

§ 1356.41

45 CFR Ch. XIII (10-1-02 Edition)

(f) The State agency must actively seek ways to promote the adoption assistance program.

[48 FR 23116, May 23, 1983, as amended at 53 FR 50220, Dec. 14, 1988]

§ 1356.41 Nonrecurring expenses of adoption.

(a) The amount of the payment made for nonrecurring expenses of adoption shall be determined through agreement between the adopting parent(s) and the State agency administering the program. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

(b) The agreement for nonrecurring expenses may be a separate document or a part of an agreement for either State or Federal adoption assistance payments or services. The agreement for nonrecurring expenses must be signed prior to the final decree of adoption, with two exceptions:

(1) Cases in which the final decree of adoption was entered into on or after January 1, 1987 and within six months after the effective date of the final rule; or

(2) Cases in which a final decree was entered into before January 1, 1987 but nonrecurring adoption expenses were paid after January 1, 1987.

(c) There must be no income eligibility requirement (means test) for adopting parents in determining whether payments for nonrecurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(d) For purposes of payment of nonrecurring expenses of adoption, the State must determine that the child is a "child with special needs" as defined in section 473(c) of the Act, and that the child has been placed for adoption in accordance with applicable State and local laws; the child need not meet the categorical eligibility requirements at section 473(a)(2).

(e)(1) The State agency must notify all appropriate courts and all public and licensed private nonprofit adoption agencies of the availability of funds for the nonrecurring expenses of adoption of children with special needs as well as where and how interested persons may apply for these funds. This infor-

mation should routinely be made available to all persons who inquire about adoption services after the publication date of this final rule.

(2) The State agency must send a notice to all public and private nonprofit adoption agencies directing them to notify all their clients who adopted a special needs child between January 1, 1986 and six months following the effective date of this rule of the availability of reimbursement for nonrecurring expenses paid after January 1, 1987.

(3) For adoptions in which a final decree is entered between January 1, 1987 and six months after the effective date of this rule, or where a final decree was entered before January 1, 1987 but nonrecurring adoption expenses were paid after January 1, 1987, individuals who seek reimbursement must enter into an agreement with the State agency and file a claim with the State agency within two years of the effective date of this rule. For adoptions in which a final decree is entered more than six months after the effective date of this rule, the agreement must be signed at the time of or prior to the final decree of adoption. In such cases, claims must be filed with the State agency within two years of the date of the final decree of adoption.

(f)(1) Funds expended by the State under an adoption assistance agreement, with respect to nonrecurring adoption expenses incurred by or on behalf of parents who adopt a child with special needs, shall be considered an administrative expenditure of the title IV-E Adoption Assistance Program. Federal reimbursement is available at a 50 percent matching rate, for State expenditures up to \$2,000, for any adoptive placement.

(2) States may set a reasonable lower maximum which must be based on reasonable charges, consistent with State and local practices, for special needs adoptions within the State. The basis for setting a lower maximum must be documented and available for public inspection.

(3) In cases where siblings are placed and adopted, either separately or as a unit, each child is treated as an individual with separate reimbursement for nonrecurring expenses up to the

maximum amount allowable for each child.

(g) Federal financial participation for nonrecurring expenses of adoption is limited to costs incurred by or on behalf of adoptive parents that are not otherwise reimbursed from other sources. Payments for nonrecurring expenses shall be made either directly by the State agency or through another public or licensed nonprofit private agency.

(h) When the adoption of the child involves interstate placement, the State that enters into an adoption assistance agreement under section 473(a)(1)(B)(ii) of the Act or under a State subsidy program will be responsible for paying the nonrecurring adoption expenses of the child. In cases where there is interstate placement but no agreement for other Federal or State adoption assistance, the State in which the final adoption decree is issued will be responsible for reimbursement of nonrecurring expenses if the child meets the requirements of section 473(c).

(i) The term “nonrecurring adoption expenses” means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State or Federal law, and which have not been reimbursed from other sources or other funds. “Other expenses which are directly related to the legal adoption of a child with special needs” means the costs of the adoption incurred by or on behalf of the parents and for which parents carry the ultimate liability for payment. Such costs may include the adoption study, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process.

(j) When State statutes must be amended in order to reimburse parents for nonrecurring expenses in the adoption of eligible children, legislation must be enacted before the close of the second general session following publication of the final rule and must apply retroactively to January 1, 1987. Fail-

ure to honor all eligible claims will be considered non-compliance by the State with Title IV-E of the Act.

(k) A State expenditure is considered made in the quarter during which the payment was made by a State agency to a private nonprofit agency, individual or vendor payee.

[53 FR 50220, Dec. 14, 1988]

§ 1356.50 Withholding of funds for non-compliance with the approved title IV-E State plan.

(a) To be in compliance with the title IV-E State plan requirements, a State must meet the requirements of the Act and 45 CFR 1356.20, 1356.21, 1356.30, and 1356.40 of this part.

(b) To be in compliance with the title IV-E State plan requirements, a State that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.22 and paragraph (a) of this section; and

(c) For purposes of this section, the procedures in §1355.39 of this chapter apply.

[48 FR 23117, May 23, 1983, as amended at 65 FR 4091, Jan. 25, 2000; 66 FR 58677, Nov. 23, 2001]

§ 1356.60 Fiscal requirements (title IV-E).

(a) *Federal matching funds for foster care maintenance and adoption assistance payments.* (1) Effective October 1, 1980, Federal financial participation (FFP) is available to States under an approved title IV-E State plan for allowable costs in expenditures for:

(i) Foster care maintenance payments as defined in section 475(4) of the Act, made in accordance with 45 CFR 1356.20 through 1356.30 of this part, section 472 of the Act and section 102(d) of Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980;

(ii) Adoption assistance payments made in accordance with 45 CFR 1356.20 and 1356.40 and sections 473 and 475(3) of the Act.

(2) Federal financial participation is available at the rate of the Federal medical assistance percentage as defined in section 1905(b) of the Act, Definitions, and pertinent regulations as promulgated by the Secretary, or his designee.