

CHAPTER 121
ADOPTIONS

Authority

N.J.S.A. 30:4C-45 through 49, N.J.S.A. 30:4C-31 and P.L. 96-272.

Source and Effective Date

R.1995 d.360, effective June 12, 1995.
See: 27 N.J.R. 1122(a), 27 N.J.R. 2616(a).

Executive Order No. 66(1978) Expiration Date

Chapter 121, Adoptions, expires on June 12, 2000.

Chapter Historical Note

Chapter 121, Adoptions, was filed and became effective prior to September 1, 1969. Amendments became effective February 1, 1973 as R.1973 d.40. See: 5 N.J.R. 12(a), 5 N.J.R. 86(a). Subchapter 3 became effective February 6, 1975 as R.1975 d.15. See: 7 N.J.R. 58(c). Subchapter 4 became effective March 19, 1979 as R.1979 d.119. See: 10 N.J.R. 543(a), 11 N.J.R. 248(a). Amendments became effective September 20, 1982 as R.1982 d.321. See: 14 N.J.R. 746(a), 14 N.J.R. 1060(b). Subchapter 3 was readopted with amendments (which repealed N.J.A.C. 10:121-3.3 to 3.5), as R.1983 d.509. See: 15 N.J.R. 1341(a), 15 N.J.R. 1865(b). Subchapter 4 was readopted effective March 13, 1984 as R.1984 d.88. See: 16 N.J.R. 119(b), 16 N.J.R. 730(a). Pursuant to Executive Order No. 66(1978), Chapter 121 expired on March 13, 1989. Chapter 121 was readopted as New Rules by R.1990 d.344, eff. July 16, 1990. See: 21 N.J.R. 3047(b), 22 N.J.R. 2172(a). Chapter 121 was readopted as R.1995 d.360, effective June 12, 1995. See: Source and Effective Date. See section annotations for specific rulemaking activity.

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**SUBCHAPTER 1. APPROVAL OF AGENCIES
DESIRING TO PLACE CHILDREN IN NEW
JERSEY**

10:121-1.1 Approval of agencies

(a) This section shall apply to agencies, public or private, whose principal offices are not located within the State of New Jersey, which do not otherwise maintain an adequately staffed office within the State of New Jersey and which do not provide direct adoption services in New Jersey but do on occasion place children for adoption with families living in or moving to New Jersey. Whenever the contemplated adoption may not or cannot be completed in their own state, approval under this section will permit the agency to consent to an adoption in a New Jersey court. An agency must, before placing a child for adoption with a family living in New Jersey:

1. Be a non-profit or governmental agency and be licensed, certified or otherwise approved in its own state to place children for adoption under procedures and standards established in that state, which procedures and standards shall be consistent with those of the State of New Jersey with respect to services provided to birth parents and termination of parental rights;

2. Enlist the cooperation of a duly certified New Jersey adoption agency to provide all direct adoption services in New Jersey including home evaluation, concurrence with the proposed placement and proper supervision of the adoption placement until the final decree of adoption is entered by a court of competent jurisdiction or until some alternate plan is made for the child; and

3. Provide the New Jersey Department of Human Services, Division of Youth and Family Services, with a written statement certifying that (a)1 and 2 above have been complied with and, further, that interstate placement requirements of both states will be followed, including continued responsibility for the child until an adoption is finalized, the child is removed from the State of New Jersey or some other plan approved by the Department of Human Services, Division of Youth and Family Services, is made.

R.1973 d.40, effective February 1, 1973.
See: 5 N.J.R. 12(a), 5 N.J.R. 86(a).
Notice of Correction; 21 N.J.R. 765(b).

SUBCHAPTER 2. ADOPTION SUBSIDY

10:121-2.1 Definitions

For the purposes of this subchapter, the following definitions shall apply.

“Adoptive family for hard-to-place child” means any person or persons eligible to adopt a child who agree to adopt a hard-to-place child regardless of the income of the adoptive parent(s) and who meet conditions which include but are not limited to:

1. **Age:** The adoptive parent(s) must attain the age of 18 before the adoption has been finalized and shall be at least 10 years older than the person(s) sought to be adopted unless either of these limitations is waived by the court. There is no maximum age.
2. **Religion:** The adoptive parent(s) are not required to be affiliated with or practicing members of any religion. They are required only to be capable of raising the child or children in a decent, moral environment.
3. **Residence:** The adoptive parent(s) must be residents of New Jersey and/or any other state if approved for adoption by a licensed agency in that state and all interstate requirements can be met. N.J.S.A. 9:7-1 et seq.
4. **Income:** Adoptive parent(s), with the addition of a State adoption subsidy, must have sufficient financial resources to provide for the basic health, education, and general well-being and normal development of the adopted child or children and must demonstrate an ability to manage family financial resources efficiently and in such a way as to meet the basic cost of raising the child or children in a suitable way.
5. **Health:** Adoptive parent(s) must be in reasonably good physical and emotional health, as attested to by an examination by a physician, if necessary. Also, they must be free from any physical or mental illness or disability which would jeopardize the normal health, education, and well-being of the adopted child or children.
6. **Suitability:** The adoptive parent(s) must be able to provide for the normal development of the adopted child or children and provide for the general health, education, and well-being of the adopted child or children.

“Board rate” means the rate paid to the foster family for the child currently or that which would have been paid for the child if the child was in foster care, including clothing allowances but excluding any other payments.

“80 percent Board rate” means 80 percent of the rate which was or would have been paid for the child if the child was in foster care, excluding clothing allowance and other payments. 80 percent Board rate includes any additional board increases granted by the Division as provided by law.

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

“Division” means the Division of Youth and Family Services in the Department of Human Services.

“Hard-to-place child” means any child who the State of New Jersey has the legal right to place for adoption but who is reasonably expected not to be placed for adoption due to the lack of a prospective adoptive home 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 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 hard-to-place 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 Adoption Service Unit of the Division;
8. Any other condition which may be approved by the Director; or
9. The child is over five years of age and has been living with foster parents for at least 12 months and adoption by the foster parents is the most appropriate plan for the child. A child under five may be deemed hard-to-place 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.

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

10:121-2.2 Payments for the care and maintenance of a hard-to-place child (adoption subsidy)

(a) The Division shall make payments for the care and maintenance of a hard-to-place 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 Division.

(b) The Division 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 hard-to-place child in N.J.A.C. 10:121-2.1. The failure of the Division 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 paragraph (g) below.

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

(d) Payments shall be made on behalf of a child placed for adoption by the Division except that whenever a child who would otherwise be eligible for subsidy payments is in the care of any approved New Jersey adoption agency other than the Division pursuant to N.J.S.A. 9:3-37 et seq. that child shall, upon application by the agency and satisfaction of the regular requirements of the adoption subsidy program, be approved for participation in the adoption subsidy program. Subsidy payments for children in private agency adoptions shall begin when the Division receives the application for adoption subsidy from the private agency. A determination as to the child's eligibility to receive subsidy may be made by the Division. However, such determination must be made prior to the child's adoptive placement, in order to assist the prospective adoptive parents in making a decision as to their ability to accept the child into their home. The Division is responsible for monitoring the adoption subsidy to the private agency. The Division may approve adoption subsidy payments for a child without legal transfer of care or custody of the child to the Division.

(e) Payments shall be made only pursuant to a written Adoption Assistance Agreement between the Division 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 of which the adoptive parent(s) are residents 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 hard-to-place;
4. The needs of the children being adopted;
5. The amount of adoption subsidy to be paid and the board rate upon which the amount of payment is based;
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 Division 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 Division may require.

(f) Except in situations involving adoption by a child's foster parents, a reasonable effort will be made to place the child in an adoptive setting without providing a subsidy, except where the Division determines that such efforts should not be made because of the special needs of the child or the special qualifications of the adoptive parents.

(g) The written agreement covering subsidy payments shall remain in effect regardless of adoptive parent(s) income until the child's 18th birthday, provided that the adoptive parents remain legally responsible for the support of the child and the child continues to receive support from such parents. On an annual basis the Division will determine that the adoptive parents continue to be legally responsible for the support of the child and that the child continues to receive support from the adoptive parents or the subsidy payments will be terminated. In the event of the death of the adoptive parent(s), subsidy payments shall be transferred to the new caretaker when the caretaker 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.

(h) The income of the adoptive parent shall not be considered by the Division in determining whether or not to enter into such an agreement.

(i) The amount of monthly payment for care and maintenance will be 100 percent of the applicable foster care board rate, except that families who adopted prior to January 17, 1984 will continue to receive at the 80 percent board rate. Those families who were receiving a partial subsidy prior to January 17, 1984 will now receive subsidy at the 80 percent board rate.

(j) The medical costs of children determined to be "hard-to-place" will be covered through the New Jersey Medicaid Program.

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

(l) 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 Division if specified in the agreement.

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

Case Notes

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.

10:121-2.3 Exceptions

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

(b) Exceptions to the provisions of this chapter may be made upon request for:

1. Families who are funded below the 100 percent board rate whose cases were approved prior to January 17, 1984 so that their level of funding may be increased to the applicable 100 percent rate, if documentation shows a dramatic decrease in their financial circumstances;
2. Medical coverage for families whose subsidy cases were approved prior to January 17, 1984 when there is documentation of the development of a severe and permanent physical or mental handicap under the hard-to-place guidelines, and there is no third party medical insurance or where inadequate third party medical insurance is available to provide for the needs of the child; or
3. The continuation of subsidy payment for all cases at an 80 percent foster care board rate for those children between the ages of 18 to 21 years of age who are enrolled in a curriculum directed toward gainful employment at any educational level below college.

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

10:121-2.4 Administrative hearings

(a) Any person aggrieved by the decision of the Division not to make an 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 Division to determine with reasonable promptness any application filed with the Division under this section, shall be entitled to an administrative hearing when an application for a hearing is filed with the Division's Administrative Hearings Unit within 15 calendar days of such decision or failure to act by the Division.

(b) The Division'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 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 for 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.

10:121-2.5 Adoption Resource Exchange

The Division shall list its hard-to-place children as defined in N.J.A.C. 10:121-2.1 in the Adoption Resource Exchange Bulletin or in such other manner as deemed appropriate on a continuing basis. Copies of the bulletin or other such list are available upon request from the Division.

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. 10:121-2.6.

SUBCHAPTER 3. ADOPTION COMPLAINT INVESTIGATION FEES

10:121-3.1 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 (ACIs) 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 ACIs, based on a person's or family's ability to pay. By use of the adjusted fee scale the Division seeks to recoup the cost of the ACI.

10:121-3.2 Fees for adoption complaint investigation

(a) The fees and methods of payment for Preliminary Investigation and Report services provided by the Division of Youth and Family Services are as follows:

1. A total of \$296.00 for Preliminary Investigation and Report is paid in full prior to the preliminary hearing; or
2. A monthly payment, which is determined by dividing the total fee (\$296.00) by the prospective adoptive applicant's monthly capacity to support, is made. The applicant's monthly capacity to support is obtained by completing DYFS Form 26-6a, Income Worksheet for Legally Responsible Persons.