

**Code of Virginia**  
**Effective July 1, 2021**

**Title 63.2 - WELFARE (SOCIAL SERVICES)**

**Chapter 13. Adoption Assistance for Children with Special Needs**

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**Chapter 13. Adoption Assistance for Children with Special Needs.**

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

A. The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs.

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

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

C. A child with special needs will be eligible for adoption assistance if (i) the child is a citizen or legal resident of the United States; (ii) the child cannot or should not be returned to the home of his parents; and (iii) reasonable efforts to place the child in an appropriate adoptive home without the provision of adoption assistance have been unsuccessful. An exception may be made to the requirement that efforts be made to place the child in an adoptive home without the provision of

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adoption assistance when it is in the best interest of the child due to factors such as the development of significant emotional ties with his foster parents while in their care and the foster parents wish to adopt the child.

1974, c. 507, § 63.1-238.1; 1978, c. 536; 1981, c. 359; 1987, cc. 650, 681; 2000, cc. [290](#), [830](#), § 63.1-238.03; 2002, c. [747](#); 2010, c. [271](#); 2017, c. [199](#).

**§ 63.2-1301. Types of adoption assistance payments.**

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

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

1. Was in the custody of a local board or a licensed child-placing agency at the time of the adoptive placement;
2. Was in the custody of a local board or a licensed child-placing agency at the time of the adoptive placement and met the factors set forth in subdivision B 1 or 2 of § [63.2-1300](#) at the time of adoption but such factors were not diagnosed until after the final order of adoption and no more than one year has elapsed from the date of diagnosis; or
3. Lived with his foster parents for at least 12 months and has developed significant emotional ties with his foster parents while in their care and the foster parents wish to adopt the child and state-funded maintenance payments are necessary to enable the adoption.

C. Special services payments may be made for the provision of services to the child that are not covered by insurance, Medicaid, or otherwise. Special services include (i) medical, surgical, and dental care; (ii) hospitalization; (iii) individual remedial education services; (iv) psychological and psychiatric treatment; (v) speech and physical therapy; and (vi) special equipment, treatment, and training for physical and mental handicaps. A child is eligible for special services payments if:

1. The child is a child with special needs as set forth in § [63.2-1300](#);
2. The child is receiving adoption assistance payments pursuant to subsection A or B; and
3. The adoptive parents are capable of providing the permanent family relationships needed by the child in all respects except financial.

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

1974, c. 507, § 63.1-238.2; 1982, c. 171; 1983, c. 292; 1987, cc. 650, 681; 2002, c. [747](#); 2010, c. [271](#); 2017, c. [199](#).

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

A. Adoption assistance payments may include Title IV-E or state-funded maintenance payments; however, such payments shall not exceed the foster care payment that would otherwise be made for the child at the time the adoption assistance agreement is signed.

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

1. The local department determines on or within six months prior to the child's eighteenth birthday that the child has a mental or physical handicap, or an educational delay resulting from such handicap, warranting the continuation of assistance; or
2. The initial adoption assistance agreement became effective on or after the child's sixteenth birthday and the child is (i) completing secondary education or an equivalent thereof; (ii) enrolled in an institution that provides postsecondary or vocational education; (iii) employed for at least 80 hours per month; (iv) participating in a program or activity designed to promote employment or remove barriers to employment; or (v) incapable of doing any of the activities set forth in clauses (i) through (iv) due to a medical condition.

C. Adoption assistance payments shall be made on the basis of an adoption assistance agreement entered into by the local board and the adoptive parents or, in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed

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child-placing agency and the adoptive parents. A representative of the Department shall negotiate all adoption assistance agreements with both existing and prospective adoptive parents on behalf of local departments.

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

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

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

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

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

1974, c. 507, § 63.1-238.3; 1976, c. 216; 1977, c. 533; 1978, c. 536; 1980, c. 280; 1981, c. 359; 1982, c. 171; 1985, c. 568; 1987, cc. 650, 681; 1988, c. 417; 1989, c. 191; 2000, c. [290](#); 2002, c. [747](#); 2010, c. [271](#); 2017, c. [199](#).

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**§ 63.2-1303. Application for adoption assistance payments.**

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

1974, c. 507, § 63.1-238.4; 1976, c. 216; 1981, c. 359; 1987, cc. 650, 681; 2002, c. [747](#); 2010, c. [271](#); 2017, c. [199](#).

**§ 63.2-1304. Appeal to Commissioner regarding adoption assistance.**

Any applicant for or recipient of adoption assistance aggrieved by any decision of a local board or licensed child-placing agency in granting, denying, changing or discontinuing adoption assistance, may, within 30 days after receiving written notice of such decision, appeal therefrom to the Commissioner. Any applicant or recipient aggrieved by the failure of the local board or licensed child-placing agency to make a decision within a reasonable time may ask for review by the Commissioner. The Commissioner may delegate the duty and authority to duly qualified hearing officers to consider and make determinations on any appeal or review. The Commissioner shall provide an opportunity for a hearing, reasonable notice of which shall be given in writing to the applicant or recipient and to the proper local board in such manner and form as the Commissioner may prescribe. The Commissioner may make or cause to be made an investigation of the facts. The Commissioner shall give fair and impartial consideration to the testimony of witnesses, or other evidence produced at the hearing, reports of investigation of the local board and local director or licensed child-placing agency or of investigations made or caused to be made by the Commissioner, or any facts that the Commissioner may deem proper to enable him to decide fairly the appeal or review. The decision of the Commissioner shall be binding and considered a final agency action for purposes of judicial review of such action pursuant to the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

2003, c. [467](#).

**§ 63.2-1305. Federal-Funded Kinship Guardianship Assistance program.**

A. The Federal-Funded Kinship Guardianship Assistance program is established to facilitate placements with relatives and ensure permanency for children for whom adoption or being returned home are not appropriate permanency options. Kinship guardianship assistance payments may include Title IV-E maintenance payments, state-funded maintenance payments, and nonrecurring expense payments made pursuant to this section.

B. A child is eligible for kinship guardianship assistance under the program if:

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1. The child has been removed from his home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child;
2. The child was eligible for foster care maintenance payments under 42 U.S.C. § 672 or under state law while residing for at least six consecutive months in the home of the prospective kinship guardian;
3. Being returned home or adopted is not an appropriate permanency option for the child;
4. The child demonstrates a strong attachment to the prospective kinship guardian, and the prospective kinship guardian has a strong commitment to caring permanently for the child; and
5. The child has been consulted regarding the kinship guardianship if the child is 14 years of age or older.

C. If a child does not meet the eligibility criteria set forth in subsection B but has a sibling who meets such criteria, the child may be placed in the same kinship guardianship with his eligible sibling, in accordance with 42 U.S.C. § 671(a)(31), if the local department and kinship guardian agree that such placement is appropriate. In such cases, kinship guardianship assistance may be paid on behalf of each sibling so placed.

D. In order to receive payments under 42 U.S.C. § 674(a)(5) or pursuant to the Children's Services Act (§ [2.2-5200](#) et seq.), the local department and the prospective kinship guardian of a child who meets the requirements of subsection B shall enter into a written kinship guardianship assistance agreement negotiated by the Department and containing terms providing for the following:

1. The amount of each kinship guardianship assistance payment, the manner in which such payments will be provided, and the manner in which such payments may be adjusted periodically, in consultation with the kinship guardian, on the basis of the circumstances of the kinship guardian and the needs of the child;
2. The additional services or assistance, if any, for which the child and kinship guardian will be eligible under the agreement;
3. The procedure by which the kinship guardian may apply for additional services as needed;
4. Subject to 42 U.S.C. § 673(d)(1)(D), assurance that the local department shall pay the total cost of nonrecurring expenses associated with obtaining kinship guardianship of the child, to the extent that the total cost does not exceed \$2,000; and
5. Assurance that the agreement shall remain in effect without regard to the state of residency of the kinship guardian.

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E. A kinship guardianship assistance payment on behalf of a child pursuant to this section shall not exceed the foster care maintenance payment that would have been paid on behalf of the child had the child remained in a foster family home.

F. The Board shall promulgate regulations for the Federal-Funded Kinship Guardianship Assistance program that are necessary to comply with Title IV-E requirements, including those set forth in 42 U.S.C. § 673. The regulations may set forth qualifications for kinship guardians, the conditions under which a kinship guardianship may be established, the requirements for the development and amendment of a kinship guardianship assistance agreement, and the manner of payments on behalf of siblings placed in the same household.

G. For purposes of this section, "relative" means an adult who is (i) related to the child by blood, marriage, or adoption or (ii) fictive kin of the child.

2018, cc. [769](#), [770](#); 2020, cc. [224](#), [366](#); 2021, Sp. Sess. I, c. [254](#).

**§ 63.2-1306. State-Funded Kinship Guardianship Assistance program.**

A. The State-Funded Kinship Guardianship Assistance program is established to facilitate placements with relatives and ensure permanency for children in foster care. Kinship guardianship assistance payments may include state-funded maintenance payments made pursuant to this section.

B. A child is eligible for kinship guardianship assistance under the program if:

1. The child has been removed from his home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child;
2. The child has been in the custody of the local department for at least 90 days;
3. The child demonstrates a strong attachment to the prospective kinship guardian, and the prospective kinship guardian has a strong commitment to caring permanently for the child;
4. The child has been consulted regarding the kinship guardianship if the child is 14 years of age or older;
5. The requirements for a transfer of custody of the child to the prospective kinship guardian for the purpose of establishing eligibility for the State-Funded Kinship Guardianship Assistance program set forth in subsection A1 of § [16.1-282.1](#) have been met; and
6. The child is not eligible for the Federal-Funded Kinship Guardianship Assistance program set forth in § [63.2-1305](#).

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C. If a child does not meet the eligibility criteria set forth in subsection B but has a sibling who meets such criteria, the child may be placed in the same kinship guardianship with his eligible sibling if the local department and kinship guardian agree that such placement is appropriate. In such cases, kinship guardianship assistance may be paid on behalf of each sibling so placed.

D. A prospective kinship guardian is eligible for kinship guardianship assistance under the program if he:

1. Completes the relative foster home approval process; or
2. Qualifies for a waiver from one or more components of such process pursuant to Board regulations, completes a background check and has not been convicted of any barrier crime as outlined in 42 U.S.C. § 671(a)(20), and completes a home study in accordance with § [63.2-904](#).

E. In order to receive payments pursuant to the Children's Services Act (§ [2.2-5200](#) et seq.), the local department and the prospective kinship guardian of a child who meets the requirements of subsection B shall enter into a written kinship guardianship assistance agreement with the Department and containing terms providing for the following:

1. The amount of each kinship guardianship assistance payment, the manner in which such payments will be provided, and the manner in which such payments may be adjusted periodically, in consultation with the kinship guardian, on the basis of the circumstances of the kinship guardian and the needs of the child; and
2. Assurance that the agreement shall remain in effect without regard to the state of residency of the kinship guardian.

F. For purposes of this section, "relative" means an adult who is (i) related to the child by blood, marriage, or adoption or (ii) fictive kin of the child.

2021, Sp. Sess. I, c. [254](#).