

# Children's Law Center of Indiana



## 2009 Statutory and Policy Changes to Postadoption Financial Assistance<sup>1</sup>

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Indiana statutory amendments and Indiana Department of Child Services (DCS) policies will bring about changes for adoptive families of Children in Need of Services who are receiving or plan to request postadoption financial assistance in the form of adoption subsidy. Following are some of the most significant changes. The full text of the Indiana Adoption Program policy letter may be found at [www.in.gov/dcs](http://www.in.gov/dcs) under DCS Policies, then Child Welfare Policies Implemented Via Administrative Letter. The new Indiana Adoption Program includes Indiana adoption subsidy and the federal Title IV-E Adoption Assistance Program.

1. Indiana courts which have jurisdiction over adoptions no longer have the authority to order Indiana adoption subsidy payments for hard-to-place children. The statutes on Indiana adoption subsidy have been repealed and replaced by a new chapter, IC 31-19-26.5 through 13, which is effective January 1, 2009.
2. All eligibility determinations for both Indiana adoption subsidy and the federal Adoption Assistance Program shall be made by the Indiana Department of Child Services (DCS). IC 31-19-11-3(c); IC 31-19-26.5-3.
3. New statutory provisions at IC 31-19-26.5-1 et seq. apply to the continuations, modification, or termination of adoption subsidy orders entered by courts pursuant

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to the prior statutes IC 31-19-26.5-11. DCS will make the determination regarding continuation, modification, or termination of subsidy payments not the court with jurisdiction over the adoption.

4. Indiana courts with jurisdiction over adoptions shall refer any adoption petition which contains a request for financial assistance to DCS for determination of eligibility for Indiana adoption subsidy and federal Adoption Assistance. DCS will determine the amount of assistance which will be provided. IC 31-19-11-3(a)(b).
5. The statutory modifications do not affect the adoptive child's legal status, the rights and responsibilities of adoptive parents, or the eligibility of a child for federal Adoption Assistance. IC 31-19-26.5-13.
6. DCS policy provides that the amount of monthly postadoption financial assistance shall not exceed 75% of the standard foster care per diem rate for both Indiana adoption subsidy and federal Adoption Assistance. IC 31-19-26.5-5 states that the amount of subsidy payments may not exceed the amount that would be payable by DCS for the monthly care of a child in a foster family home (1) at the time the subsidy agreement is made; or (2) the subsidy is payable; whichever is greater.
7. DCS policy provides that when an adoptive family has been identified for a particular adoptive child, the DCS family case manager shall give the adoptive parents a copy of the Eligibility Predetermination Letter issued by the DCS Central Eligibility Unit, an explanation of the Indiana Adoption Program, and an Indiana Adoption Program application. The completed Indiana Adoption Program Application must be sent to the DCS local office at the same time, or no later than ten (10) business days after the petition for adoption is filed. The DCS local office shall submit the application and any supporting documentation to the DCS Central Eligibility Unit, including any recommendations for approval or denial of the assistance requests. After the DCS Central Eligibility Unit reviews and makes a final eligibility determination, it will send the Final Adoption Program Eligibility and proposed assistance agreement within forty calendar days via certified mail, return receipt requested, to the adoptive parents or their attorney if they are represented by an attorney for the adoption. The family case manager shall discuss

and negotiate the terms of the adoption agreement with the adoptive parents, and or the adoptive parents' attorney.

8. According to DCS policy, no monthly payments for postadoption financial assistance shall begin until a copy of the final decree of adoption is submitted to the DCS local office attorney.
9. DCS policy provides that DCS will determine the child's eligibility for Non Recurring Adoption Expenses. (Adoption attorneys often receive payment for legal services through Non Recurring Adoption Expenses.) The amount of Non Recurring Adoption Expenses allowable per child is \$1500 for the first eligible child and \$750 for the second child and subsequent children if the siblings are adopted together or by separate adoption decrees entered within six months.
10. According to DCS policy all adoptive parents who have entered into adoption agreements for postadoption financial assistance shall submit a fully completed Adoption Program Status Report to DCS Central Office after June 1<sup>st</sup> and before July 1<sup>st</sup> of each calendar year. If the agreement was signed or monthly payments began after April 15<sup>th</sup> of any year, the first Status Report shall be due before July 1<sup>st</sup> of the following year. Failure to submit the required report shall be grounds for termination or suspension of payments under a State Adoption Subsidy Agreement, until the report has been submitted, reviewed, and approved by DCS. Adoptive parents are also required to notify the DCS Central Office in writing of the occurrence of any event that is or could be grounds for termination or suspension of the adoption agreement or court order. IC 31-19-26.5-8 provides that DCS may require adoptive parents to submit verified reports stating the location of the parents, the location and condition of the child, and any additional information required by DCS as a condition of receiving continued subsidy payments.
11. IC 31-19-26.5-4 states that, if DCS determines there are not or will not be available sufficient funds in the adoption assistance account, DCS may (1) approve new adoption subsidy agreements only for children for whom DCS has wardship responsibility at the time the adoption petition is filed; or (2) give priority to funding new adoption subsidy agreements for children for whom DCS has had wardship responsibility. IC 31-19-26.5-11 provides that in determining the

availability of funds in the adoption assistance account for payments of subsidies, DCS shall prioritize payments required by court orders entered under IC 31-19-26 prior to its repeal. DCS policy prioritizes the payment of federal Adoption Assistance, court ordered subsidies entered before January 1, 2009, and Non Recurring Adoption Expense Agreements. DCS policy also establishes a waiting list for payment of state adoption subsidies. The DCS by policy may implement a percentage reduction in all payment obligations after thirty days written notice to the adoptive parent if insufficient funds are available to pay for all State Subsidy Agreements. DCS may also submit a request augmentation of the Adoption Assistance Account to the State Budget Agency.

12. Adoptive parents may request an administrative review by the DCS Director or his designee of (1) the Final Adoption Services Eligibility Determination; (2) termination or suspension of adoption assistance under an adoption agreement or court order before the child becomes eighteen years of age; (3) discontinuance of modification of adoption assistance in an adoption agreement or court order, or (4) denial of an application for continuation of payments under an adoption agreement or court order after the child has reached the age of eighteen. The written Request for Administrative Review must be submitted within thirty days after receipt of the notice of the determination. Upon completion of an administrative review, DCS shall issue a Notice of Final Administrative Review. An administrative hearing before an administrative law judge may be requested only in certain situations according to DCS policy. The request for an administrative hearing must be made within 30 days of the receipt of the Notice of Final Administrative Review decision.