

§35325. Request for Adoption Assistance.

(a) The Adoption Assistance Program (AAP) removes or reduces barriers to the adoption of children who otherwise would remain in long-term foster care. The program provides necessary financial assistance to families who are willing and able to assume parental responsibility for children but are prevented from doing so by inadequate financial resources.

(b) The agency shall provide any person who wants to apply for adoption assistance benefits with a Request for Adoption Assistance form (AAP 1).

(1) If the agency placing a child for adoption believes the child to be an AAP-eligible child, the agency shall offer the family an AAP 1.

(c) The public agency responsible for determining AAP eligibility and initial and subsequent payments shall be:

(1) The Department or the licensed county adoption agency responsible for the child or,

(2) If the child is the responsibility of a licensed private adoption agency, the Department or licensed county adoption agency providing agency adoption services in the county that would provide adoption assistance benefits on behalf of the child.

(A) If the child has been voluntarily relinquished for adoption to a licensed private adoption agency, the financially responsible county shall be the county in which the parent who has physical custody of the child resides at the time the relinquishment document is signed.

(B) The licensed private adoption agency shall submit the AAP 1 and supporting documentation, including, but not limited to, the assessment of the child required by Section 35127.1 and a description of efforts to locate a non-subsidy home for the child, as the Department or licensed county adoption agency finds necessary in the particular case.

(2) Once established, the county of responsibility shall remain unchanged for the duration of adoption assistance payments for that child.

(d) [Manual of Policy and Procedure]

(e) The responsible public agency shall determine whether the child meets the eligibility requirements as specified in Section 35326.

(1) If an AAP 1 is submitted on behalf of a relinquished child who is not under the supervision of a county welfare department as the subject of a legal guardianship or a juvenile court dependency, the agency shall ask that entity responsible for providing services to children who are dependents of the court in the county that would be responsible for providing AAP benefits for a written determination as to whether the child would or would not have been at risk of dependency if the child had not been relinquished for adoption.

(2) If the responsible public agency determines that the child is not eligible for AAP benefits, the agency shall send the county responsible for payment a completed Payment Instructions - Adoption Assistance Program form (AAP 2) indicating that AAP eligibility is denied and the specific reason(s), including relevant regulatory or statutory citations, for the denial.

(3) If the responsible public agency determines that the child is eligible for AAP benefits, the agency shall:

(A) Submit the Federal Eligibility Certification for Adoption Assistance Program form (FC 8) to the county responsible for payment.

1. The child's name prior to adoption (birth name) shall be used on the FC 8.

2. The child's adoptive name shall not be used on the FC 8.

(B) Apply for Supplemental Security Income (SSI) benefits on the child's behalf prior to the completion of an AD 4320 if:

1. The FC 8 returned by the county responsible for payment indicates that the child is not eligible for the Federal AAP and;

2. The child appears potentially eligible for the SSI program.

(C) Determine the initial amount and duration of payment as specified in Section 35333.

1. If another agency assessed the prospective adoptive family as specified in Sections 35180 through 35183.1 and/or a private adoption agency is responsible for the child, these agencies shall be consulted before the amount and duration of payment is determined.

(D) Complete an Adoption Assistance Program Agreement (AD 4320) as specified in Section 35337.

1. The AD 4320 shall be signed by the responsible public agency and the adopting parent(s) prior to the granting of the final decree of adoption.

2. In adoptive placements which involve more than one agency, all agencies shall sign the initial AD 4320.

(i) Subsequent amendments to the AD 4320 may be signed by the responsible public agency alone.

3. If AAP assistance is to be provided after the adoptive placement but prior to the final decree, the AD 4320 shall be signed prior to the granting of assistance.

4. The child's adoptive name shall be used on the AD 4320.

5. If the adoptive family elects not to apply for AAP benefits, the agency shall encourage the family to sign a deferred Adoption Assistance Program Agreement (AD 4320).

(E) If the agency and the adoptive family are unable to agree on AAP benefits, the agency will complete the AAP 2 as described in Section 35343(b)(4)(A).

(F) Authorize payment as specified in Section 35341.

§35326. AAP Eligibility.

(a) In order for a child to be eligible for Adoption Assistance Program (AAP) benefits, the conditions specified at Welfare and Institutions Code Section 16120 shall be met.

(b) A child meeting the requirements of Welfare and Institutions Code Section 16120(h) shall be eligible for AAP benefits if subsequently adopted through either an independent adoption or an agency adoption.

(c) Adoption Assistance Agreements signed prior to October 1, 1992, shall be governed by Welfare and Institutions Code Section 16121.05(b).

§35327. Search for Parents Not Requiring Adoption Assistance.

(a) Prior to the selection of adoptive parents requiring adoption assistance payments, the agency shall seek adoptive parents who do not require such assistance.

(1) This search for adoptive parents shall be documented in the adoption case record and shall include the following:

(A) Discussion of potential adoptive parents at a regional adoption agency exchange meeting, or

(B) Registration of the child with the department's photo-listing album.

(2) This search shall not be required when the current foster parents, or other persons with whom the child has been living and has established significant emotional ties, have both:

(A) Expressed interest in adopting the child, and

(B) Been determined by the agency to be suitable adoptive parents for the child.

§35329. Effect of Adoptive Parent's Legal Residence.

(a) The adoptive parent's legal residence shall not affect the child's eligibility.

§35331. Documentation of Child's Eligibility.

(a) The determination of the child's eligibility for adoption assistance shall be documented in the case record on the Eligibility Certification - Adoption Assistance Program form (AAP 4).

§35332. Notification Requirements for Agencies.

§35332.1. Eligibility for Reimbursement.

§35332.2. Authorization for Reimbursement.

§35332.3. Agency Requirements for Reimbursements.

§35333. Determination of Amount and Duration of AAP Benefit for All Children.

The Adoption Assistance Program (AAP) provides benefits to facilitate the adoption of children who otherwise would not likely be adopted. The AAP benefit is a negotiated amount based upon the needs of the child and the circumstances of the adoptive family. The responsible public agency shall negotiate the amount of the AAP benefit and make the final determination of the amount according to the requirements of this section.

(a) No agency may use an income eligibility requirement (income means test) in determining the AAP benefit.

(b) The responsible public agency shall assess the child's needs.

(1) The agency, after consultation with the adoptive parents and the financially responsible county, if different from the agency, shall identify the child's care and supervision needs, including any special needs beyond basic care and supervision, for which a foster care maintenance payment would be authorized.

(A) The adoption caseworker shall base the assessment of the child's needs and required level of care and supervision on all of the following information:

1. Direct observation of the child.

2. Information contained in the child's case record, including birth history and psychological, medical and other relevant assessments completed by licensed professionals.

3. Information about the child based on application of the county's foster care specialized care assessment instrument or any specialized foster care increment previously approved for the child.

4. Information provided by the adoptive parents.

(c) The responsible public agency shall determine the maximum AAP benefit for which the child is eligible.

(1) Step 1: The agency in consultation with the financially responsible county, if different from the agency, shall determine the state-approved foster care maintenance payment that the child would have received in a foster family home if the child had remained in foster care.

1. No agency may use a Foster Family Agency (FFA) treatment rate or a payment made to a certified home by a FFA on behalf of the child for purposes of calculating the maximum AAP benefit for which the child is eligible.

(B) If the child is living in the adoptive family's home, the agency shall assume that, but for adoptive placement, the child would be living in a licensed foster family home.

1. If the child is placed for adoption within the financially responsible county, the AAP benefit shall be based on the child's foster care maintenance payment, not to exceed the age-related, state-approved foster family home care rate, for which the child would otherwise be eligible.

2. If the child is placed for adoption in California but outside the financially responsible county, the AAP benefit shall be based on the foster care maintenance payment, not to exceed the age-related, state-approved foster family home care rate of the financially responsible county or that of the host county, whichever is higher, for which the child would otherwise be eligible.

3. If the child is placed for adoption outside California, the AAP benefit shall be based on the foster care maintenance payment, not to exceed the applicable California age-related, state-approved foster family home care rate or the applicable rate in the host state, whichever is higher, for which the child would otherwise be eligible.

4. If the child also has any special needs which would qualify him or her for a specialized care increment, the AAP benefit shall include the applicable state-approved specialized care increment in addition to the foster care maintenance payment, based on the rate described in Section 35333(c)(1)(B)1., 2., or 3.

a. If the child requires a benefit based on a special need in addition to age-related basic care, the agency shall document each special need by describing the need including the underlying problem or condition.

c. If the child is placed for adoption outside the financially responsible county, the agency shall use the specialized care rate of the host county or that of the financially responsible county, whichever is higher, or that of the financially responsible county when the host county has no specialized care system.

(C) If the child is a client of a California Regional Center (CRC) for the Developmentally Disabled, the maximum rate shall be the foster family home rate formally determined for the child by the Regional Center using the facility rates established by the California Department of Developmental Services. CRC clients who leave California shall be able to continue to receive AAP benefits based on the most recent level of need assessed by the CRC.

(D) If the child is temporarily living away from the adoptive home and the AAP benefit is not authorized under Section 35334(a) or Section 35334(c), the agency shall consider the child to be living in the adoptive home when the eligibility requirements of Section 35326 continue to be met.

(2) Step 2: The agency shall determine the amount of income received by or on behalf of the child.

(A) The agency shall consider income including, but not limited to, SSI/SSP, Social Security benefits based on the earnings of a birth parent, or available income from an inheritance or a trust fund derived from assets of a birth parent or his or her relatives or created on behalf of the child as a result of a lawsuit or insurance settlement.

(3) Step 3: The agency shall calculate the maximum AAP benefit for which the child is eligible by subtracting the child's income identified according to Section 35333(c)(2) from the sum of the age-related, state-approved foster family home care rate identified according to Section 35333(c)(1) and any applicable state-approved specialized care increment. This remaining amount is the maximum AAP benefit available for the child.

(d) The responsible public agency shall determine the circumstances of the family.

(1) Corroborating documentation shall be unnecessary when the adoptive parents attest to the following information requested by the agency:

(A) A written statement from the adoptive parents explaining how they plan to incorporate the adoptive child into their family and the impact, if any, on their family's lifestyle and circumstances.

(B) "Circumstances of the Family" means circumstances of the family as defined in Welfare and Institutions Code Section 16119(d)(2).

(e) The responsible public agency shall negotiate the amount of any AAP benefit with the adoptive family. For purposes of negotiation, the agency shall follow the legislative intent expressed in Welfare and Institutions Code Section 16115.5 and the requirements in Welfare and Institutions Code Section 16119(d)(1).



(2) The agency shall make a good faith effort to negotiate the AAP benefit with the adoptive parents.

(3) The agency shall encourage the adoptive parents to request the AAP benefit they require in order to meet the child's needs taking into account their family circumstances.

(4) The agency shall base the negotiated AAP benefit on the needs of the child and the circumstances of the family determined through discussion with the adoptive parents.

(A) The agency shall advise the adoptive parents that the amount of the AAP benefit determined for the child is limited to the age-related, state-approved foster family home care rate and any applicable state-approved specialized care increment for which the child would have been eligible had he or she remained in foster care.

(5) The agency shall include in the child's AAP file a written summary of the negotiations and discussions with the adoptive parents.

(A) When only age-related basic care is requested by the family, the agency shall include a statement to that effect for retention in the child's AAP file.

(6) The amount of the negotiated AAP benefit shall be between zero and the maximum AAP benefit for which the child is eligible as identified according to Section 35333(c)(3).

(A) The agency shall advise the adoptive parents that the AAP benefit does not include payment for any specific good or service, but is intended to assist the adoptive parents in meeting the child's needs.

(7) At the conclusion of negotiations, if agreement on the AAP benefit has been reached, the agency shall authorize payment of the AAP benefit in the agreed amount.

(f) When agreement on the AAP benefit has been reached, the responsible public agency shall complete an Adoption Assistance Agreement (AD 4320) with the adoptive parents.

(1) The agency shall complete the AAP 2 instructing the county to send a Notice of Action to the adoptive parents indicating that the AAP benefit is approved.

(2) After completion of the Adoption Assistance Agreement (AD 4320), the adoptive parents shall have the right to use the AAP benefit to meet the child's needs as they deem appropriate without further agency approval.

(g) When the responsible public agency and the adoptive parents are unable to agree on an AAP benefit, the agency shall complete the AAP 2 instructing the county to send the adoptive parents a Notice of Action that the requested AAP benefit is denied. The agency shall specify the reason for denial.

(h) A reassessment of the AAP benefit shall be required every two (2) years beginning from the date of a signed Adoption Assistance Program Agreement (AD 4320) between the agency and the adoptive parents.

(1) The AAP benefit shall be increased automatically at the same time and to the same degree as any automatic adjustments to payments for state-approved basic foster care maintenance.

(2) Payment of the AAP benefit shall terminate in the month in which the child becomes 18 years of age or if the agency has determined that the child has a mental or physical disability that warrants the continuance of assistance, in the month in which the child becomes 21 years of age.

#### §35334. Determination of Amount and Duration of AAP Benefit for a Child in Temporary Out-of-Home Placement.

(a) The responsible public agency shall determine the amount and duration of the AAP benefit when the child is placed, either on a voluntary basis or as a court dependent, in out-of-home care to treat a condition that the agency has determined to have existed before the adoptive placement.

(1) The agency shall conclude that the child would have been placed in the same out-of-home care facility if the child had not been placed for adoption if, after consultation with the adoptive parents, the agency has determined that:

(A) Out-of-home placement is necessary to meet the child's needs,

(B) The specific placement is able to meet the child's needs appropriately, and

(C) The facility's rate classification level is appropriate to the child's needs.

(2) The agency shall determine the maximum AAP benefit for which the child is eligible for out-of-home placement.

(A) If the adoptive parents are paying for the cost of the placement directly, the available AAP benefit is the state-approved foster care facility rate for which the child is eligible.

(B) If the placement cost is paid by another agency (e.g., county welfare department, probation office, regional center), the available AAP benefit shall be either the age-related, state-approved basic foster family home care rate or the adoptive parent's actual share of cost for support of the child, whichever is greater, but not to exceed the foster family home rate as determined under Section 35333(c)(1).

(3) If the initial Adoption Assistance Program Agreement (AD 4320) for the child was signed on or after October 1, 1992, the duration of a child's placement in a group home or residential treatment facility shall be limited to an 18-month cumulative period of time for a specific episode or incident justifying that placement.

(b) If the responsible public agency approves the provision of wrap-around services, as defined in Welfare and Institutions Code Section 18251(d), in lieu of out-of-home placement, the amount of the AAP benefit shall be limited to the amount that would have been paid for the out-of-home placement.

(c) If the child is placed out-of-home as a ward of the court under Welfare and Institutions Code Section 601 or 602, the maximum AAP benefit for which the child is eligible shall be either the adoptive parents' actual share of cost for support of the child or the foster family home rate as determined under Section 35333(c)(1), whichever is less.

(d) The AAP benefit for the child's placement in a group home or residential care treatment facility shall continue to be available, provided the requirements of this section

are met and the adoptive parents actively participate in a plan to return the child to the adoptive home.

(e) When the responsible public agency and the adoptive parents agree on the AAP benefit, the agency shall complete an Adoption Assistance Program Agreement (AD 4320) with the adoptive parents.

(1) The agency shall state in the agreement that the AAP benefit is intended for the child's out-of-home placement.

(2) The agency shall complete the AAP 2 instructing the county to send the adoptive parents a Notice of Action indicating that the AAP benefit is approved.

(f) The duration of an Adoption Assistance Program Agreement (AD 4320) for the child's out-of-home placement shall be 18 months before a subsequent reassessment is required.

§35335. Content of the Adoption Assistance Agreement.

§35337. Content of the Adoption Assistance Program Agreement.

(a) The Adoption Assistance Program Agreement form (AD 4320) shall contain the following:

(1) The child's adoptive name and the name(s) of the adoptive parent(s).

(2) The amount and duration of financial assistance.

(3) The specific needs for which payments are being authorized.

(4) That the existence of a characteristic that is a barrier to the child's adoption without subsidy has been confirmed by the agency.

(5) That, until termination of financial assistance, the adoptive parents shall notify the child's agency immediately regarding the following:

(A) A change in their mailing address on record with the agency.

(B) The child begins to receive unearned income as specified at Section 35333(c)(2)(A).

(C) They are no longer responsible for the support of the child.

(D) They are no longer supporting the child.

(6) That a failure to report the changes specified in Sections 35337(a)(5)(B) through (D) may result in an overpayment which would be recovered by a direct charge or a reduction in current and future AAP benefits.

(7) That continuation of payment depends upon continued legal responsibility of the adoptive parents for the support of the child and upon continued receipt by the child of that support.

(8) That the AAP benefit will be reduced if the AAP benefit amount exceeds the foster care maintenance payment that would have been made if the child had remained in a foster family home.

(9) That the AAP benefit may be reduced if the child receives other unearned income as specified in Section 35333(c)(2)(A).

(10) That the child is eligible for Medi-Cal services.

(11) That the child is eligible for services provided pursuant to Title XX of the federal Social Security Act.

(A) Title XX services are public social services as described under MPP Sections 30-000 and 31-000.

(12) The procedure for reassessment of the AD 4320.

(13) That the agreement remains effective regardless of the state in which the adoptive parents reside.

(14) Any additional services and assistance which are to be provided as part of the agreement.

§35339. Deferred Payment of AAP.

(a) When the effective date of payment is not known because a child has a mental, physical, medical or emotional condition which does not require current benefits but which could require future benefits, the Adoption Assistance Program Agreement form (AD 4320) shall indicate that the family may request benefits to meet needs associated with the condition at an unspecified future date.

(1) The existence of a condition which does not require current benefits shall be certified by a licensed professional competent to make an assessment of the condition and operating within the scope of his or her profession.

(2) A history which is likely to lead to a future mental, physical, medical or emotional condition shall be considered as such a condition.

(3) The requirements set forth in Section 35333 shall be used to determine payment amount and duration if the family requests AAP benefits.

(4) An AD 4320 shall be used to record the revised agreement.

§35341. Procedures for Initiation of Payment.

(a) The responsible public agency shall provide the county responsible for payment with information necessary to allow the county to issue AAP payments and authorize the issuance of Medi-Cal cards.

(1) AAP payments shall not begin before the Adoptive Placement Agreement (AD 907) and the Adoption Assistance Program Agreement (AD 4320) are signed.

(2) When the beginning date of payment is known, the agency shall complete and send the following forms to the county:

(A) Payment Instructions for Adoption Assistance Program (AAP 2),

(B) Eligibility Certification - Adoption Assistance Program (AAP 4)

(C) If a Medi-Cal eligible child is enrolled in private health coverage, a Health Insurance Questionnaire (DHS 6155) and

(D) Income and Property Checklist for Federal Eligibility Determination - Adoption Assistance Program (FC 10).

(3) The child's adoptive name shall be used on the AAP 2, AAP 4, and FC 10 and all related correspondence with the county.

(b) Upon receipt of the AAP 2, the county shall issue payments as instructed.

§35343. Procedures for Reassessment of the Child's Needs.

(a) A reassessment shall be completed by the agency which authorized the initial payment either:

(1) During the 90-day period prior to the end of each payment authorization period specified in Section 35333(h).

(A) The process shall not be completed if the child is no longer eligible due to age.

(2) Prior to the 90-day period at the request of the adoptive parent or if the agency learns that the current AAP grant may no longer be appropriate because:

(A) The adoptive parents may no longer be legally responsible for the support of the child.

(B) The adoptive parents may no longer be supporting the child.

(C) The adoption assistance benefit may exceed the amount for which the child would have been eligible in a licensed foster family home.

(b) The reassessment process shall include the following steps:

(1) The county responsible for payment shall mail the adoptive parent(s) the Reassessment Information Adoption Assistance Program form (AAP 3) as specified in CDSS Manual of Policies and Procedures, Eligibility and Assistance Standards Section 45-805.1.

(B) The adoptive parent(s) shall return the AAP 3 to the agency which authorized the initial payment.

(2) After the public adoption agency receives the completed AAP 3 from the adoptive parents, the agency shall determine the procedure, as listed below, to follow in order to complete the reassessment process:

(A) If the adoptive parents select box 1 on the AAP 3 indicating they no longer wish to receive an AAP benefit for their child, the agency shall follow the procedures as specified in Section 35339 for completing a deferred payment agreement.

(B) If the adoptive parents select box 2 on the AAP 3 indicating they request the AAP benefit to continue at the current level, the agency shall complete and send a Payment Instructions Adoption Assistance Program (AAP 2) form to the county within five working days of completing the reassessment process.



(C) If the adoptive parents select box 3 requesting an increase in the amount of the AAP benefit, the adoptive parents shall provide written documentation of the child's special needs justifying the increase. This documentation must be sufficient so as to assist the agency in determining whether or not the increase is warranted. The agency may require additional information as necessary.

1. The agency shall base the reassessment of the child's needs and required level of care and supervision on the following information:

a. Information provided by the adoptive parents.

b. Information about the child based on application of the county's foster care specialized care assessment instrument.

2. The responsible public agency shall follow the procedures in Section 35333(c) in determining the new maximum AAP benefit amount.

3. If the agency determines that a change in the amount of payment appears appropriate, the adoptive parents' concurrence shall be obtained prior to changing the amount of payment.

a. The adoptive parents' concurrence is not required by law if the payment amount is changed to prevent the payment from exceeding the maximum payment amount specified in Section 35333(c)(1).

4. The agency and the adoptive parents shall complete an AD 4320 which indicates that the agreement is an amendment to the initial AD 4320.

a. If the agency and the adoptive parents are unable to agree on the amount of the AAP benefit, the agency shall complete an AAP 2 instructing the county to send a Notice of Action to the adoptive parents indicating that the request for additional AAP benefits is denied and that the AAP benefit will continue at the prior rate. The agency shall specify the reason for denial as "The agency and the family cannot agree on benefits."

5. The agency shall complete and send a Payment Instructions Adoption Assistance Program (AAP 2) form to the county within five working days of completing the reassessment process.

(D) If the adoptive parents select box 4, requesting a decrease in the amount of the AAP benefit, the agency and the adoptive parents shall complete an AD 4320 which indicates that the agreement is an amendment to the initial AD 4320.

1. The agency shall complete and send a Payment Instructions Adoption Assistance Program (AAP 2) form to the county within five working days of completing the reassessment process.

(E) If the adoptive family fails to return the AAP 3 within the 90 days before the end of the payment authorization period, the agency shall conclude that the family does not want to continue receiving assistance.

1. If the family returns the AAP 3 within 30 days after the expiration of the 90-day period, the effective date of renewal shall be the last day of the 90-day period.

2. If the family takes more than 30 days after the expiration of the 90-day period to return the AAP 3, the effective date of renewal shall be the date on which assistance was requested in writing.

(3) The agency shall complete and send a Health Insurance Questionnaire (DHS) 6155 if the child is Medi-Cal eligible and has private health coverage.

#### §35344. Procedures for Identification and Recovery of Overpayments.

(a) An overpayment of Adoption Assistance Program (AAP) benefits may exist in the following situations:

(1) The adoptive parent receives aid after the child becomes ineligible for assistance because:

(A) The child has attained 18 years of age, or, if the agency has determined that the child has a mental or physical condition which warrants the continuation of assistance, 21 years of age.

(B) The adoptive parent is no longer supporting the child.

3. The parent may reestablish eligibility by resuming support of the child.

(C) The adoptive parent is no longer legally responsible for the support of the child.

(2) The adoptive parent has committed fraud in his or her application for, or reassessment of, the adoption assistance benefit.

(3) The AAP payment exceeds the foster care payment which would have been paid on behalf of the child if the child had not been placed for adoption.

(b) The agency which authorized payment shall compute the overpayment amount as follows:

(1) Compute the correct AAP payment based on correct information for each month.

(2) Subtract the correct AAP payment from the amount of assistance actually provided.

(c) The agency which authorized payment shall inform the county responsible for payment of the reason for the overpayment and the computation of the overpayment amount.

(d) The county shall attempt to recover the overpayment as specified in MPP Section 45-806 and Section 45-808, which provides for recovery by grant adjustment, demand for repayment, or civil judgment.

§35345. When Notice of Action Is Required.

(a) The agency responsible for authorizing payment shall notify the county responsible for payment by using the Payment Instructions Adoption Assistance Program form (AAP 2) regarding any of the following events which require that the county send the adoptive parent a Notice of Action (NOA):

- (1) Denial of request for adoption assistance benefits.
- (2) Completion of a deferred payment agreement (Section II of the AD 4320).
- (3) Authorization of the initial grant.
- (4) Completion of the recertification process.
- (5) Payment termination.
- (6) An overpayment requiring collection.
- (7) Any change in grant amount.

§35347. Statutory Provisions for AAC.

(a) The agency shall follow the provisions of Welfare and Institutions Code Section 16121.05(d) for those adoption assistance agreements which were in effect prior to October 1, 1982.

§35349. Chronic Health Condition and Continuation of the AAC Grant.

(a) For purposes of this section, a chronic health condition shall include one or more of the following conditions present at placement and of such nature as to make adoptive homes unavailable to the child without financial assistance:

(1) Physical or mental disability present at birth or resulting from disease or injury.

(2) Emotional disturbance.

(3) History of either injury prior to adoptive placement, physical disease, or emotional disturbance which may manifest itself in some form of physical, mental, or emotional disability after completion of the adoption.

#### §35351. Maintenance of Separate Records.

(a) To maintain confidentiality of the adoption case record, the agency shall maintain copies of the following documents separate from the adoption case record:

(1) The Request for Adoption Assistance (AAP 1).

(2) The Eligibility Certification - Adoption Assistance Program (AAP 4), which verifies that the child meets the Adoption Assistance Program eligibility criteria specified in Section 35326.

(3) The following documents relating to the determination of Federal eligibility:

(A) Federal Eligibility Certification for Adoption Assistance Program (FC 8).

(B) Determination of Federal AFDC-FC Eligibility (FC 3).

(C) Income and Property Checklist for Federal Eligibility Determination - Adoption Assistance Program (FC 10).

(4) Documentation supporting the determination of the amount and duration of payment made pursuant to Section 35333.

- (5) The initial Adoption Assistance Program Agreement (AD 4320).
- (6) Completed reassessment documents, including:
  - (A) Reassessment Information - Adoption Assistance Program (AAP 3).
  - (B) The Adoption Assistance Program Agreement (AD 4320) used as an amendment to the initial agreement.
- (7) Payment Instructions - Adoption Assistance Program (AAP 2).
- (8) All correspondence from the county, including notices of action.
- (9) State hearing decisions.
- (10) All AAP related correspondence from the adoptive parent, including supporting documentation submitted to the agency by the parent.
- (11) Any other correspondence relating to the determination of AAP eligibility or grant amount.

§35352. Notification Requirements for Agencies.

(a) The agency shall inform all applicants that:

(1) Reimbursement for nonrecurring adoption expenses is available to adoptive parents who adopt an AAP-eligible child.

(2) Agreements entered into pursuant to this section shall meet the provisions of Section 35352.1(a)(7).

(3) Agreements must be signed at the time of or prior to the final decree of adoption.

(4) Claims for reimbursement must be filed with the agency responsible for payment of AAP benefits within two years of the date of the final decree of adoption.

#### §35352.1. Eligibility for Reimbursement.

(a) In order for a claim to be eligible for reimbursement, the responsible public agency shall:

(1) Record in the case file that the adoption took place in compliance with applicable state and local laws.

(2) Record in the case file that the child for whose adoptive costs the parents are claiming reimbursement is an AAP-eligible child as defined in Section 35000(a)(1).

(3) Record in the case file that the placement meets the search requirements of section 35327.

(4) Include verification in the case file that the expenses claimed were actual expenditures. "Verification" includes, but is not limited to, copies of the following:

(A) Cancelled checks;

(B) Signed and dated receipts.

(5) Record in the case file that the expenses claimed meet the definition of "nonrecurring adoption expenses" as defined in section 35000(n).

(6) Record in the case file that the adoptive parents have not received reimbursement for the claimed expenses from other sources. "Other sources" include, but are not limited to, the following:

(A) Reimbursement from employers;

(B) Income tax deductions.

(7) Ensure that all adoptive parents sign an agreement with the agency prior to finalization of the adoption. The content of all such agreements shall meet the requirements as follows:

(A) The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

(B) The agreement may be a separate document or part of an agreement for either state or federal adoption assistance payments or services.

(8) Limit the maximum reimbursement for nonrecurring adoption expenses to \$400.00 per placement of an AAP-eligible child.

(A) Reimbursement for the adoptions costs incurred for the adoption of siblings shall be paid as follows:

1. Siblings placed for adoption either separately or as a unit are treated as individual placements with separate reimbursement for nonrecurring expenses up to the maximum amount allowable for each child.

(9) Record in the case file that reimbursement for nonrecurring adoption expenses in interstate placements shall conform to the following:

(A) When the adoption of the child involves interstate placement, the State that enters into an Adoption Assistance Agreement under section 473(a)(1)(B)(ii) of the Social Security Act or under a state subsidy program will be responsible for paying the nonrecurring adoption expenses of the child. In cases where there is interstate placement but no agreement for other Federal or State adoption assistance, the State in which the



Final Adoption Decree is issued will be responsible for reimbursement of nonrecurring expenses if the child meets the requirements of 473(c).

(B) Interstate placements which do not comply with the Interstate Compact on the Placement of Children are not eligible for reimbursement.

#### §35352.2. Authorization for Reimbursement.

(a) Pursuant to a determination that a claim for reimbursement for nonrecurring adoption expenses meets the eligibility criteria in Section 35352.1, the responsible public agency shall authorize the appropriate county to reimburse the adoptive parents.

(1) The county responsible for reimbursement shall be the county responsible for the child's Adoption Assistance Program (AAP) payment.

(A) In cases in which the adoptive parents have elected not to receive AAP payments, the county responsible for reimbursement shall be the county that would otherwise provide the child's AAP payment.

#### §35352.3. Agency Requirements for Reimbursements.

(a) The county responsible for the child's Adoption Assistance Program (AAP) payment shall be the county responsible for the direct reimbursement to that child's adoptive parents for their nonrecurring adoption expenses as required by Welfare and Institutions Code section 16120.1. This reimbursement shall be separate from the child's AAP payment as required by Welfare and Institutions Code Section 16120.1(d).

(b) The state shall reimburse counties for payments made to adoptive parents of AAP-eligible children as mandated by Welfare and Institutions Code Section 16120.1.

(c) Reimbursement for nonrecurring adoption expenses is contingent upon the ongoing existence of the federal program for these reimbursements as mandated by Welfare and Institutions Code Section 16120.1(c).

#### §35353. CDIB and Linkage to the ICWA.

(a) In working with children who could be subject to the provisions of the ICWA or be eligible for a CDIB and the birth parents of such children, the additional requirements of Subchapter 8 shall be met.

§35355. Non-Applicability of ICWA.

(a) The requirements of the ICWA shall not apply to:

(1) Adoptions in which a final decree of adoption was issued prior to May 8, 1979.

(2) Children who are members of non-federally recognized Indian tribes.

(A) The agency shall submit the AD 4311 to the department as required in Section 35359.

§35357. Background Information to Determine the Applicability of the ICWA and to Obtain the CDIB.

(a) The agency shall obtain sufficient information from the parents of a child as follows:

(1) If an Independent Adoption, as required by Section 35023.

(2) If an Agency Adoption, as required by Section 35129.3.

(b) The agency shall make the following determination for each child:

(1) Whether the child meets the definition of an Indian child in accordance with 25 USC Section 1903(4), and

(2) Whether a CDIB can be issued.

§35359. Completing the AD 4311.

(a) The agency shall complete all requested information on the AD 4311 to the extent that the information is ascertainable from the birth parents, extended family members, and other sources of information.

(b) The agency shall complete an AD 4311 when parental rights regarding a child claiming Indian heritage, including unknown tribes, are being involuntarily or voluntarily terminated.

§35361. Submission of the AD 4311 to the Department.

(a) Before accepting a relinquishment or consent, the agency or the adoption service provider shall immediately submit to the department a completed AD 4311 for each child claiming Indian heritage.

(1) A certified copy of the child's birth certificate shall be attached to the AD 4311.

(2) If the father is the identified Indian parent and is not named on the child's birth certificate, or his paternity has not been otherwise established, a signed and notarized statement of paternity must be attached to the AD 4311.

(g) Upon receipt of a CDIB from the BIA or tribe, the agency shall send a copy of the CDIB to the department.

(1) For relinquishment adoptions only:

(A) After receipt of the ICWA determination, the agency shall send to the department the AD 90 and all copies of correspondence sent to or received from the tribe or BIA agency office.

§35363. Procedures for Children Who Meet the Definition of an Indian Child.

(a) Reserved.

§35365. Background Information on a Child Subject to the ICWA.

(a) The agency shall attempt to ascertain the following background information:

(1) Name, address, date, place of birth, and tribal affiliation of the child and of any parent, grandparent, or great-grandparent with Indian heritage.

(2) Names and addresses of extended family members.

(3) Tribal customs regarding child placement practices.

(4) Addresses where tribal governing organizations may be located.

§35367. Information to the Parents.

(a) The agency shall inform the parents of a child with Indian heritage that:

(1) The provisions of the ICWA shall apply if at least one parent is a member of an Indian tribe as defined at Section 35000(i)(7) and the child is an Indian child as defined at Section 35000(i)(5).

§35369. Provisions of the ICWA.

(a) The agency shall inform the parents of a child subject to the ICWA of the act's provisions which include:

(1) The requirement for an order of placement preference.

(C) If the parent requests modification of the placement order in an agency adoption, the request shall be brought to the attention of the court for a decision on whether the placement order shall be modified.

(D) In an independent adoption, the court shall be advised that the parent has been made aware of the order of placement preference and has made the decision to consent to the adoption by the petitioners.

(2) The requirement that the relinquishment or consent must be taken before a judge of the Superior Court.

(3) The requirement that the parent may withdraw consent or revoke or rescind relinquishment at any time prior to the entry of the final decree of adoption.

(4) The requirement that, in the event the parent who gave physical custody of the child to the agency or petitioners and has not otherwise been deprived of legal custody requests to revoke or rescind the relinquishment or withdraw the consent, or refuses to give consent, the following procedures shall be followed:

(A) In an independent adoption:

(1) If the consent has not been signed and the parent wishes return of the child, the parent rather than the agency will request the petitioners to return the child. If the petitioners refuse, the agency shall immediately file a report with the court and recommend the child's return.

2. If the consent has been signed, the agency shall immediately file a report with the court advising the court of the parent's request and recommending that the child be returned to the parent.

(B) In an agency adoption:

1. If the parent's request precedes adoptive placement the agency shall rescind the relinquishment and return the child to the parent.

2. If the parent's request follows an adoptive placement, the agency shall immediately notify the adoptive parents and return the child to the parent within an agreed upon time period, which would ordinarily not exceed three working days.

(i) In no case shall the return of the child require more than seven calendar days following the parent's request.

(C) Any other parent whose consent has been taken or whose relinquishment has been filed shall immediately be notified of the request to revoke or rescind the relinquishment or withdraw the consent and shall be notified of any court proceedings resulting from the request.

(5) The requirement that, in the event that the parent who did not give physical custody of the child to the agency or petitioners, or the parent who has been deprived of legal custody, requests revocation or rescission of the relinquishment or withdrawal of the consent, the following procedures shall be followed:

(A) In an independent adoption, the agency shall ensure that the petitioners are advised that court proceedings will be necessary to determine whether that parent has a right to physical custody of the child or whether the adoption plan can proceed.

(B) In an agency adoption, the agency shall initiate court proceedings which will determine whether that parent has a right to physical custody of the child or whether the adoption plan can proceed.

1. The agency shall ensure that any other parent whose consent has been taken or whose relinquishment has been filed is notified of the request to revoke or rescind the relinquishment or withdraw the consent and notified of any court proceedings resulting from the request.

(6) The requirement that if the agency or petitioners initiate legal proceedings to involuntarily terminate the parent's rights to the Indian child, the tribe shall be notified and may intervene in the proceedings.

(7) The requirement that the parent will be notified if the adoption petition is withdrawn, dismissed, or denied or the adoption is set aside.

(B) The agency shall inform the parent that he or she must keep his or her name and address current with the agency so that notice can be provided.

(C) The agency reporting on the petition that is withdrawn, dismissed, or denied, or on the set aside shall provide written notice to the parent.

(8) The requirement that upon petition of either parent, the Indian custodian or the Indian child's tribe, all court proceedings with regard to the child shall be transferred to the jurisdiction of the tribal court, providing there is no good cause to the contrary, and neither parent objects to the petition and the tribal court does not decline the transfer.

(9) The requirements for release of information concerning the adoption and the adopted child's Indian heritage as follows:

(A) The adopted child, when he or she reaches age 18, may request and receive information from the court as provided for in 25 USC 1917.

(B) That the court which granted the adoption is required by the Act to provide information to the Secretary of the Interior as specified in 25 USC 1951 and the parent who wishes his or her identity to remain confidential will need to file an affidavit with the court requesting confidentiality.

2. The agency shall request the parent to provide a copy of the affidavit for filing in the adoption case record.

(C) That although the Secretary of the Interior is required by the Act to insure confidentiality, some Indian tribes, if they know of the adoption, may not maintain confidentiality.

(D) That upon request the department will make available to authorized personnel from the Bureau of Indian Affairs and the adopted child who has reached age 18 information as specified in Family Code Section 8619.

§35371. Provisions for Setting Aside the Adoption and Withdrawing Consent.

(a) The agency shall inform the parents of a child subject to the provisions of the ICWA that within five years of the time a decree of adoption is granted, the parent may petition the court to set aside a decree of adoption upon the grounds that the consent or relinquishment was obtained through fraud or duress pursuant to USC 1913(d) and Family Code Section 9102.