

Impact Analysis: Special Children Adoption Incentive Fund 10A NCAC 70M Rule Package (Additional incentive funding for eligible foster children who are adopted)

Agency:	Department of Health and Human Services Division of Social Services	
Rule Citation(s):	10A NCAC 70M .0102; .0701-.0702	
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Rulemaking Authority:	G.S. 108A-49; 108A-50; 143B-153; S.L. 2000-67, s. 11.16	
Impact Summary:	State Government:	Yes
	Local Government:	Yes
	Private Entities:	Yes
	Substantial Impact:	No

Introduction and Purpose

The Special Children Adoption Incentive Fund (SCAIF) is designed to support permanency for children who otherwise may have lingered in the foster care system. This fund is designed to promote permanent placements for those hard to place foster children who are eligible for adoption. This fund is available for those children and families who meet the specific requirements that are above the special need requirement of those children that meet the standard adoption assistance eligibility requirements. These children can receive both the standard adoption assistance subsidy in addition to SCAIF.

The Department is proposing to codify current policy into the Special Children Adoption Incentive Fund rules to reflect current practices, deliver a logical organization structure, and provide helpful information to the regulated public.

The proposed changes include: eligibility criteria, definitions, and responsibilities for foster parents and agencies to allow a clear and transparent understanding of the requirements; provisions that explain the documentation and record keeping requirements for payments to be administratively processed; and technical changes and revisions to the formatting and organization of the Rules so that it is easier to assess the requirements placed on each category of individuals. SCAIF rules were consolidated into a new section .0700. The agency is including this change for the purpose of transparency and uniform enforcement.

Program Background

Special Children Adoption Incentive Fund fees are provided to certain eligible children with special needs prior to finalization of the adoption decree. These programs are intended to establish, extend and strengthen child welfare services provided by state and local child welfare agencies. Rates are established by the North Carolina General Assembly for Adoption Assistance on a graduated rate based on the eligible child's age. Special Children Adoption Incentive Funds are available to eligible children who meet additional special need criteria. Payment amounts are based on the child's last six months of the foster care episode and designed to promote adoption for children with special needs which may have reduced likelihood of adoption.

The Division remains committed to achieving permanence for all children in the foster care system across the state. As of 12/2020, there were 33 counties participating in the SCAIF program. Counties agree to a 50% match in cost to provide modified rates to eligible adoptive parents caring for children with special needs. Average participation in the program has increased over the last four years; however, this has benefited the stability of children who would have otherwise lingered in the foster care system. There are no exorbitant rate increases anticipated, as policy and current rules allow for eligibility to be determined on a case by case basis. State oversight will continue to monitor utilization of this program and ensure funding is available to support the children with heightened medical and/or psychological needs in achieving permanence.

Impact Analysis

Eligibility Criteria and Program Participation

The proposed rules incorporate the eligibility criteria for SCAIF as outlined in current policy, including the definition of special needs. To be eligible for SCAIF, a child must present one of the physical, mental, emotional, or developmental disabilities in the special needs definition. This definition has been in policy, unchanged, for over 10 years. The Social Security Act section 673(c) defines special needs as "...a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance..."

More specifically, the current policy and the proposed rule amendments require that one or more of the following factors or conditions must exist and be documented in order for the child to be eligible for adoption assistance:

- a. The child is six years of age or older-The Fostering Connections Act of 2008 has mandated that all children receiving Adoption Assistance attend school in compliance with the Fostering Connections Act. NC has included in the program administration the same or similar requirement and has established the age 6 to include and support adoptions made in states where 6 is the compulsory school attendance age.
- b. The child is two years of age or older and a member of a minority race or ethnic group; Research and the Division of Social Services' data indicates that children who are members of a minority race or ethnic group have longer stays in foster care. To promote adoption for these children, the federal law P L 110-351 supported States developing policies and practices to increase adoptions and use Title IV-E funding to support the policies and practices. This policy is maintained as the children defined here continue to remain in foster care longer than their non-minority peers,
- c. The child is a member of a sibling group of three or more children to be placed in the same adoptive home; To maintain connections with siblings, federal law requires that siblings are placed together as much as possible. Specifically, 42 U.S.C. §671(a)(31) requires Title IV-E agencies provide that reasonable efforts shall be made:
 1. "To place siblings removed from their home in the same foster care, kinship, guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings.
- d. The child is a member of a sibling group of two children to be placed in the same adoptive home, in which one or more of the siblings meet at least one of the other criteria, excluding (i), for special needs; This is the same as above but allows a smaller sibling to meet another criteria to become eligible. A smaller sibling can be less challenging to find an adoptive placement but continues to be harder to place than a single child. In support of 42 U.S.C. §671(a)(31) and promotion safety and wellbeing for all children, it is policy and practice to continue placing siblings together if it is not contrary the safety and well-being of the children.
- e. The child has a medically diagnosed disability which substantially limits one or more major life activity, requires professional treatment, assistance in selfcare, or the purchase of special equipment;
- f. The child is diagnosed by a qualified professional to have a psychiatric condition which impairs the child's mental, intellectual, or social functioning, and for which the child requires professional services;
- g. The child is diagnosed by a qualified professional to have a behavioral or emotional disorder characterized by inappropriate behavior which deviates substantially from behavior appropriate to the child's age or significantly interferes with child's intellectual, social and personal functioning;
- h. The child is diagnosed to be intellectually disabled by a qualified professional;
- i. The child is at risk for a diagnosis described above in items e - h, due to prenatal exposure to toxins, a history of abuse or serious neglect, or genetic history.

Items e. through h. are determined by the Social Security Act § 416.906. **Basic definition of disability for children.**

If you are under age 18, we will consider you disabled if you have a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months. Notwithstanding the preceding sentence, if you file a new application for benefits and you are engaging in substantial gainful activity, we will not consider you disabled. We discuss our rules for determining disability in children who file new applications in §§ 416.924 through 416.924b and §§ 416.925 through 416.926a.

[62 FR 6421, Feb. 11, 1997, as amended at 65 FR 54777, Sept. 11, 2000]

The SCAIF Program uses this information as defined by the Social Security Act to confirm disability to ensure those with disabilities have continued access to the program and its benefits and services.

In addition to meeting the criteria for special needs, there are several other conditions that must be met to qualify for SCAIF. These criteria remain substantively unchanged from current rule:

- The child must reside in a therapeutic or level placement where they receive above the standard board rate for six months or more
- The prospective adoptive parents must be licensed as foster parents for six consecutive months or more.
- The application and eligibility must be assessed prior to the final entry of decree. Retroactive requests will not be approved.

While it is not expected that the utilization of Special Adoption Children Fund (SCAIF) will increase or decrease as a result of the addition of the eligibility criteria in the administrative rules compared to current practice, the trending increase of the program usage and per-child cost shown in the table below is related to the significant special needs of the growing number of eligible children.

SCAIF Financial Reports	Average Number of Children Services	Total Amount Expended for SFY	Average Cost per Child
SFY 16-17	203	1,838,229	9,055
SFY 17-18	203	1,867,332	9,199
SFY 18-19	212	2,103,293	9,921
SFY 19-20	234	2,392,160	10,223

Documentation and Recordkeeping

The proposed rules outline the documentation that must be completed by foster parent(s) and county agencies in subsection (d). The forms listed are required to determine the child's eligibility for the program and to establish a contract between the public agency and the family for the child's SCAIF benefits. Without properly establishing eligibility and entering into an agreement, the child would not be eligible for the program. The benefits of including these requirements in Rule are to ensure all eligible children will have the same level of access to the program and its subsidy and medical benefits. Additionally, it gives the State the capacity to enforce the program requirements and with uniformity.

County agencies are responsible for administering the requirements proposed for incorporation. The average for a social worker II for 2018-2019 is approximately 43,400 per year according to data collected by the UNC School of Government.¹ It takes an average of 2 hours to complete the adoption assistance paperwork, to determine eligibility and to go over that documentation with each family. An average adoption assistance caseload is about 15 cases per social worker. Completing the eligibly process one time per each case costs approximately \$10,850 per year in county staff time (\$43,400 annual salary / 2080 hours per year * 2 hours per application X 260 applications per year). In addition, the average maintenance per case is about 1 hour per month after the finalization of the decree. The annual cost of maintenance is approximately \$57,588 per year. (\$43,400 annual salary / 2080 hours per year * 12 hours per participant per year X 230 children per year).

¹ <https://www.sog.unc.edu/publications/reports/county-salaries-north-carolina-2020>

A state level consultant has been assigned to the program to ensure that all eligible families are receiving funding in an equitable and consistent manner. The average cost to the state for these responsibilities is \$3,040 per year (\$55,000 annual salary / 2080 hours per year * 0.5 hours per case * 230 cases per year)

Criminal history checks

The proposed rules incorporate the requirement for a criminal history check and checks of the Responsible Individuals List or other state child abuse and neglect registries. Although these checks are currently not required in these rules, they are already required by state and federal law. DSS is including this requirement in the rules to promote transparency by reinforcing that these checks are a condition precedent to being eligible; it does not create a new regulatory impact.

Eligibility criteria alternative:

Consideration was given to change the eligibility for this funding source to target children with the highest degree of medical and emotional need. The change in the eligibility criteria was dismissed due to concerns with the implementation of the eligibility determination process.

Summary

The Department is proposing these rules governing the SCAIF program be amended through readoption to reflect current practices, deliver a logical organization structure, provide helpful information to the regulated public and update changes in federal law and to :

- (1) to establish standards and procedures for the payment of State funds by the Division of Social Services; for care and services provided to children who are in the custody or placement responsibility of a county department of social services;
- (2) to assure the equitable distribution of the available funds to the eligible agencies;
- (3) to assure the purchase of the minimum sufficient level of care for foster children;
- (4) to assure adequate accountability by the eligible agencies for the use of State funds.

The proposed changes include: technical changes and revisions to the formatting and organization of the Rules so that it is easier to assess the requirements placed on each category of individuals: definitions to allow for clear and transparent understanding of the requirements; additional provisions that explain the requirements for payments to be administratively processed; and updated provisions that align with the state plan requirements of Title IV-E.

The proposed changes outlined for 10A NCAC 70M reflect necessary modifications to ensure compatibility with policy already operationalized by the state and in the counties. SCAIF is designed to promote permanency for children who otherwise may have lingered within the foster care system because of complex medical and/or psychological needs. Providing SCAIF funds helps to promote the permanency and well being of those foster children that may have not achieved permanency by any other means. Providing additional funds to these families helps to ensure that these higher-level needs children receive the proper care and support that they need and deserve from a loving family.

There are no anticipated changes in the number of eligible children or expended funds due to the proposed rule amendments, and counties and families will not experience any additional compliance costs compared to current practice. The implementation of policy into rule will help to promote equitable and consistent application of the program, transparency of the program and to help further clarify policies.

However, this analysis acknowledges the ongoing costs and benefits of the eligibility criteria and administrative processes proposed for codification. To achieve the benefits described above, DSS estimates that county agencies incur staff time costs of approximately \$68,400 per year and the state spends approximately \$3,000 per year to oversee and administer the Adoption Assistance program in accordance with the policies being incorporated in these rules.

10A NCAC 70M .0102 is proposed for adoption as follows:

10A NCAC 70M .0102 DEFINITIONS

(a) The following definitions shall apply to the rules in this Subchapter:

(1) “Adoption assistance agreement” means a signed written agreement that is developed by the Department (“North Carolina Adoption Assistance Agreement” Form DSS-5123 which can be found at <https://www.ncdhhs.gov/divisions/dss>) that is binding upon the public adoption agency and the prospective adoptive parents of a minor child and, at a minimum, the agreement shall:

(A) specify payments that meet the requirements in 42 USC 673(a)(3), and any subsequent amendments, and specifies the nature and amount of any payments, services, and assistance to be provided under the agreement;

(B) stipulates that the agreement shall remain in effect regardless of the state of which the adoptive parents are residents of at any given time;

(C) require each adoptive parent to inform the public adoption agency of any circumstances that would make the parent ineligible for the payments or eligible for a different amount;

(D) if applicable, require the adoptive parents to provide receipt of vendor payments; and

(E) contain provisions for the protection of the interests of the child in cases where the adoptive parents and child move to another state while the agreement is effective.

(2) “Applicable child” means a child who meets the requirements in 42 U.S.C. 673(e) which is incorporated herein by reference along with any subsequent amendments.

(3) “Child with special needs” or “children with special needs” means a child who meets the requirements in 42 USC 673(c) which is incorporated herein by reference along with any subsequent amendments. The public adoption agency, or the North Carolina Department of Health and Human Services for the Special Needs Adoptions Incentive Fund assistance, shall make the specified determinations for the state in 42 USC 673(c) and any subsequent amendment. A child cannot or should not be returned to the home of the child’s parent if there is a court order terminating parental rights, a

relinquishment to a public or private child-placing agency, a consent for adoption by the parent, a finding from the court in an adoption proceeding that a parent's consent is not required, or verification of the death of a parent. For a child to meet the requirement in 42 USC 673(c)(2)(B)(ii), the child must have a letter from the Social Security Administration that approves the child for Social Security Insurance benefits. For purposes of 42 USC 673(c)(1)(B) and 42 USC 673(c)(2)(B)(i), and any subsequent amendments, the child shall present one or more of the following specific factors or conditions:

(A) six years of age or older;

(B) two years of age or older and a member of a minority race or ethnic group;

(C) a member of a sibling group of three or more children who will all be placed in the same adoptive home;

(D) a member of a sibling group of two children who will be placed in the same adoptive home and the child's sibling meets one of the factors or conditions in (A), (B), (E), (F), (G) or (H) of this definition;

(E) a medically diagnosed disability which substantially limits one or more major life activities, requires professional treatment, requires assistance in self-care, or requires the purchase of special equipment;

(F) diagnosed by a medical professional, who is qualified to make the diagnosis, as having a psychiatric condition which impairs the child's mental, intellectual, or social functioning, and for which the child requires professional services;

(G) diagnosed by a medical professional, who is qualified to make the diagnosis, as having a behavioral or emotional disorder characterized by inappropriate behavior which deviates substantially from behavior appropriate to the child's age or significantly interferes with child's intellectual, social and personal functioning; or

(H) diagnosed by a medical professional, who is qualified to make the diagnosis, as being intellectually or developmentally disabled;

(I) at risk, as opined by a qualified medical professional, for one of the factors or conditions in (E) through (H) of this definition due to:

- (i) prenatal exposure to toxins;
- (ii) a history of abuse or serious neglect; or
- (iii) genetic history.

- (4) “Department” means the North Carolina Department of Health and Human Services.
- (5) “Nonrecurring adoption expense” means the same as “nonrecurring adoption expenses” found in 42 U.S.C. 673(a)(6)(A) along with any subsequent amendments of the phrase.
- (6) "Public adoption agency" means any county department of social services, consolidated human services, or regional department of social services in North Carolina that is authorized by law to place children for adoption or that provides adoption services.
- (7) “Supplemental Agreement” means a signed written agreement that is developed by the Department (“North Carolina Special Children Adoption Incentive Fund Supplemental Adoption Assistance Agreement” Form DSS-5212 which can be found at <https://www.ncdhhs.gov/divisions/dss>) that is binding upon the public adoption agency and the prospective adoptive parents of a minor child and at a minimum (A) specifies the nature and amount of any Special Children’s Adoption Incentive Fund payment, and (B) includes an acknowledgement by the prospective adoptive parents that the payments are not an entitlement and are limited to available funds in the Special Children’s Adoption Incentive Fund.

History Note: Authority G.S. 143B-153; 42 U.S.C. 673; 45 C.F.R. 1356.41(i)
Eff. August 31, 2021.

10A NCAC 70M .0701 is proposed for adoption as follows:

10A NCAC 70M .0701 ELIGIBILITY REQUIREMENTS FOR THE SPECIAL NEED ADOPTION INCENTIVE FUND AND EFFECTIVE DATE

(a) Within the limits of available funding, the Department may approve and provide assistance in the form of monthly cash payments from the Special Need Adoption Incentive Fund when the following requirements have been met:

(1) Requirements for the child:

- (A) Shall be a child with special needs and either has at least one of the factors or conditions listed in (e) through (h) of the definition in this Chapter of a child with special needs or meets the requirement in 42 USC 673(c)(2)(B)(ii).
- (B) Shall meet the requirements for monthly cash adoption assistance in this Chapter;
- (C) The child was in the custody and placement responsibility of an adoption agency for at least six consecutive months prior to the finalization of the adoption;
- (D) The special needs condition from (a)(1) of this Rule is expected to limit the child's ability, both currently and throughout childhood, to function in the home, school or community absent eight or more hours of direct daily supervision or care for personal health care or prevention of self-destructive or assaultive behavior;
- (E) The child will have resided in the foster parent's home for six consecutive months prior to the finalization of the adoption; and
- (F) The child will have been legally adopted on or after January 1, 2001.

(2) The requirements for each foster parent are:

- (A) licensed as a foster parent;
- (B) have been receiving monthly cash assistance from any governmental source, such as federal, state or local, above the state adoption assistance rate established by the General Assembly for the previous six consecutive months prior to the finalization of the adoption to provide the direct care or supervision required for the child's health condition that meets the requirement in (a)(4) of this rule;
- (C) prior to the entry of the adoption decree, the foster parent made a request for financial assistance in addition to the state adoption assistance rate established by the General Assembly in order to provide the care required for the child's health condition that meets the requirement in (a)(1)(4) of this Rule.
- (D) prior to the entry of the adoption decree, the foster parent provided the public adoption agency with a signed letter that truthfully and accurately details the daily supervision needs of the child.

- (E) shall only be willing to adopt the child if the monthly cash assistance from any other governmental source, such as federal, State or local, is above the state adoption assistance rate received for foster parents and is not terminated upon the adoption of the child;
- (F) shall enter into an adoption assistance agreement with a public adoption agency prior to the decree of adoption;
- (G) entered into a supplemental agreement with a public adoption agency prior to the adoption decree;
- (H) agree to provide the public adoption agency with a copy of the adoption decree once the adoption has been finalized.
- (I) shall have a completed criminal history investigated pursuant to NCGS 48-3-303 and –309 and shall not have a criminal history, as defined by NCGS 48-1-101(5b), or any other criminal conviction that would cause the prospective adoptive parent is unfit to have responsibility for the safety and well-being of children as determined by the public adoption agency pursuant to NCGS 48-3-309.
- (J) shall require all individuals eighteen years of age or older who reside in the prospective adoptive home to undergo a criminal history investigated pursuant to NCGS 48-3-303 and 49-3-309; and
- (K) shall provide the public adoption agency with the results of the criminal back history investigation.
- (3) All individuals eighteen years of age or older who reside in the prospective adoptive home shall have a completed a criminal history investigated pursuant to NCGS 48-3-303 and 48-3-309 and shall not have a criminal history, as defined by NCGS 48-1-101(5b), or any other criminal conviction that would cause the prospective adoptive parent is unfit to have responsibility for the safety and well-being of children as determined by the public adoption agency pursuant to NCGS 48-3-309.
- (4) The requirements for the public adoption agency having custody of the child are:

 - (A) it voluntarily agrees to participate in the Special Need Adoption Incentive Fund and agrees to assume fifty percent of the payment above the State adoption assistance rate established by the General Assembly.
 - (B) entered into an adoption assistance agreement as provided in this Rule.
 - (C) entered into a supplement agreement as provided in this Rule.
 - (D) maintains a record for the child that contains written documentation that the child and foster parent(s) have met or will meet the requirements for the foster child and the foster parents in this Rule at the time of the adoption decree and shall specifically include the following:

- (i) written statement on a form provided by the Department (“Special Children Adoption Incentive Fund Agency Verification of Legal Custody and Child’s Living Arrangement For Past Six Months” Form DSS-5214, which can be found at <https://www.ncdhhs.gov/divisions/dss>) signed by the Director of the public adoption agency that verifies:

 - (a) each foster parent is licensed;
 - (b) the public adoption agency has legal custody and placement authority of the child;
 - (c) the child has lived with the foster family for six consecutive months prior to the adoption;
 - (d) that the foster parent(s) have received monthly cash assistance from a governmental source in excess of the standard board rate established by the General Assembly for the previous six months on a continuous basis and the amount of the payments;
and
 - (e) the foster parent(s) have stated a willingness to adopt this child if the monthly cash assistance that they have received as foster parents is not terminated.

- (ii) written statement on a form provided by the Department (“Special Children Adoption Incentive Fund Verification of Child’s Health Condition” Form DSS-5213 which can be found at <https://www.ncdhhs.gov/divisions/dss>) signed by a medical professional qualified to diagnose the child’s condition prior to the adoption that demonstrates that the child meets all the requirements in (a)(4) of this rule;
- (iii) written statement on a form provided by the Department (“Special Children Adoption Incentive Fund Verification of Child’s Need for Daily Supervision” Form DSS-5215 which can be found at <https://www.ncdhhs.gov/divisions/dss>) signed by the foster parent(s) prior to the adoption that demonstrates that the child meets all the requirements in (a)(4) of this rule;
- (iv) a letter from the foster parent(s) detailing the daily needs of the child.
- (v) signed adoption assistance agreement;
- (vi) signed supplement agreement
- (vii) a copy of the foster parent’s license;
- (viii) copy of the decree of adoption once it has been received pursuant to this Rule;

(ix) a copy of the results of the criminal investigation of the foster parents and any individual eighteen years of age or older who resides in the prospective adoptive home.

(x) It makes a request, on behalf of the foster parent(s), prior to the adoption decree to the Department for Special Need Adoption Incentive Fund assistance for the foster parents.

History Note: Authority G.S. 108A-49; 108A-50; 108A-50.1; 143B-153; S.L. 2000-67, s. 11.16;

Eff. August 31, 2021.

10A NCAC 70M .0702 is proposed for adoption as follows:

10A NCAC 70M .0702 PAYMENTS FROM THE SPECIAL NEED ADOPTION INCENTIVE FUND

(a) Payments from the Special Need Adoption Incentive Fund will be made by the Division of Social Services to the adoptive parent(s).

(b) Participating county departments of social services shall submit claims for payments to the Division of Social Services.

(c) The initial payment claim must include the following items:

(1) verification of child's placement authority;

(2) verification that the child has lived with the foster family six consecutive months;

(3) copy of written statement from a licensed physician regarding the child's health condition;

(4) copy of written statement from a licensed health, mental health, or developmental disability professional regarding the status of the child's condition;

(5) copy of signed adoption assistance agreement;

(6) copy of signed supplemental assistance agreement; and

(7) copy of Decree of Adoption.

(d) Monthly payment claims shall be submitted on the "Request for Special Children Adoption Incentive Fund Payment" form developed by the Division of Social Services.

History Note: Authority G.S. 108A-49; 108A-50; 108A-50.1; 143B-153; S.L. 2000-67, s. 11.16;
Eff. August 31, 2021.