

CHAPTER 121**ADOPTIONS****Authority**

N.J.S.A. 9:6-8.15, 9:6-8.36a, 9:6-8.46b, 9:6-8.98, 9:23-5, 30:1-12, 30:4C-4(h), 30:4C-31, and 30:4C-45 through 49; and 42 U.S.C. §§ 670 et seq.

Source and Effective Date

R.2005 d.439, effective November 18, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 121, Adoptions, expires on May 17, 2013. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 121, Adoptions, was filed and became effective prior to September 1, 1969.

Subchapter 3, Adoption Complaint Investigation Fees, was adopted as R.1975 d.15, effective February 6, 1975. See: 7 N.J.R. 58(c).

Subchapter 4, Release of Criminal HISTORY Record Information, was adopted as R.1979 d.119, effective March 19, 1979. See: 10 N.J.R. 543(a), 11 N.J.R. 248(a).

Pursuant to Executive Order No. 66(1978), Subchapter 3, Adoption Complaint Investigation Fees, was readopted as R.1983 d.509, effective . See: 15 N.J.R. 1341(a), 15 N.J.R. 1865(b).

Pursuant to Executive Order No. 66(1978), Subchapter 4, Release of Criminal HISTORY Record Information, was readopted as R.1984 d.88, effective March 13, 1984. See: 16 N.J.R. 119(b), 16 N.J.R. 730(a).

Pursuant to Executive Order No. 66(1978), Chapter 121, Adoptions, expired on March 13, 1989.

Chapter 121, Adoptions, was adopted as new rules by R.1990 d.344, effective July 16, 1990. See: 21 N.J.R. 3047(b), 22 N.J.R. 2172(a).

Pursuant to Executive Order No. 66(1978), Chapter 121, Adoptions, was readopted as R.1995 d.360, effective June 12, 1995. See: 27 N.J.R. 1122(a), 27 N.J.R. 2616(a).

Pursuant to Executive Order No. 66(1978), Chapter 121, Adoptions, was readopted as R.2000 d.254, effective May 24, 2000. Subchapter 4, Release of Criminal History Record Information, was repealed, and Subchapter 5, Medical Information Forms, was recodified as Subchapter 4, Medical Information Form, by R.2000 d.254, effective June 19, 2000. See: 32 N.J.R. 741(a), 32 N.J.R. 2239(a).

Chapter 121, Adoptions, was readopted as R.2005 d.439, effective November 18, 2005. As a part of R.2005 d.439, former Subchapter 1, Approval of Agencies Desiring to Place Children in New Jersey, was repealed; former Subchapter 2, Adoption Subsidy, was recodified as Subchapter 1; former Subchapter 3, Adoption Complaint Investigation Fees, was recodified as Subchapter 2; and former Subchapter 4, Medical Information, was recodified as Subchapter 3, effective December 19, 2005. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 121, Adoptions, was scheduled to expire on May 17, 2011. See: 42 N.J.R. 3030(a).

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SUBCHAPTER 1. ADOPTION SUBSIDY**10:121-1.1 Definitions**

The following words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

“Adoption subsidy” means payments for the care and maintenance of a special needs child.

“Assistant Commissioner” means that person designated by the Commissioner of the Department to act on issues of youth and family services.

“Board rate” means the rate paid to the resource family for the child at the time of finalization or that which would have been paid for the child if the child was in placement.

“Child” means any person under the age of 18.

“Department” means the New Jersey Department of Human Services.

“Resource parent” means a person who has received a resource parent license from the State of New Jersey in order to provide foster, adoptive or kinship care.

“Special needs child” means any child who the State of New Jersey has the legal right to place for adoption but who is reasonably expected to be hard to place (due to a difficulty in finding a prospective adoptive home) as specified in N.J.A.C. 10:121-1.2.

New Rule, R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).

Former N.J.A.C. 10:121-1.1, Approval of agencies, repealed.

10:121-1.2 Determining that a child is a special needs child

(a) A Department representative shall determine that a child is a special needs child for any of the following reasons:

1. Any medical or dental condition which will require repeated or frequent hospitalization or treatment;

2. Any physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury or disease, which makes or may be expected to make a child totally or partially incapacitated for education or for remunerative occupation;

3. Any substantial disfigurement, such as the loss or deformation of facial features, torso or extremities;

4. A diagnosed emotional or behavioral problem, psychiatric disorder, serious intellectual incapacity or brain damage which seriously affects the child's ability to relate to his or her peers or authority figures, including, but not limited to, a developmental disability;

5. The child is one of a group of three or more siblings (including half-siblings) and it is considered necessary that the group be placed together, or the child is one of two siblings (including half-siblings) one of whom meets the special needs criteria, and it is considered most appropriate that the children be placed together;

6. The child is 10 years old or older;

7. The child is over two years of age and a member of an ethnic group for whom adoptive homes are not readily available. Information regarding availability of homes may be obtained from the Department;

8. The child is over five years of age and has been living with a resource parent for at least 12 months and adoption by the resource parent is the most appropriate plan for the child. A child under five may be deemed special needs and qualify for subsidy under this subsection if he or she is a member of an ethnic group for whom adoptive homes are not readily available; or

9. Any other condition of a specific child which may be approved by the Assistant Commissioner or designee.

New Rule, R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).

10:121-1.3 Payments for the care and maintenance of a special needs child (adoption subsidy)

(a) The Department shall make payments for the care and maintenance of a special needs child to the person(s) with whom the child has been placed for adoption or by whom the child has been adopted when such payments are applied for prior to adoption according to such forms and procedures as may be established by the Department.

(b) The Department shall determine and approve the qualifications for subsidy payments prior to the completion of an adoption proceeding. In order to qualify for subsidy, a child must meet the definition of a special needs child in N.J.A.C. 10:121-1.1. The failure of the Department to complete its determination and approval of qualifications prior to the finalization of adoption shall not prevent qualification for adoption subsidy, if application for such subsidy was made in a timely manner. Eligibility for subsidy shall be subject to an annual review and redetermination as described in N.J.A.C. 10:121-1.4(a).

(c) No payments shall be made for any child who the Department has determined was brought into the State of New Jersey for the sole purpose of qualifying for adoption subsidy.

(d) In addition to meeting the requirements as set forth in (a) through (c) above, payments pursuant to this section shall be made on behalf of a child only in the following circumstances:

1. A child is placed for adoption by the Department;

2. A New Jersey child is placed with a New Jersey family by an agency approved to provide adoption services in New Jersey;

3. A New Jersey child who is not Title IV-E eligible or Supplemental Security Income eligible is placed in any state other than New Jersey by an agency approved to provide adoption services in New Jersey;

4. A New Jersey child in placement who appears to be potentially eligible for Supplemental Security Income, but that determination has not yet been made, is placed in any state other than New Jersey by an agency approved to provide adoption services in New Jersey. Subsidy will be terminated if the child is determined to be Supplemental Security Income eligible and the family will be instructed to seek subsidy from its state of residence; or

5. A non-New Jersey child who is Title IV-E or Supplemental Security Income eligible prior to adoption finalization is placed by a private agency anywhere in the country with a New Jersey family.

(e) Subsidy payments for children in private agency adoptions shall be effective as of the date the Department receives the application for adoption subsidy from the private agency or when the child is placed, whichever occurs later. A determination as to the child's eligibility to receive subsidy may be made by the Department. However, such determination shall be made prior to the child's adoptive placement. The Department is responsible for monitoring the adoption subsidy to the adoptive parent. The Department may approve adoption subsidy payments for a child without legal transfer of care or custody of the child to the Department.

(f) Payments shall be made only pursuant to a written Adoption Assistance Agreement between the Department and the adoptive parent(s), which shall include:

1. The date on which the agreement is entered and the stipulation that the agreement shall remain in effect regardless of the state in which the adoptive parent(s) reside at any given time;

2. The first name and birthdate of the child for whom the payment is to be made;

3. The condition(s) of the child which make the child a special needs child;

4. The needs of the children being adopted;
5. The amount of adoption subsidy to be paid;
6. The additional assistance or services to be provided by the State, and how the costs for these items are to be met;
7. Provisions for the protection of the interest of the child in cases where the adoptive parent(s) and child move to another state while the agreement is effective;
8. How the adoptive parent(s) shall notify the Department of changes in the needs of the child or circumstances of the adoptive family that would affect the eligibility for, or amount of, adoption subsidy;
9. How adoptive parent(s) shall be notified of any changes in the amount of adoption subsidy and how they may request changes in the adoption assistance agreement; and
10. Such other provisions as the Department may require.

(g) A Department representative shall make a reasonable effort to place the child in an adoptive setting without providing a subsidy, except in situations involving adoption by a child's resource parent or where the Department determines that such efforts should not be made because of the special needs of the child or the special qualifications of the adoptive parents.

Amended by R.1987 d.45, effective January 5, 1987.
See: 18 N.J.R. 24(a), 19 N.J.R. 129(a).
Recodified from N.J.A.C. 10:121-2.2 and amended by R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).
Rewrote the section.

Case Notes

Foster parents do not qualify for adoption subsidy when they fail to show that foster child's emotional or behavioral problems affect ability to relate to peers or authority figure and diminish adoption prospects. *W. v. New Jersey Division Of Youth and Family Services*, 96 N.J.A.R.2d (DYF) 1.

Parents were not entitled to legal fees and subsidy in connection with adoption of hard-to-place child. *N.R. v. Division of Youth and Family Services*, 94 N.J.A.R.2d (DYF) 10.

10:121-1.4 Duration and amount of adoption subsidy

(a) The written agreement covering subsidy payments shall remain in effect regardless of family income until the child's 18th birthday. Subsidy payments will be terminated if the Department determines that the parents are no longer legally responsible for the child or the child is no longer receiving support from those parents.

(b) Payments in subsidization of adoption shall include, but are not limited to, the maintenance costs, medical, and surgical expenses, and other costs incidental to the care, training, and education of the child. Such payments may not exceed the cost of providing comparable assistance in re-

source family care and shall be made until the child becomes 21 years of age if the child is enrolled as a student of a secondary school or its equivalent.

(c) In the event of the death of the adoptive parent(s), subsidy payments shall be transferred to the new caregiver when the caregiver demonstrates legal responsibility for the child as a result of being named guardian in the adoptive parent's will or having obtained a custody order through the courts.

(d) An adoptive parent cannot be disqualified from receiving subsidy because of his or her family income.

(e) The amount of monthly payment for care and maintenance will be 100 percent of the applicable foster care board rate.

Recodified from N.J.A.C. 10:121-2.2 and amended by R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).
Rewrote the section.
Administrative correction.
See: 38 N.J.R. 4228(a).

10:121-1.5 Other payments

(a) The medical costs of children determined to be special needs will be covered through Medicaid.

(b) Any child eligible for adoption subsidy is eligible for legal subsidy directly related to the adoption and approved by the Department prior to the adoption.

(c) Expenses resulting from a condition which qualified the child for adoption subsidy and which are not covered by third-party liability or Medicaid may be covered by the Department if specified in the agreement.

Recodified from N.J.A.C. 10:121-2.2 and amended by R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).
Rewrote the section.

10:121-1.6 Exceptions

The requirements and standards prescribed in this subchapter may be subject to exceptions in specific cases where the Department determines that strict compliance would result in undue hardship or jeopardize the health, safety or welfare of the prospective adoptive parent or child except that no exception to these rules may exceed the limitations provided by Federal or State law.

Amended by R.1987 d.45, effective January 5, 1987.
See: 18 N.J.R. 24(a), 19 N.J.R. 129(a).
Recodified from N.J.A.C. 10:121-2.3 and amended by R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).
Rewrote the section.

10:121-1.7 Administrative hearings

(a) Any person aggrieved by the decision of the Department not to make adoption subsidy payment pursuant to this

section, or a decision to make such payment in an inadequate or inappropriate amount contrary to the provisions of this section, or failure of the Department to determine with reasonable promptness any application filed with the Department under this section, shall be entitled to an administrative hearing when an application for a hearing is filed with the Department Administrative Hearings Unit within 15 calendar days of such decision or failure to act by the Department.

(b) The Department's Administrative Hearings Unit will transmit requests for hearings which comply with the provisions in (a) above to the Office of Administrative Law which will conduct all such hearings as contested case hearings pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1).

(c) Following receipt of the Initial Decision from the Office of Administrative Law and the expiration of the applicable comment periods, the Director shall issue a Final Decision which accepts, rejects, or modifies the Initial Decision. A copy of the Final Decision will be served on all parties of record.

Recodified by R.1987 d.45, effective January 5, 1987.
See: 18 N.J.R. 24(a), 19 N.J.R. 129(a).

Recodified from N.J.A.C. 10:121-2.5.
Amended by R.2000 d.254, effective June 19, 2000.
See: 32 N.J.R. 741(a), 32 N.J.R. 2239(a).
Recodified from N.J.A.C. 10:121-2.4 and amended by R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).
Substituted "Department" for "Division" throughout.

SUBCHAPTER 2. ADOPTION COMPLAINT INVESTIGATION FEES

10:121-2.1 Adoption complaint investigation

The Division of Youth and Family Services, as an approved adoption agency in New Jersey, is authorized to conduct adoption complaint investigations and required to charge to the plaintiffs in such cases the costs of conducting such investigations pursuant to N.J.S.A. 9:3-53. The Division of Youth and Family Services charges fees to conduct adoption complaint investigations, based on a person's or family's ability to pay.

Amended by R.2000 d.254, effective June 19, 2000.
See: 32 N.J.R. 741(a), 32 N.J.R. 2239(a).
Deleted a former third sentence.
Recodified from N.J.A.C. 10:121-3.1 and amended by R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).
Deleted "ACIs" throughout; added "adoption complaint investigation" to last sentence. Former N.J.A.C. 10:121-2.1, Definitions, repealed.

10:121-2.2 (Reserved)

Recodified as N.J.A.C. 10:121-1.3 through 1.5 by R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).
Section was "Payments for the care and maintenance of a hard-to-place child (adoption subsidy)."

10:121-2.3 (Reserved)

Recodified as N.J.A.C. 10:121-1.6 by R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).
Section was "Exceptions."

10:121-2.4 (Reserved)

Recodified as N.J.A.C. 10:121-1.7 by R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).
Section was "Administrative hearings."

10:121-2.5 (Reserved)

Repealed by R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).
Section was "Adoption resource exchange."

SUBCHAPTER 3. MEDICAL INFORMATION

10:121-3.1 Medical information forms

Pursuant to N.J.S.A. 9:3-41.1, an approved adoption agency shall provide prospective parents with all available information relevant to the child's developmental and medical history, personality, and the parent's medical histories, including drugs or medications taken during pregnancy or any conditions believed to be hereditary and any other aspects of the parent's health which may influence the child's present or future health. This information SHALL be shared with the prospective parent prior to the actual placement of the child in the home or upon completion of an investigation conducted by an approved agency pursuant to N.J.S.A. 9:3-53. This information shall be provided to the prospective parent on a Department specified form which is available from:

Office of Licensing
PO Box 717
Trenton, NJ 08625-0717

Amended by R.2000 d.254, effective June 19, 2000.
See: 32 N.J.R. 741(a), 32 N.J.R. 2239(a).
Rewrote the section.
Recodified from N.J.A.C. 10:121-4.1 and amended by R.2005 d.439, effective December 19, 2005.
See: 37 N.J.R. 1938(a), 37 N.J.R. 5001(b).
Substituted "a Department specified form" for "DYFS Form 14-177, Adoption Medical History," and rewrote address. Former N.J.A.C. 10:121-3.1 recodified as N.J.A.C. 10:121-2.1.