

## Impact Analysis Administrative Code 10A NCAC 70 M – Adoption Assistance

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Agency:	Department of Health and Human Services Division of Social Services	
Rule Citation(s):	10A NCAC 70M .0102; .0201; .0301-.0304; .0401-.0405; .0601-.0604	
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Rulemaking Authority:	G.S. 143B-153; G.S. 108A-49; 108A-50	
Impact Summary:	State Government:	Yes
	Local Government:	Yes
	Private Entities:	Yes
	Substantial Impact:	No

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### Introduction and Purpose

The North Carolina Division of Social Services is committed to its responsibility for the permanence of children with special needs. In support of this responsibility, the Adoption Assistance program is available for this population of children. The Adoption Assistance program is significant in supporting adoptive placements for children with special needs, as it provides financial assistance for eligible children and supports the adoptive placement. County departments of social services use an established standard of eligibility criteria to determine the children who are appropriate to participate in this program. The revision proposal to this section of the rules will be to align rules with State and federal policy.

The Department is proposing to incorporate current policy into the Adoption Assistance rules to reflect current practices, deliver a logical organization structure, provide helpful information to the regulated public and update changes in federal law.

The purpose of proposed changes to the Adoption Assistance rules are to incorporate current policy practice into the administrative rules. The recommended changes will not eliminate eligible children but rather maintains the current eligibility structure outlined in the Division's *Adoption Assistance* policy and in federal code, 42 USC 673. The recommendation to align policy and rule was provided through legal guidance.

The Division is proposing revisions to several programs which are Adoption Assistance and Special Children's Adoption Fund (SCAIF). This analysis is specific to Adoption Assistance and is related to the other changes in this rule.

### Description of Proposed Rules

The administrative rule recommendation for Adoption Assistance is to incorporate the requirements in Title IV-E of the Social Security Act and existing policy into the administrative code. The proposal to the rule will add the determination of a special needs child and include other eligibility criteria for appropriately determining eligible children and prospective adoptive parents. The proposed rules also incorporate requirements for payments to be administratively processed and make technical and organizational changes for clarity.

Another important proposal to the Adoption Assistance rule is the revision to the include the program definitions and the Multi Ethnic Placement Act of 1996 (MEPA) language and to redact outdated language.

#### Definitions

The Division is adding definitions in the permanent rules. Most of the added definitions incorporate the definitions and meanings used in Title IV-E of the Social Security Act. These definitions are necessary to provide clarity and transparency throughout Subchapter 70M and to ensure that the State requirements for these programs are consistent with the federal funding requirements. In particular, the definition of "children with special needs" has been changed so that the requirements are more clearly and specifically identified.

#### Section .0300

The language being added in this Section is to make the general requirements that are placed on public adoption agencies consistent with what is required in federal law for Title IV-E of the Social Security Act reimbursement "Federal Title IV-E matching funds are given to States that provide adoption assistance payments to parents who adopt children with special needs (as defined by the State). The children must be eligible for Aid to Families with

Dependent Children (AFDC) or Supplemental Security Income (SSI). In addition, the program authorizes Federal matching funds for States that reimburse the nonrecurring adoption expenses<sup>4</sup> of adoptive parents of children with special needs, regardless of AFDC or SSI eligibility.<sup>1</sup>

Public adoption agencies are currently required to comply with these requirements in order to claim federal funding so the proposed amendments will not create any additional impact. These changes add further transparency of these requirements.

Sections .0400 and .0600

The Division is reorganizing the language in these Sections so that the requirements of each respective individual(s) is grouped together by categories. Much of the added language directly pulls in the applicable federal law requirements, which the Department and the public adoption agencies are already following in order to seek federal reimbursement. The added language includes criminal background checks 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 for an adoption to be finalized in Chapter 48 of the General Statutes adoption and are being added to these rules to promote transparency by reinforcing that these checks are a condition precedent to being eligible.

Further, the added language explains the administrative steps and process required of public adoption agencies, adoptive families, and vendors in order for payments to be made. Although public adoption agencies already follow these requirements since they are in policy, adding these requirements is necessary for transparency.

**Impact Analysis**

Adoption Assistance funds are provided to eligible children utilizing federal funds and state funds. Over the last four state fiscal years, the trend has been relatively the same with minimal increases in the amount of expended funds and the number of children served. Compared to current practice, incorporating policy into rule is not expected to increase or decrease the number of children served beyond pre-existing trends.

<b>Adoption Assistance SFY</b>	<b>IVE state expenditure</b>	<b>IVB state expenditure</b>	<b>Children served ages 0-18 IVE</b>	<b>Children served aged 0-18 IVB</b>
SFY 16-17 totals	12,232,356.49	22,061,815.75	11,548	4,353
SFY 17-18 totals	12,888,011.50	20,888,011.50	11,904	4,143
SFY 18-19 totals	12,836,468.85	19,351,590.25	12,285	3,810
SFY 19-20 totals	13,324,908.37	17,458,151.00	12,767	3,437

Eligibility Criteria

The proposed rules incorporate the eligibility criteria for Adoption Assistance as outlined in current policy, including the definition of special needs. As part of determining eligibility for adoption assistance, the agency must determine that the child meets the following special needs criteria. (The *three-part special needs criteria are the same for all children, regardless of classification as an applicable or non-applicable child*).

1. That the child cannot or should not be returned to the home of his parents. This means that the local child welfare agency must have reached that decision based on evidence by a court order legally clearing the child of both parents through some combination of the following procedures: Termination of Parental Rights (TPR), the existence of a petition for TPR, a relinquishment to a public or private child-placing agency, a consent for adoption by the parent or a finding from the Court that consent is not required, or verification of the death of a parent; and
2. That there is a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under Title IV-E and Medicaid, or that the child meets all of the medical and disability requirements for Supplemental Security Income (SSI). If a child meets all the medical or disability requirements for SSI, the criteria for the factor or condition element of the special needs' determination will be met. The Social Security Act section 673 (c) establishes these first two criteria, broadly defined.

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<sup>1</sup> <http://centerforchildwelfare.fmhi.usf.edu/kb/GenIVE/Federal%20IV-E%20and%20Adoption%20Subsidies---Summary%20of%20State%20Laws.pdf>

3. 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 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 Adoption Assistance 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.

The proposed definition has been in policy, unchanged, for over 10 years. Incorporation of this definition of special needs into rule is not expected to change eligibility determinations or program participation compared to current practice.

Administrative Process and Documentation

The proposed rules outline the eligibility determination process and documentation that parent(s), vendors, and county agencies must complete.

The program utilizes the forms 5012 and 5013 to determine eligibility. Without the completed form 5012, eligibility cannot be determined, and benefits cannot be established for the child. The form 5013 is the agreement between the family and the agency and without the agreement, there is not a contract for the family to receive adoption assistance benefits on behalf of the child.

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.

The State measures the program participation through subrecipient monitoring to ensure that all eligible families are consistently and equitably receiving funding. The average cost to the state for these responsibilities is \$1,124 per year (\$55,000 annual salary / 2080 hours per year \*0.5 hours per applicant X 85 applicants per year). In addition, incorporation of the current policies into rule is expected to improve enforcement and compliance and decrease the number of appeals and hearings. It is not possible to determine the likelihood or magnitude of fewer appeals.

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.<sup>2</sup> Completing the eligibility process one time takes approximately 2 hours to complete the adoption assistance paperwork, to determine eligibility and to go over that documentation with each family. The eligibility determination process costs approximately \$6,051 per year in county staff time (\$43,400 annual salary / 2080 hours per year \*2 hours per application X 145 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 \$4,056,230 per year. (\$43,400 annual salary / 2080 hours per year \*12 hours per participant per year X 16,200 participants per year).

Non-Recurring Adoption Expenses

Non-Recurring Adoption Expenses are provided to eligible children utilizing federal funds. Over the last four state fiscal years, the trend has been relatively the same with minimal increases in the amount of expended funds and the number of children served. The total reimbursable expenses cannot exceed \$2000 per adoption. These limits are not changed from what is in current rule. The data below displays the nominal change over a 4-year period.

The proposed rules incorporate federal background check requirements, details regarding the state’s application process, and reformat the rule for clarity. Compared to current practice, this proposed change is not expected to increase or decrease the number of children served beyond pre-existing trends.

<b>Nonrecurring Adoption Expense SFY</b>	<b>IV-E State Expenditure</b>	<b>Children Served Ages 0-18</b>
SFY 2016-17 totals	\$246,985	350
SFY 2017-18 totals	\$254,294	340
SFY 2018-19 totals	\$234,724	299
SFY 2019-20 totals	\$230,477	400

Vendor Payments

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<sup>2</sup> <https://www.sog.unc.edu/publications/reports/county-salaries-north-carolina-2020>

Vendor Payments are provided to eligible children utilizing IV-B and state funds. Vendor payments assist the adoptive parent(s) to have the ability to receive additional services to improve the overall well-being of the child. To qualify, the request for vendor reimbursement must tie back to the child's condition identified in the adoption agreement. Over the last four state fiscal years, the trend has been relatively the same with minimal increases in the amount of expended funds and the number of children served. There have been substantial decreases to the amounts in state vendor payment expenditures over the past 4 years. The number of children served has continued to decline over the past 4 years as well. There are no substantial changes anticipated. Compared to current practice, this proposed change is not expected to increase or decrease the number of children served beyond pre-existing trends.

The proposed rules incorporate the requirement that the state must be reimbursed for any non-qualifying payments. . The state does not conduct subrecipient monitoring on vendor payments so this is expected to be an infrequent occurrence. Impermissible payments may be identified through a Title IV E review. The maximum amount for vendor payments – and thus the maximum amount that may be refunded to the state - is \$2,400 per state fiscal year.

The proposed rules add the requirement that vendors must obtain approval from the state prior to receiving payments. To be approved, vendors must submit documentation of the child's diagnosis and special care needs, service performance goals and metrics, treatment duration, and cost. The vendor approval process includes the completion of the 5115 form. This form is used to document the request and the approval for the vendor payment. If the approval process did not include the completion of the form, there is a risk for misuse of the vendor payment. This requirement for completing the 5115 stems from policy and has remained, unchanged, for the last 10 years. Incorporation of this definition into rule is not expected to change eligibility determinations compared to current practice.

Vendor Payments SFY	Vendor Payment IVB Fund Expenditure	Vendor Payment State Fund Expenditure	Children Served 0-18
SFY 16-17	\$268,919	\$45,187	377
SFY 17-18	\$282,101	\$32,167	360
SFY 18-19	\$268,947	\$24,586	320
SFY 19-20	\$273,303	\$12,373	303

**Alternatives:**

1. Consideration was given to retaining the rules in current format. This was dismissed as proposed recommendations provide policy and rule alignment for Adoption Assistance eligibility and is consistent with federal code.

The Adoption Assistance 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.

**Summary**

The Department is proposing these rules governing the Adoption Assistance program, codified in 10A NCAC Chapter 70M, 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 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 outlined for 10A NCAC 70M reflect necessary modifications to ensure compatibility with policy already operationalized by the state and in the counties. Adoption Assistance 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 Adoption Assistance funds, Vendor Payments and Non-recurring Adoption Expenses helps to promote the permanency and wellbeing of those foster children that may have not achieved permanency by any other means.

There are no anticipated substantial increases in the number of eligible children or expended funds due to the proposed rule amendments beyond the cost already incurred by the State and counties. There is no expected change to the current funding for Adoption Assistance, Vendor Payments and Non-recurring Adoption Expenses 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 \$4 million and the state spends approximately \$1,124 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 .0201 is proposed for re adoption with substantive changes as follows:

## **SECTION .0200 - ORGANIZATION AND ADMINISTRATION**

### **10A NCAC 70M .0201 PUBLIC ADOPTION AGENCIES**

- (a) Except for the requirements relating to an executive director, public adoption agencies must comply with 10A NCAC 70H .0401 ~~governs the policies for public agencies providing adoption services~~ in determining the qualifications and job responsibilities for ~~personnel~~ and in the recruitment, retention, and effective performance of ~~qualified~~ personnel.
- (b) Public adoption agencies must comply with 10A NCAC 70F .0207 ~~governs the policies for public agencies~~ in the hiring of ~~staff, use of clerical staff,~~ staff and use of volunteers.
- (c) The caseload size of social workers providing adoption services shall be in compliance with requirements set forth in 10A NCAC 70H .0401.

*History Note: Authority G.S. ~~48-1-101~~; 48-1-109.; 143B-153;  
Eff. February 1, 1976;  
Readopted Eff. October 31, 1977;  
Amended Eff. October 1, 2008; September 1, ~~1986-1986~~;  
Readopted Eff. August 31, 2021.*

10A NCAC 70M .0301 is proposed for readoption with substantive changes as follows:

## **SECTION .0300 - FUNCTIONS OF ~~AN~~ A PUBLIC ADOPTION AGENCY**

### **10A NCAC 70M .0301 GENERAL**

Public ~~child-placing~~ adoption agencies shall perform the following functions:

- (1) provision of casework and other supportive services to biological parents considering adoption;
- (2) provision of casework and other supportive services to the child considered for adoption;
- (3) provision of casework and other supportive services to adoptive applicants through pre-placement studies;
- (4) selection of home and placement process;
- (5) supervision after placement;
- (6) fulfillment of social and legal responsibilities;
- (7) compilation and preservation of complete case records;
- (8) provision of post-adoption consultation services. ~~services, including, but not limited to, coordination and referrals for educational enrollment for children seven to sixteen years of age, and for therapeutic and physical health needs;~~
- (9) when this Subchapter requires, determine whether eligibility requirements have been met for adoption assistance in this Subchapter that is available for children with special needs who are in custody of the public adoption agency or who have been placed by a private child-placing agency in an adoptive home within its jurisdiction;
- (10) administer adoption assistance agreements for which it entered into pursuant to this Subchapter;
- (11) notify adoptive parents of tax credits that may be available for adoptive parents;
- (12) make current information available for prospective adoptive families that describes the kinds of children needing placement, the availability of adoption assistance, and procedures for referring families they are unable to serve to other child placing agencies; and
- (13) recruit potential foster and adoptive families in accordance with the Multiethnic Placement Act (MEPA) of 1994 as amended by the Interethnic Adoption Provisions of 1996 requirements.

*History Note: Authority G.S. 48-1 et seq.; 143B-153; 48-2-502; 48-3-203; 48-3-204; 48-3-303;  
Eff. February 1, 1976;  
Readopted Eff. October 31, 1977;  
Amended Eff. June 1, 1990; September 1, ~~1986.~~ 1986;  
Readopted Eff. August 31, 2021.*

10A NCAC 70M .0302 is proposed for readoption with substantive changes as follows:

**10A NCAC 70M .0302 SERVICES TO ADOPTIVE APPLICANTS**

~~(a) Public adoption agencies must comply with~~ 10A NCAC 70H .0404, .0405, .0406, .0407, .0408 and .0409 ~~shall govern the policies for public agencies providing adoption services~~ in determining the procedures ~~for~~, for the application process, preplacement assessment, notification to adoptive applicants of acceptance or denial of application, services to adoptive applicants and families, legal process and record retention.

~~(b) A county department of social services shall prepare or contract for the preparation of a preplacement assessment for an adoptive applicant who has identified a prospective adoptive child and has been unable to obtain a preplacement assessment. An applicant is deemed unable to obtain a preplacement assessment if the applicant is unable to obtain an assessment at the fee the county department of social services is permitted to charge under 10A NCAC 70M .0303. Except as provided in this Subchapter, no county department of social services is required to conduct a preplacement assessment unless it agrees to do so.~~

*History Note: Authority G.S. 48-1-100; 48-1-101; 48-1-102; 48-1-103; 48-1-106; 48-1-109; 48-2-205; 48-2-301; 48-2-302; 48-2-304; 48-2-305; 48-2-501; 48-2-502; 48-2-503; 48-2-504; 48-2-601; 48-2-602; 48-2-603; 48-2-604; 48-2-605; 48-2-606; 48-2-607; 48-3-100; 48-3-201; 48-3-202; 48-3-203; 48-3-204; 48-3-205; 48-3-301; 48-3-302; 48-3-303; 48-3-304; 48-3-305; 48-3-306; 48-3-307; 48-3-308; 48-3-30; 48-3-501; 48-4-100; 48-4-101; 48-4-102; 48-4-103; 48-5-100; 48-5-101; 48-6-100; 48-6-102; 48-9-101; 48-9-102; 48-10-104; 48-10-105; 131D-10.5; 143B-153;*  
*Eff. February 1, 1976;*  
*Readopted Eff. October 31, 1977;*  
*Amended Eff. October 1, 2008; July 17, 2000; September 1, 1986. 1986;*  
*Readopted Eff. August 31, 2021.*

10A NCAC 70M .0304 is proposed for readoption with substantive changes as follows:

**10A NCAC 70M .0304    MULTIETHNIC PLACEMENT ACT REQUIREMENTS FOR ADOPTIVE HOME RECRUITMENT**

~~The agency shall have a written plan for on-going recruitment of adoptive homes for the children it places or plans to place for adoption. The plan shall adhere to the provisions of the Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996 and shall be submitted to the Division of Social Services, Adoption Unit, to ensure compliance with the Act. If the plan is found to be out of compliance, it shall be returned to the agency for corrections. A copy of the Multiethnic Placement Act of 1994 as amended may be obtained from the U. S. Department of Health and Human Services, Children's Bureau, 300 C Street SW, Washington, D.C. 20447.~~

- ~~(a)    Public adoption agencies shall recruit potential adoptive and foster families that reflect the ethnic and racial diversity of children in the state.~~
- ~~(b)    Public adoption agencies shall not deny any person the opportunity to become an adoptive or a foster parent on the basis of the race, color, or national origin of the person or of the child involved.~~
- ~~(c)    Public adoption agencies shall not delay or deny the placement of a child for adoption or foster care, on the basis of the race, color, or national origin of the adoptive or foster parent or the child involved.~~
- ~~(d)    Public adoption agencies shall not violate provisions of the Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996 that apply to state or local agencies.~~

*History Note:    Authority G.S. 48-3-204; 131D-10.5; 143B-153;  
                          Eff. October 1, ~~2008~~; 2008;  
                          Readopted Eff. August 31, 2021.*

10A NCAC 70M .0401 is proposed for readoption with substantive changes as follows:

**SECTION .0400 – REGULAR MONTHLY CASH ADOPTION ASSISTANCE: GENERAL ASSISTANCE AND VENDOR PAYMENTS**

**10A NCAC 70M .0401 REGULAR MONTHLY CASH ADOPTION ASSISTANCE DEFINED AND VENDOR PAYMENTS**

(a) Regular monthly cash assistance payments are monthly payments made based on means the graduated rates set by the General Assembly. Assembly and reflected in the executed adoption assistance agreement. The payments may be made to children who meet the requirements set out in Rule .0402 of this Section.

(b) Vendor payments are made directly to the a child's provider, including which may include the adoptive parents, for medical medical, therapeutic, psychological, and remedial services not covered by Medicaid, Medicaid therapeutic, psychological, and remedial services for children who meet the eligibility criteria set out in Rule .0402 of this Section. or another source if the requirements in this Subchapter are met.

(c) ~~Special Children Adoption Incentive Fund payments may be made to children who meet the requirements as set out in Rule .0404 of this Section.~~

*History Note: Authority G.S. 108A-49; 108A-50; 143B-153;  
Eff. July 1, 1982;  
Amended Eff. July 18, 2002; July 1, 1991; September 1, 1986. 1986;  
Readopted Eff. August 31, 2021.*

10A NCAC 70M .0402 is proposed for readoption with substantive changes as follows:

**10A NCAC 70M .0402 ELIGIBILITY REQUIREMENTS FOR REGULAR MONTHLY CASH ASSISTANCE PAYMENTS OR VENDOR PAYMENTS**

(a) Adoption assistance in the form of regular monthly cash assistance payments based on graduated rates set by the General Assembly and vendor payments may be made when ~~The the child shall meet~~ meets the following eligibility criteria:

- (1) The child is ~~legally clear for adoption,~~ or was legally adopted;
- (2) The child is, ~~or was, the placement responsibility of a North Carolina agency authorized to place children for adoption at the time of adoptive placement;~~ meets at least one of the following criteria:
  - (A) is not an applicable child and meets the requirements in 42 USC 673(a)(2)(A)(i) and any subsequent amendments. The public adoption agency shall make the determination in 42 USC 673(a)(2)(A)(i)(II) for the state. 42 USC 673(a)(2)(B) is applicable when appropriate;
  - (B) is an applicable child and meets the requirements in 42 USC 673(a)(2)(A)(ii) and any subsequent amendments. The public adoption agency shall make the determination in 42 USC 673(a)(2)(A)(ii)(II) for the state. 42 USC 673(a)(2)(B) is applicable when appropriate; or
  - (C) the requirements set forth in 42 USC 673(a)(2)(C) and any subsequent amendments.
- (3) ~~The child has special needs that create a financial barrier to adoption; or the child was legally adopted and the child's special needs, though pre-existing, were detected after the adoption has been finalized and if known would have created a financial barrier to adoption;~~ An applicable child is not eligible if he or she meets the three conditions in 42 U.S.C. 673(a)(7)(A)(i) through (iii), unless 42 U.S.C. 673(a)(7)(B) is applicable and the public adoption agency makes the requisite determination for the state;
- (4) ~~Reasonable but unsuccessful efforts have been made to place the child for adoption without the benefits of adoption assistance;~~
- (5) ~~The child is under 18 years of age; and was adopted after reaching the age of 16 but prior to reaching the age of 18;~~
- (6) ~~The child may continue to receive adoption assistance payments after his or her 18th birthday until his or her 21st birthday if an adoption assistance agreement was entered into on or after his or her 16th birthday and meets any of the following conditions:~~
  - (A) ~~Completing secondary education or a program leading to an equivalent credential;~~
  - (B) ~~Enrolled in an institution that provides post-secondary or vocational education;~~
  - (C) ~~Participating in a program or activity designed to promote or remove barriers to employment;~~
  - (D) ~~Employed for at least 80 hours per month; or~~
  - (E) ~~Is incapable of doing any of the previously described educational or employment activities due to a medical condition or disability.~~

~~(b) In order for the child to receive regular monthly cash assistance payments, the adoptive parents must have entered into an agreement with the child's agency prior to entry of the Decree of Adoption. The agreement shall have set forth the respective responsibilities of the agency and the adoptive parents during the time of the child's eligibility for this assistance.~~

~~(c) A child's eligibility for vendor payments shall further be determined on the basis of documentation of a known and diagnosed medical, mental, or emotional condition that will require periodic treatment or therapy of a medical or remedial nature.~~

~~A child's eligibility for vendor payments may be determined by the agency administering adoption assistance benefits at any time during the child's minority if the medical, mental, or emotional condition, congenital problem, birth injury, or other documented problem is determined to have been pre-existing at the time of his or her placement into an adoptive home. Prior to the child's receipt of vendor payments, the adoptive parents must enter into an agreement with the child's agency to indicate the extent to which they desire the child to participate in this component of the program.~~

~~(d) North Carolina residency of the child and adoptive parents is not a requirement for the child to be eligible to receive regular monthly cash assistance payments or vendor payments.~~

(b) For vendor payments, in addition to the criteria in subsection (a) of this Rule, the child shall also meet the following criteria:

- (1) at or prior to the issuance of the adoption decree, have a known and diagnosed medical, mental, or emotional condition that is documented by a medical professional that will require ongoing treatment or therapy of a medical or remedial nature; or
- (2) after the issuance of the adoption decree but while still under the age of eighteen, have been determined by the public adoption agency administering adoption assistance benefits to have a medical, mental, or emotional condition, congenital problem, birth injury, or other documented problem that is determined by a medical professional to have been preexisting at the time of his or her placement into an adoptive home.

(c) The prospective adoptive parents must meet the following criteria:

- (1) Enter into an adoption assistance agreement with a public adoption agency at the time of or prior to the issuance of an adoption decree;
- (2) Have a child placed with them in accordance with applicable state and local laws for purposes of an adoption who meets the requirements in subsection (a) of this Rule;
- (3) are legally responsible for the support of the child and is providing support to the child, if the child is under the age of eighteen;
- (4) entered into an adoption assistance agreement with the public adoption agency prior to entry of the decree of adoption. The adoption assistance agreement shall identify the specific services for the child that the parents want to be covered by vendor payments;
- (5) Shall have a completed criminal history investigated pursuant to N.C.G.S. 48-3-303 and 48-3-309 and shall not have a criminal history, as defined by N.C.G.S. 48-1-101(5b), or any other criminal conviction that would cause the prospective adoptive parent to be 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.
- (6) Shall provide the public adoption agency with the results of the criminal back history investigation.
- (7) Shall have a completed check of the North Carolina's Responsible Individuals List and have a check of the results of child abuse and neglect central registry of states where the applicant has resided the past five years and not be placed on the North Carolina's Responsible Individuals List or any other



state's child abuse and neglect central registry. The public adoption agency shall maintain a copy of the results in their file.

- (8) For vendor payments when the child meets the criteria in (a)(4)(b) of this Rule, shall enter into an adoption assistance agreement amendment on a form provided by the Department ("North Carolina Division of Social Services Adoption Assistance Agreement Amendment" DSS-5307, which can be found at <https://www.ncdhhs.gov/divisions/dss>) that identifies and includes supporting documentation of the child's preexisting condition and allows the parents to be reimbursed for vendor services related to the child's preexisting condition.
- (d) All individuals eighteen (18) years of age or older who reside in the prospective adoptive home shall have a completed a criminal history investigated pursuant to N.C.G.S. 48-3-303 and 48-3-309 and shall not have a criminal history, as defined by N.C.G.S. 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.
- (e) Prior to the adoption, all individuals eighteen years of age or older who reside in the prospective adoptive home shall have a completed check of the North Carolina's Responsible Individuals List and have a check of the results of child abuse and neglect central registry of states where the applicant has resided the past five years and not be placed on the North Carolina's Responsible Individuals List or any other state's child abuse and neglect central registry. The public adoption agency shall maintain a copy of the results in their file.
- (f) Upon adoption, the adoptive parents shall comply with all the terms of the adoption agreement assistance and notify the public adoption agency of any change in their legal or financial responsibility of the adopted child, address or contact information.
- (g) The public adoption agency shall:
- (1) prior to the adoption, make a determination as to whether the requirements of this Rule have been met on a form created by the Department ("Adoption Assistance Eligibility Checklist" Form DSS-5012 which can be found at <https://www.ncdhhs.gov/divisions/dss>) that shall identify the reasons that the eligibility requirements have been met and inform the prospective adoptive parents of the right to appeal the decision.
  - (2) maintain 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.
  - (3) after the adoption:
    - (i) annually send to the adoptive parents a letter reminding them to report any changes in their legal or financial responsibility of the adopted child;
    - (ii) issue to the adoptive parents a notice if the adoption assistance payments are to be suspended ("North Carolina Division of Social Services Adoption Assistance Suspension Notice" Form DSS-5306 which can be found on the Department's website at <https://www.ncdhhs.gov/divisions/dss>) that shall identify the reason for the suspension and how to appeal the suspension.
    - (iii) issue to the adoptive parents a notice if the adoption assistance payments are to be terminated ("North Carolina Division of Social Services Adoption Assistance Termination Notice" Form DSS-5308 which can be found at <https://www.ncdhhs.gov/divisions/dss>) that shall identify the reason for the termination and how to appeal the termination.

(4) In order for vendor services to be reimbursed the vendor must obtain prior approval by submitting to the public adoption agency completed and signed forms provided by the Department (“Adoption Assistance Vendor Payment Request Form” Form DSS-5112 and “Adoption Assistance Vendor Payment Instructions for Providers” Form DSS-5115 which can be found at <https://www.ncdhhs.gov/divisions/dss>) that includes documentation of the child’s diagnosis, the child’s special needs related to the diagnosis, how the is service related to the special needs, what the goals of the service is to accomplish, how achievement of goals be measured, the projected duration of treatment or service, the projected total cost and two copies of the provider’s bill after all health insurance claims have been processed.

*History Note: Authority G.S. ~~48-1-101; 108A-48; 108A-49; 108A-50; 143B-153;~~  
Eff. July 1, 1982;  
Amended Eff. March 1, 2017; July 18, 2002; July 1, 1991; March 1, ~~1990.~~ 1990.  
Readopted Eff. August 31, 2021.*

10A NCAC 70M .0403 is proposed for readoption without substantive changes as follows:

**10A NCAC 70M .0403 PROCEDURES/REIMBURSEMENT OF ADOPTION ASSISTANCE BENEFITS**

(a) Adoption assistance benefits for which a child may be eligible shall become effective the first month following the month in which the Decree of Adoption is issued.

(b) Claims from service providers and monthly cash assistance shall be reimbursed or provided from adoption assistance funds in accordance with the Department of Health and Human Services county department of social services reimbursement process, subject to the following limitations:

- (1) Vendor payments to adoptive parents, medical providers and to providers of psychological, therapeutic, and remedial services shall be made only for treatment or services given to alleviate or correct those conditions for which the child has been determined eligible to receive benefits.
- (2) The total amount for vendor payments for any combination of medical services not covered by Medicaid including psychological, therapeutic services or remedial services for any child shall not exceed two thousand four hundred dollars (\$2,400.00) per State fiscal year.
- (3) Vendor payments shall not be made to reimburse providers for the following:
  - (A) routine medical examinations;
  - (B) illnesses or conditions not related to or resulting from the conditions for which the child was determined eligible for vendor payments;
  - (C) services or treatment provided to the child prior to entry of the Decree of Adoption; and
  - (D) services or treatment that may have been provided on or after the first day of the month following the month in which the child's eligibility ceases.

(c) No local match, in terms of dollars, is required for funds for those children certified to receive benefits under the State Fund for Adoptive Children with Special Needs who are the placement responsibility of licensed private child-placing agencies with the exception of monthly cash payments for those children who are eligible for benefits from Title IV-E of the Social Security Act. No monthly cash assistance payments from the State Fund for Adoptive Children with Special Needs shall be made for any adoption in which the Decree of Adoption is issued on or after October 1, 2011.

*History Note: Authority G.S. 108A-49; 108A-50; 143B-153;*

*Eff. July 1, 1982;*

*Amended Eff. October 1, 2011; July 18, 2002; July 1, 1991; March 1, ~~1990~~ 1990;*

*Readopted Eff. August 31, 2021.*

10A NCAC 70M .0404 is proposed for repeal as follows:

**10A NCAC 70M .0404 ELIGIBILITY REQUIREMENTS FOR THE SPECIAL CHILDREN ADOPTION  
INCENTIVE FUND AND EFFECTIVE DATE**

*History Note:* Authority G.S. 108A-49; 108A-50; 143B-153; S.L. 2000-67, s. 11.16;  
Temporary Adoption Eff. January 1, 2001;  
Temporary Adoption Eff. August 31, 2001;  
Eff. July 18, ~~2002~~, 2002;  
Repealed Eff. August 31, 2021.

10A NCAC 70M .0405 is proposed for repeal as follows:

**10A NCAC 70M .0405 PAYMENTS FROM THE SPECIAL CHILDREN ADOPTION INCENTIVE FUND**

*History Note: Authority G.S. 108A-49; 108A-50; 143B-153; S.L. 2000-67, s. 11.16;*  
*Temporary Adoption Eff. January 1, 2001;*  
*Temporary Adoption Eff. August 31, 2001;*  
*Eff. July 18, ~~2002~~, 2002;*  
*Repealed Eff. August 31, 2021.*

10A NCAC 70M .0601 is proposed for readoption with substantive changes as follows:

**SECTION .0600 - NON-RECURRING ADOPTION COSTS: ~~GENERAL COSTS~~**

**10A NCAC 70M .0601 ~~PURPOSE OF REIMBURSEMENT OF NON-RECURRING ADOPTION EXPENSES~~ PUBLIC ADOPTION AGENCY REQUIREMENTS**

~~Reimbursement of non recurring adoption expenses incurred by adoptive parents shall be provided by county departments of social services in accordance with requirements set forth in this Section to facilitate the adoption of children with special needs, and in accordance with procedures established by the State Division of Social Services.~~

(a) Public adoption agencies shall:

(1) at the time of or prior to the final decree of adoption, enter into an agreement for the reimbursement of nonrecurring adoption expenses with parents who adopt a child with special needs;

(2) prior to entering into an agreement for the reimbursement of nonrecurring adoption expenses, the public adoption agency shall:

(A) Make a determination that the child is a child with special needs; and

(B) Make a determination that the child has been placed for adoption in accordance with applicable laws;

(3) make payments for reimbursement of nonrecurring adoption expenses incurred by or on behalf of parents in connection with the adoption of a child with special needs if it enters into an agreement for the reimbursement of nonrecurring adoption expenses;

(4) retain copies of the complete application for reimbursement of nonrecurring adoption expenses, along with supporting document and receipts, and the agreement for the reimbursement of nonrecurring adoption expenses for auditing purposes; and

(5) upon receipt of a completed nonrecurring adoption expense reimbursement application, the public adoption agency shall submit the application to the Department.

(b) When there is an interstate placement of the child with special needs, the public adoption agency that agency that entered into an adoption assistance agreement shall also reimburse for the nonrecurring adoption expenses. When there has been an interstate placement of a child with special needs for the purpose of adoption and there is no adoption assistance agreement from the sending state, then the public adoption agency that is responsible for reimbursing for entering into an agreement for non-recurring adoption expenses shall be the public adoption agency where petitioner resides.

*History Note: Authority G.S. 108A-49; 108A-50; 143B-153;*

*Eff. July 1, ~~1991~~ 1991;*

*Readopted Eff. August 31, 2021.*

10A NCAC 70M .0602 is proposed for readoption with substantive changes as follows:

### **10A NCAC 70M .0602 DEFINITIONS ELIGIBLE NON-RECURRING ADOPTION EXPENSES**

~~Non-recurring costs for which reimbursement can be claimed are those costs associated with the adoption that are incurred prior to or at the time of the adoption and which include:~~

- ~~(1) — reasonable and necessary adoption fees;~~
- ~~(2) — court costs;~~
- ~~(3) — attorney's fees;~~
- ~~(4) — adoptive home study;~~
- ~~(5) — physical examinations;~~
- ~~(6) — psychological examinations, when required by an agency;~~
- ~~(7) — supervision of the placement prior to entry of the final order of adoption; and~~
- ~~(8) — transportation and costs of lodging and food for the child and adoptive parents when necessary to complete the adoptive process.~~

(a) An adoptive parent shall receive reimbursement for non-recurring adoption expenses not to exceed two thousand dollars (\$2,000) when:

- (1) The child placed with the parent for the purpose of adoption is a child with special needs;
- (2) The adoptive parents have submitted a signed application for non-recurring adoption expenses on a form provided by the Department ("State of North Carolina Application For Reimbursement of Nonrecurring Adoption Costs" Form DSS-5145 which can be found at <https://www.ncdhhs.gov/divisions/dss>). The application shall:
  - (A) demonstrate that the child is a child with special needs;
  - (B) include acknowledgements by the adoptive parents that:
    - (i) non-recurring adoption expenses are limited to a reimbursement of two-thousand dollars (\$2,000.00) per child and are contingent on the child being a child with special needs;
    - (ii) the expenses that they are seeking reimbursement for were actually incurred by them;
    - (iii) the expenses that they are seeking reimbursement for are reasonable and necessary adoption expenses which were directly related to the legal adoption of the child; and
    - (iv) the expenses that they are seeking reimbursement for have not and will not be reimbursed by another source.
  - (C) if the placement was an interstate placement, include an acknowledgement by the adoptive parents that the placement was made in accordance with the Interstate Compact on the Placement of Children adopted by both the sending and receiving state and any other applicable federal, state or local laws or rules related to the interstate adoptive placement of a child;
  - (D) the type and amount of the expense that will be incurred by the adoptive parents; and
  - (E) include documentation that verifies the information in the application and receipts for any non-recurring service for which the parent is seeking reimbursement.
- (3) The foster parents and 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 G.S. 48-3-303 and 48-3-309 and shall not have a criminal history, as defined by G.S. 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 G.S. 48-3-309.
- (4) The foster parents shall provide the public adoption agency with the results of the criminal history investigation, and the public adoption agency shall maintain a copy of the results.
- (5) The adopting parents and all individuals eighteen years of age or older who reside in the home shall have a completed check of the North Carolina's Responsible Individuals List and have a check of the results of child abuse and neglect central registry of states where the applicant has resided the past five years and not be placed on the North Carolina's Responsible Individuals List or any other state's child abuse and neglect central registry. The public adoption agency shall maintain a copy of the results in their file.
- (6) Upon approval of the application in subsection (2) of this Rule, the adoptive parents shall enter into a binding written agreement with a public adoption agency for the reimbursement of non-recurring expenses on a form provided by the Department ("State of North Carolina Agreement for

Reimbursement of Non-recurring Adoption Costs” Form DSS-5146 which can be found at <https://www.ncdhhs.gov/divisions/dss>) that meets the requirements in 42 USC 673(a)(3) and any subsequent amendments, and is signed at the time of or prior to the final decree of adoption.

(7) The application for reimbursement was filed in accord with the quarter rule outlined in CFR 45 1356.41. E2 adoption.

*History Note: Authority G.S. 108A-49; 108A-50; 143B-153;*

*Eff. July 1, ~~1991~~ 1991;*

*Readopted Eff. August 31, 2021.*



10A NCAC 70M .0603 is proposed for repeal as follows:

**10A NCAC 70M .0603 REQUIREMENTS**

*History Note:* Authority G.S. 108A-49; 108A-50; 143B-153; 42 U.S.C. 673;  
Eff. July 1, 1991;  
Amended Eff. March 1, ~~2017~~ 2017;  
Repealed Eff. August 31, 2021.

10A NCAC 70M .0604 is proposed for reoption with substantive changes as follows:

**10A NCAC 70M .0604 ~~REIMBURSEMENT FOR NON-RECURRING ADOPTION EXPENSES~~**  
**PROHIBITION ON REIMBURSEMENT CAPS**

~~(a) The maximum amount for which adoptive parents will be reimbursed for all non-recurring adoption expenses shall not exceed two thousand dollars (\$2,000).~~

~~(b) No maximum rates for specific reimbursable services shall be established by the State Division of Social Services or by any county department of social services.~~

The Department and any public adoption agencies are prohibited from establishing a maximum allowable reimbursement amount for any single eligible nonrecurring adoption expense.

*History Note: Authority G.S. 108A-49; 108A-50; 143B-153;  
Eff. July 1, ~~1991~~ 1991;  
Readopted Eff. August 31, 2021.*