

# 1

## ADOPTION OVERVIEW

### TABLE OF CONTENTS

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<b>1.1</b>	<b>Introduction .....</b>	<b>2</b>
<b>1.2</b>	<b>Framework .....</b>	<b>3</b>
1.2.1	Practice principles .....	3
1.2.2	Legal citations .....	3
1.2.2.1	Federal laws .....	3
1.2.2.2	Code of Virginia .....	6
<b>1.3</b>	<b>Definitions .....</b>	<b>7</b>
<b>1.4</b>	<b>Common websites .....</b>	<b>16</b>

# 1

## ADOPTION OVERVIEW

### 1.1 Introduction

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“Adoption is the method provided by law to establish the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents.”<sup>1</sup> The primary purpose of adoption is to help children, whose parents are incapable of assuming or continuing parental responsibilities, to legally become part of a permanent family.

Permanency is both a value and a goal of best practice to ensure that no child grows to adulthood without a lifelong connection to a caring adult. If permanency cannot be achieved through reunification with parents or placement with relatives, the goal of adoption is considered, either with relatives or non-relatives in order to provide children with permanent family connections.

Permanency for a child can best be defined as an enduring family relationship that:

- Is safe and meant to last a lifetime.
- Offers the legal rights and social status of full family membership.
- Provides for physical, emotional, social, cognitive, and spiritual well-being.
- Assures lifelong connections to extended family, siblings, and other significant adults and family history, traditions, race and ethnic heritage, culture, religion, and language.

The goals of adoption services include:

- Timely permanency for children, which is the ability to ensure that every child, no matter the child’s age, has an opportunity for placement in a family;
- Preparing children for the transition to an adoptive family;
- Providing support and services to strengthen the adoptive family; and,

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<sup>1</sup> Child Welfare League of America, Standards for Adoption Services, Revised Edition, page 11.

- Providing post-adoption services to optimize the adoptive family functioning.

## 1.2 Framework

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### 1.2.1 Practice principles

Excerpts from the Virginia Children's Services Practice Model provide guiding principles relevant to the goal of adoption:

- We believe that all children and youth need and deserve a permanent family.
- Lifelong family connections are crucial for children and adults. It is our responsibility to promote and preserve kinship, sibling, and community connections for each child. We value past, present, and future relationships that consider the child's hopes and wishes.
- Permanency is best achieved through a legal relationship such as parental custody, adoption, kinship care, or guardianship. Placement stability is not permanency.
- Planning for children is focused on the goal of preserving their family, reunifying their family, or achieving permanency with another family.
- Permanency planning for children begins at the first contact with the children's services system. We proceed with a sense of urgency until permanency is achieved. We support families after permanency to ensure that family connections are stable.

### 1.2.2 Legal citations

The legal framework and specific requirements for engaging children and families through adoption are found through federal and state law. Key laws are identified in this section.

#### 1.2.2.1 Federal laws

- [Adam Walsh Child Protection and Safety Act of 2006](#) (Pub. L. No. 109-248). This federal law requires fingerprint-based background checks for all prospective adoptive parent(s) and, in all cases, prohibits states from claiming title IV-E adoption assistance if the prospective adoptive parent(s) has certain felony convictions. This law requires child abuse and neglect registry checks for perspective foster or adoptive parents and any other adult who resided in the home for the last five (5) years.
- [Adoption Assistance and Child Welfare Act of 1980](#) (Pub. L. No. 96-272). This federal law:

- Requires states to make adoption assistance payments, taking into account the circumstances of the adopting parents and the child, to parents who adopt a child who is AFDC eligible and is a child with special needs.
- Defines a child with special needs as a child who:
  - Cannot be returned to the parent's home;
  - Has a special condition such that the child cannot be placed without providing assistance; and,
  - Has not been able to be placed without assistance.
- Requires the court or administrative body to determine the child's future status, whether it is a return to parents, adoption, or continued foster care, within 18 months after initial placement into foster care.
- [Adoption and Safe Families Act of 1997](#) (Pub. L. No. 105-89). This federal law promotes the adoption of children in foster care. It was passed to improve the safety of children and to promote adoption and other permanent homes for children who need them and to continue to support families. This law also requires that agencies, when filing a petition for TPR, shall concurrently begin to recruit, identify, process, and approve a qualified adoptive family on behalf of the child, regardless of age. The law provides that title IV-E adoption assistance children retain their eligibility for such assistance in a subsequent adoption if the adoptive parents die or the adoption dissolves with a termination of parental rights and the child continues to be a child with special needs. This law also requires states to conduct criminal records checks on prospective adoptive parents of children who would receive title IV-E adoption assistance.
- [Child Citizenship Act of 2000](#) (Pub. L. No. 106-395). This federal law amends the Immigration and Nationality Act to permit foreign-born citizens (including adopted children) to acquire citizenship automatically if they meet certain requirements.
- [Deficit Reduction Act of 2005](#) (Pub. L. No. 109-171). This federal law clarifies that for title IV-E adoption assistance, a child shall meet the July 16, 1996 State AFDC eligibility criteria in the specified relative's home from which he or she is removed. This legislation also eliminates the requirements that a child had to be AFDC eligible at the time of the initiation of adoption.

- [Fostering Connections to Success and Increasing Adoptions Act of 2008](#) (Pub. L. No. 110-351). The goal of this law is to amend parts B and E of title IV of the Social Security Act to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, improve incentives for adoption, and for other purposes.
- [Indian Child Welfare Act \(ICWA\) of 1978](#) (Pub. L. No.95-608). This federal law sets standards to maintain placement of American Indian children with American Indian/Alaska Native families.
- [Multiethnic Placement Act \(MEPA\) of 1994](#) and [The Interethnic Provisions of 1996](#) (Pub. L. No. 103-382 and Pub. L No. 104-188). The Multiethnic Placement Act was passed to promote the best interests of children by decreasing the length of time that children wait to be adopted, preventing the discrimination in the placement of children on the basis of race, color, or national origin and facilitated the identification and recruitment of foster and adoptive families who can meet children's needs. Under MEPA, the state shall provide for diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed. The state's plan for foster care and adoption assistance under title IV-E shall comply with MEPA. This plan shall provide that neither the state nor any other entity in the state that receives funds from the federal government is involved in adoption or foster placements that may discriminate on the basis of race, color, or national origin of the adoptive or foster parent or the child. The 1996 legislation amended the civil rights laws to prohibit persons and governments involved in adoption and foster care placements from denying to any individual the opportunity to become an adoptive or foster parent on the basis of race, color, or national origin of the individual or of the child or delaying or denying the placement of a child for adoption on the basis of the race, color, or nationality origin of the adoptive or foster parent or the child.
- [The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 \(PRWORA\)](#) (Pub. L. No. 104-193). This law limits Federal public benefits to qualified aliens. PRWORA requires a qualified alien entering the United States on or after the date of enactment of PRWORA (August 22, 1996), unless excepted, to live in the United States for five years before becoming eligible for certain Federal public benefits. In accordance with section 403(c)(2)(F) of PRWORA, however, Federal payments for adoption assistance are excluded from this five-year residency requirement if the child and the foster or adoptive parent(s) with whom he or she is placed are qualified aliens.

- [Safe and Timely Interstate Placement of Foster Children Act of 2006](#) (Pub. L. No. 109-239). This federal law:
  - Requires each title IV-E state plan for foster care and adoption assistance to provide that the state shall have in effect procedures for orderly and timely interstate placement of children, complete home studies requested by another state within a specified period, which is 60 days in most cases but up to 75 days if specified circumstances warrant an extension, and accept such studies received from another state **within 14 days** unless reliance on the report would be contrary to the child's welfare.
  - Requires courts to ensure that foster parents, pre-adoptive parents, and relative caregivers of a child in foster care are notified of certain proceedings held with respect to the child.
  - Requires child welfare services to include the assurance that the state will eliminate legal barriers to facilitate timely adoptive or permanent placements for children.
- [Small Business Job Protection Act of 1996, Section 1807](#) (Pub. L. No. 104-188). This federal law provides a non-refundable tax credit for people who adopt children and a non-refundable credit to those who adopt children with special needs.

#### 1.2.2.2 Code of Virginia

The Code of Virginia encourages timely disposition of adoption proceedings and guides practice to enhance permanency for children and youth.

- Chapter 12 of the Code of Virginia §§ [63.2-1200](#) through [63.2-1220.1](#) provides guidance on the general provisions of adoption in the Commonwealth.
- Additional articles of the Code of Virginia provide guidance on adoption practice, proceedings and requirements:
  - Post Adoption Contact and Communication Agreements (PACCA)
    - §§ [63.2-1220.2](#) through [63.2-1220.4](#)
  - Agency Adoptions including entrustments and foster parent adoptions
    - §§ [63.2-1221](#) through [63.2-1229](#)
  - Parental Placement Adoptions

- [§§ 63.2-1230](#) through [63.2-1240](#)
- Stepparent Adoption
  - [§§ 63.2-1241](#) through [63.2-1242](#)
- Close Relative Adoption
  - [§§ 63.2-1242.1](#) through [63.2-1242.3](#)
- Adult Adoption
  - [§§ 63.2-1243](#) through [63.2-1244](#)
- Records including permanent retention, disposition of reports, disclosure of birth family information, and fees for court ordered services
  - [§§ 63.2-1245](#) through [63.2-1248](#)
- Virginia Birth Father Registry
  - [§§ 63.2-1249](#) through [63.2-1253](#)

Additional laws included in the Code of Virginia provide guidance on:

- The Uniform Act on Adoption and Medical Assistance [§§ 63.2-1404](#) through [63.2-1405](#) provides definitions, information on medical assistance, and penalties for making false claims.
- The Interstate Compact on the Placement of Children ([§ 63.2-1000](#)) provides for cooperation between states with regard to placing children in a suitable environment. Sections [§§ 63.2-1100](#) through [63.2-1105](#) define the implementation of the Interstate Compact on the Placement of Children.
- [§ 16.1-283](#) describes the process in the termination of residual parental rights.

## 1.3 Definitions

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The following words and terms, when used in this guidance, shall have the following meaning, unless the context clearly indicates otherwise:

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Acknowledged</b>	A man with a relationship with a child established by a voluntary

<b>Father</b>	written statement between the man and the mother of the child made under oath agreeing to the paternity and confirming that prior to signing the acknowledgement, the parties were provided with a written and oral description of the rights and responsibilities of acknowledging paternity and the consequences arising from the signed acknowledgement, including the right to rescind ( <a href="#">§ 20-49.1</a> ).
<b>Addendum</b>	An attachment to the original adoption assistance agreement which specifies additions or deletions to the original terms, services, or conditions of the agreement and supersedes the original agreement.
<b>Additional Daily Supervision (ADS)</b>	A child's need for increased supervision and support. ADS is the basis for determining if an enhanced maintenance payment to a foster parent or an adoptive parents entering into an adoption assistance agreement is needed.
<b>Adjudicated Father</b>	A man with a judgment or order from a court establishing paternity of a child using scientifically reliable genetic tests, including blood tests, which affirm at least a 98 percent probability of paternity. Such genetic test results shall have the same legal effect as a judgment entered pursuant to <a href="#">§ 20-49.8</a> .
<b>Adoptee</b>	Any person who has been adopted.
<b>Adoptee Application for Disclosure</b>	The application form to be completed by an adoptee, requesting a search is made to locate the adoptee's birth mother, birth father, and/or adult birth siblings.
<b>Adoption</b>	The legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all the obligations of a birth child.
<b>Adoption Assistance</b>	A money payment or payment for services provided to adoptive parents and other persons on behalf of a child who has special needs and who meets eligibility criteria.



<b>Adoption Assistance Agreement</b>	A written agreement and any addenda that are entered into and binding on all relevant parties, including the local department of social services (LDSS), the adoptive parents of the child with special needs, and the licensed child placing agency when the child is in its custody. At a minimum, the agreement and any addenda specify the payments, services, and assistance to be provided on behalf of the child and stipulate that the agreement and any addenda shall remain in effect regardless of the State of residence of the adoptive parent at any given time (Social Security Act, Title IV, <a href="#">§ 475 (c) (2) [42 USC 675]</a> and <a href="#">§ 63.2-1302</a> ).
<b>Adoption Assistance Case File</b>	The physical file that contains documentation related to a child's adoption assistance which supports the data stored within the electronic case record.
<b>Adoption Assistance Screening Tool</b>	The form used to determine the child's eligibility for adoption assistance in Virginia.
<b>Adoption Committee</b>	A group of a minimum of three people (a manager in children's services, the child's service worker, and the adoption worker) that meets to select a family whose strengths meet the needs of the child and to determine the child's compatibility with the adoptive family.
<b>Adoption Disruption</b>	The unplanned termination of an adoptive placement prior to the finalization of the legal adoptive process.
<b>Adoption Dissolution</b>	The interruption of an adoptive placement after the legal process has been completed and the adoption is finalized.
<b>Adoption Resource Exchange of Virginia (AREVA)</b>	A registry and photo listing of children and families waiting for adoption within the Commonwealth of Virginia. It is one of the tools provided by the Virginia Department of Social Services (VDSS) to connect children and youth available for adoption with families.

<b>Adoption Search</b>	A child placing agency (CPA) conducts interviews and makes written or telephone inquiries to locate and advise the adoptee, biological parents, or siblings of an applicant's request made by an Application for Disclosure for identifying information.
<b>Adoption Tax Credits</b>	The amounts deducted from state and federal tax liability for qualifying expenses paid to adopt an eligible child (including a child with special needs).
<b>Adoptive Home</b>	Any family home selected and approved by a parent, local department of social services, or a licensed child-placing agency for the placement of a child with the intent of adoption.
<b>Adoptive Parent</b>	A provider selected and approved by a parent or a child placing agency for the placement of a child with the intent of adoption.
<b>Adoptive Placement</b>	Means arranging for the care of a child who is in the custody of a child placing agency in an approved home for the purpose of adoption with a signed adoptive placement agreement.
<b>Adult</b>	Any person 18 years of age or over.
<b>Adult Adoption</b>	The adoption of any person 18 years of age or older.
<b>Agency Placement Adoption</b>	An adoption in which a child is placed in an adoptive home by a child placing agency which has custody of the child.
<b>Amended Birth Certificate</b>	A term used to refer to the new birth certificate that is issued for an adopted child after an adoption becomes final, which shows the new name of the adopted child and the adoptive parents as the parents of the child, as though they are the biological parents.
<b>Application for Adoption Assistance</b>	The application form used to request adoption assistance payments or services on behalf of an eligible child with special needs.
<b>Basic Maintenance Payment</b>	A component of the adoption assistance payment made to an adoptive parent that may be consistent with the basic foster care maintenance rate.
<b>Birth Certificate (original)</b>	Legal document issued at the time of birth documenting the child's birth facts such as name at birth, date of birth, place of birth, and name of one or both biological parents.

<b>Birth Parent</b>	The child's biological parent, and for the purpose of adoptive placement, means parent(s) of a previous adoption.
<b>Child</b>	Any natural person less than 18 years of age.
<b>Child-placing Agency</b>	Any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to <a href="#">§ 63.2-1819</a> of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to <a href="#">§§ 63.2-900</a> , <a href="#">63.2-903</a> or <a href="#">63.2-1221</a> . A child-placing agency may be a local department of social services or a private licensed child placing agency.
<b>Child's Pre-Adoptive Summary</b>	A written assessment of the physical, mental, and emotional condition of the child, including the child's strengths, needs, and non-identifying history.
<b>Child Protective Services</b>	The identification, receipt, and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age provided by the LDSS under the supervision of VDSS. It also includes an assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.
<b>Children's Services Act (CSA)</b>	The legislation that created a collaborative system of services and funding that is child-centered, family-focused, and community-based to address the strengths and needs of troubled and at-risk youth and their families in the Commonwealth ( <a href="#">§ 2.2-5200</a> ).
<b>Closed Adoption</b>	An adoption in which the identity of the adoptive parents and birth parents are kept confidential during the process of adoption and records are sealed upon finalization of the adoption, as prescribed by law.
<b>Close Relative Placement</b>	For the purposes of adoption, a close relative placement is a child or youth's grandparent, great grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt (refer to <a href="#">§ 63.2-1242.1 (A)</a> of the Code of Virginia).
<b>COBRA Reciprocity</b>	A state's decision to extend Medicaid coverage to adopted children from another state living in the state who meet eligibility requirements and receive non-title IV-E adoption assistance benefits.
<b>Commissioner</b>	The Commissioner of the Department, his designee, or authorized

representative.

**Community Policy and Management Team (CPMT)**

A team that is appointed by the participating local political subdivision to implement the CSA as specified in the Code of Virginia §§ [2.2-5200](#) – [2.2-5207](#). The purpose of the CPMT is to manage the cooperative effort in each community to better serve the needs of troubled and at-risk youths and their families, and to maximize the use of state and community resources.

**Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)**

Addresses the provision of Medicaid to adoption assistance eligible children.

**Consortium for Resource, Adoptive, and Foster Family Training (CRAFFT)**

CRAFFT is a joint initiative between VDSS, Norfolk State University, Radford University, and Virginia Commonwealth University. CRAFFT Consultants are available to LDSS to provide assistance regarding training for foster and adoptive families.

**Cultural Competency**

The understanding of culture as a system of values, beliefs, attitudes, traditions, and standards of behavior governing the organization of people into social groups, regulating both group and individual behaviors.

**Custody**

A designation of legal and/or physical care and responsibility of a child.

**Custody Investigation**

A process, requested by a court, used by a LDSS to gather information related to the parents and a child whose custody, visitation, or support is in controversy or requires determination.

**Department**

The State Department of Social Services.

**Enhanced Maintenance Payment**

The negotiated amount paid to an adoptive parent over and above the basic maintenance payment. It is based on the needs of the child for additional daily supervision and support by the adoptive parent that is beyond age appropriate care. The maximum rate for each child is determined by the administration of a VEMAT.

**Executed Agreement**

For the purposes of adoption assistance, an executed agreement is one that has been signed and dated by both the adoptive parent and the local board or local board designee ([§ 63.2 - 1302](#)).

<b>Family Assessment and Planning Team (FAPT)</b>	A local team created through the CSA to assess the strengths and needs of troubled youth and families, which identifies and determines the complement of services required to meet these unique needs ( <a href="#">§ 2.2-5208</a> ).
<b>Foster-Adopt Placement</b>	A child placement in which birth parents' rights have not yet been severed by the court or in which birth parents are appealing the court's decision but foster parents agree to adopt the child if/when parental rights are terminated.
<b>Free and Appropriate Public Education (FAPE)</b>	The services or accommodations outlined in the Individualized Education Plan (IEP) that adapt the content, delivery or methodology that meet the unique needs of the child to access the general education curriculum.
<b>Group Home</b>	For the purpose of adoption assistance, a group home is a Level A or B facility that is either providing community-based, residential services licensed by the Department of Social Services (DSS), Department of Juvenile Justice (DJJ), or Department of Education (DOE); or therapeutic behavioral residential services licensed by the Department of Behavioral Health and Developmental Services.
<b>Guardian Ad Litem (GAL)</b>	A trained, independent advocate who represents and promotes the best interests of abused, neglected, and dependent children.
<b>Intercountry Placement</b>	The arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth, by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.
<b>Interlocutory Order of Adoption</b>	An order declaring that subject to the probationary period prior to the final order of adoption, the child will be, for all intents and purposes, the child of the petitioner.
<b>Interstate Compact on Adoption and Medical Assistance (ICAMA)</b>	An agreement between member states that governs the interstate delivery of and payment for medical services and adoption assistance payments for adopted children with special needs.
<b>Investigation</b>	A process of gathering and assessing information relative to the best interest of the child.

<b>Joint Custody</b>	Joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residency may be with one parent. Joint physical custody where both parents share physical and custodial care of the child or a combination of joint legal and joint physical custody which the court deems to be in the best interest of the child.
<b>Local Department</b>	The local department of social services of any county or city in this Commonwealth.
<b>Online Automated Services Information System (OASIS)</b>	Automated system used to record all child welfare services data for foster care, adoption, and adoption assistance cases.
<b>Parental Placement</b>	The placement of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.
<b>Permanency</b>	Means establishing family connections and placement options for children in order to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.
<b>Person Locator Tool</b>	A web-based search program that allows people searches, address searches, and phone number searches in real-time.
<b>Person with a legitimate interest</b>	May be broadly construed and includes but is not limited to grandparents, stepparents, former stepparents, blood relatives and family members provided that the party has intervened in the suit or is properly before the court to accommodate the best interest of the child.
<b>Petitioner</b>	A person who requests of the court through a petition permission to adopt a certain child.
<b>Post Adoption Contact and Communication Agreement (PACCA)</b>	The voluntary, legally enforceable, written agreement between the birth parent(s) and the adoptive parent(s) for contact and communication after the legal adoption of a child that has specific requirements included in the agreement.
<b>Post-Adoption Services</b>	Services provided to the family after the legal finalization of the adoption to support, maintain, and sustain the adoptive placement.

<b>Post-Placement Services</b>	A multitude of appropriate services that are provided after the child's placement with his or her adoptive family but before the finalization of adoption. The goal of these services is to facilitate the integration of the child and family, and the resolution of problems that they may encounter.
<b>Presumed Father</b>	A man presumed to be the father if the following circumstances apply: he and the mother of the child are married to each other and the child is born during the marriage; he and the mother of the child were married to each other and the child is born within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce ( <a href="#">§ 63.2-1202</a> ).
<b>Putative Father Registry</b>	A registry established by the Department of Social Services for a man who desires to be notified of proceedings for adoption or termination of parental rights regarding a child he may have fathered.
<b>Qualified Professional</b>	A person who is licensed, certified, and/or has documentable education to provide care or services specific to the child's current treatment, diagnosis, or disabilities.
<b>Re-Adoption</b>	(1) A process in which a child adopted in a foreign country is adopted for a second time in a court of his/her state of residence within the United States. Refer to <a href="#">§ 63.2-1200.1</a> for the Commonwealth of Virginia's specific requirements for re-adoption. (2) The process of adopting a formerly adopted child after the previous adoption dissolved or due to the death of the adopted parents.
<b>Residential Treatment Facility</b>	For the purposes of adoption assistance, a residential treatment facility (Level C) contains a program that is (1) for children and adolescents licensed by the Department of Behavioral Health Developmental Services (DBHDS) that is located in a psychiatric hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); <b>or</b> (2) for children and adolescents licensed by DBHDS that is located in a psychiatric unit of an acute general hospital accredited by the JCAHO; <b>or</b> (3) psychiatric facility that is (i) accredited by JCAHO, the Commission on Accreditation of Rehabilitation Facilities, the Council on Quality and Leadership in Support for People with Disabilities, or the Council on Accreditation Services for Families and Children and (ii) licensed by DBHDS as a residential treatment program for children

and adolescents.

<b>Sibling</b>	Two or more children having one or more parents in common.
<b>Sole Custody</b>	One person retains responsibility for the care and control of the child and has primary authority to make decisions concerning the child.
<b>Special Services Payments</b>	A component of the adoption assistance payment made to the adoptive parents or other persons for special services on behalf of the child.

## 1.4 Common websites

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The following websites provide insight and valuable resources for adoption topics:

- [Adoptive Families of America Magazine](#)
- [Administration for Children and Families](#)
- [AdoptUSKids](#)
- [Adopting.org](#)
- [American Adoption Congress](#)
- [Casey Family Programs](#)
- [Child Welfare Information Gateway](#)
- [Dave Thomas Foundation](#)
- [Evan B. Donaldson Institute](#)
- [National Center on Adoption and Permanency](#)
- [National Resource Center for Adoption \(NRCA\)](#)
- [North American Council on Adoptable Children](#)
- [PACT, An Adoption Alliance](#)
- [Virginia's Waiting Children](#)



# 2

## ADOPTION ASSISTANCE

### TABLE OF CONTENTS

---

<b>2.1</b>	<b>Introduction .....</b>	<b>6</b>
<b>2.2</b>	<b>Framework .....</b>	<b>7</b>
2.2.1	Practice principles .....	7
2.2.2	Outcomes.....	8
<b>2.3</b>	<b>Determining LDSS responsibility for adoption assistance.....</b>	<b>8</b>
2.3.1	Preparing for the adoption assistance process .....	9
<b>2.4</b>	<b>Educating and partnering with adoptive parents .....</b>	<b>9</b>
2.4.1	How adoption assistance applies to the child .....	10
2.4.2	Information on continuing SSI payments for eligible child .....	11
2.4.3	Information on survivor and disability benefits .....	12
2.4.4	Information on Federal Adoption Tax Credit .....	13
2.4.5	Responsibility for school attendance .....	13
2.4.6	Independent living services for youth adopted at age 16 and over .....	14
2.4.7	Youth participation in National Youth in Transition Database .....	14
<b>2.5</b>	<b>Application process .....</b>	<b>14</b>
2.5.1	Initial review and notice of application receipt.....	15
<b>2.6</b>	<b>Assessing family circumstances.....</b>	<b>16</b>
2.6.1	Assessing basic maintenance needs of child.....	19
2.6.2	Assessing additional daily supervision needs of child .....	20
2.6.2.1	LDSS responsibilities in conducting a VEMAT .....	21
2.6.2.2	Adoptive parents responsibilities in conducting a VEMAT .....	22
2.6.3	Assessing child care needs .....	22
2.6.4	Assessing the child’s health insurance needs.....	25
2.6.5	Assessing non-recurring adoption expenses needs.....	25
2.6.6	Assessing special services to meet child’s needs.....	27

2.6.6.1	Determining whether adoptive parents can financially afford services..	28
2.6.6.2	Types of special services.....	28
2.6.6.2.1	Educational Advocate.....	30
2.6.6.3	Tutoring.....	30
2.6.6.4	Determining whether residential services are covered.....	31
2.6.6.5	Requirements for respite care.....	32
2.6.6.6	Selecting providers.....	33
<b>2.7</b>	<b>Assessing resources to defray costs.....</b>	<b>34</b>
2.7.1	Child’s health insurance.....	34
2.7.2	Family preservation services for adoptive families.....	36
2.7.3	Children’s special needs.....	36
2.7.4	Older youth with significant disabilities.....	37
2.7.5	Educational and related services needs.....	37
2.7.6	Post-secondary education and training.....	40
<b>2.8</b>	<b>Screening child for adoption assistance.....</b>	<b>41</b>
<b>2.9</b>	<b>Screening child prior to final order of adoption.....</b>	<b>42</b>
2.9.1	Special Needs Criteria.....	43
2.9.2	Title IV-E applicable child.....	45
2.9.2.1	Title IV-E eligibility for an applicable child.....	45
2.9.3	Non-applicable eligibility – Aid to Families with Dependent Children.....	47
2.9.4	Screening child for State basic maintenance payments.....	49
2.9.5	Eligibility for enhanced maintenance payments.....	49
2.9.6	Eligibility for special services payments.....	50
2.9.7	Eligibility for non-recurring payments.....	51
2.9.8	Eligibility for Medicaid in relation to adoption assistance agreement.....	51
2.9.8.1	Medicaid for the child eligible for title IV-E adoption assistance.....	52
2.9.8.2	Medicaid for the child eligible for state adoption assistance with special medical needs.....	52
2.9.8.3	Medicaid for child eligible for state adoption assistance without special medical needs.....	53
<b>2.10</b>	<b>Screening child after final order of adoption.....</b>	<b>54</b>
2.10.1	Screening a child for adoption assistance after final order.....	55
2.10.2	Screening a child for enhanced maintenance after final order.....	56
2.10.3	Screening for special services after final order.....	57
2.10.4	Eligibility for Medicaid after the final order.....	57

<b>2.11</b>	<b>Negotiating adoption assistance.....</b>	<b>58</b>
2.11.1	Role of the Assistance Negotiator .....	58
2.11.2	Role of LDSS during the negotiation process .....	59
2.11.3	Negotiation process.....	61
2.11.4	Negotiating special services payments.....	62
2.11.5	Appealing the Negotiation .....	64
<b>2.12</b>	<b>Adoption Assistance Agreement.....</b>	<b>64</b>
2.12.1	Developing the agreement .....	64
2.12.2	Executing the agreement.....	65
<b>2.13</b>	<b>Annual affidavit.....</b>	<b>67</b>
<b>2.14</b>	<b>Making changes to agreement.....</b>	<b>69</b>
2.14.1	Submitting request for addendum.....	69
2.14.2	Timeframe for acting on request.....	70
2.14.3	Assessing overall request for addendum.....	71
2.14.4	Assessing relevant components of adoption assistance .....	71
2.14.5	Executing the addendum.....	73
2.14.6	Conducting a VEMAT after signing adoption assistance agreement.....	73
2.14.7	Assessing conditions warranting continuation beyond 18 <sup>th</sup> birthday .....	74
2.14.7.1	Criteria for continuing beyond 18 <sup>th</sup> birthday .....	75
2.14.8	Extension of adoption assistance through Fostering Futures.....	77
2.14.8.1	Fostering Futures eligibility criteria .....	77
2.14.8.2	Documentation for Fostering Futures eligibility.....	78
2.14.8.3	Continuing adoption assistance using Fostering Futures .....	79
2.14.9	Requirements for residential treatment services.....	79
2.14.9.1	FAPT requirements for residential treatment services .....	81
2.14.9.2	Convening Family Partnership Meeting.....	82
2.14.9.3	Negotiating residential treatment services.....	82
2.14.9.4	Responsibilities of adoptive parents .....	83
2.14.9.5	Discharge and aftercare planning.....	84
2.14.9.6	Documenting in the automated system .....	86
<b>2.15</b>	<b>Payment and services .....</b>	<b>86</b>
2.15.1	Beginning payments and services .....	86
2.15.2	Reconciling foster care payment records.....	87
2.15.3	Making and reporting maintenance payments .....	87

2.15.4	Making and reporting non-recurring adoption payments.....	89
2.15.5	Making and reporting special services payments .....	90
2.15.6	Making and reporting Fostering Futures payments.....	91
2.15.7	Adoption and Legal Guardianship Incentive funds.....	91
<b>2.16</b>	<b>Maintaining responsibilities.....</b>	<b>91</b>
2.16.1	Responsibilities of the adoptive parents .....	91
2.16.1.1	Responsibilities of adoptive parents who receive enhanced maintenance prior to finalization of the adoption .....	93
2.16.2	Responsibilities of LDSS responsible for adoption assistance.....	93
2.16.2.1	Support services for adoptive parents receiving enhanced maintenance prior to finalization .....	95
2.16.3	Responsibilities of LDSS where adoptive parents reside.....	96
2.16.4	Responsibilities of LDSS when abuse or neglect.....	98
<b>2.17</b>	<b>Terminating payments and agreements .....</b>	<b>98</b>
2.17.1	Terminating maintenance payments.....	98
2.17.2	Terminating state special services payments .....	99
2.17.3	Terminating agreements signed on or after October 1, 2013.....	99
2.17.4	<i>Terminating agreements signed prior to October 2013.....</i>	<i>100</i>
2.17.5	Terminating extended adoption assistance through Fostering Futures....	101
2.17.6	LDSS actions when adoptive parents fail to provide financial support .....	101
2.17.7	LDSS actions when adoptive parents die .....	102
<b>2.18</b>	<b>Appeals and fair hearings.....</b>	<b>104</b>
2.18.1	Request for appeals .....	105
2.18.2	Validating the appeal.....	106
2.18.3	Summary of Facts .....	106
2.18.4	Administrative Hearing .....	107
2.18.5	Withdrawal statement.....	109
2.18.6	Appeal to Circuit Court .....	109
2.18.7	Filing complaint of discrimination.....	109
<b>2.19</b>	<b>Establishing case record .....</b>	<b>110</b>
<b>2.20</b>	<b><i>Child welfare information system case record.....</i></b>	<b><i>110</i></b>
2.20.1	Adoption case contacts .....	111
2.20.2	Assistance screen .....	112
2.20.3	Residential screen.....	114

**2.21 Appendix A: Legal excerpts and Child Welfare Policy Manual ..... 114**

- 2.21.1 Applicable Child ..... 114
- 2.21.2 Child with special needs ..... 115
- 2.21.3 State-funded maintenance payments ..... 115
- 2.21.4 Nonrecurring expense payments ..... 115
- 2.21.5 State special services payments ..... 115
- 2.21.6 Adoption assistance agreement ..... 116
- 2.21.7 Terminating agreement ..... 116

**2.22 Appendix B: Adoption assistance timeline ..... 117**

DRAFT

# 2

## ADOPTION ASSISTANCE

### 2.1 Introduction

---

The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs ([§ 63.2-1300](#)). Children with special needs often have experienced abuse and neglect as well as significant losses and disruptions in their lives. These traumatic events increase their risk for developmental, physical, emotional, and behavioral challenges and adoption is unlikely within a reasonable period of time without adoption assistance.

Adoption gives a child with special needs a foundation for success in life. Adoption assistance provides:

- Safe, stable, and permanent family relationships to meet the child's special needs.
- Positive parenting to assist children in overcoming challenges and tapping into their resiliency.
- Lifelong connections for sharing family traditions, special holidays, and important life events.

Adoption assistance provides the adoptive parents with the necessary assistance to adopt and care for the child who has special needs and who meets eligibility criteria. It is not intended to cover the full cost of raising the child. Rather, it supplements the resources of the adoptive parents.

The types of adoption assistance may include:

- Basic maintenance payments to help meet the child's needs for housing, food, clothing, transportation, or personal incidentals. A supplemental clothing allowance over and above the basic maintenance payment is not an allowable payment in adoption assistance.

- Enhanced maintenance payments to help address the child's additional supervision and support needs from the adoptive parents when necessary to ensure the safety and well-being of the child.
- Health insurance through the Medicaid program for an eligible child.
- Payment for non-recurring expenses directly related to the placement and legal adoption of the child.
- Special services payments that are time-limited to help meet the child's documented special needs.

Local departments of social services (LDSS) shall use a consistent application, assessment, and negotiation process statewide. This process individually tailors adoption assistance to meet the special needs of the child, family circumstances of the adoptive parents, and available resources in the community.

## 2.2 Framework

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The LDSS should use the following framework to help guide decision-making. The LDSS shall comply with federal and state legal requirements and should use the following sound practice principles and desired outcomes when making decisions.

### 2.2.1 Practice principles

Four fundamental principles in [Virginia's Children's Services System Practice Model](#) provide the philosophical basis and guide practice in adoption assistance.

First, we believe all children and communities deserve to be safe.

- Safety comes first. Ensuring safety requires a collaborative effort among family, agency staff, and the community.

Second, we believe all children need and deserve a permanent family.

- Children's needs are best served in a family that is committed to the child.
- Lifelong family connections are crucial for children and adults. It is our responsibility to promote and preserve kinship, sibling, and community connections for each child. We value past, present, and future relationships that consider the child's hopes and wishes.
- Permanency is best achieved through a legal relationship such as parental custody, adoption, kinship care, or guardianship.

Third, we believe in partnering with others to support child and family success in a system that is family-focused, child-centered, and community-based.

- We take responsibility for open communication, accountability, and transparency.
- Our communication must reinforce the belief that children and youth belong in family and community settings and that system resources must be allocated in a manner consistent with that belief.

Fourth, we believe how we do our work is as important as the work we do.

- Relationships and communication among staff, children, families, and community partners are conducted with genuineness, empathy, and respect.
- As we work with children, families, and their teams, we clearly share with them our purpose, role, concerns, decisions, and responsibility.
- We are focused on providing high quality, timely, efficient, and effective services.

### 2.2.2 Outcomes

LDSS shall strive to achieve the following permanency outcomes required in the federal Child and Family Services Review:

- Increase the percentage of children adopted based on all children in foster care who have the goal of Adoption, and a final order terminating parental rights.
- Increase the timeliness of adoptions.

## 2.3 Determining LDSS responsibility for adoption assistance

---

Responsibility for adoption assistance is based on who has placement and care of the child or where the adoptive parents reside.

The LDSS responsible for placement and care of the child is responsible for adoption assistance. The LDSS maintains responsibility for adoption assistance for the duration of the agreement whether the child is placed with adoptive parents in another state or the adoptive parents move to another jurisdiction or state ([§ 63.2-1302 D](#)).

When a licensed child placing agency (LCPA) has custody of the child:

- The LDSS where the adoptive parents reside is responsible for adoption assistance.



- The public child welfare agency where the adoptive parents reside is responsible for adoption assistance when the child is placed in another state.

When the child is not in the placement and care of a public or private child placing agency (CPA), the LDSS where the adoptive parents reside is responsible for adoption assistance.

### 2.3.1 Preparing for the adoption assistance process

To prepare for the adoption assistance process, the LDSS:

- Reviews and ensures the [Full Disclosure of Child Information Form](#) is complete and identifies the child's special needs (see Chapter E. Foster Care Manual, [Section 9.9.4](#)).
- Identifies the services and supports the child is *currently* receiving, including the provider, frequency, and monthly cost.
- Identifies the amount of basic maintenance adoption assistance available for the child. The amount is based on the maintenance payment rate for foster care (See Chapter E. Foster Care Manual, [Section 18.1.3](#)). It is determined by the child's age at the time of placement in the adoptive home.
- Identifies the maximum amount of enhanced maintenance payments for adoption assistance. This amount is based on the VEMAT score for the child.
- Explores whether the child may be entitled to or continue receiving [Social Security benefits](#) due to the retirement, death, disability (e.g. [Veterans' benefits](#), [Railroad Retirement benefits](#)), life insurance, and trust fund payments related to the birth parent after adoption. The child may continue to be eligible for benefits connected to the birth parents. Changing the child's social security number at the time of the adoption may prohibit the child's access to benefits.
- Explores whether the child may continue receiving [SSI](#) payments for the child's disability after the finalization of adoption. The adoptive parents will need to decide whether to continue SSI payments for an eligible child and receive adoption assistance maintenance payments concurrently, or obtain payments solely from one program.
- Enters information on the child's special needs and resources in Section I of the [Application for Assistance](#) to be given to the adoptive parents.

## 2.4 Educating and partnering with adoptive parents

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When discussing adoption assistance with the adoptive parents, the LDSS should continue to strengthen the collaborative partnership by:

- Creating a supportive environment for conversations and building trust.
- Demonstrating open and transparent communication.
- Understanding and respecting the adoptive parents' strengths, concerns, and family circumstances.
- Searching to create win-win solutions that meet the child's special needs, address the family circumstances, and use adoption assistance funds wisely.

#### 2.4.1 How adoption assistance applies to the child

The LDSS should discuss with the adoptive parents how adoption assistance applies to the specific child they wish to adopt and their family circumstances. Conversations should include:

- The child's background and special needs.
  - All known information about the child, including the child's documented special needs and non-identifying information about the birth family on the Full Disclosure of Child Information Form (see Chapter E. Foster Care Manual, [Section 9.9.4](#)).
  - The long term needs of children who have experienced trauma.
  - The supervision, services, and supports the child currently requires, and to the extent possible, the services the child will need.
- The child's eligibility for adoption assistance. The purpose and types of adoption assistance and supports that may be available to help address the child's special needs.
- The family circumstances of the adoptive parents to begin identifying what they need to successfully integrate the child into their home, lives, and future.
- The purpose of negotiation and the application process.
- The agreement should be executed within 90 days after the LDSS receives the completed application with all supporting documentation.
- The process adoptive parents request changes to the adoption assistance agreement based on changes in the child's special needs or their family circumstances.
- When and how adoption assistance payments and agreements are terminated.

- The adoptive parents' right to appeal decisions made by the LDSS and information on the fair hearing process.

During these conversations, the agency should ensure the adoptive parents have copies of the following documents:

- [Full Disclosure of Child Information Form](#).
- [Adoption Assistance Screening Tool](#).
- [Information Sheet on the Virginia Adoption Assistance Program](#).
- [Application for Assistance](#) with Section I completed by the service worker.

When the adoptive parents sign the Full Disclosure of Child Information Form and the Virginia Application for Assistance, they confirm that they received these documents, the program was explained to their satisfaction, and they understand the process. The LDSS shall maintain a copy of these signed documents in the child's adoption assistance case record.

Failure to provide the adoptive parents information on all relevant and known facts about the child and the availability of adoption assistance for an eligible child prior to finalizing the adoption may constitute the LDSS denying adoption assistance. The adoptive parents may request an appeal of the agency's decision.

#### **2.4.2 Information on continuing SSI payments for eligible child**

When the adoptive parents are likely to continue receiving [SSI](#) payments after the final adoption, the LDSS should encourage the adoptive parents to contact a Social Security representative at 1-800-772-1213 to discuss their situation. The adoptive parents may also visit the Social Security Administration (SSA) website at <http://www.socialsecurity.gov>.

The LDSS should inform the adoptive parents that they may choose to apply for SSI payments for an eligible child and receive adoption assistance maintenance payments concurrently, or to obtain payments solely from one program.

In determining the amount of SSI the child is entitled to receive, the SSA counts the income and resources of the adoptive parents. If these resources exceed an established maximum level, the child is no longer eligible for SSI payments.

If the income and resources of the adoptive parents do not affect the child's eligibility for SSI and the adoptive parents receive concurrent payments from both programs on behalf of the child, the SSA will reduce the SSI amount, dollar for dollar, for any title IV-E adoption assistance paid to the adoptive parents. In this situation, the adoptive parents may choose to:

- Reduce the title IV-E adoption assistance payment they receive based on the amount of SSI the child is entitled to receive.
- Decline the basic maintenance payment and receive only SSI for the child. However, if the adoptive parents do not execute an adoption assistance agreement prior to the final order of adoption, the child will no longer be eligible for title IV-E adoption assistance payments. The child also may not be eligible for state adoption assistance after the final order of adoption. The LDSS should encourage the adoptive parents to enter into an adoption assistance agreement with a zero or minimal dollar payment, if the adoptive parents are not receiving other adoption assistance. This agreement allows the adoptive parents to submit an [Addendum Request to the Assistance Agreement](#) if they want to receive basic maintenance payments in the future.
- Receive only the adoption assistance payment and not continue SSI payments for the child. However, if the child does not receive SSI benefits for twelve (12) months, the child is no longer eligible for SSI. The adoptive parents may reapply for SSI benefits in the future, or the child may apply for Social Security Disability Insurance (SSDI) benefits after age 18 as an adult disabled since childhood.
- The LDSS should serve as a resource for the adoptive parents on the adoption assistance program as the adoptive parents make this decision. There are many complexities and financial implications and it is important that the adoptive parents discuss all aspects of combining SSI and adoption assistance with a representative from the SSA prior to negotiating the adoption assistance agreement ([Federal Child Welfare Policy Manual, Subsection 8.4D #1](#)).

### 2.4.3 Information on survivor and disability benefits

The adopted child can receive adoption assistance concurrently with survivor benefits (due to death of child's birth parent) or disability benefits (due to the disability of the child's birth parent) from the SSA for an eligible child. The adoptive parents should contact a Social Security representative for further information.

If the child is solely receiving disability and/or survivor benefits, not SSI, the SSA will not reduce the amount of disability and/or survivor benefits based on the child receiving adoption assistance. (Note: If the child is receiving SSI, survivor benefits, and adoption assistance, then the SSI will be reduced dollar for dollar. SSI is the only benefit the SSA will reduce based on other benefits the child is receiving.)

The LDSS should not reduce adoption assistance due to the child receiving these benefits. However, such benefits should be considered during negotiations as part of the overall resources the adoptive parents have available to help support the child when the LDSS and adoptive parents negotiate adoption assistance.

#### 2.4.4 Information on Federal Adoption Tax Credit

While not part of the adoption assistance program, the LDSS shall inform the adoptive parents of their potential eligibility for a federal adoption tax credit when adopting a child in foster care, including a child with special needs ([Social Security Act, Title IV, § 471 \(a\) \(33\) \[42 USC 671\]](#)).

The LDSS should encourage adoptive parents to consult a tax professional to determine their eligibility for the tax credit. The LDSS should also refer the adoptive parents to the following websites for information about the tax credit:

- The [Internal Revenue Service](#) has eligibility information and forms required for filing on its [Adoption Credit and Adoption Assistance Programs](#).
- The [North American Council on Adoptable Children](#) (NACAC) has general information on the [federal tax credit](#).

The LDSS should inform the adoptive parents:

- The tax credit can help defray adoption costs for eligible taxpayers.
- The maximum credit amount is established by federal law and is based on the year the adoption was finalized. (See [NACAC website](#) for the maximum credit amount available each year.)

#### 2.4.5 Responsibility for school attendance

The LDSS shall inform the adoptive parents of their responsibility for ensuring the child complies with applicable law regarding the minimum age for compulsory school attendance ([Social Security Act, Title IV, § 471 \(a\) \(30\) \[42 USC 671\]](#)). Virginia requires compulsory school attendance when the child is age five on or before Sept 30 of the current school year through his or her 18th birthday as defined in [§ 22.1-254 A](#).

The adoptive parents shall report information on the status of the school aged child or youth on the annual affidavit (e.g., full-time student, completed secondary school).

The adoption assistance agreement includes a provision for the adoptive parents to authorize the LDSS and VDSS to use the child's State Testing Identification (STI) number, when applicable. The purpose of the STI number is to document the child's enrollment in school and to obtain educational information from the Virginia Department of Education (VDOE) on children who receive adoption assistance funds. Only non-identifying aggregate educational information on children with adoption assistance will be reported publicly.

The STI number is located on the child's SOL Student Report for the Standards of Learning assessments. If the LDSS does not have the STI number in the child welfare information system, the LDSS or LCPA that has custody of the child may contact the person responsible for student records at the child's school to obtain the number. The STI number shall be maintained as confidential information by LDSS (§ [63.2-104](#)).

#### **2.4.6 Independent living services for youth adopted at age 16 and over**

The LDSS shall inform the adoptive parents and the youth of independent living (IL) services available for youth who were adopted from foster care at age 16 and over (up to age 21). Independent living services may be available through the LDSS responsible for providing services to the family. If there is a fee, the adoptive youth or the parent will be responsible for the payment for the fees required to participate. Services include a broad range of activities, educational support, job preparation, and training to help the youth prepare for adulthood. The adopted youth is not eligible for an IL stipend. LDSS shall not use adoption assistance funds to pay for these services. For more information on types of services and the IL program, see Chapter E. Foster Care Manual, [Section 13.10](#).

#### **2.4.7 Youth participation in National Youth in Transition Database**

When the adoptive parents adopt a youth who exits foster care within 45 days **after** reaching his 17<sup>th</sup> birthday in the federal fiscal years 2017, or any third year thereafter, the LDSS shall inform the adoptive parents that:

- The LDSS is required to ask the youth to participate in a survey during the 45 days after the youth's 17<sup>th</sup> birthday to collect and report baseline information on the youth as part of National Youth in Transition Database (NYTD).
- The youth may then be selected to participate in an outcomes survey when the youth turns age 19, and then again when the youth turns age 21.
- The purpose of the survey is to assess the foster care system with regards to life outcomes for youth (e.g., increasing financial self-sufficiency, improving educational attainment, increasing connections with adults, reducing homelessness, reducing high risk behavior, and improving access to health insurance).

For more information on NYTD, see Chapter E. Foster Care Manual, [Section 13.13](#).

## **2.5 Application process**

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After the LDSS and adoptive parents have fully discussed the child's special needs and the adoption assistance program, the LDSS and the adoptive parents should begin the application process.

The LDSS shall provide the adoptive parents with the [Application for Assistance](#). The LDSS should complete Section 1 prior to giving the document to the adoptive parents. This tool helps the adoptive parents identify the payments, services, or supports they may need. The application should be completed by the adoptive parents with the LDSS or the LCPA when the child is in the LCPA's custody. *The child's adoptive name is used on the application. If the child's adoptive name has not been decided at the time of the application, then the applicant should use the child's birth first name and the first initial of his or her last name. This is because the child's birth name is sealed when the adoption is finalized. See Section 5 for the adoption disclosure process.*

The adoptive parents either:

- **Request adoption assistance** on behalf of the child with special needs.
- **Decline adoption assistance** by signing Section 8B of the application.
- **Request to enter into an adoption assistance agreement, but decline financial assistance and services until they are needed.** The agreement is executed with a zero dollar payment. Medicaid may be included for an eligible child. This agreement enables the adoptive parents to request an addendum to the agreement during the duration of the agreement to address the child's special needs and family circumstances of the adoptive parents. This agreement shall be used when the child solely has the special need factors of hereditary tendency, congenital problem (including substance exposure), or birth injury and there is no evidence the child currently has a disability. The adoptive parents may request assistance if the child's problem or disability manifests in the future.

The adoptive parents shall sign and submit the completed application and all necessary documentation to the LDSS. Letters, other written requests, and verbal requests for adoption assistance do not constitute an application and do not initiate the required time frames for processing the application.

### 2.5.1 Initial review and notice of application receipt

Within **14 calendar days** after receiving the application for assistance, the LDSS should:

- Review the application to determine whether the application is complete with all required documentation.
- Notify the adoptive parents in writing that the application was received and its status:
  - **Additional information is needed.** The notification shall state the specific information necessary to complete the application and request the

adoptive parents submit the information by email, phone, or in person within **30 calendar days** from the notice date.

- **The application is complete.** The notification shall include the date the application was received. It shall state that the LDSS and adoptive parents have **90 calendar days** to execute an adoption assistance agreement.
- **The application is denied** when it is clearly evident that the child is not eligible for adoption assistance (e.g., the child is 19 years old). The notification shall clearly state the reasons for the denial, provide information on the adoptive parents' right to appeal within **30 calendar days** of receiving the notice of denial, and provide information on the fair hearing process. No further action is required by the LDSS on the application.

Once the LDSS receives the completed application and all required documentation:

- The LDSS submits the initial [Referral for Negotiations](#).
- The LDSS and adoptive parents should complete, sign, and execute the adoption assistance agreement within **90 calendar days** from the date the LDSS received the completed application and all required documentation.
- All parties shall sign and execute the agreement prior to the final order of adoption, except for the application submitted and agreement entered into after the final order of adoption ([45 CFR 1356.40 \(b\) \(1\)](#)).

## 2.6 Assessing family circumstances

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The LDSS should begin the assessment process by facilitating conversations with the adoptive parents about the child's special needs, the services the child requires, the family circumstances of the adoptive parents, and how these circumstances impact their need for adoption assistance. Family circumstances include the adoptive parents' overall ability to meet the immediate and future needs of the child and to incorporate the child into their home, in relation to their current lifestyle and standard of living, as well as their future plans.

During these conversations, the LDSS should summarize the conversations to ensure the LDSS fully understands the perspectives and family circumstances of the adoptive parents, including:

- The strengths of the family.
- The ways the family can contribute to meeting the child's special needs.



- Their concerns and interests related to the child's special needs and their family circumstances.
- Their specific requests for adoption assistance and reasons for these requests.

The LDSS should ask and discuss with the adoptive parents the following types of questions:

- What is your understanding of the child's special needs? What concerns do you have?
- What resources are available to help you meet the child's needs from your relatives, friends, neighbors, connections with community groups (e.g., faith-based organizations, community centers, cultural, and civic organizations), health insurance, and other public and government agencies? How can these resources be used creatively to meet the child's needs?
- How do you plan to integrate the child into your family and your future plans? What concerns do you have? For a sibling group, what concerns do you have about meeting the children's needs (e.g., furniture, supplies, space)?
- In what ways do you feel you can meet the child's special needs? How can you share in the costs in meeting the child's needs?
- How do you plan to provide for any special accommodations (e.g., specialized food, equipment, ramps, lifts, remodeling the home) that the child requires due to a physical disability or chronic health condition?
- What type of assistance is important to you so you can adopt and care for the child as a member of your family? Do you need financial assistance, health insurance, special services, or other supports?
- How much assistance do you need? When do you need it? How long do you need it? How will this assistance help you adopt the child and meet the child's special needs?

The adoptive parents also provide information on their family circumstances in the adoption assistance application. The purpose of this information is to assist the adoptive parents in:

- Planning for integrating the child into their family.
- Evaluating:
  - The total funds they have available for the child, taking into account their financial resources and expenses for the child.

- Other resources available to help address the child's special needs (e.g., family, neighbors, faith-based community, health insurance, schools, and other government resources).
- The financial assistance they may need in order to adopt and meet the child's special needs.
- Negotiating with the LDSS on the terms for the adoption assistance agreement.

The LDSS shall not use this information in determining the child's eligibility for adoption assistance maintenance payments ([45 CFR 1356.40 \(b\) \(4\) \(c\)](#)), nor as the sole factor in assessing family circumstances or in determining adoption assistance payments.

The LDSS *and the adoptive parents* enter the information *on the Application for Assistance*. The *application* calculates a monthly average for:

- The financial resources the adoptive parents have available to support the child.
- The total expenses for the child as a member of the adoptive parents' family based on their current lifestyle and future plans.
- Any remaining funds the adoptive parents have available to care for the child (i.e., subtracting the child's expenses from the financial resources available for the child).

The LDSS shares this information with the adoptive parents. The LDSS should discuss with the adoptive parents:

- If the adoptive parents anticipate any changes in the near future that will increase or decrease the financial resources they have available to support the child (e.g., change in job or additional family members to support on a regular basis).
- In what ways the adoptive parents feel this information reflects their family circumstances.
- What additional information the adoptive parents can share to better understand their family circumstances.
- Whether the adoptive parents can spend any funds differently to help meet the child's needs.

This helps the adoptive parents assess and understand the resources they have available to care for the child. The adoptive parents also refer to this information during the negotiation process.

### 2.6.1 Assessing basic maintenance needs of child

A basic maintenance payment shall be approved for a child, who is eligible for adoption assistance, unless the adoptive parent indicates, or it is determined through negotiation that adoption assistance is not needed ([22 VAC 40-201-161 E 1](#)). **A supplemental clothing allowance over and above the basic maintenance payment is not an allowable payment in adoption assistance** and shall not be considered.

The LDSS should discuss the following factors with the adoptive parents:

- The basic maintenance payment is based on the child's age rate for foster care maintenance rates (See Chapter E. Foster Care Manual, [Section 18.1.3](#)). The LDSS should explain that the payment amount shall not exceed what would have been paid had the child been in a foster family home ([§ 63.2-1302 A, Social Security Act, Title IV, § 473 \(a\) \(3\) \[42 U.S.C. 673\]](#)).
- When the child is likely to continue receiving SSI after the adoption and these payments provide a higher benefit level than the basic maintenance payment, the adoptive parents may want to use the SSI payments to help meet the child's needs.
- The adoptive family's income and expenses should be discussed as it relates to what supports are needed to adequately meet the needs of the child. For example, the LDSS worker should inform the adoptive parents that based on the information they provided, they have "x" dollars available to help care for the child. Given the available resources, what amount do you need on a monthly basis to help address the needs for the child? *The worksheet may be used as an additional resource.*
- The amount of basic maintenance the adoptive parents request, if they choose to receive less than the amount available.
- The length of time the adoptive parents request to receive the basic maintenance payment, if they choose a time before the child turns age 18. For example, the LDSS should ask the adoptive parents how long and for what time period they request this payment.

The LDSS shall inform the adoptive parents:

- The basic maintenance rate shall be automatically increased under two circumstances in the future when:

- The child reaches a higher age grouping in foster care (see Chapter E. Foster Care Manual, [Section 18.1.3](#)), to help address the increased costs of caring for an older child.
- Statewide increases are provided to help address increased costs of living.

If the adoptive parents choose to receive less basic maintenance than the maximum available rate, the agreed upon payment amount will be increased by the same percentage amount used to calculate the increase in the maximum foster care maintenance payments. The LDSS will notify them in writing when automatic increases occur.

After discussing all relevant factors, the LDSS shall document the adoptive parents' decisions about basic maintenance payments and the agreed upon terms in the adoption assistance agreement and in any addendum containing basic maintenance payments.

### **2.6.2 Assessing additional daily supervision needs of child**

The LDSS and adoptive parents should assess the child's needs for additional supervision and support when appropriate for the child. An enhanced maintenance payment may be paid when the child requires additional supervision and support from the adoptive parents to ensure the child's safety and well-being.

When the LDSS establishes that the child requires additional supervision and support based on the administration of the VEMAT, the LDSS and Assistance Negotiator shall assess and negotiate an enhanced maintenance payment with the adoptive parents, unless the adoptive parents decline such assistance. The LDSS should discuss the following factors with the adoptive parents:

- The child's needs for additional supervision and support from the adoptive parents, as documented by the VEMAT for the child.
- Available resources to help meet the child's special needs and defray the costs for adoption assistance and the adoptive parents.
- The family circumstances of the adoptive parents.
- The LDSS should ask questions such as, given the resources you have available for the child: How much financial assistance do you need to provide this supervision and support for this child? How can we share in meeting the child's special needs?
- The amount of the enhanced maintenance payment shall not exceed what would have been paid if the child was in foster care ([§ 63.2-1302 A](#)). The

VEMAT score for the child determines the maximum payment. It does not determine the final payment amount.

- The maximum allowable amount is based on the child's VEMAT score when the LDSS and Assistance Negotiator negotiate an enhanced maintenance payment with the adoptive parents. The maximum amount remains the same for any subsequent negotiations on enhanced maintenance *payments* for the duration of the adoption assistance agreement.

When the adoptive parents and the LDSS agree to time-limited enhanced maintenance payments, the LDSS shall inform the adoptive parents that the LDSS shall notify the adoptive parents in a certified letter **sixty calendar days** prior to the scheduled end date for the payment.

#### 2.6.2.1 LDSS responsibilities in conducting a VEMAT

The LDSS who is responsible for the application for assistance shall coordinate the administration of the VEMAT and ensure that all conditions for conducting the VEMAT are met.

The LDSS shall conduct a VEMAT assessment within **14 calendar days** of the LDSS decision to assess or reassess the adoption assistance enhanced maintenance payment. Completing the VEMAT within this time period is consistent with the requirement that adoption assistance agreements be executed within *60 calendar days* of the receipt of the application by the LDSS. A re-administration of the VEMAT is not required if the adoption assistance agreement is signed within **six months** of a prior VEMAT assessment ([22VAC40-221-20 A 5 c](#)).

*If the VEMAT is re-administered prior to the signing of the adoption placement agreement and there is a rate change, the new VEMAT rate will go into effect the first day of the following month using foster care funds until the adoption assistance agreement is in effect.*

The VEMAT is conducted according to the same team process as specified in Chapter E. Foster Care Manual, [Section 18.2.2.3](#) with the following exception:

- If there is no specific case manager for the family, the LDSS shall ensure that the individual at the LDSS who is assigned to manage adoption assistance requests is included in the VEMAT meeting.

The VEMAT rater shall be an individual as described in Chapter E. Foster Care Manual, [Section 18.2.2.5](#) and shall follow all requirements in administering the VEMAT.

### 2.6.2.2 Adoptive parents responsibilities in conducting a VEMAT

The parents should ensure that all necessary information is available for a comprehensive review of the needs of the child. The parents should:

- Cooperate with the LDSS staff who may request additional meetings with the family to discuss the child's needs, services that have been provided, progress of the child over time, services that are available that may best meet the child's needs, training, and other similar supports for the parents to learn how to better manage or address the child's needs.
- Provide and make available documentation within two years of the child's behavioral, emotional, or physical care needs that demonstrate the need for additional supervision and support by the parents. If requested, the parents should submit a signed consent for release of information for the LDSS to obtain information from individuals or organizations such as the school, therapists, and other service providers.
- Consider the LDSS request to meet with the child to assess the child's current needs. Adoptive parents may choose not to allow contact with the child. Such a decision by the adoptive parent shall not be considered by the LDSS in conducting the VEMAT. The LDSS is not required to try to meet with the child.

If the parent does not provide requested documentation, sign releases for information, or obtain additional assessments, the LDSS should not conduct a VEMAT and the agency cannot offer enhanced maintenance in the adoption assistance agreement.

**The VEMAT score does not determine the enhanced maintenance payment** for the child but instead determines the maximum rate allowable.

### 2.6.3 Assessing child care needs

A child care supplement may be provided based on the child and family's circumstances. When the LDSS establishes that child care is required, the LDSS and the Assistance Negotiator shall assess and negotiate the child care supplement with the adoptive parents based on the child care funded category.

There are two child care funded categories, maintenance and special services. The category of child care is determined by the child and family's circumstances.

#### Maintenance funded child care

Only adoption assistance agreements executed after July 1, 2017 will be eligible for maintenance funded child care. Addendums to adoption assistance agreements

executed **prior** to July 1, 2017 cannot be negotiated for maintenance funded child care.

- To be eligible for maintenance funded child care **all** of the following must be met:
  - The child is 0-12 years of age. Child care terminates on the child's 13<sup>th</sup> birthday, unless the child has a documented special need from a qualified medical professional warranting the continuation of child care, which will result in changing the category to special services funded child care.
  - Both adoptive parents must be working or attending college classes when the adopted child is not in school. If the adoptive parent is single, then the adoptive parent must be working or attending college classes when the adopted child is not in school.
    - School attendance includes occupational training such as cosmetology and technical schools.
    - *If the parents are self-employed, their most recent tax returns or proof of earnings statements (within the last 90 calendar days) are required to be submitted as supporting documentation.*
    - *It is the responsibility of the LDSS to verify the parents' employment or school attendance. This verification must be sent with the referral request to the Assistance Negotiator.*
    - *The child care program may be a licensed or an unlicensed regulated program. For more information on approved program types, see <http://www.dss.virginia.gov/family/cc/index.cgi>, in the VDSS Child Care Manual and [Section 2.6.6.5](#) for selecting a child care provider. Verification of the license, registration, religious exemption, or certification must be sent with the referral request to the Assistance Negotiator.*
- The monthly supplemental payment rate cannot exceed \$600 for full day child care and cannot exceed \$300 for *before and/or after school* child care. Full day is at least six hours or more of child care provided per day.
- Child care payments are negotiated and agreed upon on the adoption assistance agreement for up to one year. The child care payments are negotiated annually to evaluate the need for child care and the child's continued eligibility.
- The amount of maintenance funded child care will be included in the monthly amount for the support and care of the child. The title IV-E or state funded

maintenance payments shall not exceed the foster care payment that would otherwise be made for the child ([§ 63.2-1302 A](#)).

- To document maintenance funded child care payments in the child welfare information system, use the Assistance Screen and list child care as a maintenance type of payment. Child care payments end annually and a new entry is made each time the service is renewed. This payment is separate from the basic maintenance payment. The LDSS will use guidelines set forth in [Section 2.17 \*Terminating payments and agreements\*](#), to ensure families receive adequate notice of termination. If the service is still needed, the LDSS must submit a request to the Assistance Negotiator and a new addendum must be created and effective, prior to continuing the service. To avoid a lapse in service, the LDSS should initiate discussion at least 90 days prior to the end of the service.

### Special services funded child care

- Eligibility for special services child care occurs when child care directly addresses the documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness **and** requires special health surveillance or specialized programs, interventions, technologies, or facilities. See [Section 2.14.2](#).
- Special Services child care can continue to the child's 18<sup>th</sup> birthday.
- The child care facility selected by the adoptive parents *should* be licensed and should specialize in serving children with medical and behavioral needs.
- For licensed special needs and therapeutic child day centers the following shall occur:
  - The child day program's director and primary staff responsible for plan implementation shall develop an individual service, education, or treatment plan for each child and the plan shall be implemented within 60 days after the first day of the child's attendance ([22VAC 40-185-120](#)); and
  - The child's individual service, education, or treatment plan shall be developed, reviewed, and revised every three (3) months and rewritten annually by the director and primary staff responsible for plan implementation in partnership with the parent. A copy of the initial plan and subsequent plans is given to the child's parent ([22VAC 40-185-120](#)).
  - A copy of the child's individual service, education, or treatment plan should be maintained in the child's adoption assistance record.



- *To document special services funded child care payments in the child welfare information system, use the Assistance Screen and list child care as a special services type of payment.*

#### 2.6.4 Assessing the child's health insurance needs

The LDSS and adoptive parents should identify health insurance coverage for the child. The adoptive parents should:

- Add the child to their health insurance policy (e.g., employer-based, TRICARE, CHAMPVA, and self-purchased plans) in accordance with the insurance policy requirements ([§ 38.2-3432.3 \(B\) \(2\)](#)). The child may be added at the time of the adoptive placement.
- Add the child to their health insurance policy and use Medicaid or FAMIS as secondary health insurance if the child is eligible ([Virginia DSS Medical Assistance Eligibility Manual](#), M1510.301).
- Use Medicaid or FAMIS if the child is eligible.

When the adoptive parents do not have health insurance coverage for the child, the adoptive parents should search available options and provide health insurance coverage for the child.

Special services payments may help pay for health insurance premiums in the adoption assistance agreement. When the adoptive parents want special services payments to help pay for health insurance premiums or for benefits potentially covered under Medicaid or FAMIS, and if the child may be eligible for state medical assistance, the adoptive parents shall apply for Medicaid.

The decision to help with health insurance costs shall be based on the unique circumstances of the adoptive parents. These costs shall not be automatically paid for all children. When the child becomes eligible for other health insurance coverage, including Medicaid or FAMIS, the special services payment end for these premiums.

Whenever the child has health insurance coverage available, special services payments shall not be used to pay for health insurance premiums nor covered benefits.

#### 2.6.5 Assessing non-recurring adoption expenses needs

Non-recurring adoption assistance payments shall be made only when the adoption assistance agreement is signed and executed **prior** to the final order of adoption ([45 CFR 1356.41](#)).

Types of expenses include reasonable and necessary costs directly related to the legal adoption of the child, including:

- Court costs related to filing an adoption petition.
- Attorney fees and other legal service fees directly related to finalizing the adoption.
- Health and psychological examinations.
- Supervision of the placement prior to adoption.
- Transportation, lodging, and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process. These costs may be paid for more than one visit.
- Adoption fees charged or home studies conducted by the licensed child placing agencies.
- Other costs necessary to complete the child placement or adoption process ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(B\) \(i\) \[42 USC 673\]](#); [45 CFR 1356.41](#); [§ 63.2-1301 D](#); and [\(22 VAC 40-201-161\)](#)).

In estimating and determining payment amounts, the LDSS and adoptive parents shall meet the following requirements:

- Payment amounts shall be determined through agreement between the adoptive parents and the LDSS. They do not need to be negotiated.
- The adoptive parents' income shall not be used as an eligibility requirement (means test) to determine whether payments shall be made.
- The total payment amount shall not exceed \$2,000 per child per adoptive placement.
- Each child of a sibling group placed and adopted, either separately or together, shall be reimbursed up to the \$2,000 maximum, or an amount established by federal law.
- Caps or limits shall not be set for any type of non-recurring expenses.
- Adoptive parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(B\) \(i\) \[42 USC 673\]](#); [45 CFR 1356.41](#); [§ 63.2-1301 D](#); and [Federal Child Welfare Policy Manual, Subsection 8.2D.3](#)).

*The amount of the payment made for nonrecurring expenses of adoption shall be determined through an agreement between the adopting parents and the LDSS. Nonrecurring expenses shall be documented on the Adoption Assistance Agreement prior to or at the time of the finalization of the adoption ([45 CFR 1356.41](#) and [22 VAC 40-201-161 C4](#)). The agreement must indicate the nature and the amount of the nonrecurring expenses to be paid. Reasonable estimates may be used when actual service costs are not known. It is not necessary to amend the agreement when the actual costs differ from the estimate. The total cost for all services rendered and paid from nonrecurring expenses shall not exceed \$2,000.*

Payment and reimbursement shall be for expenses:

- Incurred by, or on behalf of, adoptive parents for which the adoptive parents have ultimate liability for payment.
- Not incurred in violation of State or Federal law.
- Paid directly to service providers or adoptive parents.

#### **2.6.6 Assessing special services to meet child's needs**

The LDSS may consider payments for special services and supports through state adoption assistance when they:

- Help meet the child's physical, mental, emotional, or dental needs (does not include orthodontic treatment for cosmetic reasons).
- Are directly related to the child's special needs, as documented by a qualified professional.
- Are time-limited based on the child's special needs [22 VAC 40-201-161 E2](#).

When the LDSS determines that special services payments may be appropriate for the child, the LDSS shall determine whether:

- The services are covered by health insurance or any other resources ([§ 63.2-1301 C](#)).
- The adoptive parents can financially afford the special services ([§ 63.2-1302 C3](#)). This information shall be considered as one factor when assessing and negotiating the special services payment.

Special services payments should be an exception rather than the rule in adoption assistance agreements.

The VEMAT shall not be used to assess the child's behaviors or conditions for special services payments.

#### **2.6.6.1 Determining whether adoptive parents can financially afford services**

Prior to considering special services payments, the LDSS and adoptive parents shall determine whether the adoptive parents can financially afford the special services ([22 VAC 40-201-161 E 2](#)).

To assess the amount of special services the adoptive parents can financially afford, the LDSS identifies any remaining funds the adoptive parents have available that may be used for special services and/or supports using the *application*. This amount shall be considered as one factor when assessing and negotiating the special services payment. It shall not be the sole factor considered in assessing family circumstances ([22 VAC 40-201-161 F](#)).

The LDSS *and the adoptive parents discuss* any remaining funds they have available that may be used for special services payments (i.e., the amount they can afford to pay) based on the information they provided. The LDSS should explain that this amount takes into account their total financial resources available for the child, their total expenses for the child as a member of their family based on their current lifestyle and future plans, and all other expenses they identified for the child. The LDSS should discuss with the adoptive parents:

- In what ways the adoptive parents feel this amount reflects their family circumstances.
- What additional information the adoptive parents can share to better understand the child's special needs and their family circumstances.

#### **2.6.6.2 Types of special services**

Special services and supports shall be directly related to the child's special needs listed on the adoption assistance agreement ([22 VAC 40-201-161 E 2](#)). Special services payments may be used to address the following types of situations:

- Recent changes in the child's behaviors or conditions are due to clearly identified reasons that may be resolved through time-limited services.
- The behaviors or conditions of the child are likely to decline or be resolved over time based on the documentation of a qualified professional.

Special Services may include:

- Medical, surgical, and dental care.

- Hospitalization.
- Individual remedial educational services, including tutoring or remedial educational sessions, books, or equipment.
- Psychological and psychiatric treatment.
- Speech and physical therapy.
- Special services, equipment, treatment, and training for physical and mental disabilities.
- Equipment, such as prosthetics, body braces, crutches, and hearing aids.
- Premiums for a major health insurance policy for the child, when a family policy is not available for the child.
- Therapeutic child day program, including but not limited to therapeutic recreation program, that is a specialized program exclusively serving children with special needs and an individual service, education, or treatment plan is developed and implemented with the goal of improving the functional abilities of the child.
- Therapeutic summer camp that is directly related to the child's special needs and is not solely for recreational or caretaking purposes.
- Case management provided by a qualified professional.
- Respite care when the child's condition requires extreme difficulty of care.
- Residential treatment that provides services from a Level C Residential Treatment Center.
- Educational component of the residential treatment facility, when other sources of funding are unavailable.

Special Service payments shall not be used for:

- Legal fees and nonrecurring adoption expenses.
- Boarding schools or private school placements or expenditures.
- Placements in therapeutic foster care (TFC) Homes.
- Placements in group homes.

- For more information on distinguishing residential treatment and group homes, refer to the [DMAS website](#) under New Presentations or Outreach Materials for documents providing criteria on levels A, B, C residential facilities and services.

#### 2.6.6.2.1 Educational Advocate

In order to consider an educational advocate for inclusion in an adoption assistance agreement or an addendum for special services payments, the adoptive parents must have the service and amount added to the agreement or addendum prior to incurring the service.

Additionally, the adoptive parents must demonstrate that they have attempted to resolve the educational issue without an educational advocate and by the using the established Individualized Education Program process at the school and other resources available to them. The VDOE provides guidance at [http://www.doe.virginia.gov/special\\_ed/index.shtml](http://www.doe.virginia.gov/special_ed/index.shtml).

When negotiating the reimbursed amount, the LDSS *should use the application* and compare the amount requested to what is usual and customary for this type of service within the specific service area. *The worksheet may be used as an additional resource.*

Payments may be made as a reimbursement to the adoptive parents, or paid directly to the service provider after the service is provided. When the reimbursement is provided to the adoptive parents, the adoptive parents shall provide a copy of a detailed invoice with hourly amounts showing what dates and services the advocate provided and a receipt of payment to the provider. When the payment is made directly to the provider, the provider shall invoice the LDSS each month after services are provided. The invoice shall include specific dates and services provided. The LDSS will confirm with the adoptive parents and/or the school that specific services were provided before issuing payment.

#### 2.6.6.3 Tutoring

*Limited payment for tutoring may be provided for any child, ages six and older, for the purpose of improving poor grades (D or below), if related to a special need as indicated on the original adoption assistance agreement or an onset of a condition directly related to the special need identified on the original adoption assistance agreement. This may be in addition to any reasonable accommodations, which may or may not be identified in a child's IEP or 504 plan, if related or specific to the condition as listed on the adoption assistance agreement.*

*The tutoring must:*

- *Be specific to a subject area.*
- *Include an estimate of the length of time the tutoring will be needed.*
- *Occur outside of regular school hours.*
- *The child should display marked improvements, indicated by a higher overall grade and/or test scores.*

#### *Tutoring Approvals*

- *Tutoring services must be negotiated and approved by the Assistance Negotiator prior to beginning the service.*
- *Tutoring approvals are not to exceed 60 hours annually at the rate of \$50 per hour.*
- *The family will submit the child's report card, to the LDSS, within 30 days of receipt.*

*Note: Tutoring will not be reimbursed when provided by a current household member or immediate family member of the adoptive household or provided in advance of approval by the Assistance Negotiator.*

#### **2.6.6.4 Determining whether residential services are covered**

When exploring all available resources, the LDSS and adoptive parents shall determine whether the following resources are available to fund necessary residential treatment services prior to considering a special services payment ([22VAC40-201-161 E 2 b \(2\)](#)):

- When the child's Individualized Education Plan (IEP) requires placement in a residential treatment program for **educational** purposes, the CSA (Children's Services Act) in the locality where the adoptive parents reside is responsible for all placement costs.
- When the child's IEP does **not** require placement in a residential treatment program and the child is placed in residential treatment for **non-educational** purposes, the local school division in the locality where the adoptive parents reside is legally responsible for assuring the child's access to free and appropriate public education (FAPE). In such circumstances, the school division is responsible for determining and providing the services necessary for FAPE while the child is in the residential placement. The adoptive parents may request that special services funds be used to cover the remaining educational costs.

- When the child is Medicaid eligible, Medicaid may cover residential treatment for the child who meets Medicaid medical necessity criteria and is in a Medicaid-enrolled facility. The adoptive parents, with assistance from the LDSS, shall follow all requirements for Medicaid funding for placement in a children's residential facility.
- When the child is not Medicaid eligible during the initial admission into a residential treatment facility, the family should check with their own health insurance during the first 30 day period. In the event that their health insurance does not cover the costs, the adoptive parents may request that special services funds be used for the residential treatment costs during the child's first 30 days of placement.
- If the child is placed in a psychiatric residential treatment facility for 30 days or longer, the adoptive parents should apply for Medicaid on behalf of the child to help cover the costs. For purposes of Medicaid eligibility, the child is considered not living with the adoptive parents at 30 days or more. The adoptive parents should submit the Medicaid application to the LDSS with which they entered into the adoption assistance agreement.

After assessing all other resources available to help pay for residential treatment and when there are remaining costs, the LDSS and adoptive parents shall then determine whether the adoptive parents can financially afford the remaining costs for the requested special service. If solely Medicaid funds or special services payments are used, any documentation sent to the provider must specify that the placement is a non-CSA placement.

#### 2.6.6.5 Requirements for respite care

Respite care is a support service designed to offer short-term relief to adoptive families by providing substitute care for the adoptive special need child. The purpose of respite care for families is to reduce adoptive home disruption and assist in maintaining the permanent placement for the child.

The following requirements shall be met:

- The LDSS shall assure that the respite care provider meets all the standards for an approved LDSS home as stipulated in the [Local Department Resource, Foster and Adoptive Home Approval Guidance Manual](#). Adoptive parents may opt to use a respite care provider that does not meet this standard; however, adoption assistance funds shall not be used.
- The terms of the respite care are specified on the adoption assistance agreement or addendum **prior** to the respite care service being utilized.



- Respite care can be provided for up to 30 days per year, with no more than 15 days in any given 90 day period and no more than 240 hours of respite per year. The terms of respite care are negotiated and entered onto the adoption assistance agreement or addendum.
- Respite care is not the provision of an emergency placement when a placement has disrupted, or short-term placement of a child in a group or TFC facility for the purposes of treatment.

#### 2.6.6.6 Selecting providers

The adoptive parents have the right and responsibility for selecting the provider they feel is most appropriate for their child. However, adoption assistance special services payments should be used to pay for specific types of providers delineated below, when applicable. The adoptive parents may choose whether to use these providers or use their own or alternative resources to pay for other providers.

The adoptive parents shall use:

- Providers through health insurance, the local school division, the state education agency, or early intervention supports and services. Adoption assistance funds should not be used to pay other providers when the services are available, appropriate, and accessible through these avenues.
- Fully licensed, regulated, approved, or accredited providers. These facilities licensed under the VDSS Minimum Standards for Licensed Child Caring Institutions are statutorily prohibited from receiving public funds ([§ 63.2-1737](#)).

The LDSS should assist the adoptive parents in verifying status:

- For child day care facilities, including therapeutic child day care programs:
  - See information on types of [child day care facilities](#) and [search for a facility](#).
- For residential treatment programs:
  - See [VDSS website](#) for information about the Child Welfare Unit of the Division of Licensing Programs.
  - See Virginia Department of Behavioral Health and Developmental Services ([VDBHDS website](#)) for information about licensed public and private providers of community services.

- Shall not place children in a residential facility when its licensure status is lowered to provisional as a result of multiple health and safety or human rights violations, until the violations and deficiencies are completely remedied and full licensure status is restored ([§ 2.2-5211.1](#)).
- Shall use therapeutic summer camps that are **fully accredited** by an external organization for achieving safety and professional industry standards in serving individuals with special needs.

The LDSS should discuss with the adoptive parents factors they may want to consider when selecting a provider.

- For child care providers, see factors listed in Chapter E. Foster Care Manual, [Section 12.8.1](#).
- For residential treatment programs, see characteristics correlated with long-term positive outcomes for children in Chapter E. Foster Care Manual, [Section 6.16.1](#).

The LDSS may refer the adoptive parents to providers. The adoptive parents are responsible for ensuring provider qualifications.

## 2.7 Assessing resources to defray costs

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The LDSS and adoptive parents should consider all relevant and applicable resources, when assessing and negotiating maintenance and special services payments for adoption assistance.

The LDSS and the adoptive parents shall assess all available family, health insurance, community, government, and other resources to help meet the child's special needs and defray the costs for adoption assistance ([22 VAC 40-201-161 F](#)). The LDSS shall document the resources explored in the *child welfare information system* case contacts.

When the LDSS determines that health insurance benefits or other resources are appropriate, available, and accessible for the child, these resources shall be utilized prior to considering adoption assistance special services ([§ 63.2-1301 C](#)). Adoption assistance funds shall not be used to pay for services that can be provided through these resources. The adoptive parents may choose whether or not to use these resources.

### 2.7.1 Child's health insurance

The LDSS shall explore all services covered by the child's health insurance before using adoption assistance funds and document the findings in the *child welfare information system* case contacts.

For a Medicaid eligible child, the adoptive parents shall first seek out Medicaid providers for the needed and covered services. Special services payments may only be used when qualified Medicaid providers are not available and accessible. The adoptive parents shall provide documentation that they sought services from Medicaid providers and the services were not available and accessible.

- [Medicaid](#) or [FAMIS](#). For example, Medicaid provides:
  - Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), Medicaid services, dental services, and mental health treatment and intellectual disability services. See [Medical Assistance for Families and Children Handbook](#) for additional information.
  - Long-term care services (see Chapter E. Foster Care Manual, [Section 12.11.6.11](#)), including:
    - [My Life My Community-ID/DD Waiver Redesign](#).
    - [Home and Community-Based Waivers](#).
    - [Commonwealth Coordinated Care \(CCC\) Waiver](#).
    - For more information on waivers, see [VHI website](#) and its resource, "[Long-Term Care: A Consumer's Guide](#)."
- For a complete listing and description of covered and non-covered services, see the [Medical Assistance for Families and Children Handbook](#).
- For questions, contact a [Regional Medical Assistance Program Consultant](#).
- [TRICARE](#) provides health care coverage for families of Uniformed Service members and retirees through several health plan options, a pharmacy benefit, dental options, and other special programs. See [TRICARE Benefits Overview](#).
- The [Civilian Health and Medical Program of the Department of Veterans Affairs \(CHAMPVA\)](#) provide health care for certain dependents and survivors of Veterans and eligible Reservists and National Guard members.

For the child who is not eligible for Medicaid in relation to the adoption assistance agreement, the LDSS should determine if it is likely that the child will qualify for Medicaid under another covered group or FAMIS after the final order of adoption. If the child is not eligible for Medicaid or FAMIS, the LDSS may consider special services payments.

For the child covered through other health insurance, the adoptive parents shall provide the LDSS a copy of the full explanation of covered and non-covered benefits.

The LDSS and adoptive parents shall ensure all applicable and covered benefits are utilized prior to considering special services payments.

### 2.7.2 Family preservation services for adoptive families

The [Adoptions through Collaborative Partnerships](#) provides case management, counseling, crisis intervention, parent support groups, and children's support and activity groups through regional sites at no cost for any adoptive family in Virginia. Additional post adoption services are provided. See the [VDSS website](#) for additional information.

### 2.7.3 Children's special needs

The [Infant & Toddler Connection of Virginia](#) provides early intervention supports and services to infants and toddlers from birth through age two, who are not developing as expected or who have a medical condition that can delay normal development. To determine eligibility, the child's development is evaluated by at least two professionals from different professions or areas of development.

The [Children and Youth with Special Health Care Needs \(CYSHCN\) Program](#) by the Virginia Department of Health promotes optimal health and development of Virginia's children with special health care needs by working in partnership with families, service providers, and communities.

- Care Connection for Children is a statewide network of Centers of Excellence for children with special health care needs. The centers provide access to specialty medical services; assistance coordinating care and services; assistance in obtaining health insurance for the child; information and referral to community resources; family-to-family support; and training and consultation with community providers.

The [Children's Services Act \(CSA\)](#) creates a collaborative system of services and funding that is child-centered, family-focused, and community-based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth. The state and localities are required to provide special education and foster care services for specific children listed below ([§ 2.2-5211 C](#)). When funds are available, localities may serve other children who have emotional or behavioral problems and multiple agency involvement.

- Children who are placed for purposes of special education in approved private school educational programs ([§ 2.2-5211 B1 and C](#)).
- Children with disabilities placed by LDSS or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such

school is the appropriate placement while living in foster homes or child-caring facilities ([§ 2.2-5211 B2 and C](#)).

- Children who are abused or neglected, and children in need of services, and their families are eligible for mandated foster care services when the children:
  - Have been identified as needing services to prevent or eliminate the need for foster care placements; or
  - Have been placed through an agreement between either the LDSS or the public agency designated by the Community and Policy Management Team (CPMT) and the parents or guardians who retain legal custody; or
  - Have been committed or entrusted to an LDSS or LCPA by the court ([§ 2.2-5211 B3 and C](#) and [§ 63.2-905](#)).

[Community Services Boards](#) (CSBs) provide the point of entry for the publicly-funded system of mental health, intellectual disability, and substance abuse services.

#### **2.7.4 Older youth with significant disabilities**

**Vocational Rehabilitation (VR) Transition Services** with the Virginia Department for Aging and Rehabilitative Services (DARS) help youth with significant disabilities develop skills and formulate plans to move from high school to an adult life, including opportunities for employment, higher education, independent living, and community involvement. Referrals of students for DARS services often come from school personnel to the VR Counselor assigned to their school district. Referrals should be made three years prior to the youth leaving school and written into the student's IEP. See [DARS Transition Services](#) and [DARS office locations](#).

#### **2.7.5 Educational and related services needs**

The LDSS shall explore all educational and related services provided by the public school system before using adoption assistance funds. According to the VDOE based on its statutes and regulations:

- Remedial education is designed to remedy, strengthen, and improve the academic achievement of students who demonstrate substandard performance. Some remedial services may be available from the child's public school in the local school division.
- Special education is through the local school divisions, and is mandated by law to provide, without cost to the parent, specifically designed instruction and related services to meet the unique needs of children with disabilities, ages 2 through 21 ([§ 22.1-214](#)).

- Special education may include instruction conducted in the classroom, home, hospital, institution, and other settings and instruction in physical education (§ [22.1-213](#), [34 CFR 300.39](#), and [8 VAC 20-81-10](#)). The term includes each of the following if it meets the requirements of the definition of special education:
  - Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards.
  - Vocational education.
  - Travel training.

Specifically designed instruction means adapting as appropriate to the needs of the eligible child the content, methodology, or delivery of instruction to address the unique needs of the child and to ensure access of the child to the general curriculum in order to meet the educational standards that apply to all children.

Related services means transportation and developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education. Related services include speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes; school health and nurse services; social work services in schools; and parent counseling and training.

Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs and dance therapy), if they are required to assist a child with a disability to benefit from special education.

The school division's responsibility is limited to FAPE or to ensuring the provision of accommodations or activities on the IEP, which are designed to adapt the general curriculum to the child's needs. For specific details related to FAPE and VDOE regulations refer to state regulations, laws, and policies on the [VDOE website](#).

Nothing in this section:

- Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP team to be necessary for the child to receive FAPE;

- Limits the responsibility of a public agency to appropriately monitor medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
- Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly ([34 CFR 300.34 \(a\) and \(b\)](#)); and [8 VAC 20-81-10](#)).

Local school divisions are responsible for paying for services and placement identified on the IEP when the child is placed within the school system or regional special education program.

If the adoptive parents have any concerns or disagreements about the child's special education program or implementation of the special education procedures, they should first contact the director of special education in the local school division for resolution. If resolution is not achieved at the local level, the adoptive parent may contact the VDOE's Dispute Resolution and Administrative Services unit. See the [VDOE website](#) for additional information. For more information about mediation, complaints, and due process hearings, refer to [Division of Special Education and Related Services](#).

**Section 504** means the section of the Rehabilitation Act of 1973, as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance ([29 USC § 701](#) et seq.; [8 VAC 20-81-10](#)).

A student with disabilities or an eligible student is a student who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment ([34 CFR §104.3 \(j\)](#)).

Both Individuals with Disabilities Education Act (IDEA) and Section 504 require that children with disabilities (or who are suspected of having a disability) be evaluated. The assessments completed are determined based on the child's suspected disability. The evaluation process is nondiscriminatory and comprehensive and reviews information from a variety of sources. The test must be validated (appropriate for intended use), administered by trained personnel, more than general IQ tests, and administered so that handicapping condition does not impair test accuracy. A Section 504 Education Plan must be developed for an eligible child to incorporate services and accommodations needed in the educational setting.

For additional information, see the VDOE's [Section 504: Keys to Implementation in Virginia's Schools](#). Adoptive parents should discuss with the child's school whether or how Section 504 may apply.

The [Parent Educational Advocacy Training Center \(PEATC\)](#) assists families of children with disabilities by providing education, information, and training. PEATC builds respectful, collaborative partnerships between schools, professionals, and the community to promote success in school and community life for children with disabilities.

The [Virginia Department of Education's Transition Services website](#) provides support, information, and resources designed to improve the outcomes of students with disabilities in transition from middle/secondary education to postsecondary education and employment.

**Private education:** While payment for private school placements is not provided through adoption assistance, the adoptive parents may seek out private school options using alternative funds.

### 2.7.6 Post-secondary education and training

The adoptive parents may consider the costs of post-secondary education and training when assessing the child's needs for adoption assistance. The LDSS should inform the adoptive parents about the following resources that can help defray costs.

- [Tuition Assistance Grant Program](#) assists Virginia residents who attend accredited private, non-profit colleges, and universities in Virginia, for purposes other than religious training or theological education.
- [Education and Training Vouchers \(ETV\) Program](#) assists eligible youth adopted at age 16 and older with post-secondary education and training expenses. It is designed to help youth aging out of foster care with the education, training, and services needed for employment and self-sufficiency. Funding for the program is supplied through vouchers that can be applied toward colleges, universities, community colleges, and one-year training institutions. Youth shall first use the [Free Application for Federal Student Aid \(FAFSA\)](#) website.
- Virginia Community College System:
  - Great Expectations Program provides transitional support to teens in foster care to help them complete high school and gain access to a community college education. This program is offered in several community colleges across the state. Coaches and mentors can provide assistance, offer encouragement, and help youth reach their goals. The [online resource directory and website](#) serves as a central clearinghouse for current and former foster youth, LDSS staff, counselors, career coaches, and foster and biological parents, giving them easy access to all services provided. The website provides additional information on and links to funding and scholarship opportunities.



- [Tuition Grant Program](#) assists with tuition and fees at any Virginia Community College for youth who graduated from high school or completed their general education development (GED) and who are considered special needs adoption, **based on financial need**.
- [Foster Care to Success](#) provides college funding and support for college-bound youth in foster care or adopted after their 16<sup>th</sup> birthday. It administers [scholarships and grants](#) for former youth in foster care to achieve a meaningful post-secondary education. They provide tuition grants, book money, living stipends, and emergency funding for unexpected expenses. They also provide academic coaches, personal mentors, care packages, and internship opportunities.
- [Federal Student Aid](#) provides free information on the website from the U.S. Department of Education on preparing for and funding education beyond high school.
- [Smart Student Guide to Financial Aid](#) is a website with comprehensive annotated collections of information about student financial aid, including a financial aid calculator for determining costs.

## 2.8 Screening child for adoption assistance

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The LDSS screens the child to determine whether the child has special needs and is eligible for adoption assistance.

The title IV-E foster care determination is completed by the Benefit Programs Specialist. The Benefits Programs Specialist does not determine if the child is title IV-E eligible for the purposes of adoption assistance.

The LDSS shall complete a screening tool for all children **prior** to executing an adoption assistance agreement whether the application is made before or after the final order of adoption. The LDSS should begin screening the child for eligibility after termination of parental rights or after the execution of a valid permanent entrustment agreement.

The adoptive parents sign the completed tool to acknowledge that they were informed of the child's special needs, the funding source for maintenance payments, and the child's eligibility for all components of adoption assistance. The LDSS shall maintain a signed copy of the screening tool in the child's adoption assistance case record and document the results of the screening in the *child welfare information system, adoption case contacts*.

The LDSS shall not use income eligibility requirements (means testing) for the adoptive parents in determining eligibility for adoption assistance maintenance payments ([45 CFR 1356.40](#)).

Adoption assistance maintenance payments and special services shall not be available for children adopted through parental placements. This restriction does not apply to adoption assistance agreements existing prior to July 2013. Parental placement means the child's parent or legal guardian located or effected the placement of the child or placed the child in a family home for the purpose of foster care or adoption (§ [63.2-1301](#)).

The LDSS should document the child's special need factors and eligibility requirements for adoption assistance within the *child welfare information system* and the supporting documentation is placed in the adoption case record. Additionally, the LDSS should document in the *child welfare information system* why this factor makes the child difficult to place and describe the efforts to place the child for adoption without providing assistance. In some situations, the child's special needs shall be documented by a qualified professional. When there is a potential financial gain or apparent conflict of interest on the part of the qualified professional, the LDSS can obtain an opinion from a similarly qualified person.

## 2.9 Screening child prior to final order of adoption

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The Adoption Assistance Screening Tool shall be used to determine a child eligible for adoption assistance, title IV-E or state. The tool is designed to screen for basic and enhanced maintenance payments, Medicaid, special service payments, and non-recurring expenses. The LDSS shall maintain documentation to support the eligibility determination within the *child welfare information system* and the supporting documents in the adoption case record.

For both title IV-E and state funded cases, and applications submitted before and after final order, the child shall be under age 18 at the time the petition for adoption is filed ([22 VAC40-201-161 B1](#)).

The LDSS shall establish and document the child's age and legal residency at the time of the application for assistance as follows:

- The child shall be a United States citizen or legal resident. Documentation of legal residency may include: child's birth certificate, social security card, adoption documentation, or Certificate of Citizenship or Naturalization.

*If **both** the child and the foster/adoptive parents are qualified aliens, for the purpose of adoption assistance, the residency qualification is considered to have been met. If the foster/adoptive parent is a United States citizen or is a non-qualified alien and the child would otherwise be found eligible, except for the fact they are a non-qualified alien, the child only needs to meet the five year residency requirement to be eligible for adoption assistance.*

*For more information on establishing legal residency in the United States see: <https://secure.ssa.gov/poms.nsf/lnx/0302610023#b>.*

- For state funded cases, a qualified alien is not eligible unless that qualification makes the child a legal resident. For example, a Resident Alien Card may be used for documentation only when the child qualifies as a legal resident.
- For title IV-E funded cases, a child may be a qualified alien. Resident Alien Cards may be used for documentation. In addition, it is highly improbable, if not virtually impossible, that the child adopted abroad by a United States citizen or brought into the United States from another country for the purpose of adoption is eligible for title IV-E adoption assistance. The child may be eligible if the initial adoption of the child by adoptive parents failed and the child is subsequently placed into foster care (see [Federal Program Instruction dated August 26, 2009](#)). Contact the LDSS attorney for assistance with a specific situation.

### **2.9.1 Special Needs Criteria**

*When screening the child prior to the final order of adoption, the LDSS shall first determine whether the child meets the definition of special needs as defined by §473(c) of the Social Security Act ([Social Security Act, Title IV, § 473 \(a\)\(1\)\(A\)](#)), and the Code of Virginia § [63.2-1300](#)). There are three parts to this determination and all three must be met to be eligible for any form of adoption assistance:*

1. *The court must have determined that the child cannot or should not be returned to the home of their parents. This can be achieved by one of the following:*
  - *Through a termination of parental rights proceeding.*
  - *Temporary Entrustment Agreement and evidence of a title IV-E foster care payment made on the child's behalf.*
  - *A Permanent Entrustment Agreement with a LDSS or LCPA with whom the State had a title IV-E agreement and meets the conditions below:*
    - *a petition was filed to remove the child from the home within 180 days of the time the child lived with their specified relative, and*
    - *a subsequent judicial determination was made, and*
    - *the order contained the language that to remain in the home was contrary to the child's welfare.*
2. *The child must meet any one of the following criteria:*
  - *Physical, mental, or emotional condition existing prior to adoption.*

- *Hereditary tendency, congenital problem, or birth injury leading to substantial risk of future disability.*
- *Member of a minority group based on racial, multi-racial, or ethnic heritage.*
- *Close relationship with one or more siblings.*
- *Age six or older and has been in foster care for 18 months or longer.*
- *Meets all medical or disability eligibility requirements of SSI.*

*These criteria may be documented by one or more of the following:*

- *Statements from qualified licensed professionals documenting the hereditary tendency, congenital problem (including substance exposure), and/or birth injury in the birth family or child's history.*
  - *Relevant diagnostic and assessment reports.*
  - *Any other relevant documents (e.g., Child Study, Individualized Educational Plan, 504 Plan from the Virginia Department of Education, etc.).*
3. *The LDSS must determine that reasonable, but unsuccessful, efforts to place the child with appropriate parents without providing adoption assistance have been made, except when it has been determined that it would not be in the best interest of the child to make this effort (e.g. the child has developed significant emotional ties with prospective adoptive parents while in the care of those parents as a foster child).*

*If all three parts of the special needs determination have not been met, the child is not eligible for any type of adoption assistance payment or reimbursement.*

*The LDSS shall document in the child welfare information system and provide written documentation in the adoption assistance case record each condition identified as making it unlikely the child would be adopted within a reasonable period of time without adoption assistance.*

*When the child's sole special need factor is hereditary tendency, congenital problem (including substance exposure), and/or birth injury, and there is no evidence the child currently has a related disability, the adoptive parents and the LDSS shall enter into an adoption assistance agreement with a zero dollar payment.*

*Executing an agreement with a zero dollar payment preserves the child's title IV-E status and authorizes the adoptive parents to obtain Medicaid, if applicable. It also*

*establishes eligibility, allowing the adoptive parents to request adoption assistance payments should the child's disability manifest in the future. At that time, the child may receive basic maintenance, enhanced maintenance, and/or special services payments, consistent with applicable guidance.*

*An agreement shall be executed for every eligible child, unless the adoptive parents decline in writing.*

### **2.9.2 Title IV-E applicable child**

The LDSS screens the child using the applicable child criteria.

- *The child shall be older than two years or turn two years old during the FFY that the adoption assistance agreement is executed. The FFY begins October 1<sup>st</sup> and ends September 30<sup>th</sup>; or*
- The child's sibling is an applicable child and is placed in the same prospective adoptive home of his or her sibling.

#### **2.9.2.1 Title IV-E eligibility for an applicable child**

*In addition to the above applicable child criteria, the LDSS agency shall also determine that an applicable child with special needs meets one of the four following eligibility requirements:*

- Judicial determination criteria

*The child, at the time of the initiation of adoption proceedings, shall have been in the care of a public or licensed private child placing agency pursuant to:*

- an involuntary removal. The *first court order sanctioning the removal*, must contain a statement that continuation in the home is "contrary to the welfare" of the child or that removal is in the child's best interest; or
  - a *Temporary or Permanent Entrustment Agreement*. For an "applicable child," there does not have to be a title IV-E payment made under a Temporary Entrustment Agreement. The language of contrary to the child's welfare shall be obtained.
- Child was eligible in a prior adoption:
    - The child was determined eligible for title IV-E adoption assistance in a prior adoption, and

- is available for adoption because the prior adoption has been dissolved or the child's adoptive parents have died.

In such an instance, the child may retain eligibility for adoption assistance payments in a subsequent adoption. The LDSS agency only needs to determine that the child is still a child with special needs for the child to be eligible for adoption assistance.

- Child meets all medical and disability requirements of Social Security Income (SSI) eligibility.

*The child is eligible for adoption assistance if, at the time the adoption petition is filed:*

- the child meets the requirements of title XVI SSI eligibility, and
  - prior to the finalization of the adoption is determined by the LDSS to be a child with special needs. (Eligibility must be established no later than at the time the adoption petition is filed). An "applicable child" does not have to meet the needs-based requirements for SSI.
- Child of a minor parent in foster care
    - the child's parent is a child in foster care; and
    - the child's parent has title IV-E foster care maintenance payments paid on their behalf; and
    - the payments cover both the minor parent and their child at the time the adoption petition is initiated; and
    - the child must be residing in a foster family home or child care institution with their minor parent; and
    - prior to the finalization of the adoption, the child of the minor parent is determined by the LDSS to meet the definition of a child with special needs.

*There are no additional criteria that must be met in order for a child to be eligible for title IV-E adoption assistance if the child's eligibility is based on their minor parent's receipt of foster care while placed with the minor parent in foster care.*

*There is no requirement that a child must have been removed from their home pursuant to a Permanent Entrustment Agreement or as a result of a judicial determination. If the child and minor parent have been separated in foster care*

*prior to the time of the adoption petition, the child's eligibility for title IV-E adoption assistance must be determined based on the child's current and individual circumstances.*

### 2.9.3 Non-applicable eligibility – Aid to Families with Dependent Children

The LDSS screens the child using non-applicable child criteria.

To establish title IV-E eligibility for a non-applicable child with special needs, only one of the four criteria below must be met:

- Child is AFDC Eligible

*A child must be found AFDC or title IV-E eligible at the time of removal (when the initial title IV-E foster care determination is made).*

- **For court placed children:** At the initial title IV-E Foster Care determination, if the child was title IV-E eligible, the child is determined, as part of that process, AFDC eligible.

*In the first court order sanctioning the removal of the child from the home, a judicial determination must be made that remaining in the home would be contrary to the child's welfare.*

*The initial Title IV-E Foster Care Notice of Action form showing "title IV-E categorically eligible" is used to verify AFDC eligibility.*

*For the child who entered foster care through a court ordered removal and met all the AFDC requirements at the time of removal but was found ineligible for title IV-E funds in foster care for the sole reason that the initial court order did not contain the Reasonable Efforts language, they are considered to have met the AFDC requirement for adoption assistance. A copy of the title IV-E Foster Care Notice of Action citing this, as the reason for denial, must be included in adoption assistance record.*

- **For temporarily entrusted children:** A child placed pursuant to a Temporary Entrustment Agreement must have actually received a title IV-E Foster Care payment to be eligible for title IV-E adoption assistance (child must be in the placement and care of a LDSS, LCPA, or Tribal agency that makes title IV-E foster care payments to foster families).
- **For permanently entrusted children:** The child must be in the care and custody of a LDSS or a LCPA or Tribal agency with a title IV-E

agreement with the State in place. The title IV-E agency must have filed a petition to have the child judicially removed from their home within 180 days of the Permanent Entrustment Agreement. The title IV-E agency must have a subsequent judicial order removing the child and the order must state that remaining in the home is contrary to the child's welfare.

- Child was eligible in a prior adoption

*The child was determined eligible for title IV-E adoption assistance in a prior adoption and is available for adoption because the prior adoption has been dissolved or the child's adoptive parents have died. In such an instance, the child may retain eligibility for adoption assistance payments in a subsequent adoption. The LDSS agency only needs to determine that the child is still a child with special needs for the child to be eligible for adoption assistance.*

- Child meets all medical and disability requirements of SSI

*The child is eligible for adoption assistance if, at the time the adoption petition is filed, the child meets the requirements of title XVI SSI eligibility, and prior to the finalization of the adoption is determined by the LDSS to be a child with special needs. (Eligibility must be established no later than at the time the adoption petition is filed). An "applicable child" does not have to meet the needs-based requirements for SSI.*

- Child of a minor parent in foster care

- the child's parent is a child in foster care; and
- the child's parent has title IV-E foster care maintenance payments paid on their behalf; and
- the payments cover both the minor parent and their child at the time the adoption petition is initiated; and
- the child must be residing in a foster family home or child care institution with their minor parent; and
- prior to the finalization of the adoption, the child of the minor parent is determined by the LDSS to meet the definition of a child with special needs.



*There are no additional criteria that must be met in order for a child to be eligible for title IV-E adoption assistance if the child's eligibility is based on their minor parent's receipt of foster care while placed with the minor parent in foster care.*

*There is no requirement that a child must have been removed from home pursuant to a Temporary Entrustment Agreement or as a result of a judicial determination.*

*If the child and minor parent have been separated in foster care prior to the time of filing the adoption petition, the child's eligibility for title IV-E adoption assistance must be determined based on the child's current and individual circumstances.*

#### **2.9.4 Screening child for State basic maintenance payments**

When the LDSS determines that the child is not eligible for title IV-E adoption assistance, then the LDSS shall screen the child for state adoption assistance payments.

A state maintenance payment shall be approved for the child who is eligible for adoption assistance unless the adoptive parent indicates or it is determined through negotiation that the payment is not needed ([22 VAC 40-201-161, E 1](#)). *To be considered eligible for this screening, the child must meet the special needs criteria in [Section 2.9.1](#) and the age and citizenship criteria in [Section 2.9](#).*

#### **2.9.5 Eligibility for enhanced maintenance payments**

Enhanced maintenance payments may be available when the child has a clearly defined, ongoing need that requires the adoptive parents to provide additional supervision and support beyond what is developmentally appropriate to ensure the child's safety and well-being.

When the LDSS establishes there are indications that the child may require additional supervision and support from the adoptive parents, the LDSS shall use the [Virginia Enhanced Maintenance Assessment Tool](#) (VEMAT) to assess the child's behavioral, emotional, or physical/personal care needs ([22VAC40-221-20](#)). In order to be eligible for enhanced maintenance payments, the child shall meet **one** of the following criteria:

1. The child is receiving an enhanced maintenance payment in foster care based on the VEMAT; or
2. The LDSS determines there are indications that the child may require additional supervision and support from the adoptive parents beyond what is developmentally appropriate.

In the event the child meets the first criteria and the most recent VEMAT was completed within **six months** of the receipt of the application for assistance, then the most recently completed VEMAT may be used. Otherwise, the LDSS will need to perform a new VEMAT.

When the LDSS establishes that the child requires additional supervision and support based on the administration of the VEMAT in accordance with VDSS guidance, after the adoptive parents apply for adoptive assistance, the Assistance Negotiator, LDSS, and adoptive parents shall assess and negotiate an enhanced maintenance payment unless the adoptive parents decline this assistance in writing.

**The VEMAT does not determine the enhanced maintenance payment amount, only the maximum amount.** Basic maintenance and enhanced maintenance combined is the maintenance payment for adoption assistance. Negotiations will begin at 70% of the total maintenance rate. At no time shall the amount of the enhanced maintenance payment exceed what would have been paid if the child was in foster care ([Social Security Act, Title IV, § 473 \(a\) \(3\) \[42 U.S.C. 673\]](#)).

The funding source for maintenance payments prior to the final order of adoption shall be title IV-E funds when the child is eligible to receive adoption assistance as an applicable child. The funding source shall be state funds when the child does not meet title IV-E requirements and meets the requirements for state funded maintenance payments.

### 2.9.6 Eligibility for special services payments

State funded special services payments help meet the child's physical, mental, emotional, or dental needs. Special services payments shall be time limited and directly based on the child's current special needs ([22 VAC 40-201-161 E2](#)). Only state funds shall be used to pay special services.

The child may be eligible for state special services when the child has special needs and is eligible for either title IV-E adoption assistance or state adoption assistance **AND:**

- *The child is in the custody of the LDSS or LCPA at the time of adoptive placement.*
- The adoptive parents are capable of providing the permanent family relationship needed by the child in all respects except financial ([§ 63.2-1301 C 3](#)).

The LDSS assesses the capability of the adoptive parents to meet the child's needs financially when assessing payment amounts for special services. The LDSS will assess whether:

- The adoptive parents can financially afford the special service.
- Health insurance or other resources will cover the service cost ([§ 63.2-1301 C](#) and [22 VAC 40-201-161 E 2 b \(2\)](#)).

Income shall only be one factor considered when assessing the family circumstances of the adoptive parents for special services payments ([22 VAC 40-201-161 F](#)).

### 2.9.7 Eligibility for non-recurring payments

Non-recurring expenses shall be incurred by, or on behalf of, the parents and shall be directly related to the legal adoption of the child with **special needs** ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(B\) \(i\) \[42 USC 673\]](#)).

A child is eligible for non-recurring expenses when the child has been determined to be a child with special needs, see [Section 2.9.3.2](#). The adoption assistance agreement indicates the terms and amount of non-recurring expenses and *shall* be signed prior to the final order of adoption. The total non-recurring expenses per child, per adoption, shall not exceed \$2,000. Adoptive parents cannot be reimbursed for out-of-pocket expenses if they have already received reimbursement from another source.

The LDSS should include known non-recurring payments on the adoption assistance agreement.

Title IV-E funds shall be used for all non-recurring adoption expense payments for children receiving adoption assistance, title IV-E and State.

### 2.9.8 Eligibility for Medicaid in relation to adoption assistance agreement

The LDSS shall inform the adoptive parents whether the child they are adopting is eligible for Medicaid.

The child is eligible for Medicaid as part of their adoption assistance agreement ([VDSS Medical Assistance Eligibility Manual, M0310.102](#)) when the child:

- Resides in Virginia, and
- Has a title IV-E funded adoption assistance agreement, or
- Has a state funded adoption assistance agreement in effect that specifies the child has a special medical and/or rehabilitative need (also known as a special medical need)

When the child is eligible for adoption assistance maintenance payments only using state funds, and the agreement does not document that the child has a special medical and/or rehabilitative need, the child is not eligible for Medicaid as part of the adoption

assistance agreement. The adoptive parents can apply for Medicaid outside of the adoption assistance process.

#### **2.9.8.1 Medicaid for the child eligible for title IV-E adoption assistance**

When the child is eligible for title IV-E adoption assistance, Medicaid shall be included in the adoption assistance agreement. Medicaid eligibility continues for the child when the agreement is executed. The adoptive parents are not required to submit a separate Medicaid application for the child.

The child is eligible whether or not the final order of adoption has been executed or a title IV-E adoption assistance payment is made on behalf of the child. As long as the adoption assistance agreement is in effect, the child meets the title IV-E adoption assistance definition for Medicaid eligibility purposes ([Social Security Act, Title IV, § 473 \(b\) \[42 U.S.C. 673\]](#); [Federal Child Welfare Policy Manual, Subsection 8.2B.8 #1](#); and the Virginia DSS Medicaid Eligibility Manual, [MO310.102](#)).

For children placed for adoption through the Interstate Compact for Adoption and Medical Assistance (ICAMA), the ICAMA form 6.01 verifies their title IV-E eligibility for Medicaid and serves as the Medicaid application form (see the Virginia DSS Medicaid Eligibility Manual, [MO120.200 C.4.a](#)).

#### **2.9.8.2 Medicaid for the child eligible for state adoption assistance with special medical needs**

When the child is eligible for adoption assistance payments solely using state funds and the child has a special need documented on the adoption assistance agreement that meets Medicaid's definition of **special medical needs** (listed below), the child is eligible for Medicaid under the Special Medical Needs covered group. In Part II, Section B, of the adoption assistance agreement, the LDSS shall indicate that the child has a special medical need.

The adoptive family must submit a Medicaid application and a copy of the state-funded adoption assistance agreement that specifies the child's special medical or rehabilitative need.

In accordance with Medicaid policy, a child with special medical needs is defined as a child who was determined unlikely to be adopted because of:

- A physical, mental, or emotional condition that existed prior to adoption;  
**or**
- A hereditary tendency, genetic defect, congenital problem, or birth injury leading to a substantial risk of future disability (see the Virginia DSS Medicaid Eligibility Manual, [MO310.102 2d](#)).

The child with a special medical or rehabilitative need may have, but is not limited to:

- A diagnosed medical condition that does not require immediate treatment, such as sickle-cell anemia.
- Medical or emotional conditions requiring regular medication, such as epilepsy, severe allergies, and attention deficit disorders.
- Severe visual and dental problems requiring non-routine medical or dental treatment.
- Conditions that are medically determined by a medical practitioner.

The child's adoption assistance case record shall contain documentation by qualified professionals of the child's special medical or rehabilitative need.

The LDSS should inform the adoptive parents that only the child's own income and resources will be counted when determining the child's eligibility for Medicaid. Therefore, the child's income from employment or SSA may impact Medicaid eligibility. For example, while the child may initially be eligible for Medicaid, if the child becomes employed or begins receiving countable income, the child may no longer be eligible. The child's countable income shall not exceed the Medicaid Families and Children (F&C) 100% income limit for a single person. The income of the child's parents and siblings will not be counted.

The adoptive parents submit the application to the Benefit Programs Specialist as soon as possible with the LDSS which they entered into the adoption assistance agreement. The child who meets all Medicaid financial eligibility requirements after the final order of adoption continues to be eligible for Medicaid with the adoptive parents from the date the adoption assistance agreement is executed.

For information on Special Medical Needs Adoption Assistance, see the Virginia DSS Medicaid Eligibility Manual, [M03 Medicaid Covered Groups](#).

### **2.9.8.3 Medicaid for child eligible for state adoption assistance without special medical needs**

When the child is eligible for adoption assistance maintenance payments only using state funds, and the agreement **does not** document that the child has a special medical or rehabilitative need, the child is **not** eligible for Medicaid as part of the adoption assistance agreement.

The LDSS should discuss the child's situation with the adoptive parents and explain that the child may be eligible for medical coverage under various Medicaid covered groups or under FAMIS.

The LDSS should inform the adoptive parents that a Medicaid application is required to determine the child's eligibility for Virginia medical assistance. The adoptive parents submit the application to the LDSS with which they entered into the adoption assistance agreement.

The child who is currently enrolled in Medicaid will be reevaluated to determine whether the child meets eligibility requirements under various Medicaid covered groups or under FAMIS after the final order of adoption. The income of the child's adoptive parents is counted when determining the child's eligibility. If the child is eligible for Virginia medical assistance, the child is enrolled in the covered group or program for which he is eligible and that is most beneficial to the child. If the child is not eligible due to the adoptive family's income, the child will be treated by Medicaid as a foster care child while in the adoptive placement until the final order of adoption (see the Virginia DSS Medicaid Eligibility Manual, [M0310.102](#)).

For information on Medicaid covered groups, see the Virginia DSS Medicaid Eligibility Manual, [M03 Medicaid Covered Groups](#).

For information on the FAMIS program, see <http://www.coverva.org/> or the Virginia DSS Medicaid Eligibility Manual, [M21](#)

## **2.10 Screening child after final order of adoption**

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When the adoptive parents submit an [Application for Assistance](#) after the final order of adoption has been issued and there is not an existing adoption assistance agreement, the LDSS screens the child for eligibility using the [Adoption Assistance Screening Tool](#). When screening the child after the final order of adoption, the LDSS shall first determine whether the child meets the special needs criteria as defined in [Section 2.9.1](#). After the LDSS establishes the child's special needs eligibility, the LDSS will then determine whether the child is eligible for other types of adoption assistance, including:

- Basic and Enhanced maintenance, and
- Special services.
- Non-recurring adoption expenses shall not be included in adoption assistance agreements entered into after the final order of adoption ([45 CFR 1356.41 b](#)).

The LDSS shall provide the adoptive parents a copy of the completed screening tool, and respond to all questions they may have. The adoptive parents should sign the completed screening tool to acknowledge that they were informed of the child's special needs and eligibility for adoption assistance, the funding source for maintenance payments, and the

child's eligibility for all components of adoption assistance. By signing the screening tool, the adoptive parents are not indicating that they agree with the screening tool, rather that they have received this information. If the adoptive parents do not sign the screening tool, the LDSS should write on the form that the adoptive parents were provided the opportunity to sign the form but opted not to sign. Regardless of the child's eligibility status, the LDSS shall document the results of the screening in *child welfare information system* and place the completed tool in the child's supporting adoption case file.

Only state funded adoption assistance shall be used when a new agreement is entered into after the final order of adoption ([§ 63.2-1301 B](#) and [45 CFR 1356.40 \(b\) \(1\)](#)), even when the child was title IV-E eligible while in foster care. State adoption assistance and special services shall not be available for children adopted through parental placements. This restriction does not apply to adoption assistance agreements existing prior to July 2013 ([§ 63.2-1301 B 1](#)).

### 2.10.1 Screening a child for adoption assistance after final order

*To determine a child's eligibility for adoption assistance, after the final order of adoption has been entered, the LDSS must first determine if the child meets the definition of special needs as defined in [Section 2.9.1](#), the age and citizenship criteria as defined in [Section 2.9](#), and the additional eligibility requirements to be eligible for adoption assistance. The LDSS shall document that the child meets each of the three criteria below:*

1. The special needs criteria as defined in [Section 2.9.1](#); and
2. The age and citizenship requirements as defined in [Section 2.9](#); and
3. The child meets each of the three following additional eligibility requirements below:
  - i. The child was in custody of a LDSS or LCPA immediately prior to adoption; and
  - ii. Has a condition or disability that was present at the time of adoption but was not diagnosed until after the final order of adoption; and
  - iii. The diagnosis by a qualified licensed professional was made within 12 months of the date the adoptive parents submitted the application for assistance.

When the child meets all of the criteria above, the child has special needs and is eligible for state funded maintenance payments ([§ 63.2-1301 B](#)). The LDSS shall clearly document how the child meets each criterion in the *child welfare information system* and place the supporting documentation in the adoption case record.

Income eligibility requirements (means testing) for adoptive parents shall not be used in determining eligibility for adoption assistance maintenance payments ([45 CFR 1356.40](#)).

### **2.10.2 Screening a child for enhanced maintenance after final order**

After the LDSS establishes the child is eligible for state adoption assistance basic maintenance, the LDSS determines whether the child is eligible for enhanced maintenance payments.

Enhanced maintenance payments are for a child that has a clearly defined, ongoing need that requires the adoptive parents to provide increased supervision and support to ensure the child's safety and well-being.

When the LDSS determines there are indications that the child may require additional supervision and support from the adoptive parents, the LDSS shall use the VEMAT to assess the child's behavioral, emotional, or physical/personal care needs.

The LDSS shall administer the VEMAT to determine whether an enhanced maintenance payment is appropriate when:

1. The child received an enhanced maintenance payment in foster care based on the VEMAT; **or**,
2. The child did not receive an enhanced maintenance payment, or local-only special services stipend in foster care, but the LDSS has sufficient reason to believe the child requires additional supervision and support from the adoptive parents that are beyond developmentally appropriate behaviors based on the frequency, duration, and intensity of the child's behavioral, emotional, and physical/personal care characteristics consistent with VEMAT guidance.

When the LDSS establishes that the child requires additional supervision and support based on the administration of the [VEMAT](#) in accordance with VDSS guidance, the Assistance Negotiator and LDSS shall then assess and negotiate an enhanced maintenance payment with the adoptive parents, unless the adoptive parents decline this assistance in writing ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(A\) \[42 U.S.C. 673\], 22 VAC 40-201-161 E1](#)). The VEMAT score does not determine the exact amount the adoptive parents will receive; rather the VEMAT score sets the maximum amount for the negotiation.

The enhanced payment amount may range from no payment up to the maximum amount allowed by law. The amount of the enhanced maintenance payment shall not exceed the foster care enhanced maintenance payment that would have been paid during the period if the child had been in a foster family home ([22 VAC 40-201-161 E1b](#)).



### 2.10.3 Screening for special services after final order

Special services payments help meet the child's physical, mental, emotional, or dental needs. Special services payments shall be time limited and directly based on the child's special needs ([22 VAC 40-201-161 E2](#)).

When the child has special needs and is eligible for state adoption assistance based on Virginia legal requirements after the final order of adoption, the child may be eligible for state special services when:

- The child was in the custody of the LDSS or LCPA at the time of the adoption ([§ 63.2-1301 B1](#)).
- The adoptive parents are capable of providing the permanent family relationship needed by the child in all respects except financial ([§ 63.2-1301 C](#)).

The LDSS assesses the capability of the adoptive parents to meet the child's needs financially when assessing payment amounts for special services. The LDSS will assess whether:

- The adoptive parents can financially afford the special service.
- Health insurance or other resources will cover the service cost ([§ 63.2-1301 C](#)).

Income shall only be one factor considered when assessing the family circumstances of the adoptive parents for special services payments ([22 VAC 40-201-161 F](#)).

Special services shall not be available for children adopted through parental placements. This restriction does not apply to adoption assistance agreements existing prior to July 2013. Parental placement means the child's parent or legal guardian located or effected the placement of the child or placed the child in a family home for the purpose of adoption ([§ 63.2-100](#)).

### 2.10.4 Eligibility for Medicaid after the final order

Medicaid shall not be included in the adoption assistance agreement when the application is made **after** the final order of adoption.

The LDSS should inform the adoptive parents that a Medicaid application is required to determine the child's eligibility. The adoptive parents submit the application to the LDSS with which they entered into the adoption assistance agreement. The child who is currently enrolled in Medicaid or FAMIS shall be reevaluated to determine whether the child meets eligibility requirements under various Medicaid covered groups or

under FAMIS. The income of the child's adoptive parents is counted when determining the child's eligibility.

For information on Medicaid covered groups, see the Virginia DSS Medicaid Eligibility Manual, [M03 Medicaid Covered Groups](#).

For information on the FAMIS program, see the [Cover Virginia](#) website or the Virginia DSS Medicaid Eligibility Manual, [M21](#).

## 2.11 Negotiating adoption assistance

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After the [Application for Assistance form](#) and [Adoption Assistance Screening Tool](#) are complete, the LDSS completes a [Referral for Negotiations](#). The LDSS and Assistance Negotiator shall assess and negotiate with the adoptive parents to determine agreed upon terms for time-limited services, payment, and supports to meet the child's special needs.

The purpose of negotiation is to assess the child's needs for adoption assistance taking into account the family circumstances of the adoptive parents, and to determine the adoption assistance necessary for the adoptive parents to adopt and care for the child's special needs. This process individually tailors adoption assistance to meet the unique special needs of the child, family circumstances, and available resources in the community.

- Decisions are based on:
  - Child's special needs.
  - Family circumstances of the adoptive parents.
  - Availability of other resources to meet the child's needs and help defray costs for the adoptive parents and the adoption assistance program.
  - Legal requirements for adoption assistance.

Basic maintenance and enhanced maintenance combined is the maintenance payment for adoption assistance. Negotiations will begin at **70%** of the total maintenance rate.

### 2.11.1 Role of the Assistance Negotiator

The Assistance Negotiator is responsible for the following action items in leading up to, during, and after the negotiation process:

- Ensures the state-wide adoption assistance negotiation process is objective, consistent, and supportive of both the LDSS and the adoptive family.
- Reviews the application for assistance or request for addendum.

- Reviews the pertinent and supporting documents that are within the *child welfare information system* and case record. Specifically:
  - Ensures that the documentation supports the child's special needs; and,
  - Reviews the previous services, history of the case, and effectiveness of outcomes of previous services.
- Interviews the case worker and the family, when necessary.
- Negotiates with the family and LDSS on a case by case basis.
- *Acknowledges receipt of the referral from the LDSS within **5 calendar days** via email.*
- *Completes the negotiation and provides the LDSS with the Adoption Negotiation Report within **30 calendar days** of receiving the Referral for Negotiations from the LDSS.*
- Validates within **30 calendar days** that the signed adoption assistance agreement matches the negotiated terms.
- Reviews the foster care and adoption case in the *child welfare information system* within 30 days of the negotiation.

### 2.11.2 Role of LDSS during the negotiation process

The LDSS is a key player in the negotiation process. The LDSS is responsible for the following action items in leading up to, during, and after the negotiation process:

- Discusses with the family the requested services, payments, and prepares the family for the negotiation process. Reviews the [Information Sheet on the Virginia Adoption Assistance Program](#) with the family.
- Screens the child (i.e. determining eligibility for adoption assistance) using the Virginia Adoption Assistance Screening Tool.
- Within **14 calendar days** of receipt of the *Application for Assistance* or Request for Addendum (both hereafter referred to as the application):
  - Determines if the *application* is complete.
  - Determines if the requested payments or services are reasonable.
  - *Gathers documentation which supports any additional daily support and supervision needs the child may have that are payable through an enhanced maintenance payment and for all special service payments*

*requested. Supporting documentation must be current within two years of the date of application. The need for an enhanced maintenance payment must be assessed using the VEMAT tool and the completed assessment must not be more than six months old from the date of application.*

- Once this information has been obtained, submits a Referral for Negotiation, the *application*, and, if applicable, the VEMAT to the Assistance Negotiator.
- If the *application* or request for addendum includes a request for enhanced maintenance, the LDSS shall follow the existing guidelines for determining if a VEMAT will be administered. *The LDSS completes the VEMAT prior to submitting the Referral for Negotiation and application. The VEMAT score and the amount are required to be entered on both of the abovementioned forms.*

The LDSS will submit any additional documentation requested by the Assistance Negotiator within *seven calendar days* of the request.

- If a LCPA has placement and care responsibility for the child, the LDSS shall work with the LCPA to obtain and provide all needed documentation to the Assistance Negotiator regarding the child's special needs.
- In conjunction with the assistance negotiator, schedules the negotiation date and time with the family, if applicable.
- Retains a copy of the Report of Negotiation in the supporting adoption case record.
- Obtains the adoptive family and LCPA (if applicable) signatures, and signs the negotiated adoption assistance agreement.
- Provides the Assistance Negotiator a copy of the signed adoption assistance agreement within **ten (10) calendar days** of obtaining all signatures.
- Updates the *child welfare information system* with adoption assistance financial and service information within **five (5) calendar days** from the signing of an adoption assistance agreement or addendum.
- Within **seven (7) calendar days** of receipt of the final order of adoption, updates the *child welfare information system* and supporting adoption case record.
- Prepares the [Family Services Summary of Facts](#) for the Appeals Officer if the adoptive family appeals decisions related to adoption assistance (including negotiations).

- Issues payments per the terms of the negotiated adoption assistance agreement.
- Reports expenditures in LASER.

### 2.11.3 Negotiation process

As of July 1, 2015, all applications for adoption assistance and addendum requests are being facilitated by an Assistance Negotiator. With the following exceptions:

- Adoption assistance agreements executed prior to October 2013, when the terms and conditions do not have end dates, are not referred to an Assistance Negotiator. The LDSS may utilize their existing internal process to extend the agreement past age 18 or continue special services payments in accordance with the terms of the agreement.
- A change of a provider or rate for services on an existing agreement does not have to be referred for negotiations. The LDSS may make this administrative change by completing an addendum or placing a memo in the case record explaining the change. For rate changes that exceed 30%, a referral should be made to the Assistance Negotiator.

The LDSS should submit a copy of the signed *application* to the Assistance Negotiator within **14 calendar days** of receipt from the adoptive parents. The Referral for Negotiations form and the following documentation relative to the child's special needs and the adoptive family's circumstances should be included:

- The screening tool;
- VEMAT, if the screening tool indicates that a VEMAT is required; and,
- Supporting documentation and diagnosis of each of the child's special needs (such as, but not limited to, Full Disclosure Child Information Form, medical reports, IEP, psychological evaluations, etc.).

The following is additional information needed for an addendum negotiation:

- Referral for Negotiations form;
- Professional documentation that is specific to the special needs and service requested;
- Signed copy of the Addendum Request to the Assistance Agreement form;
- Copy of the original adoption assistance agreement;

- Copy of the most recent addendum for that service, if applicable; and,

Upon receipt of the referral, the Assistance Negotiator will review the documentation and may request additional supporting documentation. If the supporting documentation is excessive, the LDSS may contact the Assistance Negotiator to request a site visit to review the case in person.

If necessary, executes the VEMAT no later than the **30<sup>th</sup> day** after receiving the application, and submits a copy of the VEMAT to the Assistance Negotiator.

After reviewing the documentation and discussing the case with the LDSS and the family (when appropriate), the Assistance Negotiator will determine if the negotiation can be conducted via the phone or if an onsite visit is required. The negotiators also have the option to conduct a desk review in some cases.

*The Negotiator will complete the negotiation and provide the LDSS with the Adoption Negotiation Report within **30 calendar days** of receiving the Referral for Negotiations and all supporting documentation from the LDSS. The Negotiator will submit the negotiation report to the LDSS and the LDSS will provide a copy to the adoptive parents.*

Within **fifteen (15) calendar day** from the date of the Adoption Negotiation Report, the LDSS should draft and execute an adoption assistance agreement. No later than **ten (10) days** following the last signature on the adoption assistance agreement, **the LDSS will submit a copy of the adoption assistance agreement to the Assistance Negotiator.**

Refer to the [Appendix D](#) for a graphic of this process.

#### **2.11.4 Negotiating special services payments**

During this process, the LDSS, Assistance Negotiator, and adoptive parents should discuss the following factors, as well as any other relevant factors:

- The amount, duration, and cost of the special service and/or support the child requires, and the anticipated impact on the child's special needs or behaviors, as documented by a qualified professional.
- Available resources to help meet the child's special needs and defray the costs for adoption assistance and the adoptive parents.
- The family circumstances of the adoptive parents.
  - Their strengths, challenges, and capacity in meeting the child's special needs.

- Their contributions (e.g., participation, transportation) to help facilitate the success of the special service.
- The remaining funds the adoptive parents identify they have available that may be used for special services and supports (i.e., the amount they can financially afford to pay).
- The LDSS should ask the adoptive parents how much they will pay from the funds they have available that may be used for special services for the child. If the adoptive parents have alternative plans for using these funds, the LDSS should ask questions such as: How do you suggest we share in the costs of meeting the child's special needs? How much will you contribute for this service? And, how much assistance do you need for this service? The LDSS and adoptive parents should discuss options for sharing in the cost and determine an agreed upon amount.
- Requirement that the LDSS payment shall not exceed the prevailing community rate for the service ([22 VAC 40-201-161 E2c](#)).
  - For child care, the VDSS policy on maximum reimbursable child care rates should be considered, based on the type of provider, number of hours the child is in care, and the age of the child (see Chapter E. Foster Care Manual, [Section 12.8](#)).
  - For residential care, the VDSS may consider the maximum rates identified by providers in the [CSA service fee directory](#).
- How the adoptive parents will monitor the effectiveness of the service and keep the LDSS informed of progress. This information allows the LDSS and adoptive parents to assess whether to increase, extend, reduce, or terminate the service based on the child's needs. The adoptive parents should:
  - Provide copies of periodic progress reports from service providers to the LDSS.
  - Sign consents for release of information for the LDSS to obtain information from service providers (e.g., the school, therapist, residential treatment provider, intensive care coordinator).
  - Arrange and participate in regular meetings and conference calls with service providers and the LDSS.

After discussing and negotiating all relevant factors for each special service, the LDSS and adoptive parents agree upon the time-limited services and supports to be provided, the amount of payments, the duration of payments with beginning and end dates, and any other terms. The LDSS shall document the agreed upon terms in the

adoption assistance agreement and any addendum adding special services to the agreement.

### 2.11.5 Appealing the Negotiation

The LDSS shall provide the [Family Services Notice of Action and Right to Appeal](#) to the adoptive parents; documenting the LDSS action on the adoptive parents' *application*. This notice should be provided within **90 calendar days** from the date the LDSS received the completed [Application for Assistance](#) with all required documentation. The notice includes information about the adoptive parents' right to appeal any LDSS decision in granting, denying, changing, or discontinuing adoption assistance within **30 calendar days** of receiving written notice of the decisions and their right to a fair hearing.

LDSS cannot use the Appeals and Fair Hearings process for appealing the negotiation results. LDSS who disagree or object to the results of the negotiations should contact the [Adoption Program Manager](#) by email. In the event that the LDSS and the Adoption Program Manager are unable to reach an accord, the LDSS may contact the [Director of Family Services](#).

## 2.12 Adoption Assistance Agreement

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An adoption assistance agreement is a written agreement between the LDSS, the adoptive parents of the child with special needs, and the licensed child placing agency when the child is in its custody. At a minimum, the agreement and any addenda shall remain in effect per the term of the agreement regardless of the state of residence ([Social Security Act, Title IV, § 475 \(c\)\(2\)\[42 USC 675\]](#)).

### 2.12.1 Developing the agreement

After the negotiation, the LDSS and the adoptive parents agree on the terms of payments and/or services for adoption assistance and enter into an adoption assistance agreement. *The child's adoptive name is used on the agreement. If the child's adoptive name has not been decided at the time of the application, then the applicant should use the child's birth first name and the first initial of his or her last name. This is because the child's birth name is sealed when the adoption is finalized.*

The LDSS shall use the [Adoption Assistance Agreement \(22 VAC40-201-161 G\)](#). The agreement includes, but is not limited to:

- The child's documented special needs.
- The agreed upon terms of adoption assistance, including the type, duration, and amount of assistance to be provided.
- Process for requesting changes through an addendum to the agreement.



- Requirements that the adoptive parents:
  - Document that a school age child is enrolled full-time in school or that the child has completed secondary school.
  - Submit an annual affidavit.
  - Submit written notification of changes when:
    - Their address changes.
    - The child is incapable of participating in school full-time due to a medical condition documented by a qualified professional.
    - There are changes in the child's special needs or family circumstances of the adoptive parents that may change the amount of adoption assistance received.
    - The child is no longer eligible for adoption assistance.
- Circumstances for terminating services, funding, and the agreement.
- Process for appealing decisions.
- Process for continuing adoption assistance when the adoptive parents and the child move to another jurisdiction in Virginia or to another state.
- Effective and expiration dates of the agreement.
- Signatures of all parties and dates.

### **2.12.2 Executing the agreement**

When the local board, or its designee, approves the agreement, all parties sign the document. The local board does not have authority to deny an adoption assistance agreement for an eligible child. Signatures shall include the local board representative, or designee, the adoptive parents, and the LCPA when the child is in LCPA custody. The signed agreement is legally binding on all parties ([Social Security Act, Title IV, § 475 \(3\) \[42 USC 675\]](#); and [§ 63.2-1302 C](#)).

The agreement shall be signed and in effect prior to, or at the time of, the final order of adoption when title IV-E adoption assistance funds are used ([45 CFR 1356.40](#)).

The effective date and beginning initial payment date shall be the first day of the month following the month in which all parties signed the agreement. The agreement shall state the effective date. When the agreement is entered prior to adoption finalization, the effective date shall be no later than the date the final order of adoption is signed

by the judge. The LDSS shall only provide payments and services after all parties have signed and dated the agreement and when the agreement is in effect. *However, for special services payments, the effective date is the date in which all parties sign the agreement.*

The LDSS shall give the parents a copy of the signed agreement. The LDSS shall keep the original agreement and all supporting documents in the child's adoption assistance case record.

The LDSS shall discuss with the adoptive parents how they may request changes at any time during the duration of the agreement. The LDSS shall give the adoptive parents a copy of the [Addendum Request to the Assistance Agreement](#).

Failure to execute an agreement prior to the final order of adoption will prevent the child from receiving adoption assistance, unless the child's eligibility can be established using the policies and procedures for establishing eligibility after the final order of adoption. In addition, title IV-E funds cannot be used to support the adoption assistance agreement for a title IV-E eligible child when the agreement is executed after the final order of adoption.

When the failure to complete the adoption assistance agreement prior to the final order of adoption is due to LDSS failure to act on the application within a reasonable time, the adoptive parents may ask for a review of the process (§ [63.2-1304](#)). Prior to making a final determination on the application, the LDSS should attempt to rectify the situation as an administrative error, when applicable. The LDSS should inform the adoptive parents of its actions to resolve the situation. However, it must not prejudice the adoptive parents from requesting a review of the process. The LDSS should document the reasons the LDSS failed to properly process the application and how the child met all eligibility criteria for title IV-E funding prior to, or at the time of, the final adoption order. The LDSS should submit this documentation to the Adoption and Family Recruitment Regional Consultant with a written request to allow execution of the adoption assistance agreement using title IV-E funds. The Adoption Program Manager determines whether the situation can be corrected as an administrative error. If the Adoption Program Manager approves the request in writing, the LDSS shall execute the adoption assistance agreement using title IV-E funds.

When the adoption assistance agreement is not executed within **90 calendar days** due to the failure of the adoptive parents to provide any additional required information, the LDSS should deny the application. The adoptive parents may reapply for adoption assistance. Once the adoptive parents submit the complete application with all required documentation, then a new 90 day period begins.

## 2.13 Annual affidavit

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An annual affidavit is required for all adoption assistance agreements, including agreements entered into with a zero dollar payment, *unless the initial adoption assistance agreement is for a one-time payment, such as non-recurring expenses.*

The LDSS shall notify the adoptive parents in writing of the date the annual affidavit is due. The notification shall be sent **two months** before the anniversary date of when the adoption assistance agreement was effective. The LDSS shall use the [Virginia Annual Affidavit for Adoption Assistance](#).

The adoptive parents shall submit an annual affidavit to the LDSS within **30 calendar days** of the anniversary date that the adoption assistance agreement was effective (i.e., the effective date stated in the agreement) ([§ 63.2-1302 C](#)).

The adoptive parents shall annually certify in the affidavit that the:

- Child's condition requiring adoption assistance continues to exist.
- Child continues to be eligible for adoption assistance:
  - The adoptive parents remain legally responsible for the child's care.
  - The adoptive parents continue to provide financial support for the child.
  - The child is not an emancipated minor, married, deceased, or enlisted in the military.
- If the youth is, or will be, 18 years old within the next year and has a mental or physical condition/disability, or an educational delay resulting from such condition/disability, that requires ongoing treatment and/or intervention.
- Whether or not they request changes to the adoption assistance agreement ([§ 63.2-1302 C](#) and [Federal Child Welfare Policy Manual, Subsection 8.2D.5](#)).
- The school-age child is a full-time student or has completed secondary school. The child:
  - Is enrolled in elementary, middle, or high school.
  - Is instructed at home in elementary or secondary education, in accordance with home schooling laws and requirements.
  - Is instructed in an independent study program for elementary or secondary education that is administered by the local school division, in accordance with education laws.

- Is incapable of participating in school full-time due to a medical condition ([Social Security Act, Title IV, § 471 \(a\) \(30\) \[42 USC 671\]](#)). Documentation by a qualified professional shall be included with the affidavit.
- Has graduated from high school or earned an equivalent credential.
- Is enrolled in an institute of higher education, technical college, or community college.
- Whether there has been any change in the child's special needs or in their family circumstances that may change the adoption assistance the child receives. When changes have occurred, the adoptive parents shall provide documentation of change (e.g., copies of new private health insurance card and full explanation of health benefits).

The annual affidavit shall be signed by at least one of the adoptive parents. If the adoptive parent does not return the annual affidavit, the LDSS:

- Shall not suspend or terminate adoption assistance maintenance payments or the adoption assistance agreement.
- May suspend the special services payments until the signed affidavit is received, when the LDSS determines appropriate. The LDSS shall not terminate the special services payments.

The LDSS shall attempt to obtain the affidavit with due diligence. When the adoptive parents do not return the annual affidavit, the LDSS:

- Should send a certified letter to the adoptive parents advising them to return the signed affidavit by a required date.
- May advise them to come into the office, sign the affidavit, and pick up the check at the same time by the required date. The certified letter shall be sent at least 30 days prior to holding the check. The LDSS shall issue the check for adoption assistance payments on the normal schedule and shall give the check to the adoptive parents before they depart the premises.
- Shall inform the adoptive parents that, when applicable, special services payments being provided to the family will be suspended until the signed affidavit is received. The letter shall include information on the adoptive parents' right to appeal the LDSS decision within **30 calendar days** of receiving the letter and provide information on the fair hearing process. After diligent efforts by the LDSS to obtain the affidavit and when the adoptive parents fail to submit the signed affidavit by the required returned date, the LDSS may suspend the identified special services payment.

The LDSS shall document case contacts, in the *child welfare information system*, within **five calendar days** of the receipt of the signed affidavit. The LDSS shall place copies of the written notifications to the adoptive parents and the returned annual affidavits in the child's adoption assistance case record.

## 2.14 Making changes to agreement

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The adoptive parents may request a change to the existing adoption assistance agreement at any time during the duration of the agreement based on changes in the child's special needs or the family circumstances of the adoptive parents.

After the adoption assistance agreement is executed, the terms of the agreement are changed when:

- The terms are assessed, negotiated, and agreed upon by the adoptive parents and the LDSS ([Social Security Act, Title IV, § 473 \(a\) \(3\) \[42 U.S.C. 673\]](#)).
- The new terms are documented in the signed, dated, and executed addendum.

An addendum is an attachment to the original adoption assistance agreement which specifies additions or deletions to the original terms, services, or conditions of the agreement. The addendum may address a specific item, multiple items, or for the entire document. Unless specified, the terms, services, or conditions specified in the addendum supersede those in the original agreement.

An addendum is not required when terminating a payment or service based on the terms specified in an agreement or addendum.

When opting to modify the original agreement (rather than executing an addendum), the LDSS will complete an administrative change. These changes will not be in effect until both the LDSS and the adoptive parents initial and date the changes. A rate or provider change will require an administrative change and the LDSS will place a memorandum in the adoption record explaining the change. Rate changes over 30% should be referred to an Assistance Negotiator.

Adoption assistance agreements prior to October 2013, when the terms and conditions do not have end dates, are not referred to an Assistance Negotiator. The LDSS will utilize their internal process for negotiating terms and completing the addendum.

Services that are regularly utilized such as counseling may be approved on the addendum for up to one year.

### 2.14.1 Submitting request for addendum

Changes in specific components of adoption assistance may be requested during the duration of the agreement as follows:

- Basic maintenance may be reassessed at any time upon request of the adoptive parents.
- Enhanced maintenance and/or special services may be reassessed and renegotiated at any time upon request of the adoptive parents.
- Non-recurring expenses are one time only expenses and cannot be reassessed.

The adoptive parents submit an [Addendum Request to the Assistance Agreement](#) to the LDSS with which they established the agreement. Both parents sign the request when the agreement was with two parents, including adoptive parents who are separated or divorced. One parent signs the request when the agreement was with one parent or when a signed court order documents the sole legal responsibility of one parent for the child.

#### 2.14.2 Timeframe for acting on request

**Within 14 days** after receiving the request for an addendum, the LDSS should:

- Review the request to determine whether it is complete with all required documentation.
- Notify the parents in writing that the request was received and its status:
  - **The request is complete.** The notification shall include the date the request was received. It shall state that the LDSS and parents have **60 calendar days** to assess, negotiate, and execute an addendum.
  - **Additional information is needed.** The notification shall state the specific information necessary to complete the request. It should request the parents submit the information by email, phone, or in person within **30 calendar days** from the notice date.

If the parents do not provide the information within 30 days, the LDSS should deny the request. The LDSS shall inform the parents in writing the reasons for denying the request and that they may submit a new [Addendum Request to the Assistance Agreement](#).

- **Request for changes is denied.** The notification shall clearly state the reasons for the denial, provide information on the adoptive parents' right to appeal within **30 calendar days** of receiving the notice of denial, and provide information on the fair hearing process. No further action is required by the LDSS on the request.

### 2.14.3 Assessing overall request for addendum

The LDSS and adoptive parents should discuss the information provided in the Addendum Request to the Assistance Agreement. The purpose of this conversation is to fully understand the parents' reasons for requesting adoption assistance at this time. The conversation should include, but is not limited to:

- The changes in the child's special needs or the family circumstances of the parents, including:
  - The reasons the adoptive parents are concerned at this time.
  - The impetus, duration, severity, and impact of the child's special needs and behaviors.
- The specific services, resources, and supports the parents have used, or attempted to use, in their family and community to address the changes.
- The services, resources, and supports the parents are requesting to help meet the child's special needs.

The LDSS should summarize the concerns, needs, interests, and reasons of the parents to ensure accurate understanding.

### 2.14.4 Assessing relevant components of adoption assistance

The Assistance Negotiator shall assess and negotiate relevant components of adoption assistance with the LDSS and adoptive parents to determine agreed upon terms for the addendum. There is no need to assess components that are not impacted by the request, when the current terms will continue as delineated in the existing adoption assistance agreement.

The LDSS should use the *application* to assist in the assessment of the financial circumstances of the family and consider this information when negotiating changes to the agreement. This *application* does not determine the child's eligibility for adoption assistance and will not be used as the sole factor in assessing the family circumstances.

The assistance negotiator, LDSS, and the parents should use the same assessment and negotiation process that is used for initial agreements to guide the addendum process, including:

- Negotiating adoption assistance.
- Assessing:
  - Family circumstance.

- Basic maintenance needs of child.
- Additional supervision and support needs of child.
- Services to meet the child's special needs.
- Other resources.

When the adoptive parents request:

- A reassessment for additional supervision and support being provided by the adoptive parents, the LDSS determines if there are indications that the child's requirements for additional supervision and support may have changed based on the frequency, duration, and intensity of the child's behavioral, emotional, and physical/personal care characteristics. Such change in behavior shall be documented and a request is made using the [Addendum Request to the Assistance Agreement](#). When the LDSS administers the VEMAT and the child's VEMAT score is higher than the child's previous score, the new VEMAT score for the child establishes the maximum rate used during negotiations. When the child's VEMAT score is lower than the child's previous score, the payment may be lowered with the concurrence of the adoptive parents.
- To add a new diagnosis or special need factor that was present at the time of the adoption, but was not diagnosed, the adoptive parents shall submit documentation and relevant reports from qualified professionals as required for documenting special need condition/disability after the final order of adoption, when no more than one year has elapsed from the date of diagnosis.
- To document the child has a special medical need that existed at the time the initial adoption assistance agreement was executed prior to the final order of adoption, then the adoptive parents shall submit documentation by qualified professionals of the child's current special medical need and its existence at the time the initial agreement was executed (whether or not treatment was being received).
- Residential treatment services that impact the amount of required additional daily supervision and support for the child from the adoptive parents, then the LDSS shall reevaluate the VEMAT and negotiate a reduced enhanced maintenance payment with the adoptive parents.

The LDSS should use the same procedures used for initial agreements to resolve issues during negotiation.

The LDSS shall send the [Family Services Notice of Action and Right to Appeal](#) to the parents documenting the outcome. This notice should be sent within **60 calendar days** from the date the LDSS received the completed [Addendum Request to the](#)



[Assistance Agreement](#). The notification shall include information about the adoptive parents' right to appeal the decisions within **30 calendar days** of receiving the written notice.

#### **2.14.5 Executing the addendum**

The LDSS shall prepare an Addendum to the Virginia Adoption Assistance Agreement on behalf of the child.

When the local board, or its designee, approves the addendum, the parents and the local Board, or designee, shall sign and date it. The local board does not have authority to deny an addendum for an eligible child. When both parents signed the request for an addendum and agreed to the terms in the addendum, then both parents shall sign and date the addendum.

Payments and services shall not be effective until all parties have signed and dated the addendum. Changes in payment rates, such as an increase or decrease in enhanced maintenance rate, shall not be implemented until the first day of the month following all signatures. The addendum shall state the effective date of the changes. This date shall not be earlier than the date when all parties signed the addendum. The addendum is executed on behalf of the child on the effective date stated in the addendum. *However, for special services payments, the effective date is the date in which all parties sign the addendum.*

The LDSS shall give the adoptive parents a copy of the addendum. The LDSS should place the original agreement and all supporting documents in the child's adoption assistance case record.

#### **2.14.6 Conducting a VEMAT after signing adoption assistance agreement**

Within **14 calendar days** of receiving an Addendum Request to the Assistance Agreement that specifies a request for services related to additional daily supervision from the adoptive parents, the LDSS shall determine that a VEMAT will be conducted due to changes in the child's needs or behavior.

If the LDSS determines that a VEMAT will not be conducted, the LDSS shall send the Family Services Notice of Action and Right to Appeal to the parents notifying them of the reason for not executing a VEMAT and their right to appeal the decision within **30 calendar days** of receiving the written notice.

If the LDSS determines that a VEMAT will be conducted, then the LDSS shall administer a VEMAT within **25 calendar day** of the decision to reassess the adoption assistance maintenance payment. The LDSS shall ensure the VEMAT is executed within sufficient time to ensure that the LDSS is able to completely process, execute, and respond to the family who submitted the Addendum Request to the Assistance Agreement within **90 calendar days** of its receipt by the LDSS.

The VEMAT is conducted according to the same team process as specified in Chapter E. Foster Care Manual, [Section 18.2.2.3](#) with the following exception:

- If there is no specific case manager for the family, the LDSS shall ensure that the individual at the LDSS who is assigned to manage adoption assistance requests is included in the VEMAT meeting.

The VEMAT rater shall be an individual as described in Chapter E. Foster Care Manual, [Section 18.2.2.5](#) and shall follow all requirements in administering the VEMAT as identified in all earlier sections of this guidance.

The parents shall cooperate with the LDSS to ensure that all necessary information is available for a comprehensive review of the child's needs.

If the parent does not provide requested documentation or sign requested releases of information or obtain additional assessments, the LDSS shall not conduct a VEMAT.

If the results of the VEMAT indicate that, due to a change in the child's need for supervision and support, a change in the enhanced maintenance payment is allowed (e.g., increase, decrease), the LDSS, *Assistance Negotiator*, and parent may negotiate a new monthly enhanced maintenance rate. The parent has the option to keep the original, unchanged agreement or proceed with negotiations for a new agreement. The LDSS and the parent shall complete an addendum to the adoption assistance agreement to document the new agreed upon monthly rate. The parents' signature on the addendum shall serve as documentation that the parent agreed to the change in the adoption assistance agreement. The new rate shall begin on the first day of the month after the addendum is signed by all parties.

#### **2.14.7 Assessing conditions warranting continuation beyond 18<sup>th</sup> birthday**

Unless the youth has a condition that warrants continuation of adoption assistance, the adoption assistance agreement terminates on the youth's 18<sup>th</sup> birthday. The LDSS, in conjunction with the Assistance Negotiator, makes the determination if the youth has a documented condition that warrants continuation beyond the youth's 18<sup>th</sup> birthday. Consequently, the LDSS shall *notify the adoptive parents in writing, using the Family Services Notice of Action and Rights to Appeal form, six months prior to the youth turning age 18* to advise that the agreement will terminate on the youth's 18<sup>th</sup> birthday unless they submit, prior to the youth attaining age 18, documentation demonstrating that the youth has a condition that warrants continuation of adoption assistance.

After receiving the documentation, the LDSS with assistance of the Assistance Negotiator will determine if the youth meets the criteria for continuing the agreement beyond the youth's 18<sup>th</sup> birthday. If the LDSS determines the youth's condition warrants continuation of adoption assistance, the agreement may be continued via

amending the original agreement or entering into an addendum ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \(II\) \[42 USC 673\]](#) and [§ 63.2-1302 B](#)). The terms of the agreement or addendum may be for any period after the youth's 18<sup>th</sup> birthday up to the youth's 21<sup>st</sup> birthday.

If the LDSS determines the youth does not have a condition that warrants continuation of the agreement beyond the youth's 18<sup>th</sup> birthday, the LDSS shall notify the adoptive parents in writing. Notice shall be made *using the Family Services Notice of Action and Right to Appeal form at least **sixty (60) calendar days** before the youth's 18<sup>th</sup> birthday* that the agreement and subsequent payments will terminate on the youth's 18<sup>th</sup> birthday.

#### **2.14.7.1 Criteria for continuing beyond 18<sup>th</sup> birthday**

To continue adoption assistance beyond age 18, the LDSS shall determine if the youth meets both of the following criteria:

1. The LDSS shall establish one of the following that is listed on the original adoption assistance agreement:
  - The youth has a physical or mental disability that was present at the time of the adoption; or
  - The youth has a physical or mental disability that is related to a hereditary tendency, congenital problem, or birth injury; or
  - The youth has an educational delay resulting from either special need above.

#### **AND**

2. The LDSS determines the youth requires ongoing treatment and intervention.
  - The youth requires treatment, intervention, or additional supervision and support from the adoptive parents to ensure the youth's safety and well-being; and/or
  - The youth requires educational services to address the youth's educational delay **and** the youth is enrolled full-time in an educational, vocational, or technical training program (i.e., the youth is attending and actively participating in high school, institute of higher education, technical college, or community college).

Evidence of these two criteria shall be based on the following documentation:

- Statements from qualified professionals documenting the youth's disability or educational delay and the youth's need for ongoing treatment and/or intervention.
- Relevant diagnostic and assessment reports.
- Any other relevant documentation that occurred within one year (e.g., VEMAT and supporting documentation; school performance reports).

The agreement should continue as long as the LDSS determines that the:

- Physical or mental disability, or educational delay resulting from such disability, continues to exist.
- Youth continues to require ongoing treatment or intervention.

When the LDSS determines the youth's condition warrants continuation of adoption assistance:

- Due to a physical or mental disability, then the LDSS shall continue using the same fund source (i.e., title IV-E or state funds) for adoption assistance payments after the youth attains age 18.
- Solely due to an educational delay resulting from a mental or physical disability, then the LDSS shall only use state funds for adoption assistance payments after the youth attains age 18, even when the maintenance payments were funded with title IV-E funds prior to age 18 ([§ 63.2-1302 B](#)).

When the youth's condition warrants continuation solely due to an educational delay resulting from a mental or physical disability, then the agreement should be terminated when the youth **no longer**:

- Has the educational delay resulting from the mental or physical disability; or
- Requires educational services to address the youth's education delay; or
- Is willingly cooperating and participating in the educational services; or
- Is enrolled full-time, attending and actively participating in the educational, vocational, or technical training program.

### 2.14.8 Extension of adoption assistance through Fostering Futures

Youth adopted from foster care after age 16 may qualify for extension of adoption assistance under Fostering Futures after reaching 18, up to age 21.

#### 2.14.8.1 Fostering Futures eligibility criteria

When the LDSS determines that the youth is ineligible for continuation of adoption assistance beyond age 18 based on the special needs criteria, adoption assistance may continue for the youth when the following **three** criteria are met:

- The youth turned 18 on or after July 1, 2016; **and**,
- The youth is subject to an adoption assistance agreement that became effective after the youth reached the age of 16; **and**,
- The LDSS has determined the youth ineligible for continuation of adoption assistance beyond age 18 under existing adoption guidance (i.e. the youth does not have a documented physical or mental disability present at the time of adoption or related to a hereditary tendency, congenital problem, or birth injury, or an education delay resulting from such disability, requiring ongoing treatment or intervention).

In addition to meeting the three criteria above, the youth shall meet at least **one** of the five participation circumstances. The youth must be:

1. Completing secondary education or GED.
  - Examples include enrollment in a secondary school, e.g. public high school, alternative high school, private school, adult education classes, program leading to GED, or special education described in the IEP.
2. Enrolled full-time or part-time (at least half-time) in an institution that provides post-secondary or vocational education.
  - Examples include remedial courses, coursework without formal admission to the institution, attendance at multiple institutions, or correspondence or on-line course affiliated with an accredited institution.
3. Participating in a program or activity designed to promote employment or remove barriers to employment.
  - Examples include individualized activities based on an assessment of the youth's needs. These may be self-directed, completed on a one-on-one basis with a caregiver, or part of an organized program.

They may also include but are not limited to internships, volunteering, vocational rehabilitation, counseling, driver's education, less than half-time secondary education, or participating in a substance abuse program. Qualifying activities should clearly move the youth toward developing skills to help transition to education or employment leading to independence.

4. Employed at least 80 hours per month.
5. Incapable of engaging in any of the above activities due to a medical condition, i.e. a short-term or long-term physical health impairment or a mental/emotional or behavior health, developmental or cognitive disability or impairment that serves as a barrier which prevents the youth from consistently participating in employment and education.
  - o The youth does not have to be currently receiving or seeking treatment or remediation for the medical condition.

In most cases, a medical condition which makes the youth incapable of participating would also make the youth eligible for the extension of adoption assistance due to a special need; and therefore, the youth would not be eligible under Fostering Futures.

The LDSS with assistance of the Assistance Negotiator will make the initial determination whether the youth is eligible to continue the adoption assistance agreement under Fostering Futures beyond the youth's 18<sup>th</sup> birthday.

Other Fostering Futures requirements which apply in extended foster care do not apply in extended adoption assistance: there are no voluntary agreements signed by the youth; service plans; biannual reviews; allowable placement settings; visits by a service worker; payments to the youth; court action; or title IV-E determination.

#### **2.14.8.2 Documentation for Fostering Futures eligibility**

To determine initial eligibility, the adoptive parents' good faith statement of assurance that the youth will participate in secondary or post-secondary education, vocational program, employment, or job-readiness preparation as described above should be accepted. Therefore, the adoptive parent shall certify on the annual affidavit whether the youth is continuing participation, including the type and status, and submit documentation verifying the youth's involvement in one or more participation conditions.

Initially, the youth's inability to participate due to a medical condition shall be verified by a statement from a medical doctor provided by the adoptive parent. Thereafter, the adoptive parent shall certify on the annual affidavit whether the

youth continues to be unable to participate due to the medical condition, and submit documentation verifying the youth's continued medical condition.

### 2.14.8.3 Continuing adoption assistance using Fostering Futures

If the youth is eligible for an extension of adoption assistance under Fostering Futures, the service worker should prepare an Addendum to the Adoption Assistance Agreement reflecting the continuation of maintenance payments to the adoptive parents and citing the required conditions of participation. If an enhanced maintenance payment is in effect, payment shall continue at the same level unless the adoptive parent agrees to a reduction.

If a youth eligible under Fostering Futures was receiving title IV-E adoption assistance prior to age 18, title IV-E assistance shall continue without further determination; if the youth was receiving state adoption assistance, state assistance shall continue without further determination.

Continued eligibility will be determined by the annual affidavit submitted by the adoptive parents on the anniversary of the effective date of the adoption assistance agreement. The affidavit should certify the youth's compliance with one of the participation conditions and provide documentation of the youth's participation throughout the year.

### 2.14.9 Requirements for residential treatment services

In order to request residential treatment services and modify the existing adoption assistance agreement, the adoptive parents should submit the Addendum Request to the Assistance Agreement form. The LDSS should follow procedures for assessing special services ([See Section 2.6.6](#)) and requests for addendums ([See Section 2.15](#)) to the adoption assistance agreement. In addition, the LDSS should follow procedures delineated in this section.

Special services payments may be used to pay for residential treatment when the LDSS determines the following requirements are met:

- Documentation from qualified professionals demonstrate:
  - Less restrictive services (i.e., wraparound, family-based, in-home, and community-based services) were utilized and not effective, or are clearly not appropriate at this time.
  - Residential treatment services are:
    - **Directly related to the child's documented special needs** as specified on the adoption assistance agreement or addendum.

- Required to provide crisis stabilization or intensive treatment on a time-limited basis.
- The most appropriate, least restrictive, and most effective services to meet the child's documented special needs.
- Measurable outcomes to be achieved with residential treatment in addressing the child's special needs.
- Services and supports that can be used to effectively transition and return the child home at the earliest appropriate time consistent with the child's special needs.
- Recent child and family assessments are consistent with the child's need for residential treatment services. The assessment shall include, but is not limited to, the Virginia Child and Adolescent Needs and Strengths Assessment (CANS) administered within the last 90 days.
- *Recommendations for residential placement must follow the current approval procedures in place for children in foster care, to include, a Family Assessment and Planning Team meeting, a Family Partnership Meeting, and any required Medicaid approval processes.*
- The wishes and concerns of the child about residential placement are being considered, consistent with the development level of the child.
- The adoptive parents are using residential treatment as a temporary placement for crisis stabilization or intensive treatment on a short-term basis. They have developed specific plans for actively planning and participating in the child's treatment and services.
- Plans to transition and return the child home at the earliest appropriate time consistent with the child's special needs are being developed by the adoptive parents and the residential treatment provider. Adoption assistance funds shall be used only when the child is to return to the adoptive home. The only exception is when the LDSS determines the child's special needs prohibit return home and the adoptive parents demonstrate continued involvement in the child's life as a permanent member of their family.
- The LDSS must make a referral to FAPT which involves a multidisciplinary team to explore residential treatment services and least restrictive, community based resources.



### 2.14.9.1 FAPT requirements for residential treatment services

The FAPT or approved multidisciplinary team in the locality where the adoptive parents reside:

- Determines less restrictive services (e.g., wraparound, family, or community services) are not appropriate in meeting the child's special needs at this time.
- Recommends that time-limited residential treatment is the most appropriate, least restrictive, and most effective service in meeting the child's special needs.
- Recommends services and supports to successfully transition and return the child home at the earliest appropriate time consistent with the child's special needs.

If the FAPT does not recommend residential treatment, special services payments cannot be used for the placement. The adoptive parents may choose whether to place the child using their own or alternative resources.

After the FAPT makes its recommendations, the FAPT no longer needs to provide additional assessments, conduct utilization reviews, or make service recommendations, unless required by CSA law and policies, or the LDSS and FAPT agree such actions will be beneficial for the child and should be conducted, consistent with CPMT policies.

An independent physician certifies that outpatient care does not meet the child's special needs, appropriate treatment of the child's special needs requires services on an inpatient basis under the direction of a physician, and services can reasonably be expected to improve the child's special needs to prevent further regression. The FAPT may sign this independent certification. For the child who is not funded partly by CSA, the community services board in the locality where the adoptive parents reside provides the independent team certification.

To add residential treatment to an existing adoption assistance agreement, the adoptive parents shall submit an Addendum Request to the Assistance Agreement.

Thirty days prior to the special services payment end date (set specified on the adoption assistance agreement or addendum) for residential services, the LDSS shall contact the adoptive parents to determine if additional services are recommended. If additional services are recommended, the LDSS, the adoptive parents, and the Assistance Negotiator shall negotiate additional services. A request for an addendum is not necessary to initiate this process. A new

addendum is required to continue the special services payment beyond the original terms.

#### **2.14.9.2 Convening Family Partnership Meeting**

When special services payments may be used for residential treatment, the LDSS should convene a Family Partnership Meeting to engage the family, other significant adults, service providers, and community members (see Chapter E. Foster Care Manual, [Section 2.9](#)). The purpose of the meeting is to identify wraparound, family, and community services and supports that may prevent the residential placement and facilitate return home at the earliest appropriate time consistent with the child's needs. The LDSS should schedule this meeting when it is most beneficial for the child during the process:

- At the first indication the child is at risk of residential placement.
- Prior to, or concurrently with, the FAPT or approved multidisciplinary team meeting.
- When assessing the child's needs initially for residential treatment services.
- When reassessing the child's needs for continued residential treatment.
- When planning the child's transition and return home.

#### **2.14.9.3 Negotiating residential treatment services**

When the LDSS determines the child meets the requirements for residential treatment services, the LDSS and Assistance Negotiator shall negotiate special services with the adoptive parents and determine agreed upon terms. In addition, the LDSS and adoptive parents should also discuss the following factors:

- The specific services and supports that meet the child's special needs to be provided, including:
  - Residential treatment services.
  - Wraparound, family, and community services and supports necessary to successfully transition the child home.
  - Appropriate educational services for the child. The adoptive parents should discuss with the child's local school the child's educational needs and the most appropriate ways to meet those needs.
  - Intensive care coordination services arranged or provided by the community services board, when appropriate (see Virginia

Department of Behavioral Health and Development Services' [website](#)).

- The plans of the adoptive parents to actively participate in the child's treatment and return home at the earliest appropriate time that addresses the child's needs.
- Services payments for residential treatment services should be made for no longer than three months at a time. The LDSS and adoptive parents should assess the child's situation on a monthly basis, and more frequently when required for the child's special needs. The purpose is to assess progress, continued need for residential treatment, and any changes in needed services and supports.
- When the adoptive parents are receiving an enhanced maintenance payment on behalf of the child, the LDSS and adoptive parents assess the additional supervision and support the child requires from the adoptive parents when the child is placed outside of the home receiving residential treatment services.

After discussing all relevant factors, the LDSS and Assistance Negotiator shall negotiate with the adoptive parents to determine the agreed upon terms for special services payment. The LDSS shall document the agreed upon terms in the adoption assistance agreement and in any addendum.

#### **2.14.9.4 Responsibilities of adoptive parents**

When special services payments are used for residential treatment services, the adoptive parents are responsible for actively planning, supporting, and participating in service delivery to help facilitate positive outcomes. The adoptive parents should:

- Provide the child emotional support during the transition, treatment, and services.
- Participate in treatment planning, including:
  - Researching the most appropriate residential placement for the child.
  - Obtaining pre-admission screening materials and providing all required information to meet Medicaid requirements when applicable.
  - Providing the residential treatment program relevant background and service history information about the child.

- Arranging and participating in a pre-placement visit with the child.
- Negotiating rates and entering into a placement agreement with the service provider. The adoptive parents shall provide the LDSS a copy of the agreement for the child's adoption assistance case record.
- Arranging trial home visits to prepare for the child returning home.
- Transitioning and returning the child home at the earliest appropriate time that addresses the child's needs.
- Participate actively in treatment and services at the residential treatment program, at home, and in the community.
  - Visit the child frequently and regularly based on the child's best interests and treatment plan. The adoptive parents shall visit the child at least once each month and should visit more frequently.
  - Communicate frequently and continuously through phone calls, email, social media, and letters.
  - Help maintain important relationships for the child through arranging visits and frequent communication with family, friends, school, religious, spiritual, and other cultural and community connections.
  - Provide funds for the child's use during the placement (e.g., allowance, clothing, personal incidentals, and recreational activities).

The agreed upon terms for specific responsibilities of the adoptive parents shall be documented in the addendum to the adoption assistance agreement.

#### **2.14.9.5 Discharge and aftercare planning**

The LDSS and adoptive parents should begin planning the child's return home before the child is placed in the residential treatment program and continue throughout the placement. The goal is to successfully return the child home at the earliest appropriate time that addresses the child's special needs.

Transition services and supports designed to successfully re-integrate the child home should be implemented concurrently with the residential treatment services when appropriate. Aftercare services and supports should be provided to ensure the child is stable in the adoptive home as needed.

The LDSS should actively engage the adoptive parents, the child, other members of the adoptive family as appropriate, treatment and service providers, the LDSS in the locality where the adoptive parents reside, and any other appropriate community members in this process.

When necessary, the LDSS should determine whether the adoptive parents are committed to the child returning home, based on the following and other relevant factors. The adoptive parents are:

- Demonstrating commitment to maintaining a life-long relationship with the child as a permanent member of their family.
- Using residential placement consistent with the child's special needs (e.g., crisis stabilization, short-term intensive treatment), not as a permanent placement for the child.
- Participating actively in the residential treatment, family, and community services.
- Maintaining regular and frequent communication and visits with the child.
- Planning actively for the child to return home at the earliest appropriate time based on the child's needs.

When the LDSS determines that the adoptive parents do not want the child to return home, the LDSS should, as appropriate:

- Assess the child's permanency and special needs.
- Provide special services payments to prevent the adoption from dissolution and foster care prevention services to prevent the child from coming into foster care and strengthen the adoptive family. If the adoption dissolves, the LDSS in the locality where the adoptive parents reside may be ordered to assume the child's custody. This LDSS may also provide foster care prevention services when appropriate. The LDSS with responsibility for adoption assistance and the LDSS where the adoptive parents reside should collaborate closely.
- Diligently search for relatives and significant adults; actively engage adoptive and birth family members and other significant individuals. Convene a Family Partnership Meeting to brainstorm solutions and find a permanent home and lifelong connections for the child (see Chapter E. Foster Care Manual, [Section 2.9](#)).
- Explore all available community resources to ensure appropriate services are provided, including services for older youth who have significant disabilities.

#### **2.14.9.6 Documenting in the automated system**

In the event that adoption assistance funding is used to pay for any portion of the residential treatment, the local department shall record additional data concerning the residential treatment costs on the Adopt/Assistance/Residential screen in child welfare information system.

### **2.15 Payment and services**

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Payments and services shall only be provided to parents who have entered into a written, signed, and executed adoption assistance agreement on behalf of an adopted child with special needs and the payment and service is specified on the agreement or addendum. All adoption assistance payments (this includes maintenance, non-recurring, and special services) shall be recorded in the LDSS accounting system of record, LASER, and in the child welfare information system. Payments are reported in LASER in order for the LDSS to receive state and federal reimbursements for expenditures already incurred using local funds. Monthly costs are reported in the automated system in order to provide both the state and federal governments a liability estimation, expenditure projections, and because the automated system is the official system of record for the case.

Once the adoption assistance agreement is executed and the child is adopted, the adoptive parents have the right to make decisions on behalf of the child without further LDSS approval or oversight and may use adoption assistance funds as they determine appropriate. The only exception to this statement is when special services payments are made. While parents continue to have the right to make decisions related to the child, special services payments shall be used and monitored in accordance with the negotiated and agreed upon terms delineated in the signed adoption assistance agreement and any addendum in effect.

#### **2.15.1 Beginning payments and services**

LDSS shall begin utilizing adoption assistance funds on the first calendar day of the month following the month in which all parties sign the agreement or addendum. A final order of adoption is not necessary to begin making payments or reimbursing expenses. In the event that the LDSS begins making adoption assistance payments prior to the final order of adoption, the LDSS cannot continue utilizing foster care funding or services once the adoption assistance agreement is effective. This includes foster care supplemental clothing allowances, case management, and any services not specified on the adoption assistance agreement.

For the eligible child who is not in foster care with the LDSS or LCPA, adoption assistance payments shall begin on the first calendar day of the month following the month in which all parties sign the agreement or addendum. This includes the child who is being subsequently adopted after the adoptive parents die, child of title IV-E foster child (when the child is eligible for adoption assistance), and the SSI eligible child.

It is the service worker's responsibility to:

- Enter the appropriate type of agreement, type of payment, effective date, renewal date, and any other key dates for all payments into the *child welfare information systems* that the child and payments appear appropriately on the Adoptive Children Report.
- Accurately communicate changes, the appropriate funding source, and financial coding to the individuals responsible for entering all financial information into the LDSS accounting system of record and LASER.
- *Notify CSA, if necessary, of the funding change.*
- Convey to the LDSS staff responsible for Medicaid any changes that may impact Medicaid eligibility.

### **2.15.2 Reconciling foster care payment records**

When the final order is received, the LDSS must reconcile the payments made for the child to ensure that no title IV-E foster care funds (those reported under budget line [BL] 811) were used beyond the final order date. If any payments were made after the date on final order of adoption, the LDSS must make an adjusting accounting entry in LASER to refund the overpayment to BL811 and to charge the reported payments to either BL812 (title IV-E adoption assistance) or BL817 (state adoption assistance), whichever is appropriate based on the eligibility determined in the adoption assistance agreement process.

For families who do not have a signed adoption assistance agreement, the LDSS must make an adjusting accounting entry in LASER to shift the overpayment from Fund 1111, Reimbursable, to Fund 0033, Local-Only. It is up to the LDSS to determine if and how to recover the local only funds from the previous foster parents.

This is one of a few situations where prorating is required. Using BL811 funding until the end of the month after a signed final decree will create a title IV-E error as at the signing of the final adoption decree the child is no longer in foster care.

### **2.15.3 Making and reporting maintenance payments**

Maintenance payments shall be made directly to the parents and documented in the *child welfare information system* on an annual basis with the exception of when the maintenance payment increases due to the child reaching a higher age grouping or when there are statewide increases, which results in an update in the automated system ([22 VAC 40-201-161 E 1d](#)).

When the adoptive parents have requested to receive less basic maintenance than the maximum available rate, the LDSS increases the agreed upon payment amount

by the same percentage amount used to calculate the increase in the maximum foster care maintenance payments, as documented in the adoption assistance agreement.

Additionally, in order to receive reimbursement from VDSS, the local departments shall report maintenance payments in LASER for all children to the appropriate BL and cost code using the following chart. Additional information regarding adoption budget lines and cost codes are available in the [Finance Guidelines Manual](#).

LASER BL	LASER Cost Code	<i>Child welfare information system</i> Type of Payment	Description
812	81201	Maintenance	Title IV-E Basic Maintenance
812	81203	Enhanced Maintenance	Title IV-E Enhanced Maintenance
815	81501	Maintenance	Title IV-E Fostering Futures Basic Maintenance
815	81502	Enhanced Maintenance	Title IV-E Fostering Futures Enhanced Maintenance
817	81702	Maintenance	State Basic Maintenance
817	81703	Enhanced Maintenance	State Enhanced Maintenance
818	81802	Maintenance	State Fostering Futures Basic Maintenance
818	81803	Enhanced Maintenance	State Fostering Futures Enhanced Maintenance

For title IV-E funded adoption assistance agreements executed prior to October 1, 2009 that are still in effect and meet all of the following criteria, the LDSS should report the additional daily supervision payments as enhanced maintenance under cost code 81203. In the event that all the criteria are not met, the LDSS shall report these additional daily supervision payments as special service payments under BL817 and cost code 81701.

For state funded adoption assistance agreements executed prior to October 1, 2009 that are still in effect and meet all of the following criteria, the LDSS should report the additional daily supervision payments as enhanced maintenance under cost code 81703. In the event that all the criteria are not met, the LDSS should report these additional daily supervision payments as special service payments cost code 81701.

The effective date of the new maintenance rate will be the first of the month following the child's birth date. If the child's birth date is the first of the month, then the payment will increase on the date of the child's birth date.

There is no need for the LDSS and adoptive parents to execute an addendum to the existing agreement for the increased basic maintenance payment amount. The LDSS shall inform the adoptive parents in writing of the reason for the increase, new amount, and effective date for the increased basic maintenance payment.



Maintenance funded child care payments are paid as agreed upon on the adoption assistance agreement for up to one year. The LDSS will report child care expenditures for title IV-E adoption assistance agreements under BL812 and cost code 81201. For state adoption assistance agreements, the LDSS will report child care expenditures under BL817 and cost code 81702. The LDSS cannot use cost code 81701 (Purchase of Services) for maintenance funded child care.

#### 2.15.4 Making and reporting non-recurring adoption payments

Payments for nonrecurring expenses shall be made by the LDSS directly to service providers or to the adoptive parents ([Social Security Act, Title IV, § 473 \(a\) \(1\) \(B\) \(i\) \[42 USC 673\]](#)).

Payment and reimbursement shall be for types of expenses delineated in the adoption assistance agreement and shall:

- Not exceed \$2,000 per child per adoptive placement.
- Be reported in LASER under BL812 and cost code 81202 regardless of whether the child is eligible for title IV-E or state maintenance payments (see the Finance Guidelines Manual).
- Be based on actual costs of services ([22 VAC 40-201-161 E 3](#)). Costs shall be documented in bills and receipts submitted to the LDSS by the adoptive parents or vendors.
  - The actual costs may differ from the estimated costs in the agreement.
  - The adoptive parents shall submit copies of bills and receipts no later than two years after the expense was incurred ([45 CFR 1356.41 \(e\) \(3\)](#)).
  - Payments shall be made regardless when bills and receipts are submitted.
  - Adoptive parents may incur the non-recurring costs prior to signing the agreement; however, the reimbursement will not occur until after the agreement is signed by all parties (example: home study).

Payments for non-recurring adoption expenses may be made on behalf of the child in an adoptive placement prior to the final order of adoption when there is an adoption assistance agreement in effect between the LDSS and the adoptive parents ([22 VAC 40-201-161 E 3b](#); and [Federal Child Welfare Policy Manual, Subsection 8.2D.3 #6](#)). If the adoption disrupts, non-recurring expenses incurred shall be paid to the adoptive parents or the agreed upon vendor in accordance with the adoption assistance agreement. Non-recurring adoption expenses may then be provided on behalf of the child in a subsequent adoptive placement when the LDSS establishes the child has

special needs, is eligible for adoption assistance, and a new adoption assistance agreement is executed.

LDSS shall maintain bills and receipts submitted by the adoptive parents for reimbursement in the child's adoption assistance case record.

### 2.15.5 Making and reporting special services payments

Special services payments shall be paid solely from state funds, regardless of whether the child is eligible for title IV-E or state adoption assistance maintenance. The LDSS shall report payments in LASER under BL817, cost code 81701 (see the [Finance Guidelines Manual](#)).

- The LDSS may reimburse the adoptive parents or pay the service provider directly. The adoptive parents carry ultimate liability for the payment of expenses incurred for which they agree to pay directly.
- A bill or receipt documenting the actual cost of services shall be submitted to the LDSS before payment is made to the service provider or adoptive parents. The adoptive parents should submit bills or receipts within **30 calendar days** of incurring the expense. The LDSS shall inform adoptive parents of local payment procedures on time limits for paying bills or receipts submitted after **30 calendar days**.
- All special services payments shall be entered in the *child welfare information system* Assistance screen. They shall not be included with maintenance payments.
- The LDSS is not responsible for any special services expenses that have not been agreed upon and documented in the signed agreement or addendum in effect. The adoptive parents shall be responsible for payments when:
  - Expenses are incurred by the adoptive parents prior to the agreement or addendum.
  - The adoptive parents utilize different services, utilize services for a longer period of time, or exceed the costs for services documented in the agreement or addendum.
  - The specified timeframe ends for the service and support payment in the agreement or addendum.

### 2.15.6 Making and reporting Fostering Futures payments

Fostering Futures adoption assistance is used to extend adoption assistance services and support to youth who are ages 18 up to 21. The existing adoption assistance agreement determines if Fostering Futures will be title IV-E or state funded.

The addendum for Fostering Futures should be completed 30 days before the youth's 18<sup>th</sup> birthday. The approval and Budget Reporting System (BRS) request for the change to Fostering Futures adoption assistance has to take place within 30 days of the child's 18<sup>th</sup> birthday.

On the youth's 18<sup>th</sup> birthday, the BL item will change to Fostering Futures 815 (title IV-E) or 817 (state), depending on the type of adoption assistance agreement. The former BL item and Fostering Futures BL item will be prorated if the youth's date of birth is not on the 1<sup>st</sup> day of the month. These changes will be documented in the child welfare information system. The renewal date will be the date the annual affidavit is due, which is the anniversary of the effective date of the adoption assistance agreement. If the adoption assistance agreement or addendum are not signed and executed by the youth's 18<sup>th</sup> birthday to reflect the extension of adoption assistance using Fostering Futures, adoption assistance is terminated. The LDSS is expected to follow the terminating the adoption assistance procedures in [Section 2.18](#).

### 2.15.7 Adoption and Legal Guardianship Incentive funds

The Adoption and Legal Guardianship Incentive Payments program (formerly called the Adoption Incentive Payments program) recognizes improved performance in helping children and youth in foster care find permanent homes through adoption and legal guardianship. The program was originally established as part of the Adoption and Safe Families Act of 1997.

Adoption incentive funds are calculated and awarded to states based on the United States Health and Human Services, Administration for Children and Families, and Children's Bureau (HHS/ACF/CB) review of Adoption and Foster Care Analysis and Reporting System (AFCARS) data.

## 2.16 Maintaining responsibilities

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As delineated in the binding adoption assistance agreement, the adoptive parents and the LDSS maintain ongoing responsibilities.

### 2.16.1 Responsibilities of the adoptive parents

The adoptive parents who receive adoption assistance payments shall:

- Notify the LDSS when their address changes.

- Inform the Social Security Administration when the child is receiving both SSI and adoption assistance payments.
- Submit an annual affidavit to the LDSS within 30 days of the anniversary date of the adoption assistance agreement (i.e., the effective date stated in the agreement) ([§ 63.2-1302 C](#)).
- Provide the child's school enrollment status when the child reaches the age of compulsory school attendance ([Social Security Act, Title IV, § 471 \(a\) \(30\) \[42 USC 671\]](#)).
- Notify the LDSS if the child is incapable of participating in school full-time due to a medical condition ([Social Security Act, Title IV, § 471 \(a\) \(30\) \[42 USC 671\]](#)). Submit documentation by a qualified professional and submit quarterly updates on the child's medical condition to the LDSS.
- Notify the LDSS when there are changes in the child's special needs and the family circumstances of the adoptive parents that may change the amount of adoption assistance the child receives:
  - The child is receiving Social Security payments.
  - The amount of additional supervision and support the child requires from the adoptive parents changes.
  - One of the adoptive parents in a two-parent family becomes disabled, dies, or the adoptive parents become divorced.
- Notify the LDSS immediately in writing when the child is no longer eligible for adoption assistance:
  - The adoptive parents are no longer legally responsible for the child's care.
  - The adoptive parents are not providing financial support for the child.
  - The child becomes an emancipated minor, is married, is deceased, or enlists in the military.
  - The adoptive parents are deceased (i.e., two parents die in a two-parent family, or one parent dies in a one-parent family). The adoptive parents should make arrangements for the LDSS to be notified in the event of their death ([Social Security Act, Title IV, § 473 \(a\) \(4\) \[42 USC 673\]](#); [§ 63.2-1302 C](#); and [Federal Child Welfare Policy Manual, Subsection 8.2D.5](#)).
- Submit copies of bills and receipts for expenses that the LDSS pays related to non-recurring adoption expenses and special services payments.

### **2.16.1.1 Responsibilities of adoptive parents who receive enhanced maintenance prior to finalization of the adoption**

Adoptive parents (who have negotiated and signed an adoption assistance agreement but where the adoption is not yet finalized) may receive enhanced maintenance payments when they make the commitment to adopt a child into their family whose needs may require a greater level of adult supervision and support than other children either short or long-term.

Adoptive parents are expected to provide the support and supervision required for their child to remain safe and have the opportunity to build on their strengths and progress in their development. Other partners such as the school, therapists, mentors, in-home providers, service workers, and others will help support the child in addressing areas of need. As a result, it is necessary for the LDSS to identify the specific requirements for support and supervision expected from the adoptive parent which may include but are not limited to:

- Participate in and cooperate with the LDSS and/or LCPA in meetings or visits to achieve the child's goal of adoption.
- Discuss and follow through on services necessary for them and the child, in order to maintain the child's safety, well-being, and preparation for adoption.
- Assume responsibility for managing the daily supervision and supportive tasks a child may need.
- Discuss with the agency any difficulties in understanding or managing the needs of the child and any training needs or other supports that would be helpful in improving their ability to parent the child and effectively meet the child's needs.
- Actively participate in furthering the adoption finalization process.

### **2.16.2 Responsibilities of LDSS responsible for adoption assistance**

The LDSS that is responsible for adoption assistance shall:

- Maintain responsibility for payments and services as specified in the adoption assistance agreement and any addendum in effect, regardless of where the adoptive parents and the child reside.
  - When the adoptive parents move to another Virginia locality, the LDSS may request assistance from the LDSS or another child serving agency (e.g., LCPA, community services board) in the locality in providing

services delineated in the adoption assistance agreement. The LDSS remains responsible for the payment of services, when applicable.

- When the adoptive parents move to another state, the adoptive parents may apply for special services on behalf of the child in their new state of residence. When the child requires a service specified in the original adoption assistance agreement with the LDSS that is not available from the public child welfare agency in the new state, the LDSS remains responsible for payment of the specified service ([45 CFR 1356.40 \(d\)](#)).
- Assist the adoptive parents in coordinating services to meet the child's special needs related to the adoption assistance agreement upon request.
- Provide services to prevent disruption and strengthen family well-being when requested, such as:
  - Crisis intervention.
  - Assessment.
  - Counseling, support, and advocacy.
  - Information and referral to appropriate services and providers.
  - Referral to the [Adoption Family Preservation \(AFP\) Program](#).
  - Adoption assistance services directly related to meeting the child's special needs.
- Discuss with the adoptive parents the child's unique needs and their ability to manage the needs of the child. If needed, training is available as part of an already-established curriculum, (e.g., PRIDE), the adoptive parent should be directed to attend that training. If the needed training requires access to other training sources (e.g., attending specialized training on gavage feeding or autism), the agency shall identify the training source and assist the adoptive parent in accessing the training.
  - LDSS are encouraged to contact their CRAFFT Coordinator and Adoption and Family Recruitment Consultants as sources of support in locating or providing training resources. NewFound Families should also be used as a source of training and support.
  - The cost of training is an agency responsibility. LDSS may pay the cost of such training through title IV-E training funds when the VDSS has approved the training through the LDSS' title IV-E training plan.

- Assess requests for addendums to the adoption assistance agreement from the adoptive parents.
- Inform adoptive parents in writing that they have the right to appeal decisions related to granting, denying, changing, or discontinuing adoption assistance payments and services within 30 days of their receiving written notice of the LDSS' decisions.
- Notify the adoptive parents who are receiving adoption assistance in writing when:
  - The annual affidavit is due.
  - The child has reached a higher age grouping in foster care policy or there are statewide increases in the basic maintenance adoption assistance payments and their payment is being increased as delineated in the adoption assistance agreement.
  - The child has a basic or enhanced maintenance payment that is time-limited.
  - The adoption assistance agreement is terminated.
- Maintain the child's adoption assistance case in *child welfare information system* and in the child's adoption assistance case record. This includes documenting any contacts made with the adoptive parent in the Adoption Case Contacts screen in the child welfare information system.

**There is no redetermination of title IV-E eligibility for adoption assistance.**

When the child is receiving title IV-E adoption assistance, there is no need for the LDSS to re-determine the child's eligibility for title IV-E adoption assistance. Once the child has been determined eligible to receive title IV-E adoption assistance, the child's eligibility continues until the adoption assistance agreement is terminated. While the child's initial eligibility may be based on the child's eligibility for other programs that require redeterminations (e.g., Medicaid, Aid to Families with Dependent Children, and SSI), redetermination is not necessary for the purpose of maintaining the child's eligibility for title IV-E adoption assistance ([Federal Child Welfare Policy Manual, Subsection 8.2B.9 #1](#)).

**2.16.2.1 Support services for adoptive parents receiving enhanced maintenance prior to finalization**

After signing the adoption assistance agreement and until finalization, the agencies shall provide additional support and assistance to adoptive parents who have children placed in their homes where enhanced maintenance payments are

made. Such assistance is critical in avoiding placement disruptions and ensuring that adoptive parents have the guidance and tools to understand the child's needs and provide appropriate support to the child while ensuring the child's safety. Agency supports provided include at a minimum:

- A case worker and a supervisory-level services worker shall be available to the case worker twenty four hours a day, seven days per week to provide direction and assistance as necessary.
  - The agency may provide these services directly or may contract with private agencies or individuals to provide these services.
  - Agencies may also share access to an on-call worker and supervisor to meet these criteria.
- Monthly face-to-face contacts with the adoptive parents by a service worker. The monthly contacts should focus on:
  - The adoptive parents' relationship with and perceptions of the child in care including such things as:
    - Their attachment to the child.
    - The child's strengths and progress in all life domains.
    - Any concerns the parent has about the child's behavior.
    - Needs or their ability to work with the child.
    - The impact of having the child in their home.
    - The need for additional training, services, or agency support.
  - Discussion about the adoptive parents and the child's special needs.
- The expectations for how the adoptive parent is to address the needs of the child. This shall include the specific support and supervision activities to be conducted by the adoptive parent that are required to meet the needs of the child.

### **2.16.3 Responsibilities of LDSS where adoptive parents reside**

When the adoptive parents and child live in a different locality from the LDSS that is responsible for adoption assistance, the LDSS responsible for adoption assistance is responsible for coordinating activities related to the adoption assistance agreement, in collaboration with the adoptive parents. The LDSS in the locality where the adoptive



parents reside should assist the LDSS that has responsibility for adoption assistance when requested by the LDSS.

When the adoptive parents request assistance related to the adoption assistance agreement, the two agencies should establish a collaborative process of coordinating assistance that most effectively meets the child's special needs. This process should include strategies for communicating information, including services requested, actions taken, and any issues that need to be resolved.

When requested, the LDSS in the locality where the adoptive parents reside should assist the LDSS that has responsibility for adoption assistance in:

- Obtaining family-based and community services for the child related to the adoption assistance agreement, such as:
  - Providing information and referral.
  - Identifying appropriate services and supports.
  - Arranging for a Family Partnership Meeting with appropriate resources available in the community.
  - Providing service coordination through FAPT, including:
    - Arranging the team meeting.
    - Notifying the adoptive parents of the date and time.
    - Providing information and supporting documents about the child and family to the team, in collaboration with the adoptive parents.
    - Presenting the case to FAPT and participating in the meetings.
- Providing foster care prevention services when the adoption is at risk of dissolution to prevent the child from entering foster care, such as:
  - Crisis intervention.
  - Assessment.
  - Counseling, support, and advocacy.
  - Information and referral to appropriate services and providers.

If the adoption dissolves, the LDSS where the adoptive parents reside may receive the child's custody as a result of a judicial determination, entrustment, or non-custodial

foster care agreement. Therefore, it is important that the LDSS work closely with the LDSS that is responsible for adoption assistance.

The LDSS should work similarly in collaboration with the public child welfare agency from another state that is responsible for adoption assistance when the child resides in its locality.

#### **2.16.4 Responsibilities of LDSS when abuse or neglect**

Allegations of abuse and neglect in the adoptive family shall be treated the same as any other such reports, in accordance with the [Chapter C. Child Protective Services of the VDSS Child and Family Services Manual](#).

In the event that the child is removed from the adoptive home and brought into foster care, the LDSS will follow steps outlined in the [Division of Child Support Enforcement Program Manual](#) in determining if child support will be collected from the parents.

The LDSS and Assistance Negotiator should attempt to renegotiate the adoption assistance agreement for the duration the child is in foster care. If the adoptive parents are not providing financial support, refer to [Section 2.18.5](#) for guidance on LDSS actions when adoptive parents fail to provide financial support.

If termination of parental rights on the adoptive parents occurs, adoption assistance payments shall be terminated and the parents are notified in writing of the termination and their right to appeal.

## **2.17 Terminating payments and agreements**

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*For termination of payments and agreements*, the LDSS shall provide written notice *using the Family Services Notice of Action and Right to Appeal form and utilize regular and certified mail or have it hand delivered* to the adoptive parents **at least 60 calendar days prior to termination**. Both parents shall be notified when both parents signed the adoption assistance agreement, including separated or divorced parents. The notification shall include information on the parents' right to appeal the LDSS decision to terminate the payment within **30 calendar days** of receiving the written notice.

### **2.17.1 Terminating maintenance payments**

The LDSS shall only terminate maintenance payments based on terms specified in the adoption assistance agreement, or the addendum in effect, including:

- The agreed upon time period for the maintenance payment ends and the adoptive parents decline the maintenance payment in writing; or
- The adoptive parents request in writing that the maintenance payments end; or

- The LDSS determines that the adoption assistance agreement shall be terminated based on one or more circumstances delineated in [Section 2.18.3](#) on terminating the agreement ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \(iii\) \[42 USC 673\]](#)) and [Federal Child Welfare Policy Manual, Subsection 8.2D.5](#)).

### **2.17.2 Terminating state special services payments**

The LDSS shall terminate state special services payments based on terms in the adoption assistance agreement or the addendum in effect, when:

- The agreed upon time period for the special services payments end; or
- The adoptive parents request in writing that the special services payments end; or
- The adoptive parents or qualified professionals document in writing to the LDSS that the special service is no longer directly related to and required to meet the child's special needs.
- The adoptive parents do not fulfill the agreed upon terms documented in the agreement or addendum for state special services payments.

The LDSS may assess and negotiate with the adoptive parents new terms for special services to be included in an addendum to the adoption assistance agreement, when appropriate.

### **2.17.3 Terminating agreements signed on or after October 1, 2013**

The adoption assistance agreement shall only be terminated, as specified in the adoption assistance agreement, when the LDSS determines that any one of the following circumstances occurs:

- The youth with special needs reaches the age of 18 years, unless the LDSS determines the youth has a condition that warrants continuation of adoption assistance beyond the age of 18 years. Specifically, the youth has:
  - A mental or physical disability; or
  - An educational delay resulting from such mental or physical disability.
- The youth with special needs reaches the age of 21 years, or the age specified in the adoption assistance agreement, when the LDSS established that the youth has a condition that warrants the continuation of assistance beyond age 18 and up to age 21 years.
- The adoptive parents:

- Request in writing that the agreement ends.
- Are no longer legally responsible for the child's care:
  - Parental rights are terminated (for one adoptive parent when the agreement is with one adoptive parent, or for both adoptive parents when the agreement is with two adoptive parents); or
  - The child becomes an emancipated minor, marries, enlists in the military, or dies.
- Are not providing any financial support for the child.
- Are deceased (i.e., both adoptive parents are deceased when the agreement was with two parents; or one adoptive parent is deceased when the agreement was with one parent).
- The adoptive parents and the LDSS agree in writing to terminate the agreement ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \[42 USC 673\], 22 VAC 40-201-161 M](#)).

Termination shall be based upon written documentation verifying the circumstances.

#### **2.17.4 Terminating agreements signed prior to October 2013**

*For adoption assistance agreements that were signed prior to October 2013 and do not have an end date, the agreement shall be terminated when:*

- *The terms of the agreement are met.*
- *The adoptive parents request in writing to end the adoption assistance payments.*
- *The child reaches the age of 18, unless the LDSS determines that the youth has a condition that warrants continuation of adoption assistance until the age of 21.*
- *The child is deceased.*
- *The adoptive parents are deceased.*
- *The adoptive parents no longer have legal responsibility for the child.*
- *The agency determines that the child is no longer receiving support from the adoptive parents.*

### 2.17.5 Terminating extended adoption assistance through Fostering Futures

If the annual affidavit shows that the youth no longer meets at least one of the participation conditions, the LDSS should take steps to terminate the adoption assistance agreement through procedures outlined in [Section 2.18.3](#).

If extended assistance under Fostering Futures is terminated due to the youth's failure to continue to meet one of the participation conditions, adoption assistance **cannot** be reinstated once it is terminated using Fostering Futures funding.

### 2.17.6 LDSS actions when adoptive parents fail to provide financial support

When the LDSS obtains and documents verifiable information that the adoptive parents are providing no financial support for the child, the LDSS shall immediately send the adoptive parents a certified letter that states:

- The verified information documenting that the adoptive parents are not providing any financial support for the child.
- The LDSS is prohibited by law from making adoption assistance payments when the child is no longer receiving any financial support from the adoptive parents ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \(iii\) \[42 U.S.C. 673\]](#) and [Federal Child Welfare Policy Manual, Subsection 8.2D.5 #2](#)).
- The binding adoption assistance agreement requires that the LDSS terminate the agreement and any addendum.
- If the adoptive parents do not immediately reinstate financial support for the child and provide documentation of such action to the LDSS, the LDSS will terminate all adoption assistance payments and the adoption assistance agreement in its entirety, effective **ten (10) days** after the adoptive parents' receipt of the certified letter.
- The adoptive parents must immediately contact the LDSS within **ten (10) days** of receipt of the certified letter to discuss the situation.
- If the adoptive parents do not immediately reinstate financial support for the child and provide documentation of such action to the LDSS, or if the adoptive parents do not contact the LDSS within **ten (10) days** of their receipt of the certified letter to discuss the situation, the LDSS will terminate all adoption assistance payments and the adoption assistance agreement in its entirety, effective **ten (10) days** after the adoptive parents' receipt of the certified letter.

The LDSS shall notify both parents when both parents signed the active adoption assistance agreement, including separated or divorced parents.

The LDSS shall discuss the situation with the adoptive parents and document the discussion in the *child welfare information system* narrative. The discussion should include:

- The documented lack of financial support by the adoptive parents.
- The impact on the child.
- The adoptive parents' reasons for not providing any financial support for the child.
- The adoptive parents' decision whether or not they will immediately reinstitute their financial support for the child.
- The LDSS action based on the adoptive parents' decision, either to:
  - Continue payments, if the adoptive parents reinstate financial support; or
  - End payments and the agreement on the specified date in the certified letter, if the adoptive parents do not reinstate financial support of the child.

The LDSS shall document the adoptive parents' decision and the LDSS' action in writing. The LDSS and the adoptive parents shall sign the document. If the adoptive parents do not sign the document, the LDSS shall write on the document the date of the discussion with the adoptive parents and that the adoptive parents declined when asked to sign the statement.

If the adoptive parents decide to not reinstitute their financial support of the child, or do not contact the LDSS to discuss their financial support of the child as the LDSS requested, the LDSS shall provide written notice in a certified letter to the adoptive parents that the agreement shall be terminated on a specified date (e.g., the date specified in the first certified letter). The notification shall include information on the adoptive parents' right to appeal the decision to terminate the agreement within 30 days of their receipt of the second written notice. The LDSS shall then terminate the payments and the adoption assistance agreement in its entirety ([Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \(iii\) \[42 U.S.C. 673\]](#) and [Federal Child Welfare Policy Manual, Subsection 8.2D.5 #2](#)).

### **2.17.7 LDSS actions when adoptive parents die**

When both parents are deceased in a two-parent family, or one parent is deceased in a single parent family, the adoption assistance agreement shall be terminated. The child's former adoptive parents may have specified a new adoption plan for the child upon their death or another family member may assume custody of the child and then initiate adoption proceedings independent of a CPA. When the child is without a

custodian, custody is given to another relative or the child enters foster care as a result of the adoptive parents' death.

The following criteria apply for adoption assistance in the subsequent adoption:

- When the child was eligible for title IV-E adoption assistance in the previous agreement, the child may retain eligibility for title IV-E adoption assistance in the subsequent adoption. The child does not have to re-enter foster care for his or her eligibility for title IV-E adoption assistance to continue.
  - When the new adoptive parents reside in Virginia, the LDSS that had responsibility for the initial adoption assistance agreement continues to have responsibility for adoption assistance in the subsequent adoption.
  - The LDSS shall not re-determine the child's eligibility for title IV-E adoption assistance payments.
  - When the LDSS establishes that the child received title IV-E maintenance payments from a previous adoption assistance agreement, the child continues eligibility for title IV-E adoption assistance from the previous adoption.
- The LDSS manages the application, assessment, and negotiation process with the new adoptive parents.
- The LDSS and adoptive parents execute a new adoption assistance agreement when the LDSS determines it is appropriate.
- Payments and services delineated in the new agreement may begin when the petition is filed in circuit court to finalize the adoption.
- Non-recurring adoption expenses are allowable as part of the agreement.
- When the new adoptive parents reside in another state with the child, and the LDSS is not involved in the subsequent adoptive placement of the child, the subsequent state of residence for the new adoptive parents is responsible for establishing whether the child has special needs and entering into an adoption assistance agreement. The state where the child was initially adopted, or the state that pays adoption assistance in the child's initial adoption, is not relevant in a subsequent adoption.
- The LDSS shall provide necessary documentation about the child's prior eligibility for IV-E adoption assistance to the public child welfare agency in the new state. ([Social Security Act, Title IV, § 473 \(a\) \(2\) \(C\) \[42 U.S.C. 673\]](#); and [Federal Program Instruction dated August 26, 2009](#)).

- When the child was only eligible for state adoption assistance in the previous agreement, the child's eligibility for state adoption assistance does not continue. In addition, the child's previous eligibility for state adoption assistance does not extend to the child's current circumstances. The child may be eligible for adoption assistance if:
  - The child enters foster care, goes through the permanency planning process, has adoption identified as the permanency goal, is to be subsequently adopted, and is determined to have special needs and eligible for adoption assistance in accordance with all policies and procedures at the time of the new adoption; or
  - A new adoption proceeding is initiated through the private placement process, the child meets all medical or disability requirements for SSI benefits (and may also need to meet SSI financial requirements), and is determined eligible for adoption assistance in accordance with all policies and procedures at the time of the new adoption.

## 2.18 Appeals and fair hearings

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Appeals shall be processed in accordance with Virginia legal requirements ([§ 63.2-1304](#) and [22 VAC 40-201-161 O](#)) and procedures established by the Virginia Board of Social Services. For complete information, see the [Appeals and Fair Hearings Unit Procedure Manual](#).

Any applicant or recipient of adoption assistance aggrieved by any decision of the LDSS in granting, denying, changing, or discontinuing adoption assistance may appeal the decision ([§ 63.2-1304](#)). Applicants of adoption assistance shall have the right to appeal adoption assistance decisions related to decisions ([22 VAC 40-201-161 O](#)) that may include, but are not limited to the following:

- LDSS not informing the adoptive parents of relevant and known facts about the child prior to the final order of adoption, except for information that would reveal the identity of the child's birth family.
- LDSS not informing the adoptive parents of the availability of adoption assistance for eligible children in foster care.
- LDSS not informing the adoptive parents of the child's eligibility for adoption assistance.
- LDSS denying the adoptive parents' claim that the child is eligible for adoption assistance.
- LDSS denying the adoptive parents' *application*.



- LDSS denying adoption assistance maintenance payments based upon a means test of the adoptive family.
- LDSS decreasing the amount of adoption assistance specified in the adoption assistance agreement without the concurrence of the adoptive parents.
- LDSS denying the adoptive parents' request for a change in the amount of maintenance payments due to a change in the adoptive parents' circumstances.
- LDSS terminating the adoption assistance agreement.

Any applicant or recipient aggrieved by the failure of LDSS to make a decision within a reasonable time may request a review of the process ([§ 63.2-1304](#)). Such decisions may include, but are not limited to the following:

- LDSS failure to act on the adoptive parents' application within **90 calendar days** from the LDSS receiving the completed application and all required documentation.
- LDSS not acting upon the claim that the child is eligible for title IV-E benefits with reasonable promptness.

The applicant may appeal the decision within **30 calendar days** after receiving written notice of the decision. The written notice shall inform the applicant of the 30 day time limit for the appeal ([§ 63.2-1304](#)).

### 2.18.1 Request for appeals

The adoptive parents may request a fair hearing within **30 calendar days** after receiving written notice of the LDSS decision. A person acting on behalf of the adoptive parents (e.g., a relative, friend, or an attorney) may act as their authorized representative and request the hearing.

Requests for appeals must be submitted in writing to:

Appeals and Fair Hearings Unit  
Virginia Department of Social Services  
801 East Main Street  
Richmond, VA 23219-2901

The LDSS must not prejudice or limit the adoptive parents' right to appeal a decision. The LDSS must assist the adoptive parents in submitting an appeal or in preparing the adoptive parents case, if necessary. The LDSS has an affirmative duty to provide information and referral services to help the adoptive parents make use of any legal services available in the community.

### 2.18.2 Validating the appeal

The LDSS will receive a copy of the adoptive parents' appeal request and a validation form from the Appeals and Fair Hearings Unit. The LDSS must specify:

- The action taken by the LDSS.
- The date of the notice of action.
- Whether or not adoption assistance has been continued during the appeal process.

The LDSS must return the completed validation form and a copy of the Notice of Action within **five (5) calendar day** to the hearing officer.

When the hearing officer determines the appeal request is valid, the LDSS and adoptive parents are notified in writing of the date for the Administrative Hearing. Written notice of the hearing date is provided at least **ten (10) days** prior to the hearing of the date for the Administrative Hearing. The notice includes information about the appeal rights of the adoptive parents. The hearing is scheduled and conducted at a time, date, and place convenient to the adoptive parents. It is usually conducted by teleconference. The hearing officer will order continuation of adoption assistance where required, if the LDSS has not already taken such action.

When the hearing officer determines the appeal request is invalid, the LDSS and adoptive parents receive written notification with an explanation of the reason for the determination that an Administrative Appeal Hearing cannot be granted.

A copy of the completed validation form, the Notice of Action, and the written notification from the hearing officer shall be placed in the child's adoption assistance case record.

### 2.18.3 Summary of Facts

Upon receiving notification of the scheduled Administrative Hearing, the LDSS must prepare a Summary of Facts of the case. A copy of the summary should be received by the hearing officer and adoptive parents at least **five (5) calendar day** prior to the hearing.

The summary should include:

- Identifying case information.
  - Name of LDSS.
  - Name and address of child and adoptive parents.

- Adoption assistance case number.
- All relevant information about the action being appealed.
- Statement of issue (e.g., the specific request of the adoptive parents that was denied; the determination by the LDSS; the type, amount, and date of adoption assistance payment and service that was denied; the alleged failure of the CPA to act).
- Logical, chronological sequence of events which led to the action taken by the LDSS (e.g., specific dates; agency requests for verification; actions that occurred or did not occur; LDSS actions to resolve the issues). The LDSS should assume that the reader is not familiar with the facts of the case or the program policy.
- Description of specific calculations and policy or guidance used to determine adoption assistance amounts, when applicable. If specific figures are disputed, the reasons underlying the dispute must be addressed.
- Adoptive parents' request for and date of appeal, including quoted words from adoptive parents regarding the issue and their reasons for appealing.
  - Specific citations and language quoted from law, policy, and the guidance manual on which LDSS action was based.
  - Relevant provisions of the adoption assistance agreement, if applicable (e.g., dollar amount, number of hours, number of service units, period of time authorized, provisions).
  - Copies of all other relevant documentation regarding the action being appealed (e.g., documents submitted by adoptive parents, notices, adoption assistance forms, worksheets, letters).
  - Signature of LDSS Director and date.

The Summary of Facts, including all attachments, must be signed and sent to the adoptive parents, their representative if any, and the hearing officer.

A copy of the Summary of Facts shall be placed in the child's adoption assistance paper case record.

#### **2.18.4 Administrative Hearing**

The formal administrative hearing is conducted by the VDSS hearing officer. The hearing officer is an impartial person charged by the Commissioner to hear appeals and decide if the LDSS followed policy and procedure in making a decision.

At the hearing, the adoptive parents and/or their authorized representative will have the opportunity to:

- Examine all documents and records used at the hearing.
- Present the case.
- Bring witnesses.
- Establish pertinent facts and advance arguments.
- Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

The LDSS will have the opportunity to:

- Clarify or modify its statements contained in the Summary of Facts.
- Question the adoptive parents and their witnesses on the salient issues.
- Examine all documents submitted by the adoptive parents or their authorized representative.

Only relevant evidence related to the issues being appealed is admissible at the hearing.

There is a legal presumption that the LDSS acted in accordance with law and policy and the burden of proof is on the adoptive parents to demonstrate the LDSS' error.

The decision of the hearing officer shall be based exclusively on the evidence (i.e. documents or testaments) introduced at the hearing, and on all applicable laws, regulations, policies, and guidance manuals.

The hearing officer shall notify the LDSS and adoptive parents in writing of its decision on the appeal within 60 days following the date the appeal request was received by the VDSS, except when a postponement was requested. If the hearing was postponed, the time limit will be extended for as many days as the hearing was postponed.

The decision of the hearing officer is final and binding when the decision is mailed to the LDSS and adoptive parents. The LDSS must ensure that administrative action is taken to implement the hearing officer's decision no later than **ten (10) calendar day** following the date of the decision, regardless of whether the adoptive parents request further review by the Circuit Court. See the [Appeals and Fair Hearings Unit Procedure Manual](#) for exceptions to implementation within this time period. After corrective action

is taken, the LDSS must notify the adoptive parents and the hearing officer in writing that the agency has complied with the decision.

All documents from the hearing, the written decision of the hearing officer, and the LDSS written notice documenting compliance with the decision, when applicable, shall be placed in the child's adoption assistance case record.

### **2.18.5 Withdrawal statement**

If the LDSS and adoptive parents resolve the issue at any time after the Appeals and Fair Hearings Unit receives the adoptive parents' request for an Administrative Review Hearing, the adoptive parents must provide a written statement withdrawing the appeal request. The withdrawal statement is sent to the hearing officer with a copy to the LDSS. The withdrawal statement shall be placed in the child's adoption assistance case record.

### **2.18.6 Appeal to Circuit Court**

The adoptive parents aggrieved by the decision of the hearing officer may seek further review of the decision by the appropriate circuit court. The adoptive parents have 30 days from the date of service (the date they actually received the hearing officer's decision or the date it was mailed to the adoptive parents, whichever occurred first) to provide notice of their intent to file an appeal with the circuit court.

Written notice of intent to appeal the hearing officer's decision must be sent to:

Commissioner  
Virginia Department of Social Services  
801 East Main Street  
Richmond, Virginia 23219-2901

In addition, the adoptive parents must file a written petition in circuit court in the locality where they live in order to perfect the appeal. The adoptive parents will not receive correspondence nor will their adoption assistance continue as a result of the adoptive parents sending written notice to VDSS of their intent to appeal, as the hearing officer's decision is the final administrative action.

### **2.18.7 Filing complaint of discrimination**

If the adoptive parents believe they have been discriminated against by the VDSS or LDSS because of race, color, national origin, sex, age, or disability, the adoptive parents have the right to file a complaint of discrimination with the:

VDSS Civil Rights Program Administrator  
801 E. Main Street, 8th Floor  
Richmond, Virginia 23219

and/or

U.S. Department of Health and Human Services  
Director, Office of Civil Rights  
Region III 150 S. Independence Mall West – Suite 372  
Philadelphia, Pennsylvania 19106-3499

For more information, see [VDSS Office for Civil Rights](#).

## **2.19 Establishing case record**

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When the LDSS receives an *application*, the LDSS shall establish an adoption assistance case record for the child. This record is separate from the child's foster care record, the record established for the foster/adoptive home approval of the adoptive family, and any eligibility record established by the Benefit Programs unit.

The adoption assistance case record is the child's service record and corresponds to the child's adoption case in *child welfare information system* and the LDSS financial system of record.

It shall include documentation in all areas delineated below. Specific documentation required is listed in the [Checklist for Child's Virginia Adoption Assistance Case Record](#):

- Child's eligibility for adoption assistance, including child's special needs.
- Availability of funds/payments.
- Child adoption legal documents.
- Adoption assistance documents.
- Written notifications and correspondence.
- Annual affidavits.
- Payments and services.
- Any other relevant information.

## **2.20 Child welfare information system case record**

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Adoption case information shall be documented in the *child welfare information system* adoption case record for the child on a timely basis.

- For children already in LDSS custody, the *child welfare information system* adoption record is opened within **five (5) calendar days** from the signature on the adoptive placement agreement using the Bio-Connect process to the foster care case and *the child's placement status in the child welfare information system foster care record should be changed to Adoption: Non-finalized*. Within **five (5) calendar days** of the effective date of the adoption assistance agreement, the LDSS updates the *child welfare information system* Assistance screen.
- For children adopted through LCPAs, LDSS shall create an *child welfare information system* record when the LDSS receives the *application*. The record is opened without the bio-connect process within **five (5) calendar days**.

Additional instruction on opening an adoption case in *child welfare information system* can be obtained through the Help screen in the *child welfare information system*. Directions on required screens and data entry may also be found on the Help screen in the *child welfare information system*.

### 2.20.1 Adoption case contacts

In *child welfare information system* Adoption Case Contacts, LDSS shall include narrative summaries documenting policies, procedures, and timelines were followed when applicable. All case contacts after finalization should be documented in the Adoption Case Contact screen in *child welfare information system*. Narratives shall include, but are not limited to:

- An opening narrative that describes the selection of the adoptive home placement (including the reasons the placement is in the child's best interest), the child's eligibility for adoption assistance (including types of adoption assistance that may be available), and his/her special needs.
- Full disclosure and discussion with adoptive parents on all known child information, including special needs, and all known, relevant, and non-identifying information on child's birth family.
- Reasonable efforts to place the child with an appropriate adoptive home without adoption assistance are not in the child's best interest OR description of reasonable efforts that were made but were unsuccessful.
- Discussion of the adoption assistance program, including the application, assessment, negotiation and decision-making process, and information on the right to appeal the LDSS' decision and the fair hearing process.
- Date adoptive parents notified of application receipt and status (should be within 14 days after receiving the application).

- Exploration of all available health insurance, extended family, community, government, and other resources, including the LDSS determination that these other resources can or cannot be used to fully or partially pay for the services and supports required to meet the child's special needs.
- Date the adoption assistance agreement was executed, meaning the effective date stated in the agreement is within 90 days after the LDSS receives completed application with all supporting documentation.
- Dates the signed affidavits were returned.
- Any parent or provider contacts subsequent to the final order of adoption including requests for services/addendums.

### 2.20.2 Assistance screen

In the *child welfare information system* Assistance screen, the LDSS shall record and keep up-to-date all adoption assistance payments, including basic and enhanced maintenance, non-recurring, and special service payments. Also, the LDSS shall be able to certify that the data in the *child welfare information system* record is consistent with the paper case record, the LDSS financial system of record, and the expenditures submitted for reimbursement in LASER. The goal of reporting the monthly payments in *child welfare information system* is to provide relatively accurate picture of the monthly payments agreed to on the adoption assistance agreement. The *child welfare information system* information is also used in federal reporting and state budget analysis. Further directions may be found on the Help screen in the *child welfare information system*.

When the initial adoption assistance agreement is signed and payments begin, the LDSS will enter in the Assistance screen each type of payment (maintenance, enhanced maintenance, non-recurring, special service) and subsequent information into the inset grid. Specifically, the:

- **Type of Payment** is either maintenance, enhanced maintenance, non-recurring, or service. For new agreements, as of July 1, 2014, basic and enhanced maintenance should be reported separately. For existing agreements, the local department will begin reporting the basic and enhanced maintenance separately when the LDSS is entering new payment lines upon receipt of the annual affidavit.
- **Application date** is the date of the initial *application*.
- **Effective date** is *the first day of the month following the month in which all parties sign and date the agreement*.



- **Renewal date** is the due date of the next annual affidavit (the last date of the month a year after the effective date) or the date the agreement terminates, whichever is sooner.
- **Type of Agreement** is funding source for the basic maintenance portion of the agreement.
- **Authorized amount** is the monthly maximum amount authorized for the payment. For service payments that fluctuate from month to month, the LDSS will enter the maximum monthly liability in the payment amount.
- **End date** is left blank until the annual affidavit is received or the agreement terminates. The end date is the last date of payment within either the annual or monthly payment cycle.

Example:

The initial *application* is signed by the family on August 27, 2016. The last date of signature on the adoption assistance agreement is 10/16/16. The agreement specifies the effective date at 11/01/16 and authorizes a title IV-E basic maintenance payment of \$700, non-recurring costs of up to \$2,000, and six months of counseling up to \$500/month. Non-recurring expenses were paid on 11/10/2016.

In the *child welfare information system* Assistance screen, the LDSS would have three entries:

- **Maintenance:** application date 8/27/16, effective date 11/01/16, renewal date 10/31/17; type of agreement: IV-E, type of payment: maintenance, amount authorized \$700.
- **Non-recurring:** application date 8/27/16, effective date 11/01/16, renewal date 10/31/17; type of agreement: IV-E, type of payment: Non-recurring, amount authorized \$2,000 with an end date of 11/10/2016.
- **Special Services:** application date 8/27/16, effective date 11/01/16, renewal date 04/30/17; type of agreement: IV-E, type of payment: special services, the maximum monthly amount authorized \$500.

By not entering an end date all payment types will display on the *child welfare information system* Adoptive Children Report (ACR); subsequently, the ACR should be able to be reconciled to the amounts authorized on the adoption assistance agreement and any addendums. The LDSS' financial system of record and the monthly LASER reimbursement entries should never exceed the amounts authorized.

In the above example, unless there is an addendum to the agreement specifically authorizing continued special service payments, the LDSS would end date the special

service payment on 04/30/17. Also, once all the non-recurring expenditures have been reimbursed, the agency will need to end date this entry so that it will not display on the *child welfare information system* Adoptive Children Report. Non-recurring expenses should only display on the ACR during the period in which the agency is either waiting for invoices or in the month the invoice is paid.

Upon receipt of the annual affidavit, the LDSS will end date the previously created individual payment lines and create new payment lines in the inset grid for the upcoming year.

- The application date is the date of the initial *application*.
- The effective date is the first date of the next agreement year.
- The renewal date is the due date of the next annual affidavit.
- Type of Agreement is funding source for the basic maintenance portion of the agreement.
- Authorized amount is the monthly maximum amount authorized for the payment.

### 2.20.3 Residential screen

In the event that adoption assistance funding is used to pay for any portion of the residential treatment, the local department shall record the maximum monthly cost, the name of the facility, and the date the child entered the facility on the Adopt/Residential screen in *child welfare information system*. In the comment section of this screen, the LDSS should enter the adoption assistance terms specific to the residential treatment. When the child is no longer in treatment at this facility, the LDSS should enter the exit date on this screen.

## 2.21 Appendix A: Legal excerpts and Child Welfare Policy Manual

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Adoption assistance is governed by Federal regulations, as well as the laws and regulations of the Commonwealth of Virginia. The Child Welfare Policy Manual is not law, but is a reference manual that contains citations to the law.

### 2.21.1 Applicable Child

- [Social Security Act, Title IV, § 473 \[42 USC 673\]](#)
- [Child Welfare Policy Manual: Title IV-E Eligibility](#)

### 2.21.2 Child with special needs

- [Social Security Act, Title IV, § 473 \[42 USC 673\]](#)
- [45 CFR 1356.40](#)
- [Child Welfare Policy Manual: Special Needs](#)
- [§ 63.2-1300](#)
- [§ 63.2-1301 A](#)
- [§ 63.2-1301 B](#)
- [22 VAC 40-201-161](#)

### 2.21.3 State-funded maintenance payments

- [§ 63.2-1301 B](#)
- [§ 63.2-1302 B1](#)
- [22 VAC 40-201-161](#)

### 2.21.4 Nonrecurring expense payments

- [Social Security Act, Title IV, § 473 \(a\) \(1\), \(a\) \(3\), \(a\) \(5\), and \(a\) \(6\) \(A\) \[42 USC 673\]](#).
- [45 CFR 1356.41](#)
- [§ 63.2-1301 D](#)

### 2.21.5 State special services payments

- [§ 63.2-1301 C](#)
- [22 VAC 40-201-161](#)

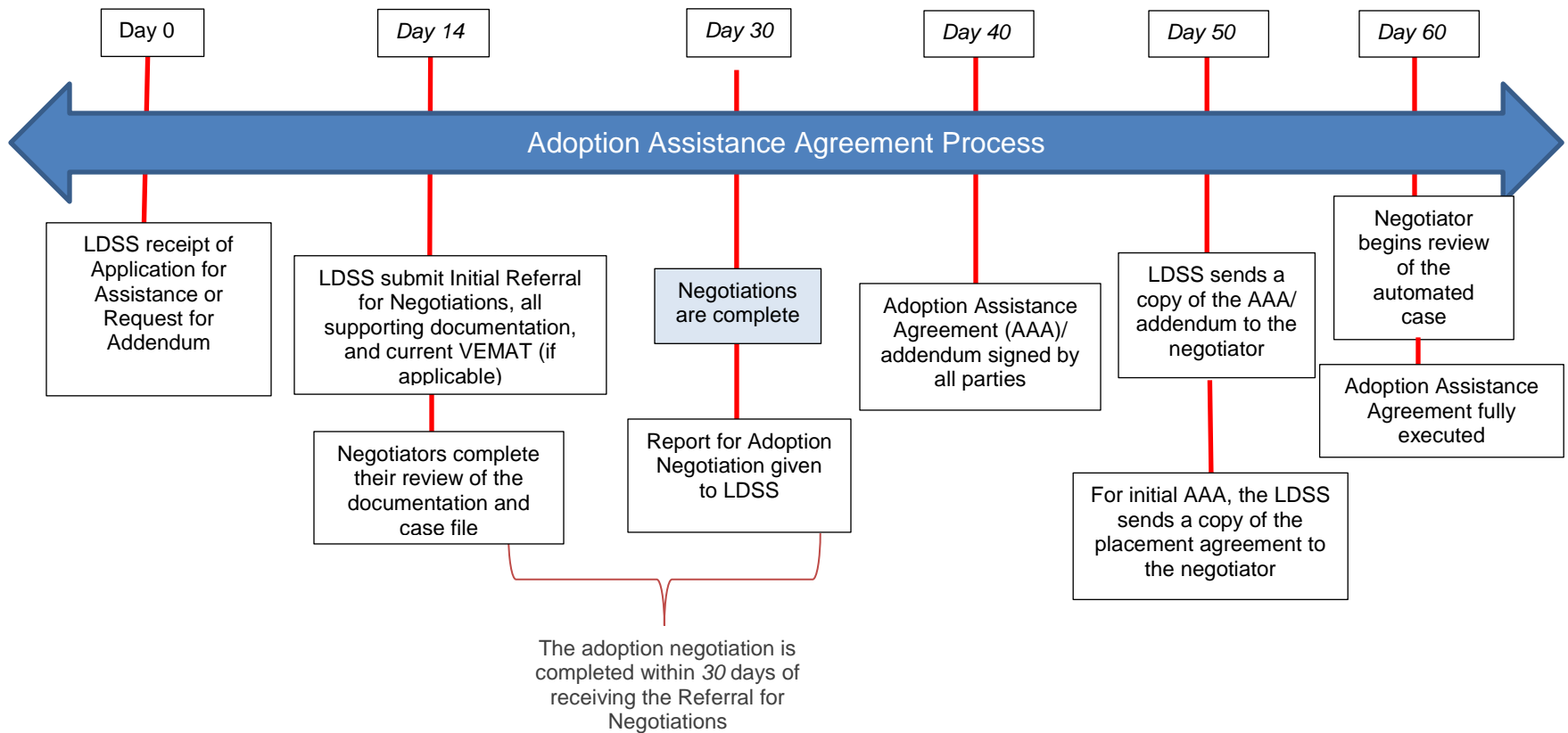
### 2.21.6 Adoption assistance agreement

- [Social Security Act, Title IV, § 475 \(3\) \[42 USC 675\]](#).
- [45 CFR 1356.40](#)
- [Child Welfare Policy Manual: Adoption Assistance](#)
- [§ 63.2-1302 C](#)
- [22 VAC 40-201-10](#)

### 2.21.7 Terminating agreement

- [Social Security Act, Title IV, § 473 \(a\) \(4\) \(A\) \[42 USC 673\]](#)
- [Child Welfare Policy Manual: Termination](#)
- [§ 63.2-1302 B](#)
- [22 VAC 40-201-161](#)

## 2.22 Appendix B: Adoption assistance timeline



# 3

## FINALIZING THE ADOPTION

### TABLE OF CONTENTS

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<b>3.1</b>	<b>Introduction .....</b>	<b>3</b>
<b>3.2</b>	<b>Framework .....</b>	<b>3</b>
<b>3.3</b>	<b>Legal Citations .....</b>	<b>3</b>
<b>3.4</b>	<b><i>Adoptive home selection and preparation.....</i></b>	<b>4</b>
3.4.1	<i>Utilizing a team approach.....</i>	4
3.4.2	<i>Criteria for selection of a family for the child .....</i>	5
3.4.3	<i>Educating and partnering with adoptive parents.....</i>	5
3.4.3.1	<i>Full disclosure of child information.....</i>	6
3.4.4	<i>Selecting the adoptive home .....</i>	7
3.4.5	<i>Preplacement visits .....</i>	10
3.4.6	<i>Placing the child.....</i>	10
3.4.7	<i>Post-placement support and supervision.....</i>	11
3.4.8	<i>Visits during probationary period .....</i>	11
3.4.9	<i>Report of Visitation .....</i>	12
3.4.10	<i>Removal from adoptive home after signing the placement agreement.....</i>	13
<b>3.5</b>	<b><i>Post-Adoption Contact and Communication Agreement (PACCA).....</i></b>	<b>13</b>
3.5.1	<i>When to use a PACCA.....</i>	14
3.5.2	<i>Submitting PACCA at permanency planning hearing.....</i>	14
3.5.3	<i>Approval of PACCA by circuit court.....</i>	15
3.5.4	<i>Factors in deciding whether to enter into a PACCA.....</i>	15
3.5.5	<i>Determining best interest of child with PACCA.....</i>	16
3.5.6	<i>Who enters into the agreement .....</i>	17
3.5.7	<i>How to develop the PACCA .....</i>	18

3.5.8	<i>Roles and responsibility of agency completing the PACCA</i> .....	19
3.5.9	<i>Enforcement of PACCA</i> .....	20
3.5.10	<i>Modification of PACCA</i> .....	20
<b>3.6</b>	<b>Filing the petition to adopt</b> .....	<b>20</b>
3.6.1	When to file .....	20
3.6.2	Legal representation.....	21
3.6.3	Consent to adopt.....	21
3.6.3.1	Who may consent .....	21
3.6.3.2	Execution of consents.....	22
3.6.4	The petition filing date .....	22
<b>3.7</b>	<b>Report of Investigation</b> .....	<b>22</b>
3.7.1	What to include .....	23
3.7.2	Checklist for Report of Investigation .....	23
3.7.3	When to submit the Report of Investigation .....	27
3.7.4	Distribution of the Report of Investigation .....	27
<b>3.8</b>	<b>Adoption Progress Report</b> .....	<b>28</b>
<b>3.9</b>	<b>Adoption records</b> .....	<b>28</b>
3.9.1	Obtaining an adoption case number.....	28
3.9.2	Materials sent to VDSS Adoption Unit – Adoption <i>Records</i> Specialist .....	29
3.9.3	Materials maintained at the local department of social services.....	31
3.9.4	Maintaining adoption records at the LDSS .....	32
<b>3.10</b>	<b>New birth certificate and Social Security information</b> .....	<b>32</b>
3.10.1	Obtaining a new birth certificate .....	32
3.10.2	Updating Social Security Information.....	33

# 3

## FINALIZING THE ADOPTION

### 3.1 Introduction

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The finalization process begins when the adoptive parents are ready to file their petition to adopt the child. The process may involve obtaining legal representation, signing the consent, filing the petition, and submitting a report to the court.

*Until the finalization of the adoption, the child placing agency (CPA) should continue to engage the birth family even after termination of parental rights (TPR). Engaging the child's birth family and natural supports are especially important when an adoptive family has not yet been identified and the youth may age out of care.*

### 3.2 Framework

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Principals in the Virginia's Children's Services System Practice Model provide a philosophical basis and guide for practice in decision making for achieving a permanent family for a child.

We believe that children do best when raised in families.

- Children should be reared by their families whenever possible.
- Keeping children and families together is the best possible use of resources.
- Children are best served when we provide their families with the supports necessary to raise them safely. Services to preserve the family unit and prevent family disruption are family-focused, child-centered, and community-based.
- Children's needs are best served in a family that is committed to the child.

### 3.3 Legal Citations

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Chapter 12 of the Code of Virginia [§§ 63.2-100](#) through [63.2-1220](#) provides guidance on the general provisions of adoption in the Commonwealth.



### ***3.4 Adoptive home selection and preparation***

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*A child can be placed for adoption, by an LDSS, once parental rights have been terminated and the LDSS has been granted the authority to place and consent to the child's adoption. In determining the appropriate home in which to place a child for adoption, a married couple or an unmarried individual shall be eligible to receive placement of a child for purposes of adoption [§63.2-1225](#). All child-placing agencies, both private and public, shall be certified by the Division of Licensing Programs to provide Treatment Foster Care Case Management Services ([12 VAC 30-130-920](#)). See Chapter E., Foster Care Manual, [Section 6](#), for more information regarding placement to achieve permanency and foster and adoptive home licensing.*

#### ***3.4.1 Utilizing a team approach***

*Selecting the adoptive home for a child should be done using a team approach. Development of a group of professional resource people in the community to serve as consultants can also be beneficial, especially for special needs children. A multi-disciplinary team can provide information specific to the needs of the child and can help assess the impact of placement of a child with a particular family under consideration.*

*The purpose of this team is to:*

- Confirm the adoptive placement with caregivers with whom the child is presently residing; or*
- Establish the adoption of the child with another selected family with whom the child has significant attachments.*
- Be the deciding body in selecting an adoptive home for the child from among families who have shown an interest in adopting the child.*

*The team should be composed of a minimum of three persons, including a person in a management position in children's services, the child's worker and the worker responsible for placement and adoption services for the child. When two or more agencies are working in a collaborative partnership to match children to an adoptive family to finalize the adoption, the other CPAs involved in the collaboration should also be represented on the adoption team.*

*This team should meet whenever there is a minimum of one home interested in adopting a child to determine next steps in selecting the adoptive family and placing the child.*

### **3.4.2 Criteria for selection of a family for the child**

- *The family's ability to meet the physical, emotional, and mental health needs of the child.*
- *The compatibility between the child's personal characteristics and the expectations of all members of the adoptive family.*
- *The specific experiences and/or training the family has had that prepares them to provide for the special needs the child may have.*
- *The resources in the family's community that are available to meet the child's special needs.*
- *The degree to which the family is willing to initiate and participate in medical and/or therapeutic treatment, if the child is in need of such services.*
- *The degree to which the family can accept the child's need for contact with siblings, other birth family members, and/or foster family if the need is indicated.*

### **3.4.3 Educating and partnering with adoptive parents**

*Educating and building collaborative partnerships with adoptive parents should begin with their initial contact with the child welfare system and continue throughout the adoption process.*

*When the adoptive parents indicate interest in adopting a specific child with special needs, the agency shall provide and discuss the following information:*

- *The child's background and needs including non-identifying information about the birth family.*
- *The long term needs of children who have experienced trauma.*
- *The [Information Sheet on Adoption Assistance Program](#) including:*
  - *The purpose and types of adoption assistance and/or supports that may be available to help address the child's needs.*
  - *The application, assessment and negotiation process.*
  - *The adoption assistance agreement and how to request changes in the agreement when the child's needs and/or family circumstances of the adoptive parents change.*
  - *Contact information for the LDSS that has jurisdiction for adoption assistance to further discuss the program and submit their application).*

*While adoptive parents want to make a difference in the child's life, they may have concerns about how this decision will impact their lives and whether they will have the necessary resources to meet the child's needs once the adoption is finalized. The agency should discuss with the adoptive parents how they can integrate the child with special needs into their lives and future. Providing sufficient information about the child to the prospective adoptive parents allow them to decide whether they and the child are right for each other and gives them time to examine their feelings about adoption as a means of having a family or enlarging the one they already have.*

#### **3.4.3.1 Full disclosure of child information**

The CPA shall provide the adoptive parents all known and relevant information about the child. The service worker should discuss this information, responding to all questions the adoptive parents may have.

The agency shall provide the adoptive parents a copy of the Full Disclosure of Child Information form which provides information on:

- *The child's special needs, the services the child currently requires, and to the extent possible, the services the child will need.*
- *Medical, dental, developmental, behavioral, emotional, and educational information for the child.*
- *The child's experience in foster care, including the child's age when entering care, the reason(s) for entering care, and the child's placement history.*
- *The child's biological family, without revealing the family's identity, including but not limited to:*
  - *Ages and genders of parents and siblings.*
  - *Education, occupations, and talents of parents.*
  - *Language, culture and traditions of family.*
  - *Medical, mental health and substance abuse history of birth parents, grandparents, and other family members.*
  - *Level of contact the child has had with biological and extended family prior and during foster care placement.*
  - *Strengths, positive contributions, issues and challenges in the child's relationship with biological and extended family members.*

*The worker should encourage adoptive parents to talk with the foster parents and any professionals (e.g., physician, teacher, and service providers) involved with the child to gain a comprehensive understanding of the child's needs.*

*The CPA shall share all relevant documentation, including medical records, prescription histories, psychological evaluations, school records, and any other information that documents the child's needs.*

*Failure to disclose all relevant information may result in an appeal by the adoptive parent and potential financial liability for the LDSS.*

*The adoptive parents may have a legitimate interest in disclosure of information from a child protective services record as the potential caretaker of the child. When the LDSS determines that disclosure of records or information in a child protective services (CPS) case is in the child's best interest, the LDSS may provide this information without a court order and without the consent of the family (§ 63.2-105).*

#### **3.4.4 Selecting the adoptive home**

*The agency plays a key role in identifying a prospective adoptive parent for a child. Services for adoptive applicants begin with a study that involves the adoptive applicants in a process to determine with the agency whether they can meet the needs of an adopted child. The study should be carried out so that it brings about increased understanding of the process and begins to prepare the applicants for adoption. The study should be completed by a worker who is experienced in understanding adoption and how adoption affects a family, who is skilled in interviewing and in eliciting information, and can encourage sharing and discussion of sensitive and personal topics.*

*The study should consist of a series of interviews in which adoptive applicants and the worker exchange factual information, discuss emotional factors involved in adoption, and come to recognize feelings and attitudes that may affect adoption. The study process should begin to establish a relationship with the applicants that will make it possible for the applicants to feel supported both during the selection and placement of the child and during the post placement period. It is important that there be several interviews with the family members individually and together, in addition to group meetings. The children in the family should be seen early in the process since they play a vital role in the success of the placement.*

*If the child is already living in the home of the potential adoptive parents, strong consideration should be given to placement with these persons, taking into account the length of time the child has been in the home, the depth and degree of bonding that has occurred and the child's ability to move from the home and form satisfactory attachments in another home and with another family.*

*The adoption team should consider foster parents with whom the child has developed emotional ties as a primary adoptive resource for the child.*

*If the foster family is to be the adoptive family, the foster family must be prepared for the differences between foster care and adoption. (NOTE: Foster parents have the right to file a petition for adoption, without consent of the LDSS, when:*

- *The child has resided in their home continuously for at least 18 months, and*
- *The birth parents' rights to the child have been terminated (§ 63.2-1229).*

*The worker will use the “Addendum: Mutual Family Assessment – Addition of Child Specific or Matching Information for Adoption” form to document and assess the family. The following checklist provides a framework for the information that should be included in the Adoption Home Study Addendum:*

- *Dates of contact.*
- *Who was present.*
- *Where the contact took place.*
- *Current household members.*
- *Changes in the household composition or financial status since the initial home study.*
- *Current monthly income (verified by paystubs, tax statements etc.).*
- *Current monthly expenses (verified by monthly billing notices).*
- *A summary of whether or not the family is living within their means and can financially support a child placed in the home.*
- *Current health reports (include the date of the exam, TB results, any new physical or mental concerns or conditions).*
- *Three references (current within 12 months) – these must be mailed directly to the named references from the agency and returned back to the agency.*
- *Current record clearances (Background Fingerprint Check, Sworn Affidavit, Central Registry Checks).*
- *Parents’ motivation to adopt.*
- *Issues of infertility.*

- *The applicants' expectations of adoption.*
- *Discussion of each person in the home including their age, gender, grade and school, behavior, mental health, and any developmental issues. Also discuss their attitude towards having another child added to the family.*
- *Discussion of family structure, clarity of roles and boundaries, communication, how decisions are made and how affection is displayed.*
- *Family's participation in recreational activities, religious activities, cultural activities, etc.*
- *Discuss the family's willingness and ability to support the child's culture; religion, language, inherent sexuality, gender identity or expression, etc.*
- *Thoughts and feelings of child's birth parents and family.*
- *How will adoptive family assist the child in maintaining relationships with other significant persons (if appropriate)?*
- *Discuss the family's resources within extended family members, friends, faith based organizations, clubs, etc. Include resources available in the community, resources they have accessed in past, and what the family would do in case of an emergency.*
- *Discussion of alternate care plans for the permanent care of the child. Include more extensive details if the applicants age and/or health status are assessed to be a concern.*
- *Discussion of the specific child identified to be placed in the home for adoption to include an up to date health assessment, current medications, counseling, education, services being provided and how often, how the child is doing in the home, and what is their attitude about adoption.*
- *Training or support needs that have been identified for the family.*
- *A recommendation of whether or not the adoption placement is supported by the LDSS.*

*For more information on writing an Adoption Home Study see the additional resource: [The ABC's of Writing and Reading an Adoption Family Assessment \(Home Study\)](#), prepared by the Practice Committee of the Connecticut Council on Adoption.*

### **3.4.5 Preplacement visits**

*When a specific adoptive family is selected for the child, the child's worker shall provide him with detailed information about the family, including sharing pictures of all family members, their home, pets, etc. The worker should also prepare the child for the anticipated number and location of visits with the prospective adoptive parents.*

*There is no standard number of visits that is required before a child moves into an adoptive home, however, no child should be placed into an adoptive home on one visit unless the child is less than three days old.*

*All parties, including the foster parents, the adopting parents, the child, and the child's worker are involved in planning the pre-placement visits. Visits should take into consideration the needs of each particular child.*

*Pre-placement and placement plans should be well thought out and outlined so that the child, the worker, the prospective adoptive parents, the foster parents, know what is being planned and the general timing of the various visits.*

*If the child wants ongoing contact with the birth parents and the prospective adoptive family supports this contact, the service worker should also consider and discuss with the child and family, whether the birth parents should be included in any of the pre-placement visits. The purpose of including birth parents and how such visits would be arranged must be clear and in the best interest of the child (see [Section 3.5](#) for information regarding use of a Post Adoption Contact and Communication Agreement (PACCA)).*

### **3.4.6 Placing the child**

*When placement has been assessed to be in the child's best interest, all the parties involved in the child's adoption, including the child, believe the child is ready to move and the adoptive parents are ready for placement, the LDSS shall schedule a Family Partnership Meeting to discuss arrangements for the move. If this is an out of state placement, it is important to keep the agency who will supervise the placement informed of developments.*

*The LDSS and the schools shall jointly determine the child's best interest for school placement up until the final order of adoption. A best interest determination meeting should be held when the child is in foster care, is placed in an adoptive home outside of the child's current school district and there is reason to believe that the child would be best served by remaining in his current school placement prior to the adoption being finalized. The adoptive parents should be actively engaged in the best determinations meeting and should be educated as to the purpose of the meeting, the practice of allowing children to remain in their current school when in the child's best interest and the plan for the child once the adoption is finalized (see Chapter E., Foster Care Manual and [Section 12.12](#)).*

*When an agency is considering an out of state adoptive placement for a child in its care, the agency shall take the steps necessary to initiate a request for approval for placement under the [Interstate Compact on the Placement of Children](#) before the visiting process can begin. The agency is responsible for selecting the adoptive family that is best able to meet the child's needs.*

*When the child is moving in to an adoptive home from their foster home, at the time of placement, the Adoption Home Placement Agreement and the Adoption Assistance are signed together, effective the day of placement.*

*When the child will be adopted by their foster parents, the Adoptive Home Placement Agreement and the Adoption Assistance Agreement are signed together, effective the first day of the following month after all parties of signed.*

*The LDSS must open an adoption case in the child welfare management system within **five calendar days** of signing the Adoptive Home Placement Agreement and Adoption Assistance Agreement. The foster care case is also updated in the child welfare management system with the child's new placement information and the placement type is changed to 'Adoption Non-Finalized'.*

*The LDSS must inform other interested families that the child was placed with another adoptive family. It is important to continue to engage and assess these families as possible placement options for other waiting children.*

### **3.4.7 Post-placement support and supervision**

*The LDSS must offer support and supervision services to the adoptive parents to assist in a successful adoption transition of the child into the home of the family selected. The standard supervision period for an adoptive placement is a minimum of six consecutive months and can include the time the adoptive parents were the child's foster care parents. During the six months following the adoptive placement, the LDSS shall ensure that at least three supervisory visits are conducted. There must be at least 90 days between the first and the last visit. During supervisory visits, both adoptive parents shall be seen together and with the child in at least one of the three visits, unless the petition was filed by a single parent. Face-to-face contact must occur with the child in in the home during all of the visits (§ [63.2-1212](#)). Supervisory visits are specific to the adoption and are in addition to the monthly face-to-face visits. The LDSS must continue to provide foster care services until the final order of adoption is entered. The CPA certifies to the circuit court that the child has lived with the petitioner continuously for six months immediately preceding the filing of the petition and all visits have been completed (§ [63.2-1210.3](#)).*

### **3.4.8 Visits during probationary period**

The purpose of the visits during the probationary period is to:



- Gather information in order to make a recommendation to the court whether the best interest of the child will be met by finalizing the adoption;
- Provide regular and ongoing support for the child and family (including monitoring and counseling); and,
- Document the progress of the placement.

Since the goal of these visits is to facilitate the integration of the child into the family, the actual number of visits should be determined by the special needs of the child and the family for a successful adoptive home.

If the adoptive family moves to another locality, state, or country before the final adoption decree is entered, the agency having placement authority for the child is responsible for requesting continuing casework services and supervision of the placement from a social service agency serving the adoptive family's new place of residence utilizing interstate procedures as required by the [Office of the Interstate Compact for the Placement of Children](#).

In such cases, it is essential that an interlocutory order be filed prior to the family's move to avoid the potential for a considerable delay in the adoptive parent's ability to file an adoption petition in their new state of residence. Without the order, the family may encounter resistance as to their rights to obtain school admission, medical services, etc. on behalf of the child (§ [63.2-1209](#)).

If the move occurs within Virginia, the supervising agency should correspond directly with the adoptive family's new CPA to request the needed services. Along with the cover letter to explain the basis for the request, the adoptive home assessment, child's adoptive summary, and any other pertinent information should be sent to the new CPA.

*When it becomes known to the LDSS that there are significant changes to the adoptive family's situation, including changes in the family structure, the LDSS must update the adoption home study prior to making a determination to proceed with finalization of the adoption.*

### **3.4.9 Report of Visitation**

If the placement is being supervised by a CPA, other than the placing agency, the placing agency should receive a written report following each visit. The placing agency should be notified promptly of any concerns noted during the visits. If a child is placed in this state from another state or a child is placed out of state, the [Office of the Interstate Compact for the Placement of Children](#) should be used for reporting of all information.

A written report shall be made to the circuit court in the [Report of Visitation](#) format as recommended by the VDSS Adoption Unit. A copy of the Report of Visitation shall also be served on the counsel of record for the parties and the Commissioner ([§ 63.2-1212](#)).

At a minimum, the Report of Visitation shall include a mutual assessment of the placement, the agency contacts, the adjustment of the child and family to the placement, and services the supervising agency provided or need to be provided.

#### **3.4.10 Removal from adoptive home after signing the placement agreement**

*When a child is placed in an adoptive home with a signed adoptive home placement agreement and the circuit court has not entered an interlocutory order of adoption, the child shall not be removed from the custody of the adoptive parents except in one of the following instances:*

- *Consent of the adoptive parents ([§ 63.2-1207](#)).*
- *Court order ([§ 63.2-1207](#)).*
- *Approval from Virginia Department of Social Services Commissioner ([§ 63.2-904](#)).*
- *For parental placements, when the entrustment agreement has not yet been finalized by the court and there is proof of fraud or duress after the placement of the child in an adoptive home ([§ 63.2-1204](#)).*
- *Child abuse and neglect procedures ([§ 16.1-251](#) or [§ 63.2-1517](#)).*

### **3.5 Post-Adoption Contact and Communication Agreement (PACCA)**

*The PACCA is a voluntary, legally enforceable, written agreement between the birth parents and adoptive parents that has specific requirements included in the agreement. The PACCA governs for contact and communication after the legal adoption of the child that has specific requirements included in the agreement ([§§ 63.2-1220.2, 63.2-1220.3, 63.2-1220.4, 16.1-277.01, 16.1-277.02, 16.1-278.3, and 16.1-283.1](#)).*

*The PACCA is intended to support open adoptions in Virginia, especially for older children in foster care who have significant emotional attachments to their birth parents. Open adoption is a permanency practice that facilitates communication between the birth parents and the adoptive parents throughout the lifetime of the child.*

*Service workers should implement PACCA using the Virginia Children's Services System Practice Model to guide practice (See [Section 1.2.1](#)).*

The agency shall notify the prospective adoptive parent of the option to enter into a PACCA and notify the child (if age 14 years or older) of their right to consent to the PACCA ([§ 16.1-283.1](#)).

Once the agency files a petition for a permanency planning hearing and up until adoption finalization, the agency shall notify pre-adoptive families of the option to enter into a PACCA and notify the child (if age 14 years or older) of their right to consent to the PACCA, ([§ 16.1-283.1](#)). Additionally, the LDSS may notify the birth parents of the option to enter into a PACCA.

### **3.5.1 When to use a PACCA**

A PACCA shall only be used in cases where all of the following conditions are met:

- It is determined to be in the child's best interests.
- The CPA with custody of the child, usually the LDSS, recommends a PACCA.
- The child's guardian ad litem (GAL) recommends a PACCA.
- One or both of the birth parents want to enter into a PACCA.
- The prospective adoptive parents want to enter into a PACCA.
- If the child is at least 14 years old, the child agrees to a PACCA.

If **any one** of these conditions cannot be met, there can be no PACCA.

### **3.5.2 Submitting PACCA at permanency planning hearing**

At the time of the permanency planning hearing, if prospective adoptive parents have been identified and all parties agree to and sign a PACCA, the agency service worker shall submit the PACCA to the juvenile court along with the service plan. The court may consider the appropriateness of the PACCA at the hearing, and if all requirements have been met, the judge will enter the PACCA into the order.

Although the agency is not required to consider a PACCA prior to terminating parental rights, it may do so in appropriate cases. For example, if the child is at least 14 years old and is objecting to the termination because of his or her desire to maintain contact with the birth parents, discussion of the PACCA should occur prior to the TPR. The decision to pursue a PACCA should be made independently of the decision to pursue termination of parental rights.

A court or an agency cannot require a PACCA as a precondition to making a decision in any case involving a child prior to the adoption ([§ 16.1-277.01 D](#)).

**3.5.3 Approval of PACCA by circuit court**

The circuit court has the final authority to approve the PACCA, if included in the final adoption order; however, if circumstances change between the permanency planning hearing and the circuit court hearing, the PACCA may not be included in the final order of adoption.

**3.5.4 Factors in deciding whether to enter into a PACCA**

The scope of post-adoption contact is not limited by law. Accordingly, post-adoption contact between biological parents and the child can be as extensive (e.g., weekly visitation) or as limited (e.g., a photo once a year) as the birth and adoptive parents agree, subject only to the agency and GAL approval with the agreement.

Birth parents, prospective adoptive parents, and the child to be adopted will have different factors to consider in deciding whether to enter into a PACCA. Some benefits and limitations of the agreement follow:

<b>Family Member</b>	<b>Benefits</b>	<b>Limitations</b>
<b>Child</b>	<ul style="list-style-type: none"> <li>• Has a realistic understanding of the circumstances regarding the birth parents</li> <li>• Has a sense of security and well-being knowing the adoptive parents and birth parents work collaboratively to support the child</li> </ul>	<ul style="list-style-type: none"> <li>• Allows only the birth parents and adoptive parents to enter into the PACCA as a party</li> <li>• Does not allow grandparents, siblings or other birth relatives the option to enter into a PACCA</li> </ul>
<b>Birth Parent</b>	<ul style="list-style-type: none"> <li>• Have the ability to exchange information with the adoptive parent on an ongoing basis</li> <li>• Know that the child is in a safe and secure environment</li> <li>• Know that the child will have information regarding the birth family</li> </ul>	<ul style="list-style-type: none"> <li>• Interest in a PACCA does not guarantee an agreement will occur</li> <li>• Allows only the birth parents to enter into the PACCA as a party</li> <li>• Does not allow grandparents, siblings or other birth relatives to enter into a PACCA</li> </ul>

<b>Family Member</b>	<b>Benefits</b>	<b>Limitations</b>
<b>Adoptive Parent</b>	<ul style="list-style-type: none"> <li>• Supports the child's need to identify with the birth family and accept the new adoptive family</li> <li>• Allows a better understanding and knowledge of the biological family</li> <li>• Allows access to obtain additional family information, if needed</li> <li>• Obtains support of the birth parents to help the child to become a member of the adoptive family</li> <li>• Having the ability to exchange ongoing information about the child</li> </ul>	<ul style="list-style-type: none"> <li>• Entering into a PACCA will not guarantee a continued relationship with the birth parents</li> <li>• Requires the PACCA be submitted to and enforced by a circuit court in Virginia.</li> </ul>

A PACCA requires acknowledgements and conditions which include, but are not limited to:

- The PACCA can be used in all agency placements.
- The prospective adoptive parents and birth parents shall be informed that a PACCA is optional.
- The PACCA allows the birth parents or the prospective adoptive parents the right to seek enforcement of the agreement.
- A PACCA is not required to complete an adoption nor shall it be a precondition to any decision related to a petition for a court order involving a child (e.g., TPR, changing the permanency goal to adoption).
- The prospective adoptive parents/petitioners shall submit the PACCA with the petition for the adoption.
- The agency sponsoring the adoption, or the agency that completes the adoption report, and the child's guardian ad litem (GAL) shall recommend that the PACCA be approved.
- The adoption is irrevocable even if the adoptive parents or birth parents do not honor the PACCA.

### **3.5.5 Determining best interest of child with PACCA**

Generally after the decision to seek TPR has been made or after TPR has been achieved (whichever is most appropriate in the particular case), the agency sponsoring the adoption should use a team approach to assess and determine the best interest of the child for a PACCA. The team should include the agency service

*worker, GAL, any agency professionals preparing the child or adoptive parent for adoption, any involved therapists, and the child, if appropriate.*

*To determine the best interests of the child, the team should consider whether:*

- *After the adoption, the child would be at risk of physical and/or emotional harm.*
- *The incident of extreme cruelty, sexual abuse, or other factors that occurred prior to foster care or while in placement would negatively impact a child having contact or communication with the birth parents after an adoption.*
- *The child has a therapist and the therapist's perception on a PACCA's impact on the child's well-being.*
- *The child has expressed interest in maintaining contact with the birth parent and in what form.*
- *The child has an ongoing relationship with the birth parents, and the nature of that relationship is supportive of the child.*

*The agency service worker documents the discussion of "best interests" and the reasons why a PACCA is or is not recommended in the foster care contacts section of the child welfare management system. If the team determines that a PACCA is in the best interest of the child, the agency service worker consults with the following individuals about whether they are interested in pursuing the PACCA:*

- *The child.*
- *The prospective adoptive parents.*
- *The birth parents.*

*If the child is 14 years of age or older, the child shall consent to the PACCA.*

*If the child, birth parents, and the prospective adoptive parents are interested in developing an agreement, the agency service worker should discuss the benefits and limitations with them, separately or together, as appropriate.*

### **3.5.6 Who enters into the agreement**

*The parties who enter into the PACCA shall be:*

- *The birth parents of a child in the custody of an LDSS or LCPA*
- *The pre-adoptive parents*

*The agency and GAL are not considered parties to the agreement. However, they sign the PACCA to indicate they have seen and approved of the agreement as being in the best interest of the child and recommend its approval.*

*Additionally, the child is also not a party to the agreement. Children age 14 years or older sign the PACCA indicating their consent to the agreement.*

### **3.5.7 How to develop the PACCA**

*When the birth parents and prospective adoptive parents indicate a willingness to develop a PACCA, the LDSS provides suggestions for terms of the agreement and a packet of information to the birth parents and prospective adoptive parents, which contains the following:*

- *A fact sheet with the following statements:*
  - *The adoption is irrevocable even if one or more parties does not honor the PACCA.*
  - *A PACCA is optional.*
  - *The agency sponsoring the adoption or completing the adoption report and GAL shall recommend that the PACCA is in the best interest of the child.*
  - *The prospective adoptive parents shall agree to the PACCA.*
  - *The birth parents shall agree to the PACCA.*
  - *The child age 14 and older shall consent to the PACCA.*
  - *A PACCA grants the birth parents and adoptive parents the right to seek enforcement of the PACCA through contempt proceedings in court.*
    - *The prospective adoptive parent would have to submit the agreement with the petition for the adoption. The PACCA shall be filed with the petition in a Virginia circuit court to be legally enforceable.*
    - *Future changes, such as either party moving out of the state, should be considered when developing the terms of a PACCA, and the PACCA should state, if possible, what the parties will do in the case of such future changes.*
- *Examples of types of contact and communication that can occur and suggestions regarding frequency of contact:*

- *Type of contact: Letters, phone calls, visits, emails, online video contact (e.g., Skype).*
- *Provisions of visits: Sharing photos and information on health, education, and welfare; discussing the child's goals.*
- *Frequency of in-person contact: Whenever the adoptive and birth parents agree to a visit based on a discussion ahead of time; on specified days; at the request of the child, and with the approval of the biological and adoptive parent; on holidays, twice a year, three to four times a year, or annually.*
- *Whether visits/contact should be made in person or not.*
- *Whether contact and communication is just between parents or includes the child.*
- *The form for a PACCA Agreement.*

### **3.5.8 Roles and responsibility of agency completing the PACCA**

*The primary role of the agency is to:*

- *Ensure the team determines whether a PACCA is in the best interest of a child.*
- *Provide information to the birth parent(s) and/or prospective adoptive parents, if the PACCA is determined to be in the best interest of the child.*
- *Determine if the parties are interested in a PACCA.*
- *Assist in determining appropriate types of contact and communication.*
- *Review the PACCA after it is developed.*
- *Sign the PACCA, if approval is recommended by the agency.*

*The agency sponsoring the adoption signs the agreement to indicate its recommendation for approval of the PACCA.*

*The agency will not sign the agreement if the agency does not agree with one or more terms within the PACCA.*

*If there is no sponsoring agency, the agency ordered by the circuit court to complete the Report of Investigation will include in the report that they have been informed of the PACCA and whether they recommend approval of the agreement.*



*Circumstances where there would not be an agency sponsoring the adoption include:*

- *When the agency that has custody is withholding consent.*
- *A foster parent files a petition to adopt the foster child placed in their home.*
- *Another agency is ordered to complete the Report of Investigation.*

### **3.5.9 Enforcement of PACCA**

*Once the adoption is finalized, the terms of the PACCA become enforceable in circuit court by either the biological or adoptive parents as long as the PACCA has been expressly included in the final order of adoption.*

*The termination of parental rights (TPR) and adoption are irrevocable. Failure to comply with the PACCA by either party has no effect whatsoever on the validity of the TPR decision or adoption. If a party is not complying with the terms of the PACCA after the final order of adoption is entered, the other party can enforce the PACCA through a contempt (show cause) proceeding in court.*

### **3.5.10 Modification of PACCA**

*A PACCA can be modified upon request by either the birth parents or adoptive parents. Legal fees, the cost for a GAL and court reporter fees are the responsibilities of the parties involved. Special service payments from assistance agreements shall not be used to modify and/or enforce a PACCA.*

## **3.6 Filing the petition to adopt**

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*The adoptive parents or their legal representative are responsible for filing the petition to adopt. Even though the child placing agency (CPA) is not responsible, the CPA should know the procedures for filing, since the court may order the CPA to perform certain functions related to the petition to adopt.*

*An interlocutory order of adoption declares that, subject to the probationary period prior to the filing of the final order of adoption, the child shall be, for all purposes, the child of the petitioner.*

### **3.6.1 When to file**

The decision to file should be made jointly by the CPA and adoptive parents. All preliminary work regarding preparation of the child and family should be completed and all parties should agree that moving forward to finalize is the next step.

*The CPA should ensure the following are completed prior to filing the petition to adopt:*

- Discussions and decisions about the child's ongoing contact and communication with the biological parents.
- Questions about the child's history, the adoptive family's concerns and discussions about post-adoption services, and ongoing support from the CPA.
- All parties, including the child when appropriate, should share the opinion that finalizing is clearly in the child's best interests.

### 3.6.2 Legal representation

Adoption is a legal process and the CPA should encourage the adoptive parents to obtain the services of an attorney. Some circuit courts do not require representation by an attorney, and the adoptive parents can explore this option in their home judicial district. Children's Services Act (CSA) funds may be available for attorney fees to help adoptive parents who are adopting without adoption assistance, if the adoptive parents cannot afford to pay for these expenses. For children being adopted with adoption assistance, payments for non-recurring expenses are made utilizing title IV-E funds and can include legal expenses directly related to finalization of the adoption ([See Sections 2.6.5 and 2.9.5](#)).

### 3.6.3 Consent to adopt

*No petition to adopt shall be granted, unless written consent to the proposed adoption is filed with the petition (§ [63.2-1202](#)). Consent refers to the agreement by a parent, person, or agency acting in place of a parent, to relinquish a child for adoption and release all rights and duties with respect to that child. *The Consent to Adoption form should be used.**

#### 3.6.3.1 Who may consent

The birth mother and the birth father (if he has properly established paternity) hold the primary right of consent to adoption of their minor child. When neither parent is available or is no longer legally authorized to give consent, the responsibility may fall to another legal entity, such as:

- The CPA that has custody of the child, *with rights to place for adoption, through court commitment or parental agreement as provided in § [63.2-900](#), [63.2-903](#), or [63.2-1221](#)*;
  - *For foster parent adoption:*
    - *The CPA who has custody of the child consents after the child has resided in the foster parent's home continuously for at least six months.*

- *If the CPA who has custody of the child does not consent and the child has resided in the foster parent's home continuously for at least 18 months and the birth parents' rights have been terminated, the circuit court shall accept the petition filed by the foster parents without the CPA's consent.*
- Any person who has been given custody;
- A guardian or guardian ad litem; or
- The court having jurisdiction over the child.

The court may determine that consent of the parent is not needed under specific circumstances, including when parental rights have been terminated, the child has been abandoned, the parent has been convicted of specific crimes against the other parent or the child, the parent has failed to support or establish a significant relationship with the child, or the parent is mentally incompetent or unfit due to abuse or neglect.

Consent for adoption shall be required from children 14 years and older ([§ 63.2-1202 C 3](#)).

### **3.6.3.2 Execution of consents**

Adoption is meant to create a permanent and stable home for a child; therefore, a validly executed consent to adopt is intended to be final and irrevocable. However, consent may be revoked: within seven days after execution ([§ 63.2-1234 1](#))

The agency director or the local board chairman, *of the agency who has custody and the right to place the child for adoption*, shall sign the consent ([§ 63.2-1202 C 2](#)). The CPA shall provide the attorney representing the adoptive parents with a copy of the consent. If the adoptive parents do not have an attorney, the consent shall be sent directly to the court where the petition is to be filed.

### **3.6.4 The petition filing date**

The date the clerk of court clocks in the petition is considered the petition filing date. The Order of Reference signed by the judge is the document that orders the CPA to investigate the petitioner's home and submit the Report of Investigation.

## **3.7 Report of Investigation**

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The Order of Reference is the document that orders the CPA to investigate the petitioners' home and submit the Report of Investigation. Upon entry of the Order of Reference, the court forwards a copy of the petition, the Order of Reference, and all exhibits to the

Commissioner and to the CPA ([§ 63.2-1208](#)). Exhibits are any documents filed with the petition such as the consent and the agency's statement that the birth parents received counseling.

### 3.7.1 What to include

The CPA shall prepare and submit a Report of Investigation to the court as directed by the court order. The Report of Investigation shall include all relevant information necessary to provide an orderly and complete account of the facts leading up to and supporting the adoption of the child. The Report of Investigation should not reflect the attitudes of the worker or agency and should be simple, direct, and use clear, brief sentences to provide the information.

*The Report of Investigation shall include a statement by the CPA or local director that all reasonably ascertainable background, medical, and psychological records of the child, including whether the child has been the subject of an investigation as the perpetrator of sexual abuse, have been provided to the prospective adoptive parents. The report shall include a list of all records provided to the adoptive parents ([§ 63.2-1208 F](#)).*

*The LDSS shall ensure all criminal background and Central Registry records checks have been completed and are current within 18 months of filing the final Report of Investigation to the circuit court.*

### 3.7.2 Checklist for Report of Investigation

The following checklist provides a framework for the information that should be included in the Report of Investigation.

- Verification of child's name and the date and place of birth with birth registration number.
- Petitioners:
  - Full name, maiden name, and aliases
  - Place and date of birth
  - Verification of marriage
  - Verification of termination of marriages
  - Physical description/personalities
  - Employment history
  - Medical and mental health history of adoptive family

- Religion of adoptive family
- Children
- Education
- Details of the adoptive family's financial situation including income and debts/financial stability of family and ability to manage finances
- Family's capability to meet monthly expenses
- Home
  - Size
  - Location
  - Standards
  - Occupants/ Other children and adults living in the home
  - Extended family members
  - Adoptive parent's children not living in the home
  - Persons not residing in the adoptive home, who may have frequent and meaningful contact with the adoptive household
  - Adoptive parents relationship with adoptive child
  - Relationship between adoptive parents and birth parents
- Child
  - Proposed new full name ( if applicable)
  - Physical description/description of personality
  - Likes/dislikes/sensitivities/allergies
  - Hobbies/Talents
  - Any aspirations for the future (depending on age)
  - Place of birth, hospital, city and state
  - Child's heritage/citizenship

- Race/Ethnic background
- Reason why the child became free for adoption
- Court order (date signed and entered)/entrustment
- Death of birth parent/custodian/legal guardian (give dates)
- Juvenile delinquency history of the child, if applicable
- Relationship with birth family
  - Siblings and location
  - Frequency, location, and nature of visitation
  - Potential for visitation after finalization
  - Contact with birth parents after finalization
- Child's adjustment to the current placement
- Child's position regarding adoption by the adoptive parents
- Child's understanding of the legal consequences of adoption
- Child's position regarding relationship with birth family, if contact is continued
- Child's relationship with other children in the household
- Education history
- Current school and address
- Grade/summary of academic record
- Special education needs
- Description of conduct in school
- Services provided to the child by the school
- Relationship with teachers and peers
- Adoptive parent's involvement with child's education and commitment to encourage child's education

- Medical history/diagnosis, prognosis
- Physical disabilities and supportive service to meet needs
- Attach pertinent medical records and reports
- Mental health history
- History of mental illness and treatment/supportive services to meet mental health needs.
- Attach pertinent mental and physical health records.
- Birth parents
  - Name
  - Date of birth/age
  - Age at time of child's birth
  - Marital status at time of child's conception and birth
  - Verification of a parent's death
  - Nationality/ethnic origin/race
  - Physical description
  - Education
  - Occupation
  - Religion
  - Talents/hobbies/special interest
  - Drugs taken during pregnancy
  - Hereditary disease/physical health, including current
  - Mental health
  - Relationship with parents/family relationships/siblings/extended family
  - Separation from and planning for child, opportunity for counseling
- Consent

- Proper identification of child and petitioner
- Date of consent
- Date, place, and method of custody received
- Placement
  - Date of placement
  - Circumstances surrounding the child's placement
  - Fees paid by the petitioner to persons or agencies that have assisted them in obtaining the child
- Assessment of the adoptive family
  - Strengths
  - Potential issues/plan to resolve issues
- Post-adoption services needs
- Agency's recommendation

### 3.7.3 When to submit the Report of Investigation

The CPA *shall complete the Report of Investigation within 60 days* after receipt of the petition and Order of Reference ([§ 63.2-1208](#)).

### 3.7.4 Distribution of the Report of Investigation

The agency shall prepare, maintain, and forward the original and copies of the Report of Investigation to the following:

- Original to the court with a [Certificate of Service](#).
- One copy is sent to the Attorney.
- One copy is sent to the Commissioner via the Virginia Department of Social Services (VDSS) Adoption Unit, Adoption Records Specialist along with:
  - A completed [Commissioner's Confidential Report](#);
  - Copies of the Entrustment Agreement for Permanent Surrender of a Child ([032-02-0024-04-eng](#)), *if applicable*, and commitment orders; and



- A copy of Certificate of Service

If the adoptive parents do not have an attorney, the CPA should advise the adoptive parents that the Order of Investigation has been submitted to the court and they should contact the clerk of court to have their case placed on the docket for disposition.

### 3.8 Adoption Progress Report

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*The LDSS shall submit the Adoption Progress Report to the court documenting progress toward adoption **six months** after a permanency planning hearing when the goal of adoption has been approved by the court. The court has the option to schedule a hearing to review this report. The Adoption Progress Report, provided in the child welfare management system, shall be entered into the child welfare management system ([22VAC40-201-110 G](#)).*

*The court will provide a copy of the Adoption Progress Report to the Guardian ad Litem (GAL) for the child. The LDSS should advise the Adoption and Family Recruitment Consultant that the Adoption Progress Report is complete by email with the case number and client ID for their review.*

*The Adoption Progress Report is completed and filed every **six months** from the date the goal of adoption is approved in Juvenile and Domestic Relations court, until the adoption is finalized. The LDSS should use the Adoption Progress Report to notify the court when the adoption is finalized within **ten calendar days** of receiving the final order.*

### 3.9 Adoption records

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The Code of Virginia gives the Commissioner of the Department of Social Services the responsibility for storage and preservation of adoption records. The material to be preserved shall include records, orders, and other documents kept or created by the Commissioner, CPA, or local board such as the child's protective services, foster care, and adoption records.

#### 3.9.1 Obtaining an adoption case number

*When the following documents are received by the Adoption Records Specialist from the circuit court, an acknowledgement letter with the adoption case number is sent to the circuit court and CPA, if applicable:*

- Petition,
- Consent,
- Signed Order of Reference, *interlocutory order*, or *final order*, and
- All exhibits.

If the CPA has not received notification of an assigned adoption case number from the Adoption Records Specialist *within 15 calendar days* of the CPA receiving a copy of the petition, a signed court order, and all exhibits submitted to the court on the case; the CPA should contact the Adoption Records Specialist.

The clerk of court where the petition was filed has the responsibility to send a copy of the petition and final adoption order to the Commissioner and the CPA that placed the child.

### 3.9.2 Materials sent to VDSS Adoption Unit – Adoption Records Specialist

Within 30 days of receipt of a final order of adoption, the CPA *shall* compile the required materials in the case record and forward to:

*Virginia Department of Social Services  
Adoption Unit, 11<sup>th</sup> Floor  
801 East Main Street  
Richmond, Virginia 23219*

*For the purpose of this section, “adoption file” means records, orders, and other documents kept or created by the Commissioner, CPA, or local board, beginning with the earliest of:*

- (i) An order terminating residual parental rights*
- (ii) An entrustment agreement*
- (iii) A home study or investigation conducted in preparation for adoption*
- (iv) The filing of a petition for adoption*

*The record ends with receiving the final order of adoption*

*Adoption file also includes all records regarding applications for disclosure and post-adoption searches.*

*Finalized adoption materials should be placed in a standard file folder, labeled with the adoption case number, and all names by which the child may have been known on the front of the folder. These names include:*

- The child's *birth* name.
- The child's adoptive name.
- Agency code names for the child.

- Any other names by which the child has been known.

Materials sent to VDSS should include:

- *An order terminating residual parental rights;*
- *An entrustment agreement;*
- *An adoptive family home study;*
- *Report of Investigation;*
- *The petition for adoption;*
- *The final order of adoption;*
- All medical and psychological reports on the birth family;
- All verifications of births, deaths, divorces, and marriages;
- *Full Disclosure of Child Information Form;*
- Letters to legal/birth parents and the envelopes, if returned by the post office;
- All legal documents concerning the child's custody;
- Foster care face sheet including placement history;
- Adoptive home placement agreement;
- The case opening and closing summaries of the case narrative material from foster care and adoption records;
- Verification received from the Virginia Birth Father Registry related to completing a search.

*The CPA should remove staples before it is sent to the VDSS Adoption Unit. Records should be purged of all duplicate and non-pertinent material. **If purging is not done at the CPA, the record will be returned to the agency for the removal and destruction of all duplicate materials.***

*The foster care record is used to gather the above materials for the sealed adoption file, to create an adoption assistance case record, and should be cross referenced with the LDSS CSA/title IV-E financial record to ensure they have a complete record. After the adoption file, adoption assistance case record, and eligibility files are complete, the remaining items should be purged. This includes but is not limited to the following:*

- Miscellaneous correspondence, letters, acknowledgments, and requests for status of reports.
- Duplicates and extra copies of material.
- Case narrative that does not contain specific factual information relative to the child's background.
- Baby pictures, baby hospital bracelets, greeting cards, and other personal mementos. These should be given to the adoptive parents after identifying information has been deleted.
- Service application forms.
- *Foster care records prior to the TPR order or the entrustment agreement.*

If the child's adoption was finalized outside the State of Virginia, the placing agency should observe the requirements of the other state regarding case material and documents to be sent for preservation.

### 3.9.3 Materials maintained at the local department of social services

For LDSS' adoptions, the LDSS shall manage an *adoption assistance record onsite*. Using the *Checklist for Child's Virginia Adoption Assistance Case Record form* the *Adoption Assistance file* is created.

- All court orders, service plans, panel reviews, documents pertaining to AFDC-FC eligibility, dispositional plans, and home-studies and background checks on the adoptive parents should be maintained on children who are adopted. This material is to be retained for **five years after the child's 18<sup>th</sup> birthday**.
- If the child was adopted with adoption assistance of any kind, all forms, reports, and documents concerning the child's special needs, the adoptive family's circumstances, eligibility for IV-E adoption assistance, and the adoptive parents' background checks shall be retained and provided to the case worker assigned to the adoption assistance case for inclusion in the adoption assistance case record. This material should be kept **for five years after the child's 18<sup>th</sup> birthday**.
- If the child's adoption was finalized in another state, the LDSS shall maintain the materials identified above for title IV-E foster care and adoption eligibility reviews.

### 3.9.4 Maintaining adoption records at the LDSS

Information on the maintenance and destruction of local social service records is found in the Library of Virginia's Archival and Records Management Services Division, [Records Retention and Disposition Schedule](#), General Schedule No. 15 County and Municipal Governments Social Services Records.

The manual, retention schedules, forms and additional information on records management is available at the [Library of Virginia's](#) website.

## 3.10 New birth certificate and Social Security information

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### 3.10.1 Obtaining a new birth certificate

Once a final order of adoption is entered, the Office of Vital Records will seal the child's original birth certificate and establish a new birth certificate for the child.

The CPA is responsible for completing the VS-21, Report of Adoption. This form can be obtained from the clerk of court or the Office of Vital Records. There is a twelve dollar administrative fee to establish the new birth certificate. This fee should be paid by the adoptive parent and may be claimed as part of non-recurring adoption expenses.

The VS-21 is not an electronic form. Once completed it must be sent to the court along with the Report of Investigation. The original name, date and place of birth, names of birth parents, and file number of the child's original birth certificate are entered in Part 1 of the VS-21. All information must be completed on the VS-21.

If the child was born outside of the State of Virginia, but within the United States, the Office of Vital Records will forward the VS-21 to the appropriate State Registrar. The petitioners' attorney should contact that State Registrar about the procedures for issuing a new birth certificate.

The Office of Vital Statistics is required, upon request, to establish and register a Virginia birth certificate for a person born in a foreign country upon receipt of a report of adoption for an adoption finalized pursuant to the laws of the foreign country or upon receipt of a report or final order of adoption. (§§ [32.1-261](#) and [63.2-1200.1](#))

- A completed VS-21 and a completed VS-6, Application for a Certified Copy of a Record, this electronic form may be obtained from the [Office of Vital Records](#).
- A check for the required fee.
- A request that such certificate be established in Virginia. The Office of Vital Records will send a copy of the VS-21 to the appropriate federal agency.

### 3.10.2 Updating Social Security Information

When a child is adopted, the Social Security Administration (SSA) will assign a new social security number (SSN) if the adoptive parents request one. The SSA will not assign a new number for adopted children who:

- Know they are adopted;
- Receive Social Security benefits or Supplemental Security Income payments,
- Have worked, or are adopted by a step-parent or other relative.

In these instances, SSA updates the child's record to show the new identifying information and issues a corrected card with the child's new name but original SSN. To apply for a new SSN for an adopted child, the adoptive parent must complete an Application for a Social Security Card.

Further guidance on obtaining new numbers and the Application for a Social Security Card, is available at the [SSA website](#). The application can also be obtained by calling 1-800-722-1213 or visiting a local SSA office.

# 4

## POST-ADOPTION SERVICES

### TABLE OF CONTENTS

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<b>4.1</b>	<b>Introduction .....</b>	<b>2</b>
<b>4.2</b>	<b>Framework .....</b>	<b>2</b>
<b>4.3</b>	<b>Types of post adoption services .....</b>	<b>3</b>
<b>4.4</b>	<b>Adoption dissolution.....</b>	<b>4</b>
4.4.1	<i>Role of LDSS prior to adoption dissolution .....</i>	<i>4</i>
4.4.2	<i>Role of LDSS during adoption dissolution .....</i>	<i>5</i>
4.4.3	<i>Adoption assistance .....</i>	<i>6</i>
4.4.4	<i>Obtaining information after the adoption dissolution .....</i>	<i>6</i>

# 4

## POST-ADOPTION SERVICES

### 4.1 Introduction

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Families built through adoption may have characteristics significantly different from those created through birth. This can result in unique challenges for the family. Post-adoption services provide a wide range of supports and services designed to respond to the needs of the family after the finalization of the adoption. Adoptive families may request services for any needs including managing loss and grief, trust and attachment, school problems, post-institutionalization issues and behaviors, identity formation, family dynamics, birth family connections, effects of early childhood trauma, health issues, and developmental delays.

Adoption support activities are available through local, state, and national adoption organizations and groups. Prior to and after the finalized adoption, *the local departments of social services (LDSS) or licensed child-placing agency (LCPA) who had placement and care of the child* should assist adoptive families in identifying available supports and making the initial connections.

### 4.2 Framework

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The Virginia Children's Services System Practice Model states that *all children need and* deserve a permanent family. This includes a commitment to adoptive families by offering on-going services to meet the families' needs once the adoption is finalized. Some families have agency involvement *until the child reaches adulthood*, while other families require support on a periodic basis. All families need the assurance that supportive services are available and should be encouraged to participate in on-going educational and training events.



### 4.3 Types of post adoption services

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*Post-adoption supports offered by the LDSS is not a continuation of agency supervision of the adoptive home. It is an agency service given as needed and requested by any of the parties involved in an adoption. Such services reflect the agency's on-going obligation and social responsibility for the welfare of the children for whom it originally had involvement. To supplement services that are provided by the LDSS, the Virginia Department of Social Services (VDSS) has contracted with private agencies to provide post-adoption services to families of all adopted children. A child who is adopted through any kind of adoption, including foreign, domestic, foster care and stepparent adoptions is eligible to receive services through these State funded, agency administered contracts.*

*Community services boards (CSB), health departments, and other governmental agencies often provide supportive services available to residents of that jurisdiction. Families should explore using local services to assist in meeting their needs. While some needs are met through the family or community's resources, others require adoption-specific intervention.*

*The LDSS and LCPA should provide adoptive parents with information that will assist them in obtaining post-adoption services at the beginning of the adoption process. Some families will require adoption-specific services which should be made available to every adoptive family. Adoption-specific services can address problems that develop before or after the date of the final order of adoption. Therapy and counseling services should be provided by [adoption competent professionals](#).*

The types of post adoption services include but are not limited to:

- In-person and online support groups
- Camps
- Heritage activities
- Therapy and counseling
- Respite care
- Educational and information resources
  - Books, magazines, and websites
  - Workshops, seminars, and conferences
  - Information and referral sources
- Search and reunion

The web sites that provide information on post-adoption services are listed below:

- [Adoption.com](http://Adoption.com)
- [Fact Sheets for Families](#) by the U. S. Department of Health and Human Services, Administration for Children and Families, Child Welfare Information Gateway
- [National Foster Care and Adoption Directory Search](#)
- [NewFound Families](#)
- [North American Council on Adoptable Children](#)
- [Virginia Department of Social Services - Adoption](#)

Families may also receive post-adoption services specific to the child's special needs through the VDSS adoption assistance program. Eligibility requirements and how adoption assistance can supplement a family's ability to address the child's special needs are found in [Section 2](#).

#### 4.4 Adoption dissolution

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Adoption dissolution occurs *after the adoption is finalized* and the *legal* family relationship and responsibilities of the adoptive parents no longer exist. *Adoption dissolution is different from adoption disruption in that adoption disruption ends the adoption process prior to the finalization of the adoption. Adoption disruption may result in the child changing placements from the prospective adoptive parents' home to another placement while in foster care. For more information about adoption disruptions see Chapter E. Foster Care Manual, [Section 9.12](#).*

When dissolution cannot be prevented or an alternative found, it should be approached with the child's best interests at the forefront. Sensitivity to the feelings of the child who leaves the family and the children who stay in the family must be the first priority.

##### 4.4.1 Role of LDSS prior to adoption dissolution

Knowing that adoption dissolution can be devastating for both the adopted child or youth and the adoptive family as a whole; an agency should work diligently to prevent a dissolution by providing support and post adoption services specific to the needs of the adoptive child or youth and family.

Problems in the adoptive home should be evaluated in light of the family's issues as well as the needs and behaviors of the child. The adoptive family should be encouraged, supported, and assessed in getting services in place that will enable the parents to continue to parent their child. The LDSS should view the family as the best resource for this child unless a *safety risk has been identified from a child protective*

*services (CPS) assessment or investigation. In the event of a CPS allegation, the LDSS should collaborate with the CPS worker to work with the family.*

*Prevention services should be provided to the family prior to adoption dissolution. If the family resides in a different locality than the locality that assisted the family with placement and finalizing the adoption, the LDSS that is responsible for coordinating post-adoption services is the LDSS that assisted with finalizing the adoption. When requested, the LDSS where the family resides should assist the other LDSS in providing information on appropriate services and support within the community to preserve the family. If Family Assessment and Planning Team (FAPT) involvement is necessary, the locality where the family resides will be responsible for conducting the FAPT meeting and the LDSS that was responsible for finalizing the adoption and providing services should attend the meeting (See [Section 2.17.3](#) for more information about LDSS responsibilities).*

*To prevent the child from entering foster care, foster care prevention services should be provided when the adoption is at risk of dissolution and a Family Partnership Meeting (FPM) should occur when the potential disruption is recognized. The LDSS where the family resides is responsible for opening a prevention case, if necessary. For more information about providing prevention services and opening a prevention case, (See Chapter B., Prevention Services, [Section 2](#)). If the placing agency is from another state and the child resides in a Virginia locality, the LDSS where the family resides should work in collaboration with the out of state locality to prevent adoption dissolution. If the adoption dissolves, the LDSS where the adoptive parents reside may receive custody of the child.*

#### **4.4.2 Role of LDSS during adoption dissolution**

*A dissolution decision should be made with the focus on the best interest of the child. The LDSS should continue engaging the family if the child enters foster care, unless termination of parental rights (TPR) occurs.*

A temporary entrustment agreement should only be considered when it is in the child's best interest. At no time should a temporary entrustment agreement be accepted from adoptive parents as their plan to eliminate their legal responsibilities or to obtain treatment for the child. A temporary entrustment agreement does not terminate the adoptive parents' rights or their duty to support their child. It does, however, place the child back in foster care and communicates a message of failure and instability to the child.

In the event of adoption dissolution, the LDSS may need to pursue TPR. If an adoptive child comes back into foster care and the parents' rights are terminated either voluntarily or involuntarily, the procedure to terminate the adoptive parental rights is the same as for any parent (see Chapter E., Foster Care Manual, [Section 9.6](#) for information on TPR).

TPR severs the relationship of parent and child between the individual adopted and the adoptive parents. The former parents are relieved of all legal duties and obligations due from them to the adoptee and the former parents are divested of all rights with respect to the adoptee.

#### **4.4.2.1 Opening a foster care case**

*If there is adoption dissolution and the child is removed from the home, the child enters foster care in the locality where the family resides. A new foster care case is opened in the child welfare information system (See Chapter E., Foster Care Manual, [Section 2](#) and [Section 3](#) for more information about opening a foster care case).*

#### **4.4.2.2 Closing the adoption case**

*When the parental rights of the adoptive parents are terminated, the adoption case is closed in the child welfare information system. The information in the child welfare automated system remains restricted and the paper adoption file is sealed (See [Section 4.4.4](#) on how to obtain adoption information to provide services to the child).*

#### **4.4.3 Adoption assistance**

When a child continues as a family member but does not reside in the family home, adoption assistance benefits shall continue as long as the adoptive parents retain legal and financial responsibility for the child.

*If the child is no longer in the adoptive parents' home or was placed in foster care and TPR has not occurred, the LDSS that entered into the adoption assistance agreement with the adoptive family should assess the agreement with the adoptive family. The LDSS should make a referral to the Assistance Negotiator to negotiate the adoption assistance payment, if necessary. No changes to the adoption assistance payment shall be made without being negotiated ([§ 63.2-1302 C](#)). The adoption assistance payment cannot be terminated without the adoptive parents' consent unless the LDSS determines that there is a circumstance that meets the termination criteria of the adoption assistance agreement (See [Section 2.17](#) for more information for terminating an adoption assistance payment).*

*If the family was receiving adoption assistance and TPR occurs, the family is no longer legally and financially responsible for the child and adoption assistance shall be terminated ([22VAC40-201-161 N](#)).*

#### **4.4.4 Obtaining information after the adoption dissolution**

Once an adoption is finalized in Virginia, the adoption record is sealed and information can only be disclosed under the circumstances designated in the Code of Virginia §§

[63.2-1246](#) and [63.2-1247](#). See [Section 5.4](#) and [5.5](#) for additional information on when adoption information can be disclosed to the adoptee, birth family, and adoptive parents.

*The Commissioner shall release non-identifying information from the adoption record when the LDSS requesting the information is providing services to the child or adoptive parents (§ [63.2-1246](#)). When a child returns to foster care after adoption dissolution, the original LDSS or LCPA may release non-identifying information in the child's adoption records to the LDSS that has custody of the child. Non-identifying information is information that does not identify the birth family or any trace information that could lead to the identification of the birth family (See [Section 5.4](#) for more information about non-identifying information). When the adopted child enters foster care and the adoption was finalized in Virginia, the LDSS seeking information from the adoption record should contact the Adoption Unit to determine if the information may be released.*

# 5

## ADOPTION DISCLOSURE

### TABLE OF CONTENTS

5.....	2
<b>5.1 Introduction .....</b>	<b>2</b>
<b>5.2 Legal Citations.....</b>	<b>2</b>
<b>5.3 Types of information available for disclosure.....</b>	<b>2</b>
5.3.1 Non-identifying information.....	2
5.3.2 Who can request non-identifying information.....	3
5.3.3 Special types of non-identifying information.....	3
5.3.3.1 Critical medical information.....	3
5.3.3.2 Letters .....	4
5.3.4 Identifying information .....	4
<b>5.4 Adding information to the closed adoption file.....</b>	<b>6</b>
<b>5.5 Conducting a disclosure search.....</b>	<b>6</b>
5.5.1 Letter of Appointment.....	6
5.5.2 Searching for information .....	7
5.5.3 Requesting an extension .....	9
5.5.4 Expediting a disclosure search.....	9
<b>5.6 Redacting the adoption file.....</b>	<b>9</b>
5.6.1 Releasing non-identifying information.....	11
<b>5.7 Report of Inquiries.....</b>	<b>12</b>
5.7.1 Waiting for the final disposition .....	14
<b>5.8 Final disposition .....</b>	<b>14</b>
<b>5.9 Charging a fee.....</b>	<b>15</b>
5.9.1 Fee schedule for adoption searches.....	15
5.9.2 Determination of direct costs.....	16

# 5

## ADOPTION DISCLOSURE

### 5.1 Introduction

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The Virginia Department of Social Services (VDSS) Adoption Unit maintains a permanent record of all adoptions finalized in Virginia since July 1, 1942 and has the primary responsibility for maintaining adoption *files* and administering the release of information from those *files*. Public and private child placing agencies (CPAs) have the responsibility of releasing information from closed adoption *files* upon approval from the Commissioner.

Based on the Code of Virginia, the adult adoptee and various other members of the adoption triad may have access to information in the closed adoption *file* when certain criteria are met and an application for disclosure is submitted to the VDSS Adoption Unit.

### 5.2 Legal Citations

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The Code of Virginia in Chapter 12, §§ [63.2-1245](#) through [63.2-1248](#) provides law on permanent record retentions, disposition of reports, and disclosure of birth family information.

### 5.3 Types of information available for disclosure

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*There are two types of information available during the disclosure process: non-identifying and identifying information. The disclosure of information is determined by the party requesting the information as well as when the adoption was finalized.*

#### 5.3.1 Non-identifying information

Non-identifying information is generally defined as information *from the preserved adoption file*, which does not identify the birth family. Trace information is any information *that is in the adoption file* that could lead to the identification of the birth family *e.g. the birth parents' date of birth, the name of the hospital where the child was born. When a party requests non-identifying information, all identifying and trace*

information shall be redacted from the file (See [Section 5.6](#) for information on redacting the adoption file).

### 5.3.2 Who can request non-identifying information

Non-identifying information from the adoption *file* can be released to the:

- Adoptive parents
  - Adoptive parents may have access to non-identifying information from the adoption *file* at any time after the entry of the final order of adoption.
- Adoptee who is 18 years of age or older
  - In the event that the adult adoptee *requests* information on the adoptive parents (e.g., the home study or Report of Investigation), the adult adoptee must have a notarized consent from each adoptive parent on whom the information is requested or *verification of death* for that person.
- The CPA that is providing services to the adoptee or adoptive parents.

### 5.3.3 Special types of non-identifying information

There are two types of non-identifying information that require special handling: critical medical information and letters.

#### 5.3.3.1 Critical medical information

In any case where a physician or licensed mental health provider submits a written statement, in response to a request from the adult adoptee, adoptive parent, birth parent, or adult birth siblings indicating that it is critical that medical, psychological, or genetic information be conveyed; the statement shall state clearly the reasons why this is necessary ([§ 63.2-1247 C](#)). The CPA that does the investigation shall make an attempt to inform the adult adoptee, adoptive parents, birth parents, or adult birth siblings, whichever is applicable, of the information. It is the responsibility of VDSS to provide information from the adoption *file* if necessary to facilitate the search. Confidentiality of all parties shall be maintained by the agency which means that **identifying information cannot be shared**; only the non-identifying critical medical information can be given.

If an adult adoptee, birth parent, birth sibling, or adoptive parent contacts a CPA with critical medical information to share with other members of the adoption triad, the requirements are as follows:



- *The birth parent, adoptive parent, or adoptee completes the Adoption File Update form and mails it to VDSS and attaches verifications of critical medical information.*
- The physician or licensed mental health provider sends a letter stating that it is critical that medical, psychological, or genetic information be conveyed to the other party. The letter must state the reasons why this is necessary *and be written on the provider's letterhead.*
- Upon receipt of the doctor's letter certifying the necessity to share critical medical information, the CPA should inform VDSS of the request and attempt to locate the other family members.
- The CPA can contact the adult adoptee directly if there is critical medical information from the birth family.
- The CPA can share the medical diagnosis and related information, but cannot release names, locations, or other identifying information to the other party.

#### 5.3.3.2 Letters

If the CPA that was involved in the adoption is willing, the CPA can act as an intermediary for the purpose of exchanging non-identifying information, such as letters, with the adoptive parent and birth parent when *they agree in writing at the time of the adoption and the whereabouts of the adoptive parent and birth parent are known or readily accessible* ([§ 63.2-1247 D](#)). The words “readily accessible” eliminate the need for the agency to conduct a search, such as those conducted when an adult adoptee applies for identifying information. A review of generally available resources, as a current or recent location contained in the *file* satisfies the requirement.

Such an arrangement can occur when at least one of the adoptive parents and one of the birth parents agree in writing. *It does not need to include both of the birth parents or both adoptive parents, if married. This agreement may be withdrawn by either party at any time or may be withdrawn by the adult adoptee.*

#### 5.3.4 Identifying information

Identifying information is information that identifies the adoptee or birth family. It includes “trace” information that may lead to the identity of the birth family. Identifying information on birth family members is only granted by the Commissioner or circuit court upon showing good cause. *Good cause, for the purpose of adoption disclosure, is defined as showing a compelling and necessitous need for the identifying information* ([§ 63.2-1246](#)).

*An application shall be used when identifying information is requested from the adoption file ([§ 63.2-1246](#)). There are four types of disclosure applications: adoptee, adoptive parent, birth parent, and adult birth sibling.*

By using the *Application for Disclosure*, the following people may apply for disclosure of identifying information:

- Adoptees who are 18 or older may apply for disclosure.
  - *The adoptee submits the [Adoptee Application for Disclosure](#).*
- Birth parents and adult birth siblings, if the adoption was finalized on or after July 1, 1994, and the adopted person is at least 21 years of age.
  - *The birth parent submits the *Birth Parent Application for Disclosure*.*
  - *The adult birth sibling submits the *Adult Birth Sibling Application for Disclosure*.*
- Adoptive parents of a **minor child**, if the adoption was finalized on or after July 1, 1994.
  - *The adoptive parent submits the *Adoptive Parent Application for Disclosure*.*
- In a parental placement adoption where consent was executed on or after July 1, 1994, the entire adoption *file* shall be open to the adoptive parents, the adoptee who is 18 years of age or older, and the birth parent who executed the written consent. However, any criminal record checks for the adoptive parents, which show a criminal record conviction cannot be released.

*The application for disclosure is forwarded to:*

*Virginia Department of Social Services  
Adoption Unit, 11<sup>th</sup> Floor  
801 East Main Street  
Richmond, Virginia 23219*

*If the CPA receives the application directly, the CPA should send the application to VDSS with all attachments and inform the applicant that the application was forwarded to VDSS.*

The Commissioner has the responsibility for deciding whether information from the adoption file is released. CPAs provide assistance to the Commissioner by conducting searches to locate birth family members. In cases in which an adult adoptee seeks disclosure about his or her birth parents and consent is not obtainable due to the death or mental incapacity of the birth parents, the Commissioner shall release identifying

information if the adult adoptee shows good cause as to why the information should be made available.

## 5.4 Adding information to the closed adoption file

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Birth parents, birth siblings and birth family members have the right to send letters to be included in the adoption *file using the Adoption File Update form*. Sometimes birth family members will call or write to provide updated information for the adoption *file*. The CPA should explain the rights of the adoptive parents and the adult adoptee for obtaining information from a closed adoption file. This will enable the family to understand the importance of sending letters to update the adoption *file* of current address and telephone number. The worker can update the information in the CPA file and at the state level by advising the Adoption Disclosure Specialist, VDSS Adoption Unit of the updates.

## 5.5 Conducting a disclosure search

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Upon receiving an application for disclosure, *the Commissioner of VDSS shall designate the CPA initially involved in the adoption to attempt to locate and advise the birth family or adoptee of the application using the Letter of Appointment*. If the private CPA is no longer in operation, the LDSS or a private CPA may be asked to conduct the search.

### 5.5.1 Letter of Appointment

*The Adoption Disclosure Specialist at VDSS will act on behalf of the Commissioner by sending the Letter of Appointment to the CPA. The Letter of Appointment will include the following:*

- *The applicant's name.*
- *The type of application (adoptee, birth parent, adoptive parent, or adult birth sibling).*
- *The type of information requested (non-identifying and/or identifying information).*
- *Special instructions, such as how to give the applicant his or her non-identifying information if he or she lives out of the area.*
- *The timeframe to complete the search or provide the non-identifying information, which is 90 days from the date of the Letter of Appointment.*
- *The Adoption Disclosure Specialist's name and contact information.*
- *The following will be included with the Letter of Appointment to the CPA:*
  - *A copy of the application for disclosure.*

- A copy of the adoption file.

The Adoption Disclosure Specialist mails a copy of the Letter of Appointment to the adoptee. Once the CPA receives the Letter of Appointment, they are authorized to begin working on the *disclosure* case.

### 5.5.2 Searching for information

There is no correct sequence of methods that work for every case. A combination of search techniques should be tried and use of a person locator tool is permissible (*such as CLEAR*). *The CPA* should consider multiple avenues to find information for the search and may have to go back a generation or more.

- Review the entire adoption *file*, from start to finish, gathering all information possible, looking for clues about the people being searched for, paying close attention to detail, and noting any piece of information that could be significant.
- Workers should note full names (including variations in spellings), nicknames, addresses, relatives' names, dates of birth, professions or information on employment, locations mentioned (such as another state), a physical description of the birth parents if mentioned, any hobbies they may have had, and handwritten notations in the margins or in the file. Even information that may seem trivial may be significant if it will assist the worker in the search.
- When a birth parent is not named in the adoption *file*, the agency's worker should obtain a copy of the child's original birth certificate. For children born in Virginia, the Adoption Disclosure Specialist may assist the agency in obtaining a copy of the original birth certificate from the Bureau of Vital Statistics.
- *When the adoptee is requesting a birth family search, the CPA should contact the adoptee to assist in gathering information. A questionnaire format will assist the CPA in staying focused and gathering information that may be helpful for the search. The following questions are a guide:*
  - What has prompted you to search? What do you hope to find?
  - Describe your relationship with your family, both your adoptive family and any present family structure.
  - How and when did you find out you were adopted? How was the subject handled by your family? *Do you know the identity of your birth family?*
  - What family members or friends are aware you are doing a search? What was their reaction to the news?
  - What information about you would you share with your birth parents?

- If we are able to locate your birth relatives, but they are unwilling to have their identity disclosed, what information would you like to obtain from them?
  - List specific questions that the adoptee would like to have asked *such as, what is our family medical history?*
- If we are able to locate your birth relatives, and they are willing to have contact with you, how would you prefer your first contact to occur (e.g., via phone, email, letter, face-to-face)?
- If the search is to locate the adult adoptee for the birth parent or birth sibling, contact the birth parent or adult birth sibling using the above questions that are similar in nature *to gather information from the birth family.*
- The CPA should use discretion when contacting relatives or persons who know the birth parent/sibling, even when these relatives can aid in the search. The confidential nature of the inquiry is not revealed unless it is clear from the adoption file or other information that the contacted person knows the circumstances surrounding the child's placement or knowledge of the adoption.
  - *The CPA should complete a general inquiry to the relative by phone or letter without revealing any information, even that the child was adopted, unless the relative states he or she is aware of the adoption.*
- Try to locate and search any in-house files that are related to the adoption *file*. Check to see if there are any other files related to the case. These could be siblings' records or records that are now in agency's archives. Search these records.
- Search any logs or books that your agency may have to track inquiry calls made by birth family, adoptees, or adoptive parents.
- Check in-house databases.
- Initiate search in a person locator tool.
- Additional searchable databases:
  - [PIPL](#)
  - [Ancestry.com](#)
  - [RootsWeb](#)
  - [411.com](#)

- [USGenWeb Project](#)
- [Census Finder](#)
- [Find a Grave](#)

### 5.5.3 Requesting an extension

*There may be incidents when the search cannot be completed within the timeframe of 90 days. For example, the agency is waiting for consent from the birth family. If the CPA needs additional time to conduct the search, the CPA needs to request consent from the applicant to extend the 90 day timeframe. Once consent is received, the CPA may request a **30, 60, or 90 day** extension from the Adoption Disclosure Specialist. The CPA must submit a written request to the Adoption Disclosure Specialist prior to the search deadline. The request for an extension should include the reason for the request and extension timeframe (30, 60, or 90 day).*

### 5.5.4 Expediting a disclosure search

There may be an occasion where a search should be expedited. An example of this would be for a medical emergency or other situation of an emergency nature. Such issues should be brought to the attention of the Adoption Disclosure Specialist in the VDSS Adoption Unit, so the search process can be expedited prior to the final disposition.

## 5.6 Redacting the adoption file

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*Adult adoptees and adoptive parents have the right to request and receive non-identifying background information about the adoptee and the adoptee's birth family from the adoption file. The Application for Disclosure should be used to request non-identifying information. When the adoptee or adoptive parent requests non-identifying information through the application process, the non-identifying information should be provided in paper form.*

*Once the Adoption Disclosure Specialist receives the application for disclosure, a copy of the preserved file is sent to the CPA. After receiving the copy, the CPA will closely review the documents, checking word for word, to redact any information that would lead to the identity of the birth family. When working with older adoption files, the CPA worker should check the CPA historical or in-house files to be certain that the entire adoption file is reviewed and included in the redacting process.*

The following identifying information shall be redacted from the file including any "trace" information that may lead to the identity of the birth family.

- Adoptee's pre-adoptive last name(s) (can leave in first and middle names).

- *Full names and addresses of birth family.*
- *Full names and addresses of foster families.*
- Names of places of employment for birth parents or other relatives (if military, delete branch i.e. navy, army).
- Names of schools or colleges attended by birth parents or other relatives.
- Month, day of birth of birth parents and birth siblings (can leave in year).
- Place of birth parents and birth siblings (delete both city and state).
- *Name of the hospital where the child was born.*
- Social security number of birth parents and other relatives.
- Month and day of graduations, births, deaths, divorces of birth parents and other family members (*can leave in year*).
- Name and location of maternity home.
- Name and address of churches attended by birth family.
- Name and address of doctors (including OBGYN) of birth parents.
- Names and addresses, etc., of any individuals who knew a member of the birth family; this could include the doctor who delivered the child, foster parents with whom the child lived, or any third party involved in the placement.
- Names of agencies involved with the birth parents, except the CPA.
- Any information in the file on other adoptees and foster children (if other adoptees in the same adoptive home as the one requesting information are birth siblings, their *adoptive* names can be left in).
- Locality and state on birth parents consent notarization (if different from location of circuit court where adoption is filed).

*When the adult adoptee requests non-identifying information, the CPA shall not give information about the adoptive parents from the home study, unless the adoptive parents are deceased (verification of death is required) or have given written notarized consent for the release of the home study. If one of the adoptive parents consents to the release of the home study or is deceased, but the other parent does not consent, information on the parent who does not give consent must be deleted. The following reports/documents are considered to be part of the home study on the adoptive parents.*

- Any report that only contains information on the adoptive family such as the home study and any questionnaire completed on themselves by the adoptive parents.
- Reference letters on the adoptive parents.
- Medical and psychological on the adoptive parents.
- AREVA Family's Registration Form.
- Criminal record checks on the adoptive parents.
- Child protective service checks on the adoptive parents.
- The section of the Report of Investigation or Home Study Report entitled "Suitability of the Petitioners to Adopt."
- Any paragraph in the Report of Visitation that deals solely with the adoptive parents.
- The portion of the Commissioner's Confidential Report form pertaining to the adoptive parents.

#### 5.6.1 Releasing non-identifying information

Non-identifying information cannot be mailed to the *applicant*. The *applicant* may pick up the non-identifying information in person *from the CPA appointed to the case* after showing identification. The CPA worker should make a copy of the identification card and attach it to a receipt for the *applicant* to sign, indicating receipt of the non-identifying information. *Verification that the non-identifying information was received is documented on the Report of Inquiries (See [Section 5.7](#) for more information about the Report of Inquiries).*

If the *applicant* lives out of the area, the *applicant* may request that a child welfare agency or professional (such as a doctor, psychiatrist, psychologist, *clergy*, etc.) closer to his or her location to receive the non-identifying information. The *applicant* should contact the nearby child welfare agency or professional to request this service. After confirming with the child welfare agency or professional that they will receive the information, the *applicant* will provide the CPA in writing the mailing address of the receiving child welfare agency or professional, and a written statement that authorizes the named party to receive the non-identifying information. Additionally, the receiving child welfare agency or professional must send a written statement to the CPA that they are willing to receive the information on behalf of the *applicant*. The CPA will verify the identity of the *applicant* before the release of non-identifying information.



## 5.7 Report of Inquiries

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Once the CPA completes the request from the application for disclosure (e.g. search for birth family or non-identifying information release), the CPA should send a Report of Inquiries to the Adoption Disclosure Specialist in the VDSS Adoption Unit. *The Report of Inquiries is a form that is used to document the results of the attempt to locate and advise the applicant of the search results and for the CPA to make a recommendation about disclosing identifying information to the applicant as well as document if the applicant received non-identifying information from the adoption file.*

*The following should be included on the Report of Inquiries:*

- No identifying information should be disclosed to the adoptee, birth family parents, or birth family members without proper authorization from the Commissioner.
- The resources used to locate the birth family members should be fully documented, *specifically* in those cases where agency efforts were unsuccessful.
- *When the adoptee wants birth family identifying information and the birth family is located, the report should state the biological parent's wishes regarding disclosure of his or her identify and if the birth family member consents to contact with the adoptee.*
  - *Each person documented on the Report of Inquiries should be contacted. If they were not contacted, a reason should be given as to why they were not contacted.*
- *When the birth family member or adoptee is deceased, the CPA should document the verification of the death (e.g. death certificate, obituary) and attach it to the Report of Inquiries.*
- *The date that non-identifying information was given to the adoptee or adoptive parent. If non-identifying information was not given as requested on the application, the CPA should explain the reason why it was not provided.*
- The CPA's recommendation regarding disclosure based on the findings including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents, and the birth family.
  - *The recommendation is to the grant, deny, or dismiss the application. The CPA should explain the reason for their recommendation (e.g. the application is denied because the birth mother was located and declined disclosure of her identifying information).*
- If there is a fee, the report shall include a statement indicating the amount of the fees assessed and whether or not the fee has been paid. The Commissioner

cannot grant the release of identifying information unless the agency has provided verification that the fee has been paid.

The CPA should use the following recommendations for disposition in the Report of Inquiries:

- **Contact Wanted.** If contact is wanted, the CPA should state in the report that the person was found and wants contact, or consents to the disclosure of their identifying information. The worker should state that the CPA recommends the release of identifying information.
- **Denial.** If contact is not wanted, the report should state that the person was found but does not consent to the disclosure of his *or her* identifying information. The worker should state that the agency recommends that disclosure of information be denied.
- **Birth Father Unknown.** If the worker cannot find the birth father's name in the adoption *file*, then the report should state that the birth father is not named, or not identified. The worker should state that disclosure of information on the birth father will be denied. *If the original birth certificate was requested, the worker should state whether the birth father was named on the birth certificate. See [Section 5.5.2](#) for information about requesting a birth certificate for a Virginia born adoptee when the father's name is not listed in the adoption record.*
- **Birth Siblings.** If birth parents had no other children, the worker should state that there are no adult birth siblings, or no known adult birth siblings. If the birth parents had other children that are currently minors, under the age of 18, they should be mentioned in the report; however, the adoptee is only able to receive information about adult birth siblings.
- The birth parents have the right to decide whether they want to be the ones to tell their other children about the adoptee first, or if they are comfortable with letting the adoptee contact birth siblings directly.
  - If the birth parent is comfortable *allowing* direct contact *with the adult birth siblings and the adoptee*, the CPA should contact the adult birth siblings for consent to release their identifying information. When consent is received, the CPA should recommend that the sibling's information be released to the adoptee.
  - If the birth parent is not comfortable with direct contact but wants to notify the other children first, the worker should state that disclosure of information on the adult birth siblings be denied at this time.
- **Ongoing Search.** If one person is found and wants contact, but another person inquired about in the adoptee's application is not yet found, then the report should

*recommend disclosure be granted for one and the search for the other person be continued.*

- **Search No Longer Wanted.** When an adoptee who applied to do a search changes his mind and no longer wishes to continue with the search, the worker should make the recommendation that the search case be closed.
- **Consult with the Adoption Unit.** *The CPA should contact the Adoption Disclosure Specialist when there is a special circumstance that may affect the recommendation for disclosure.*

### 5.7.1 Waiting for the final disposition

If an adoptee, birth parent, or birth sibling has an open case with the CPA, he or she might call to obtain a status on the case. The worker should *inform* the applicant of the *search efforts being made (e.g., phone calls, letters sent out)* and the *current status of these efforts*. If asked, the worker may provide to the party search resources. [International Soundex Reunion Registry](#) is the largest and oldest registry available.

The [Child Welfare Information Gateway](#) website has factsheets of information and resources that can be provided to birth parents, adopted persons, and others interested in learning more about the process of searching for birth relatives. *Additional resources during the disclosure process are [Access to Adoption Records by the Child Welfare Information Gateway and State Statutes Search](#). Support group information may assist the adoptee, adoptive parent, or birth parent during the search process. The website [American Adoption Congress Support Group Directory](#) provides a list of support groups that are in the state that he or she may reside.*

## 5.8 Final disposition

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The Commissioner makes the final decision about the release of identifying information after a review of the Report of Inquiries. The Adoption Disclosure Specialist will send the CPA and applicant a letter of Final Disposition. The Final Disposition letter provides the search results and the Commissioner's decision about disclosure. *Identifying information shall not be released unless the Commissioner has granted the disclosure of identifying information.*

If the final disposition indicates that the application for disclosure is granted, the CPA shall share the identifying information with the adoptee, birth parent, adult birth sibling, or adoptive parent.

If the final disposition is to deny the application for disclosure, the adoptee, birth parent, adult birth sibling, or adoptive parent must be told of the right to file a petition with the circuit court.

The petition is filed in the Richmond City Circuit Court (which is the court where VDSS is located) if the adoptee lives out of state or the circuit court in the locality where the adoptee resides if the adoptee lives in Virginia. *Virginia Department of Social Services must be made party to the petition.*

## **5.9 Charging a fee**

Virginia law allows fees to be charged for adoption searches.

Fees are to be determined based on income, family size, and indirect costs to the agency or average costs. The fee schedule is established by the State Board of Social Services.

### **5.9.1 Fee schedule for adoption searches**

The formula is as follows:

*For LDSS, the LDSS fiscal manager should calculate an indirect cost factor that covers expenses other than the direct worker's salary and benefits (such as overhead expenses).*

The time the worker spends providing the service should be recorded. The time spent is to be multiplied by the combined worker's hourly salary and benefits (or an agency average of the worker's hourly salary and benefits) and the indirect costs.

Determine applicant's family size. Include all persons for whom the applicant and his or her spouse are responsible.

Determine the applicant's gross monthly income. Include all income available to the family. Accept the applicant's declaration of income.

Determine the applicant's percent of median income using the [state median income \(SMI\) chart](#). The SMI chart is available at the VDSS internal website (SPARK) and is updated each year. The updated SMI is issued by a broadcast each year prior to September 1<sup>st</sup>.

If income falls between two percentages, use the lower figure. Reduce or waive the fee if the LDSS finds circumstances that affect the applicant's ability to pay, such as heavy debt, unusual medical or educational expenses, or heavy financial support of relatives.

The LDSS shall report any fees collected as expenditures refunded on its financial report. The local agency's reimbursement from state and federal funds shall be adjusted to reflect the state and federal share of income collected. Using the percentage of fee scale shown below, determine the fee assessed.

Percentage of  
Median Income

Calculated Fee  
to be Charged

50% and below	0% (No charge)
60%	10%
70%	25%
80%	50%
90%	75%
100%	100%

### **5.9.2 Determination of direct costs**

In determining direct costs, the CPA providing the service has the option of using the actual salary and benefits of the worker performing the service, an average of the salary and benefits, or the minimum salary and benefits.

If the actual salary and benefits of the worker performing the service is used, and a supervisor has to perform the service due to the worker being absent, the fee would be based on the amount of the salary and benefits of the worker that would have ordinarily performed the service to avoid overcharging the customer.

If some form of averaging is used, the averaging should be based on the budget figures for the previous fiscal year and should be calculated on a yearly basis around May or June when the budget is reviewed. The method of averaging, which appears to conform to the intent of the statute which talks about the actual cost of the service, would be to average the actual salaries and benefits of the workers performing the services.

The agency may use 20 hours as an average, multiply this by the agency hourly costs, factor in family size and income, and charge the applicant that amount in advance. If the search is completed in less than 20 hours, the agency would return the unexpended funds.

If the search is not completed in 20 hours, the agency should ask the applicant if the agency should continue the search at the worker's hourly cost (written permission from the applicant is mandatory) or the agency can continue the search but not charge the applicant more than the initial estimated fee which is based on 20 hours of work (this is an option because guidance allows an agency to recommend waiving all or part of the fee in unusual circumstances).

## 6

## NON-AGENCY PLACEMENT ADOPTIONS

## TABLE OF CONTENTS

<b>6.1</b>	<b>Introduction .....</b>	<b>3</b>
<b>6.2</b>	<b>Parental placement adoptions.....</b>	<b>3</b>
6.2.1	Timeline for parental placement adoption.....	4
6.2.2	Responsibilities of the agency in a parental placement adoption before the adoption petition is filed in circuit court.....	5
6.2.3	Duties of the attorney in parental placement adoption in juvenile court.....	12
6.2.4	Duties of the juvenile court in a parental placement before the adoption petition is filed in circuit court .....	15
6.2.5	Duties of the Commissioner in a parental placement adoption when reports of suspected violations of law in the placement and adoption .....	20
6.2.6	Duties of the circuit court in a parental placement adoption after the adoption petition is filed in circuit court.....	21
6.2.7	Duties of the attorney in a parental placement adoption after the adoption petition is filed in circuit court .....	22
6.2.8	Duties of the Commissioner in a parental placement adoption after the adoption petition is filed in circuit court.....	23
6.2.9	Responsibilities of the agency in a parental placement after the adoption petition is filed in circuit court .....	23
6.2.10	Adoption recommended by birth parents, physicians, Virginia licensed attorneys, and clergymen.....	29
<b>6.3</b>	<b>Close relative adoptions .....</b>	<b>31</b>
6.3.1	Close relative placement for a child who has been in the home less than two years	31

## Child and Family Services Manual

## F. Adoption

6.3.2	What is needed to file in circuit court .....	32
6.3.3	Close relative placement for a child who has been in the home <i>two</i> or more years	32
6.3.4	Finalizing the adoption .....	32
6.3.5	Responsibilities of the agency .....	33
6.3.6	Duties of the attorney .....	38
6.3.7	Duties of the circuit court when the child has resided in the home of the prospective adoptive parents continuously for at least <i>two</i> years .....	41
6.3.8	Duties of the Commissioner .....	43
<b>6.4</b>	<b>Stepparent adoptions .....</b>	<b>43</b>
6.4.1	Case opening .....	44
6.4.2	Review the petition and Order of Reference .....	44
6.4.3	Duties of the attorney .....	48
6.4.4	Duties of the Commissioner .....	49
6.4.5	Duties of the circuit court .....	49
<b>6.5</b>	<b>Adult adoptions .....</b>	<b>53</b>
6.5.1	Specifics for Adult Adoption .....	53
6.5.2	Responsibilities of the agency in adult adoption .....	54
6.5.3	Report of Visitation .....	58
6.5.4	Distribute copies of the report .....	58
6.5.5	What should be done following final disposition .....	59
6.5.6	Duties of the attorney in an adult adoption .....	59
6.5.7	Duties of the court .....	60
6.5.8	Duties of the Commissioner .....	61
<b>6.6</b>	<b>Intercountry adoptions .....</b>	<b>62</b>
6.6.1	Pre-adoptive requirements .....	62
6.6.2	Adoptive home study .....	62
6.6.3	Responsibilities of the LDSS in inter-country adoptions .....	63
6.6.4	Duties of the attorney .....	66
6.6.5	Duties of the Commissioner .....	66
6.6.6	Duties of the circuit court .....	67

## 6

## NON-AGENCY PLACEMENT ADOPTIONS

## 6.1 Introduction

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A non-agency placement *adoption* occurs when the child is not in the custody of a *local department of social services (LDSS)* or *licensed child placing agency (LCPA)*. In a non-agency placement, the birth parents or legal guardians consent to the adoption, and parental rights are terminated by entry of the Final Order of Adoption. Depending on the type of non-agency placement, the local agency may have identified responsibilities to assist in the completion of the adoption.

*Fees may be charged for non-agency adoptions and are determined based on income, family size, and indirect costs to the agency. The fee schedule is established by the State Board of Social Services. See [Section 5.9](#) for additional information on charging a fee.*

## 6.2 Parental placement adoptions

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Parental placements for the purpose of adoption are governed by the provisions in Chapter 12 of the Code of Virginia, [§ 63.2-1230](#) through [63.2-1240](#).

When a LCPA or LDSS is requested to and accepts custody of a child for the purpose of placing the child with adoptive parents recommended by the birth parents or a person other than a LDSS or LCPA, the birth parents select either the parental placement adoption provisions or the agency adoption provisions ([Section 3.5](#)) for the adoption of their child.



An agency or local board shall provide information to the birth parents regarding the parental placement adoption and agency adoption provisions, and shall provide the birth parent the opportunity to be represented by independent legal counsel as well as counseling. No person shall charge, pay, give, or agree to give or accept any money, property, services, or other thing of value in connection with such adoption except as provided in [§ 63.2-1218](#).

In a parental placement, the agency completes a home study and a petition is filed in the juvenile and domestic relations court for execution of consent and awarding custody to the prospective adoptive parents. The juvenile and domestic relations court reviews the home study and collateral material to determine whether the requirements of law are met, accepts parental consent, and transfers custody to the adoptive parents. An adoption petition may then be filed in circuit court.

### 6.2.1 Timeline for parental placement adoption

The overall steps in a parental placement adoption are as follows:

- The agency *must* receive a request for a home study *from the court*.
- A home study is completed *by the agency and submitted to the court*.
- A petition is filed for execution of consents in juvenile and domestic relations district court.
- The court accepts consent and awards custody to the prospective adoptive parents.
- A petition for adoption is filed in the circuit court.
- The circuit court enters an interlocutory order if everything is in compliance with the law.
- The agency conducts supervision of the placement and submits a Report of Visitation to the circuit court (See Section [3.8.2](#) for more information on the Report of Visitation).
- After a six-month supervisory period, the circuit court enters a Final Order of Adoption.

### **6.2.2 Responsibilities of the agency in a parental placement adoption before the adoption petition is filed in circuit court**

In a parental placement, in order for the juvenile and domestic relations court to make the required determinations before accepting consent, the agency shall perform the tasks in the following sections.

#### **6.2.2.1 Open the case**

In most parental placements, the agency will be asked to complete a home study before the petition to execute consent is filed in the juvenile and domestic relations court. The request will come from either the birth parent or adoptive parent. In some cases, the agency will receive an order for a home study directly from the court. When the request for services comes from either the birth parent or the prospective adoptive parents, a Service Application is completed. In cases where the court order initiates the request for services, the court order serves as the Service Application.

##### **6.2.2.1.1 Set up case records**

A parental placement case record should contain the following documents:

- Service Application (or court order).
- All court orders.
- Home study, including all certifications.
- Report of Visitation.
- All correspondence.
- Documentation, including background forms and information on the birth family.
- Documentation of the simultaneous meeting between adoptive and birth parents if held. If the simultaneous meeting is not held, all contacts and meetings with the birth and adoptive family shall be noted.
- Documentation of the counseling provided to the birth family.
- Case narratives.

### 6.2.2.2 Conduct a home study of the prospective adoptive home

The manner in which a family receives a child for adoption shall have no bearing on how the family is assessed for the purposes of an adoptive placement. The criteria of capacity for parenthood are the same whether the child was placed by an agency, the birth parents, or a legal guardian.

The difference between completing a home study for a child placed by an agency and for a child placed by the birth parents is in the role of the agency, not in the assessment of the adoptive family. In an agency placement, the agency approves or denies adoptive applicants based on home approval standards issued by Virginia Department of Social Services (VDSS). In a parental placement, the agency makes a recommendation to the court regarding the suitability of the family to adopt. The recommendation is based on an assessment of whether the placement is contrary to the best interest of the child based on information gathered during the home study process.

The adoptive home study process involves a shared determination by the adoptive applicants and the agency as to whether they can meet the needs of an adopted child. It should be carried out so that it brings an increased understanding of the adoption process and begins to prepare the applicants for adoption. A thorough assessment of the adoptive family is critical in evaluating whether the placement is contrary to the best interest of the child.

In a parental placement, it is important for the home study to be completed as early in the process as possible. Early completion of the home study provides safeguards for the child and must be completed and filed with the court prior to the consent hearing.

In a parental placement, the agency is not responsible for approving or denying the family. State law gives birth parents the right to place their child with a family of their choice ([§ 63.2-1230](#)). The agency's responsibility is to assess the family and report its findings to the juvenile court. The birth family and the juvenile court will make the determination as to whether the family is a suitable family for the child.

After completing the home study, the agency should inform the birth parents of their recommendation to the court.

### 6.2.2.3 Agency meetings with the birth parent and adoptive parent

In addition to the information gathered during the home study assessment, the agency worker shall:

- Meet at least once with the birth parents and the prospective adoptive parents. If the birth parents and prospective adoptive parents agree, the meeting may occur simultaneously ([§63.2-1231](#)).
  - The purpose of this simultaneous meeting is to facilitate the exchange by the birth parents and adoptive parents of identifying information including full names, addresses, physical, mental, social, and psychological information, and any other information necessary to promote the welfare of the child.
  - The exchange of names and addresses may be waived if both parties agree in writing to waive the disclosure of this information.
  - If the worker is unable to complete the simultaneous meeting, it shall be documented in the home study the reasons why they were not able to meet this requirement. Upon review of the home study, the court may waive the requirement to meet simultaneously where the opportunity for compliance is not reasonably available under the circumstances in accordance with [§ 63.2-1231](#).
- Inform the birth parents of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families. Anyone may provide the required information to the birth parents including doctors, attorneys, ministers, counselors, and service workers. However, it is the service worker's responsibility to determine whether this information has been provided, and if not, to provide it.
- When birth parents request additional counseling to help them work through feelings and issues related to placing the child for adoption, the role of the agency is to assist the birth parents in obtaining this counseling. The agency may provide the counseling directly or refer the birth parents to another community agency.
  - Documentation that the birth parents were provided with this information and related counseling services is required and may serve as evidence for the court. The court is required to determine that the birth parents' consent is informed and uncoerced before proceeding with the adoption ([§ 63.2-1232](#)).
- The prospective adoptive family shall be informed of alternatives to adoption; adoption procedures, including the need to address the parental rights of the birth parents; the procedures for terminating parental rights; and the opportunities for adoption of other children.

- Documentation that the adoptive parents were provided this information is required and may serve as evidence for the court. The court is required to determine that the adoptive parents' decision is informed and uncoerced and that they intend to file an adoption petition and proceed toward a Final Order of Adoption ([§ 63.2-1232](#))
- The family can be informed of this information by the attorney or the agency. The agency should determine whether the family has received this information and, if not, provide it during the course of the home study. The home study should indicate that this information was provided to the adoptive parent.

#### **6.2.2.4 No exchange of property, advertisement, or solicitation**

The agency shall determine that there has been no exchange of property, advertisement, or solicitation except that which is allowed in [§ 63.2-1218](#) and [§ 63.2-1232](#). Fees that are allowable include:

- Reasonable and customary services provided by a licensed or duly authorized child placing agency (CPA) and fees based on prevailing community rates.
- Payment or reimbursement for medical expenses and insurance premiums which are directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings, for mental health counseling received by the birth mother or birth father related to the adoption, and for expenses incurred for medical care for the child.
- Payment or reimbursement for reasonable and necessary expenses for food, clothing, and shelter when, upon the written advice of her physician, the birth mother is unable to work or otherwise support herself due to medical reasons or complications associated with the pregnancy or birth of the child.
- Payment or reimbursement for reasonable expenses incurred incidental to any required court appearance including transportation, food, and lodging.
- Usual and customary fees for legal services in adoption proceedings;
- Payment or reimbursement of reasonable expenses incurred for transportation in connection with any of the services specified in [§ 63.2-](#)

[1218](#) or intercountry placements as defined in [§ 63.2-1104](#) and as necessary for compliance with state and federal law in such placements.

If the agency suspects that there has been an exchange of property, money, services, or any other thing of value in violation of law in the placement or adoption of the child, the agency shall report the findings to the Commissioner for investigation. (If the agency has questions as to whether a violation of [§ 63.2-1218](#) has occurred, it is recommended that the agency ask the prospective adoptive family to obtain an itemized account of services rendered for the fees charged.)

#### **6.2.2.5 Binding contract**

The agency shall determine that all parties understand that no binding contract exists regarding placement or adoption of the child ([§ 63.2-1232](#)).

Birth parents may change their minds about adoption, even after executing consent. Consent does not terminate parental rights and may be revoked by the birth parents within **seven days** of execution, upon proof of fraud or duress or by mutual consent of the birth and adoptive parents until entry of the Final Order of Adoption.

The adoptive parents may also decide not to pursue the adoption. The agency's responsibility is to ensure that both parties understand that the only guarantee of adoption in a parental placement is the entry of the Final Order of Adoption.

In a parental placement adoption the birth and adoptive parents may decide to enter into a Post Adoption Contact and Communication Agreement (PACCA) per [§ 63.2-1220.2](#) (See [Section 3.5](#) for more information about PACCA). Failure to comply with a PACCA, does not impact the validity of the consent to the adoption, the voluntary relinquishment of parental rights, the voluntary, or involuntary termination of parental rights, or the finality of the adoption.

#### **6.2.2.6 Provide the juvenile court with a Report of Home Study**

The Report of Home Study is a separate document from the home study; however, information in the home study should be included in, and consistent with, information in the Report of Home Study.

#### **6.2.2.7 Report of Home Study format**

The format for the Report of Home Study should be used as recommended by the VDSS *Adoption* Unit. The report shall include the following:

## Child and Family Services Manual

## F. Adoption

- Information regarding whether the prospective adoptive parents are financially able, morally suitable, and in satisfactory physical and mental health to enable them to care for the child.
- The physical, mental and developmental condition of the child.
- Information about both birth parents, including:
  - Names and addresses.
  - Why the parents desire to be relieved of the responsibility for the child and what their attitude is toward the proposed adoption.
  - Physical description, ages, races, marital status, education, employment, and, if known, physical and mental health.
- The circumstances under which the child came to live, or will be living, in the home of the prospective adoptive family, and if applicable, a statement as to whether the requirements of law related to ICPC have been met.
- All financial agreements or exchange of property among the parties, including fees paid for services related to the placement and adoption of the child, shall be reported to the court.
  - The agency includes this information in the Report of Home Study that is submitted to the juvenile court.
  - The agency is also responsible for reporting suspected violations to the Commissioner.
- A statement as to whether the requirements of law related to execution of consent have been met. These requirements include:
  - The child shall be at least three days old before consent can be executed ([§ 63.2-1233](#)).
  - When there is an identified child, the agency shall verify the child's birth (if a birth certificate is not available due to the *child's recent birth*, verification may be made through a hospital certificate). The agency should make an attempt to get a certified copy of the birth certificate with the birth registration number as soon as possible.
  - If the identity of the birth father is reasonably ascertainable, but the whereabouts of the birth father are not reasonably ascertainable,

verification of compliance with the Virginia *Birth* Father Registry shall be provided to the court ([§ 63.2-1233 1b](#)).

- The birth registration number should be listed on the Report of Visitation and the Commissioner's Confidential Report form.
- The agency shall include birth information in the Report of Home Study.
- A statement in the report of the efforts made to encourage birth parents to provide information related to all reasonably ascertainable background, medical, and psychological records of the child to the prospective adoptive parents. A list of reports given to the prospective adoptive parents shall also be submitted with the Report of Visitation.

The birth parents shall be aware of their opportunity to be represented by legal counsel, and consent of the birth parents shall be informed and uncoerced.

Additional information is reported on the [Certification form](#). The Certification form is signed by the agency worker and notarized certifying the following:

- That the birth parents are aware of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families.
- The prospective adoptive parents have been counseled with regard to alternatives to adoption, adoption procedures, including the need to address the parental rights of birth parents, the procedures for terminating such rights, and opportunities for adoption of other children, the prospective adoptive parents' decision appears to be informed and uncoerced, and the adoptive parents have stated they intend to file an adoptive petition and proceed towards a Final Order of Adoption.
- During the course of the home study, the agency worker met with birth parents and adoptive parents simultaneously; or
  - The simultaneous meeting between the agency worker, the birth parents and adoptive parents did not occur because the child was being adopted by his/her grandparents, adult sibling, or adult uncle or aunt.
- Identifying information including full names, addresses, physical, mental, social and psychological information was exchanged between the birth parents and the adoptive parents.



The agency submits the Certification form to the court with the Report of Home Study.

The original and two copies of the Report of Home Study are provided to the court and the court, at its discretion, provides the birth and adoptive parents with copies of the home study.

#### 6.2.2.8 False information

If the agency becomes aware that any person has knowingly and intentionally provided false information in writing and under oath, which is material to an adoptive placement, the agency shall report this to the Commissioner ([§ 63.2-1217](#)).

**Note:** The above responsibilities all take place at the juvenile court level. Once the adoption petition is filed in the circuit court, the agency has additional responsibilities.

#### 6.2.3 Duties of the attorney in parental placement adoption in juvenile court

The duties of the parent's attorney in a parental placement adoption do not require any action by the CPA (*CPA references LDSS or LCPA*). However, the CPA should be knowledgeable of what actions the attorney is required to take in facilitating the adoption.

- File petition for consent hearing ([§ 63.2-1237](#)).
- Obtain consent from ([§ 63.2-1202](#)):
  - The mother.
  - The father who may be:
    - An acknowledged;
    - An adjudicated;
    - A presumed; and/or
    - A registered putative father.
  - If a legal father denies that he is the father of a child born to his wife or ex-wife and the child was born within 300 days or ten months of the marriage ending, the agency shall make all effort to identify the father by gathering more information from the wife or ex-wife,

verifying paternity through testing or checking the *Virginia Birth* Father Registry.

- The child who is 14 years of age or older, unless the court finds that the best interest of the child will be served by not requiring such consent ([§ 63.2-1202](#)).
- If consent cannot be obtained from at least one parent, the court shall deny the petition and determine custody of the child pursuant to [§ 63.2-1233](#) unless all parents are deceased ([§ 63.2-1233.3](#)).

Consent is not required when:

- A birth father denies under oath and in writing the paternity of the child. A denial of paternity may be withdrawn no more than ten days after it is executed. Once a child is ten days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to adoption of the child and cannot be withdrawn. ([§ 63.2-1202](#))
- The birth father is convicted of a rape, carnal knowledge of a child between 13 and 15, or adultery or fornication with a daughter, granddaughter, son, grandson, father, or mother and the child to be adopted was born of this action.
- The birth father of a child placed for adoption through a parental placement when such father is convicted of rape or incest and the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of any of the adoption proceedings ([§ 63.2-1233.6](#))
- A person's parental rights have been terminated by a court of competent (legally qualified) jurisdiction.
- If birth parents without cause, has neither visited nor contacted the child for a period of six months prior to the petition for adoption.
  - The adoptive parent needs to show evidence that the birth parents has not visited or contacted the child for a period of six months.
  - A birth parent is still required to receive noticed and be heard on the allegation of abandonment.
  - Failure of the non-consenting parent to appear at any scheduled hearing constitutes a waiver of such objection.

## Child and Family Services Manual

## F. Adoption

- If both parents are deceased, the court, after hearing evidence to that effect, may grant the petition without the filing of any consent (§ [63.2-1233.5](#)). A death certificate for a deceased birth parent can be submitted to the court as evidence that the consent is not required (§ [63.2-1203.3](#)).
- When the parents of a child born in wedlock are divorced and the residual parental rights and responsibilities of the parent have been terminated by the divorce decree or another order of a court (§ [63.2-1202](#)).
- When consent has been obtained from the birth mother, consent of the birth father who was not married to the birth mother at the time of the child's conception or birth is not required if (§ [63.2-1202](#)):
  - The putative father did not register with the Virginia *Birth* Father Registry his consent is not required (§ [63.2-1233.1b](#)). If the identity of the birth father is reasonably ascertainable, but the whereabouts or the birth father are not reasonably ascertainable, verification of compliance with the Virginia *Birth* Father Registry shall be provided to the court (§ [63.2-1233.1b](#));
  - The identity of the birth father is ascertainable and his whereabouts are known, he is given notice of the proceedings by registered or certified mail to his last known address and fails to object to the proceeding within **15 days** of the mailing of the notice (§ [63.2-1233.1c](#)); or
  - The putative birth father named by the birth mother denies under oath and in writing paternity of the child (§ [63.2-1202](#)).

When the consent of one parent has been obtained, the consent of the other parent may be waived if the court determines that consent is being withheld contrary to the best interest of the child or is unobtainable (§ [63.2-1203 A](#)).

The circuit court may grant the petition without consent if:

- **Fifteen days** after personal service of notice of the petition for adoption. Personal notice is by certified or registered mail. There should be a returned postal receipt signed by the parent to indicate that notice was received and this notice is kept in the record (§ [63.2-1203 A1](#));
- If personal service is unobtainable, ten days after the completion of the execution of an order of publication against the party or parties whose consent is required; or (§ [63.2-1203 2](#));

**Child and Family Services Manual****F. Adoption**

- If a birth parent is deceased, upon the filing of a death certificate for a deceased parent with the court ([§ 63.2-1203 3](#)); or
- If the judge certifies on the record that the identity of any person whose consent is required is not reasonably ascertainable ([§ 63.2-1203 2](#)).

If the birth parent who is a resident of Virginia decides to place the child for adoption in another state and the laws of that other state govern the proceedings for the adoption, the birth parent may elect to waive the execution of and instead execute consent to the adoption pursuant to the laws of the receiving state.

When waiving Virginia law and using the laws of the other state, a written waiver shall be executed under oath and include:

- A statement that the birth parents received independent legal counsel from an attorney licensed in Virginia who explained the laws of Virginia and the laws of the other state where the birth parent desired to use those laws for the adoption. This statement shall also include that information was given to the birth parents of the effects of waiving their consent in Virginia for the consent process of the other state.
- A statement that the birth parent elects not to use the consent procedures of Virginia but instead use the laws of the other state where the child was placed.
- The name, address, and telephone number of the attorney whom provided the independent legal counsel.

Failure to follow these procedures will render any waiver of consent pursuant to [§ 63.2-1233](#) invalid.

#### **6.2.4 Duties of the juvenile court in a parental placement before the adoption petition is filed in circuit court**

The duties of the juvenile and domestic relations court in a parental placement adoption do not require any action by the CPA. However, the CPA should be knowledgeable of what actions the court may take in hearing the adoption petition.

The court must advance the consent proceedings on the docket to be heard within **ten days** of filing of the petition, or as soon thereafter as practicable ([§ 63.2-1230](#)).

Consent shall be executed:

- In the juvenile and domestic relations court in the locality where the child to be adopted was born; in the locality where the birth parents reside; or in the locality where the prospective adoptive parents reside ([§ 16.1-243 1c](#)); or

## Child and Family Services Manual

## F. Adoption

- If the birth parent does not reside in Virginia, before a court having jurisdiction over child custody matters in the jurisdiction where the birth parent resides when requested by a Virginia court pursuant to [§ 20-146.11](#) ([§ 63.2-1230](#)).
- By the birth parents while before the juvenile and domestic relations court in person and in the presence of the prospective adoptive parents ([§ 63.2-1233](#)).

If the child was placed by the birth parents with the prospective adoptive parents and if both birth parents have failed, without good cause, to appear at a hearing to execute consent, the court may grant the petition without consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents ([§ 63.2-1233.4](#)).

- Transferring custody becomes effective immediately.
- Prior to the entry of such an order, the court may appoint legal counsel for the birth parents, and shall find by clear and convincing evidence that the:
  - Birth parents were given proper notice of the hearing to execute consent and of the hearing to proceed without their consent.
  - Birth parents failed to show good cause for their failure to appear at such hearings.
  - The consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable.

In determining whether the valid consent of any person whose consent is required is withheld contrary to the best interests of the child, or is unobtainable, the court shall consider whether granting the petition for adoption would be in the best interest of the child. In determining the best interest, the court shall consider all relevant factors, including ([§ 63.2-1205](#)):

- The birth parents' efforts to obtain or maintain legal and physical custody of the child.
- Whether the birth parents are currently willing and able to assume full custody of the child.
- Whether the birth parents efforts to assert parental rights were thwarted by other people.
- The birth parents' ability to care for the child.

## Child and Family Services Manual

## F. Adoption

- The age of the child.
- The quality of any previous relationship between the birth parents and the child and between the birth parents and any other minor children.
- The duration and suitability of the child's present custodial environment.
- The effect of a change of physical custody on the child.

Before accepting a consent that is executed in court, the juvenile and domestic relations court shall determine that:

- The child is at least three days old ([§ 63.2-1233](#)).
- The birth parents are aware of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families, and that the birth parents' consent is informed and uncoerced ([§ 63.2-1232 A13](#)).
- A licensed or duly authorized CPA has counseled the prospective adoptive parents with regard to alternatives to adoption, adoption procedures, including the need to address the parental rights of the birth parents, the procedures for terminating such rights, and opportunities for adoption of other children; the prospective adoptive parents' decision is informed and uncoerced; and they intend to file an adoption petition and proceed toward a Final Order of Adoption ([§ 63.2-1232 A2](#)).
- The birth parents and adoptive parents have exchanged identifying information including full names, addresses, physical, mental, social, and psychological information, and any other information necessary to promote the welfare of the child, unless both parties agree in writing to waive the disclosure of full names and addresses ([§ 63.2-1232 A3](#)).
- Any financial agreement or exchange of property among the parties and any fees charged or paid for services related to the placement or adoption of the child have been disclosed to the court and that all parties understand that no binding contract regarding placement or adoption of the child exists ([§ 63.2-1232 A5](#)).
- There has been no violation of law in connection with the placement ([§ 63.2-1232 A5](#)).

## Child and Family Services Manual

## F. Adoption

- A licensed or duly authorized CPA has conducted a home study of the prospective adoptive home and that during the course of the home study, the worker has met at least once with the birth parent and prospective adoptive parents simultaneously ([§ 63.2-1232 A6](#)).
  - The court can waive the requirement of the simultaneous meeting where the opportunity for compliance is not reasonably available under the applicable circumstances ([§ 63.2-1233 4](#)).
- The birth parents have been informed of their opportunity to be represented by legal counsel ([§ 63.2-1237](#)).
- If any of the above requirements have not been met, the juvenile and domestic relations court shall refer the birth parent to a licensed or duly authorized CPA for investigation and recommendation ([§ 63.2-1232 B](#)).

Consent shall be revocable as follows ([§ 63.2-1234](#)):

- By either consenting birth parent for any reason for up to **seven days** from its execution; however, the seven-day revocation period may be waived provided that the child is ten days old and the consenting birth parent acknowledges having independent legal counsel regarding the effect of the waiver ([§ 63.2-1234](#)).
- Revocation shall be in writing, signed by the revoking party or counsel of record for the revoking party, and filed with the clerk of court in which the petition was filed during the business day of the court, within the following time period:
  - If the revocation period expires on a Saturday, Sunday, legal holiday, or any day on which the clerk's office is closed, the revocation period shall be extended to the next day that is not Saturday, Sunday, legal holiday, or other day on which the clerk's office is closed.
  - Upon the filing of a valid revocation within the time period specified, the court shall order that any consent given for the purpose of such placement is void and, if necessary, determine custody of the child as between the birth parents.
- By any party prior to the Final Order of Adoption (i) upon proof of fraud or duress or (ii) after placement of the child in an adoptive home, upon written mutual consent of the birth parents and prospective adoptive parents ([§ 63.2-1234 2](#)).

After accepting consent, the juvenile and domestic relations court shall transfer custody to the prospective adoptive parents, to be responsible for the care of the child until such time as the court order is modified ([§ 63.2-1233](#)).

- The juvenile and domestic relations court shall review such orders of appointment at least annually until such time as the Final Order of Adoption is entered ([§ 63.2-1233](#)).
- When a child is placed in an adoptive home by the birth parent and a court of competent jurisdiction has not entered an interlocutory order, the child shall not be removed from the physical custody of the adoptive parents, except ([§ 63.2-1103](#)):
  - With the consent of the adoptive parents;
  - Upon order of the juvenile and domestic relations district court or the circuit court of competent jurisdiction;
  - Pursuant to [§ 63.2-904](#), which removal shall be subject to review by the juvenile and domestic relations district court upon petition of the adoptive parents; or
  - Upon order of the court which accepted consent when consent has been revoked as authorized by [§ 63.2-1204](#) or [63.2-1223](#).

After the expiration of the appropriate revocation period ([§ 63.2-1206](#)):

- When a birth parent or an alleged birth parent attempts to obtain or regain custody or attempts to exercise parental rights to a child who has been placed for adoption, there shall be no parental presumption in favor of any party.
- Upon the motion of any such birth parent or alleged birth parent, or upon the motion of any person or agency with whom the child has been placed, the court shall determine:
  - Whether the birth parent or alleged birth parent is a person whose consent to the adoption is required.
  - If so, whether, in the best interest of the child, the consent of the person whose consent is required is being withheld contrary to the best interest of the child or is unobtainable.
- If the juvenile and domestic relations court suspects that there has been an exchange of property, money, services, or any other thing of value in violation



of law in the placement or adoption of the child, the court shall report the findings to the Commissioner for investigation ([§ 63.2-1218](#)).

- When services have been provided by an LDSS, the court shall assess a fee, in accordance with regulations and fee schedules established by the State Board of Social Services. The court shall not accept parental consent until proof of payment of fees has been received ([§ 63.2-1248](#)).
- If the juvenile and domestic relations court determines that the placement will be contrary to the best interests of the child, the court shall inform the birth parents. If the birth parents choose neither to retain custody of the child nor to designate other prospective adoptive parents, or if the birth parents' whereabouts are not reasonably ascertainable, the court shall determine custody of the child ([§ 63.2-1235](#)).

#### **6.2.5 Duties of the Commissioner in a parental placement adoption when reports of suspected violations of law in the placement and adoption**

When reports of suspected violations of law in the placement and adoption of the child are received by the Commissioner, the Commissioner shall ([§ 63.2-1218](#)):

- Investigate the suspected violation and take appropriate action when the investigation reveals that:
  - There may have been a violation of law; the Commissioner shall report his/her findings to the appropriate attorney for the Commonwealth;
  - The violation occurred in the course of the practice of a profession or occupation licensed or regulated pursuant to Title 54.1, the Commissioner shall also report his/her findings to the appropriate regulatory authority for investigation and appropriate disciplinary action ([§ 63.2-1219](#)); or
  - The violation involves engaging in the activities of a CPA without a license, the Commissioner may file suit with the court of record having chancery jurisdiction ([§ 63.2-1701](#)).
- The Commissioner is also authorized to investigate and may refer to the attorney for the Commonwealth any person who has knowingly and intentionally provided false information in writing and under oath, which is material to an adoptive placement ([§ 63.2-1217](#)).

### 6.2.6 Duties of the circuit court in a parental placement adoption after the adoption petition is filed in circuit court

The following are duties of the circuit court regarding acting on petitions for adoption. These duties do not fall under the purview of the agency and require no action on the part of the agency. Pending certain actions taken by the circuit court as described below, documents generated in the course of the court acting on the petition may be required to be sent to the agency for filing and/or submission to the VDSS *Adoption* Unit, Adoption Records Specialist.

The clerk of court where the petition is filed sends a copy of the petition, the interlocutory order, and all exhibits to the CPA, whichever agency completed the home study required by [§ 63.2-1231](#). A copy is also sent to the Commissioner ([§ 63.2-1209](#)).

- The petition shall be signed by the petitioner and counsel of record, if any ([§ 63.2-1237](#)).
- In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath ([§ 63.2-1237](#)).

The circuit court shall not accept a petition in a parental placement unless:

- Copies of documents executing consent, transferring custody to the petitioners, and the home study are filed with the petition ([§ 63.2-1237](#)).
- The circuit court has determined that the findings required by law have been made by the juvenile and domestic relations court.

When all legal requirements related to executing consent pursuant to ([§ 63.2-1232](#)) have been met, the circuit court may dispense with the Order of Reference and enter an interlocutory order.

In those parental placements where an Order of Reference or an interlocutory order is entered, the circuit court shall expeditiously consider the merits of the petition upon receipt of the report ([§§ 63.2-1208 B](#) and [63.2-1212 A](#)).

The court may take any action it finds appropriate if the report is not submitted in the specified time.

When no action is taken by the court for at least one year from the entry of the last order, the clerk of court places the case on the docket for review by the court ([§ 63.2-1214](#)).

The clerk of court sends a copy of any order entered to the agency and to the Commissioner ([§ 63.2-1238 A](#)).

Upon entry of a Final Order of Adoption or any other final disposition, the clerk of court forwards all reports submitted with the Final Order of Adoption to the Commissioner for preservation ([§ 63.2-1246](#)).

When services have been provided by an LDSS, the court shall assess a fee, in accordance with regulations and fee schedules established by the State Board of Social Services. The court shall not enter a Final Order of Adoption until proof of payment of fees has been received ([§ 63.2-1248](#)).

The court may not enter a Final Order of Adoption without the information needed to complete a Report of Adoption (VS-21); unless the court determines this information is unavailable or unnecessary ([§ 63.2-1213](#)). The Report of Adoption (VS-21) provides information that is needed to locate and identify the original birth certificate and to establish a new birth certificate (See [Section 3.11.1](#) for more information on the Report of Adoption form).

After the entry of a final order, the clerk of court sends to the State Department of Health, Office of Vital Statistics, a completed Report of Adoption, VS-21, and a completed application for a certified copy of a birth record, VS-6, with a check for the required fee ([§ 32.1-262](#)).

After the expiration of six months from the date of entry of any Final Order of Adoption from which no appeal has been taken to the court of appeals, the validity of the final order shall not be subject to attack in any proceedings, collateral or direct, for any reason, including fraud, duress, failure to give any required notice, failure of any procedural requirement, or lack of jurisdiction over any person, and the Final Order of Adoption shall be final for all purposes ([§ 63.2-1216](#)).

### **6.2.7 Duties of the attorney in a parental placement adoption after the adoption petition is filed in circuit court**

The following are duties of the attorney for the adoptive family. These duties do not fall under the purview of the agency and require no action on the part of the agency.

Some courts allow petitioners to represent themselves in adoption proceedings. The decision to require an attorney rests with the court. The attorney:

- Files the petition which shall state that the findings required by ([§ 63.2-1232](#)) have been met and shall be accompanied by the following documentation:
  - Copies of documents executing consent.
  - A copy of the court order transferring custody of the child to the prospective adoptive parents.

- A copy of the home study required by ([§ 63.2-1231](#)).
- Prepares appropriate orders.
- Informs the petitioners of the legal requirements.
- Assists the agency in obtaining necessary verifications.
- Assists the petitioners in obtaining a new birth certificate for the child.

### **6.2.8 Duties of the Commissioner in a parental placement adoption after the adoption petition is filed in circuit court**

The VDSS, *Adoption* Unit is the office which carries out the duties of adoption for the Commissioner. These duties include:

- Establishing a permanent record of all adoptions petitioned and providing post-adoption services to adult adoptees and adoptive parents seeking background information on the biological family ([§ 63.2-1246](#)).
- Accepting for preserving, adoption cases including related exhibits ([§§ 63.2-1238](#) and [63.2-1212](#)).
- Arranging through the ICPC for investigation and supervisory visits to be made when an out-of-state/country agency is involved ([§ 63.2-1240](#)).

### **6.2.9 Responsibilities of the agency in a parental placement after the adoption petition is filed in circuit court**

#### **6.2.9.1 Review the petition**

The petition is a written request filed with the court by prospective adoptive parents asking the court to legalize a relationship with a child.

The CPA may review the petition to be sure the petition is filed in the court having jurisdiction where the petitioners reside, or in the locality or city in which the birth parent executed a consent, or the locality or city in which the CPA that placed the child is located and the case has been referred to the proper agency. The petition must be signed by the petitioner and by counsel, if any.

In a parental placement, the petition shall state that the findings required by ([§ 63.2-1232](#)) have been met and should be accompanied by the following documentation:

- Copies of documents executing consent.

- A copy of the court order transferring custody of the child to the prospective adoptive parents.
- A copy of the home study required by ([§ 63.2-1231](#)).

#### 6.2.9.2 Acknowledge the interlocutory order

In a parental placement adoption, if the other requirements of ([§63.2-1230 through 63.2-1240](#)) were met, the circuit court may dispense with an investigation and proceed with the entry of an interlocutory order. The agency which completed the home study required by ([§ 63.2-1231](#)) is responsible for providing supervision after the entry of the interlocutory order. The agency shall review and acknowledge to the court receipt of the interlocutory order. A copy of the acknowledgment should be sent to the VDSS Adoption Records Specialist in the VDSS *Adoption* Unit.

#### 6.2.9.3 Supervision of the placement

The circuit court reviews the home study when it is satisfied that all the requirements have been complied with, the petitioner is financially able to maintain the child, is morally suitable and a proper person to care for and train the child, the child is suitable for adoption by the petitioner, and the best interests of the child will be met through adoption; the court shall enter an interlocutory order.

An interlocutory order declares that subject to the probationary period prior to the filing of the Final Order of Adoption that the child shall be for all purposes the child of the petitioner.

#### 6.2.9.4 Make supervisory visits

The purpose of *supervisory* visits should be for regular and ongoing support, monitoring and counseling of the family, and to document the progress of the placement. Since the goal of these visits is to facilitate the integration of the child into the family, the number of visits should be determined by the special needs of the child and the family for a successful adoptive home.

The agency shall make at least three visits to the child within a six-month period following the date the interlocutory order is entered ([§ 63.2-1212](#)).

- The visits shall be in the presence of the child.
- One visit shall be in the home of the petitioners with the child and both petitioners present unless one of the petitioners is no longer residing in the home.

**Child and Family Services Manual****F. Adoption**

- Visits shall be scheduled at least 90 days elapse between the first and last visit.
- If one of the petitioners is no longer living in the home, the agency shall contact that petitioner to determine if he or she desires to remain a party to the proceedings. The report to court shall include the results of the contact.
- If the petitioners move from Virginia prior to completion of the three visits, the agency shall request assistance from an agency in the new state of residence in completing the visits through the ICPC.
  - An Interstate Compact form (100a) is completed and forwarded to ICPC at the VDSS with a cover letter clearly stating the needed services and any collateral materials the out-of-state agency may need.
- After the entry of the interlocutory order, the court is the sender and no longer the agency ([§ 63.2-1240](#)).
  - Collateral material would include social and medical information on the child and birth parents and the home study on the adoptive family. A copy of the interlocutory order is also included in the materials.

**6.2.9.5 Report of Visitation**

The purpose of the visits is to determine for the court whether the best interest of the child will be met by finalizing the adoption. At a minimum, the Report of Visitation shall include a mutual assessment of the placement, the agency contacts, the adjustment of the child and family with the placement, and services the supervising child placement agency has provided or needs to be provided.

The questions specified in [§ 63.2-1238](#) shall be answered:

- Whether the petitioners are financially able, morally suitable, in satisfactory physical and mental health, and a proper person to care for and train the child.
- What the physical and mental condition of the child is.
- Why the parents, if living, desire to be relieved of the responsibility for the custody, care and maintenance of the child, and what their attitude is toward the proposed adoption.

**Child and Family Services Manual****F. Adoption**

- Whether the parents have abandoned the child, or are morally unfit to have custody over him.
- The circumstances under which the child came to live, or will be living, in the home of the petitioners.
- Whether the child is a suitable child for adoption by the petitioner.
- What fees have been paid by the petitioners or in their behalf which have assisted them in obtaining the child.
- Relevant physical and mental history of the birth parents, if known.

The report should include:

- Interviews with:
  - Adoptive parents.
  - Child, if of the age to participate.
  - All biological/legal parents to determine their attitude, physical and mental health history, and background information.
- If an interview is not possible, contact should be made by mail or telephone, or through another agency.
- When a letter is sent to the parents of a child born out-of-wedlock, it shall be sent by or certified mail.
  - The letter shall be delivered to the addressee only and a return receipt requested.
- Contact with professional persons concerned with the case.
- Home visits
- Medical statements on the child and adoptive parents in non-relative cases.
- Information on the adoptive parents' income in order to determine the fee assessed.

If unable to complete the investigation:

- The court and the *VDSS Adoption* Unit shall be notified if the investigation and report are delayed and cannot be completed within 60 days.
- A report should be sent to the court with a request for additional time to complete the report. The request should include the reasons for the delay or inability to complete the investigation, and the period of time needed to complete the investigation.
- If the petitioners cannot be contacted or located, the agency is to submit a report to the court and recommend the petition be dismissed.
- If the petitioners move from Virginia before completion of the investigation, the agency requests assistance from the new state of residence through ICPC.
  - An Interstate Compact Form (100A) is completed and forwarded to the ICPC with a cover letter clearly stating the needed services and any collateral materials the out-of-state agency may need in completing their services.
- Collateral materials would include social and medical information on the child and birth parents and the home study on the adoptive family.

#### 6.2.9.6 Prepare the Report of Visitation

Use the format for the home study required by [§ 63.2-1238](#) shown in the Forms section with the following changes:

- Title the report "Report of Visitation."
- Direct the report to the appropriate circuit court and the appropriate circuit court judge.
- Put the court chancery number and the Virginia adoption case number on the report if available.
- Cite the appropriate code section under which the agency was directed to do the report ([§§ 63.2-1208 B](#) and [63.2-1238](#)).
- Insert a section on consent after the section on separation from birth parents.
- State who consented to the adoption and the manner in which consent was executed.



**Child and Family Services Manual****F. Adoption**

- If applicable, state whose consent was not required or can be waived and why.
- The report shall include the physical and mental history of birth parents, if it is known.

**6.2.9.7 Distribute copies of the report**

Send copies to:

- Original to the court with the Certificate of Service.
- *VDSS Adoption Unit*.
- Attorney.
  - If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for final disposition.
- A copy may be sent to the adoptive parents.

If a letter of opposition to the adoption is received from the biological parents, the letter is to be sent to the court with the report. A copy is sent to the attorney and to the *VDSS Adoption Unit* with the copy of the report. A copy is kept in the agency's file.

- Keep one copy in agency's file until final action by the court.
- The agency should submit any additional information requested by the *VDSS Adoption Unit*.
- In those instances where an LDSS has provided services and the court may enter a final order, the agency shall include a statement as to the amount of the fee assessed and whether the fee has been paid. Proof of payment of the fee shall be provided by the LDSS to the court prior to the entry of the final order ([§ 63.2-1248](#)).

#### 6.2.9.8 Submit a Supplementary Report

Sometimes after the required report has been submitted, the agency receives factual information on a case that would influence the action to be taken by the court. The agency shall submit a Supplementary Report when factual information is received after making the required report and no court action has been taken or the case is pending as the result of a request for additional time to complete the investigation.

- Send the original to the court, a copy to the *VDSS Adoption* Unit, and a copy to the attorney. One copy is retained in the agency's file.
- Review the interlocutory order

#### 6.2.9.9 What should be done following final disposition

A final disposition is the final action taken by the court in an adoption, which means the case is closed. A final order granting an adoption means the child acquires parents other than his natural parents and a person acquires a child other than by birth. A final order is not subject to attack after six months from the date it was entered and is final for all purposes ([§ 63.2-1213](#)).

#### 6.2.9.10 Acknowledgment and disposition of case material

The agency shall review and acknowledge receipt of the Final Order of Adoption or any other order of final disposition. A copy of the acknowledgment to the court should be sent to the *VDSS Adoption* Unit.

The agency should purge the record of duplicative material and send to the *VDSS Adoption* Unit for preservation original copies of all pertinent material that has not been sent (See [Section 3.10.2](#) for more information about sending the adoption file for preservation).

The agency may wish to work out a procedure with their circuit court whereby the circuit court will notify the juvenile and domestic relations court when the Final Order of Adoption is entered so that the juvenile and domestic relations court can remove the case from their docket.

#### 6.2.10 Adoption recommended by birth parents, physicians, Virginia licensed attorneys, and clergymen

A designated adoption is an adoption where the birth parents or a person other than a CPA recommends the prospective adoptive placement of a child. Birth parents, physicians, licensed attorneys in Virginia, and clergymen may recommend

**Child and Family Services Manual****F. Adoption**

prospective adoptive parents when they are familiar with such parent or child ([§ 63.2-1226](#)).

The birth parents can request the LDSS to accept custody of a child by signing a Permanent Entrustment Agreement or by petitioning the court to be relieved of their rights.

- When a CPA is requested to accept custody of a child for the purpose of placing the child with adoptive parents recommended by the birth parents) or a person other than someone recommended by a CPA, either the parental placement provisions or the agency provisions shall apply to the adoption at the election of the birth parents ([§ 63.2-1226](#)).

The agency shall:

- Provide information to the birth parents on the parental placement adoption procedures and the agency placement adoption procedures.
- Provide the birth parents with the opportunity to be counseled by a service worker.
- Provide the birth parents with the opportunity to be represented by independent legal counsel.
  - The documentation for the method chosen to provide these services should be kept with the child's record.
- The agency should determine if an approved home study has been completed on the prospective adoptive family.
  - If a home study has been completed, the agency should review the home study and determine whether it is in the best interest of the child.
  - If a home study has not been completed, a home study shall be initiated accordingly:
    - When the birth parents elect the LDSS placement adoption procedures, the agency initiates a home study of the prospective adoptive parents.
    - When the birth parents elect the non-agency placement adoption procedures, the LCPA initiates a home study of the prospective adoptive parents.

- If the prospective family lives out of state, the agency shall use the ICPC procedures to obtain an approved home study from the other state.

### 6.3 Close relative adoptions

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A close relative adoption shall be an adoption by the *child's adult relatives, including stepparents, stepbrothers, stepsisters, and all other adult relatives of the child by marriage or adoption.*

Chapter 12 of the Code of Virginia §§ [63.2-1242.1](#) through [63.2-1242.3](#) provides guidance on the provisions for close relative adoptions in the Commonwealth.

If a petition is filed while the child is under 18 years of age and the child then turns 18 years of age, the petition will not become invalid because the child reaches 18 years of age prior to the entry of a Final Order of Adoption.

In a close relative placement, the court may accept a written consent signed under oath by the birth parents and notarized. The birth parent does not have to execute consent in court.

#### 6.3.1 Close relative placement for a child who has been in the home less than *two* years

When a child who continuously resided in the home or has been in the continuous physical custody of a close relative for less than *two* years:

- The adoption proceedings, including the court approval of the home study, shall begin in the juvenile and domestic relations district court pursuant to the parental placement adoption provisions according to [§63.2-1232](#).

Exceptions to the parental placement adoption proceedings are:

- The birth parents' consent does not have to be executed in juvenile and domestic relations district court in the presence of the prospective adoptive parents.
- The simultaneous meeting specified in [§63.2-1231](#) is not required.
- No hearing is required for this proceeding.

The close relative may file in circuit court after the juvenile and domestic relations district court:

**Child and Family Services Manual****F. Adoption**

- Issues an order accepting the consents or otherwise deals with the birth parents rights.
- Appoints the close relative custodians of the child.

**6.3.2 What is needed to file in circuit court**

- When the home study is filed with the circuit court an Order of Reference, investigation, and Report of Investigation shall not be made unless the circuit court in its discretion requires an investigation and Report of Investigation to be made.
- The circuit court may omit the probationary period and the interlocutory order and enter a Final Order of Adoption. The circuit court may waive appointment of a guardian ad litem (GAL) for the child who is subject to a close relative adoption ([§ 63.2-1242.2](#)).
- If the circuit court determines the need for an additional investigation, it shall refer the matter to the CPA that completed the home study. The CPA shall complete the report in the timeframe specified by the circuit court.
- No hearing is required in the juvenile and domestic relations court.

**6.3.3 Close relative placement for a child who has been in the home two or more years**

When a child who continuously resided in the home or has been in the continuous physical custody of a close relative for *two* years or more, the adoption proceeding of the parental placement provisions shall not apply and the adoption proceeding shall begin in the circuit court according to [§ 63.2-1242.3](#).

The circuit court may waive appointment of a GAL for the child who is subject to a close relative adoption ([§ 63.2-1242.3](#)).

**6.3.4 Finalizing the adoption**

An Order of Reference, investigation, and Report of Investigation shall not be made unless the circuit court in its discretion requires an investigation and Report of Investigation to be made.

The circuit court may omit the probationary period and the interlocutory order and enter a Final Order of Adoption.

In the event that the circuit court determines that there is a need for an investigation, it shall be referred to the local director of the LDSS for an investigation and report.

### 6.3.5 Responsibilities of the agency

When the Order of Reference and the interlocutory order are omitted and a Final Order of Adoption is entered at the time the petition and consent are filed, the CPA has no responsibility in this type of adoption.

However, the circuit court may order a thorough investigation of the matter and report to be performed by the applicable agency and submitted to the court within a time frame determined by the circuit court. In this case, the agency has the responsibility to complete the investigation and report to the circuit court as required in [§ 63.2-1208](#).

#### 6.3.5.1 Set up case records

A close relative adoption case record, where the circuit court has entered an Order of Reference and/or an interlocutory order, should contain the following documents:

- Service Application
  - When the Order of Reference and/or interlocutory order are received by the agency, the court order serves as the Service Application.
- All court orders.
- Report of Investigation/Home Study
- Report of Visitation
- All correspondence
- Narrative

#### 6.3.5.2 Review the petition

The petition is a written request filed with the court by prospective adoptive parents asking the court to legalize a relationship with a child.

The petition should be reviewed to verify the petition is filed in the locality the petitioner lives, in the locality the CPA that placed the child is located, in the locality the birth parent executed a consent pursuant to [§63.2-1233](#), or where the petitioners reside and the case has been referred to the proper agency ([§ 63.2-1201](#)).

The petition shall be signed by the petitioner and by counsel, if any ([§ 63.2-1201](#)).

### 6.3.5.3 Review the interlocutory order

In this type of close relative adoption case, the court may enter an interlocutory order after the investigation is completed, or omit the interlocutory order and enter a Final Order of Adoption.

If an interlocutory order is entered, the agency shall review and acknowledge to the court receipt of the interlocutory order. A copy of the acknowledgment shall be sent to the VDSS *Adoption* Unit.

### 6.3.5.4 Complete the investigation if ordered at the discretion of the circuit court

When the circuit court requires an investigation, the following areas shall be addressed (§§ [63.2-1208](#) and [63.2-1238](#)):

- Whether the petitioners are financially able, morally suitable, in satisfactory physical and mental health, and a proper person to care for and train the child.
- The physical and mental condition of the child.
- Why the parents, if living, desire to be relieved of the responsibility for the custody, care and maintenance of the child, and what their attitude is toward the proposed adoption.
- Whether the parents have abandoned the child or are morally unfit to have custody over him.
- The circumstances under which the child came to live and is living in the home of the petitioners.
- Whether the child is a suitable child for adoption by the petitioners.
- What fees have been paid by the petitioners or in their behalf to persons or agencies which have assisted them in obtaining the child.

Ensure that the investigation required by § [63.2-1208](#) includes:

- Interviews with:
  - Adoptive parents.
  - Child, if of the age to participate.

**Child and Family Services Manual****F. Adoption**

- All natural/legal parents to determine their attitude, physical and mental health history, and background information.
  - If an interview is not possible, contact should be made by mail or telephone, or through another agency.
  - When a letter is sent to the parents of a child born out-of-wedlock, it shall be delivered to the addressee only and a return receipt requested
- References shall be contact in person, by mail, or telephone.
- Professional persons concerned with the case.
- Visits to the adoptive home
- Information on the adoptive parents' income in order to determine the fee assessed

If unable to complete the investigation the court and subsequent report within 60 days or another time frame ordered by the court, the court and the VDSS *Adoption* Unit shall be notified. The notification to the court should include a request for additional time to complete the investigation and include the reasons for the delay or inability to complete the investigation and subsequent report in the allotted period of time.

If the petitioners cannot be contacted in order to conduct the investigation, the agency shall submit a report to the court and recommend the petition be dismissed.

If the petitioners move from Virginia before completion of the investigation, the agency should request the help of an out-of-state/country agency through ICPC.

- Send a copy to the attorney. If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for disposition. Do not send the petitioners a copy of the report.
- Keep a copy in agency's file until final disposition.
- If a letter of opposition to the adoption is received from the birth parents, the letter is to be sent to the court with the report. A copy is sent to the attorney and to the *VDSS Adoption* Unit. A copy is kept in the agency's file.



- The agency should submit any additional information requested by the VDSS *Adoption* Unit.
- In those instances where an LDSS has provided services and the court may enter a final order, the agency shall include a statement as to the amount of the fee assessed and whether the fee has been paid. Proof of payment of the fee shall be provided by the LDSS to the court prior to the entry of the final order ([§ 63.2-1248](#)).

#### 6.3.5.5 Submit a Supplementary Report

Sometimes after the required report has been submitted, the agency receives factual information on a case that would influence the action to be taken by the court. The agency shall submit a Supplementary Report when factual information is received after submitting the required report and no court action has been taken or the case is pending as a result of a recommendation for additional time to complete the investigation.

The original report shall be sent to the court, a copy to the VDSS *Adoption* Unit, and a copy to the attorney. One copy is retained in the agency's file.

#### 6.3.5.6 Conduct the supervisory visits

In a close relative adoption, the court at its discretion can omit the probationary period and an interlocutory order and enter a Final Order of Adoption. If the circuit court determines that there is a need for additional investigation and reports, the agency which completed the home study shall complete the supervision and reports in the time designated by the court. The interlocutory order supervisory visits shall be made in accordance with ([§ 63.2-1212](#)):

- The agency shall make at least three visits to the child within a six-month period following the date the interlocutory order is entered.
- Visits shall be scheduled so that no less than 90 days elapse between the first and last visit.
- The visits shall be in the presence of the child. One visit shall be in the home of the petitioners with the child and both petitioners present unless the petition was filed by a single parent or one of the petitioners is no longer residing in the home.
- If one of the petitioners is no longer living in the home, the agency shall contact that petitioner to determine if he/she desires to remain a party to

the proceedings. The report to the court shall include the results of the contact.

- If the petitioners move from Virginia prior to completion of the three visits, the agency shall request the assistance of an agency in the new state of residence in completing the visits. This is done through ICPC.

#### **6.3.5.7 Complete the Report of Visitation**

The Report of Visitation is sent to the court within **15 days** of the last visit.

The format for the Report of Visitation shall be that recommended by the VDSS *Adoption Unit*.

#### **6.3.5.8 Distribute copies of the report**

Send copies to:

- Original to the court with the Certificate of Service
- VDSS Adoption Unit
- Attorney
  - If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for final disposition.
  - Do not send a copy of the report to the petitioners.
- Agency keeps a copy in the agency's file until the final action by the court.

#### **6.3.5.9 What should be done following final disposition**

Final disposition is the final action taken by the court in an adoption, which means the case is closed. A final order granting an adoption means the child acquires parents other than his natural parents and a person acquires a child other than by birth.

After the expiration of six months from the date of entry of the Final Order of Adoption from which no appeal has been taken, the validity of the Final Order of Adoption shall not be subject to attack for any reason including fraud, duress, failure to give any required notice, failure of any procedural requirement, or lack of jurisdiction ([§ 63.2-1216](#)).

#### 6.3.5.10 Acknowledgment

The agency shall review and acknowledge receipt of the Final Order of Adoption or any other order of final disposition. A copy of the acknowledgment to the court should be sent to the VDSS *Adoption* Unit. The agency should advise the court of any problem that could affect the legality of the adoption.

#### 6.3.5.11 Closing the case

The agency should purge the record of duplicate material and send to the VDSS *Adoption* Unit for preservation original copies of all pertinent material that has not been sent (See [Section 3.10.4](#) for more information about sending the adoption file for preservation).

### 6.3.6 Duties of the attorney

In this type of adoption, the attorney has primary responsibility for the work that should be done. The CPA should be aware of these responsibilities although it may have no responsibility to provide services in such cases.

The attorney:

- Files the petition for adoption ([§ 63.2-1201](#)).
  - The petition shall be signed by the petitioner and the petitioner's attorney, if any.
  - If the petition seeks entry of a final order without referral for investigation, the petition shall be under oath.
- Obtains required consents, which are to be filed with the petition for adoption. When the child has resided in the home of the prospective adoptive parents continuously for at least *two* years, consent is executed in accordance with [§ 63.2-1202](#).

The consent shall be in writing, signed by the birth parent under oath, and acknowledged by a notary public ([§ 63.2-1202](#)). Consent is from:

- The mother
- The legal father
  - The mother's husband is presumed to be the child's legal father. Even if he is not the child's birth father, his parental rights shall be addressed.

## Child and Family Services Manual

## F. Adoption

- If the mother is divorced and the child was born within ten (10) months of the divorce decree, the former husband is considered the legal father.
- This presumption may be rebutted by sufficient evidence, satisfactory to the court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child. In this case, the consent of the mother's husband is not required.
- The birth father
  - The court may accept the written consent of the birth father who is not married to the birth mother of the child at the time of the child's conception or birth provided that the required identifying information is filed in writing with the court.
  - The written consent can be signed prior to the birth or shall be executed after the birth of the child, shall advise the birth father of his opportunity for legal counsel and shall be presented to the court for acceptance.
  - The consent may waive further notice of the adoption proceedings.
- The child who is 14 years of age or older, unless the court finds that the best interest of the child will be served by not requiring such consent.

If consent cannot be obtained from at least one parent, the court shall deny the petition and determine custody of the child pursuant to [§ 16.1-278.2](#) unless all parents are deceased ([§ 63.2-1233.3](#)).

If both parents are deceased, the court, after hearing evidence to that effect, may grant the petition without the filing of any consent ([§ 63.2-1233.5](#)).

When the consent of one parent has been obtained, the consent of the other parent is not required:

- If the parent is deceased ([§ 63.2-1202](#));
- When the parents of a child born in wedlock are divorced and the residual parental rights and responsibilities of the parent have been terminated by the divorce decree or another order of a court ([§ 63.2-1202](#));

- When consent has been obtained from the birth mother, consent of the birth father who was not married to the birth mother at the time of the child's conception or birth is not required if ([§ 63.2-1202](#));
- The birth mother swears under oath and in writing that the identity of the birth father is not reasonably ascertainable ([§ 63.2-1233 1a](#));
- The identity of the birth father is ascertainable and his whereabouts are known, he is given notice of the proceedings by registered or certified mail to his last known address and fails to object to the proceeding with twenty-one days of the mailing of the notice ([§ 63.2-1233 1a](#)); or
- The putative birth father named by the birth mother denies under oath and in writing paternity of the child ([§ 63.2-1203](#)).

When the consent of one parent has been obtained, the consent of the other parent may be waived if the court determines that consent is being withheld contrary to the best interest of the child or is unobtainable ([§ 63.2-1203](#)):

- **Fifteen days** after personal service of notice of the petition for adoption (when personal notice is by certified or registered mail, there should be a returned postal receipt signed by the parent to indicate that notice was received.); or
- If personal service is unobtainable, **ten days** after the completion of the execution of an order of publication against the party or parties whose consent is required; or
- If the judge certifies on the record that the identity of any person whose consent is required is not reasonably ascertainable.

No consent shall be required from the birth father of a child placed for adoption through a parental placement when such father is convicted of rape or incest and the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of any of the adoption proceedings ([§ 63.2-1233 7](#)).

- Prepares the appropriate orders.
  - In this type of placement, neither an Order of Reference ([§ 63.2-1238](#)) nor an interlocutory order ([§ 63.2-1210 4](#)) needs to be entered. In most cases, a final order is filed with the petition and consent.
- Assists the petitioners in obtaining a new birth certificate for the child.

Before entering a Final Order of Adoption, the court shall require the preparation of a Report of Adoption form (VS-21) furnished by the state registrar of vital records (See [Section 3.11.1](#) for more information about the Report of Adoption form).

The report shall:

- Include such facts as are necessary to locate and identify the original certificate of birth.
- Provide information necessary to establish a new certificate of birth.
- Identify the order of adoption and be certified by the clerk of court.

### **6.3.7 Duties of the circuit court when the child has resided in the home of the prospective adoptive parents continuously for at least two years**

The following are duties of the circuit court regarding acting on petitions for adoption. These duties do not fall under the purview of the agency and require no action on the part of the agency. Pending certain actions taken by the circuit court as described below, documents generated in the course of the court acting on the petition may be required to be sent to the agency for filing and/or submission to the VDSS Adoption Unit, Adoption Records Specialist.

The clerk of court where the petition is filed sends a copy of the petition, Order of Reference, or interlocutory order and all exhibits to the LDSS. A copy is also sent to the Commissioner. The petition shall be signed by the petitioner and counsel of record, if any ([§ 63.2-1201](#)).

If, after considering evidence, the court finds that the valid consent of any person whose consent is required is withheld contrary to the best interests of the child or is unobtainable, the court may grant the petition without consent ([§ 63.2-1203](#)):

- **Fifteen (15) days** after personal service of notice of the petition on the party whose consent is required;
- If personal service is unobtainable, **ten (10) days** after the completion of the execution of an order of publication against the party whose consent is required; or
- If the judge certifies on the record that the identity of any person whose consent is required is not reasonably ascertainable.
- An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence which would refute such an affidavit ([§ 63.2-1203 A](#)).

**Child and Family Services Manual****F. Adoption**

- The court may omit the Order of Reference and the interlocutory order and enter a Final Order of Adoption.
- In those parental placements where an interlocutory order is entered, visitations will be required ([§ 63.2-1212 A](#)), and the agency is required to furnish a report of the finding of the visitation. The court may take any action it finds appropriate if the report is not submitted in the specified time. The court may:
  - Enter a Final Order of Adoption;
  - Enter an interlocutory order;
  - Deny the petition;
    - If the court denies the petition and the child is without proper care, the court may appoint a guardian for the child or commit the child to a custodial agency ([§ 63.2-1209](#)).
  - Dismiss the petition;
  - Continue the proceeding; or
  - Schedule a hearing.

When no action is taken by the court for at least one year from the entry of the last order, the clerk of court places the case on the docket for review by the court ([§ 63.2-1214](#)).

The clerk of court sends to the agency and to the Commissioner a copy of any order entered. Upon entry of a final order or any other final disposition, the clerk forwards all reports submitted with the final order to the Commissioner for preservation ([§ 63.2-1213](#)).

When services have been provided by an LDSS, the court shall assess a fee, in accordance with regulations and fee schedules established by the State Board of Social Services. The court shall not enter a Final Order of Adoption until proof of payment of fees has been received ([§ 63.2-1248](#)).

The court may not enter a Final Order of Adoption without the information needed to complete a Report of Adoption (VS-21), unless the court determines this information is unavailable or unnecessary. The Report of Adoption (VS-21) provides information that is needed to locate and identify the original birth certificate and to establish a new birth certificate.

After the entry of a final order, the clerk of court sends to the State Department of Health, Bureau of Vital Records and Health Statistics, a completed Report of Adoption (VS-21), and a completed Application for a Certified Copy of a Birth Record (VS-6), with a check from the petitioners for the required fee.

### 6.3.8 Duties of the Commissioner

The VDSS *Adoption* Unit and ICPC are the offices which carry out the duties of the Commissioner in adoptions. These duties include:

- Establishing a permanent record of all adoptions petitioned and providing post adoption services to adult adoptees and adoptive parents seeking background information on the biological family (§ [63.2-1246](#)).
- Monitoring and evaluating adoption cases and submitting reports to courts (§§ [63.2-1208 B](#) and [63.2-1212](#)).
- Arranging, through ICPC, for investigation and supervisory visits to be made when the petitioners move prior to completing the adoption.

## 6.4 Stepparent adoptions

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A stepparent adoption is when the spouse or former spouse of the birth or adoptive parent is adopting the child. The regulations governing parental placement adoptions are not applicable in stepparent adoptions because no placement occurs in a stepparent adoption. In a stepparent adoption, consent has either been obtained or is not required in certain circumstances as outlined in this section. However, when a former spouse is adopting, the consent of the birth parent is required (§ [63.2-1201.1](#)).

Chapter 12 of the Code of Virginia §§ [63.2-1241](#) through [63.2-1242](#) provides guidance on stepparent adoptions in the Commonwealth.

*When a stepparent files a petition for adoption in circuit court, a national criminal background check shall be completed on the stepparent at his/her cost (§ [19.2-392.02 H](#)). The court shall consider the results of the national background check to determine whether an investigation is necessary (§ [63.2-1242](#)).*

The investigation shall be undertaken only if the court determines that there should be an investigation before a Final Order of Adoption is entered (§ [63.2-1242](#)). If the court makes such a determination, the agency becomes involved when the adoption petition is filed and the circuit court enters the Order of Reference.



### 6.4.1 Case opening

A case is opened when a petition for adoption is received from the circuit court. A petition is a written request filed with the court by prospective adoptive parents asking the court to legalize a relationship with a child.

The steps for opening a case include the following:

#### 6.4.1.1 Set up a case record

The case record should contain the following documents, if applicable:

- All court orders.
- All required documentation.
- Report of Investigation.
- All correspondence.
- Narrative.

If two children are on the same petition, only one case is opened.

### 6.4.2 Review the petition and Order of Reference

The petition for adoption is usually accompanied by an Order of Reference, which is an order from the court directing an agency to make an investigation and report.

The petition and Order of Reference should be reviewed to ensure the petition is filed in the court having jurisdiction 1) where the petitioners reside, or 2) in the locality where the birth parents executed consent occurred ([§ 63.2-1201](#)) and the case has been referred to the proper agency. The petition shall be signed by the petitioner and by counsel of record, if any ([§ 63.2-1201](#)).

The petition shall ask permission to adopt a minor child who is not legally the petitioner's by birth.

If the agency receives an Order of Reference in either of the following cases, the agency should contact ICPC to request assistance with completion of the investigation.

- The petitioners are legal residents of Virginia but are living outside the state; or
- The petitioners move from the state after the petition is filed.

In some stepparent adoptions, the court has the option of dispensing with the investigation and entering a final order. If an Order of Reference is entered in these cases, the attorney should be contacted by the CPA to make sure he is aware the court may enter a final order without an investigation.

If the Order of Reference is not rescinded, the agency is responsible for making the investigation and report.

If the petitioners move from the agency's jurisdiction but within Virginia or if it appears to be in the best interest of the child for another agency to make the investigation, the agency should request that the court enter an amended order referring the investigation to another agency. If the court denies the request for an amended order, the agency shall complete the investigation and report. The services of another agency may be requested in writing by the agency ordered to make the investigation.

#### **6.4.2.1 Respond to inquiries made during the investigation**

If an investigation is required by the court, the following items from the Code of Virginia §§ [63.2-1208.D](#) and [63.2-1242](#) are to be addressed:

- Whether the petitioners are financially able, morally suitable, in satisfactory physical and mental health, and a proper person to care for and train the child. A child protective service check and references are not needed.
- The physical and mental condition of the child. Medical reports are not needed.
- Why the parents, if living, desire to be relieved of the responsibility for the custody, care and maintenance of the child, and what their attitude is toward the proposed adoption.
- Whether the parents have abandoned the child or are morally unfit to have custody over him.
- The circumstances under which the child came to live and is in the physical custody the petitioner.
- Whether the child is a suitable child for adoption by the petitioner.
- What fees have been paid by the petitioner or in their behalf to persons or agencies which have assisted them in obtaining the child.

- The report shall include the physical and mental history of birth parents, if it is known.

A statement in the report of the efforts made to encourage birth parents to provide information related to all reasonably ascertainable background, medical, and psychological records of the child to the prospective adoptive parents. A list of reports given to the prospective adoptive parents shall also be submitted with the Report of Investigation.

#### 6.4.2.2 Perform the investigation

The investigation includes interviews with:

- Adoptive parents.
- Child, if of the age to participate.
- Parents, to include the birth mother, the presumed father, acknowledged father, adjudicated father, and/or putative father whose identity is known to determine their attitude, physical and mental health history, and background information.

If a face-to-face interview is not possible, contact should be made by mail, telephone, or through another agency.

- When a letter is sent to the parents of a child born out of wedlock, it shall be sent by certified mail. The letter shall be delivered to the addressee only and a return receipt requested.
- Contact professional persons concerned with the case.

The investigation also includes:

- Home visits to describe for the court the physical environment in which the child will live, and to observe interactions between the parent and child in a familiar environment.
- Information on the adoptive parents' income in order to determine the fee assessed.

If unable to complete the investigation, the court and the VDSS *Adoption* Unit shall be notified if the investigation and report are delayed and cannot be completed within 60 days ([§ 63.2-1208 B](#)).

A report should be sent to the court with a request for additional time to complete the investigation. The report should include the reasons for the delay or inability to complete the investigation and the period of time needed to complete the investigation.

If the petitioners cannot be contacted or located, the agency should submit a report to the court and recommend the petition be dismissed.

If the petitioners move from Virginia before completion of the investigation, the agency should request the assistance of an out-of-state agency, through ICPC in completing the investigation.

#### **6.4.2.3 Prepare the Report of Investigation**

The format of the report should be that recommended by the VDSS *Adoption* Unit.

For purposes of confidentiality, the report shall not contain identifying information on the legal/birth parent who is not a party to the petition. The report should contain a recommendation as to the action to be taken by the court.

#### **6.4.2.4 Distribute copies of the report**

Send copies to:

- Original to the court with the Certificate of Service showing that a copy of report was sent to the VDSS *Adoption* Unit ([§ 63.2-1208](#)).
- VDSS *Adoption* Unit with a completed Commissioner's Confidential Report.
- Attorney.
  - If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for disposition.
- Keep a copy in the agency's file until final disposition.

If a letter of opposition to the adoption is received from the legal/birth parent, the letter is to be sent to the court with the report. A copy is sent to the attorney and to the VDSS *Adoption* Unit with the copy of the report. A copy is kept in the agency's file.

The agency should submit any additional information requested by the VDSS *Adoption* Unit.

In those instances where the court may enter a final order, the agency shall include a statement as to the amount of the fee assessed and whether the fee has been paid. A receipt shall be provided to the court by LDSS which completed the investigation and court report, to provide proof of payment of the fee.

#### **6.4.2.5 Submit a Supplementary Report**

Sometimes after the required report has been submitted, the agency receives factual information on a case that would influence the action to be taken by the court. The agency shall submit a Supplementary Report when factual information is received after making the required report and no court action has been taken or the case is pending as a result of a recommendation for additional time to complete the report.

#### **6.4.2.6 What should be done following final disposition**

Final disposition is the final action taken by the court in an adoption which means the case is closed. A final order granting an adoption means the child acquires parents other than his natural parents and a person acquires a child other than by birth. A final order is not subject to attack for any reason after six months from the date it is entered and is final for all purposes ([§ 63.2-1216](#)).

#### **6.4.2.7 Acknowledgment and disposition of case material**

The agency shall review and acknowledge receipt of the Final Order of Adoption or any other order of final disposition. A copy of the acknowledgment to the court should be sent to the VDSS *Adoption* Unit. The agency should advise the court of any problem that could affect the legality of the adoption.

The agency should purge the record of duplicate material and send original copies of all pertinent material that has not been sent to the VDSS *Adoption* Unit for preservation.

#### **6.4.2.8 Case closing**

The case should be closed when the Final Order of Adoption is received.

### **6.4.3 Duties of the attorney**

The duties of the attorney do not require action by the agency but agencies should be aware of the responsibilities of attorneys in facilitating stepparent adoptions. Some courts allow petitioners to represent themselves in adoption proceedings. The decision to require an attorney rests with the court. The attorney:

- Files the petition, which shall be signed by the petitioner and counsel of record ([§ 63.2-1201](#)).
- Obtains required consents.
- Prepares appropriate orders.
- Informs the petitioners of the legal requirements.
- Assists the agency in obtaining necessary verifications.
- Assists the petitioners in obtaining a new birth certificate for the child.

#### 6.4.4 Duties of the Commissioner

The VDSS *Adoption* Unit carries out the duties of the Commissioner in stepparent adoptions. These duties include:

- Establishing a permanent record of all adoptions petitioned and providing post-adoption services to adult adoptees and adoptive parents seeking background information on the biological family.
- Monitoring adoption cases and submitting reports to courts when necessary.

#### 6.4.5 Duties of the circuit court

The duties of the circuit court do not require action by the agency but agencies should be aware of the responsibility of the court in facilitating stepparent adoptions.

If the petition is executed under oath and in writing, the court may, without an investigation, enter a final order in accordance with code [§ 63.2-1213](#) when:

- A natural parent, whose spouse has died, marries again, and the surviving parent and new spouse petition for adoption ([§ 63.2-1241 A](#)); or
- A legitimate child of a divorced parent is being adopted by a stepparent and the other natural parent has consented to the adoption ([§ 63.2-1241 B](#)); or
- A mother of an illegitimate infant marries, and her husband desires to adopt, provided ([§ 63.2-1241 C](#)):
  - The birth father consents;
  - The mother executes an affidavit that the identity of the father is not known or not reasonably ascertainable;

## Child and Family Services Manual

## F. Adoption

- The putative father denies paternity under oath and in writing, according to [§ 63.2-1202](#);
- The child is 14 years of age and has lived in the petitioners' home for at least five years;
- The alleged father is deceased;
- The non-custodial birth parent executes a denial of paternity under oath and in writing; or
- The non-custodial birthparent:
  - Is not an acknowledged father.
  - Is not adjudicated father.
  - Is not a presumed father.
  - Is a putative father who has not registered with the Virginia *Birth Father Registry* and if his identity is reasonably ascertainable, he has been provided notice to register with the [Virginia Birth Father Registry](#) and has failed to register in a timely manner.
- A single person who adopted a child marries and files a petition with his or her spouse ([§ 63.2-1241 D](#)).

The investigation and report shall be undertaken only if the court in its discretion determines that there should be an investigation before a Final Order of Adoption is entered ([§ 63.2-1242](#)). If the court makes such a determination, it shall refer the matter to the local director of social services.

The clerk of circuit court where the petition is filed sends a copy of the petition, Order of Reference, and all exhibits to the director of the LDSS and to the VDSS *Adoption Unit*. The petition shall be signed by the petitioner and counsel of record, if any ([§ 63.2-1201](#)).

The court will expeditiously consider the merits of the petition when the report is received ([§§ 63.2-1208 A](#) and [63.2-1242.2](#)).

The court may take any action it finds appropriate if the report is not submitted in the specified time ([§§ 63.2-1242](#) and [63.2-1208 B](#)). The court may:

- Enter a final order;

- Deny the petition;
- Dismiss the petition;
- Continue the proceeding;
- Schedule a hearing; or
- Enter an interlocutory order. In stepparent adoptions, the interlocutory order is almost always waived by the court in accordance with [§ 63.2-1210 1](#)).

The court may dispense with parental consent if the court finds that consent is withheld contrary to the best interest of the child or is unobtainable ([§ 63.2-1203 A](#)) provided that:

- Twenty-one days have elapsed since personal notice of the petition was served on the persons whose consent is required (when personal notice is by certified or registered mail, there should be a returned postal receipt signed by the parent to indicate that notice was received); or
- If personal service is unobtainable, ten days have elapsed after the completion of the execution of an order of publication against the persons whose consent is required; or
- The judge certifies on the record that the identity of the person whose consent is required is unobtainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable is sufficient evidence provided that there is no evidence before the court to refute the affidavit.

The court does not require consent when:

- The birth father is convicted of:
  - Rape;
  - Carnal knowledge of a child between the ages of 13 and 15; or
  - Adultery or fornication with his daughter or granddaughter, or his mother; and
  - The child was conceived from this action ([§ 18.2-366 B](#)).
- A parent is deceased ([§ 63.2-1203 B](#));



## Child and Family Services Manual

## F. Adoption

- The parents of a child born in wedlock are divorced and the residual parental rights and responsibilities of one parent have been terminated by the divorce decree or another order of the court ([§ 63.2-1202](#));
- A birth father denies under oath and in writing the paternity of the child. The denial cannot be withdrawn after ten days. Once the child is ten days old, any denial of paternity is final and constitutes a waiver of all rights,
- The parent has not visited or contacted the child for a period of six months without any justification ([§ 63.2-1202](#));
- A child born outside wedlock ([§ 63.2-1202](#));
- The father's identity is unknown;
- The putative father consents to the termination of all of his parental rights before the child is born ([§ 63.2-1202](#));
- The father is given notice of the adoption proceedings by certified or registered mail at his last known address and fails to object within 15 days of the date the notice was mailed ([§ 63.2-1233 1c](#)); or
- Once proper notice has been given and the non-consenting parent fails to appear in court either in person or by counsel the non-consenting parent waives any objection and right to consent to the adoption ([§ 63.2-1202](#)).

A death certificate for a deceased birth parent can be submitted to the court as evidence that the consent is not required ([§ 63.2-1203 3](#)).

When no action is taken by the court for at least one year from the entry of the last order, the clerk of court places the case on the docket for review by the court.

The clerk of court sends to the agency and to the *VDSS Adoption* Unit a copy of any order entered. Upon entry of a final order or any other final disposition, the clerk forwards all reports submitted with the final order to the *VDSS Adoption* Unit for preservation.

When services have been provided by a LDSS, the court shall assess a fee, in accordance with regulations and fee schedules established by the State Board of Social Services. The court shall not enter a Final Order of Adoption until proof of payment of fees has been received ([§ 63.2-1248](#)).

The court may not enter a Final Order of Adoption without the information needed to complete a Report of Adoption (VS-21), unless the court determines this information is unavailable or unnecessary. The Report of Adoption (VS-21) provides information that is needed to locate and identify the original birth certificate and to establish a new birth certificate.

After the entry of a final order, the clerk of court sends to the State Department of Health, Bureau of Vital Records and Health Statistics a completed Report of Adoption, VS-21, and a completed application for a certified copy of a birth record, VS-6, with a check for the required fee ([§ 32.1-262](#)).

## 6.5 Adult adoptions

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An adult adoption is the adoption of any person who is 18 years of age or older at the time that the adoption petition is filed.

Chapter 12 of the Code of Virginia §§ [63.2-1243](#) through [63.2-1244](#) provides guidance on adult adoptions in the Commonwealth.

### 6.5.1 Specifics for Adult Adoption

The circuit court may, without an investigation or supervisory period, enter a final order in the adoption of an adult if consent has been obtained from the person to be adopted, if the person to be adopted is:

- A stepchild parented by the petitioner at least three months;
- A child who is adopted by a close relative as defined in [§ 63.2-1242.1](#) as grandparent, great-grand parent, adult nephew or niece, adult *sibling*, adult uncle or aunt, or adult great uncle or great aunt;
- A birth child; or
- Any adult who has resided in the home at least three months before age 18.

The circuit court shall require an investigation and report when the petition for adoption is for a person 18 years of age or older when there is no relationship between the adoptee and the petitioner ([§ 63.2-1244](#)).

- The person to be adopted shall be at least 15 years younger than the petitioner.
- The petitioner and the person to be adopted shall have known each other for at least one year prior to the filing of the petition for adoption.

The circuit court may also, in its discretion, require an investigation in any adult adoption.

### **6.5.2 Responsibilities of the agency in adult adoption**

When the circuit court requires an investigation, the agency shall:

#### **6.5.2.1 Set up a case record**

A case record should contain the following documentations:

- Service Application (court order).
- All court documents.
- Report of Investigation.
- All correspondence.
- Narrative.

#### **6.5.2.2 Review the petition and Order of Reference**

The petition is a written request filed with the court by prospective adoptive parents asking the court to legalize a relationship with an (adult) child.

The Order of Reference is an order from the court directing an agency to make an investigation and report.

The petition and Order of Reference should be reviewed to be sure the petition is filed in the court having jurisdiction where the petitioners reside and the case has been referred to the proper agency. The petition shall be signed by the petitioner and by the counsel, if any ([§ 63.2-1201](#)).

If an Order of Reference is entered in one of the situations where an investigation is not required, the attorney should be contacted to make certain that he is aware the court may enter a final order without investigation. If the Order of Reference is not rescinded, the agency is responsible for making the investigation and report.

If the petitioners move from the agency's jurisdiction but within Virginia or if it appears to be in the best interest of the person being adopted for another agency to make the investigation:

- The agency requests that the court enter an amended order referring the investigation the agency in the location where the petitioner has taken up new residence.
- If the court denies the request for an amended order, the agency shall complete the investigation and report. The services of another agency can be requested by the agency ordered to make the investigation.
- The Order of Reference shall be acknowledged to the court with a copy to the *VDSS Adoption* Unit. The acknowledgement shall show the date of receipt of the order and the name of the agency ([§ 63.2-1208](#)).

### 6.5.2.3 Make inquiries during the investigation

In those cases in which an investigation shall be made, the report to the court shall be made within 60 days after the copy of the petition is forwarded ([§§ 63.2-1243](#) and [63.2-1208 B](#)).

The Code requires the following questions be answered ([§ 63.2-1244](#)):

- Whether the petitioners are financially able, morally suitable, in satisfactory physical and mental health, and a proper person to care for and train the person to be adopted.
- What the physical and mental condition of the person to be adopted is.
- Why the birth parent (if applicable) of the person to be adopted desire to be relieved of the responsibility for the custody, care, and maintenance for the person to be adopted and what their attitude is toward the proposed adoption.
- Whether the parents (if applicable) have abandoned the person to be adopted or are morally unfit to have custody over him.
- The circumstances under which the person to be adopted came to live and is living in the home of the petitioners.
- What fees have been paid by the petitioners or in their behalf, if appropriate.
- Relevant physical and mental history of the birth parents, if known to the person making the report.

**Child and Family Services Manual****F. Adoption**

- An investigation is not necessary to report the physical and mental history of the birth parents.
- This information is reported only if it is known to the agency.

**6.5.2.4 Perform the investigation**

The investigation includes:

- Interviews with:
  - Adoptive parents.
  - The person being adopted.
  - References - contact in person, by mail, or telephone.
  - Professional persons involved with either the petitioners or person to be adopted.
- A home visit.
- Medical statements on the adoptee and adoptive parents in non-relative cases.
- Information on the adoptive parents' income in order to determine the fee assessed.

If unable to complete the investigation:

- The court and the VDSS *Adoption* Unit shall be notified if the investigation and report are delayed and cannot be completed within 60 days.
- A report shall be sent to the court requesting additional time to complete the investigation. The report shall include the reasons for the delay or inability to complete the investigation and the period of time needed to complete the investigation.
- If the petitioners cannot be contacted or located to complete the investigation, the agency is to submit a report to the court and recommend the petition be dismissed.

**6.5.2.5 Prepare the Report of Investigation**

The format of the report shall be that recommended by the VDSS *Adoption* Unit.

For purposes of confidentiality, the report shall not contain identifying information on the biological family.

- The report shall contain a recommendation as to the action to be taken by the court ([§§ 63.2-1208 C](#) and [63.2-1244](#)).

#### **6.5.2.6 Distribute copies of the report**

- Send original to the court with Certificate of Service showing copy of report was sent to the VDSS *Adoption* Unit.
- Send one copy to the VDSS *Adoption* Unit with the completed Commissioner's Confidential Report.
- Send one copy to the attorney. If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for disposition. Do not send the petitioners a copy of the report.
- Keep a copy in the agency's file until final disposition.

The agency should submit any additional information requested by the VDSS *Adoption* Unit. In those instances where the court may enter a final order, the agency shall include a statement as to the amount of the fee assessed and whether the fee has been paid.

A receipt shall be provided to the court by the LDSS which completed the investigation and court report to provide proof of payment of the fee ([§ 63.2-1248](#)).

#### **6.5.2.7 Submit a Supplementary Report**

Sometimes after the required report has been submitted, the agency receives factual information on a case that would influence the action to be taken by the court. The agency shall submit a Supplementary Report when factual information is received after making the required report and no court action has been taken or the case is pending as a result of an extension for additional time to complete the investigation.

Send the original to the court, a copy to the VDSS *Adoption* Unit, and a copy to the attorney. One copy is retained in the agency's file.

### 6.5.2.8 What shall be done following entry of an interlocutory order, if the court in its discretion decides to enter the order

#### 6.5.2.8.1 Conduct supervisory visits

The agency shall make at least three visits within a six-month period following the date the interlocutory order is entered ([§ 63.2-1212](#)).

- The visits shall be in the presence of the adopted person.
- One visit shall be in the home of the petitioners with the adoptive person and both petitioners present unless one of the petitioners is no longer residing in the home.
- Visits shall be scheduled so that at least 90 days elapsed between the first and last visit.

If one of the petitioners is no longer living in the home, the agency should contact that petitioner to determine if he or she desires to remain a party to the proceedings. The report to court shall include the results of the contact.

If the petitioners move from Virginia prior to completion of three visits, the agency should request assistance from an agency in the new state of residence in completing the visits.

Since this type of adoption does not involve the placement of a child across state lines, the requirements of ICPC does not apply.

#### 6.5.3 Report of Visitation

The Report of Visitation is sent to the court **within 15 days** of the last visit.

The format for the Report of Visitation should be that recommended by the VDSS *Adoption Unit*.

#### 6.5.4 Distribute copies of the report

- Send original to the court with Certificate of Service.
- Send one copy to the VDSS *Adoption Unit*.
- Send one copy to the attorney. If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for final disposition. Do not send the petitioners a copy of the report.

- Keep one copy in agency's file until final action by the court.

The agency should submit any additional information requested by the VDSS *Adoption* Unit.

In those instances where an LDSS has provided services and the court may enter a final order, the agency shall include a statement as to the amount of the fee assessed and whether the fee has been paid.

Proof of payment of the fee shall be provided by the LDSS to the court prior to the entry of the final order ([§ 63.2-1248](#)).

### **6.5.5 What should be done following final disposition**

Final disposition is the final action taken by the court in an adoption which means the case is closed. A final order granting an adoption means the adult acquires parents other than his natural parents and a person acquires a child other than by birth. A final order is not subject to attack after six months from the date it was entered and is final for all purposes ([§ 63.2-1216](#)).

#### **6.5.5.1 Acknowledgement and disposition of case material**

The agency should review and acknowledge receipt of the Final Order of Adoption or any other order of final disposition. A copy of the acknowledgement should be sent to the VDSS *Adoption* Unit. The agency should advise the court of any problem that could affect the legality of the adoption.

The agency should purge the record of duplicate material and send to the VDSS *Adoption* Unit for preservation original copies of all pertinent material that has not been sent.

#### **6.5.5.2 Close the case**

The case should be closed when the Final Order of Adoption is received.

### **6.5.6 Duties of the attorney in an adult adoption**

The duties of the attorney do not require action by the agency but agencies should be aware of the responsibilities of attorneys in facilitating an adult adoption.

Some courts allow petitioners to represent themselves in adoption proceedings. The decision to require an attorney rests with the court. The attorney:

- Files the petition which shall be signed by the petitioner and by counsel, if any ([§ 63.2-1201](#)).



**Child and Family Services Manual****F. Adoption**

- Obtains required consents (in an adult adoption, only the consent of the person to be adopted is required) ([§ 63.2-1243 a](#)).
- Prepares appropriate orders.
- Informs the petitioners of the legal requirements.
- Assists the agency in obtaining necessary verifications.
- Assists the petitioners in obtaining a new birth certificate for the person being adopted.

**6.5.7 Duties of the court**

The CPA should be aware of these responsibilities of the court although it will have limited responsibility for providing services in these cases unless requested by the court.

The investigations and visitations shall not be required unless the court, in its discretion, so requires ([§ 63.2-1244](#)).

The clerk of court where the petition is filed sends a copy of the petition, Order of Reference, and all exhibits to the director of the LDSS and to the Commissioner. The petition shall be signed by the petitioner and by counsel, if any ([§ 63.2-1201](#)).

The circuit court shall expeditiously consider the merits of the petition upon receiving the Report of Investigations ([§ 63.2-1208](#)). The court may:

- Enter a final order;
- Deny the petition;
- Dismiss the petition;
- Continue the proceeding;
- Schedule a hearing; or
- Enter an interlocutory order (an interlocutory order is not required in an adult adoption and is seldom entered by the court).

When no action is taken by the court for at least one year from the entry of the last order, the clerk of court places the case on the docket for review by the court ([§ 63.2-1212](#)).

The clerk of court sends to the agency and to the Commissioner a copy of any order entered. Upon entry of a final order or any other final disposition, the clerk of court forwards all reports submitted with the final order to the Commissioner for preservation. ([§ 63.2-1213](#))

If the petition is executed under oath, the court may, without an investigation, enter a final order in the adoption of an adult if the person to be adopted is ([§ 63.2-1244](#)):

- A stepchild parented by the petitioner at least three months;
- A child adopted by a close relative as defined as a grandparent, great-grandparent, an adult nephew or niece, adult *sibling*, adult uncle or aunt, or adult great uncle or great adult who has lived in the home at least three months;
- A birth child; or
- Any adult who has resided in the home at least three months before age 18.

When services have been provided by an LDSS, the court shall assess a fee, in accordance with regulations and fee schedules established by the State Board of Social Services. The court shall not enter a Final Order of Adoption until proof of payment of fees has been received ([§ 63.2-1248](#)).

The court may not enter a Final Order of Adoption without the information needed to complete a Report of Adoption (VS-21), unless the court determines this information is unavailable or unnecessary. The Report of Adoption (VS-21) provides information that is needed to locate and identify the original birth certificate and to establish a new birth certificate ([§ 63.2-1248](#)).

After the entry of a final order, the clerk of court sends to the State Department of Health, Bureau of Vital Records and Health Statistics a copy of the Final Order of Adoption, which incorporates a change of name.

#### 6.5.8 Duties of the Commissioner

The *VDSS Adoption* Unit is the office which carries out the duties of the Commissioner in adoptions. These duties include:

- Establishing a permanent record of all adoptions petitioned and providing post adoption services to adult adoptees and adoptive parents seeking background information on the biological family ([§ 63.2-1246](#)).
- Monitoring and evaluating adoption cases and submitting reports to courts ([§ 63.2-1244](#)).

## 6.6 Intercountry adoptions

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An inter-country adoption is the placement into Virginia of a child already adopted in a foreign country or placement into Virginia of a child from a foreign country for the purpose of adoption. In most inter-country adoptions, the adoptive parents are encouraged to re-adopt in Virginia. Re-adoption, however, is not required to obtain a new birth certificate.

### 6.6.1 Pre-adoptive requirements

Prior to bringing a foreign born child into Virginia, the prospective adoptive parents should meet Virginia's pre-adoptive requirements as well as certain requirements of the Department of Immigrations. Families requesting information on Virginia's pre-adoptive requirements and requirements of the Department of Immigrations should be referred to the [Inter-Country Adoption Specialist](#).

An IR-3 visa is issued when a full and final adoption is completed abroad. It requires that the adoptive parents physically see the child prior to or during the adoption proceedings. Children with this visa automatically acquire citizenship if they enter the United States prior to their 18<sup>th</sup> birthday. If they are under 18 years old, they are automatically U.S. citizens upon admission to the United States and they reside with their parents in the United States.

An IH-3 visa is issued for children with full and final adoptions from a Hague Convention Country. Children with this visa automatically acquire citizenship if they have entered the United States prior to their 18<sup>th</sup> birthday, if they are under 18 years old, they are automatically United States citizens upon admission to the United States and they reside with their parents in the United States.

When a child enters the country with either an IR-3 or IH-3 visa as issued by the United States Citizenship and Immigration Services, the adoptive parents shall not be required to readopt the child in Virginia.

It is recommended for a child adopted in a foreign country that re-adoption in the state of Virginia be considered to obtain a Virginia birth certificate, this will assist in establishing a preserved adoption file in the state of Virginia.

### 6.6.2 Adoptive home study

In most inter-country adoptions, the family will obtain an adoptive home study from a private agency. In these cases, the private agency that completed the home study will be responsible for the investigation and supervision required to obtain a Final Order of Adoption in Virginia.

### 6.6.3 Responsibilities of the LDSS in inter-country adoptions

There may be times when no Virginia agency was involved in assisting the family with pre-adoptive requirements. In these rare cases, the circuit court will refer the matter for investigation to the LDSS in the locality where the petitioners reside.

#### 6.6.3.1 Open the case

A case is opened when a petition for adoption is received from the circuit court. A petition is a written request filed with the court by prospective adoptive parents asking the court to legalize a relationship with a child.

##### 6.6.3.1.1 Set up a case record

The case record should contain the following documents, if applicable:

- All court orders.
- All required documentation.
- Report of Investigation.
- All correspondence.
- Narrative.

If two children are on the same petition, only one case is needed.

#### 6.6.3.2 Review the petition and Order of Reference

The petition for adoption is usually accompanied by an Order of Reference, which is an order from the court directing an agency to make an investigation and report.

The petition and Order of Reference should be reviewed to be sure the petition is filed in the court having jurisdiction where the petitioners reside and the case has been referred to the proper agency. The petition shall be signed by the petitioner and by counsel of record, if any ([§ 63.2-1201](#)).

For a child born in another country, an affidavit by a representative of the child-placing agency that a birth certificate number is not available may be substituted for verification by a registrar of vital statistics for that country.

If the petitioners move from the agency's jurisdiction but within Virginia or it appears to be in the best interest of the child for another agency to make the investigation, the agency is to request that the court enter an amended order

referring the investigation to another agency. If the court denies the request for an amended order, the agency shall complete the investigation and report. The services of another agency can be requested in writing by the agency ordered to make the investigation.

The Order of Reference shall be acknowledged to the court with a copy to the VDSS *Adoption* Unit. The acknowledgment should show the date of receipt of the order and the name of the agency.

### 6.6.3.3 Perform the investigation

The investigation includes:

- Interviews with:
  - Adoptive parents.
  - Child, if of the age to participate.
- Home visits to describe for the court the physical environment in which the child will live, and to observe interactions between the parent and child in a familiar environment.
- Information on the adoptive parents' income in order to determine the fee assessed.

If unable to complete the investigation:

- The court and the VDSS *Adoption* Unit should be notified if the investigation and report are delayed and cannot be completed within 60 days.
- A report should be sent to the court requesting additional time to complete the investigation. The report should include the reasons for the delay or inability to complete the investigation and the period of time needed to complete the investigation.

If the petitioners cannot be contacted or located, to complete the investigation, the agency is to submit a report to the court and recommend the petition be dismissed.

If the petitioners move from Virginia before completion of the investigation, the agency requests the assistance of an out-of-state agency in completing the investigation. All requests should be forwarded to ICPC.

#### 6.6.3.4 Prepare the Report of Investigation

The format of the report should be that recommended by the VDSS *Adoption* Unit.

The report shall contain a recommendation as to the action to be taken by the court.

#### 6.6.3.5 Distribute copies of the report

- Send the original to the court with the Certificate of Service showing that a copy of report was sent to the VDSS *Adoption* Unit.
- Send one copy to the VDSS *Adoption* Unit with the completed Commissioner's Confidential Report.
- Send one copy to the attorney. If the petitioners do not have an attorney, advise them to contact the clerk of court to have the case placed on the docket for disposition.
- Keep a copy in agency's file until final disposition.

The agency should submit any additional information requested by the VDSS *Adoption* Unit.

In those instances where the court may enter a final order, the agency shall include a statement as to the amount of the fee assessed and whether the fee has been paid. A receipt shall be provided to the court by the LDSS which completed the investigation and court report to provide proof of payment of the fee.

#### 6.6.3.6 Submit a Supplementary Report

Sometimes after the required report has been submitted, the agency receives factual information on a case that would influence the action to be taken by the court. The agency shall submit a Supplementary Report when factual information is received after making the required report and no court action has been taken or the case is pending as a result of additional time granted for completion of the investigation.

#### 6.6.3.7 What should be done following final disposition

Final disposition is the final action taken by the court in an adoption which means the case is closed. A final order granting an adoption means the child acquires parents other than his natural parents and a person acquires a child other than

by birth. A final order is not subject to attack for any reason after six months from the date it is entered and is final for all purposes ([§ 63.2-1216](#)).

#### **6.6.3.8 Acknowledgement and disposition of case material**

The agency shall review and acknowledge receipt of the Final Order of Adoption or any other order of final disposition. A copy of the acknowledgment to the court should be sent to the VDSS *Adoption* Unit. The agency should advise the court of any problem that could affect the legality of the adoption.

The agency should purge the record of duplicate material and send original copies of all pertinent material that has not been sent to the VDSS *Adoption* Unit for preservation.

#### **6.6.3.9 Close the case**

The case should be closed when the Final Order of Adoption is received.

### **6.6.4 Duties of the attorney**

The duties of the attorney do not require action by the agency but agencies should be aware of the responsibilities of attorneys in facilitating intercountry adoptions. Some courts allow petitioners to represent themselves in adoption proceedings. The decision to require an attorney rests with the court.

The attorney:

- Files the petition, which shall be signed by the petitioner and counsel of record ([§ 63.2-1201](#)).
- Obtains required consents.
- Prepares appropriate orders.
- Informs the petitioners of the legal requirements.
- Assists the agency in obtaining necessary verifications.
- Assists the petitioners in obtaining a new birth certificate for the child.

### **6.6.5 Duties of the Commissioner**

The VDSS *Adoption* Unit carries out the duties of the Commissioner in adoptions. These duties include:

- Establishing a permanent record of all adoptions petitioned and providing post-adoption services to adult adoptees and adoptive parents seeking background information on the biological family.
- Monitoring adoption cases and submitting reports to courts when necessary.

#### 6.6.6 Duties of the circuit court

The following are duties of the circuit court regarding acting on petitions for adoption. These duties do not fall under the purview of the agency and require no action on the part of the agency. Pending certain actions taken by the circuit court as described below, documents generated in the course of the court acting on the petition may be required to be sent to the agency for filing and/or submission to the VDSS *Adoption* Unit, Adoption Records Specialist.

The petition and all exhibits shall be forwarded to the CPA which completed the home study or provided supervision. If no Virginia agency provided such services, the petition and all exhibits shall be forwarded to the local director of social services in the locality where the adoptive family resides, or resided at the time of filing the petition, or had legal residence at the time of the filing of the petition.

The clerk of circuit court where the petition is filed sends a copy of the petition, Order of Reference, and all exhibits to the local director of the department of social services and to the VDSS *Adoption* Unit. The petition shall be signed by the petitioner and counsel of record, if any ([§ 63.2-1201](#)).

The circuit court shall expeditiously consider the merits of the petition upon receipt of the report ([§ 63.2-1208](#)).

The court may take any action it finds appropriate ([§ 63.2-1208 B](#)). The court may:

- Enter a final order;
- Deny the petition;
- Dismiss the petition;
- Continue the proceeding; or
- Schedule a hearing.

The court may dispense with entry of the interlocutory order when ([§ 63.2-1210](#)):

- The child has been legally adopted according to the laws of a foreign country with which the United States has diplomatic relations ([§ 63.2-1210 5](#)):



## Child and Family Services Manual

## F. Adoption

- If the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper.
- The child has been in the physical custody of the petitioners for:
  - At least one year immediately prior to the filing of the petition.
  - A representative of a child-placing agency has visited the petitioner and child at least once in the six months immediately preceding the filing of the petition or during its investigation; or
  - The child has been in the physical custody of the petitioners for at least six months immediately prior to the filing of the petition;
  - Has been visited by a representative of a child-placing agency or the LDSS three times within such six-month period with no fewer than 90 days between the first and last visits.
  - The last visit has occurred within six months immediately prior to the filing of the petition.
- The child was placed into Virginia from a foreign country in accordance with [§ 63.2-1104](#), and if ([§ 63.2-1210 6](#)):
  - The child has been in the physical custody of the petitioner for at least six months immediately prior to the filing of the petition.
  - Has been visited by a representative of a LCPA or the LDSS three times within such six-month period with no fewer than 90 days between the first and last visits.
  - The last visit has occurred within six months immediately prior to the filing of the petition. The circuit court may, in cases of an international placement, omit the requirement that three visits be made within a six-month period.

When no action is taken by the court for at least one year from the entry of the last order, the clerk of court places the case on the docket for review by the court.

The clerk of court sends to the agency and to the VDSS *Adoption* Unit a copy of any order entered. Upon entry of a final order or any other final disposition, the clerk forwards all reports submitted with the final order to the VDSS *Adoption* Unit for preservation.

**Child and Family Services Manual****F. Adoption**

When services have been provided by an LDSS, the court shall assess a fee, in accordance with regulations and fee schedules established by the State Board of Social Services. The court shall not enter a Final Order of Adoption until proof of payment of fees has been received ([§ 63.2-1248](#)).

The court may not enter a Final Order of Adoption without the information needed to complete a Report of Adoption (VS-21), unless the court determines this information is unavailable or unnecessary. The Report of Adoption (VS-21) provides information that is needed to locate and identify the original birth certificate and to establish a new birth certificate.

After the entry of a final order, the clerk of court sends to the State Department of Health, Bureau of Vital Records and Health Statistics, a completed Report of Adoption, VS-21, and a completed application for a certified copy of a birth record, VS-6, with a check for the required fee ([§ 32.1-262](#)).

# 7

## OTHER COURT-ORDERED SERVICES

### TABLE OF CONTENTS

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<b>7.1</b>	<b>Introduction .....</b>	<b>2</b>
<b>7.2</b>	<b>Legal Citations.....</b>	<b>2</b>
<b>7.3</b>	<b>Guidelines for custody investigations .....</b>	<b>2</b>
7.3.1	Purpose .....	2
7.3.2	Basic assumptions .....	3
7.3.3	Qualifications of worker conducting a custody investigation .....	4
7.3.4	Consistency in gathering information.....	4
7.3.5	Questionnaires.....	4
7.3.6	Authorization for release of information .....	4
7.3.7	Information from observations .....	5
7.3.8	Conducting interviews .....	5
7.3.9	Court and department records.....	5
7.3.10	Record checks .....	5
7.3.11	Letters of reference .....	6
7.3.12	Worker's assessment .....	6
7.3.13	Referral for further assessment .....	6
7.3.14	Preparing the information for the court .....	6
7.3.15	Options for recommendations .....	7
7.3.16	Fees for services.....	7

# 7

## OTHER COURT-ORDERED SERVICES

### 7.1 Introduction

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The court may direct the LDSS to provide supervised visitation, mediation services or to conduct an investigation pursuant to ([§16.1-278.15](#)) in adjudicating matters involving a child whose custody, visitation, or support is in controversy or requires determination.

Custody investigation means a court ordered method of gathering information related to the parents and a child whose custody, visitation or support is in controversy or requires determination.

Supervised visitation means supervision of visits between children and family by a court appointed representative. There are no standardized procedures or formats for conducting supervised visitation. The local court will advise the agency on any preferred procedures or formats.

Mediation is a court ordered service used in custody disputes. It is a means for the parties to work out arrangements regarding custody and visitation between themselves in a non adversarial way. Providing mediation services requires specific training for the mediator.

### 7.2 Legal Citations

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The Code of Virginia in Chapter 11, entitled Juvenile and Domestic Relations District Courts, §§ [16.1-241](#) and [16.1-273](#) through [16.1-278.15](#) and Chapter 6.1, entitled Custody and Visitation Arrangements for Minor Children, §§ [20.124.1](#) through [20.124.6](#) provide guidance on conducting other court ordered services.

### 7.3 Guidelines for custody investigations

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#### 7.3.1 Purpose

The goal of the custody investigation is to help the court determine the living and visitation arrangement that will enable the child to establish a meaningful relationship with either parents or the parties in the custody dispute.

### 7.3.2 Basic assumptions

Custody investigations are guided by the principals of objectivity, competence, and thoroughness.

Whenever possible, custody investigations are limited to addressing issues that remain unresolved after the disputing parties have had the opportunity to resolve contested issues by mediation. Thus, the scope and depth of the custody investigation will vary depending on the degree to which the parties have been able to come to some agreement.

Information reported to court is always validated by supported documentation.

The Code of Virginia in §§ [16.1-278.15](#) and [20-124.3](#) allows the judge to consider the following factors if presented by the parties:

- The child's age and physical and mental condition, with due consideration to the child's changing developmental needs
- The age and physical and mental condition of each parent.
- The relationship existing between each parent and the child, with due consideration given to the positive involvement with the child's life and the ability to accurately assess and meet the emotional, intellectual and physical needs of the child.
- The needs of the child, with due consideration given to other important relationships of the child, including but not limited to siblings, peers, and extended family members.
- The role which each parent has played and will play in the future, in the upbringing and care of the child.
- The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child.
- The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child.
- The reasonable preference of the child, if the child is deemed by the court to be of reasonable intelligence, understanding and age and experience to express a preference.

- Any history of “family abuse” as that term is defined in §16.1-228, specifically any act involving violence, force or threat including, but not limited to an forceful detention, which results in bodily injury or placed one in reasonable apprehension of bodily injury and which is committed by a person against such person’s family or household member, or any history of sexual abuse. If the court in its finding determines a history of family abuse or sexual abuse, the court may disregard information pertaining to bullet six.

### **7.3.3 Qualifications of worker conducting a custody investigation**

To ensure the highest level of competence and accountability, workers conducting custody investigations should have training that is current on issues related to the effect of custody disputes on children and appropriate techniques for interviewing children and families.

### **7.3.4 Consistency in gathering information**

When all parties reside in the same jurisdiction, one worker should complete the assessment of both parents and the child. When one or more parties reside in another jurisdiction, the worker may request a courtesy assist from that locality. The worker should consult with the professional staff in the other jurisdiction to ensure that all parties are asked for the same information in the same format.

### **7.3.5 Questionnaires**

If the worker plans to use questionnaires to ensure that comparable information is obtained from the parents, the worker should be aware that some parents may not understand, may be intimidated or put off by lengthy questionnaires, surveys, and forms. The worker should utilize good judgment when using these materials and should not rely on them as a primary source of information.

Any questionnaire used should be reevaluated periodically to ensure that issues addressed and language used are current and appropriate.

The worker may ask the parents to complete a questionnaire in advance of a home visit to help both the parents and the worker prepare for the visit.

### **7.3.6 Authorization for release of information**

The parents or legal guardian should sign authorizations for release of information from schools, past or present counselors, substance abuse counselors, etc., as appropriate to the situation.

The parents or legal guardian should be told that the information obtained will be made available to the court and to counsel through the court. The clerk of court shall furnish a copy of such report to all attorneys representing parties in the matter before

the court **no later than 72 hours**, and in cases of child custody **15 days**, prior to the scheduled court hearing.

When various sources are asked for information and the parents or legal guardian sign an authorization to release the information as presented, the worker should inform the source that the information will be made available to the court.

### **7.3.7 Information from observations**

The worker should visit both parties' homes to determine if the environment is sanitary and safe; to observe how comfortable the child is in the home; and to observe the interaction between child and parent/caretaker and any other members of the household.

When a child spends a large part of the time in a setting other than the home (for example, in school, day care, or with a baby-sitter), the worker should visit that setting to observe the child's level of comfort and interaction with others, etc.

### **7.3.8 Conducting interviews**

The worker should always interview the involved parties face-to-face. The same questions should be asked to both parties regardless of the interview tool utilized.

The worker should personally interview those knowledgeable about the child's situation (such as teachers, school administrators, day care workers, baby sitters, neighbors, the child's physicians, and others, as applicable).

The worker should interview the child alone to obtain the child's perception of each parent/party to the dispute, about daily events in the home, and, when applicable, the child's relationship with siblings and extended family members.

- Preferences of the child should be explored, but the child should never be asked to choose between parents or caretakers.
- Children's comments should be sent separately from the regular report to the court for the judge's review and discretionary use.

### **7.3.9 Court and department records**

The worker should review all records concerning the child and the family that are available through the court, the LDSS and other involved agencies.

### **7.3.10 Record checks**

The worker should secure a check of the Child Protective Services Registry and report the findings to the court.

A copy of the client's criminal record should be obtained through the Virginia State Police for inclusion in the report to the court. How this record is obtained may be done using LDSS practice for securing criminal records checks.

### **7.3.11 Letters of reference**

Three letters of reference shall be requested. The individuals providing the references should be made aware their responses will be attached to the report sent to the court.

### **7.3.12 Worker's assessment**

The worker should offer an informed assessment of each parent's behavior as perceived through personal interviews, written records, and third-party observations. Such assessment should consider each parent's:

- Level of cooperation with the investigation.
- Stability in the work and home environment.
- Style of interpersonal interactions including discipline.
- Ability to promote a positive relationship between the child and the other parent and family members.

Unless there is a formal psychological evaluation by an appropriately licensed practitioner, the worker's report should not include a psychological assessment component.

### **7.3.13 Referral for further assessment**

When a custody investigation reveals evidence of substance abuse, mental health problems, dysfunctional family behaviors, or other problems that the worker cannot immediately assess, the worker should recommend to the court that the family, parent, or child be referred to an appropriate third party for expert assessment. The worker should also recommend that the assessment of all parties be completed by the same provider.

### **7.3.14 Preparing the information for the court**

The format for the report to the court may be left up to the locality and dependent on the format requested by that localities' judicial district.

If the worker has made use of questionnaires, checklists, etc. that are not part of the local format, the worker should make these materials available, upon request, to the court.



Information included in the report should be comprehensive and easy to read.

### **7.3.15 Options for recommendations**

If the court requests a worker to make a recommendation, the worker should consider recommending joint legal custody absent any convincing evidence to the contrary. If joint legal custody is not recommended, the worker should specifically state why this custody arrangement is not appropriate to the specific child and family situation. Other recommendations that may be made, as appropriate, are:

- Sole custody with visitation.
- Sole custody with visitation denied.
- Sole custody with supervised visitation.
- Court determines custody.

### **7.3.16 Fees for services**

The Code of Virginia allows fees to be assessed for custody investigations and supervised visitation. When the court directs the appropriate LDSS to conduct supervised visitation or directs the LDSS to conduct an investigation pursuant to [§ 16.1-273](#) or to provide mediation services in matters involving a child's custody, visitation, or support, the court shall assess a fee against the petitioner, the respondent or both, in accordance with fee schedules established by the LDSS when that agency performs the service. The amount of the fee is determined by the locality in accordance with [§ 16.1-274](#).

# 8

## Virginia Birth Father Registry

### TABLE OF CONTENTS

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<b>8.1</b>	<b>Introduction .....</b>	<b>2</b>
<b>8.2</b>	<b>Framework .....</b>	<b>2</b>
8.2.1	Legal citations .....	2
<b>8.3</b>	<b>Who should register with the Virginia Birth Father Registry.....</b>	<b>2</b>
<b>8.4</b>	<b>Who does not have to register .....</b>	<b>3</b>
<b>8.5</b>	<b>Registration .....</b>	<b>3</b>
8.5.1	Timely Registration.....	4
8.5.2	Confirmation of receipt of registration .....	5
8.5.3	Updating registration .....	5
8.5.4	Rescinding or withdrawing registration .....	5
<b>8.6</b>	<b>Access to the Virginia Birth Father Registry .....</b>	<b>6</b>
<b>8.7</b>	<b>Search of the Virginia Birth Father Registry .....</b>	<b>7</b>
<b>8.8</b>	<b>Compliance with notice provisions .....</b>	<b>8</b>

# 8

## Virginia Birth Father Registry

### 8.1 Introduction

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The Virginia Birth Father Registry is a confidential database of registered putative fathers. The purpose of the Virginia Birth Father Registry is to protect the rights of a putative father by providing notification of court proceedings for termination of his parental rights and adoption regarding a child that he may have fathered. A putative father is the alleged father of a child.

### 8.2 Framework

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The 2006 General Assembly passed into law the putative father registry for implementation by the Virginia Department of Social Services [§ 63.2-1249](#). In 2017, the name of the putative father registry was changed to the Virginia Birth Father Registry. The Virginia Birth Father Registry provides a mechanism for putative fathers to voluntarily acknowledge paternity prior to adoption court proceedings to ensure they receive notice of the hearings.

#### 8.2.1 Legal citations

The Code of Virginia, Chapter 12, Article 7, [§§ 63.2-1249](#) through [63.2-1253](#) provides guidance on the Virginia Birth Father Registry.

### 8.3 Who should register with the Virginia Birth Father Registry

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A putative father must register with the Virginia Birth Father Registry in an effort to protect his parental rights. Registration may also assist with the opportunity for a father or paternal relatives to play an important role in the child's life.

Any male who desires to be notified of an adoption proceeding or termination of parental rights regarding a child that he may have fathered shall register with the

Virginia Birth Father Registry. This may include a male who currently lives in Virginia or who visited Virginia at the time of conception of the child or birth of the child.

If the conception or birth of a child occurred in another state and that state has a putative father registry, the male should register in that state in addition to registering with the Virginia Birth Father Registry to protect his rights.

The Virginia Birth Father Registry is not intended to start a paternity proceeding. However, the registration may be used to help establish paternity.

#### 8.4 Who does not have to register

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A male who is recognized as a legal father or is establishing paternity before a petition or consent is filed does not have to register for protection of his rights and to receive notice of an adoption proceeding or termination of parental rights.

The following are considered legal fathers:

- An acknowledged father is a male who has established, by voluntary written statement, a relationship between himself and the mother of the child and that he is the father. The statement is made under oath and in writing agreeing to the paternity.
- An adjudicated father is a male with a judgment or court order establishing the paternity of a child.
- A presumed father is a male married to the mother of the child or who was married to the mother of the child and the child was born within 300 days after the termination of the marriage.

Any male that begins paternity proceedings before a petition is filed for adoption or termination of parental rights is not required to register with the Virginia Birth Father Registry.

#### 8.5 Registration

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A male wishing to register must complete a [Virginia Birth Father Registry Registration form](#).

A registration form can be obtained at any of the local departments of social services, by email at [birthfatherregistry@dss.virginia.gov](mailto:birthfatherregistry@dss.virginia.gov), or by calling 1-877-433-2339 to request an application.

A registration form can be accessed on the [VDSS website](#). When the registration is completed online, the registrant will be asked to print and mail the original to VDSS. **A registration is only complete when VDSS receives the original, signed registration**

**form.** Prior communication of registration information or the online submission of the registration through the VDSS website does not complete a timely registration.

The following information must be provided by the putative father on the registration form:

- His name, date of birth, social security number, and signature;
- His driver's license number and state of issuance;
- His home address, telephone number, and employer;
- The name, date of birth, ethnicity, address and telephone number of the putative mother, if known;
- The state of conception (i.e. Maryland, North Carolina, California, etc.);
- The place and date of birth of the child, if known; and,
- The name and gender of the child, if known.

Other identifying information about the father, putative mother, or child may be requested.

The completed form is signed and should be mailed to:

Virginia Birth Father Registry  
Virginia Department of Social Services  
801 East Main Street  
Richmond, VA 23219-2901

Once registered with the Virginia Birth Father Registry, a male is known as a registrant.

### **8.5.1 Timely Registration**

A male must register in a timely manner in order to protect his rights. A registration is considered timely when it is received:

- Before the child is born; or
- Within 10 calendar days after the child is born, or
- Within 10 days of personal service from the child placing agency or adoptive parent; or
- Within 13 days of receipt of the certified mailing from the child placing agency or adoptive parent; or

- Within 10 days upon the discovery of fraud by the mother.

Fraud is considered to have occurred in the following examples:

- The male was told that a pregnancy was terminated or the mother miscarried when actually the baby was born, or
- The male was told the child had died when actually the baby is alive.

The child-placing agency or adoptive parent is required to give notice of the adoption plan to the putative father. Typically an agency would provide notice in an agency adoption and an adoptive parent or their attorney would provide notice in a non-agency adoption.

All registrations received by VDSS shall be entered into the Virginia Birth Father Registry by the Virginia Birth Father Registry Program Specialist.

### **8.5.2 Confirmation of receipt of registration**

If a male would like to receive confirmation that he has registered, he may contact the Virginia Birth Father Registry at 1-877-433-2339.

### **8.5.3 Updating registration**

The registrant shall **promptly** notify the Virginia Birth Father Registry of any changes including a change of address. The registrant can update his registration by completing another Virginia Birth Father Registry registration form. The registrant indicates that he is updating his registration by marking the box on the registration form with an X or check mark stating it is an updated registration.

The registrant updates the information that has changed, signs the registration form, and mails the form to:

Virginia Birth Father Registry  
Virginia Department of Social Services  
801 East Main Street  
Richmond, VA 23219-2901

### **8.5.4 Rescinding or withdrawing registration**

The registrant has a right to rescind his registration at any time. To rescind a registration, the registrant must complete another Virginia Birth Father Registry registration form.

The registrant marks the box on the registration form indicating that the registration is being withdrawn for a specific registration.

The registrant must rescind a registration form for each registration with a different name of a putative mother or child.

## 8.6 Access to the Virginia Birth Father Registry

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The Virginia Birth Father Registry is confidential and exempt from the Virginia Freedom of Information Act.

The information in the database shall only be released to the authorized entities:

- The court or a person designated by the court.
  - A designated person must submit documentation from a court signed by a judge indicating that they have been designated by the court.
- The mother of the child who is the subject of registration.
  - The mother must submit proof of being the mother of the child by providing a copy of the birth certificate and notice from the Virginia Birth Father Registry of being listed in the registry.
- A licensed child-placing agency.
- A support enforcement agency.
- An agency authorized by law to receive such information.
- A party or the party's attorney of record in an adoption proceeding, custody proceeding, paternity proceeding, or in a proceeding of termination of parental rights, regarding a child who is the subject of the registration.
  - A party to an adoption proceeding may be a petitioner in a termination of parental rights or adoption proceeding such as a local department of social services or an adoptive parent. The foster parent who is not adopting is not party to the termination of parental rights or adoption proceeding for the purposes of the registry.
- The child's guardian ad litem (GAL).
  - An attorney or GAL must provide a letter specifically stating the party they represent.
- A putative father registry in another state.

## 8.7 Search of the Virginia Birth Father Registry

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A search of the Virginia Birth Father Registry shall be conducted for all adoptions except for children who have been adopted according to the laws of a foreign country or if the child was placed in Virginia from a foreign country in accordance with ([§ 63.2-1104](#)) for the purpose of adoption.

Any petitioner, who files a petition for the termination of parental rights or for an adoption court proceeding, shall request a search of the Virginia Birth Father Registry for any putative father.

A petitioner who requests a search of the Virginia Birth Father Registry is called a requestor. The requestor is an authorized person, agency, or organization listed in [Section 8.6](#).

VDSS only conducts searches of the Virginia Birth Father Registry. If the birth and/or conception occurred in another state, the requestor must request a search of the putative father registry in the other state. The Virginia Birth Father Registry Program Specialist is available to assist in obtaining contact information for a putative father registry in another state by calling 1-877-433-2339.

The requestor completes the [Virginia Birth Father Registry Request to Search form](#). For a search of a child who is unborn or less than 10 days old and a putative father has been identified, the requestor shall attach the letter notifying him of his availability to register.

The search form can be obtained at any local department of social services, by email at [birthfatherregistry@dss.virginia.gov](mailto:birthfatherregistry@dss.virginia.gov), or by calling 1-877-433-2339 to request a form.

Upon satisfaction of documentation requirements, VDSS will conduct a search of the Virginia Birth Father Registry, furnish a certificate that the search was conducted, and include an attachment of any findings of the search.

VDSS will furnish, within **four (4) business days** from receipt of a request from a court, agency, or individual:

- A signed certificate stating that a search was completed; and
- The findings of the search.

VDSS will mail the certificate and findings of the search using the United States mail, or at the requestor's expense, the certificate will be delivered by overnight mail, in person, by messenger, by facsimile, or other electronic communication.

The certificate of search and findings shall be filed with the court before an adoption proceeding can conclude.



A copy of the certificate of search shall be maintained in the case record of the child-placing agency. The services worker shall file a copy of the certificate of search and the findings with the adoption record.

If a search of the registry does not identify a match to the child who is the subject of the search, the Family Services Specialist should gather and explore other information to locate and identify the name of the father.

## **8.8 Compliance with notice provisions**

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It is the responsibility of the child placing agency, attorney, or adoptive parent to provide evidence of compliance with the following provisions of the Virginia Birth Father Registry:

- Notice to a known putative father, and/or
- Notice to the putative father regarding his rights

If the identity of the putative father and whereabouts are reasonably ascertainable, a written notice of the adoption plan and availability of registration with the Virginia Birth Father Registry must be sent by personal service or certified mailing to the putative father's last known address ([§ 63.2-1250 E](#)).

The evidence must be submitted to the courts when filing a petition that notice was sent to the putative father.