

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: April 6, 2021
To: Joint Standing Committee on Health & Human Services
From: Anna Broome, Legislative Analyst

LD 503 Resolve, To Help Children in Therapeutic Foster Care Move toward Adoption

SUMMARY: This resolve directs DHHS to require that an adoptive family receive the same level of financial assistance for long-term or limited-period adoption assistance (chapter 13 rules) as the family received when the child was in treatment-level foster care (chapter 14 rules). DHHS must adopt the increased rate by October 1, 2021. (Long term assistance is monthly payment until the child is 18 or 21; limited period is monthly payment for a limited period of time for medical or mental health costs or education benefits if aged 18-21years.)

ISSUES FROM TESTIMONY:

- Sponsor: costs of raising a child with a disability do not drop with adoption but the payment does when moving from treatment level foster care to adoption.
- DHHS opposed: unintended consequence of keeping a child inappropriately in treatment level foster care. Adoption assistance rate is negotiated at the time of adoption and should be discussed then; enhanced payments can carry over. Does this affect future adoptions only or previous ones as well? Is there funding attached or does it come out of IV-E which impacts other spending?

DRAFTING ISSUES:

- DHHS issue about who this applies to – is it only new adoptions?
- October 1, 2021 likely not enough time for the rule to be amended although a rate could be increased on that date.
- Would adoption assistance be required for all adoptive families as opposed to those who qualify?

ADDITIONAL INFORMATION REQUESTED BY COMMITTEE:

From DHHS: (see memo)

- No of families or children this would affect?
- Range of reimbursement rates for adopted children that have been in treatment level foster care prior to adoption.
- What % of adoptive families receive adoption assistance?
- Related law and rules:

PL 2017, c. 471, An Act to Improve the Child Welfare System – sec. 1 increased rates for foster homes.

Sec. 1. Rate increase for foster homes. The daily rates for foster homes must be increased as follows: Unlicensed Homes must be increased from \$10.00 to \$18.50, Level A Licensed Homes must be increased from \$16.50 to \$25.00, Level B Licensed Homes must be increased from \$26.25 to \$35.00, Level C Licensed Homes must be increased from \$39.38 to \$45.00, Level D Licensed Homes must be increased from \$52.50 to \$60.00, Level E Licensed Homes must be increased from \$65.62 to \$75.00 and Medical Licensed Homes must be increased from \$60.00 to \$70.00.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

IV-E Foster Care/Adoption Assistance 0137

Initiative: Provides funding for increased foster home reimbursement rates to increase recruitment and retention of foster families in this State.

GENERAL FUND	2017-18	2018-19
All Other	\$0	\$386,493
GENERAL FUND TOTAL	<hr/> \$0	<hr/> \$386,493
FEDERAL EXPENDITURES FUND	2017-18	2018-19
All Other	\$0	\$579,738
FEDERAL EXPENDITURES FUND TOTAL	<hr/> \$0	<hr/> \$579,738

State-funded Foster Care/Adoption Assistance 0139

Initiative: Provides funding for increased foster home reimbursement rates to increase recruitment and retention of foster families in this State.

GENERAL FUND	2017-18	2018-19
All Other	\$0	\$2,586,929
GENERAL FUND TOTAL	<hr/> \$0	<hr/> \$2,586,929

Rule 10-148: Chapter 14, RULES FOR LEVELS OF CARE FOR FOSTER HOMES

Definitions of levels of care – Treatment level foster care at levels C, D or E in the bill:

2. Levels of Care (LOC) – Child Functioning Levels

The following levels of care designations are used to determine the reimbursement rate to be paid to the foster parent.

- A. **LOC A- Basic Care - Minimal Needs.** This level is for children who have minimal needs and require the type of care offered in a Family Foster Home for Children. "Children with minimal needs" may have occasional episodes of behavioral and/or emotional problems which do not significantly impair the child's interpersonal relationships and ability to function at home or at school. "Children with minimal needs" are expected to function largely at an age appropriate level educationally, socially, physically, medically, developmentally and emotionally.
- B. **LOC B - Basic Care - Mild Needs.** This level is for children who have mild needs that require a higher than LOC A-Basic Care level of services in a Family Foster Home. "Children with mild needs" may display the following: minor developmental delays, episodic problems relating with others, infrequent concerns/problems regarding performance in school, limited or short-term mental health treatment needs and stable/routine medical needs.
- C. **LOC C-Treatment Care - Moderate Needs.** This level is for children who have moderate needs and require the type of care offered in a Specialized Children's Foster Home. "Children with moderate needs" may display the following: moderate developmental delays, ongoing problems with interpersonal relationships including a history of self-abusive behaviors, and minor episodes of aggression toward others. They may also have ongoing needs for mental health treatment, monitoring of school problems and/or special education needs and/or medical supports.

- D. **LOC D - Treatment Care - High Needs.** This level is for children who have high needs that require a higher than LOC C - Treatment Care level of services in a Specialized Foster Home. "Children with high needs" may display the following: significant developmental delays, impulsivity requiring external control, ongoing conflict with others, unresponsiveness to social prompts, need for special education services to address performance and/or behavior issues, slow or no progress in mental health treatment, and may require in-home supports for medical conditions. They may have a history of self abusive behaviors, including assault on others.
- E. **LOC D - Basic or Treatment Care - Exceptional Medical Care.** This level is for medically fragile children in Basic of Treatment Care with a high level of medical need that does or could lead to care in an "intermediate care nursing facility". It is likely that these issues will not moderate and may become more severe over time and require specialized care to support activities of daily living. It must be shown that the Foster Parent has obtained the training necessary to meet the medical needs of the child and is directly providing that level of care. Examples of children who meet this criteria include, but are not limited to, children that: require a feeding tube, congenital heart disease/abnormalities requiring surgery and monitoring, weekly to monthly hospital/specialist monitoring, kidney dialysis, severe forms of cancer, and/or severe failure to thrive with long range effects.
- F. **LOC E-Treatment Care - Severe Needs.** This level is for children who have severe needs that require a higher than LOC D - Treatment Care level of services in a Specialized Foster Home. "Children with severe needs" may display the following: severe developmental delays, a risk to self or others including deliberate aggression toward others, inability to maintain control in spite of close supervision, chronic/serious medical condition, and poor/no response to mental health treatment.

Rule 10-148, Chapter 13, Rules for the Adoption Assistance Program

Child must be eligible but also the adoptive family must be eligible for adoption assistance:

3. ELIGIBILITY CRITERIA

b. The Adoptive Family

(1) For purposes of adoption assistance:

- (a) Applications may be submitted by foster parents interested in adopting an eligible child in their care and other persons interested in adopting an eligible child.
- (b) The family must have been studied and approved as meeting the Department's standards for adoption either by the Department or by a licensed child-placing agency with an adoption program, except for financial eligibility.

- (c) The circumstances of the family must be considered in determining adoption assistance of the type, duration and amount requested.
 - (d) For adoption assistance that exceeds one year in duration, there must be an annual redetermination of need in accordance with Part 8 of these rules.
 - (2) For purposes of reimbursement of non-recurring adoption expenses:
 - (a) The family must have been studied and approved as meeting the Department's standards for adoption either by the Department or by a licensed child-placing agency with an adoption program.
 - (b) The family is not otherwise able to adopt this special needs child without reimbursement of non-recurring adoption expenses.
 - (c) The family must not have received, or be eligible for, reimbursement for these expenses from any other source.
 - (d) All applicable state and local laws must have been followed.
 - (3) For retroactive adoption assistance, the family must request such assistance in writing to the Department, and approval must be made pursuant to the rules.
- c. In some instances there are no common definitions of acceptability of families or of the best interest of children. When such instances occur in these rules, the determination of acceptability of families or of the best interest of children shall be made at the discretion of the Department.

5. AMOUNT AND DURATION OF ADOPTION ASSISTANCE

- a. The amount of assistance may vary, depending on the circumstances of the adoptive family, the special needs of the child, and the availability of other resources. The amount of long term, limited period, or one-payment adoption assistance, or any combination thereof, may not exceed the cost of caring for the child if the child had remained in the custody of the Department in a family foster home. The amount of non-recurring adoption expense shall not exceed \$2,000 per child who is otherwise eligible. Federal financial participation may not exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home. Therefore, board and clothing payments may not exceed the board and clothing payments which would have been paid by the Department if the child had remained in its custody in a foster family home.

In some cases, the needs, conditions, or behaviors of the child may indicate a need for specialized care. When children, who are recipients of or are candidates for a special family foster care rate, are to be placed for adoption with an adoption

assistance agreement, a Request for Special Foster Family Rate Form completed by the caseworker, must be submitted for rating. (See Child and Family Services Manual, Section V, G-1. page 9.1.b.)

The specialized rate for adoption assistance is determined by the degree of physical, emotional, or behavioral handicap of the child and the specialized care provided by the parents to meet the identified needs. Rates will be determined as above and not by rate setting for children placed by child placing agencies in their therapeutic homes/specialized homes.

- b. For reimbursement of non-recurring adoption expenses, the amount of reimbursement may vary, but may not exceed \$2,000.00 for each child.
- c. When a special needs child is determined to be eligible for retroactive adoption assistance, that child is eligible prospectively for any assistance provided by the adoption assistance program. Assistance may be provided from the date the request for retroactive adoption assistance is made, forward. The retroactive rate of assistance will be determined by methods consistent with rate setting for the adoption assistance program.

In some special circumstances, the Commissioner, or his designee, may at his discretion, authorize payment up to a maximum of \$12,000 for special costs incurred for an eligible child prior to the date of first request for retroactive assistance.

Payments for normal, usual and expected expenses of childhood will not be considered.

Special expenses that may be considered must:

- (1) Be directly related to the special needs of the child, and
- (2) Be extraordinary in nature, and,
- (3) Must help the family in continuing their support of the specialized needs of the child.

Documentation/receipts related to the above expenses may be required.

- d. All other resources, and benefits including insurance, Social Security, Supplemental Security Income, VA benefits, other benefit payments, and available medical programs must be utilized before assistance is considered. If such benefits are available for the child whose adoption is to be assisted, the amount of the assistance must be reduced by the amount of the benefits, as long as the adopted child continues to be eligible for these benefits. The adoptive family must apply for third party benefit payments on behalf of their child.
- e. The duration of assistance may not exceed the terms of the written agreement made between the approved adoptive family and the Department.

- f. When the approved adoptive family and the Department agree to adoption assistance for a period longer than one year, the continuance of assistance each year shall be subject to the family's continued eligibility based on an annual redetermination of the needs of the child and circumstances of the family.

If a special adoption assistance rate is granted, a Request for Special Family Foster Care Rate must be submitted with each adoption assistance renewal application. The special family foster care rate will be determined each year of renewal based on the same standards as if the child remained in foster care.

- g. In no instance shall assistance continue past the time when the child attains the age of eighteen (or, until the child is age 21 where the state determines the child has need of educational benefits or has a physical, mental or emotional handicap which warrants the continuation of adoption assistance).
- h. If the adopting family moves to another state, assistance will continue according to the agreement between the family and the Department as long as the family continues to be eligible based on the annual redetermination of need.
- i. Adoption assistance payments will terminate if the state determines that the parents are no longer legally responsible for the child or if the state determines that the child is no longer receiving any support from such parents. The adopting family is responsible for immediately notifying the Department's Adoption Program Specialist in writing of any changes in the needs of the child, the circumstances of the family, or other benefits available for the child's support, which may affect their eligibility for adoption assistance or the amount of assistance required. The family shall notify the Department's Adoption Program Specialist in writing within 10 days of these changes(above).
- k. The adoptive family is responsible for reimbursing any overpayment of adoption assistance funds to the Department.
- l. The adopting family is responsible for immediately notifying the Department's Adoption Program Specialist in writing of any changes in address, custody or living arrangements of the child.

6. AGREEMENT BETWEEN THE APPROVED ADOPTIVE FAMILY AND THE DEPARTMENT

- a. A written agreement between the family entering into assisted adoption and the Department must precede the adoptive placement. An exception can be made in accordance with Section 7 of these rules in the case of a request for retroactive adoption assistance approved in accordance with 3.b.3. of these rules.
- b. The Commissioner of the Department or his designee will sign the agreement on behalf of the Department.
- c. The agreement shall include the following:
 - (1) The amount and type of adoption assistance payments;

- (2) A statement concerning eligibility for Title XIX benefits and Title XX services for children receiving federally-matched adoption assistance payments;
- (3) Designation of any Title XX benefits or additional services or assistance to be provided by the Department and how the costs for these items are to be met;
- (4) The duration of the agreement;
- (5) The process for annual redetermination of need and a statement that failure to reapply or failure to meet the standards for adoption assistance will result in the termination of the agreement;
- (6) A statement that the adoptive family is responsible for immediately notifying in writing the Department's Adoption Program Specialist of any changes in address, custody, or living arrangements or changes in benefits for the child;
- (7) A statement specifying how adoptive parents shall notify the Department in writing of changes in the needs of the child or the circumstances of the family that would affect their eligibility for, or the amount of, assistance required;
- (8) A statement concerning interstate continuance of the agreement, specifying payments and services for which Maine will remain responsible if the family moves out of state;
- (9) A statement specifying how adoptive parents shall be notified of any changes in the rates of adoption assistance payments and how they may request changes in the adoption assistance agreement;
- (10) A statement of the terms of continued eligibility for adoption assistance;
- (11) A statement regarding the right of the family to appeal decisions concerning adoption assistance and the procedure for doing so;
- (12) The effective date for beginning adoption assistance payments will be the date the child is placed in the adoptive home with an approved adoption placement agreement (BCFSAC-034).

FISCAL IMPACT:

Not yet received from OFPR.