

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-5.1c, Chapter 121, Adoptions, expires on May 17, 2011. See: 42 N.J.R. 3030(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 Subchapter 4, Release of Criminal History Record Information, was repealed, and Subchapter 5, Medical Information Forms, was recodified as Subchapter 4, Medical Information Form, by R.2000 d.254, effective June 19, 2000.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 As a part of R.2005 d.439, former Subchapter 1, Approval of Agencies Desiring to Place Children in New Jersey, was repealed; former Subchapter 2, Adoption Subsidy, was recodified as Subchapter 1; former Subchapter 3, Adoption Complaint Investigation Fees, was recodified as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.

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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;