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Local Commissioners Memorandum

Transmittal:	09-OCFS-LCM-12
To:	Local District Commissioners
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	October 1, 2009
Subject:	Highlights of Changes in Adoption Assistance Eligibility
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Attachments:	Only on-line. See below
Attachment Available Online:	Chapter 1B Eligibility Manual For Child Welfare Programs; Appendix A: Adoption Assistance Eligibility Checklist (LDSS 3912 revised 10/09) http://www.ocfs.state.ny.us/main/publications/eligibility/

I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to advise social service district staff of the newly revised Chapter 1B of the **Eligibility Manual for Child Welfare Programs** pertaining to Title IV-E Adoption Assistance Eligibility, State Adoption Subsidy, and Medical Assistance (MA) eligibility for those cases. As a result of these changes, the associated

Checklist (LDSS 3912) for determining eligibility for Title IV-E Adoption Assistance, State Adoption Subsidy and MA has also been revised, effective October 1, 2009. This LCM contains highlights of the chapter and checklist changes.

II. Background

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), enacted on October 7, 2008, amended the eligibility requirements for the Title IV-E adoption assistance program provided in section 473 of the Social Security Act. The revised eligibility criteria will be phased in for specific children over the next several years beginning in Federal Fiscal Year 2009-2010, effective October 1, 2009 to September 30, 2010.

On July 28, 2009, OCFS issued 09-OCFS-ADM-14 Changes in Adoption Subsidy: Medicaid under the Provisions of COBRA, Subsidy Eligibility, and the Review and Approval of the Subsidy Agreement. That release, in part, clarified state policy regarding non-Title IV-E subsidy eligible children who may qualify for MA under the provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985. The categories of eligible children include children with special needs who meet the state's definition of hard-to-place children and children who lose Title IV-E eligibility following adoption, but otherwise meet the eligibility requirements for MA under the provisions of COBRA.

Changes resulting from Fostering Connections to Success and Increasing Adoptions Act of 2008 and clarification provided by 09-OCFS-ADM-14 have been incorporated into Chapter 1B of the Eligibility Manual for Child Welfare Programs and associated checklist (LDSS 3912 / revised 10/09).

III. Program Implications

Staff responsible for determining eligibility for Title IV-E Adoption Assistance, State Adoption Subsidy and MA for those cases must follow the instructions in Chapter 1B of the Eligibility Manual for Child Welfare Programs and begin using the revised Checklist LDSS 3912 as of October 1, 2009. Below is a summary that highlights the changes.

Highlights: Adoption Assistance Eligibility Provisions of Fostering Connections to Success and Increasing Adoptions Act of 2008

- A child's eligibility for Title IV-E Adoption Assistance is "delinked" from the child's initial eligibility for Title IV-E foster care for applicable children. In other words, the past criteria requiring that a child had to have

been initially eligible for Title IV-E foster care in order to be eligible for adoption subsidy no longer applies for children who meet the definition of “applicable children.” Applicable children include: children who reach **age 16 before September 30, 2010**, the end of the Federal Fiscal Year that begins on October 1, 2009; children who have been in foster care for 60 consecutive months; and children who are the sibling(s) of an applicable child by virtue of age or time in foster care and who are placed in the same adoption arrangement as that sibling. The applicable children must meet all other eligibility requirements pursuant to section 473 of the Social Security Act, and as described in Chapter 1B of the Eligibility Manual for Child Welfare Programs.

- The age of applicable children will decrease by two years each federal fiscal year until children of any age meets the applicable age requirements in FFY 2017-2018 (October 1, 2017 to September 30, 2018).

Highlights: 09-OCFS-ADM-14 (Pertinent Portions)

- *Clarifies previous interpretation of the MA COBRA provisions so that children with special needs who are approved for state adoption subsidy because they meet the state’s definition of *hard-to-place* as defined in 18 NYCRR 421.24 (a) (3), and who have been in receipt of MA in the three months prior to the Adoption Subsidy Agreement being signed, or would have been eligible for MA during that period of time, qualify for MA under the provisions of COBRA. Virtually all children in foster care, with the exception of non-qualified immigrant children, will meet these criteria, as they have categorical eligibility for MA as foster children.*
- *Clarifies previous interpretation of the MA COBRA provisions so that children who are handicapped or hard-to-place and who lose Title IV-E eligibility following adoption and who are eligible for state adoption subsidy, and children who become eligible for a state adoption subsidy following adoption, are to be evaluated for eligibility for Medicaid under the provisions of COBRA.*

/s/ Nancy W. Martinez

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