Agency Name: Department of Social Services

Statutory Authority: 43-1-80 and 63‑9‑1700 through 1810

Document Number: 5315

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Senate Committee: Family and Veterans' Services Committee

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Subject: Supplemental Benefits for Adoption and Medical Assistance

History: 5315

By Date Action Description Jt. Res. No. Expiration Date

- 09/27/2024 Proposed Reg Published in SR

- 01/14/2025 Received President of the Senate & Speaker 01/18/2026

H 01/14/2025 Referred to Committee

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S 04/23/2025 Resolution Introduced to Approve 596

Document No. 5315

**DEPARTMENT OF SOCIAL SERVICES**

CHAPTER 114

Statutory Authority: 1976 Code Sections 43‑1‑80 and 63‑9‑1700 through 1810

114‑4380. Supplemental Benefits for Adoption and Medical Assistance.

**Synopsis:**

 The State of South Carolina aims to support adoption laws by making possible through public supplemental benefits the most appropriate adoption of each child certified by the Department of Social Services as requiring a supplemental benefit to assure adoption. The Department of Social Services is charged with promulgating regulations to carry out the State’s purpose; and therefore, is proposing to amend Regulation 114‑4380 to promote compliance with statutory authority and to further the Department’s mission to promote safety, permanency, stability, and well‑being of children who are in the State’s foster care system.

Section‑by‑Section Discussion:

Regulation 114‑4380

1. Subsection (A), Amended to clarify the meaning of key terms found in the regulations.

2. Subsection (B), Amended to clarify eligibility requirements.

3. Subsection (D), Amended to explain the process for prior approval of certain expenditures and to notify adoptive parents that the State Medicaid agency may require certain documentation to continue coverage of a child adopted in another State.

4. Subsection (E), Amended to clarify when Supplemental Benefits may terminate.

 The Notice of Drafting was published in the *State Register* on June 28, 2024.

**Instructions:**

Print the regulations as shown below. All other items remain unchanged.

~~Indicates Matter Stricken~~

Indicates New Matter

**Text:**

114‑4380. Supplemental Benefits for Adoption and Medical Assistance.

(Statutory Authority: 1976 Code Sections ~~Section 20‑7‑1900 through 20‑7‑1970~~ 63‑9‑1700 through 63‑9‑1810 and Sections ~~Section 20‑7‑2610~~ 63‑9‑2000 through 63‑9‑2050 ~~et. seq~~*~~.~~*)

 A. Definitions.

 1. Supplemental Benefits: State funded payments for the care and support of an adopted child.

 2. The Department: The South Carolina Department of Social Services.

 3. Family: The adoptive family who is adopting or has adopted a child, or the caregiver.

 4. Caregiver: The person who provides care and support after the death or disability of the adoptive parent(s).

 5. Child: ~~The adoptive child for whom Supplemental Benefits payments are authorized.~~ A person under the age of 18 or a person age 18, 19, or 20 who meets the education or employment requirements of Section 63‑7‑2710 or who is incapable of meeting such requirements due to a physical, intellectual, emotional, or psychiatric condition that limits participation in education or employment activities.

 6. Adoption Assistance Agreement: An Adoption Subsidy Agreement or contract between an adoptive family and the Department or another adoption assistance state for ongoing or time limited financial support through federal or state public funds.

 7. Special Needs Child: ~~A legally free child for whom reasonable but unsuccessful efforts have been made to place without subsidy except where it would be against the best interest of the child because of significant emotional ties with foster parents and the child meets one or more of the following criteria:~~For the purpose of adoption, means children who fall into one or more of the following categories:

 ~~(a) A white child ten years old or older;~~

 ~~(b) A black or mixed race child six years old or older;~~

 ~~(c) A physically, mentally or emotionally handicapped child or a child at risk for physical, mental or emotional handicaps due to a condition existing before adoption;~~

 ~~(d) A member of a white sibling group of three or more children, one of whom is at least six years of age, or a sibling group of four or more white children of any age;~~

 ~~(e) A member of a black or mixed race sibling group of two or more children, one of whom is at least six years of age, or a sibling group of three or more black or mixed race children of any age;~~

 ~~(f) A member of a sibling group that includes a special needs child.~~

 (a) children who are members of a sibling group;

 (b) children of marginalized ethnic backgrounds, except for purposes of Section 63‑9‑60(B)

 (c) children aged six or older; or

 (d) children with physical, mental, or emotional disabilities.

 8. ICAMA: The Interstate Compact on Adoption and Medical Assistance.

 9. Medical Assistance Identification: Medicaid Card.

 10. Prior Approval: Required authorization for payment of Supplemental Benefits funds for ~~residential treatment and for purchases of medical or rehabilitative equipment which costs more than the amount specified in the adoption assistance agreement.~~ costs associated with the known conditions stated in the Adoption Subsidy Agreement that are not covered after Medicaid, private insurance, educational, and other funding sources have been explored and ruled out.

 B. Eligibility Requirements for Supplemental Benefits.

 1. The child has been placed for adoption by the Department.

 2. The child must be legally free for adoption~~.~~ and one of the following provisions apply:

 ~~3. The child must have established significant emotional ties with his foster parents who are unable to assume financial responsibility for the full cost of the child’s care, and the adoption by this family is deemed in the best interest of the child by the agency; or the child must be a special needs child.~~

 ~~4. The child must be financially dependent upon the family and under the age of 18, or a child between the ages of 18 and 21 shall be eligible if the child remains a full time student and financially dependent upon the family.~~

 (a) is a special needs child pursuant to Section 63‑9‑30;

 (b) is at high risk of developing a physical, mental, or emotional disability;

 (c) is one for whom other factors, as determined by the department, interfere with the child’s ability to be placed for adoption;

 (d) has established significant emotional ties with prospective adoptive parents while in their care as a foster child, and it is considered by the agency to be in the best interest of the child to be adopted by the foster parents.

 C. Eligibility Requirements for Medicaid Coverage.

 1. The initial adoption assistance agreement for state or federal public funds must have been signed by the family and the authorized agency representative prior to adoption finalization.

 2. The family must have a current adoption assistance agreement for federally funded adoption assistance or for state funded adoption assistance based on the child’s medical or rehabilitative needs.

 D. Family Responsibilities.

 1. The family shall notify the Department within ten working days of changes in the child’s condition or the family’s circumstances that may affect the adoption assistance agreement in any way.

 2. The family shall use all other available resources, including Medicaid, before using Supplemental Benefits payments for medical, rehabilitative or other treatment services.

 3. The family shall cooperate with the Department by signing and returning the adoption assistance agreement promptly.

 4. The family shall notify the Department within ten working days if they are no longer legally responsible for supporting the child or if they are no longer financially supporting the child.

 5. The family must obtain prior approval to receive ~~payment under~~ Supplemental Benefits for Medical Assistance ~~residential treatment and for purchases of medical or rehabilitative equipment which costs more than the amount specified in the adoption assistance agreement.~~ costs associated with known conditions stated in the Adoption Subsidy Agreement that are not covered by Medicaid, private insurance, educational, or other funding sources that have been explored and ruled out. Experimental services, services that are not approved by governmental agencies or national professional associations concerned with such services, and services that are not associated with diagnoses or conditions stated in the Adoption Subsidy Agreement are not reimbursable under this program.

 6. ~~The family that has an agreement with another state shall provide proof annually that the agreement is still in force to receive Medicaid or other services in South Carolina through ICAMA.~~A family that has an agreement with another state may be asked to provide proof that the agreement is still in force to receive Medicaid or other services in South Carolina through ICAMA.

 E. Supplemental Benefits Payments.

 1. Payments may begin as soon as the child has been placed adoptively and agreements have been executed.

 2. Payments may be delayed until the child’s needs increase and the family can no longer meet those needs from their own resources.

 3. Payments terminate at age 21 if the Department determines the child has a mental or physical disability which warrants the continuation of Supplemental Benefits, at age 18 ~~unless the child is still in school full time and financially dependent upon the family.~~ or age 19, 20, or 21, as applicable, if the child meets requirements of the extended foster care program as set forth in Title 63, Chapter 7, Article 8. The Department requires annual proof that a child aged 18‑21 meets requirements for the continuation of Supplemental Benefits by the last day of the child’s birth month.

 4. ~~All Supplemental Benefits terminate when the child reaches 21~~In no case may Supplemental Benefits continue beyond a child’s 21st birthday.

 5. All Supplemental Benefits terminate at the death of the child or at the death or disability of the adoptive parents, unless the disability results in placement of the child with a caregiver.

 6. Supplemental Benefits may be paid to a caregiver with the approval of the Department.

 7. Supplemental Benefits may not exceed that which is reasonable for treatment services or allowable for a child under foster family care.

 8. Supplemental Benefits may be reduced, terminated or left the same, if the family begins receiving other cash benefits on behalf of the child, i.e., Social Security benefits. Any reduction or termination will be negotiated with the family, but the final determination will be made by the Department.

 9. With prior approval, the ~~The~~ family may be reimbursed for the child’s medical expenses for conditions covered in the adoption assistance agreement and that are not paid by private insurance, Medicaid or other resources.

 ~~10. Providers may be paid directly for expenses incurred for the child in the same circumstances as stated above.~~

 F. Overpayments.

 1. The family who has received an overpayment shall be required to reimburse the Department.

 2. The Department reserves the right to recoup overpayments from future payments.

 G. Supplemental Benefits Appeals.

 1. The family has the right to appeal any decision made by the Department on Supplemental Benefits both before and after finalization of the adoption, according to the Department’s approved fair hearing appeal process.

 2. The family will be informed of its right to a judicial review in accordance with the Administrative Procedures Act.

 H. ICAMA Appeals.

 The family has the right to appeal decisions made about adoption assistance and/or services as specified in the adoption assistance agreement according to the policies and procedures in the state which entered into the agreement or the state in which the child lives, if appropriate.

**Fiscal Impact Statement:**

 The Department of Social Services estimates there will be no additional costs incurred by the State and its political subdivisions due to the promulgation of the proposed regulations.

**Statement of Rationale:**

 The State of South Carolina aims to support adoption laws by making possible through public supplemental benefits the most appropriate adoption of each child certified by the Department of Social Services as requiring a supplemental benefit to assure adoption. The Department of Social Services is charged with promulgating regulations to carry out the State’s purpose; and therefore, is proposing to amend Regulation 114‑4380 to promote compliance with statutory authority and to further the Department’s mission to promote safety, permanency, stability, and well‑being of children who are in the State’s foster care system.