§ 453. Maintenance subsidy; handicapped or hard to place child. 1. (a) A social services official shall make monthly payments for the care and maintenance of a handicapped or hard to place child whom a social services official has placed for adoption or who has been adopted and for the care and maintenance of a handicapped or hard to place child placed for adoption by a voluntary authorized agency who is residing in such social services district. Where a handicapped or hard to place child is placed in an adoptive placement outside the state, monthly payments for the care and maintenance of the child shall be made by the social services official placing the child or in whose district the voluntary authorized agency maintains its principal office. Such payments shall be made until the child's twenty-first birthday to persons with whom the child has been placed, or to persons who have adopted the child and who applied for such payments prior to the adoption, pursuant to a written agreement therefor between such official or agency and such persons; provided, however, that an application may be made subsequent to the adoption if the adoptive parents first become aware of the child's physical or emotional condition or disability subsequent to the adoption and a physician certifies that the condition or disability existed prior to the child's adoption. The social services official shall consider the financial status of such persons only for the purpose of determining the amount of the payments to be made, pursuant to subdivision three of this section. Upon the death of persons who have adopted the child prior to the twenty-first birthday of the child, such payments shall continue to the legal guardian or custodian of the child under the age of eighteen upon issuance of letters of guardianship or order of custody and shall continue until the child shall attain the age of twenty-one. If the guardian or custodian was the caretaker of the child under the age of eighteen prior to the issuance of letters of guardianship or order of custody, such payments shall be made retroactively from the death of the adoptive parent or parents.

(a-1) Payments pursuant to this section may be made by direct deposit or debit card, as elected by the recipient, and administered electronically, and in accordance with such guidelines as may be set forth by regulation of the office of children and family services. The office of children and family services may enter into contracts on behalf of local social services districts for such direct deposit or

debit card services in accordance with section twenty-one-a of this chapter.

(b) Any child with respect to whom federally reimbursable maintenance subsidy payments are made under this subdivision shall be deemed to be a recipient of aid to families with dependent children for purposes of determining eligibility for medical assistance.

(c) No payments may be made pursuant to this subdivision if the social services official determines that the adoptive parents are no longer legally responsible for the support of the child or the child is no longer receiving any support from such parents. For purposes of this section:

(i) "any support" shall be limited to support that is directly for the benefit of the adopted child that meets the food, clothing, education, medical and shelter needs of the adopted child and that has an identifiable value;

(ii) "no longer legally responsible for the support of the child" means (A) the child has become legally emancipated, married or joined the military; (B) a court has ruled that the adoptive parent is no longer legally responsible for the support of the child; or (C) the adoption is no longer legally valid by operation of law.

(c-1) The social services official on an annual basis shall:

(i) require adoptive parents to certify that they are fulfilling their obligations pursuant to any adoption subsidy agreement entered into in accordance with this section, including their obligation to provide support for the child;

(ii) remind the adoptive parents of the following obligations, which shall also be included in any agreement entered into with an adoptive parent concerning payments made for the care and maintenance of the child pursuant to this section:

(A) to support the child;

(B) to notify the social services official if the adoptive parents are no longer providing any support of the child or are no longer legally responsible for the support of the child; and

(C) to notify the social services official if: (I) another person has been granted physical custody of the child; (II) another person has been appointed guardian for the child; or (III) the child no longer resides with the adoptive parents.

(c-2) (i) If the adoptive parents fail to respond to an annual certification notice within thirty days of the receipt of the certification notice from the social services official or the social services official receives from any person information that provides reasonable cause to suspect that the adoptive parents are no longer providing any support to the child, the social services official shall review whether the adoptive parents are legally responsible for the support of the child and whether the child is receiving any support from the adoptive parents. Circumstances in which the social services official shall conduct this review include the following:

(A) the child has been placed in foster care;

(B) a person alleges to the social services official that:

(I) a person other than the adoptive parent has been granted legal custody of the child;

(II) another person has been appointed guardian for the child; or

(III) the child is reported to no longer reside with the adoptive parent.

(ii) The adoptive parents shall be given an opportunity to respond to the notice. Upon receiving confirmation that the parents continue to meet their legal obligations to provide support to the child, the department will take no further action to terminate the subsidy. If the parents fail to confirm that they continue to meet their legal obligations to provide support to the child, the social services official shall review all available information in order to confirm the parents' continued eligibility to receive the subsidy.

(iii) If the child is not in foster care and, based on a review of the available information, the social services official determines that the adoptive parents are no longer legally responsible for the support of the child or that the child is no longer receiving any support from the adoptive parents, the social services official shall terminate the subsidy provided to the adoptive parents pursuant to this section. The adoptive parents may appeal the termination of subsidy to the department in accordance with section twenty-two of this chapter.

(iv) If the child is in foster care and the social services official determines that the child is no longer receiving any support from the adoptive parents, the social services official may reduce, suspend, or terminate the assistance provided to the adoptive parents pursuant to

this section. The adoptive parents may appeal the termination of assistance to the department in accordance with section twenty-two of this chapter. If assistance is reduced, suspended or terminated pursuant to this paragraph and the child is returned from foster care to the care of the adoptive parents, the social services official shall resume assistance effective from the date when the child was returned to the adoptive parent's care.

(d) Applications for such subsidies shall be accepted prior to the commitment of the guardianship and custody of the child to an authorized agency pursuant to the provisions of this chapter, and approval thereof may be granted contingent upon such commitment.

(e) Upon the death of the sole or surviving adoptive parent or both adoptive parents after the eighteenth birthday and before the twenty-first birthday of the adopted child, where such adoptive parent or parents were receiving adoption subsidy payments at the time of death, such subsidy payments shall continue but shall be made to the guardian of the child on behalf of such child, where the child consents to the appointment of a guardian. Such subsidy payments shall be made retroactively from the death of the adoptive parent or parents to the appointment of a guardian, and shall continue until the twenty-first birthday of the child. If, however, there is no willing or suitable person to be appointed as guardian, or the child does not consent to the appointment of a guardian, such subsidy payments shall be made retroactively from the death of the adoptive parent or parents and shall continue to be made until the twenty-first birthday of the child: (i) through direct payments to the child, if the social services official determines that the child demonstrates the ability to manage such direct payments; or (ii) to a representative payee certified by the social services official.

(f) Upon receipt of notification of the death of the sole or surviving adoptive parent or both adoptive parents after the eighteenth birthday and before the twenty-first birthday of the adopted child, where such adoptive parent or parents were receiving adoption subsidy payments at the time of death, the social services official shall notify the child of: (i) the processes available to continue subsidy payments until the twenty-first birthday of the child including appointment of a guardian under the surrogate's court procedure act, application to be approved

for direct subsidy payments, or the appointment of a representative payee; and (ii) the right of the child to be involved in all such processes.

(g) Where the social services official has determined that the child does not demonstrate the ability to manage direct subsidy payments, the social services official shall certify payment to a representative payee on behalf of the child. Subsidy payments received by the representative payee shall be held and used strictly for the use and benefit of the child. Designation of the appropriate entity or individual and investigation of an individual for certification as a representative payee shall be conducted by the social services official responsible for payment of the adoption subsidy pursuant to this section.

(i) The social services official may designate an employee of the social services district to be the representative payee responsible for receipt of the adoption subsidy on behalf of the child only where the official determines that such employee has no conflict of interest in performing the duties and obligations as representative payee. If the child resides in a social services district other than the district responsible for payment of the adoption subsidy, the social services district in which the child resides may be designated the representative payee and a social services official of such district shall select an employee of such social services district to be responsible for receipt of the adoption subsidy as the representative payee, only where the official determines that such employee has no conflict of interest in performing the duties and obligations as a payee. Where a voluntary authorized agency has a prior relationship with a child, or where the social services district does not have sufficient or appropriate staff available to perform the functions of the representative payee, the social services district may contract with a voluntary authorized agency as the representative payee on behalf of the child where the social services district determines it would be in the best interests of the child to do so.

(ii) The social services official may designate an individual for certification as a representative payee who shall perform the functions and duties of a representative payee in accordance with the best interests of the child. In determining whether an individual is appropriate to be certified as the representative payee, the social

services official shall first consult with the child and shall give the child's preferences significant weight. The child's preference shall be determinative of the representative payee only where such preference does not conflict with the best interests of the child. Prior to designation of an individual by the social services official for certification as a representative payee, the social services official shall:

(A) collect proof of identity and a verifiable social security number of the nominated representative payee;

(B) conduct an in-person interview of the individual;

(C) investigate any potential conflicts of interest that may ensue if such individual is certified; and

(D) determine the capabilities and qualifications of the individual to manage the subsidy payment for the child.

(iii) (A) If, after completion of the investigation, the social services official is satisfied that the individual is qualified, appropriate and will serve the best interests of the child, the social services official shall certify the selected individual as the representative payee for the child.

(B) If the twenty-first birthday of the child occurs while awaiting the certification of a representative payee, the child shall be entitled to retroactive direct payment of subsidy payments since the death of the adoptive parent or parents after the eighteenth birthday of the child.

(iv) The representative payee shall submit reports to the social services official no less than once a year describing the use of the payments in the preceding year. Such reports shall be submitted by December thirty-first of each year. The social services official may also request reports from time to time from the representative payee. If a representative payee fails to submit a report, the social services official may require that the representative payee appear in person to collect payments. The social services official shall keep a centralized file and update it periodically with information including the addresses and social security or tax-payer identification numbers of the representative payee and the child.

(v) The social services official shall revoke the certification of a representative payee upon:

(A) determining that the representative payee has misused the payments

intended for the benefit of the child;

(B) the failure of the representative payee to submit timely reports or appear in person as required by the social services official after such failure; or

(C) the request of the child upon good cause shown.

(vi) The social services official shall notify the child of the contact information of the representative payee within five days of making a designation.

(vii) A child may appeal the refusal of the social services official to certify the individual preferred by the child for certification as the representative payee or revoke the certification of a representative payee upon request of the child pursuant to section four hundred fifty-five of this title.

2. Any agreement provided for in subdivision one of this section shall be subject to the approval of the department upon the application of the social services official; provided, however, that in accordance with the regulations of the department, the department may authorize the social services official to approve or disapprove the agreement on behalf of the department. In either situation, if the agreement is not approved or disapproved by the social services official within thirty days of submission, the voluntary authorized agency may submit the agreement directly to the department for approval or disapproval. If the agreement is not disapproved in writing by the department within thirty days after its submission to the department, it shall be deemed approved. Any such disapproval shall be accompanied by a written statement of the reasons therefor.

3. The amount of the monthly payment made pursuant to this section shall be determined pursuant to regulations of the department and based upon the financial need of such persons. The department shall review such regulations annually. The amount of the monthly payment shall not be less than seventy-five per centum of the board rate nor more than one hundred per centum of such rate.

4. Except as may be required by federal law as a condition for federal reimbursement of public assistance expenditures, payments under this

section shall not be considered for the purpose of determining eligibility for public assistance or medical assistance for needy persons.