

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 199

An Act to amend and reenact §§ 63.2-1300 through 63.2-1303 of the Code of Virginia, relating to adoption assistance for children with special needs.

[H 2215]

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1300 through 63.2-1303 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1300. Purpose and intent of adoption assistance; eligibility.

A. The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs. ~~Adoption assistance may include Title IV-E maintenance payments; state-funded maintenance payments; state special services payments and nonrecurring expense payments made pursuant to requirements set forth in this chapter.~~

A B. In accordance with § 473 of Title IV-E of the Social Security Act (42 U.S.C. § 673), a child with special needs is a child who is a citizen or legal resident of the United States who is unlikely to be adopted within a reasonable period of time due to one or more of the following factors:

1. Physical, mental or emotional condition existing prior to adoption;
2. Hereditary tendency, congenital problem or birth injury leading to substantial risk of future disability; or
3. Individual circumstances of the child related to age, racial or ethnic background or close relationship with one or more siblings.

C. A child with special needs will be eligible for adoption assistance if (i) *the child is a citizen or legal resident of the United States;* (ii) the child cannot or should not be returned to the home of his parents; and ~~(ii) (iii)~~ (iii) reasonable efforts to place the child in an appropriate adoptive home without the provision of adoption assistance have been unsuccessful. An exception may be made to the requirement that efforts be made to place the child in an adoptive home without the provision of adoption assistance *when it is in the best interest of the child has developed due to factors such as the development of significant emotional ties with his foster parents while in their care and that the foster parents wish to adopt the child.*

§ 63.2-1301. Types of adoption assistance payments.

A. Title IV-E maintenance payments shall be made to the adoptive parents on behalf of an adopted child placed if it is determined that the child is a child with special needs *as set forth in § 63.2-1300* and the child meets the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 U.S.C. § 673).

B. State-funded maintenance payments ~~shall~~ *may* be made to the adoptive parents on behalf of an adopted child if it is determined that the child does not meet the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 U.S.C. § 673) but the child is a child with special needs *as set forth in § 63.2-1300. For this purpose of state-funded maintenance payments only,* a A child with special needs ~~may include~~ *shall receive state-funded maintenance payments if he:*

1. ~~A child for whom~~ *Was in the custody of a local board or a licensed child-placing agency at the time of the adoptive placement;*

2. *Was in the custody of a local board or a licensed child-placing agency at the time of the adoptive placement and met the factors set forth in subdivision B 1 or 2 of § 63.2-1300 are present at the time of adoption but are such factors were not diagnosed until after the final order of adoption; when and no more than one year has elapsed from the date of diagnosis; or*

2. ~~A child who has lived~~ *3. Lived with his foster parents for at least 12 months and has developed significant emotional ties with his foster parents while in their care; when and the foster parents wish to adopt the child and state-funded maintenance payments are necessary to enable the adoption.*

C. ~~State special~~ *Special* services payments ~~shall~~ *may* be made to the adoptive parents and other persons on behalf of a child in the custody of the local board or in the custody of a licensed child-placing agency and placed for adoption, pursuant to this chapter, if it is determined that for the provision of services to the child that are not covered by insurance, Medicaid, or otherwise. *Special services include (i) medical, surgical, and dental care; (ii) hospitalization; (iii) individual remedial education services; (iv) psychological and psychiatric treatment; (v) speech and physical therapy; and (vi) special equipment, treatment, and training for physical and mental handicaps. A child is eligible for special services payments if:*

1. The child is a child with special needs *as set forth in § 63.2-1300; and*
2. *The child is receiving adoption assistance payments pursuant to subsection A or B; and*

3. The adoptive parents are capable of providing the permanent family relationships needed by the child in all respects except financial.

D. Nonrecurring expense payments shall be made to the adoptive parents for expenses related to the adoption, including reasonable and necessary adoption fees, court costs, attorney fees and other legal service fees, as well as any other expenses that are directly related to the legal adoption of a child with special needs, including costs related to the adoption study, any health and psychological examinations, supervision of the placement prior to adoption and any transportation costs and reasonable costs of lodging and food for the child and the adoptive parents when necessary to complete the placement or adoption process for which the adoptive parents carry ultimate liability for payment and that have not been reimbursed from any other source, as set forth in 45 C.F.R. § 1356.41. However, the total amount of nonrecurring expense payments made to adoptive parents for the adoption of a child shall not exceed \$2,000 or an amount established by federal law.

§ 63.2-1302. Adoption assistance payments; maintenance; special needs; payment agreements; continuation of payments when adoptive parents move to another jurisdiction; procedural requirements.

A. Adoption assistance payments may include:

1. ~~Title IV-E or state-funded maintenance payments that shall be payable monthly to provide for the support and care of the child; however, Title IV-E or state-funded maintenance~~ *such* payments shall not exceed the foster care payment that would otherwise be made for the child *at the time the adoption assistance agreement is signed; and*

2. State special services payments to provide special services to the child that the adoptive parents cannot afford and that are not covered by insurance or otherwise, including, but not limited to:

- a. Medical, surgical and dental care;
- b. Hospitalization;
- c. Individual remedial educational services;
- d. Psychological and psychiatric treatment;
- e. Speech and physical therapy; and
- f. Special services, equipment, treatment and training for physical and mental handicaps.

State special services payments may be paid to the vendor of the goods or services directly or to the adoptive parents.

B. Adoption assistance payments shall cease when the child with special needs reaches the age of 18 years of age. *However, assistance payments may continue until the child reaches 21 years of age under the following circumstances:*

If it is determined 1. The local department determines on or within six months prior to the child's eighteenth birthday that the child has a mental or physical handicap, or an educational delay resulting from such handicap, warranting the continuation of assistance; adoption assistance payments may be made until the child reaches the age of 21 years; or

2. The initial adoption assistance agreement became effective on or after the child's sixteenth birthday and the child is (i) completing secondary education or an equivalent thereof; (ii) enrolled in an institution that provides postsecondary or vocational education; (iii) employed for at least 80 hours per month; (iv) participating in a program or activity designed to promote employment or remove barriers to employment; or (v) incapable of doing any of the activities set forth in clauses (i) through (iv) due to a medical condition.

C. Adoption assistance payments shall be made on the basis of an adoption assistance agreement entered into by the local board and the adoptive parents or, in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency and the adoptive parents. *A representative of the Department shall negotiate all adoption assistance agreements with both existing and prospective adoptive parents on behalf of local departments.*

Prior to entering into an adoption assistance agreement, the local board or licensed child-placing agency shall ensure that adoptive parents have received information about their child's eligibility for adoption assistance; about their child's special needs and, to the extent possible, the current and potential impact of those special needs. The local board or licensed child-placing agency shall also ensure that adoptive parents receive information about the process for appeal in the event of a disagreement between the adoptive parent and the local board or the adoptive parent and the child-placing agency and information about the procedures for ~~revising~~ *renegotiating* the adoption assistance agreement.

Adoptive parents shall submit annually to the local board within ~~thirty~~ 30 days of the anniversary date of the approved agreement an affidavit which certifies that (i) the child on whose behalf they are receiving adoption assistance payments remains in their care, (ii) the child's condition requiring adoption assistance continues to exist, and (iii) whether or not changes to the adoption assistance agreement are requested.

Title IV-E ~~and state-funded~~ maintenance payments made pursuant to this section shall be changed only in accordance with the provisions of § 473 of Title IV-E of the Social Security Act (42 U.S.C. § 673).

D. Responsibility for adoption assistance payments for a child placed for adoption shall be continued by the local board that initiated the agreement in the event that the adoptive parents live in or move to another jurisdiction.

E. Payments may be made under this chapter from appropriations for foster care services for the maintenance and medical or other services for children who have special needs in accordance with § 63.2-1301. Within the limitations of the appropriations to the Department, the Commissioner shall reimburse any agency making payments under this chapter. Any such agency may seek and accept funds from other sources, including federal, state, local, and private sources, to carry out the purposes of this chapter.

§ 63.2-1303. Application for adoption assistance payments.

~~Qualification~~ *Eligibility* for adoption assistance payments shall be determined by the local board in response to an application for adoption assistance submitted in accordance with regulations adopted by the Board.