

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY</b>	
	<b>Chapter 10:</b> Adoption/Permanency	<b>Effective Date:</b> December 1, 2014
	<b>Section 20:</b> Administrative Review for Adoption Assistance	<b>Version:</b> 2

<b>STATEMENTS OF PURPOSE</b>
------------------------------

**General Conditions**

The Indiana Department of Child Services (DCS) will process a request for administrative review when a prospective adoptive parent(s) disagrees with a decision made by DCS under policy sections [10.17 Negotiations for Adoption Assistance](#), [10.15 Eligibility Requirements for Adoption Assistance](#) and [10.19 Continuations, Terminations and Suspensions of Adoption Assistance](#). DCS will also process a request for administrative review of a decision concerning the amount payable for Non Recurring Adoption Expenses (NRAE).

A prospective adoptive parent(s) must submit a written [Request for Administrative Review- Indiana Adoption Program \(SF54348\)](#) within 30 calendar days of service of notice by mail or hand delivery of any of the following decisions:

1. [Final Adoption Program Eligibility Determination](#);
2. The DCS periodic payment Final Offer letter;
3. Determination of the amount allowed and payable for NRAE;
4. Determination of a request for modification of the payment provisions of an adoption assistance agreement, if the DCS local office and adoptive parent(s) have not reached agreement on the modification request;
5. Denial of a request for continuation of an adoption assistance agreement to a time after the child becomes age 18; or
6. Termination or suspension of an adoption assistance agreement for any reason specified in policy [10.19 Continuations, Terminations and Suspensions of Adoption Assistance](#) other than the age of the child, death of the child or adoptive parent(s), or termination of the adoptive parent-child relationship.

The [Request for Administrative Review- Indiana Adoption Program \(SF54348\)](#) must be submitted to the DCS Hearings and Appeals, in the manner specified in the request form. The Permanency and Practice Support Division will conduct the administrative review based on the reasons stated in the request as submitted, the documentation included to support the request, and any documentation submitted by DCS staff. Any person who was involved in making the decision or determination that is the subject of the administrative review request will not participate in the administrative review.

**Eligibility Determinations**

DCS will process a [Request for Administrative Review- Indiana Adoption Program \(SF54348\)](#) from a prospective adoptive parent(s) who has an application pending for adoption assistance concerning a determination made by DCS under policy sections [10.15 Eligibility Requirements for Adoption Assistance](#) or [10.17 Negotiations for Adoption Assistance](#).

To overturn through an administrative review a DCS determination denying eligibility, the adoptive parent(s) must establish that the determination was contrary to applicable federal or

state law, rule, procedure, or policy, as applied to the facts stated in the application or otherwise found by DCS based on the documentation submitted or available in DCS records.

### **Initial Periodic Payment Amount**

Following an eligibility determination, DCS will provide a [Final Adoption Program Eligibility Determination](#), proposed agreement (if eligible), a [Payment Request Information \(PRI\) Form](#) and [Request for Administrative Review- Indiana Adoption Program \(SF54348\)](#) (if applicable) to the prospective adoptive parent(s) or the attorney who represents the parent(s).

If negotiation of the periodic payment has not resulted in an approved agreement, DCS will send a Final Offer letter to the prospective adoptive parent(s) or their attorney, stating the amount that DCS agrees to pay as the periodic payment for the agreement. The letter will include information about the availability of an administrative review process and the [Request for Administrative Review- Indiana Adoption Program \(SF54348\)](#) form. See separate policy [10.17 Negotiations for Adoption Assistance](#).

The [Request for Administrative Review- Indiana Adoption Program \(SF54348\)](#) must be submitted to DCS Hearings and Appeals. The request must be in the format specified in the [Request for Administrative Review- Indiana Adoption Program \(SF54348\)](#) form. The prospective adoptive parent(s) must state the reason(s) for requesting a review and should include documentation to support the basis for the request. DCS Legal Operations will conduct the administrative review based on the request submitted by the prospective adoptive parent(s), the documentation included to support the request and any documentation submitted by DCS staff. The administrative review will not include any person(s) who was involved in the original eligibility determination or the negotiation that resulted in the DCS Final Offer letter.

The prospective adoptive parent(s) may sign an adoption assistance agreement that includes the periodic payment amount included in the DCS Final Offer letter, submit a request for administrative review of the payment amount under this policy, and proceed in the adoption case to request a Final Decree of Adoption of the child. In that event, DCS will begin payment of the amount as stated in the agreement, effective on the date of entry of the final adoption decree. If the amount of the periodic payment is changed as a result of the administrative review or any subsequent administrative hearing (see separate policy [10.21 Administrative Appeals for Adoption Assistance](#)), the final approved payment amount will be retroactive to the final adoption decree date.

A prospective adoptive parent(s) who does not elect to sign the agreement may utilize the administrative review procedure provided in this policy. That procedure, and any available administrative hearing under policy [10.21 Administrative Appeals for Adoption Assistance](#), should be exhausted before a Final Decree of Adoption of the child is entered. The written adoption assistance agreement or State Adoption Subsidy (SAS) agreement between DCS and the adoptive parent(s) must be signed by both the parent(s) and DCS on or before the date that the court enters the Final Decree of Adoption of the adoptive child. See separate policy [10.15 Eligibility Requirements for Adoption Assistance](#). If the adoption decree is entered before both DCS and the prospective adoptive parent(s) have signed the adoption assistance agreement or SAS agreement, the child will not be eligible for any adoption assistance, or Medicaid coverage based on the adoption.

**Note:** If the adoptive child is eligible for SAS periodic payments, and funding of SAS periodic payments is not available at the time of the eligibility determination, the prospective adoptive parent(s) may sign the SAS agreement with a \$0 periodic payment amount and

obtain a Final Decree of Adoption of the child, without submitting the [Request for Administrative Review- Indiana Adoption Program \(SF54348\)](#). Negotiation of a periodic payment amount under the SAS agreement may commence upon a determination by DCS that periodic payment funding is available, and this policy will apply at that time to determine a negotiated payment amount. See separate policy [10.17 Negotiations for Adoption Assistance](#).

To overturn a DCS determination concerning the periodic payment in an administrative review, a prospective adoptive parent(s) must show one or more of the following:

1. DCS did not substantially follow the procedures specified in this policy or any other applicable policy, rule, procedure or statute relating to the determination of adoption assistance periodic payments;
2. DCS did not consider relevant information or documentation that the prospective adoptive parent(s) submitted in the PRI in conducting the negotiation or submitting its Final Offer letter based on the factors and information outlined in DCS policy [10.17 Negotiations for Adoption Assistance](#), in conducting the negotiation or submitting its Final Offer letter; or
3. The periodic payment that DCS agreed to pay as stated in the Final Offer letter is clearly unreasonable and not supported by substantial and relevant evidence presented by the prospective adoptive parent(s) or otherwise considered by DCS.

DCS will begin payment based on the signed agreement, effective upon entry of the Final Decree of Adoption. Change in the periodic payment may only be made through the administrative review process or in accordance with the modification procedures in policies [10.18 Modification of an Adoption Assistance Agreement](#) and [10.17 Negotiations for Adoption Assistance](#). DCS will not consider the failure of the adoptive parent(s) to obtain from DCS the requested periodic payment amount as a ground for revoking or setting aside their adoption of the child.

### **Modification of Periodic Payment Amount**

After an adoption assistance agreement or SAS agreement has been signed, and a Final Decree of Adoption of the child beneficiary of the agreement has been entered, the adoptive parent(s) may request a modification of the periodic payment amount or term stated in an existing agreement, under policy [10.18 Modification of an Adoption Assistance Agreement](#). If the decision by the DCS local office is unsatisfactory to the adoptive parent(s), a [Request for Administrative Review- Indiana Adoption Program \(SF54348\)](#) must be submitted to DCS Hearings and Appeals within the time and in the manner specified in this policy.

The factors previously identified in the section of this policy titled Initial Periodic Payment Amount apply to an administrative review concerning a requested modification under this section. In addition, to justify the increase of a periodic payment, the adoptive parent(s) must show that a change of circumstances concerning the child or family occurred after the original agreement was signed and was not known or anticipated at the time the agreement was signed.

### **Termination or Administrative Suspension**

If DCS determines that an adoption assistance agreement should be terminated or periodic payments under the agreement should be administratively suspended, for a reason specified in this policy or separate policy [10.19 Continuations, Terminations and Suspensions of Adoption Assistance](#), DCS may terminate the agreement by sending to the adoptive parent(s) a [Notice of Termination of Adoption Assistance Agreement](#), administratively suspend payments by sending to the adoptive parent(s) a [Notice of Administrative Suspension of Adoption Assistance Periodic Payments](#).

If the adoptive parent(s) is receiving a periodic payment and the child has been removed from the home of the adoptive parent(s) pursuant to a court order in a Child in Need of Services (CHINS) or Juvenile Delinquent (JD) case, or is otherwise temporarily residing in an out-of-home placement or residential facility for purposes of care, supervision, or treatment, DCS may administratively suspend payments under the agreement effective during the time the child is in the out-of-home placement, if DCS has determined that the adoptive parent(s) is not providing any significant financial support for the child. In that event, DCS may send to the adoptive parent(s) a [Notice of Administrative Suspension of Adoption Assistance Periodic Payments](#).

If the decision of DCS CEU concerning termination or administrative suspension of assistance under this section is unsatisfactory to the adoptive parent(s) and is subject to administrative review under the General Conditions section of this policy, a [Request for Administrative Review-Indiana Adoption Program \(SF 54348\)](#) must be submitted to DCS Hearings and Appeals. Administrative reviews of DCS decisions to terminate or administratively suspend adoption assistance will be conducted by DCS Legal Operations. See separate policy [10.19 Continuation, Terminations and Suspensions of Adoption Assistance](#).

For DCS to alter its decision at the administrative review concerning the administrative suspension or termination of the agreement, an adoptive parent(s) must show that the determination of DCS was based on a material error of fact or was contrary to applicable law or DCS policy. See separate policy [10.19 Continuations, Terminations and Suspensions of Adoption Assistance](#).

#### **Continuation after the Child Turns 18 Years of Age**

DCS CEU will process a continuation request application in accordance with the procedure specified in the separate policy [10.19 Continuations, Terminations and Suspensions of Adoption Assistance](#).

If the decision of DCS CEU concerning continuation of the agreement after the child turns 18 years of age is unsatisfactory to the adoptive parent(s), a [Request for Administrative Review-Indiana Adoption Program \(SF54348\)](#) must be submitted to DCS Hearings and Appeals. Administrative reviews of a DCS decision to deny an application for continuation of adoption assistance beyond the child's 18<sup>th</sup> birthday will be conducted by DCS Hearings and Appeals.

For DCS to alter its decision at the administrative review concerning an [Application for Continuation of Adoption Assistance Agreement Beyond Age Eighteen](#), the adoptive parent(s) must show that at least one of the following factors applies:

1. The DCS CEU failed to consider relevant documentation submitted with the application.
2. If the application is based on the child's physical, mental, medical, or emotional condition that limits the child's self-supporting capability at the time the child will become age 18, the DCS CEU failed to evaluate adequately or properly the documentation and information submitted with the application.
3. The DCS decision was contrary to currently applicable law or DCS policy.

#### **Administrative Review Decision**

Administrative review will be completed within 60 days of DCS Hearings and Appeals' receipt of the request. DCS will send notice of the administrative review decision to the prospective adoptive parent(s), or the adoptive parent(s), or their attorney, together with instructions and any appropriate forms so that a [Request for Administrative Hearing Indiana Adoption Assistance Program \(AAP or SAS\) \(SF54349\)](#) can be pursued, if applicable. Any review decisions

regarding periodic payment amounts will be approved by the DCS General Counsel, or designee.

If the prospective adoptive parent(s) or adoptive parent(s) is dissatisfied with the results of the administrative review, the parent(s) may submit a written [Request for Administrative Hearing Indiana Adoption Assistance Program \(AAP or SAS\) \(SF54349\)](#) to DCS Hearings and Appeals. The [Request for Administrative Hearing Indiana Adoption Assistance Program \(AAP or SAS\) \(SF 54349\)](#) form must be filed with the DCS Hearings and Appeals unit within 30 calendar days of service by mail or hand delivery to the prospective or adoptive parent(s) of the written notice of final administrative review decision. See separate policy [10.21 Administrative Appeals for Adoption Assistance](#).

An administrative review will not be provided concerning:

1. Disapproval of any requested change in the language or format of the agreement form that DCS submitted for completion and signature;
2. Determinations concerning the availability of funds in the Adoption Assistance Account for payments under SAS agreements or continuations of County Adoption Subsidy (CAS) agreements based on funding priorities identified in policy [10.16 Funding for Adoption Assistance](#);
3. Determinations relating to percentage reductions in current SAS payments; or
4. Any other decision or determination of DCS relating to administration of the SAS program under [IC 31-19-26.5](#) and this policy that is not described in this policy.

#### Code References

[IC 31-19-26.5: Adoption Subsidies](#)  
[42 USC 673 Title IV-E Adoption Assistance Program](#)

## **PROCEDURE**

The DCS General Counsel, or designee will:

1. Determine if requests were made in a timely manner. If not, the request will be denied upon receipt of the request for administrative review of an issue involving a periodic payment amount, modification request, termination of an adoption assistance agreement before the child turns 18 years of age, or application for continuation of an agreement after the child reaches the age of 18;
2. Send a copy of the [Request for Administrative Review- Indiana Adoption Program \(SF54348\)](#) to the DCS LOD who participated in the periodic payment negotiation process for issues that involve a periodic payment amount or a modification request. The DCS LOD will also request the most recent PRI (if applicable), and supporting documentation that was submitted by the prospective adoptive parent(s) or the adoptive parent(s);
3. Send a copy of the [Request for Administrative Review- Indiana Adoption Program \(SF54348\)](#) to DCS CEU for issues involving eligibility, continuation, or termination;
4. Appoint a qualified person in the division who has no previous knowledge or involvement in the case to conduct the administrative review;
5. Review and approve the completed administrative review decision within 60 calendar days of the receipt of the review request. The review will be based on documentation submitted by the DCS LOD, DCS CEU and the information submitted by the prospective adoptive parent(s) or the adoptive parent(s); and
6. Send a copy of the administrative review decision letter to the DCS LOD, DCS CEU and the prospective adoptive parent(s) or the adoptive parent(s).

The DCS General Counsel, or designee, will review any administrative review decision involving a request to change the periodic payment amount and approve the decision prior to notifying to the prospective adoptive parent(s) or the adoptive parent(s). Once approval has been obtained, DCS Legal Operations will provide written notification to the prospective adoptive parent(s), or the adoptive parent(s), or their attorney of the administrative review decision. The written notification will include instructions concerning the administrative appeal process and include a [Request for Administrative Hearing Indiana Adoption Assistance Program \(AAP or SAS\) \(SF54349\)](#) form, if applicable.

DCS Legal Operations will advise DCS CEU and the DCS LOD of the administrative review decision and DCS CEU will implement the decision if the administrative review decision alters the DCS determination being reviewed. An administrative review decision involving the periodic payment amount may include a revised periodic payment amount.

#### **PRACTICE GUIDANCE**

N/A

#### **FORMS AND TOOLS**

1. [Final Adoption Program Eligibility Determination](#) – Available via CEU
2. [Notice of Termination of Adoption Agreement](#) – Available via CEU
3. [Request for Administrative Review- Indiana Adoption Program \(SF54348\)](#)
4. [Request for Administrative Hearing Indiana Adoption Assistance Program \(AAP or SAS\) \(SF54349\)](#)
5. [Payment Request Information \(PRI\) Form](#) – Available via CEU
6. [Application for Continuation of Adoption Assistance Agreement Beyond Age Eighteen](#) – Available via CEU

#### **RELATED INFORMATION**

N/A