

# Child Welfare Policy Manual

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## Questions & Answers

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### 8.2A TITLE IV-E, Adoption Assistance Program, Agreements

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**1. Question: Is it permissible for a State to include a statement in the title IV-E adoption assistance agreement to the effect that "The Department's obligation to provide for Federally funded adoption assistance payments and/or services is subject to the appropriation of State funds"?**

**Answer:** No. Although we understand that the State may experience difficulties in its ability to pay subsidies due to the State budget, such difficulties do not relieve or alter the State's obligation under title IV-E to act in accordance with executed adoption assistance agreements. Accordingly, any statement that undermines the State's obligation to honor the terms of the title IV-E adoption assistance agreement is not consistent with Federal requirements in sections 473(a)(1)(B)(ii) and 473(a)(3) of the Social Security Act. Once an agreement is signed, the State must obtain the concurrence of the adoptive parent if it wishes to make any changes in the payment amount with one exception. That exception is when there is an across-the-board reduction or increase in the foster care maintenance payment rate. In that circumstance, the State may adjust the adoption assistance payment without the adoptive parent's concurrence.

- **Source/Date:** 08/05/08
- **Legal and Related References:** Social Security Act - sections 473(a)(1)(B)(ii) and 473(a)(3); CWPM 8.2D4, Q/A #2)

**2. Question: Under what circumstances may a title IV-E agency suspend adoption assistance payments?**

**Answer:** Pursuant to long-standing policy, title IV-E agencies were prohibited from suspending adoption assistance payments because a suspension was the equivalent of terminating adoption assistance payments. See ACYF-CB-PIQ-98-02, as incorporated into §8.2 of the Child Welfare Policy Manual (CWPM). Title IV-E agencies advised us that our adoption assistance suspension policy did not allow them the latitude to act when the agency was unsure or doubted that the parent was continuing to provide support to the child/youth. Consequently, we issued a Request for Comment in the Federal Register, 80 FR 17058 (March 31, 2015) asking agencies and other stakeholders to comment on our adoption assistance suspension policy. Informed by the comments we received, we have revised our adoption assistance suspension policy to allow title IV-E agencies to suspend adoption assistance payments in accordance with the guidance provided below.

A title IV-E agency may suspend adoption assistance payments if the agency cannot establish that the adoptive parent is providing any support to the child/youth (including individuals up to age 21 as per an approved title IV-E plan) because the agency has not been able to establish contact with the parent to make such a determination. “Any support” includes various forms of financial support, as determined by the title IV-E agency. Payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs are acceptable forms of financial support. See §473(a)(4)(A)(iii) of the Social Security Act (the Act); CWPM, §8.2D.5, Question and Answer #2.

Similarly, a title IV-E agency may suspend adoption assistance payments if the agency cannot establish that the adoptive parent is legally responsible for the support of the child under age 18 because the agency has not been able to establish contact with the parent to make a determination. A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military. See §473(a)(4)(A)(ii) of the Act; the Child Welfare Policy Manual at §8.2D.5, Question and Answer #2.

Note that a title IV-E agency cannot reduce or suspend adoption assistance solely because the adoptive parents fail to reply to the agency’s request for information, renewal, or recertification of the adoption assistance agreement.

A title IV-E agency only may suspend adoption assistance payments in accordance with the fair hearing requirements at 45 C.F.R. §205.10. Before suspending a payment, the title IV-E agency must ensure that notice to the adoptive parents is both timely and adequate, as described at 45 C.F.R. § 205.10(a)(4). As such, the title IV-E agency must mail notice of intent to suspend the adoption assistance payments at least ten days before the agency plans to suspend the payments. It also must describe that the agency intends to suspend payments, the reasons for the intended suspension and the title IV-E basis as outlined above for the intended suspension. Finally, the agency must describe the adoptive parent’s right to request a fair hearing and the circumstances under which assistance is continued if a hearing is requested.

In order to be able to suspend adoption assistance payments in accordance with the guidance above, the title IV-E agency must first amend its title IV-E plan and have the Children’s Bureau approve the change. Note also that each new adoption assistance agreement must include the circumstances under which the title IV-E agency may suspend adoption assistance payments. Similarly, the title IV-E agency may try to re-negotiate existing adoption assistance agreements with the adoptive parent to include the circumstances under which the title IV-E agency may suspend payments; however, the terms of an existing adoption assistance agreement only may be changed with the concurrence of the adoptive parent. If an adoptive parent declines to include such a term in the existing agreement, the title IV-E agency may not suspend adoption assistance payments under that agreement.

If the title IV-E agency suspends adoption assistance as described above, the child/youth remains title IV-E eligible, and the title IV-E adoption assistance agreement remains in effect while the payment is suspended.

Although an agency may suspend a child's adoption assistance payment under the circumstances described above, the child's eligibility for, and receipt of, Medicaid may not be suspended while the adoption assistance agreement is in effect. See §473(b) of the Social Security Act. The title IV-E agency also may claim any title IV-E adoption assistance administrative costs on behalf of a child whose title IV-E adoption assistance is suspended in accordance with its approved cost allocation plan.

- **Source/Date:** 02/14/2018
- **Legal and Related References:** Social Security Act, section 473(a)(4)(A) and (B); 45 CFR 205.10