

Agreed substantive criteria – 3.27.19

1. Special needs criteria are outlined in 42 U.S.C. 673 (c) and OAC 5101:2-49-03, or any successor rule.
2. If a child has been determined to be eligible for Title IV-E adoption assistance, the County must enter into an adoption assistance agreement with the adopting/adoptive parents. An appropriate adoption assistance agreement contains a provision for Medicaid as well as monthly adoption assistance of \$0 or more, but cannot exceed the amount of foster care maintenance the child would have received if he or she had been in a foster family home, unless a waiver is sought pursuant to OAC 5101:2-49-05(E), if it is in the best interest of the child to seek a higher amount.
3. The payment that is agreed upon should, when combined with the parents' resources, be based upon an individualized assessment of the child's needs and the family's circumstances.
 - a. The "child's needs" can include both ordinary and special needs of the child, projected over an extended period of time, including anticipated needs.
 - i. Needs that could be considered include: child care, educational expenses, medical or psychological care not covered by Medicaid, mileage to and from medical and psychological care, developmentally and/or therapeutically appropriate activities, and any other particular need of that child. This list does not guarantee that subsidizing these items is appropriate in every case.
 - b. The "circumstances of the family" generally refer to the family's overall capacity to meet the immediate and future needs (including educational needs) of the child. Families with the same incomes or in similar circumstances may not necessarily agree on or receive identical types or amounts of assistance, however the amount of assistance can take into account lost wages or any other challenges or barriers to expanding the family by adopting the child. The uniqueness of each child/family situation may result in different amounts of payments designed to subsidize different types of expenses on a case by case basis. Consistency of results is not the goal.

- c. The parents' resources are a factor that can be considered in evaluating the circumstances of the family, however, a means test may not be used to deny families adoption assistance.
- d. Once a child is considered to be eligible, the family adopting that child can be denied adoption assistance where:
 - i. A family can be denied assistance under OAC 5101:2-49-03(B) where the only special needs factor is that the child has been determined to be at substantial risk, with no manifestation, of a special needs factor or condition.
 - ii. A determination of \$0 in adoption assistance is also appropriate when the family adopting the child agrees to accept a subsidy of \$0 after being fully informed of their rights under 42 U.S.C. 673, including that they are entitled to request negotiation of a monthly assistance amount based on the child's needs and family's circumstances.
 - iii. Warren County, pursuant to OAC 5101:2-49-03(A)(2)(e), shall have the child evaluated as to whether severe separation and loss would occur if the child were placed In another setting due to the significant ties with the prospective adoptive parent(s) if no other criteria is met that qualifies them for a monthly adoption assistance amount.
4. There is no list of acceptable or unacceptable expenditures.
5. Once an amount is agreed upon, parents can spend the subsidy in any way they see fit to incorporate the child into their lives and an accounting shall not be required. Likewise, adoptive parents have a responsibility to keep the agency timely informed of circumstances which would make them ineligible for Title IV-E adoption assistance payments or eligible for assistance payments in a different amount.
6. Amendment of an adoption assistance agreement is appropriate pursuant to OAC 5101:2-49-12.
 - a. A change in a family's circumstances could be the result of losing one's job or other loss of income, significant illness in the family, or other change that impacts the family's ability to provide for the adopted child.

- b. A change in the adopted child's needs could be the result of a new diagnosis or when the adoptive child is in need of new services or care.
 - c. Renegotiation can be requested by families at any time.
- 7. Nothing in this sheet of substantive criteria shall be construed in a manner that violates current or future federal or state statutes or rules concerning adoptions subsidies.
Plaintiffs reserve the right to independently challenge any OAC rules that they believe in good faith violate federal law.