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CHAPTER 12-000 County Juvenile Services Aid Program

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TITLE 390 JUVENILE SERVICES

CHAPTER 1 JUVENILE SERVICES

001. AUTHORITY. State law provides for the supervision of juveniles by employees of the Nebraska Department of Health and Human Services - Office of Juvenile Services (DHHS-OJS). The Office of Juvenile Services Act (Neb. Rev. Stat. §§ 43-401 to 43-424) describes the duties and responsibilities for the Office of Juvenile Services. The Nebraska Juvenile Code (Neb. Rev. Stat. §§ 43-245 to 43-2,129) authorizes the Nebraska Department of Health and Human Services – Office of Juvenile Services to accept for treatment or commitment juveniles who have been so ordered by a juvenile court.

002. LEVELS OF PLACEMENT. There are three levels of placement for juvenile offenders. From least restrictive to most restrictive, the three levels of placement are:

1. In the juvenile's home;
2. Out of the home (but still in the community); or
3. At a Youth Rehabilitation and Treatment Center (YRTC), or a similar setting identified by the Department, which may be a self-contained, staff secure, or secure facility.

002.01 PLACEMENT CHANGE. A juvenile committed to the Department of Health and Human Services – Office of Juvenile Services for community supervision shall only have a change in placement under the conditions outlined in this section.

002.01(A) CHANGE TO MORE RESTRICTIVE SETTING. A placement change that moves a juvenile offender to a more restrictive setting must be approved by the juvenile court, unless one of the exceptions outlined in 390 Nebraska Administrative Code (NAC) 1-002.02(A)(i) applies.

002.01(A)(i) EXCEPTIONS. The Department of Health and Human Services – Office of Juvenile Services may make an immediate temporary change of placement without prior approval by the court if the juvenile is:

1. In a harmful or dangerous situation;
2. Suffering a medical emergency;
3. Exhibiting behaviors which warrant temporary removal; or
4. Has been placed in a non-state-owned facility and such facility has requested that the juvenile be removed.

If such placement change is made, court approval shall be sought within 15 days of the placement change.

002.01(B) CHANGE TO EQUAL OR LESS RESTRICTIVE SETTING. The Nebraska Department of Health and Human Services – Office of Juvenile Services may move a juvenile offender to a new placement at the same level of treatment or at a less restrictive level of treatment without court approval. Written notice must be given to the court and the involved parties 15 days before the proposed change. The juvenile offender may request an administrative hearing within 15 days of the notice. The hearing will be held in accordance with the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 et seq. and 465 NAC 6.



## **CHAPTER 2-000**

### **SUPPORTS**

#### Overview

Supports represent all the work activity it takes to bring about successful outcomes. Supports also develop the Department and community systems' ability to meet identified needs at the systems level.

Supervisors, managers and other Departmental staff provide support to the direct line staff in their work. A significant amount of the support function is accomplished by teams. Supports are provided in two primary ways:

- Individual Cases - Help to individual direct line workers on individual cases through the use of consultation, problem solving, and other needed assistance; and
- Systems - Work to continuously improve the quality of service delivered to children and families at a "systems" level. These systems may include public and community agencies.

#### **2-001**

### **USE OF CONSULTATION**

The purpose of case consultation is to assure staff, families and the public of consistent application of Department policy and the consideration of as many factors and ramifications as possible when critical decisions are made. Consultation should take place with team members involved in the specific consultation issue in the case. Consultation should be done in a collaborative way.

Consultation is used when making children, families and staff decisions regarding specific issues and individual cases. At many points in the work processes, consultation will be used to arrive at decisions that represent the best interests of children and families. Frequent consultation strengthens practice and quality of service provided to children and families.

Consultation may occur with the team which could include the family, supervisor, therapist, foster parent, and other caregivers, school personnel, medical professionals, mental health or substance abuse providers, service providers, YRTC staff and other involved in the case or with expertise relevant to the case.

The supervisor has the responsibility to call to the attention of and redirect the worker regarding any decision on any case which is not consistent with the following criteria:

- The best interest of the child;
- Department policy and practice;
- Current court orders or established protocol;
- The case plan; and
- The safety of the community

The decisions of the team will be discussed with the supervisor if s/he is not present. See 2-002 for decisions in emergencies.

Specific consultation is not limited to but will occur before:

- Recommending removal of a child from the home;
- Recommending returning the child to the home;
- Recommending separation of a sibling group;
- Deciding on placement of a child in an adoptive home;
- Placing a child into a foster home, group home or residential facility located in another district;
- Placing a child into restrictive placements such as hospitals, Youth Rehabilitation and Treatment Centers (YRTC), detention centers, jail, treatment facilities, and out-of-state;
- Discharging or parole of a child from YRTC;
- Requesting a variance to an existing policy;
- Developing case plan and determining decision making for child with more than one adjudication;
- Changing the permanency objective on a case;
- Accepting a relinquishment of parental rights;
- Recommending termination of parental rights; and
- Closing a case.

## **2-002**

### **CONSENSUS ON DECISION MAKING**

To the greatest extent possible decision-making occurs within a team that includes the case manager, family, child and other significant persons. Families will be included to the maximum extent possible on teams related to their case. These other significant people include any professional or individual with expertise that would be helpful in the decision-making process and to ultimately resolving the issue(s). This may include people such as a managed care coordinator, therapist, foster parent, provider, school representative, medical expert, another worker or supervisor who has expertise in a particular subject matter such as child sexual abuse, Juvenile services, resource development or others.

This team should come to consensus which is a decision that all members of the team can support. Every reasonable attempt will be made to reach consensus with all parties involved. In working to achieve consensus, or if there is a disagreement among the team members, the decision in question will be reviewed on the basis of whether the decision is consistent with:

- The best interest of the child;
- Department policy and practice;
- Current court orders or established protocol;
- The case plan; and
- The safety of the community.

The supervisor has the responsibility to call to the attention of and redirect the worker regarding any decision on any case which is not consistent with the criteria in the above criteria.

If, after reasonable attempts, the team cannot achieve consensus on a decision, the worker, in consultation with the supervisor, and others when necessary, will use the input from the team and make the decision. That decision will be final as long as it is consistent with the above criteria.

Team work and consensus are not always possible due to emergency or crisis situations. If there is a crisis situation, the worker should proceed with action, based on the above criteria, and then notify the supervisor as soon as possible. The notification of the supervisor provides an opportunity for review of the decision. The supervisor or worker may wish to reconvene the team to gather the opinions of the team members.

## **2-003**

### **POLICY VARIANCE**

At any time a worker, supervisory staff, or other management staff believes a state policy is contrary to the best interests of a child or family, then permission to deviate from policy in that instance will be requested. To preserve continuity and consistency in policy application for the Department such requests will be reviewed and approved by a team with a statewide perspective for this purpose. (Policy and Practice Team) This review will be done in a timely manner. (See Supports Guidebook.)

## **2-004**

### **COMMUNITY SUPPORT**

Child abuse and neglect and juvenile delinquency are community problems. The Department plays a key role with the community in addressing the problems associated with abuse and neglect and juvenile delinquency. This occurs in two ways:

- Collaborating with others to deal with problems; and
- Helping develop the community's understanding and capacity to deal with the problems of its children and families through community development.

## **2-005**

### **EVALUATION**

Evaluation of the work and the support system's progress and success in achieving outcomes and continuously improving service delivery are essential. A variety of tools and techniques are used to achieve this kind of evaluation and continuous improvement.

## CHAPTER 3-000 INTAKE

3-001

### **OVERVIEW OF THE INTAKE FUNCTION**

In keeping with the philosophy of providing services in the least intrusive manner possible, the Department has established criteria for determining when it is appropriate to intervene with families. Any level of intervention by the Department is intrusive because even minimal intervention invades the privacy of the family. As a result, it must be determined if a family would truly benefit from the level of intervention and services the Department provides, within requirements mandated by law.

Some community contacts and concerns brought to the Department don't indicate a level of risk of abuse and neglect. These contacts are opportunities to benefit families, the community and the agency even if the case isn't accepted for formal involvement of the Department. These people contacting the Department need information, clarification and direction to appropriate services. Staff who receive such contacts will assess the information to see if it's appropriate for Department services. If not, staff will refer the person to community services or provide consultation and education.

To determine the appropriateness of service, the Department has guidelines for deciding whether to accept a referral brought to the attention of the Department.

All youth must be adjudicated as delinquent before being admitted to any juvenile facility operated by DHHS. Proper referral, assessment, and placement will be provided for all youth committed to DHHS or to be placed in the custody of HHS-OJS.

Neb. Rev. Stat. 43-258 and 43-281.

The Department will only work with youth adjudicated as status offenders placed in its custody.

3-002

### **INTAKE OUTCOMES**

These outcomes may not all apply to intake situations for all types of cases.

- Uniform and complete information and documentation;
- Families needing other family services from the Department are directed appropriately within the Department's system;
- The role of the Department is clearly identified;
- Reporting party understands the Department's response to the referral;
- Reports meeting acceptance guidelines for child abuse and neglect will be identified and assigned for Initial Assessment or referral to law enforcement;
- Families who do not meet criteria for services from the Department will be referred to other resources;
- Law enforcement reports of child abuse and neglect will be appropriately documented and entered onto the Child Abuse and Neglect Registry established under Neb.Rev.Stat. Section 28-715;
- Consultation and information provided to reporters of suspected child abuse and neglect;
- Appropriate referral, classification, assessment, and placement;
- Complete evaluations of juvenile offenders placed with HHS-OJS for pre-disposition evaluation in a timely manner; and
- Return the evaluation report for juvenile offenders to the court at the end of the evaluation or at the end of 30 days.

3-003

### **STAFF ROLES**

#### **PROTECTIVE SERVICE WORKER**

The primary role of the Protective Service Worker during intake is to determine the Department's response to a referral into the Department's system.

Secondary roles of the worker during intake are as educator, consultant and referral source. Providing education, consultation or referral information to the reporter may help to preserve a family relationship and prevent later problems within the family system.

#### **COORDINATOR OF PRE-DISPOSITION EVALUATIONS**

Each Service Area will designate a person or persons in the Service Area to receive the evaluation referrals from the court and coordinate the evaluations of juvenile offenders placed with HHS-OJS for a pre-disposition evaluation. The designated person or persons will decide whether the juvenile offender will have a residential or non-residential evaluation based on Department established criteria. See Court and Legal for Juvenile Offenders Guidebook for screening criteria for evaluations. The designated person(s) will coordinate the evaluation. Upon receipt of the evaluation, s/he will review the recommendations and the classification of risk and prepare a letter with the recommendations of HHS-OJS for the court. The letter and evaluation will be returned to the court within 30 days. The court will be advised when the evaluation is completed so the disposition hearing may be set. See 390 NAC 3-006.05 Department Response to Families With a Juvenile Offender for policy about the evaluation. (See Court and Legal for Juvenile Offenders Guidebook for information about the evaluation process.)

### JUVENILE SERVICES OFFICER

The primary role of the Juvenile Services Officer at Intake is to receive the assigned case from the supervisor and open a case.

### YRTC STAFF

The YRTC staff's role at Intake for children committed to the facility is to open a case, request reports from schools, and previous providers and provide information to the assigned worker.

### SUPERVISOR ROLE

The role of the supervisor at Intake is to:

- review intakes for appropriate action;
- facilitate ongoing consultation to assist in decision making and to enhance worker skill;
- review court orders committing a child to the custody of HHS and HHS-OJS; and
- assign cases.

### ROLE OF TEAMS

Teams will be used to effectively and efficiently provide a means for consultation, technical expertise, support and problem-solving.

The Department will participate in the investigative and treatment teams formed in each county or area. The Department will participate to create a cooperative, complementary response to reports of child abuse and neglect and to juvenile and status offenders, law enforcement, and other agencies designated to protect children and the community.

Statutory Reference: Neb. Rev. Stat. 28-728 through 28-733.

3-004

### **OVERVIEW OF DECISION-MAKING**

The Department's response to a referral is determined on all reports of alleged maltreatment and status offense and juvenile delinquent cases received by the Department. Reports are received by:

- Telephone report to local Department offices,
- Mail,
- Law enforcement,
- In-person reporters,
- Court order,
- Mandated child abuse and neglect toll-free number\*.

- \* The purpose of the Statewide Hotline (1-800-652-1999) is to receive telephone calls regarding suspected abuse and neglect of children and adults from across the state. This information is forwarded to local offices within twenty-four hours. In emergencies, Hotline personnel will contact local law enforcement immediately by phone. To the extent possible, callers are referred to community resources that may help resolve their concerns.

The decision about the Department's response to a referral is based on statutory requirements and the assessed risk of harm to the child.

To receive services from HHS, youth who are adjudicated as delinquent under Neb. Rev. Stat. 43-247 1, 2, 4 or 43-286 (3), (4) must be committed directly to the Department of Health and Human Services (OJS).

3-004.01

## DECISION MAKER

### Child Welfare

The Department's response to a referral is determined by the workers at Intake who screen for child maltreatment. The worker may consult with his/her supervisor as the worker deems necessary. Workers at Intake are:

- Skilled professionals who have significant experience in child welfare;
- Knowledgeable about statutes, rules, policy, and practice;
- Charged with making the decision with the information available;

If the worker isn't available, the report may be taken by staff specially trained in child protective service (paraprofessional or clerical staff) or Hotline staff.

The support staff and Hotline staff must have specialized training in:

- Interviewing;
- Information gathering;
- Crisis intervention and documentation; and
- Providing information and referrals.

The information received by support staff will be reviewed by the worker responsible for Intakes. The worker's decision regarding the Department's response is reviewed by the supervisor for assignment, considering the priority designated by the assessment tool. The supervisor will also provide and facilitate ongoing consultation to assist in decision-making and to enhance worker skill. The supervisor will randomly review those intakes not assigned for initial assessment.

### Juvenile Services

The Department's response for youth adjudicated as a status offender or as a delinquent is for the supervisor to review the court order and assign the case. If the court order is not consistent with Department policy or practice, the supervisor will take appropriate action. While other action is being pursued, the court order will be followed.



### 3-004.02 CONFIDENTIALITY FOR INTAKE FOR CPS CASES

The worker will advise each person reporting maltreatment that the situation is being assessed and that his/her concern is appreciated. Staff won't release other information concerning the case to the reporter. Staff will tell the reporting person that the information contained in the referral is confidential and that his/her name will be released only to the appropriate law enforcement agency, the county attorney (if legal intervention is necessary), or when otherwise required by law. In addition, the reporting person will be advised that if the alleged maltreatment requires court intervention, it may be necessary for the reporting person to testify in court as to his/her knowledge of the alleged incident(s).

Upon request, the local office will send a summary of the findings and actions to the physician or the person in charge of an institution, school, facility, or agency making a legally mandated report. If the assessment is incomplete at the time of the request, the worker will inform the reporting person of the actions taken to date and that the case is still under assessment. The reporting person may be informed if the family is receiving services. The worker will release no other information to the reporting person except as it relates directly to the reporting person's professional relationship with the child or family.

Upon completion of an assessment, the Department must provide the subject of the report with written notice of the determination of the case and whether or not s/he will be entered into the Central Register of child protection cases established under Neb.Rev.Stat. Section 28-718. The procedures and requirements and forms for the notification are in the Intake Guidebook.

Names and other identifying data, dates, and the circumstances of any persons requesting or receiving information will be entered in the case record or, in the case of Child Abuse and Neglect Registry information, in the Registry.

Subjects of a referral have the right to request that Central Register information be amended or expunged. All these requests will be directed to the person responsible for maintaining the Central Register.

### 3-005 DEFINITIONS

#### 3-005.01 MALTREATMENT DEFINITIONS TO BE CONSIDERED DURING INTAKE

Definition of Child Maltreatment:

Maltreatment occurs when a child age birth through age 17 is physically, emotionally, or sexually harmed.

ABUSE:

- Physical: Information indicates the existence of an injury that is unexplained; not consistent with the explanation given or is non-accidental. The information may also only indicate a substantial risk of bodily injury.

- Emotional: Information indicates psychopathological or disturbed behavior in a child which is documented by a psychiatrist, psychologist or licensed mental health practitioner to be the result of continual scapegoating, rejection or exposure to violence by the child's parent/caretaker.
- Sexual: Information indicates any sexually oriented act, practice, contact, or interaction in which the child is or has been used for the sexual stimulation of a parent, the child, or other person.

NEGLECT:

- Emotional: Information indicates that the child is suffering or has suffered severe negative emotional effects due to a parent's failure to provide opportunities for normal experience that produce feelings of being loved, wanted, secure and worthy. Lack of such opportunities may impair the child's ability to form healthy relationships with others.
- Physical: Information indicates the failure of the parent to provide basic needs or a safe and sanitary living environment for the child.

\*Parent includes guardian, custodian and caretaker throughout this material.

- Medical Neglect of Handicapped Infant: The withholding of medically indicated treatment (including appropriate nutrition, hydration, and medication) from disabled infants with life-threatening conditions. Exceptions include those situations in which:
  - (1) The infant is chronically and irreversibly comatose;
  - (2) The provision of this treatment would merely prolong dying or not be effective in ameliorating or correcting all the infant's life-threatening conditions; or
  - (3) The provision of this treatment and the treatment itself under these conditions would be inhumane.

### 3-005.02 DEFINITION OF FAMILY WITH DEPENDENT CHILD

A family has a dependent child if no child maltreatment has been identified AND information indicates that the parent is or will be unable to care for the child through no fault of the parent due to:

- A. Parent incapacity or absence: parent has an acute or persistent mental or physical condition which prevents her/him from parenting the child adequately, or parent is dying or is dead, is incarcerated, hospitalized or otherwise unavoidably unable to provide care.
- B. Child has extraordinary mental health, emotional or physical needs which the parent doesn't have the ability or capacity to meet.

### 3-005.03 DEFINITION OF FAMILY WITH A STATUS OFFENDER

A family has a child with status offender behaviors if no maltreatment has been identified AND the child's behaviors violate a law that pertains only to juveniles, such as truancy or running away from home. Status offender behaviors are those that are problematic for youth and their families, but that if engaged in by someone over the age of 18 wouldn't violate the law. Status offense is a legal determination and requires a court finding for service delivery by the Department.

Statutory reference: Neb. Rev. Stat. 43-247 Subsection 3b.

### 3-005.04 DEFINITION OF FAMILY WITH A JUVENILE OFFENDER

A family has a child who is juvenile offender if:

- The child has been adjudicated as a juvenile offender, AND
- Maltreatment has not been identified.

### 3-005.05 DEFINITION OF A FAMILY WITH A CHILD WITH DUAL ADJUDICATIONS

A family has a child with dual adjudications if the court has adjudicated a child in more than one category under the statute. Dual adjudications may be a combination of any of the following: child abuse/neglect, status offense, dependency, or delinquency.

### 3-005.06 VOLUNTARY RELINQUISHMENT REQUESTS

Information must indicate one of the following:

- A. Child in question is a state ward;
- B. The family is receiving services from child welfare services or child protective services; or
- C. Child is so severely disabled that an adoptive placement would require a medical subsidy, and the family has been denied services by private agencies.

3-006

**INTAKE ACTIVITIES**

3-006.01 OVERALL INTAKE ACTIVITIES FOR CHILD WELFARE CASES

The worker will need to gather, compile and document information necessary to determine appropriate Department response. The following tasks apply to any report to the Department:

- Elicit information from reporting party; or in the case of a law enforcement report, review the written report.
- Check the information systems for any prior CPS records and other relevant information (for example, ADC, Food Stamps, Child Support, Juvenile services).
- If more information is needed, contact others having knowledge of the family situation.
- Check appropriate law enforcement records if this is indicated.
- Determine whether problem indicates: suspected CAN, dependent child, assistance with uncontrolled child, request for voluntary relinquishment.

Consultation may be used during any of these tasks.

3-006.02 DEPARTMENT RESPONSE ON REPORTS OF SUSPECTED CHILD ABUSE AND NEGLECT

Allegations which meet the definition of child abuse and neglect will be assigned for assessment. When a reporting party's concerns don't meet the definition of child maltreatment, but other agencies or Department programs exist to deal with the concern, the report will be referred to the appropriate agency or program.

When law enforcement has investigated a report of suspected child abuse or neglect and has made a report of their findings to the Department, the Department will record the finding onto the Child Abuse and Neglect Registry. The Department won't initiate another assessment unless the law enforcement investigation indicates the child is at continued risk of abuse or neglect or the information on the circumstances of the family is incomplete.

All Department assessments on suspected child abuse and neglect will be coordinated with the appropriate law enforcement agency.

3-006.03 DEPARTMENT RESPONSE TO FAMILIES WITH DEPENDENT CHILDREN

To promote family self-sufficiency and continuity for children, consideration will always first be given to helping families use parent, family and community resources. Only when family resources and community resources are inappropriate or unavailable to meet the family need will Child Protective Services intervention be considered.

3-006.04 DEPARTMENT RESPONSE TO STATUS OFFENSE

The Department provides services to status offenders only when a court has determined a child is a status offender and has ordered the Department's involvement. If a referral is made to the Department concerning a child with problematic behavior, where no status offense adjudication exists and there is no indication of child abuse/neglect, the Department's response will always be to refer the family to services in the community to support the parents in dealing with the child's behavior.

3-006.05 DEPARTMENT RESPONSE TO FAMILIES WITH A JUVENILE OFFENDER

The Department provides services to juvenile offenders only when a court has determined that a child has been adjudicated as such and committed to the care and custody of HHS-OJS at disposition.

When a court has placed a juvenile offender with HHS-OJS for evaluation, the designated person in the Service Area will arrange for and coordinate the evaluation of the juvenile. The evaluation may be residential or non-residential. HHS-OJS is responsible for payment of the evaluation. The juvenile will be returned to the court upon the completion of the evaluation or at the end of 30 days, whichever comes first. When HHS-OJS finds that an extension of the 30 day period is necessary to complete the evaluation, HHS-OJS will ask the court to order an extension. This extension will not exceed an additional 30 days.

Statutory Reference: Neb. Rev. Stat. 43-413.

3-006.06 DEPARTMENT RESPONSE TO FAMILIES WITH A DUAL ADJUDICATED CHILD

The Department will address both adjudications with the appropriate services. The Department will work in partnership with other state agencies and the community to meet the needs identified.

3-006.07 DEPARTMENT RESPONSE ON VOLUNTARY RELINQUISHMENT  
OF PARENTAL RIGHTS

The Department will provide adoptive support services to families seeking to relinquish parental rights only after the family has contacted and been turned down for adoption services by private social service agencies; or when the child is a ward of the Department and the family is currently receiving protective services and adoption is the plan established for the child.

The Department won't accept a request for relinquishment of a teenager unless the child and family have been receiving services through the Department and there is a plan for adoption.

3-007 INTAKE IN INTERSTATE COMPACT FOR THE PLACEMENT  
OF CHILDREN (ICPC)

The Interstate Compact Administrator for Nebraska, located in Central Office conducts the intake on all ICPC cases. Therefore, all requests are referred to the ICPC Administrator. When cases are received from the ICPC Administrator for Nebraska, they will be sent to a supervisor for assignment.

3-007.01 INTAKE IN INTERSTATE COMPACT ON JUVENILES (ICJ)

The Interstate Compact on Juveniles, located in Central Office, conducts the intake on all ICJ cases. Therefore, all requests are referred to the ICJ Administrator. When cases are received by the ICJ Administrator for Nebraska, they will be sent to a supervisor for assignment.

The Interstate Compact for Juveniles provides supervision to youth adjudicated as delinquents. The compact administrator, in Central Office, serves the intake function for these cases. All requests for placements of juveniles in or out of Nebraska will go through the compact administrator. When cases are received from the ICJ administrator for Nebraska, they will be sent to the designated person in the Service Management area for assignment.

3-008 **RECORD KEEPING**

Records will be maintained at Intake for the following reasons:

- To support decision-making,
- To maintain an ongoing assessment of child and family needs from both the community and State perspective,
- To determine and develop trends,
- To identify service needs and make decisions regarding staff allocation that meet those service needs,
- To enhance quality, and
- To comply with the law.

To achieve the above, periodic requests for specific information will be made of staff. These requests will occur intermittently for a limited time.

## CHAPTER 4-000

### **INITIAL ASSESSMENT PHASE FOR CHILD PROTECTIVE SERVICE AND STATUS OFFENSE CASES**

The Initial Assessment Phase (formerly referred to as investigation) is the first in-depth contact with the child and parent regarding the situation that has caused HHS to become involved.

Protective Service staff will conduct assessments with the family to make a case determination in regard to the allegations and to determine what services, if any, are needed and how services can best be provided. Protective Service Workers will refer families for service both within and outside the Department. To reinforce family self-sufficiency and least intrusive service delivery, preference will be given to referring families to community-based services.

NOTE: Since Juvenile Offenders are evaluated in the community or YRTC, that evaluation will be used as an initial assessment.

#### 4-001 **INITIAL ASSESSMENT OUTCOMES**

- Child safety.
- Validation of maltreatment and allegations.
- Determination of extent of maltreatment
- Identification of source or nature of maltreatment.
- Determination of level of risk.
- Safety service needs are identified.
- Safety plan is developed and implemented.
- Findings are documented.
- Case status determination is completed for the Child Abuse and Neglect Registry.
- Initial assessment cases that are "closed" (do not proceed in CPS system) are appropriately referred.
- Families clearly understand the Department involvement and findings.
- Public (particularly referral source) clearly understands Department involvement and findings.
- Cases are opened for voluntary or court-ordered services.
- Children are adequately adjudicated to get appropriate services.
- Community supports are in place to assist the child and family.
- Strategic Department direction and supports are in effect to achieve desired outcomes.

#### 4-002 **STAFF ROLES**

##### 4-002.01 **WORKER ROLE**

At initial assessment, the primary roles of the Protective Services Worker are to gather information to validate maltreatment or allegations on a court petition and to determine what services, if any, are needed and how they can best be provided. When necessary, a plan will be developed and implemented to provide safety for the child. The priority at this phase is securing child safety with attention to working with the family to preserve the family unit whenever possible.

The worker also works with the community systems to complete the assessment so the most appropriate and adequate services can be initiated. The worker will obtain additional consultation from supervisory staff and teams.

#### 4-002.02 SUPERVISOR ROLE

The supervisor's role during initial assessment is to ensure the assessment is accurate and complete and that safety is provided. The supervisor should also provide support to the worker.

#### 4-002.03 TEAM ROLES

Teams will be used to effectively and efficiently provide a means for consultation, technical expertise, support, and problem-solving.

Case consultation will occur before:

- Recommending removal of a child from the home;
- Recommending returning a child to the home; and
- Placing a child into a foster home, group home or residential facility located in another district.

A team of professionals involved in the case should be consulted at these decision points.

The Department will participate in the investigative and treatment teams formed in each county or area. The Department will participate to create a cooperative, complementary response to reports of child abuse and neglect by the Department, law enforcement and other agencies designed to protect children.

Statutory Reference: Neb. Rev. Stat. 28-728 through 28-733.

#### 4-002.04 LICENSING ROLE

Licensing's role during initial assessment, for licensed facilities only, is to cooperate with CPS as requested. Licensing is responsible for taking any actions against the license.

#### 4-002.05 CONTRACTING ROLE

Contracting's role during initial assessment, for contracted facilities only, is to cooperate with CPS as requested. Contracting is responsible for taking any actions against the contract.

#### 4-002.06 RESOURCE DEVELOPMENT ROLE

Resource development's role is to coordinate placement-hold notifications with Protection and Safety and resource development staff statewide through N-FOCUS.

#### 4-003 OVERVIEW OF DECISION-MAKING

Determinations to accept cases for initial assessment are made during intake. Decisions to validate or support allegations made on an intake or court petition and determination of the Department's response to an intake or petition are made during initial assessment. The decision-making process includes:

- Gathering information through interviews and collateral contacts;
- Organizing and weighing information;



- Determining opinions from facts;
- Coordinating with other agencies as needed;
- Analyzing facts to make professional judgements;
- Making determinations based on facts and professional judgments;
- Identifying and implementing necessary safety services.

#### 4-003.01 DECISION MAKER

The validation of allegations and determination of the Department's response are made by the protective services worker who conducts the initial assessment with the family. The worker will consult with his/her supervisor or support team at the specific consultation points in 390 NAC 2-006 and as appropriate.

Workers at the initial assessment phase are:

- Skilled professionals who are well trained;
- Knowledgeable about statutes, rules and policy; and
- Charged with making the decision with the information available.

#### 4-004 STRATEGY AND ASSESSMENT PLANNING

Strategy and assessment planning is a generalized activity in the initial assessment phase for all types of cases.

#### 4-004.01 COORDINATION WITH LAW ENFORCEMENT

Since both law enforcement agencies and CPS have statutory obligations pertaining to child abuse/neglect cases, it is necessary to establish which agency will take the primary responsibility for a given case and which kinds of cases will initially be a joint effort. The suggestions below do not preclude joint investigations or an independent assessment by the Department.

Cases appropriate for joint activities may include but not be limited to:

- Sexual assault or abuse of a child by a household member;
- Abuse/neglect in child care homes, child care centers or institutions; and
- Abuse/neglect in foster homes or allegations of abuse/neglect committed by foster parents or foster care providers.

Cases for law enforcement conducting primary investigation activities depend on established local protocols and may include:

- Severe physical abuse;
- Neglect, such as lack of food, unsanitary or dangerous living conditions and lack of essential utilities;
- Children being left unattended or lack of supervision;
- Chronic or extreme spouse abuse in the child's presence; and
- When criminal activity is involved.

Cases appropriate for CPS assessment:

- Physical neglect due to medically related issues;
- Emotional abuse/neglect; and
- Physical neglect due to chronic failure of parent to provide for a child's basic needs, where no immediate risk of harm presently exists.

Once an assessment has begun, CPS will obtain assistance from law enforcement agencies when any of the following circumstances become evident:

- Evidence of criminal activity has been discovered;
- Threatening, assaultive, or otherwise high-risk individuals need to be contacted;
- Information suggests the need for children to be placed in temporary custody.

#### 4-004.02 CONTACT WITH CHILD VICTIM AND PARENTAL NOTIFICATION

When a child is an alleged victim of abuse or neglect by his/her parent, a worker has the authority to contact the child to conduct an interview necessary for an assessment. This may be done without the consent or knowledge of the parent. A child may be contacted at school, child care or other locations away from the home. However, the parents will be notified as soon as possible by the worker to inform them of the Department role, involvement and activities and to avoid placing a child under unnecessary stress.

With non-English-speaking children and families, the worker will exercise considerable flexibility in order to achieve the initial assessment outcomes. This will include learning about the culture of the family, finding and working with an interpreter and sensitivity to the family's culture.

#### 4-004.03 COURTESY FOR PARENTS

Whenever possible, CPS will assure families a certain level of respect and privacy in regard to where the interview takes place, flexibility in scheduling the interview and the least intrusive method of interviewing.

#### 4-004.04 WORKER SAFETY

Worker safety will be considered during contacts at initial assessment. When there is a threat of violence to a worker, law enforcement will be contacted to assist or conduct the assessment. When concern exists about risk to staff from communicable diseases or environment hazards, appropriate health authorities will be called to assist in the contacts.

4-005

### **INITIAL ASSESSMENT ACTIVITIES**

#### Overall Initial Assessment Activities For All CPS Cases

The following tasks apply to any initial assessment conducted by CPS:

- Interview the child, parents, siblings, and other relevant family members or collateral contacts.
- Gather information from any other sources who may have information about the presenting problem or alleged maltreatment or the risk and safety of the child(ren).

Others may have information that will help in understanding the nature and extent of the alleged maltreatment and in assessing the risk and safety of the child(ren). To protect the family's right to confidentiality, interviews or contacts with others should not be initiated without cause. However, in some cases, the family may disclose other persons who have information about the alleged maltreatment or about the family in general.

- Observe the child, siblings, parents and interaction among family members; and the home and neighborhood.
- Document and analyze the information gathered.

Statutory reference: Neb. Rev. Stat. 28-725 and 28-726.

Specific areas for observation are:

- the physical condition of the child(ren), including any observable effects of maltreatment;
- the emotional status of the child(ren), including mannerisms, signs of fear, and development status;
- the reactions of the parents to the Department's concerns;
- the emotional and behavioral status of the parents during the interviewing process, levels of denial and resistance, and use of defense mechanisms;
- interactions among the family members, including oral and facial expressions and body language;
- the physical status of the home, including cleanliness, structure, hazards or dangerous living conditions, signs of excessive alcohol use and use of illicit drugs; and
- the climate of the neighborhood, including level of violence and support, and accessibility of transportation, telephones, or other means of communication.

4-006                    **GUIDELINES FOR SUSPECTED CHILD ABUSE AND NEGLECT**

The protocol from the CPS; Risk Management; Decision Making Handbook, Appendix G, will be used to gather information, make decisions and to insure that all family members are involved in the interview process whenever possible. Effectively carrying out this protocol will lead to a case status determination.

The purpose of the established protocol is to determine:

- Child safety issues, and
- Maltreatment or risk of maltreatment.

This is accomplished by collecting information and assisting in the identification of:

- Family's ability to protect the child;
- Characteristics of each family member, parenting practices, tolerance of stress, coping skills, behaviors, feelings about the child;
- Family's involvement with others;
- History of family; and
- Family's ability to meet basic needs.

Interviews with family members will be conducted in the following order to gain the broadest understanding of the family situation:

- Interview the identified child;
- Interview the siblings;
- Interview the non-maltreating parent;
- Interview maltreating parent; and
- Closure with the family.

If the child's interview occurs in the home, some preliminary introduction with the parent will need to occur.

If the interview protocol cannot be followed, the reason for the deviation will be documented.

Deviations from Protocol can occur when:

- Child is in imminent danger;
- Presence of worker is escalating family situation;
- Allegations are unfounded;\* or
- Worker safety jeopardized.

\*If the worker determines that the allegations are unfounded, the interviews need not continue.

4-007

### **SAFETY DETERMINATION AND RESPONSE**

Safety determinations and service responses will be approached in the least intrusive manner possible. A safety plan determination will be used to identify needed safety services.

Services to control the child's safety and to assist in preventing the child's removal from the home will be provided if unsafe conditions are identified and documented by the worker.

Possible safety services include the following:

- In-home family support
- Routine and emergency mental health care
- Supervision and observation
- Respite care
- Basic management and life skills
- Social and emotional supports
- Financial services
- Chore services
- Food and clothing services
- Routine and emergency health care
- In-home health care
- Child care
- In home child care
- Basic parenting assistance
- Crisis counseling
- Housing
- Transportation
- Hospitalization
- Other

If services are accessible at the level identified, they will be implemented immediately. If in-home safety services are not available or accessible at the level of service required, an out-of-home placement will be considered.

4-007.01

### **OUT-OF-HOME PLACEMENT**

Out-of-home placement will be considered when:

- Safety determination indicates safety is a problem; and
- Safety cannot be controlled in the home as documented; or
- Reasonable efforts have been made to prevent the need for placement;
- An emergency exists.

4-007.02                      REMOVAL OF CHILD FROM PARENT HOME

Removal of the child from the parent's home will occur only under one of the following conditions:

- Law enforcement determines that the child be placed in protective custody; (Statutory Reference: Neb. Rev. Stat. 43-248) or
- There is a court order to remove the child from the home; or
- The child is a state ward and is in a harmful or dangerous situation; (See Neb. Rev. Stat. 43-285) or
- Voluntary placement agreement is completed.

For further information regarding out-of-home placements, refer to the Out-of-Home Placement Service Section.

4-007.03                      SPECIAL CONSIDERATIONS WHEN WORKING WITH  
   NATIVE AMERICAN PARENTS

Department staff will use tribal social services whenever possible when working with Native American parents and children. Case-planning and service provision will be based upon the social and cultural standards of the tribe. Active efforts will be made to provide culturally relevant remedial and rehabilitative services to prevent the breakup of the family and to reunify the child and family. The "active efforts" standard places a higher burden of proof on the Department than "reasonable efforts."

Statute Reference: Indian Child Welfare Act of 1978, United States Code, Title XXV, Section 1901; Neb. Rev. Stat. 43-101, et seq.

4-008                      **CASE STATUS DETERMINATION AND AGENCY RESPONSE  
   ON SUSPECTED CHILD ABUSE/NEGLECT CASES AT  
   INITIAL ASSESSMENT**

4-008.01                      CASE STATUS DETERMINATION

Based on the information gathered and analyzed during the initial assessment phase, the worker will arrive at a finding regarding the maltreatment report. The decision at this point is whether there is credible evidence to support the finding that child abuse or neglect as defined by state statute has occurred. This finding is called the case status determination. The case status determination will be entered into the Child Welfare Information System in a timely manner.

Under current statute, the following case status determinations are available to the worker:

Court Substantiated  
Court Pending  
Agency Substantiated  
Unable to Locate  
Unfounded

For these categories, the following definitions apply:

**Court Substantiated:** Court substantiated means that a District Court, County Court, or separate Juvenile Court has entered a judgment of guilty on a criminal complaint, indictment, or information, or an adjudication of jurisdiction on a juvenile petition under Section 43-247(3)(a), and the judgment or adjudication relates or pertains to the same subject matter as the report of abuse or neglect. The court, the docket and page number should be noted in the case record.

**Court Pending:** Court pending means that a criminal complaint, indictment, or information or a juvenile petition under Section 43-247(3)(a), has been filed in District Court, County Court, or separate Juvenile Court, and that the allegations of the complaint, indictment, information, or juvenile petition relate or pertain to the same subject matter as the report of abuse or neglect.

**Agency Substantiated:** Agency substantiated means that the preponderance of the evidence indicates that it is more likely than not that child abuse or neglect occurred and court adjudication does not occur.

**Unable to Locate:** Subjects of the maltreatment report have not been located after a good faith effort on the part of the Department.

A good faith effort has been made when all available methods to locate the parties of interest have been utilized. The case manager will consult with the supervisor before determining no other efforts are needed. The efforts and the consultation will be documented in the case record.

**Unfounded:** All reports not classified as court substantiated, court pending, agency substantiated, or unable to locate will be classified as unfounded.

**Statutory Reference:** Neb. Rev. Stat. § 28-720.

4-008.02

**DETERMINING DEPARTMENT RESPONSE**

Following use of the Assessment tool, initial assessment sections, and the case status determination, the worker determines the Department response.

Six alternatives are available to the worker and family following case status determination:

1. Worker determines no further intervention service is needed. Case is closed following notification to the family.
2. Worker determines there is a need for further service that can be provided through a community agency or other Department service program. The family is willing to voluntarily engage in the service. The case is closed following engagement of family in the service.
3. Worker determines that ongoing protective services are required to address or control the maltreatment and risk identified in the initial assessment. The family is willing to voluntarily engage in CPS service provision. Case is transferred to the ongoing services for service continuation, further assessment and case planning. (These cases are referred to as "voluntary" cases.)
4. Worker determines that ongoing protective services are required to resolve or control the maltreatment and risk identified in the initial assessment. The family is unwilling to voluntarily engage in services identified as necessary. In these instances, the worker is required to formally request that the county attorney file a petition for court authorization to intervene. (See Court & Legal Issues, 390 NAC 8-000) When court authority is granted, the case is transferred for ongoing services, further assessment and case planning. (These cases are referred to as "involuntary cases".)
5. Worker determines that ongoing services are needed; the family is willing to engage in the services identified as necessary, but court involvement is needed to resolve the identified problem, for example, incest cases.
6. Worker determines a need for ongoing protective services, the parents are unwilling to cooperate, and the county attorney has determined there is inadequate factual information to pursue court action. Case is closed following notification to the family.

4-008.03

**NOTIFICATION TO SUBJECT OF REPORT**

Upon completion of an assessment, the Department must provide the subject of the report with written notice of the determination of the case and whether he or she will be entered into the Central Register. The procedures and requirements and forms for the notification are in the Intake Guidebook.

4-009

**GUIDELINES FOR FAMILIES WITH CHILDREN WHO MAY BE  
DEPENDENT OR ADJUDICATED STATUS OFFENDERS**

Following the overall assessment activities in 390 NAC 4-004, the worker will use the following guidelines when doing an assessment with children who have been identified as status offenders or dependent.



During this assessment, three major worker activities will occur:

- Review family situation to determine whether a Dependency or Status Offense case exists, as defined in 390 NAC 1-006.05.
- Identify resources to meet the family's needs.
- Determine that all reasonable attempts to secure services to the family outside of the Department have been exhausted.

If child abuse or neglect is identified at any time, an assessment for risk of maltreatment and safety will immediately be conducted as described in 390 NAC 4-007 and 4-008.

#### 4-009.01 PROBLEM IDENTIFICATION AND SAFETY DETERMINATION

Comprehensive information will need to be collected to help identify and assess the nature and seriousness of the presenting problem. The worker will interview the child, family and significant others to help develop an accurate picture of the family.

#### 4-009.02 IDENTIFY CONDITIONS CONTRIBUTING TO THE PRESENTING PROBLEM

- Family history;
- Family interaction;
- Family functioning;
- Child's behavior;
- Parenting practices and discipline methods;
- Screen for maltreatment - past or current;
- Financial information; and
- Extended family and friend supports.

#### 4-009.03 IDENTIFICATION OF SERVICES USED BY THE FAMILY

By asking the following types of questions, the worker will be able to better determine the use of services in the past:

- What services has the family used in an effort to address the presenting problem? (for example, length of time, frequency, focus of treatment)
- What benefits did the family receive?
- What other services in the community, or within the Department might benefit the family?
- Have other family members or friends been involved or supportive?

Asking the parent to sign a release of information will allow the worker to contact other service providers to learn more about the community service providers' work with the family.

4-009.04

SAFETY CONSIDERATIONS

Consideration of the following will help to insure safety and reduce risk for all concerned:

- Is the child a danger to her/himself?
- Is the family a danger to the safety of the child?
- Is the behavior of the child a danger to the community? (for example, a sexual perpetrator or possesses other violent behaviors)
- Is the behavior of the child or parent a physical threat to the safety of the worker or others?  
What will be required to assure personal safety in situations such as transporting or home visits?

If a strong possibility of maltreatment to the child exists, the worker will do an assessment for child abuse and neglect. Refer to 390 NAC 4-008.

4-009.05

ASSESSMENT

The worker will analyze and weigh the following information to thoroughly assess the situation:

1. Options the parent has explored with the non-custodial parent, relatives, or other family members to provide for or assist in care of the child.
2. Any previous or current use of community resources in providing services to the child and family.
3. Other Department programs available and a determination of the appropriateness for the family situation.
4. Other resources in the community available to the child and family.
5. The parent's motivation for seeking this level of intervention.
6. For children currently in placement, discuss the parents' ongoing responsibility to reassume care of or provide for permanence for the child.
7. The parents' financial responsibility and ability to pay for services. Include in this analysis the parents' insurance resources (current and potential).
8. Consideration of the child's and family's needs to determine whether the Department can access services to meet their needs.

NOTE: Department guidelines for placement of a child outside of the family appear in 390 NAC 7-002.

4-010           **CASE STATUS DETERMINATION AND DEPARTMENT RESPONSE  
ON DEPENDENCY OR ADJUDICATED STATUS OFFENDERS**

4-010.01           DETERMINING DEPARTMENT RESPONSE

The Department's response will be at the least intrusive, most appropriate level of service necessary to meet the identified needs of the family.

Five alternatives are available to the worker and family following case status determination.

1. Worker determines there is no need for further intervention service. Recommendations for closure of Department involvement are made to court. If no court involvement, case is closed, following notification of the family.
2. Worker determines a need for further service that can be provided through a community agency or other Department program, and the family is willing to engage in the service. The worker recommends closure of Department involvement to court.
3. Worker determines ongoing protective services are required to address the presenting problem, and the family is willing to engage in CPS service provision. Case is transferred to the ongoing services for service continuation, further assessment and case planning. (These cases are referred to as "voluntary cases" and apply to dependency cases only.)
4. Worker determines that ongoing protective services are required to resolve presenting problem, and the family is unwilling to engage in the services identified as necessary. The worker will formally request that the county attorney file a petition for intervention if an out-of-home placement for a dependent child is expected to exceed six continuous months. (See Court & Legal Issues 390 NAC 8-000.) When court authority is granted the case is transferred for ongoing services, further assessment and case planning.
5. Worker determines appropriate action on court-involved cases. For those cases that come to CPS through a court order for services, the worker makes one of three basic decisions and acts accordingly:
  - a. The adjudication is appropriate and services through the Department are necessary. A written report is prepared for court with recommendations for services.
  - b. The court adjudication is inadequate to allow for appropriate service provision; a request for further court action should be made. (for example, status offender where there is ongoing abuse/neglect in the home; adolescent sex offender who presents risk to the community and who is adjudicated as status offender; a child being abused in the home is adjudicated as a dependency.)

To request further court action the following information must be forwarded to the county attorney:

- Legal references including case name, court docket and page number;
- Updated information gathered during the assessment;
- Describe family's current situation;
- Identify problem as it relates to the population definition;
- Establish factual basis for further court action as it relates to the Department's ability to provide appropriate services to the family, and
- Request additional court action.

If the county attorney fails to respond to the request within a reasonable amount of time, duplicate information should be forwarded to the Legal Service Child Welfare Unit for review and for legal action.

- c. The family is not in need of the level of service provided by the Department, and services that have not been engaged exist in the community to meet the family's needs. A written report is prepared with recommendations that the family use the identified community service. (See Legal & Court Issues, 390 NAC 8-000 for further information.)

#### 4-011 **ASSESSMENT OF CHILD MALTREATMENT IN OUT-OF-HOME SETTINGS**

The Department will conduct assessments of allegations of child maltreatment by care givers in day care homes, foster homes, day care centers, child care facilities such as group homes, and other residential care facilities where there is responsibility to provide for and to oversee the physical care of children. Allegations of maltreatment of children perpetrated by teachers, school personnel, counselors, therapists, doctors, nurses and others not performing such care-giving responsibilities for children will not be assessed by the Department. These allegations will be referred to law enforcement for the investigation.

Assessment of allegations of child maltreatment perpetrated by providers in day care homes, day care centers, foster homes or child caring institutions or facilities will be conducted by the Department in conjunction with law enforcement, according to protocols established in each county. Law enforcement will focus primarily on conducting a criminal investigation. The role of CPS in these cases is to:

- Determine if child maltreatment has occurred,
- Assess safety of children involved,
- Recommend action and follow through to assure child safety, and
- Assess cause of problem and make recommendations to reduce risk of reoccurrence.

In cases of licensed child care homes or facilities, a licensing review will also occur. The Department will coordinate with all involved parties conducting reviews and investigations to maximize the opportunities to gain factual information, minimize the number of interviews and minimize the degree of intrusiveness. If interviews cannot be conducted jointly with licensing, then the law enforcement and CPS assessment will occur before any contact by the licensing authorities.

If law enforcement declines to become involved in conducting an investigation, the Department will proceed with an assessment.

#### 4-011.01 CONDUCTING THE ASSESSMENT

To obtain the most accurate information, it is the policy of the Department to proceed in the following order:

1. Review relevant Department and law enforcement records.
2. Notify all caseworkers of children in care to discuss relevant case information and coordinate decision-making about the child.
3. In cases involving a licensed child caring agency, the investigating Protection and Safety worker in consultation with his/her supervisor will determine when a safety plan is developed, and request related incident reports from the agency. In cases involving foster homes, the licensing agent in consultation with his/her supervisor will determine when a safety plan is developed.
4. Coordinate contact and consultation, as appropriate, with law enforcement, licensing, contracting, and resource development regarding placement and safety status.
5. Conduct interviews in the following order:
  - a. Reporting party to confirm details
  - b. Identified child victims
  - c. Other children in care who might have knowledge related to allegations
  - d. Anyone identified as present during incidents or who have knowledge of incidents
  - e. In case of foster parents, the non-maltreating foster parent
  - f. Alleged perpetrator or maltreater.

NOTE: If law enforcement is conducting a criminal investigation, the involved law enforcement officer will be responsible to determine how and when the interview with the alleged maltreater will occur. The Department will not interview the alleged maltreater until approved by law enforcement.

#### 4-011.02 NOTIFICATION OF PARENTS OF CHILDREN:

When conducting an assessment of alleged neglect, physical abuse or sexual abuse of a child in a child care home or facility, the Department will make every effort to contact the parent or legal guardian of any suspected victims before interviewing the child. If attempts to contact the parent or legal guardian are unsuccessful and there is reason to believe that interviewing the child is necessary to protect the child or other children, the Department will interview the child without parental consent. Contact with the parent or legal guardian will then occur as soon as possible following the interview with the child.

The following information will be provided parents or legal guardians of children alleged to have been maltreated in a child care home or facility:

- Notice that a report alleging neglect, physical abuse or sexual abuse has been received and information on the nature of the maltreatment;
- Notice that the agency is conducting an assessment of the allegations;
- The protective or corrective measures taken; and
- The conclusions of the assessment along with any recommendations that will help protect the child from future maltreatment in the facility.

#### 4-011.03 CASE STATUS DETERMINATION

A finding as to whether the agency has reasonable cause to believe that child abuse, neglect or sexual abuse occurred will be made. A determination about risk to other children in care will also be made. The Department may determine that risk of maltreatment to children exists without a substantiated finding that actual incidents of child abuse, neglect or sexual abuse has actually occurred. Recommendations about changes in practice or conditions that will reduce the likelihood of maltreatment will be made. Once these determinations have been made, the following will occur:

1. The case status determination will be entered into the Child Abuse and Neglect Registry.
2. A summary of the assessment, findings and recommendations for action will be sent to the appropriate licensing staff, resource development staff, case workers with children in placement and the county attorney.
3. The case findings will be shared with the alleged maltreater and child care provider.
4. Recommendations about changes in practice and conditions that would reduce the likelihood of maltreatment will be provided to the child care provider, the parents involved and the child care director in cases of a child care facility.

#### 4-011.04 SUBSTANTIATED REPORTS:

When reports of child maltreatment are substantiated, the Department will:

1. Assess present risk to the child or children involved and assure steps are taken to protect the child or children.
2. Inform the child's or children's parent or legal guardian as soon as possible.
3. When an incident involves a child placed by another child caring agency, notify that agency responsible for the child's placement.
4. Immediately notify the appropriate licensing and contracting authorities of the substantiated abuse or neglect.

When neglect or abuse is substantiated, all parents of children cared for in that home or child care facility will be notified. If the Department determines that children are not safe in the care of a home or facility, recommendations will be made to the parent or legal guardian to make alternative child care arrangements.

## CHAPTER 5-000

### **ONGOING SERVICES PHASE**

#### OVERVIEW

During the ongoing phase, family issues which required intervention are fully explored and their contributing factors are identified. An in-depth assessment allows a complete picture of the family to emerge and lays the foundation for a family-centered, child focused approach to case planning and service delivery.

Ongoing assessment and services will be approached in the least intrusive manner possible. Priority will be given to providing reasonable opportunities for parents to keep their families intact by utilizing all appropriate services available. Service packages will be developed and implemented to assure the child and family opportunities for time limited intervention to correct the conditions which brought them to the attention of the Department.

When a child is unable to return home, the ongoing focus becomes providing permanence. The child's needs will be identified and assessed to provide the appropriate services available.

Also, during this phase, the worker will define priorities and determine service delivery within the legally mandated populations served.

#### Child Welfare Cases

The Department's priorities for service delivery for child welfare are:

1. Families with children who are identified as harmed by maltreatment or who are at serious risk of harm from maltreatment; and
2. Families with children who are dependent.

#### Juvenile Service Cases

The Department's priorities for service delivery for juvenile service cases are:

1. Children with behaviors which are dangerous to self or others;
2. Children with behaviors which are destructive to property or traffic offenses; and
3. Families with children who are court adjudicated as status offenders.
4. Children are referred for evaluation.

Families and children will receive appropriate services to address the presenting problem, reduce risk of maltreatment or delinquency and provide opportunities for families and children to work toward self-sufficiency. The work at this phase will occur through a team effort on the part of the Department, the community and family. The Department will work with the community to develop and utilize the resources appropriate to meet the needs of families and children. In addition, the formation of teams will allow for the most effective, efficient use of staff time and resources.

This section presents information regarding the specific activities provided throughout the ongoing phase. In some local areas, the work of the intake phase, the assessment phase, and the ongoing phase are completed by one person and in other areas, the work is done by two or three different people. Some workers will have juvenile services specialization, some will have child welfare specialization, and some will perform both functions. This policy applies to all situations.

The final piece of the ongoing phase relates to evaluating the progress of the case, and case closure.

How the work of case management is done is described in two Guidebooks. The "Child Welfare Case Management Guidebook" is to be used in working with cases where child abuse, neglect or dependency are the issue. The "Case Management for Status Offenders and Juvenile Offenders Guidebook" is to be used for these two populations.

5-001

## **STAFF ROLE**

5-001.01

### **PROTECTION AND SAFETY WORKER ROLE**

The worker will work in partnership with families, supervising staff and teams to ensure children and families a quality, comprehensive service delivery. The worker's role and responsibilities during ongoing are to:

- Conduct and complete an assessment of the family and child.
- Maintain child's, family's and community's safety.
- Develop and implement a case plan to address the identified issues and current risk of maltreatment, status offense behaviors or delinquency.
- Provide and coordinate services to assist the child and family in resolving issues.
- Assist in securing stability and permanency for the child.
- Refer the family and child to community, social agencies, or legal systems that are necessary to support achievement of the identified case outcomes.
- Evaluate family's and child's progress.
- Coordinate service delivery to the child and family.
- Prepare child and family for closure.
- Close case.
- Consult with the case consultation team at the key decision points as listed in 390 NAC 2-001.

The Juvenile Services Officer will have the specific roles in cases with juvenile offenders as follows:

- Complete the initial classification and routine reclassifications;
- Take a child into physical custody when necessary, see 390 NAC 11-002.03A;
- Supervise and monitor the behavior of the juvenile offender in the community through direct contact and supervision services;



- Determine and adjust the child's level of restriction and supervision based on behavior and compliance with the the conditions of liberty agreement and case plan;
- Assist child in taking responsibility for his/her actions by making arrangements for restitution (if court ordered), community service or similar restorative efforts;
- Serve notice of conditions of liberty (parole) violations and allegations to child; and
- Participate in Department's Administrative Hearings: Behavioral Accountability meetings, Preliminary Hearings, and Revocation Hearings.

#### 5-001.02

#### SUPERVISOR ROLE

Supervisory staff roles and responsibilities during ongoing services are to:

- Provide support and consultation and assist the worker during critical decision points.
- Advocate in agency, community or legal system to ensure outcomes of ongoing services are achieved.
- Enhance system response by supporting, facilitating or developing use of teams as a support to quality service delivery.
- Identify and assist in removing barriers to service delivery.

#### 5-001.03

#### ROLE OF TEAMS

Teams will be used to effectively and efficiently provide a means for consultation, technical expertise, support and problem-solving.

The Department will participate in the investigative and treatment teams in each county or area. The Department will participate to create a cooperative, complementary response to reports of child abuse or neglect by the Department, law enforcement and other agencies designed to protect children.

Statutory Reference: Neb. Rev. Stat. 28-728 through 28-733.

The case consultation team will be used at key decision points during the ongoing phase. These key decision points include:

- Recommending removal of a child from the home;
- Recommending returning a child to the home;
- Recommending separation of siblings;
- Deciding on placement of a child in an adoptive home;
- Placing a child into a foster home, group home, or residential facility located in another service area;
- Discharging or conditional release (parole) of a child from YRTC;
- Placing a child into restrictive placements such as hospitals, treatment facilities, Youth Rehabilitation and Treatment Centers (YRTC), detention centers, jails, and out-of-state;
- Requesting a variance to an existing policy;
- Taking away a child's liberty;
- Changing the permanency objective on a case;

- Developing case plan and determining decision making for child with more than one adjudication;
- Recommending relinquishment;
- Accepting a relinquishment;
- Recommending termination of parental rights;
- Determining classification for juvenile offenders;
- Reviewing the case status; and
- Closing a case.

The Juvenile Service Officer has the authority to take into physical custody a juvenile offender in the custody of HHS-OJS when s/he is a risk to himself/herself or others.

The case consultation team may consist of the family service providers including foster parents, mental health providers, the supervisor, school, and medical personnel, law enforcement, and others involved in the case or with expertise relevant to the case.

5-002

#### **OUTCOMES FOR ONGOING PHASE**

- Child safety.
- Community safety.
- Reduction of risk of maltreatment.
- Reduction of delinquency.
- Identification of family issues and needs.
- Permanence for the child.
- Appropriate services implemented to address identified issues and needs.
- Services are in place to support the family.
- Increased family self-sufficiency.
- Family empowerment.
- Timely reunification when appropriate.
- Juvenile offenders are held accountable for their behaviors and learn to become responsible citizens.

5-003

#### **OVERVIEW OF DECISION MAKING**

In child welfare cases, the determination to open a case for ongoing services is completed during the initial assessment phase. Decisions regarding the types of services offered are made after the completion of the family assessment and during the case planning process.

In Juvenile services cases, the decision to open a case is made upon commitment to HHS-OJS by a court order.

The Department provides or arranges for ongoing services based upon the family assessment and the identification of family and child goals and matches services that support the desired outcomes. The Department may provide direct services, refer to other service providers or contract for services.

Information in this section includes the following:

- Service Delivery,
- Assessment of Family and Child Needs,
- Case Planning,
- Case Management,
- Case Evaluation, and
- Case Closure.

The decision on services will be a collaborative effort among the worker, child and family. Supervisory staff and others with relevant expertise may be consulted regarding available services, resource development and implementation.

If a court has ordered specific services that do not support client outcomes identified in the assessment of needs or case plan, the worker will request Legal Services staff in the System to object to the court-ordered service. (See 390 NAC 8-002, Review of Court Orders.)

#### 5-003.01 OVERVIEW OF SERVICE DELIVERY

The delivery of family-centered, child-focused services will involve all family members to identify family issues and resolve family problems. Services are designed to promote family self-sufficiency. Services are also intended to reduce the probability of delinquent behavior by juvenile offenders. Services are provided on a time-limited basis. They are focused on parents and children maintaining or gaining responsibility in decision-making.

To promote family self-sufficiency and continuity for families and children, consideration will first be given to:

- Assisting the family or child to build a support network with extended family members and friends identified by the family; and
- Linking the family or child with community services that can be independently accessed.

When community-based programs are not available or appropriate, contracted or staff-provided services will be considered.

Services described in the following information will help the worker provide quality service to families and children involved with the Department. These services are divided into two broad categories:

1. Guaranteed Services (described in 390 NAC 5-004) and
2. Additional Services (described in 390 NAC 5-005).

5-004

**GUARANTEED SERVICES**

All families and children involved with the Department will be provided with the following services:

1. An assessment of needs that may include a diagnostic and evaluation service; and
2. A case plan developed with the family and child to address the issues that brought the family or child to the attention of the Department, and
3. Case management, which includes face to face contact; and
4. Referral to community services, and
5. A therapy service, when appropriate, or
6. A parent-skill development service, when appropriate.

5-004.01

**ASSESSMENT OF FAMILY AND CHILD**

A family and child assessment process begins when:

- The court has ordered a youth into HHS-OJS or HHS custody; or
- A determination for continued ongoing intervention has been made; and
- The immediate safety of the child and community has been addressed.

The purpose of the assessment is to obtain as complete a picture as possible about the nature, extent, and causes of the factors contributing to the:

- Risk of maltreatment or delinquent acts,
- Effects of maltreatment or delinquency on the child, victim and other family members,
- Presenting problem (if other than maltreatment or delinquency), and
- Effects of the presenting problem on the family, child, or community.

The overall goal of the assessment is to reach a mutual understanding among the juvenile and family services worker, the family and community service providers, regarding the most critical needs to be addressed and the strengths on which to build.

The primary decisions and issues considered during the assessment of the family and child include:

- What are the nature, extent and causes of the factors contributing to the risk of maltreatment, delinquency, or the presenting problem?
- What are the effects of the maltreatment, delinquency, or the presenting problem and the service needs of all family members?
- What are the individual and family strengths that can be tapped in the intervention process?
- What conditions or behaviors must change for the risk of maltreatment or delinquency to be reduced or the presenting problem be controlled?
- What is the prognosis for change?

Information will be gathered by: interviewing and observing all family members; reviewing open or closed CPS records, school records, and records or reports from other agencies or providers. Additionally, evaluations and assessments may be necessary to complete an accurate picture of child and family.

The information gathered will be: assessed, analyzed, and interpreted to make professional judgment regarding the family's and child's ability to engage in appropriate available services and to correct condition that brought them to the attention of the Department.

For Juvenile services offenders, the information will also be used to determine the appropriate classification, level of supervision and placement while maintaining public safety.

#### 5-004.02

#### CASE PLANNING

Workers will provide the child and family with opportunities for change by helping them to identify positive outcomes and to set goals that address the problems that place the child at risk of maltreatment, reoffend, and which also address the issues that brought the child or family to the attention of the agency. The overall goal in child welfare cases is to reduce or eliminate the risk of maltreatment so that parents can protect their children and meet their developmental needs. The overall goal in Juvenile services cases is to reduce or eliminate the risk of re-offending consistent with community safety.

#### Child Welfare Cases

A written case plan will be developed following the assessment of family or child's needs. Case plan evaluation and revision will then occur at least every six months. A written court report incorporating the elements of the case plan will be submitted to the court at least three days before, or as dictated by local court protocol, the initial dispositional hearing or any subsequent review hearing.

#### Juvenile Services Cases

A written case plan will be developed following the assessment for children at home or in out-of-home care. The case plan for juvenile offenders will be based on the factors which are most closely related to the possibility of the child reoffending. The child's need for restrictiveness will be considered in providing services. The reclassification will relate to the progress toward goals in the case plan. The case plan for status offenders will address the issues which brought the child to the attention of the Department. A written court report will be prepared for status offenders as described in child welfare cases above.

The Conditions of Liberty Agreement will support the case plan for juvenile offenders on parole and in the community. (See Case Management for Juvenile Offenders and Status Offenders for Agreement. The Youth Responsibilities Agreement will support the case plan for status offenders.)

5-004.02A

CASE PLAN REQUIREMENTS

The Department will include in the plan for a ward who is 16 years of age or older a written proposal describing programs and services designed to assist the ward in acquiring independent living skills. A ward whose goal is independent living or is determined to be at a greater risk of failure will receive a proportionately greater emphasis on these services. The specific case plan will be based on an assessment of the ward's readiness for independent living. (See Other Permanency Objectives Guidebook, Independent Living Section.)

When a child is placed in the custody of HHS and HHS- OJS, federal regulations require that a case plan be developed within 60 days of the date of placement. When there is insufficient time to develop a case plan within this time frame for the child welfare cases, the safety plan will serve as the case plan.

Statutory reference: Neb. Rev. Stat. 43-285.

5-004.02B

CASE-PLANNING PROCESS

Case planning is the responsibility of the worker with the active involvement of the child and family and the members of the team supporting services to the family. The case-planning process will:

- Focus on the problems identified in the assessment of the family and youth,
- Identify a permanency objective,
- Establish and prioritize goals,
- Identify the action steps needed to reunite the family or to prevent out-of-home placement,
- Use the family's resources,
- Build upon the family's and child's strengths,
- Develop or maintain family responsibility,
- Identify who is responsible for tasks,
- Establish time frames for achieving case goals, projected discharge and case closure,
- Establish an evaluation process to assess whether outcomes are being achieved.

A behavior contract with the status offender or juvenile offender specifies the rewards and consequences associated with compliance or non-compliance with the outcomes and supports the case plan. The behavior contract is called the Conditions of Liberty Agreement for juvenile offenders and the Youth Responsibilities Agreement for status offenders. See Case Management for Juvenile Offenders and Status Offenders Guidebook for format.

Positive reinforcement, natural consequences, incentives and rewards will be used to assist youth who are status offenders and juvenile offenders. Graduated sanctions will also be used for juvenile offenders. The worker will use consequences related to the offense (and graduated sanctions for juvenile offenders only) as a progressive response to technical violations and misconduct for juvenile and status offenders. See Case Management For Juvenile Offenders and Status Offenders Guidebook for the use of these techniques.

Case planning also will prepare every ward for adulthood and independent living through:

- Participation in decision-making as appropriate,
- Assumption of age-appropriate responsibilities, and
- Encouragement of independent functioning based on age and developmental level.

#### 5-004.02C PRIORITIZING GOALS

Goals will be prioritized based upon the following considerations:

- Those most directly linked to the risk and needs of the child,
- Those most directly linked to the presenting problem,
- Family's view of the most important issues to address,
- In Juvenile services cases, the child's input,
- Achievement needed for further goal accomplishment.

Goals will be stated in positive, behavioral terms, in clear and understandable language. Goals will be realistic in terms of time frames and available resources.

#### 5-004.02D SERVICE DELIVERY FOR STATUS OFFENDERS

The Department will target service delivery and case plan goals to be completed within six months for families with children adjudicated as status offenders. Parents of children adjudicated as a status offender must be willing to engage in services with the Department. If the parents are unwilling to participate in services with the Department, then the matter will be returned to the court with a request that the Department be relieved of responsibility.

Until the court issues an order for termination of Department services, the Department will offer services to the family.

#### 5-004.02D SPECIAL CONSIDERATIONS WHEN WORKING WITH NATIVE AMERICAN PARENTS

This applies only to children who are adjudicated under Neb.Rev.Stat. '43-247, Sub 3(a)(b), and 8. Department staff will use tribal social services whenever possible when working with Native American parents and children. Case-planning and service provision will be based upon the social and cultural standards of the tribe. Active efforts will be made to provide culturally relevant remedial and rehabilitative services to prevent the breakup of the family and to reunify the child and family. The "active efforts" standard places a higher burden of proof on the Department than "reasonable efforts".

Statutory Reference: Indian Child Welfare Act of 1978, 25 U.S. Code, 1901 et seq.; Neb Rev. Stat. 43-101, et seq.

5-004.03

CASE MANAGEMENT

Once the case plan has been developed, the worker is responsible to see that the identified services are in place. During this phase the worker activities include:

- selecting the appropriate services, with the involvement of the family;
- helping the family or child locate and access the appropriate services;
- providing or arranging for the appropriate services when needed;
- communicating and collaborating with the identified service providers;
- monitoring child safety and risk;
- consulting with the case consultation team at the key decision points;
- meeting regularly with the family and child;
- measuring progress toward goal achievement and permanency objectives;
- monitoring services and coordinating with service providers;
- evaluating services provided;
- maintaining records;
- consulting with support team;
- preparing necessary reports;
- closing case; and
- participating in the evaluation of the support system.

Elements of the case plan will be modified to meet any issues that are identified that pertain to child safety and risk.

For juvenile offenders, the case management system is designed to gradually reduce the level of supervision for a delinquent. Some delinquents will require increased supervision.



5-004.04

WARDSHIP FOR PAYMENT

When the assessment of family needs reveals that a child has been made a ward of the Department solely for payment for psychiatric services the child is receiving, the Department will provide only those services required to meet the identified need. Case management services will consist of:

- Reviewing medical reports on progress and the managed care entity and PRO Reviews,
- Preparing reports to the court, and
- Processing payment for psychiatric services.

The Department will recommend that service provision end when the need for payment for psychiatric services ends.

Once a determination has been made that the Department's involvement is to provide assistance only, the key factors for case management are psychiatric treatment review and payment processing. The case will be assigned to a staff person with the skills and knowledge to manage the case. (The case may not be managed by a worker.)

For information on who maintains case management for children in out-of-home placement, refer to 390 NAC 7-002.

5-004.05

COMMUNITY ASSISTANCE

The family will be referred to and linked to community services as a first means of intervention whenever such a community service exists that can meet the family's need. If the family is already involved with a community service but is not making appropriate use of the resource, the worker will help the family use the resource. If the resource isn't appropriate to address the needs of the family, the family will be referred to an appropriate resource.

5-004.06

THERAPY SERVICES

Referral to community or Department therapy services will be made when the family assessment indicates undue stress and severe social, emotional or behavioral problems that threaten or negatively affect the family's structure and stability. At the time of the Department's involvement, a family or child may be involved with therapy services or treatment, which would satisfy this service provision.

5-004.07

PARENT SKILL DEVELOPMENT

Parent-skill development services will be offered when a family's condition includes an inability to meet the needs of their children due to a lack of training or education. This service will be used with families with children adjudicated as status offenders or juvenile offenders to assist parents in developing more effective parenting practices.

5-005

### ADDITIONAL SERVICES

Based on the needs of the family or child identified through the needs assessment, the worker will select additional services to support the outcomes identified in the case plan.

Additional services are provided through:

- Department staff,
- Contracted provider, or
- Community resources.

Services will be tailored to the family or child, based on the identified needs and resources available.

Additional services that may be considered when developing a case plan include but are not limited to the following:

TYPES OF SERVICE	SERVICES PROVIDED
Social Service Block Grant	Transportation and Escort Service Family Support Visitation Specialist
Child Care Subsidy Program	Child Care Payment Names of Licensed Child Care Provider
Public Assistance Programs (Based on eligibility requirements)	Job Support Programs Food Stamps Income Maintenance Payments - TANF Medical Assistance Crisis Assistance Energy Assistance Medically-handicapped Children's Program
Family Preservation	Financial Support -to maintain child in home -to remove barriers to reunification
Family Support	Financial Support

TYPES OF SERVICE

SERVICES PROVIDED

Supportive Services  
and New Beginnings

In-home Family Support  
Preventive Services  
Home-based Therapy  
Parenting Education and Support

Contracted Services  
from the Community

Home-based Therapy  
In-home Family Support  
Respite  
Tracker

Community Services

Agency-Based Foster Care  
Treatment Foster Care  
Emergency Shelter Care  
Residential Treatment Center  
Treatment Group Home  
Community Treatment Aide I  
Community Treatment Aide II  
Housing Assistance  
Employment or Job Training  
Public Health  
Visiting Nurses  
Volunteers  
Mental Health and Substance Abuse  
Services to Developmentally Disabled  
Group Care Facilities  
Parent Training  
Foster Family Care  
Reporting Center

State Ward Medical

After parents use resources  
Some non-Medicaid services

The worker will pursue all court-ordered services. See 8-002.01 for legal information.

5-005.01 CASE SUPERVISION SERVICES

The Department may be required to provide supervision in child welfare cases when:

- Court-ordered, or
- Requested through Interstate Compact.

5-005.02 COURT-ORDERED

The Department may be ordered to provide supervision in child welfare cases with the custody of the child remaining with the parents.

Unless the court has ordered specific services, the only services the Department need provide are community referrals and case supervision of the family's involvement and progress. (Case plan is not required.)

5-005.03 COURT-ORDERED ADOPTION STUDIES

The Department will determine whether to complete or contract for independent adoption studies when the court has ordered the adoption study under Neb. Rev. Stat. 43-107.

If the Department completes the adoptive home study ordered under Neb. Rev. Stat., it will be at the expense of the petitioner(s) unless the expenses are waived by the Department. The Department will determine the fee or rate for the adoptive home study. The rate will be comparable to that charged by other agencies in the state.

Statutory Reference: Neb. Rev. Stat. 43-107.

5-005.04 INTERSTATE COMPACT REQUEST

Supervision requests will follow the guidelines of Interstate Compact agreements.

5-005.05 FORMER WARDS SERVICES

The purpose of the former wards extended assistance program is to assist former wards who meet the following criteria:

- Be ages 18 through 20 years;
- Be single;
- Be a former ward of the Department or ward through relinquishment who was in out-of-home care or independent living at the time of his/her discharge; and
- Be in need of assistance in order to attend a secondary educational university, vocational school, or technical training.

The child has to enter the former ward program before discharge from the Department or meet one of the exceptions in Service Provision Guidebook.

Maintenance payments, medical assistance and case management may be provided based on the eligibility criteria of the entitlement programs that provide the funding.

When a ward is being prepared for discharge the worker will:

- Assess the ward's need for extended assistance;
- Help the ward develop an educational plan; and
- Coordinate the meeting between the ward and the worker responsible for former ward program application process.

Former wards age 19 and 20, who are not in school and have a medical need, should be referred to an Income Maintenance worker so an application for medical assistance can be processed.

The Department offers extended assistance to support eligible youth after their discharge from the custody of the Department to continue their education in preparing for gainful employment. This program is only available to eligible youth who were wards of the Department through a court action or relinquishment. Only wards living in an out-of-home setting or independent living at the time of his/her discharge are eligible. The child has to enter the former ward program before discharge from the Department or meet one of the exceptions in Service Provision Guidebook. Involvement in this program must be planned before discharge. Youth cannot return to the program unless return was planned at the time former ward case was closed and one of the exceptions is met (see guidebook for exceptions).

The services available in this extended assistance program are:

- information and referral;
- health care coverage; and
- financial assistance.

5-006

### **CASE EVALUATION**

The case will be formally evaluated at least once every six months. For Juvenile services cases, the classification will be done every three months and will connect to the overall case plan. The worker will manage and direct the evaluation process. The child, family and team who have participated in case-planning and service delivery will be involved in the case evaluation to the maximum extent possible.

Periodic reviews of cases for children in out-of-home placement including one person not responsible for service delivery to the case, is required by the federal government. The Foster Care Review Board established by state statute reviews the case of children in the custody of HHS in out-of-home care at least every six months.

#### 5-006.01 EVALUATION OF FAMILY AND CHILD PROGRESS

The primary purpose of the evaluation of family and child progress is to measure what changes have occurred in the most critical factors identified during the assessment(s). The worker will collect and organize information, apply standards to measure and analyze information, and evaluate and interpret the meaning of information with the assistance of supervisory staff.

The process of evaluating family and child progress is a continual case management function. Once the case plan is established, the worker's contacts will be focused on assessing the progress made towards achieving established goals and tasks. (See Case Management Guidebook for Case Evaluation Procedure.)

#### 5-006.02 DETERMINING CASE CLOSURE

In determining whether to close a case, a worker will focus on the issues that brought the family and child to the attention of the Department.

Department intervention will be terminated and a case will be closed on the basis of the following:

1. The goals established in the case plan have been achieved, and
2. The child is safe and the risk of future maltreatment and delinquency have been sufficiently reduced, or,
3. The family refuses services and no legal grounds exist to pursue court action, or
4. The family and child in a voluntary CPS case cannot be located or client is deceased, or
5. The sending state through Interstate Compact closes case, or
6. Current family problems are not within the scope of the Department mission, or
7. The child is convicted and sentenced as an adult, or
8. The child is age 19, or
9. The child dies.

The criteria used to determine whether to close a case is "minimal standards," not "optimal standards", for family functioning. If families and children need ongoing support and treatment following case closure, help will be provided to the family and child to arrange for these services from the community before case closure.

The worker will involve the child, family, involved service providers and supervisory staff in evaluating the appropriateness of case closure. In cases where the court has ordered the Department involvement, the court will be informed in writing of the recommendation to close the case. Closing of child welfare court-ordered cases will occur after a court order is received ordering the closure, or following an Administrative Closure of a court case (see Administrative Case Closure, 5-006.03). Closing of juvenile service court ordered cases will occur based on the decision of the Service Area designee. (See 5-006.03)

The rationale for case-closing will be documented in the case file. (See Case Management Guidebook for case-closing procedure.)

5-006.03

DISCHARGE OF A WARD

The determination to recommend discharge of a ward is made by the worker in consultation with supervisory staff. The worker is also responsible to include all parties involved in the case in the decision process.

UNDER HHS

Terminating the Department's custody of a child may be pursued by discharge of a ward through:

- Court action, or
- Court action as a result of the ward's marriage, entrance into the military, or age 19 or,
- The provision of Neb. Rev. Stat.43-905(3) and 43-905(4) which provide that a youth "becomes self-supporting, the director shall declare that fact and the guardianship shall cease" or under subsection 4 when the "parents of any ward, whose parental rights have not been terminated, have become able to support and educate their child, the Department shall restore the child to his/her parents, if the home of such parents would be a suitable home." COURT TERMINATION OF DEPARTMENTAL CUSTODY IS PREFERABLE TO ADMINISTRATIVE DISCHARGE.

NOTE: The Court does not have to accept an administrative discharge and has the ability to continue a child's custody by the Department. The Court also has the ability to order that a married ward remain in the custody of the Department. The Department in both situations is required to follow the court order.

UNDER HHS-OJS

Terminating the custody of HHS-OJS of a child may be pursued on the recommendation of the Juvenile Services Officer to the designated person in the Service Area. This includes children in the community and at the YRTC.

If the recommendation is approved by the Service Area designee, then a discharge is granted.

If there is a disagreement with the discharge recommendation, the team process will be used. The designated person in the Service Area will be the decision maker.

(Procedures for discharge are located in the Case Management Guidebook)

5-006.04

CASE FILE RETENTION

Department ward case files are permanently maintained in the "vault" of the Department or in the local office. The length of retention for each type of case is as follows:

- State ward and family service cases must be maintained permanently in the "vault".
- In-home services case records will be maintained for ten years after termination of services. If a report of child abuse or neglect is received or another case is opened regarding the family, the file will be retained for another ten-year period. These files are retained in the local office.

5-006.05

SEALING OF RECORD BY COURT

Under provision of Neb. Rev. Stat. 43-2,105, an individual who was adjudicated as a status offender or delinquent may request that the juvenile court seal his/her record. When the court requests input from the Department on these cases, the worker or supervisor will review the information to determine if there are any objections to the sealing of the record. Any objections will be shared with the appropriate court.

If a notice is received from the court that a record is to be sealed, the notice will be sent to the person responsible for the "vault" who will proceed with the sealing of the record. Sealing of the record does not prohibit use of the record by the Department but does restrict the Department from releasing information in the record without a court order.

Statutory Reference: Neb. Rev. Stat. 43-2,105.



CHAPTER 6-000

**PERMANENCY FOR CHILDREN**

6-001

**PERMANENCY OBJECTIVES**

Every child committed to HHS and HHS-OJS and his/her family will have an appropriate permanency objective which identifies the main focus of the case plan and services. Determination of the permanency goal will be done with the family and take into consideration the best interests of the child. Services to children will be offered in their family home whenever possible. The permanency goals are as follows:

1. Family preservation pending return of legal custody to parent(s);
2. Reunification;
3. Adoption;
4. Legal guardianship;
5. Long-term foster care;
6. Independent living (child must be 16 years or older), and
7. Self-sufficiency with supports.

In considering out-of-home placement, the requirements of the Multiethnic Placement Act must be followed. Race, color, or national origin may not be the basis for:

1. Delaying or denying placement of a child for adoption or into foster care; or
2. Denying any person the opportunity to become an adoptive or foster parent.

6-001.01

**PERMANENCY CHOICES**

1. Family preservation.  
Family preservation will be the first consideration whenever the worker assessment indicates the child can be safely maintained in the home. Department services will then focus on returning legal custody to the parent(s).
2. Reunification.  
For any ward in out-of-home placement, reunification will be the first permanency goal considered. Once a ward has been placed back in the parental home, the goal then becomes family preservation. Alternatives to reunification will be considered only when the family has been given reasonable opportunities to reunify and those efforts have not been successful. (Refer to 390 NAC 8-004.)  
  
A plan for reunification will remain the permanency objective when a worker makes a referral to the county attorney requesting a motion for termination of parental rights be filed on a case. Reunification will remain the permanency objective until the court has made a decision.
3. Adoption.  
When reunification efforts have been exhausted or when reunification is not appropriate, the permanency objective to be considered is adoption. This objective is selected when a parent has relinquished parental rights or when the court has terminated a parent's rights, even if this decision is under appeal or action has not been taken on the other parent.

4. Legal Guardianship.  
Legal guardianship is considered as a permanency objective when:
  - a. All efforts to reunify the family have been exhausted,
  - b. The child cannot return home,
  - c. All reasonable efforts to secure adoption of the child have been unsuccessful, or
  - d. It is determined that adoption is not in the best interest of the child.
5. Long-Term Foster Care.  
When all efforts to achieve reunification, adoption or legal guardianship are unsuccessful, the objective of long-term foster care may be selected. This will be a planned formal agreement.
6. Independent Living.  
Independent living may be considered when it appears that reunification may not occur and adoption, legal guardianship and long-term foster care are not appropriate.
7. Self-Sufficiency with Supports.  
Self-sufficiency with supervision is an appropriate objective for a youth who experiences disabilities who is currently receiving and will continue to need a supervised living situation as an adult. Wards may require continuing involvement with the Department or another service agency or both after discharge from the state ward system.

6-002

## **ADOPTION**

When a child cannot be reunited with her/his family, adoption is the preferred alternative to long-term foster care or guardianship. When a child cannot return home, considering adoption as a permanency choice gives families an opportunity to plan for permanence for their child. Adoption as a plan is always based upon the child's best interest and specific needs.

6-002.01

### **LEGAL BASIS**

Nebraska's state plan for adoption services is based on federal requirements in Title IV-B of the Social Security Act, "Child Welfare Services"; Title IV-E of the Social Security Act "Federal Payments for Foster Care and Adoption Assistance"; and Public Law 96-272, "Adoption Assistance and Child Welfare Act of 1980".

Statutory references: Neb. Rev. Stat. 43-101 through 43-113.

6-002.02

DEPARTMENT'S ROLE

The Department is responsible for administering an adoption service program to:

- Recruit adoptive families for wards of the Department,
- Prepare adoptive families for placement for wards of the Department,
- Place and supervise placements of Department wards for adoption,
- Provide post-placement services,
- Provide post-finalization services including interpreting and administering the subsidized adoption program, and
- Administer inter-state and inter-country adoption.

Note: Private adoption agencies also provide adoption services.

The child's caseworker in consultation with supervisory staff or team assess if adoption is the appropriate plan for the child. An assessment will also be made in regard to the child's need for contact with the family of origin. The case consultation team should be included in the six month case conference.

Adoption will be handled by specially trained staff.

Barriers to adoption need to be considered and overcome. They may include:

- Legal readiness of the child,
- The risk of moving the child into an adoptive placement, and
- The child's readiness for adoptive placement.

6-002.03

TIMELINES FOR PLACEMENT

Every effort will be made by all staff involved in the adoption process to place the child in an adoptive home within nine months of the date when the child became free for adoption. (See Adoption Guidebook for procedures.)

If a placement cannot occur, a review and assessment of the placement progress will be made until there is an adoptive placement or change in permanency goal.

6-002.04

PLACEMENT CONSIDERATION AND GUIDELINES

To assure safety and continuity for children, a written adoptive home study of the family will be completed before the placement; and the family will be approved for placement when appropriate. A pre-placement home study will be filed with the court in all adoptive placements. All adoptive home studies must be done by the Department or a child placing agency licensed by the Department. (See Adoption Guidebook for guidelines.)

There are three exceptions to the adoptive home study requirement. They are:

1. The placement of a foster child by the Department or a licensed child placing agency into the home of a person who later files a petition to adopt that child. Such situations are exempt from a preplacement home study. There will be a postplacement home study completed by the Department or a licensed child placing agency and filed with the county court at least one week prior to the hearing to finalize the adoption.
2. The adoption by a stepparent does not require a home study, unless so ordered by the court. In this situation, a check of the Nebraska State Patrol and the Central Register of child protection cases is required.
3. A voluntary placement for purposes other than adoption made by a parent or guardian of a child without assistance from an attorney, physician, or other individual or agency which later results in adoption. In this situation, a post-placement home study is required to be completed and filed with the court a week before the adoption finalization hearing.

Statutory Reference: Neb. Rev. Stat. 43-107.

A team will select the adoptive family and make the decision to place the child. When choosing an adoptive family the team will consider the following:

- The child's best interest and needs, including any special needs;
- Preference of an adult relative instead of a non-related caregiver provided that the relative is appropriate and can meet the child's needs;
- Siblings will be placed together unless the placement would be detrimental to one or more of them;
- Bio-parent's requests regarding religion of the adoptive parents and openness;
- Accessibility of services needed by the child;
- Child's own preferences (for example, child's desire to be adopted by foster family, religion);
- Prospective family's ability to parent and meet the child's needs;
- Family's ability to accept and share with the child his/her family background;
- Family's ability to handle child's special need such as disability or behavior problems;
- Family's ability to accept openness of adoption;
- The child's attachment to potential adoptive family; and
- The child has been living with a foster family and the family requests the adoption.

#### 6-002.05

#### BIRTH PARENT

In some situations, the parent's circumstances may have changed to the extent that the child's best interest may be served by returning the child to the birth parent whose rights have been terminated by court or voluntary relinquishment. The only way parental rights can be restored is through adoption. When considering birth parents, assessment of the following will be made:

- Parent(s) demonstrate the ability to deal constructively with the original separation from the child, and
- Child's desire to be adopted by the birth parent.

An adoptive home study and approval will be completed for birth parent before placement. Before placement, notification of the Department's plan to place the child with the birth parent must be provided to the court that terminated parental rights and to the child's guardian ad litem.

#### 6-002.06

#### OPENNESS

Openness will be based on the child's best interest. Details of the child's degree or openness is only determined after the child is free for adoption; although assessment of what is best for the child can begin earlier. The Department will have input into an openness agreement between prospective adoptive parent and the birth parent of a prospective adoptee. (See Adoption Guidebook)

Statutory Reference: Neb. Rev. Stat. 43-138 through 43-141 and 43-146.

6-002.07

PLACEMENT PROCESS

Once the team has selected a prospective adoptive family, staff will:

- Prepare the child for adoption.
- Coordinate and share with all involved staff relevant information about the child and the pre-adoptive family.
- Arrange and coordinate for all information to be shared about the child with the pre-adoptive parents.
- Plan the transition for the child to the pre-adoptive family.
- Obtain the signature of the adoptive parent and child on the appropriate forms.
- Ensure appropriate notifications of the impending move are made (to the court, tribe, guardian ad litem, school and parent if there is openness).
- Support the pre-adoptive family and child through post-placement services.
- Document the information that is provided to the adoptive family in the child's file.
- No decision regarding placement may be accepted from the family for at least forty-eight hours following the formal meeting between the child and family.
- Inform the adoptive parent of the child's potential eligibility for subsidy.
- The Department may cover part of the family's expenses if the child's special needs will be a barrier to placement. The worker will determine the amount and what it is for and consult with supervisory staff for method of payment and appropriate amounts.
- No adoptive placement may be made unless there is a commitment to adopt by the prospective adoptive family.

Prospective and foster families will sign an Adoption Agreement to indicate their commitment to the adoption and the Department's designation of the family as an adoptive family. (See Adoption Guidebook)

6-002.08

POST-PLACEMENT SERVICES

Post-placement services are those provided before the finalization of adoption. The following is a list of services and guidelines for post-placement services.

6-002.08A

PAYMENT SERVICES

- Adoptive parents are expected to assume financial responsibility for the child. Exceptions may be made for a child with special needs, such as: race, age, disability, siblings placed together, or adoption by a foster family.
- The need for payment service is evaluated before the child's placement. The payment service plan should be to decrease assistance from the Department.
- The worker in charge of the case is responsible for changing the amounts each time a change is due.

6-002.08B SUPERVISION TIME FRAMES

- Supervision is provided by having regular family contact, home visits with both parents, visits alone with the child, and contact with other persons living in the home.
- A minimum of six months of post placement supervision is provided. For a special needs child one year is recommended.

6-002.08C FAMILY-CENTERED SUPPORT SERVICES

- Assist the family with the integration of the child into the family and the creation of a new family unit,
- Are family-focused rather than child-focused,
- Provide assessment of progress and the need for other services,
- Help the family plan for services the family will desire after the finalization.

6-002.09 ABUSE AND NEGLECT DURING POST-PLACEMENT

If the worker suspects possible abuse or neglect by an adoptive family member or another party whom the child has had contact with, the worker will immediately make a CPS referral. The Department will ensure an assessment of the alleged maltreatment and will notify law enforcement. In-home services will be provided in order to maintain the placement whenever possible. The worker supervising the placement will not conduct the assessment of the alleged maltreatment of an adoptive family member.

Emergency removal can occur:

- Only after the worker has assessed the risk of removal compared to the risk of harm to the child if not removed.
- After consultation with supervisory staff.

Mandatory Removal Situations:

- Life-threatening abuse or neglect or sexual abuse has been substantiated, and the perpetrator is unwilling to leave the home, or
- The worker observes signs of life-threatening abuse or neglect or sexual abuse.

Consultation with supervisory staff is required before a removal occurs.

6-002.10 PLACEMENT DISRUPTION

Placement disruption is the formal removal and termination of the placement and the plan for adoption by the prospective family.

Through consultation by worker, supervisory staff or teams a determination is reached by assessing the following:

- The Department has made all reasonable efforts to provide or arrange services to help the family resolve a possible disruption.
- The family has refused the services or services have been unsuccessful in resolving the causes of the possible disruption.
- A mutual agreement is reached among the prospective family, child (when appropriate), worker and supervisory staff that disruption is in the best interest of the child.
- A mutual agreement cannot be reached, but the worker and supervisory staff determine that the continuation of the placement is not in the best interest of the child.
- There is a risk of emotional or physical harm if the placement continues.
- The family is not willing or is unable to provide adequate care and/or parent the child, including substantiated abuse or neglect.

When considering disruption, the prospective adoptive family will be sent a written notice explaining the problems. They also are informed of the grievance procedure. If the family does not agree with the disruption, the written notice should also include ten-day advance notice of the proposed disruption. If the family files a formal grievance, no disruption will take place during the grievance time period.

NOTE: A child may be removed without advance notice when the child is in a mandatory emergency removal situation or the prospective family waives the ten-day notice in writing.

Once a placement has disrupted, the worker will follow the timelines for placement of a child with a prospective family.

After disruption, the former prospective family may maintain involvement with the Department up to three months to assist the family with the child's removal. This involvement does not include payment for services unless the family is eligible in their own right for a specific Department program.

6-002.11

#### GRIEVANCE PROCEDURE

If the prospective family does not agree with the placement disruption decision, they will submit a written grievance to the service Department's director five working days after the family has received the written notice of intent to disrupt.

The Director or her/his representative will conduct a grievance conference. The prospective family, worker, supervisory staff and any person the Director identifies, will participate in the conference.

The Director will review the determination and advise all parties in writing of her/his determination.



#### 6-002.12 PLACEMENT WITH FAMILIES APPROVED BY OTHER ADOPTION AGENCIES

When a child is placed with a family approved by another agency, the Department's guardianship remains intact until finalization. If the other agency is to supervise the placement, a letter of agreement is completed and signed by an authorized representative of the other agency and Department worker's supervisory staff. The agreement will outline and clarify the roles and responsibilities of the Department and other agency. While recommendations from the other agency will be considered, the Department has the right and ability to exercise guardianship rights in making all relevant decisions.

When a child is placed outside the state, all Interstate Compact Procedures will be followed.

For a complete listing of recommended practice see Adoption Guidebook.

#### 6-002.13 FINALIZATION OF ADOPTION

Nebraska statute states a child must reside with a family at least six continuous months before finalization. Once this occurs and the family is nearing completion of post-placement services, the worker will prepare for finalization.

Note: If foster parents are adopting, finalization may occur at any time after the child is free, as long as the child has resided with the family for six months.

The prospective adoptive parents will retain an attorney to finalize the adoption.

The Department staff assigned to the case will prepare an adoption packet. A list of the information to be contained in the adoption packet is found in the Adoption Guidebook. For subsidized adoption, the necessary forms will be completed and approval obtained. See Adoption Guidebook for information on program and forms.

The adoption packet will be reviewed by the designated adoption staff or supervisory staff in the District.

The completed adoption packet will be promptly sent to the family's attorney by certified mail.

For a Native American child, Department staff will advise the court of the court's responsibility to notify the Secretary of the Interior of the adoption.

After finalization, adoptive parents have full rights and responsibilities for their child. Post services that may be provided are:

- Processing requests for information after the decree,
- Subsidized adoption assistance,
- Consultation and referral, and
- Mediation of adoption with openness.

(For release of information after adoption - refer to 390 NAC 1-007, Release of Information.)

#### 6-002.14 TERMINATION OF AN ADOPTION OF NATIVE AMERICAN CHILDREN

If the adoption of a Native American child is vacated or terminated by court order or adoptive parent relinquishment, the court or agency authorized by the court will attempt to give notice to the biological parent(s) or prior Native American custodian that they have a right to petition the court for custody of the child. If the parent(s) or prior Native American custodian cannot be located, notice will be given to the child's tribe. All notice and preference requirements will be observed before making another foster or adoptive placement.

#### 6-002.15 ADOPTION PLACEMENT CONSIDERATIONS FOR NATIVE AMERICAN CHILDREN

To insure compliance with the Indian Child Welfare Act, the Department will actively pursue an adoptive placement of a Native American child in the following order of preference:

1. A member of the child's extended family,
2. Other members of the child's tribe, and
3. Other Native American families.

If a Native American child's tribe has established a different order of placement preference, the order the tribe has established will be followed as long as the placement is the least restrictive placement appropriate to meet the particular needs of the child.

Good cause to depart from the order of preference for placement listed above must be based upon one or more of the following considerations:

1. The request of biological parents or of the child, (if the child is age 12 or older) for a specific placement.
2. Extraordinary physical, medical, cultural, educational, or emotional needs of the child, as established through the written report or testimony of a person with the following qualifications:
  - a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organizations and child-rearing practices;

- b. A lay person having substantial expertise in delivery of children's and family services to Indians, and extensive knowledge of the prevailing social and cultural standards and child-rearing practices within the child's tribe.
3. The unavailability of suitable families for placement after a diligent search is completed for families, including at minimum but not limited to:
  - a. Contacting the child's tribal social service program,
  - b. Searching a list of all licensed foster homes in the state, and
  - c. Contacting nationally known Indian programs known to have available placement resources.

Justification for good cause to depart from the placement preference will be fully documented.

Statutory References: Indian Child Welfare Act of 1978, 25 U.S. Code, Sections 1901 et seq., The Nebraska Indian Child Welfare Act, Neb. Rev. Stat. Sections 43-1501 et seq.

#### 6-002.16 ADOPTION FINALIZATION PAYMENTS

The Adoption Finalization Payment Program provides a payment of \$1,000 to eligible adoptive parents for the year of adoption and \$1,000 per year for up to four succeeding years. Nebraska statute does not say what the money can or should be used for. The decision about whether to save it or how to spend it is the adoptive parent(s)'.

#### 6-002.16A LEGAL BASIS

Adoption Finalization Payments may be made using state funds as provided by Neb. Rev. Stat. Section 43-118.01.

#### 6-002.16B ESTABLISHING ELIGIBILITY

Eligibility is based on the following:

- The child must have been a ward of the State of Nebraska (a ward of the Department of Health and Human Services or the Department of HHS-OJS) at the time the adoption was finalized;
- The adoption must have been finalized on or after January 1, 2000 and on or before November 15, 2002;
- The child must:
  1. Be less than 19 years old;
  2. Not be emancipated; and
  3. Be living with the adoptive parents.

The adoptive parent(s) is/are eligible for Adoption Finalization Payments when:

- The adoptive parent(s)' parental rights to the child remain intact;
- The adoptive parent(s) maintain(s) primary financial responsibility for the child;
- The child's permanent address is with them; and
- The child is not married.

A child who is hospitalized or in a medical treatment facility, such as a residential treatment center or an intermediate care facility, for treatment purposes, is considered to be living with the adoptive parent(s). A child temporarily living in another setting while attending college or vocational training is considered to be living with the adoptive parents. A child who has resided a part of the year in another family home or a non-medical facility is not considered to be living with the adoptive parent(s) during that time, and therefore the adoptive parent or couple is not eligible for a payment for that year.

Except for the year of the adoption, these criteria must be met for the entire year for which the payment is requested.

#### 6-002.16C APPLICATION AND APPROVAL PROCESS

In order to receive a payment, the adoptive parent(s) must apply to the Department. The application must be made:

1. Each year ;
2. Between January 1 and January 31, for the preceding year (for example, when applying for payment for calendar year 2000, the adoptive parent(s) can apply only between January 1 and January 31, 2001); and
3. On a form supplied by the Department.

If an adoptive parent or couple does not apply for an eligible year, the parent or couple can apply again the next year. However, the parent or couple loses payment eligibility for the year for which no application was made. Failure to apply in one year does not extend eligibility beyond "the year of the adoption and up to four succeeding years."

The Department must approve or deny payment within 30 days of receipt of the application. Checks must be issued within 30 days of approval of the application.

#### 6-002.16D RIGHT TO APPEAL

If the request for payment is denied, the adoptive parent or couple has the right to appeal. The appeal must be in accordance with the Administrative Procedure Act. A statement of that right and information about the appeal process will be included with any denial.

#### 6-003 SUBSIDIZED ADOPTION

The Department subsidized adoption program provides or continues financial assistance for an eligible child age 18 or under after an adoption is finalized. This program ensures that financial barriers or costs associated with a child's special needs do not prevent adoption. The subsidy is to meet the child's needs by helping the parents meet their responsibilities.

Families adopting with subsidy will meet the same criteria established for any other adoptive family.

6-003.01

LEGAL BASIS

Subsidized adoption payments may be made:

- Using state funds as provided by Neb. Rev. Stat. §§ 43-117 and 43-118; or
- Through Title IV-E of the Social Security Act, Federal Payments for Foster Care and Adoption Assistance. (This requires a state match.)

6-003.02

ESTABLISHING ELIGIBILITY

6-003.02A

CRITERIA FOR SUBSIDY

A subsidized adoption will be considered based on:

1. The child's eligibility,
2. Efforts to place without subsidy,
3. The family's needs for subsidy.

1. Child's Eligibility

Eligibility for reimbursement is determined by the needs of the child, not the income and resources of the parent(s). In order for the adoptive parent(s) to receive reimbursement, the child must meet the following special needs criteria:

- a. The child cannot or should not be returned to the legal biological parent(s) and one of the following criteria:
- b. Except where it would be against the best interests of the child, a reasonable but unsuccessful effort has been made to place the child without providing adoption assistance;
- c. The child is considered to be a child with special needs and cannot be placed without assistance based on the following:
  - (1) Age (if age is the only special need, children age seven or younger generally are not considered eligible);
  - (2) Membership in a sibling group of three or more to be placed together;
  - (3) Behavioral, emotional, physical or mental disability; and
  - (4) Membership in a minority race (race by itself is not sufficient to make a child eligible for subsidy).

Eligibility for State Subsidy

A child eligible for state subsidy must:

- a. Meet the criteria above and be a ward of the Department at the time the adoption petition is filed; or
- b. Be a child for whom the person adopting has a valid state subsidized guardianship agreement with the Department at the time of finalization of the adoption.

### Eligibility for Federal Subsidy

A child who is eligible for federal subsidy must meet the criteria above and:

- a. Be a ward of the Department at the time the adoption petition is filed; and
- b. Be eligible for IV-E foster care or SSI at the time the adoption petition is filed.

### 2. Efforts to Place Without Subsidy

Federal and State law requires that efforts to place without subsidy be made before a child can be adopted with subsidy. In order to meet this requirement if the Department has done any of the following, the requirement is met:

- a. Register the child on an established adoption exchange for at least three months.
- b. Feature the child in the media to recruit a family.
- c. Determine that the potential family is best able to meet the child's needs after consideration of other families.
- d. Determine that the potential family is the only one to consider because the child attached to the foster family and it would not be in the child's best interest to move her/him to another family that might be able to adopt without subsidy).

### 3. Family's Needs

If the child is eligible, the worker will discuss the family's need for subsidy with the family.

#### 6-003.02B

#### NEED FOR SUBSIDY

A determination of the child's present and anticipated future needs and the family's ability to meet those needs without assistance, will be made after considering the following:

- Family's financial circumstances (The family is expected to make budgetary adjustments to absorb as much of the child's cost as possible without significantly altering their standard of living, as they would if a child was born to the family);
- Other programs, benefits or resources available to the family to meet the child's needs; and
- Adequacy of the family's insurance to cover medical needs.

#### 6-003.02C

#### TYPES OF SUBSIDY AND COVERAGE

There are three types of subsidy:

1. Federal subsidy,
2. State subsidy,
3. Federal subsidy with a state supplement.

A federal subsidy, if available, will be the first choice of the Department. Specifics and coverage for each are described below. The process for applying for and receiving subsidy is described in the Adoption Guidebook.

6-003.02C1

FEDERAL SUBSIDY

All federal subsidies will provide full Medicaid coverage, which includes Early and Periodic Screening, Diagnosis and Treatment (EPSDT), within the resident state's guidelines, regulations and rates.

Federal subsidy may also include a monthly payment to adoptive parent to assist in meeting the child's day to day needs. It is not intended to finance long-term plans, such as, college. The amount must be less than the payment would be if the child had remained in a foster home through the Department. Other maintenance payments such as Social Security benefits, SSI, and Veteran's Benefits will be deducted from the agreed payment amount.

6-003.02C2

STATE SUBSIDY

This assistance may include one or more of the following:

1. Maintenance
2. Medicaid and Payment for Pre-existing Medical Conditions
3. Special Services

Maintenance

1. A monthly payment to adoptive parent to help in meeting the child's day-to-day needs. It is not intended to finance long-term plans, such as college. The amount must be less than the payment would be if the child had remained in foster care through the Department. Other maintenance payments such as Social Security benefits, SSI and Veteran's Benefits and ADC will be deducted from the subsidized adoption payment.
2. Medicaid and Payment for Pre-Existing Medical Conditions: The child may receive Medicaid if s/he:
  - a. Has a documented pre-existing medical need that is a barrier to adoption; and
  - b. Was receiving or was eligible to receive Medicaid before the adoption agreement was signed.

Payment is made to providers for medical or mental health care or treatment related to pre-existing medical or mental health needs that are documented and included on the subsidy agreement before the decree. This care may include psychiatric, psychological and mental health services, inpatient hospitalization, medications and prosthesis care needed to teach basic life skills, sustain life, or maintain a physical or medical. It does not include vocational training.

Payment for care for a pre-existing medical condition will be paid from non-Medicaid funds only if the care is not covered under the Medicaid program or no Medicaid provider is available in the community.

The care or treatment must be medically necessary and provided:

- a. By a medical practitioner or qualified mental health professional or prescribed by a physician; and
  - b. In the least intrusive, most family-like setting appropriate to meet the child's needs, as determined by the Department.
3. Special Services: Payments made for a specific service or item related to the child's needs and for a specified time period. They can be one-time only in nature. They may be covered only if other resources or programs are not able to provide them, and if the special service was specified on the subsidy agreement before the decree. These services may include, but are not limited to:
- a. Legal fees for the adoption (may include services of an attorney to terminate parental rights, if this is occurring as a part of the adoption proceeding). The maximum amount will be specified on the subsidy agreement.
  - b. Costs of integrating the child into the adoptive family, including furniture for siblings placed together, especially designed furniture because of a child's disability and training for adoptive parents in parenting a special needs child. The maximum amount to be paid will be specified on the subsidy agreement.
  - c. Expenses related to modifying a home to accommodate a special needs child, such as a ramp or widening of doors. The maximum to be paid will be specified on the subsidy agreement.
  - d. Expenses for transportation, lodging and meals for the child and one parent for the child to receive medical care or treatment for a pre-existing condition which was documented before finalization. The medical care or treatment does not need to be included for coverage. Amounts paid will be no more than those used for Department wards in foster care. (See Out-of-Home Placement Guidebook.)

#### 6-003.02C3

#### FEDERAL SUBSIDY WITH STATE SUPPLEMENT

When a child receives a federal subsidy but has needs that cannot be met through federal subsidy, pre-existing medical or special service components may be provided from state subsidy if the component was specified on the original subsidy agreement.

#### 6-003.02D

#### APPROVAL

Before the date of the adoption finalization, the application and agreement for subsidy, specifying type, amount, purpose and duration of subsidy must be completed and approved by designated staff person in charge of subsidized adoption. Any pre-existing medical condition to be covered must be specified on the initial agreement. Conditions cannot be added after finalization but can be changed if the original diagnosis was incorrect. (See Changes Section in this Chapter.)



6-003.03 POST-FINALIZATION SUBSIDY COVERAGE

Following the finalization of the adoption, the family has the following responsibilities:

- Meet the child's needs to the greatest extent possible without subsidy; and
- Explore and use other resources or funding sources such as private insurance coverage or service through the education system before requesting that a provider submit a bill for subsidy payment.

6-003.03A PAYMENT FOR CARE FOR PRE-EXISTING MEDICAL OR  
PSYCHIATRIC CONDITIONS

Payment will be made directly to the provider at the Nebraska Medicaid rate for medical services within applicable Medicaid guidelines.

If a child has a federal subsidy with a state supplement, payment for pre-existing medical services will be made only if the care is not covered under the Medicaid program or no Medicaid provider is available in the community. If a Medicaid provider is available but a family chooses not to use her/him, payment will not be made under state subsidy.

6-003.03B RESIDENTIAL OR ACUTE PSYCHIATRIC CARE

There are special considerations for children requiring residential or acute psychiatric care.

If the facility and service are covered by Nebraska Medicaid, the care will be covered only by Medicaid, using Medicaid procedures. If the facility or service is not covered by Nebraska Medicaid, the following requirements apply.

Medicaid payment for treatment in an inpatient acute setting must be prior authorized by the Peer Review Organization (PRO) if the provider is enrolled in Nebraska Medicaid. If the provider is not Medicaid eligible, then a local team including adoption staff and Central Office must review the situation for possible payment before the inpatient placement. This team will determine whether to authorize the service and review the stay.

To be covered under subsidy, inpatient or residential psychiatric care must be:

1. Provided in a facility licensed or approved by the appropriate agency for therapeutic, psychiatric care; and
2. Psychiatric or mental health or substance abuse treatment related to or resulting from a covered pre-existing condition.

This care does not include care provided by foster homes, licensed group homes or non-Medicaid, licensed child caring agencies.

Residential psychiatric care can be provided under subsidy for up to 18 months only. A local team including adoption staff and Central Office will review and approve the continued stay. (See Adoption Guidebook.)

6-003.03C            PAYMENT FOR INPATIENT ACUTE PSYCHIATRIC CARE

Payment for residential psychiatric treatment will be approved only if:

- Recommended by a psychiatrist or Ph.D, and,
- Approval for payment is given through the process used for Medicaid eligible child prior to the child's admission to the hospital or program;
- Approval for placement into a facility that is not a Medicaid provider will be given through a local team including adoption staff and Central Office before the placement;
- The primary diagnosis requiring treatment is related to or results from a pre-existing condition covered on the subsidy agreement;
- It is anticipated to result in progress which will enable the child to return to the family within 18 months;
- Less restrictive or acute care alternatives or treatments are not appropriate or available, or have refused to accept the child;
- The child cannot obtain appropriate care in her/his home or community;
- The child's family will continue to be involved with the child in planning for and making return home possible;
- This type of placement is in the child's best interests;
- Resources, benefits or programs not requiring subsidized adoption coverage are not available to cover the care; and  
(This includes the use of private insurance and reasonable use of private/family resources. See Adoption Guidebook for Approval/Denial Process.)

6-003.03D            REVIEW THE APPROVAL

While the child is in psychiatric residential or inpatient acute treatment, the worker, supervisor, and adoption staff in the District will review progress reports from the facility every three months for residential treatment center placements and weekly for acute inpatient treatment. Consultation with medical services staff is recommended. The team will review:

- Progress toward the treatment goal;
- Continuing need for treatment at this level of care;
- Prognosis and estimated length of treatment; and
- Involvement of the family in treatment and planning for the return home.

The decision regarding continuation of payment for treatment or hospitalization will be sent in writing to the family. If payment will terminate, the notice will include the date on which payment will stop. A minimum of 30 days notice is required.

The Peer Review Organization (PRO) will review the treatment for medical necessity on a regular basis for children in Medicaid fee for service in Medicaid enrolled facilities. If the PRO determines that the child does not need this level of care, they will deny continued stay and notify the adoption staff.

6-003.03E

PAYMENT TERMINATION

The Department will no longer provide payment for psychiatric residential or inpatient treatment if the Department determines that:

- Reasonable progress is not occurring and it is determined that treatment at the facility is no longer appropriate or as determined by the PRO;
- Treatment is no longer needed;
- The plan is not to return the child home;
- The family is no longer involved with the child or participating in treatment; or
- Reports providing the above information are not provided to the Department.

6-003.03F

GENERAL POST FINALIZATION SUBSIDY INFORMATION

6-003.03F1

RESIDENCY

A child's eligibility for subsidy is not affected by the state of residence of the adoptive parent. Specified coverage is provided regardless of the state of residence.

Medicaid coverage for children on the federal subsidy is provided by the state of residence, within that state's regulations and at that state's rate. Medicaid coverage for children on state subsidy who are living out of state continues to be provided by Nebraska. (See Adoption Guidebook for procedural information.)

6-003.03F2

REVIEW

Agreements must be reviewed every 12 months. A revised agreement may be done upon the request of the family, upon the Department's receipt of information regarding a change in family circumstances, or when a change in law or regulation indicates the need for a revision.

The review process is an evaluation of continued need for subsidy or for a change in the subsidy agreement. The parent will certify that:

1. The child continues to be a legal dependent of the parent; and
2. The need for specific coverage continues.

The process may result in renegotiation of the maintenance amount, deletion of time-limited coverages or pre-existing medical coverage, other changes in the agreement or termination of the subsidy agreement.

6-003.03F3

CHANGES

The parents will inform the Department of changes in the child's or family's circumstances such as change in address, change in child's living arrangement, change in the child's needs. A change in coverage under the subsidy is possible as a result.

A parent may request a change in medical coverage because of an incorrect medical diagnosis on the initial subsidy application. The parent will submit a report no more than six months old from a qualified medical practitioner or mental health professional stating:

1. The new diagnosis and substantiating evidence; and
2. That the former diagnosis was inaccurate and, if possible, why that diagnosis occurred for example, the child was too young before the decree to diagnose fully.

The family will be notified in writing of the decision. If approval was given, the family will complete a new subsidy agreement.

6-003.03F4

REINSTATEMENT OF SUBSIDY

In some circumstances, it is possible to reopen an original subsidy after the subsidized adoption case has been closed. The adoption specialist will review each request on an individual basis. She/he will make a final determination based on the original intent of the subsidy. Reinstatement is not possible if the parents are no longer the legal parents of the child.

6-003.03F5

TRANSFER OF SUBSIDY

It is not possible to transfer a subsidy agreement to a new adoptive parent or guardian, unless the person is a step parent who has adopted the child while married to an original adoptive parent.

6-003.03F6

RIGHT TO APPEAL

The adoptive family has the right to a fair hearing if the Department:

- Denies the application for subsidy,
- Reduces or terminates the subsidy agreement, or
- Refuses to pay for psychiatric residential or inpatient psychiatric treatment if psychiatric care is covered in the agreement.

No change in coverage will occur while the appeal is pending. (See Adoption Guidebook, Section XXIII.)

6-003.03F7

DELETIONS OR TERMINATIONS IN SUBSIDY

A subsidy can be terminated, a service deleted, or a maintenance payment decreased because of the following factors:

1. Terms of the agreement have terminated.
2. The Department determines the parents are not legally responsible for the support of the child or if the child is not receiving any support from the parents.
3. The child is beyond the age of eligibility.
  - a. A state subsidy is terminated on the child's 19th birthday.
  - b. A federal subsidy is terminated:
    - (1) On the child's 19th birthday if the child is disabled, as documented by SSI determination or determination of the Department's Medical Review Team. A determination made after finalization can be submitted by the worker for the purpose of continuation between the child's 18th and 19th birthdays; or
    - (2) On the child's 18th birthday if the child is not determined disabled by SSI determination or determination of the Department's Medical Review Team. In this case, if the need for subsidy continues between the child's 18th and 19th birthdays, the child can be transferred to the state maintenance program. If the child was eligible for Medicaid under state subsidy, s/he will continue to receive Medicaid under federal subsidy.
4. The parent(s) fails or refuses to be legally responsible for the support of the child, or to use the maintenance payment to meet the child's needs.
5. The child is no longer residing with the parents(s). If the child resides outside of the parent(s)' home, s/he must -
  - a. Be attending college or vocational training; or
  - b. Have been placed out-of-home for reasons other than school, and the family is cooperating in a plan for the child's return home. In this case, the worker shall document with the family what portion of the maintenance is being used for the child's needs (for example, clothing or transportation to maintain parent/child contact), and decrease or stop the payment accordingly.
6. The parent(s) request termination of the subsidy.
7. A change in regulations or law makes the child no longer eligible for a subsidy.
8. The parent(s) refuses to cooperate in the process of reviewing the agreement.
9. The child no longer needs the medical care, special services or respite or child care payment that were specified in the subsidy agreement; or
10. The child dies.

## 6-003.03G REIMBURSEMENT OF NONRECURRING ADOPTION EXPENSES

Nonrecurring adoption expenses may be paid one time only as a reimbursement to adoptive parents. The adopted child must meet the definition of a child with special needs. This nonrecurring adoption expense is available to both wards and children adopted privately and through private agencies (non-wards). The appropriate forms will be signed by the adoptive parent and the Department before finalization of the adoption. The maximum reimbursement for each child is \$1,500.00.

### 6-003.03G1 CONDITIONS NECESSARY TO QUALIFY

#### A. Child's Eligibility

Eligibility for reimbursement is determined by the needs of the child, not the income and resources of the parent(s). In order for the adoptive parent(s) to receive reimbursement, the adoption must meet the following special needs criteria:

1. The child cannot or should not be returned to the legal or biological parent(s), AND one of the following must be met:
2. Except where it would be against the best interests of the child, a reasonable, but unsuccessful effort has been made to place the child without providing adoption assistance;
3. The child is considered to be a child with special needs and cannot be placed without assistance, based on the following:
  - a. Age (if age is the only special need, children age seven or younger generally are not considered eligible);
  - b. Membership in a sibling group of three or more to be placed together;
  - c. Behavioral, emotional, physical or mental disability; or
  - d. Membership in a minority race (race by itself is not sufficient to make a child eligible for subsidy).
4. The adoption must not violate Nebraska State law.

#### B. Other Considerations

In addition to the child's eligibility requirements, the following requirements apply:

1. Any child being adopted may qualify for nonrecurring subsidy if the child has a special need according to conditions necessary for eligibility for subsidy. This includes private adoptions, agency adoptions, Department adoptions and intercountry adoptions. Adoption by a step-parent is not eligible when there is a biological parent in the home.
2. Each child in a sibling group is to be treated as an individual. The \$1,500.00 maximum is available for each child that qualifies.

3. If a child who is eligible for subsidy is placed across a state line, the originating state is responsible for nonrecurring expense reimbursement if that state has signed an agreement with adoptive parents for ongoing subsidy. If there is no agreement for ongoing subsidy, the state in which the child is placed is responsible for the reimbursement of nonrecurring subsidy.  
Note: If required by statute, there must be an Interstate Compact on the Placement of Children (ICPC) in place between the two states in order for eligibility to exist.
4. A child does not have to be Title IV-E or SSI-eligible in order to qualify for a nonrecurring subsidy.

#### 6-003.03G2

#### REIMBURSABLE EXPENSES

Reimbursement may be made for the following expenses:

1. Reasonable and necessary adoption fees;
2. Court costs;
3. Attorney's fees;
4. Fee for adoption home study; and
5. Charges for agency supervision before finalization.

Note: Fees and charges listed in number 4 and 5 are reimbursable only if the adoptive family is billed by the agency and ultimately liable for payment. A donation to the agency is not reimbursable.

6. Charge for health and psychological examination of adoptive parents and child;
7. Charge for agency supervision before finalization; and
8. Reasonable cost of transportation, lodging, and food for the child and adoptive parent(s) when necessary to complete the placement or adoption process.

#### 6-003.03G3

#### NON-REIMBURSABLE EXPENSES

Reimbursement is not made for the following expenses:

1. Expenses that were reimbursed by another source;
2. Agency fees which were not billed but were paid by a free will offering or donation;
3. The cost of counseling for the adoptive family;
4. The one-time cost of remodeling the adoptive parents' home to accommodate the child; and
5. The expense of ongoing medical coverage.

The adoptive parent(s) will complete the necessary paperwork and submit it to the Department. All bills or requests for reimbursement must be submitted within two years of the adoption finalization date. The agreement is considered completed after payment is made. See Adoption Guidebook for forms and process.

6-003.04      ADOPTION SUBSIDIES FOR WARDS OF PRIVATE NON-PROFIT AGENCIES

The Department may provide financial assistance for a ward of a private non-profit agency after the adoption of the child is finalized.

6-003.04A                      PRE-FINALIZATION INFORMATION

6-003.04A1                      LEGAL BASIS

Title IV-E of the Social Security Act, "Federal Payments for Foster Care and Adoption Assistance," allows the payment of adoption subsidies for wards of private agencies.

6-003.04A2      CONDITIONS NECESSARY FOR ELIGIBILITY FOR SUBSIDY

The following conditions are necessary for eligibility for subsidy:

A.    Child's Eligibility

To be eligible for adoption subsidy, a child must meet the following criteria:

The child:

- a.    Cannot be adopted without subsidy (See "Efforts To Place Without Subsidy");
- b.    Cannot or should not be returned to the home of the legal or biological parent(s);
- c.    Is age 18 or younger;
- d.    At the time the adoption petition is filed is a ward of a private non-profit agency that is licensed in Nebraska to place children for the purpose of adoption;
- e.    Is eligible for Title IV-E adoption assistance under any of the following circumstances:
  1.    The child was receiving an ADC grant or was eligible to receive an ADC grant at the time the adoption petition was filed;
  2.    The child meets the eligibility requirements for the SSI program before finalization of the adoption; or
  3.    The child is ADC eligible and is placed in foster care following a court determination that continuation in the home would be contrary to the welfare of the child. If a child who is ADC eligible is placed through a voluntary placement agreement or a relinquishment without court jurisdiction there must be a judicial determination (within six months of removal from the home of a relative) that continuation in the home would be contrary to the welfare of the child.

Note:      A determination of reasonable efforts is not required. If a child is eligible for ADC or SSI, a court order is not necessary.



There must be documentation of at least one of the following special needs:

- a. Age (if age is the only special need, children age seven or younger generally are not considered eligible);
- b. Membership in a sibling group of three or more to be placed together;
- c. Strong attachment to the foster/adoptive parent(s) so that breaking the attachment would be harmful to the child; or
- d. Behavioral, emotional, physical or mental disability.

**B. Efforts to Place Without Subsidy**

Federal law requires that efforts to place without subsidy be made before a child may be adopted with subsidy. The private agency will ensure that this occurs and document the efforts taken. (See Subsidized Adoption, 390 NAC 6-003.02A, I, Efforts to Place Without Subsidy.)

**C. Family's Need for Subsidy**

If the child is eligible and it appears that a subsidy will be needed, the private agency worker shall assess the need for subsidy and negotiate the type and amount with the family.

The family must meet as much of the expense as possible without subsidy and is responsible for exploring and using other resources which reasonable can be considered available and appropriate before using subsidy coverage. This includes private insurance coverage and care or services available through the education system.

6-003.04A3

**ASSISTANCE PROVIDED BY SUBSIDY**

Federal adoption assistance or Title IV-E subsidy is funded by federal funds with state match. All federal subsidies must include:

1. Medicaid coverage (that is, the child is eligible for Medicaid within the resident state's guidelines, regulations and rates); and
2. Title XX services for which the family is eligible.

Federal subsidy may also include a monthly payment to adoptive parents to assist in meeting the child's day-to-day needs. It is not intended to finance long-term plans, such as college. The amount will be less than the private agency would expend for the child if the child were their ward.

For regulations on nonrecurring subsidies, see 390 NAC 4-002, Adoption.

6-003.04A4

NEED FOR SUBSIDY

Information regarding the need for subsidy is found in 390 NAC 6-003.02B, Adoption, Need for Subsidy.

6-003.05

GENERAL SUBSIDY INFORMATION

6-003.05A

RESIDENCE

A child's eligibility for subsidy is not affected by the state of residence of the adoptive parent(s). Specified coverage is provided regardless of the state of residence. Nebraska will continue to pay the maintenance subsidy if the child moves out of state; however, Medicaid is no longer provided by Nebraska. The state of residence must provide Medicaid within that state's regulations and at the state's rate.

Title XX services are provided by the state of residence based on the family's eligibility. If that state does not provide the requested services, the family may submit a request to the Department to cover the services. These requests will be considered case by case.

6-003.05B

REVIEW

Subsidy agreements must be reviewed every 12 months for subsidy payments and medical assistance to continue. Note: IV-E eligibility does not need to be redetermined.

A review may be done upon the request of the family or receipt by the Department or the private agency of information regarding a change in family circumstances.

The review process is intended to be an evaluation of the continued need for subsidy agreement. The parent(s) must certify that:

1. The child continues to be a legal dependent of the parent; and
2. The need for specific coverage continues.

The process may result in renegotiation of the maintenance amount (increase or decrease), deletion of time-limited coverages or other changes in the agreement or termination of the subsidy agreement.

6-003.05C

CHANGES

The parents will inform the private agency of changes in the child's or family's circumstances. The worker from the private agency will coordinate the changes with the family and the Department. (See Adoption Guidebook, Private Agencies)

6-003.05D

FAMILY RESPONSIBILITIES

The family is responsible for supplying needed documentation to continue the coverage and for notifying the private agency worker of changes in the family's or child's circumstances which would affect the subsidy.

The family is expected to determine their ability to cover medical costs from their private resources before requesting that a provider submit a bill for subsidy coverage.

If the family no longer needs the amount of maintenance they have been receiving, the private agency worker will make all reasonable efforts to obtain the family's agreement to reduce the amount of payment.

If a Medicaid provider is available but a family chooses not to use him/her, payment will not be made under state subsidy.

6-003.05E

REINSTATEMENT AND TRANSFER

The regulation for private agencies for reinstatement or transfer of a subsidy are the same as for the Department. See 390 NAC 6-003.03F4 and 6-003.03F5 for Subsidized Adoption for those regulations.

6-003.05F

RIGHT TO APPEAL

The adoptive family has the right to appeal to the Director of the Department for a hearing on any action or inaction regarding the amount of subsidy and the eligibility for medical assistance or the Department's failure to act within reasonable promptness. The appeal must be filed in writing within 90 days of the action or inaction. No change in coverage will occur while the appeal is pending.

6-003.05G

ROLE OF PRIVATE AGENCY

The private agency will, through a worker, determine whether a child is eligible for subsidy, negotiate the amount and complete the necessary forms and submit them to the Department. The private agency worker will communicate with the family and Department throughout the process. After the finalization of the adoption, the private agency will do the paperwork for the annual review of the agreement and any time a change is made in the agreement. The Department will process the paperwork necessary for the initial subsidy and subsequent changes and renewals. (See Adoption Guidebook for forms and process).

6-003.05H DELETIONS OR TERMINATIONS IN SUBSIDY

The regulations for deletion or termination of the subsidy are the same for private agency wards and Department wards except the private agency wards are not eligible for a state subsidy between ages 18 and 19 as are Department wards. See 390 NAC 6-003.03F7, Deletions or Terminations in Subsidy for the regulations.

6-003.05I RETENTION OF RECORDS

Closed records are retained by the Department for four years.

6-004 **LEGAL GUARDIANSHIP**

When all efforts to reunify the child with his/her family have been exhausted and have been unsuccessful, and when there is no advantage to the child in pursuing termination of parental rights, legal guardianship may be appropriate to consider as a permanency plan for a child.

The Department will support a legal guardianship using the following as guidelines:

1. The child has a relationship with a prospective guardian and has lived successfully for a minimum of six months in the home of the guardian, or  
  
The worker has determined that the child will develop a relationship with a relative or foster parent who is committed to the guardianship plan.
2. The child cannot return home despite reasonable opportunities provided to the parents to correct the family conditions leading to the child's placement.
3. It is unreasonable to pursue adoption because:
  - a. Efforts to secure a voluntary relinquishment of parental rights and termination of parental rights by the court have been unsuccessful;
  - b. It has been determined that adoption is not in the child's best interest; or
  - c. Parental rights have been terminated but exhaustive efforts have not been able to secure an adoptive placement.
4. The prospective guardian and the child can function effectively without Department supervision.
5. The guardian is able and willing to support the child financially, or satisfactory financial arrangements can be made. If a guardian will need ongoing financial assistance to care for a child, eligibility for a guardianship subsidy will be pursued by the worker.
6. The child is age 12 or older, is part of a sibling group or is attached to the proposed guardian and adoption is not feasible.

6-004.01 SELECTION OF A GUARDIAN

The Department will use the following priorities in selecting a potential guardian:

1. Relative of the child.
2. Foster parent or another person with whom the child has an existing relationship.
3. New foster parent who is committed to the guardianship plan.

The child's wishes will be taken into consideration in any decision regarding a potential guardian.

6-004.02 CONSENT TO GUARDIANSHIP

The child, the prospective guardian, the child's guardian ad litem and the birth parents, if their parental rights are intact, will be consulted for consent to the guardianship. If parents object but the Department feels guardianship is in the child's and family's best interest, the worker should try to address the parent's objections or ask the court to address them at the guardianship hearing.

If a child under age 13 has objections to the guardianship, these will be explored with the child and the guardian ad litem; and a determination of the best interests of the child will be made. If a child age 14 or older objects to the guardianship, the guardianship will not be pursued.

The Department will send written notice of the plan for guardianship to these parties: the court, county attorney, guardian ad litem, parent's attorney and parents, if parental rights are intact.

To assure stability and continuity to the child, the worker will assist all parties involved to develop a written plan for visitation with any siblings, parents (if appropriate), and other relatives or important persons in the child's life.

6-004.03 FINALIZING GUARDIANSHIP

When guardianship is determined to be the plan of choice for a child, and the child has resided with the prospective guardian for a minimum of six months, the worker will advise the prospective guardian to retain legal counsel and file a petition in the county court of the county of his/her residence. The worker will appear in court to testify in support of the petition.

Upon approval of the court of the guardianship, the worker will close the case. Once the court order establishes guardianship, the Department no longer has any authority or responsibility for the child except as might exist due to a subsidized guardianship.

6-005

**SUBSIDIZED GUARDIANSHIP**

The subsidized guardianship program provides continued financial assistance to a child after a legal guardian has been appointed and Department's custody has been terminated. The program is designed to ensure that financial barriers or costs associated with a child's needs do not prevent the appointment of a guardian for a child as a preferred alternative to long-term foster care. The appointed guardian will use all available resources, benefits and programs, including but not limited to private insurance coverage, care or services available through the education system. A legally appointed guardian or conservator may apply for ADC for a child.

6-005.01

**LEGAL BASIS**

State funds may be used for subsidized guardianship payments on behalf of a child who was a ward of the Department, as provided in Nebraska Section 43-284.02, Reissue Revised Statutes of Nebraska, 1943.

6-005.02

**CHILD'S ELIGIBILITY**

A child is eligible for the subsidized guardianship program if she/he is a ward of the Department and meets the criteria for subsidized guardianship as follows:

1. Documented behavioral, emotional, physical or mental disability;
2. Membership in a sibling group of three or more to be placed together;
3. The child has a strong attachment to the potential guardian; or
4. The child is age 12 or older or, if under 12, is part of a sibling group or is attached to the proposed guardian and cannot be freed for adoption; and

A child's eligibility ends upon the child's 19th birthday, when the child becomes self-supporting or when the guardianship order is terminated.

6-005.03

**TYPES OF SUBSIDY**

Subsidized guardianship may include one or more of the following:

1. Maintenance: This includes monthly payments to the guardian to assist in meeting the child's day-to-day needs. The amount may not be greater than what would be paid for the child in foster care.
2. Medical/Surgical: This may include the following:
  - a. Payments to a medical practitioner for medical or surgical care. Payment will be made by Medicaid or at the Nebraska Medicaid rate.
  - b. Payments for residential psychiatric care. (See Residential Psychiatric Care in this Section.)

NOTE: Payment for care for a pre-existing medical condition will be paid from non-Medicaid funds only if the care is not covered under the Medicaid program or no provider is available in the community. If a Medicaid provider is available but a family chooses not to use him/her, payment will not be made under state subsidy.

3. Other Costs Incidental to the Care of the Child: This includes payment for a specific service or item related to special needs of the child, including, but not limited to -
  - a. Legal fees to obtain the guardianship, not to exceed the usual and customary rate for such services within the community; and
  - b. Expenses for transportation, lodging, and meals for the child and one adult to enable the child to receive medical care. Amounts paid will be no more than those paid for foster care.

#### 6-005.04 DETERMINING THE GUARDIAN'S NEED FOR SUBSIDY

Based on the child's current and future needs, one or more of the subsidy types may be used. A determination of these needs and the guardian's ability to meet these needs without assistance will be considered through the following:

1. Other programs and benefits to meet the child's needs.
2. Amount: If maintenance or other costs incidental to care of the child are being considered:
  - (a) The amount must be no more than payment would be if the child had remained in the Department's care; and
  - (b) Explore other maintenance payments or financial resources. The worker will explain that any maintenance payments will be deducted from the agreed-to maintenance under subsidy.
3. Duration: The anticipated time the child is expected to need assistance.

#### 6-005.05 AGREEMENT PRIOR TO GUARDIANSHIP ORDER

The agreement for subsidy will be completed and approved before the order establishing guardianship is issued. The agreement will include the type, amount and duration of the subsidy. Subsidy payments begin after the guardian has been appointed by the court. (See Guardianship Guidebook for process and forms.)

#### 6-005.06 RESIDENTIAL PSYCHIATRIC CARE

The purpose of residential or inpatient psychiatric care is to provide treatment when the child cannot benefit from less restrictive care.

6-005.06A

RESTRICTIONS

If the facility and service are covered by Nebraska Medicaid, the care will be covered only by Medicaid using Medicaid procedures. If the facility or service is not covered by Nebraska Medicaid, the following requirements apply:

To be covered under subsidized guardianship, inpatient or residential care must be:

1. Provided in a facility licensed or approved by the appropriate agency for therapeutic or psychiatric care; and
2. Psychiatric or mental health treatment.

Residential or inpatient psychiatric care may be provided under subsidized guardianship for a maximum of two years.

There is a separate process for coverage of out-of-state residential treatment.

(See Guardianship Guidebook for process.)

The Department will approve payment for residential or inpatient psychiatric care only if:

1. Care is anticipated to result in progress that will enable the child to return to the guardian or community;
2. Less restrictive or acute care alternatives or treatments are not appropriate or available, or have refused to accept the child;
3. The child cannot obtain appropriate care in the guardian's home or community;
4. The child's guardian will continue to remain involved with the child in planning for and making possible the return home;
5. This type of placement is in the child's best interests;
6. Other resources, including those of the child's parent(s), benefits, or programs are not available to cover the care; and
7. Approval for the placement is given by a local team including adoption staff and Central Office, before the residential placement.

6-005.06B

ADJUSTMENT IN MAINTENANCE

When the child is approved for residential psychiatric treatment, the worker and the guardian will determine what, if any, maintenance the guardian will provide for the child. The maintenance payment will be reduced as appropriate.



#### 6-005.06C REVIEW OF RESIDENTIAL OR INPATIENT PLACEMENT

While the child is in residential care or inpatient acute treatment , the worker will request progress reports from the facility every three months. These reports must include:

1. Progress toward treatment goal;
2. Continuing need for treatment;
3. Prognosis and estimated length of time treatment will be needed; and
4. The guardian's involvement in treatment or planning for return home.

If a child is Medicaid eligible, the Peer Review Organization (PRO) will be reviewing the treatment for medical necessity on a regular basis. If the PRO determines that the client does not need that level of care, they will deny continued stay and notify the worker.

#### 6-005.06D PAYMENT TERMINATION

The Department will no longer provide payment if:

- Reasonable progress is not occurring, and it is determined that treatment at that facility is no longer appropriate;
- Treatment is no longer needed;
- The plan is not to return the child to guardian's home;
- The guardian is no longer involved with the child or participating in treatment; or
- Reports providing the above information are not provided to the Department.

At least 30 days before payment termination, a written notice will be sent to the guardian giving the date on which payment will cease.

Note: If the guardian has ceased his/her involvement with the child, the worker will consider whether a child protective services referral is appropriate.

#### 6-005.07 ANNUAL REVIEW

The guardianship subsidy will be reviewed every 12 months to determine the level of continued need and continuing eligibility.

#### 6-005.08 RIGHT TO APPEAL

The guardian has the right to a fair hearing if the Department denies the application for subsidy or reduces or terminates the agreement.

6-005.09

TERMINATION OF GUARDIANSHIP PAYMENT

A subsidy can be terminated, a service deleted, or a maintenance payment decreased because of the following factors:

1. The terms of the agreement have terminated;
2. The Department determines the guardian is not legally responsible for the support of the child or if the child is not receiving any support from the parent;
3. The child's 19th birthday;
4. The guardian fails or refuses to be legally responsible for the support of the child or to use the maintenance payment to meet the child's needs;
5. The child is no longer residing with the guardian unless the child has been placed out of the home by the court or the Department and the guardian is cooperating in the child's return home (the payment may be decreased);
6. The guardian requests termination of the subsidy;
7. A change in regulations or law makes the child no longer eligible for a subsidy;
8. The guardian refuses to cooperate in the process of reviewing the agreement;
9. The child no longer needs the medical care, special services or respite or child care payment that were specified in the subsidy agreement; or
10. The child dies.

6-006

## INDEPENDENT LIVING

Independent living may be the permanency objective for a 16-year-old youth whose best interest is served by being self-sufficient. Services to prepare wards for independent living will be directed toward a goal or goals that will be included in a case plan and written service agreement. (See Other Permanency Objectives Guidebook, Independent Living Section II for goals, alternative services, written service agreement, case plan and process.) This policy section addresses services for wards with a permanency objective of independent living. See 390 NAC 5-000, Ongoing Services, for preparation for adulthood services.

### 6-006.01 ASSESSING INDEPENDENT LIVING AS A PERMANENCY GOAL

The worker will use all the following criteria in selecting independent living as a permanency objective:

- The ward is age 16 or older and in out-of-home care; and reunification, adoption, legal guardianship, or long-term foster care has been attempted but efforts have not been successful or it is not in the child's best interest or is no longer appropriate.
- The ward is capable of caring for himself/herself independently and providing for himself/herself financially, preferably through employment, or with supportive services or public financial assistance.
- The permanency objective can be reasonably achieved within 18 months of the selection.
- The ward is engaged full time in academic or vocational training or employment geared to self-sufficiency. A ward's lack of full-time participation in a program of education, training or employment will not disqualify him/her for this permanency objective.
- All services have been provided to the ward and while the ward is not demonstrating good potential for success, she/he is close to the age of majority.

If a ward has a disability which results in difficulty obtaining employment or prevents maximum independence or employment, this objective or the objective of self-sufficiency with supportive services should be considered. Both objectives provide an additional plan for the youth to become independent or semi-independent.

6-006.02

### PLANS FOR SELF-SUPPORT

When a ward is 16 years of age or older and not regularly attending an educational or training program or not working a minimum of 30 hours a week, the ward will have a plan for self-support signed by the ward. The worker and PALS specialist will develop the plan with the ward and others involved with her/him and ensure that the ward understands her/his responsibilities in implementing the plan. The written service agreement for wards preparing for independent living may meet this requirement if it specifically addresses the ward's responsibility in becoming financially self-supporting.

### 6-006.03 SPECIAL CONSIDERATIONS REGARDING WARDS WITH DISABILITIES

Prior to discharge, wards with mental illness, retardation, autism, developmental disability, or significant physical disability will be linked to specialized support services to make the transition to independent living. When the disability impairs the ward's ability to care for himself/herself, the goal of self-sufficiency will be considered.

The Department will help the ward access supportive services available in the Department or community.

### 6-006.04 ROLE OF CARE GIVERS WITH WARDS PREPARING FOR INDEPENDENT LIVING

The worker, PALS specialist, foster parent, residential staff or parent will determine the extent of the wards ability to make decisions. The goal will be to have the care giver serve as a mentor. The care giver, worker, PALS specialist, ward and parent, if appropriate, will work as a team to achieve the goals outlined in the ward's case plan and written service agreement.

Wards who choose to remain in their former foster home or facility after their 19th birthday will be provided with assistance in dealing with their change in status as a result of reaching the age of majority. This assistance will be provided before their 19th birthday. The worker will help the ward and the foster parent(s) understand the young adult's new role as an adult and the responsibilities that accompany this role.

### 6-006.05 YOUTH ELIGIBLE TO LIVE INDEPENDENTLY

In order to be placed into an independent living arrangement, a youth will:

1. Be age 16 or older,
2. Complete the Preparation for Adult Living (PALS) case plan, and
3. Demonstrate sufficient maturity and require minimal supervision in preparation for discharge.

**Note:** In carefully selected circumstances, the worker may consider an independent living arrangement for wards who are generally immature but who are highly motivated to live independently and who have been unsuccessful in a series of placements. These wards may have extensive histories of runaways and be unlikely to finish high school. An independent living arrangement should be considered only if all efforts at reunification, placement with relatives, or a stable out-of-home placement have failed.

Wards whose serious mental health or behavioral problems endanger themselves or others are generally not appropriate for independent living. The worker will carefully evaluate the ward's needs and consider the appropriateness of each available alternative. (See Other Permanency Objectives Guidebook, Independent Living Section II for process.)

#### 6-006.06 DECISION FOR INDEPENDENT LIVING ARRANGEMENT

The youth, parent(s), caregiver, PALS specialist and other members of the youth's support system will be involved in planning and transition to an independent living arrangement. (See Other Permanency Objectives Guidebook, Independent Living Section II for process.)

The worker will provide notification of the plan and date for an independent living arrangement seven days in advance of a move to:

- the parent(s) if parental rights are intact, and whereabouts are known;
- the legal guardian;
- the court and county attorney;
- the guardian ad litem; and
- the parent's attorney.

#### 6-006.07 WORKER EVALUATION OF PLACE OF RESIDENCE

If the ward will be sharing a residence with other youth or adults, the worker will check the Central Register for children and adults and obtain written permission from them to check the police records. This check is not required for wards residing in college dormitories.

If a Central Register or police records check indicates a history of child abuse or neglect or criminal behavior, the worker and PALS specialist will discuss the situation with the youth's parent and support system. A case consultation team may be used.

Before approving an independent living arrangement, the worker will make a home visit to assess the appropriateness of the residence, living arrangements, and person(s) residing in the home. The worker will document the assessment and approval of the arrangement in the case record.

#### 6-006.08 CONDITIONS DEFINED IN WRITING

The conditions for an independent living arrangement will be defined in writing, included in the written service agreement and signed by the ward and worker. These conditions will include the ward's responsibilities and any consequences of failure to comply with the conditions. A copy of this agreement will be sent to the worker responsible for payment.

If the ward fails to meet the defined conditions, the worker will reassess the youth's situation and develop a new plan.

#### 6-006.09 SERVICES AFTER YOUTH IS IN INDEPENDENT LIVING

Wards in an independent living arrangement will receive services during a six-month stabilization period.

These services may include but are not limited to:

- Financial management counseling,
- Advocacy in the workplace,
- Emotional support systems, and
- Further development of problem-solving skills.

The youth is responsible for maintaining the goals identified in the PALS case plan.

Support services and after-care services may be provided for a youth up to age 21 if she/he has been a state ward after age 16. A youth is not eligible for a financial payment through aftercare service. (See Other Permanency Objectives Guidebook, Independent Living Section II)

#### 6-006.10 TERMINATION OF AN INDEPENDENT LIVING ARRANGEMENT

Termination is appropriate when:

1. The ward decides no longer to participate in the program and the ward is residing in another alternative living arrangement, or
2. The ward has generally demonstrated unwillingness or inability to meet the requirements of the Department, of the program and terms of the agreement.

#### 6-006.11 MAINTENANCE PAYMENTS FOR WARDS IN INDEPENDENT LIVING ARRANGEMENTS

The placement worker and IMFC worker will determine available benefits and funding sources based on a budget for the youth's expenses. The youth's guardianship account will be used first if a deposit is required for rent or utilities. If such funds are not available, the youth can earn the deposit money or develop a plan to repay the money or do commensurate work. (See Other Permanency Objectives Guidebook, Independent Living, Section II, for budget form.)

If the ward is living in an apartment, payment may be made directly to the ward or when circumstances warrant, to the landlord with the remainder of the payment given to the ward. These arrangements will be specified in the independent living arrangement.

6-006.12 MAINTENANCE WHEN LIVING WITH A RELATIVE

If the ward resides with a relative as an independent living arrangement (relative is not acting as a parent figure), the relative has two options:

1. The maintenance payment will be sent to the ward who will be responsible for paying room and board to the relative, or
2. The relative may apply as relative payee through the Aid to Dependent Children Program. (This plan is recommended if the ward has not demonstrated her/his ability to manage her/his own money.)

The financial plan will be included in the ward's written service agreement, which all parties will have.

6-006.13 INCOME OF WORKING YOUTH

The income of working youth will be reported to the IMFC worker for consideration in the ward's budget.

6-006.14 MEDICAL CARE

Wards residing in independent living arrangements are eligible for Medicaid unless the ward's income exceeds Medicaid income or resource guidelines. If so, the placement worker and IMFC worker will determine the ward's responsibility for paying medical expenses.

6-006.15 TERMINATION OF SERVICES TO PREPARE WARDS FOR INDEPENDENT LIVING

Services will be terminated when:

- The Department's custody of the ward is terminated, the court has not ordered continued supervision or services, or there is no voluntary CPS or in-home services case on the family; or
- The ward has attained the goals outlined in his/her case plan and has received adequate preparation for independent living.

## CHAPTER 7-000

### OUT-OF-HOME PLACEMENT

Out-of-home placement is considered to be the most intrusive level of service provided to a family by the division of Protection and Safety. All families will have reasonable opportunities to assure the safety of their child within their home and community. When safety cannot be assured in the home or community, a determination may be made that an out-of-home placement is necessary if this is determined to be in the best interest of the child.

When a determination has been made that the child will be placed out of the home, the Department will consider the placement resources and place the child:

- in the least restrictive, most family-like setting;
- closest to the family, to meet the child's best interest and special needs; and
- in a setting that provides for continuity for the child in school, church and other community relationships whenever possible while also considering the safety of the community.

The use of Youth Rehabilitation and Treatment Centers is found in 390 NAC 7-004.04A.

#### 7-001

#### **ROLES AND RESPONSIBILITIES**

This section outlines the roles and responsibilities of the Department, staff, parents and temporary care givers.

##### 7-001.01

##### **DEPARTMENT ROLE**

The Department has three distinct roles when children are in out-of home placement. The roles are as a custodian, as a guardian, and for referrals for evaluations.

Role as Custodian for children in an abuse or neglect situations:

The Department assumes the role of a custodian in two situations:

1. Where a law enforcement pickup has occurred; or
2. The parent(s) or legal guardian(s) of a child signs a "Voluntary Placement Agreement".

For the duration of the law enforcement hold, the Department will secure and supervise a temporary placement and consent to any necessary emergency medical, psychological or psychiatric treatment for the child. The Department as custodian will not make decisions regarding the child's marriage, adoption or enlistment in the armed forces.



Role as Guardian:

The Department assumes the role of guardian when:

1. A court has given the care and custody of a child to the Department; or
2. The parents have signed a voluntary relinquishment to the Department.

For the duration of the court-ordered custody, the Department is authorized to make all decisions about placement, medical and psychological treatment and education. When the parental rights to the child are still intact, the Department as guardian may make decisions regarding the child's marriage or enlistment after consulting with the parents. If the parents cannot be located after a reasonable search, the Department will make those decisions based on the best interests of the child. When the parental rights to the child have been terminated or relinquished, the Department will make all the decisions regarding the child.

Role for Children Referred to HHS-OJS for Evaluation:

When a court places a child in temporary custody of HHS-OJS for evaluation, the worker has the authority to make decisions necessary to affect the completion of the evaluation.

(Refer to 390 NAC 11-000, Specific Issues For Children in the Custody of the Department for further information.)

7-001.02 STAFF ROLES AND RESPONSIBILITIES

7-001.02A PROTECTION AND SAFETY WORKER ROLE

The primary role of the Protection and Safety worker in the placement process is to locate and use the least intrusive placement possible that is in the best interest of the child. Because each child is different, placement decisions must be individualized. Consideration must be given to the total child and child's family, including any special needs of the child to be placed.

In considering out-of-home placement, the requirements of the Multiethnic Placement Act must be followed. Race, color, or national origin may not be the basis for:

1. Delaying or denying placement of a child for adoption or into foster care; or
2. Denying any person the opportunity to become an adoptive or foster parent.

Once a placement has been located, specific worker responsibilities are:

- Share information on an ongoing basis with the care provider regarding the child's behavior, history, specific needs, risks, case plan, etc.;
- When possible, prepare the child, family and care provider for placement;
- In child welfare cases only, notify all parties (parents, court, county attorney, guardian ad litem, parents' attorney(s), tribal authority, etc.) in writing seven days in ADVANCE of a change in placement. According to statute, when advance notice is not possible, notice must be sent to all parties within the next working day after the placement occurs;
- In juvenile offender cases, notify the court of transfers to a different level of placement in writing 15 days in advance of an anticipated placement change. See 390 NAC 8-001.12 for specific requirements.
- Create opportunities for family involvement and contact (this includes sibling contact);  
NOTE: If the child's parents live separately and each parent's rights are intact, contact and involvement will be established for both parents.
- Establish a written visitation plan for the child and family to ensure continued contact when appropriate; develop the plan with the family and foster parents for review and response;
- Initiate payment process for providers;
- Ensure a plan for permanence is developed;
- Provide coordinated services to child and family;
- Provide support services to care giver;
- Provide relevant information and notice of placement to service providers, that is, schools, medical providers and therapists;
- Document activities and decisions;
- Complete the necessary placement forms;
- Continually assess the child's need for placement and inform the parent(s) of the child's progress in out-of-home care;
- Take away the child's liberty, when appropriate, in Juvenile services cases; and
- Participate in administrative hearings in Juvenile services cases.

Further worker responsibilities are to use supervisory staff or teams to help in placement development, consultation, and technical assistance. Key consultation points are listed in 390 NAC 2-001.

#### 7-001.02B

#### SUPERVISOR ROLE

Supervisory staff will provide consultation and support to the worker during the placement decision-making process. The supervisory staff is responsible to assure that families are receiving consistent case management during out-of-home placement.

Specific supervisory staff tasks include but are not limited to:

- Assist in locating or developing a placement,
- Assist in locating or developing services to prevent the need for out-of-home placement,
- Team coordination and development and participation, and
- Conduct administrative hearings for children in the custody of HHS-OJS.

7-001.02C

ROLE OF TEAMS

Teams will be used to effectively and efficiently provide a means for consultation, technical expertise, support and problem-solving.

The Department will participate in the investigative and treatment teams formed in each county or area. The Department will participate to create a cooperative, complementary response to reports of child abuse and neglect and to juvenile offenders with law enforcement, and other agencies designed to protect children and the community.

7-001.03 PARENTAL RESPONSIBILITY FOR CHILD IN OUT-OF-HOME CARE

When a child is in out-of-home care the parent(s) will maintain the following responsibilities:

- Communicate and work cooperatively as a team member with the worker and service providers toward the goals of the case plan;
- Communicate and work cooperatively with the care giver toward the goals of the case plan;
- Maintain regular contact with the child and promote ongoing sibling contact as decided jointly with the worker;
- Retain financial responsibility, including insurance, and purchasing clothing and personal needs for the child to the extent possible based on resources and income; and
- Work toward the goal of permanence for the child based on the child's needs. Reunification may not always be in the best interest of the child.

In situations where there is disagreement with the Department's decision:

- In child welfare cases, the parent or child may address the issue to the court through their attorney; and
- In Juvenile services cases, the parent or child may file a grievance and then an appeal.

7-001.04

NON-CUSTODIAL PARENT'S ROLE

If a child who is a Department ward is placed in an out-of-home setting in situations other than law enforcement pick-up for temporary custody, the worker will make reasonable efforts to notify the non-custodial parent. The worker should consult with him/her regarding his/her ability and willingness to care for the child. The following issues should be considered:

- Placement with the non-custodial parent will not hinder reunification with the custodial parent,
- The child's preference,
- The child's attachment to the non-custodial parent,
- There is no history of abuse or neglect by the non-custodial parent, and
- The placement is not detrimental to the child.

7-001.05 ROLES AND RESPONSIBILITIES OF TEMPORARY CARE GIVER

- Communicate and work cooperatively as a team member with the worker, parents and service providers toward the goals of the case plan;
- Communicate and work cooperatively as a team member with the parents;
- Work toward the goal of permanence as outlined in the case plan;
- Regularly discuss with the worker the child's progress, needs and behaviors;
- Notify the worker of law violations by the child or law enforcement contact with the child;
- Notify the worker of emergencies including medical problems and runaway behavior;
- Arrange for routine and emergency medical care for the child and advise the worker. Use the medical provider covered by the parents' insurance, if applicable, or the provider identified by the worker;
- Secure specific care and treatment for the child such as medical, psychological or school evaluations, under the guidance of the worker as outlined in the case plan;
- Recognize respite care as a necessary support to provide quality care to the child;
- Cooperate with the development and implementation of the visitation plan;
- Advocate for the child's educational rights and help the school staff understand the child's emotional and educational needs;
- Arrange for or provide transportation for the child;
- To the workers, provide written documentation regarding the child's progress and contacts with parents and other family members; and
- Attend pre-service and ongoing training if licensure is involved.

7-001.06 ASSESSMENTS OF FAMILIES INTERESTED IN BECOMING FOSTER OR ADOPTIVE PARENTS

The Department will assess all persons who are interested in becoming foster or adoptive parents. This process includes:

- \* home visits;
- \* interviews with all the applicants, their children and other persons living in the home;
- \* a written home study, using the Department's format;
- \* a self-study completed by the applicants;
- \* references from three persons;
- \* Background checks with the Adult Protective Services Central Registry and the Central Register of Child Protection Cases;
- \* Criminal records check; and
- \* A medical summary for each family member.

In addition, persons caring for children from one or more families must be licensed as foster parents. An approval study is completed for relatives or persons known to the child before placement. If an approval study indicates placement is appropriate, children from one or more families who are related to the caregiver, may be placed without the care giver's being licensed to provide foster care. (See 7-004.02 for Approval of Unlicensed Homes (Non-Emergency Situations.) Families interested in becoming adoptive parents will have an adoptive home study. See 6-002.04 for adoptive home study policy.

The Department will conduct a home study when a family contacts the Department expressing interest in becoming a foster or adoptive parent. (See Out of Home Care Guidebook for the home study format and process.) The Department will not place a child in a home not known to the child before wardship before the home is licensed, has completed the home study process and has completed required pre-service training.

Applicants for providing foster or adoptive care must at least meet the following requirements in these areas:

- \* Age: The applicant must be at least 19 years of age. Generally, at least one parent should be within the normal child-bearing age for the child to be placed.
- \* Health: An applicant must be in such physical and mental condition that it is reasonable to expect him/her to be able to fulfill parenting responsibilities. If there appears to be a health condition which might affect parenting ability, a medical report may be requested. A negative report may be the basis for denial of an application at any point in the home study process.
- \* Religion, race and gender: The application of all persons will be considered regardless of race, gender, ethnic group or religion.
- \* Income: The applicant must be able to budget his/her financial resources in such a way that a child placed can be reasonably assured of minimum standards of nutrition, health, shelter, clothing and other essentials.
- \* Needs of the Children: Applicants must be willing to consider accepting children in the Department's custody or likely to enter the Department's custody.

The Department will consider all the information and take into consideration the needs of the children in the Department's custody to determine whether a family should become a foster or adoptive family. The home study will include the recommendation.

The foster or adoptive family will be given the opportunity to review the home study and attach written comments if they wish. Copies of the completed home study will not be provided to the family, the family's attorney or the guardian ad litem. Copies will be given to the court upon request.

7-001.07            MAINTAIN ADOPTIVE OR FOSTER FAMILY CASE RECORD

The Department will maintain a family case record for each adoptive or foster family. The record will include:

- A copy of the complete home study including:
  - The worker's written summary and recommendation;
  - A summary of the responses from each reference;
  - A summary of the family's medical information from DSS-913, "Medical Report"; and
  - Results of the criminal records, APS Central Registry, and Central Register\_checks.

The Self-Study Form DSS-913, "Medical Report" and Assessments on the Family, if applicable will be maintained in the foster or adoptive family's file.

## 7-001.08 COMPLAINT AND GRIEVANCE POLICY FOR FOSTER PARENTS

The worker and foster parents will strive to resolve differences together regarding actions taken related to the placement, care, or removal of children from a foster home. If the situation cannot be resolved, there are two categories of complaints: general complaints and grievances.

General complaints concern policies or practice. Grievances are disagreements about procedures or actions taken by the Department, related to the placement, care or removal of children from a foster home. Complaint and grievance procedures are limited to foster parents and do not apply to group or residential care. Foster parents will be given a copy of the grievance policy and procedures.

### 7-001.08A GENERAL COMPLAINTS

#### 7-001.08A1 COMPLAINTS CONCERNING POLICY

When the complaint is about the content of policy, a team consisting of representatives of workers and supervisory staff from more than one area will be formed (Policy and Practice Team). A central office representative may also serve on the team. The team will review the complaint along with the policy and consider the statewide implications of the policy and potential changes in policy. The team will make a recommendation for action to the statewide planning, coordinating and evaluation team. This team will make the final decision. Written complaints will be responded to in writing.

#### 7-001.08A2 COMPLAINTS CONCERNING PRACTICE

When the complaint regards specific practice or a casework decision, it must be first addressed to the worker and supervisor. See 390 NAC 2-007. A plan to resolve the complaint will be developed as necessary. The foster parent will be advised in writing of the general content of the plan or reasons for no action. If the foster parent does not agree with the decision of the team, the foster parent has recourse to contact the Director. The decision of the Director is final.

7-001.08A3

GRIEVANCES

Grievances are limited to the following areas:

1. The Department's decision not to approve a foster parent to adopt a child residing in the foster home.
2. Removal of a foster child for placement if the child has resided in the foster home for six months or longer. Situations that cannot be grieved:
  - a. There is a report of child abuse or neglect, and the allegations or findings indicate -
    - (1) Allegations of sexual abuse;
    - (2) Visible or apparent physical signs of abuse or neglect; or
    - (3) The abuse or neglect is or could be life threatening;
  - b. Removal is for the purpose of a direct adoptive placement;
  - c. Removal is to a less restrictive environment or, in cases in which reunification is the plan, to a placement closer to the home of the birth parent(s);
  - d. Removal is requested by birth parent(s) or child(ren), and the request is supported by the placement worker;
  - e. Removal is court-initiated;
  - f. The child is returning to the physical custody of the birth parent(s);
  - g. Removal results from a licensing action; and
  - h. Removal is to the Youth Rehabilitation and Treatment Center or detention center.
3. Failure of the agency to follow conditions of a contract, Nebraska statutes, or Department of Health and Human Services policy and regulations.
4. The decision not to use the Foster Care Payment Checklist or concerns about the accuracy of the list.

NOTE: The child will remain in the foster home while an appeal of the removal of a child is pending except as described above in Statement 2, a thru h.

A grievable issue will first be addressed by the worker and supervisor. If resolution is not reached, an informal short-term team made up of non-involved workers, supervisors and a foster parent representative will address the issue. This team is responsible for reviewing the information, meeting with the involved foster parent and staff, resolving and taking action on the issue, and notifying in writing the foster parent and staff of action taken and the reason for the action.

If the foster parent is not satisfied with the decision of the local team, the foster parent may forward a copy of his/her grievance and the report from the team to the director. The director will review all the information and make a decision. The decision of the director will be provided in writing to the foster parent(s), worker and supervisor. The Director's decision is final.

See Out-of-Home Placement Guidebook for Procedures on Complaints and Grievances.



#### 7-001.09 SUPPORT TO GROUP HOMES AND CHILD CARING AGENCIES

Support will be provided to group homes and child caring agencies in order to provide quality care for children. These supports include:

1. Payment for the care of the child according to the contract or if no contract based on the level of need according to the Foster Care Payment Determination.
2. Training as requested by the provider.
3. Accessibility to the case manager and other Department staff.
4. Timely licensing.
5. Membership on the team. Joint information sharing, problem-solving and planning among the parent, provider, worker, child and other team members.

#### 7-001.10 SUPPORT TO FOSTER PARENTS

Support will be provided to foster parents or relative foster parents in order to provide quality care for children. These supports include:

1. Respite care used on a regular basis, especially in cases where the child's needs are high or foster parents have several children. Respite can be provided by a family member of the foster parent or by a provider. Time the child spends with the biological parent will also provide a respite for the foster parent and child.
2. Payment for the care of the child is based on the child's needs and behaviors. This includes payment for supervision, child care, respite care, transportation, clothing and personal needs.
3. Counseling through a program such as the Foster Parent Assistance Program.
4. Foster parent insurance.
5. Support groups or a "buddy foster parent."
6. Training - preservice and ongoing training to address the needs of the foster parents.
7. Accessibility to the case manager and other Department staff.
8. Timely licensing or approval.
9. Membership on the team. Joint information on sharing, problem-solving and planning among the foster parent, parent, worker, child and other team members.
10. Family support provider or additional staff for exceptional needs children, based on the needs of the foster parent and child(ren).

Child care providers used for children who are wards must be licensed or approved by HHS. Central Register and law enforcement checks will be done on all respite providers. Relatives of the foster parents are eligible for reimbursement for respite care to the child in the foster home. Payment for respite may be to the foster parent or the provider, based on the foster parents' choice. Payment for child care will be made to a provider as billed, up to child care subsidy rates (except payment may be made based on enrollment if the provider charges other families on that basis). See 474 NAC 7-000 for child care subsidy policy and Case Management Guidebook for child care fee schedule.

7-002

### **OVERVIEW OF DECISION-MAKING**

The determination to use an out-of-home placement for a child who is a ward of the Department is made under the following conditions:

- The completed risk assessment and safety determination indicate that out-of-home placement is necessary to control the child's, community's and family's safety;
- A court order, ordering out-of-home placement is received; (Refer to 390 NAC 7-003.03, Court Ordered Placement)
- An emergency law enforcement hold; or
- The parents have signed a voluntary placement agreement.

See Restrictive Settings (7-004.04A) for use of Youth Rehabilitation and Treatment Centers.

7-002.01

#### **DECISION MAKER**

The determination to place a child out of the parent's home is made by the assigned worker in consultation with the supervisory staff. The worker who is responsible for coordinating service delivery to the parent(s) is the case manager. The family will be involved to the maximum extent possible. The case manager is responsible to make decisions within the support of the team.

7-003                                   **CONDITIONS WHEN PLACEMENT CAN OCCUR**

7-003.01                                   VOLUNTARY PLACEMENT

A voluntary placement is an option once in-home service efforts have been explored and placement is not expected to exceed six months. Voluntary placement cannot be used for juvenile or status offenders.

Voluntary placement should be considered when a parent has no other option for the care of his/her child and:

- requires short-term hospitalization; or
- has a short-term jail sentence; or
- needs short-term respite care while in-home services are being arranged.

Refer to Voluntary Placement Process in Out-of-Home Placement Guidebook for further guidelines, forms and forms instructions.

7-003.01A      **CONDITIONS FOR COMPLETING A VOLUNTARY PLACEMENT**

1. Before making a voluntary placement

The parent(s) will:

- Be fully advised and understand the process;
- Both agree to place the child unless:
  - a. one parent cannot be located; or
  - b. contacting a parent would be contrary to child's best interest;
- Agree to assume financial responsibility for cost of placement to the fullest extent possible;
- Agree to participate in specific case plan activities and services; and
- Sign the "Voluntary Placement Agreement" Form (custodial parent only).

2. After completing a Voluntary Placement Agreement

- The parent(s) and case manager will review the family's progress according to the time frames of the case plan.
- The parent(s) has the right to terminate the agreement at any time, and the child must be returned home.
- If at any time, a risk determination indicates the need for court intervention, a referral will be made to the county attorney for possible filing of a petition. (See 390 NAC 2-008).
- If the child does not return home within six months and the presenting situation still exists, a referral will be made to the county attorney for possible filing of a petition (See 390 NAC 8-001, Court and Legal Issues).

7-003.01B

NATIVE AMERICAN CHILDREN

Any voluntary placement of a Native American child is required by Neb. Rev. Stat. 43-1506(1) and the Indian Child Welfare Act (ICWA) to be executed in writing and recorded before a judge of a court of competent jurisdiction. The written consent must be accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully understood by the parent or Native American custodian.

7-003.02

EMERGENCY CUSTODY PLACEMENT (POLICE HOLD)

When a child is placed in emergency protective custody by the authority of a law enforcement officer, and the officer places the child into the temporary custody of the Department for placement and care, the Department has the responsibility to provide the child with:

- Temporary placement in the least restrictive environment consistent with her/his needs;
- Supervision of care; and
- Consent for necessary emergency medical, psychological or psychiatric treatment.

Emergency protective custody ends after 48 hours, and the child must return to the parent or legal guardian if a court order for continued Department custody is not issued by the time the 48 hours expire. The Department is responsible only for transportation while the child is in the custody of the Department.

Statutory Reference: Neb. Rev. Stat. 43-250(4).

The child is eligible for payment upon emergency custody. The payment process for emergency custody placement will be one of the following:

- Emergency shelter or foster care contract,
- Foster Care Payment Determination, or
- Group home contract rate. (See Out-of-Home Guidebook process and forms)

(See Out-of-Home Placement Guidebook for process and forms)

7-003.03

COURT-ORDERED PLACEMENT

The Department will follow orders issued by the court regarding placement of children. If the caseworker determines that the order for placement is inadequate, factual supporting information will be brought to the attention of the county attorney and guardian ad litem with a request to modify the court order for placement. A copy of this request will be sent to the Department legal staff. If either the guardian ad litem or county attorney does not seek to modify the court order within a reasonable time, the System legal staff will be contacted to pursue legal action. (Refer to 390 NAC 8-000, Court and Legal Issues, for time frames and further legal information.)

7-003.04

**MEDICAL CARE FOR WARDS**

The worker will gather information about the child's health from his/her parents. Children in out-of-home care, including children at YRTC's, will receive a health examination during the first 14 days of placement. Children committed to HHS-OJS for an evaluation will also receive a health examination. The purpose of the examination, will be to determine the physical condition, including growth and development status, of the child at the time of placement and whether the child has any contagious diseases that may affect placement. Information regarding the presence of any contagious or communicable disease will be shared with the physician and prospective home or facility before placement.

Children in out-of-home care will receive ongoing coordinated medical care under the direction and supervision of the worker.

The caregiver is responsible for:

- Insuring that the child receives age-appropriate immunizations;
- Informing the worker of all illnesses, accidents, injuries and other accidents requiring medical attention;
- Insuring that the child receives regular medical care and medical care based on the child's needs; and
- Updating the Child's Health Record.

To assure continuity in medical care, if a child has a primary care physician when entering care the Department will attempt to use this provider whenever possible.

Children in out-of-home care will receive an annual health exam. The caregiver will use the Health Check (EPSDT) program for the child's annual health check.

7-004

**TYPES OF PLACEMENT**

7-004.01A

**DETERMINATION OF PLACEMENT TYPE**

The least restrictive placement setting will always be considered first when selecting a placement. Placement selection is further based on the child's:

- needs,
- behaviors,
- risks,
- age,
- placement history, and
- permanency goal.

NOTE: For Native American Children see "Special Considerations for Native American Children" (7-004.07).

The Department will consider placement for non-medical reasons of a child based upon the following order:

- Non-custodial parent;
- Approved relative\*;
- Approved home, known to child\*;
- Licensed foster home;
- Approved home, not known to child\*;
- Agency-based foster care; and
- Group home or child-caring agency.

(See 7-004.04, Restrictive Settings for Access to Psychiatric Settings and YRTCs.)

Note: If an approval study indicates placement is appropriate, children from two or more families who are related to the caregiver can be placed without the caregiver's being licensed to provide foster care.

\*See "Approval of Unlicensed Home" and "Approval of Emergency Placements in Unlicensed Relative Homes".

Placement decisions are based upon the needs of the child, ability of the placement to meet the needs of the child, and the availability of placement resources.

#### 7- 004.01B PLACEMENT LEVELS FOR JUVENILE OFFENDERS

There are three levels of placement ("levels of treatment") for juvenile offenders identified by the Department:

- \* Home (least restrictive):  
child is placed in the home of a parent or legal guardian
- \* Out-Of-Home Placement in the Community:  
child may be placed by the Department with a relative home, foster family home, Agency Based Foster Care, Group home, emergency shelter center or home, residential treatment center, treatment group home, or in-patient treatment setting; or
- \* Self-contained staff-secure residential facility (most restrictive):  
Child is placed by the Department in a Youth Rehabilitation Treatment Center (YRTC) or similar setting identified by the Department.

Pursuant to Section 43-408(2), the committing court will order the initial level of placement ("level of treatment") when a juvenile offender is committed to the Department (Office of Juvenile Services), specifically one of three levels set out above. The Department will then designate a suitable placement based upon the level specified in the court order.

See 390 NAC 8-001.10 for court process.

7-004.02 APPROVAL OF UNLICENSED HOMES (NON-EMERGENCY SITUATIONS)

Placement with a relative is always the first consideration when out-of-home care is necessary. It is the expectation that all wards will be placed in licensed homes for foster care or adoption. This expectation includes relatives and persons known to the child. Children may be placed in the home of a relative or friend previously known to the child, if the home is approved or licensed.

In the case of any placement of a child into an unlicensed home of someone known to the child, an approval study and the "Request for Approved Status" form will be completed before the placement. The request form must be signed by the service area designee and the Protection and Safety Central Office designee. The child's best interest is the first and foremost concern in the approval process.

To assure a home can meet a child's needs and is appropriate for placement of the child, the following safety plan will be completed before a placement of a child into an approved home in a non-emergency:

- a. A visit to the home to assure adequate housing, including documentation of appropriate sleeping accommodations and that the child's safety is not at risk;
  - b. All adult household members will be met and their child care practices reviewed and documented;
  - c. Positive references will be secured (either orally or in writing), documented, and checked from at least three credible, non-relative sources who can provide reliable information as to the person's ability to provide care to the child; and
  - d. Background checks on each household member age 13 or older with the Central Register of Child Protection Cases and background checks on each household member age 18 or older with the Adult Protective Services Central Registry, the appropriate local law enforcement agency, the State Patrol Sexual Offenders Registry, and the State Patrol for a National Criminal History Check with the Identification Division of the Federal Bureau of Investigation.
1. A "Request for Approved Status" form must be signed by the service area Chief Executive Officer (CEO) and the Protection and Safety Central Office designee if a background check reveals that a household member has been identified as a perpetrator on the Central Register of Child Protection Cases or the APS Central Registry.
  2. A "Request for Approved Status" form must be signed by the service area CEO if a background check reveals that a household member has been convicted in the last five years for any of the following crimes:
    - (a) Burglary;
    - (b) Driving under the influence;
    - (c) Misdemeanor controlled substances offenses; or
    - (d) Misdemeanor contributing to the delinquency of a child.

3. A "Request for Approved Status" form must be completed and submitted for signature by the service area CEO and the Protection and Safety Central Office designee if a background check reveals a current charge, conviction, or pending indictment for any of the following crimes:
  - (a) Aggravated or armed robbery;
  - (b) Arson;
  - (c) Assault, first or second degree;
  - (d) Child abandonment;
  - (e) Child abuse;
  - (f) Child molestation or debauching a minor;
  - (g) Child neglect;
  - (h) Commercial sexual exploitation of a minor;
  - (i) Criminal non-support;
  - (j) Domestic violence;
  - (k) Exploitation of a minor involving drug offenses;
  - (l) Felony controlled substances offenses;
  - (m) Felony violation of custody;
  - (n) Incest;
  - (o) Kidnapping;
  - (p) Murder, first or second degree;
  - (q) Robbery;
  - (r) Sexual abuse of a minor;
  - (s) Sexual assault;
  - (t) Sexual exploitation of a minor, including child pornography; or
  - (u) Voluntary manslaughter.

NOTE: See corresponding licensing regulation in 474 NAC 6-003.14.

When this information has been assessed and appropriate approvals have been received, the home is approved. All documentation related to the process is maintained in the child's case file. A copy of the "Request for Approved Status" form is also maintained in the resource development file and the Central Office.

#### 7-004.03 APPROVAL OF UNLICENSED HOMES (EMERGENCIES)

In case of an emergency placement in an unlicensed foster care home the following will be completed before placement of a child.



- a. Visit the home to assure adequate housing prior to or at the time of placement or the next working day if law enforcement makes the placement choice;
- b. Background checks on each household member age 18 or older with the Central Register of Child Protection Cases, the Adult Protective Services Central Registry, the appropriate local law enforcement agency, and the State Patrol for a National Criminal History Check with the Identification Division of the Federal Bureau of Investigation. The checks may be completed orally or in writing; and
- c. Complete the Approval Process of Unlicensed Homes in Non-emergency Situations in no less than 30 days. (See Out-of-Home Care Guidebook for Approval Study Format.)

NOTE: In an emergency, law enforcement has the discretion to place the child in any setting without the immediate involvement of Department staff.

7-004.04

RESTRICTIVE SETTINGS

Youth in the custody of HHS-OJS adjudicated as a juvenile offender may be held at a locked detention center on a temporary basis.

7-004.04A YOUTH REHABILITATION AND TREATMENT CENTERS

The YRTC can only be used by HHS staff when one of the following conditions are met:

- The youth is between 12 and 18 years of age. (Commitment may occur after age 18 if offense occurred before the youth's 18th birthday.), and
- The youth is adjudicated as a juvenile offender and committed to the custody of HHS-OJS, or
- The youth is referred by court order for a residential evaluation at a YRTC, or
- The youth who is a ward of HHS-OJS is detained for safe-keeping before the hearing process for juvenile offenders, or
- The youth who is a ward of HHS-OJS has his/her condition of liberty (parole) revoked.

The court may order a youth to the YRTC under the following conditions:

- For youth with adjudication of delinquency evaluation between ages of 12 to 18 years of age,
- For safekeeping pending further action.

Youth who are adjudicated as status offenders or abused, neglected or dependent will not be placed at YRTC facilities for "safekeeping."

#### 7-004.04B JAILS AND LOCKED DETENTION CENTERS

Under Nebraska statute, youth may be detained in a locked facility pending an adjudication only through a law enforcement officer or by court order.

If law enforcement places a Department ward in a locked facility, the worker will advocate for a plan to best meet the child's needs. The court may order a youth to the YRTC under the following conditions:

- ! For youth with adjudication of delinquency evaluation between ages of 12 and 18 years of age,
- ! For safekeeping pending further action.

Youth who are adjudicated as status offenders or abused, neglected or dependent won't be placed at YRTC facilities for "safekeeping".

#### Payment for County Detention Centers and Jails

HHS-OJS will pay for the detention of a youth in a county detention center or jail only in the following conditions:

- a youth is picked up by law enforcement because of a Apprehension and Temporary Detention request by HHS-OJS; and
- if law enforcement picks up a juvenile offender on a new allegation of criminal behavior and the HHS-OJS Juvenile Services Officer consents to the detention or requests such detention.

If a juvenile offender is arrested for committing a new crime, law enforcement is responsible for deciding whether to detain the youth. If law enforcement chooses to detain the youth, the law enforcement agency is responsible for payment.

Based on the Nebraska Court of Appeals decision in the David C. case, juvenile courts cannot order a juvenile offender in the custody of HHS-OJS into a detention facility over the objections of HHS-OJS.

#### 7-004.04C OUT-OF-STATE PLACEMENTS

The worker in consultation with supervisory staff will consider an out-of-state placement when:

- There is not an appropriate placement available in Nebraska to meet the child's identified needs and there is one identified in another state; or
- The closest appropriate resource is out of state and the family will be involved in the child's treatment.

An Interstate Compact for the Placement of Children or Interstate Compact for Juvenile must be followed before placement is made. (See 10-000, Interstate Compact for details.)

#### 7-004.04D INPATIENT PSYCHIATRIC HOSPITALIZATIONS

Inpatient psychiatric hospitalizations will be used only for psychiatric treatment, care and observation when out-patient psychiatric services will not meet the needs of the child or are not available in the community. The decision to hospitalize a child is made by a psychiatrist. If the child is seeing a psychiatrist, the psychiatrist will be involved during the inpatient admission process. The worker will consult with supervisory staff. The Medical Services Regulations for inpatient service will be followed for admission, payment and review of care and length of stay. (See Service Provision Guidebook for procedure.)

#### 7-004.05 FOSTER CARE PAYMENTS

Foster care payments are made for the care of children in foster family homes, private child care institutions, or public child care institutions accommodating no more than 25 children, which are licensed by the State in which they are situated or have been approved by the agency in such State having responsibility for licensing or approving foster family homes or child care institutions. Federal reimbursement is not available for children who are in detention facilities, forestry camps, training schools or any other facility operated primarily for the detention of delinquent children. 7-004.05

Payment for the care of a Department ward in a foster home without a contract with the Department is based on the child's needs and behaviors. The payment rate is determined by the use of the Foster Care Payment Determination Checklist plus child care, respite care, transportation, and other needs based on the guidelines as found in the Out-of-Home Placement Guidebook.

The foster care payment includes all usual costs of maintaining a child including but not limited to:

- Board and room;
- Personal needs, including recreation and activities;
- School needs, including school trips and graduation expenses;
- Transportation to meet the child's needs;
- Clothing;
- Respite care for non-relative approved providers;
- Child care; and
- Allowance.

7-004.06 SPECIAL PAYMENT CIRCUMSTANCE

7-004.06A BEDHOLDING

A bedholding fee may be authorized to a child's foster parent, group home or child caring agency when there is a plan for the child to return to the placement and one of the following circumstances applies:

1. The child is on extended, planned stay away from the foster care placement that has been pre-authorized by the child's worker; or
2. The child has run away and the holding of a bed has been authorized by the child's worker.

NOTE: Bedholding will not be authorized when the child's stay away from the foster care facility is a result of the foster care provider's plans.

When there is an existing contract with a foster care home or facility, bedholding may be authorized according to the contract.

7-004.06A1 FOR BEDHOLDING UP TO THIRTY DAYS:

The worker may authorize a bedholding fee equal to the per diem cost of care or current payment level for up to 15 days when the above circumstances exist.

If a child's situation as described above continues after 15 days, the worker may authorize a bedholding fee for up to 30 days. The worker will negotiate a lower rate of care based on the cost to the foster care provider and her/his level of involvement in the child's situation (for example, visits to child, transportation and other costs, participation in treatment, attempts to locate runaway child).

7-004.06A2 FOR BEDHOLDING LONGER THAN THIRTY DAYS:

Bedholding in foster care homes, group homes or child caring facilities beyond 30 days may be authorized only for hospitalization or inpatient psychiatric care when there is a plan for the child to return to the provider in the near future.

The worker will consult with supervisory staff or a team to determine whether to continue a bedhold and, if so, the rate of payment and length of time. The rate of payment will be based on the costs of the foster care provider and that person's involvement.

NOTE: Caution should be used in extending a bedhold beyond 30 days because beds are being used for one child. The limited resources and the needs of other children in the state should be considered. The best interest of the child should be considered but weighed against the needs of other children needing placement.

#### 7-004.07 SPECIAL CONSIDERATIONS FOR NATIVE AMERICAN CHILDREN

This only applies to children adjudicated as 43-247 Subdivision 3 or 8.

Before any change in placement of a Native American child, the Department will notify the child's parents or former Indian custodian and the tribal court.

For Native American children, placement will be based upon the following order of preference:

1. Members of the child's extended family specified by the tribe or approved by the Department; then
2. Foster homes licensed, approved or specified by the child's tribe; then
3. A Native American foster home licensed by a non-Indian authorized licensing authority; and finally
4. A child caring agency, institution, or group home for children approved by an Indian tribe or operated by a Native American organization and with a program suitable to meet the child's needs.

If all of the above are unavailable, refer to 390 NAC 7-004, Types of Placement.

The Department may depart from the established order of placement for a Native American child based upon one or more of the following:

1. The request of biological parents or of the child (if the child is age 12 or older) for a specific placement;
2. Extraordinary physical, medical, cultural, educational, or emotional needs of the child, as established through the written report or testimony of a person with the following qualifications:
  - a. A member of the child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organizations and child-rearing practices; or
  - b. A lay person having substantial expertise in delivery of children's and family services to Native Americans, and extensive knowledge of the prevailing social and cultural standards and child-rearing practices within the child's tribe.
3. The unavailability of suitable families for placement after a diligent search completed for families, including at minimum but not limited to:
  - a. Contacting the child's tribal social service program;
  - b. Searching of list of all licensed foster homes in the state; and
  - c. Contacting nationally known Native American programs known to have available placement resources.

In order to use good cause to depart from the placement preference, the Department will fully document the justification in the child's case record.

Statutory Reference: Indian Child Welfare Act of 1978, 25 U.S. Code, Title XXV, Section 1901. Neb. Rev. Stat. 43-101.

## CHAPTER 8-000

### **COURT AND LEGAL ISSUES**

#### For Child Welfare Cases

The court and legal system is one element of the larger child welfare service system. At times the court and legal system will be used to achieve positive action on child welfare cases. Use of the court is not viewed as a last resort, but as a purposefully initiated constructive action on the behalf of the child and family, accomplishing specific outcomes. Court is not used as a punitive action against parents or a child.

Workers are social workers and not attorneys. The Department has separate legal representatives to offer support and consultation and to represent the position of the Department.

At times, children and families may find themselves involved in the legal system. The worker has the legal responsibility to the child, the family and the agency. Staff responsibilities are described in the following sections. Consultation and confirmation of decisions made by the worker regarding situations involving the court and legal system are encouraged when unique situations exist or the worker is in need of such support. The relevant legal policies and issues for child welfare cases are in 390 NAC 8-001, 8-002, 8-003, 8-004, and 8-005.

#### Hearing Processes for Juvenile Offenders

In the case of a juvenile offender adjudicated as a delinquent (43-247 Subdivision 1, 2, 4), the court may place the youth with HHS-OJS for an evaluation before the disposition hearing to gather information to be used in determining the disposition. The court at disposition, may commit the juvenile offender to the care and custody of HHS-OJS. An evaluation is required before a juvenile offender may be committed to HHS-OJS. The court maintains jurisdiction over the juvenile offender until discharge from the custody of HHS-OJS. See 390 NAC 8-001.11 Disposition for Juvenile Offenders.

An administrative hearing process will be used to provide due process for juvenile offenders when they have committed acts which would constitute a violation of their conditions of liberty, or result in a restriction in liberty. The Behavioral Accountability meeting may be used for all juvenile offenders regardless of the level of restrictiveness the court orders at disposition. The Preliminary Hearing and Revocation Hearing may only be used with juvenile offenders conditionally released to the community from the YRTC. The court may also request a review hearing but it would be separate from these procedures.

If a child violates a condition of liberty, and a new delinquency offense is alleged, the county attorney may be encouraged to process a new delinquency proceeding. All children in the custody of HHS-OJS will be given due process of the law on new allegations.

The hearing processes conducted by administration are as follows:

- The Behavioral Accountability Meeting,
- The Preliminary Hearing, and
- The Revocation Hearing.

The administrative hearing processes are in 390 NAC 8-006, 8-007, and 8-008. Other relevant policies are in 390 NAC 8-002 and 8-003. The process for the administrative hearings are in the Court and Legal for Juvenile Offenders Guidebooks.

## 8-001                    **COURT AND LEGAL PROCESS FOR CHILD WELFARE CASES**

Children are placed in the care and custody of the Department through one of four ways:

1. Law enforcement pickup for temporary custody;
2. Court intervention;
3. Voluntary relinquishment;
4. Voluntary placement agreement. (See 390 NAC 7-003.)

This section focuses on children who are placed with the Department through law enforcement, the court or the parents' voluntary relinquishment.

### 8-001.01            **LAW ENFORCEMENT PICKUP FOR TEMPORARY CUSTODY (48 HOURS)**

According to Nebraska law, a law enforcement officer may assume temporary custody of a child and place that child in temporary custody of the Department without court order if:

- A child is seriously endangered in his/her surrounding and immediate removal appears necessary for the child's protection, or
- When the officer believes the juvenile to be mentally ill and dangerous.

Statutory reference: Neb. Rev. Stat. 43-248 and 250 Sub 4.

### 8-001.02            **WORKER ACTIVITY FOR CHILD WELFARE CASES**

- Secure a temporary placement for the child in the least restrictive setting, consistent with the child's best interest as determined by the worker; the worker will involve the family to the extent possible. (See Out-of-Home Payment and Placement Guidebook, Emergency Custody Placement.)
- Supervise the temporary placement of the child;
- Consent to any necessary emergency medical, psychological or psychiatric treatment for the child;
- Refer case to intake process for screening; and
- Follow up with law enforcement, county attorney or court to determine if a court order for temporary custody will be issued. NOTE: If the child is not a resident of Nebraska and the situation does not involve the child's parents in Nebraska, law enforcement is mandated to attempt to notify the child's parents or relatives.



The Department has NO OTHER AUTHORITY in the case until a court order is received placing the child in the custody of the Department.

**IMPORTANT NOTE:** Without a court order or warrant, only a law enforcement officer may take temporary custody of a child who is in immediate danger. If a law enforcement officer does not take action, and the worker believes a child is in danger, the worker will seek emergency court action by contacting the county attorney. (See 390 NAC 8-001.03, Request for Temporary Custody.)

A court order of temporary custody MUST be issued within 48 hours after the initial temporary custody, if the child is to remain in placement. This time period includes weekends and holidays and is mandated by state law. The law enforcement officer is to make a full written report to the county attorney and the Department within 24 hours of taking the child into temporary custody.

If a court order placing the child in the temporary custody is not issued within 48 hours of taking the child into custody, the temporary custody of the Department terminates. If no court order is issued, the child will be returned to the custody of his/her parent or relative. If the 48 hours has expired and the Department cannot provide transportation for the child, alternative arrangements for returning the child must be made.

Statutory Reference: Neb. Rev. Stat. 43-250(4) .

#### 8-001.03 COURT INTERVENTION REQUESTED BY THE DEPARTMENT FOR CHILD ABUSE AND NEGLECT SITUATIONS

Once risk of abuse or neglect has been determined by the Initial Assessment, and voluntary services will not provide for the child's safety or reduce risk, there are two Department responses:

1. Request for Temporary Custody
2. Request for Petition

#### 8-001.04 REQUEST FOR TEMPORARY CUSTODY FOR CHILD ABUSE AND NEGLECT SITUATIONS

If an emergency exists and the worker has pertinent information, this information will be immediately shared with the county attorney and law enforcement and will include a request for immediate court action. This information may be orally shared pending a written document.

If the county attorney or law enforcement decline to take action, the worker may refer the case to legal staff for review.

**NOTE:** For additional information regarding the decision to make this request, refer to 390 NAC 2-001 and 2-002.

#### 8-001.05 REQUEST FOR PETITION IN CHILD ABUSE AND NEGLECT SITUATIONS

When court intervention is needed, the following will be forwarded to the county attorney. This request will include:

- General information on each family member residing in the home and any absent biological and legal parent (name, address, date of birth, etc.);
- Description of the presenting problem that meets the statutory requirements for the population served including the history and time frames of problem;
- A factual basis to support specific allegations and establish the need for court involvement;
- Names and addresses of any people with first-hand knowledge of and could provide testimony directly related to the allegations specified.

If the court takes jurisdiction of the case, the following describes court-ordered involvement.

#### 8-001.06 COURT-ORDERED INVOLVEMENT FOR ALL CASES

Any court order for service by the Department will be reviewed to insure appropriate, adequate service delivery to children and families. (See 390 NAC 8-002, Review of Court Order.) More detailed information regarding the court process and statutory mandated timeframes associated with court procedures is in Court and Legal Issues Guidebook for Child Welfare and Court and Legal for Juvenile Offenders Guidebook.

#### 8-001.07 PRE-ADJUDICATION STATUS

At this point in a child abuse, neglect, dependency or status offense case, the worker will:

- Provide information about the child and family to the county attorney.
- If the court has placed the child in the temporary custody of the Department, a written report addressing the location and needs of the child will be filed with the court within 30 days of the custody date. No other information about the facts of the case will be included in the report so as not to compromise the due process rights of the parents.
- Inform the court and all interested parties (including tribal authorities in cases of Native American children) of any significant decisions regarding the child's placement.

#### 8-001.08 ADJUDICATION OF CHILD WELFARE CASES

At adjudication the worker will:

- Be present at the adjudication hearing and provide testimony as required or requested by the parties involved.

8-001.09 PRE-DISPOSITIONAL STATUS FOR CHILD WELFARE CASES

After adjudication, the worker or supervisory staff will:

- Conduct the appropriate assessment to determine family service needs.
- Review the case to determine if it has been adequately adjudicated to allow for appropriate service delivery (see 390 NAC 8-002.02, Inadequate Adjudication).
- Prepare a written case plan and court report for the court and all other interested parties concerning the circumstances of the child and family using the Department designated format. A specific request for child support will be included in the case plan if the child is in out-of-home placement.\* The case plan and court report will be submitted at least three days before the first dispositional hearing to assist the court in arriving at an appropriate plan for rehabilitation.\*\*

\*Child support is an important element in maintaining parental responsibility for children in out-of-home placement. A worker will incorporate, under this premise, a specific request for child support in each report offered to the court. For further information refer to Court and Legal Issues Guidebook.

\*\*See Court and Legal Issues Guidebook, Forms Section for Department's designated format.

8-001.10 DISPOSITION  
FOR CHILD WELFARE CASES

At the Dispositional hearing worker or supervisory staff will:

- Prior to the hearing, ask the county attorney to recommend that the court find that reasonable efforts have been made, adopt the elements of the case plan, and order child support, if the child is in out-of-home placement.
- Attend the hearing and provide testimony as requested and provide oral recommendations if necessary.
- Request a review of the court's order by the Juvenile Review Panel within the ten days allowed in Statute, if the court does not incorporate elements of the case plan or find reasonable efforts, does not order child support if requested and applicable, or orders a placement contrary to the recommendations of the Department.

FOR JUVENILE SERVICES CASES

For Youth Adjudicated as Juvenile Offenders and Committed to HHS-OJS at a disposition hearing:

The court may commit to the care and custody of HHS-OJS, a youth adjudicated under 43-247 subdivision (1), (2) or (4). The court may order the "initial level of treatment" in conjunction with the commitment but may not order the specific placement or program. The "level of treatment" is defined as the type of supervision, care, confinement and rehabilitation services for the juvenile offender. This relates to the restrictiveness of setting and the degree of structure intended by the court in its commitment of a juvenile offender to HHS-OJS." "Levels of treatment" for juvenile offenders will correspond with "levels of placement" described in the following paragraph.

Statutory Reference: Neb. Rev. Stat. 43-408.

There are three levels of placement for a juvenile offender identified by the Department:

\* Home (least restrictive):

the child is placed in the home of a parent or legal guardian;

\* Out-Of-Home Placement in the Community:

the child may be placed in one of the following settings- relative foster home, foster family home, Agency Based Foster Care, Group Home, Emergency Shelter Care, treatment foster home, treatment group home, residential treatment center or in-patient treatment setting; and

\* Self-contained, Staff Secure Residential Facility (most restrictive):

Youth Rehabilitation and Treatment Center or similar setting identified by HHS-OJS.

Upon receiving a court order committing a juvenile offender to the custody of HHS-OJS, the supervisor will conduct a search to determine if the juvenile has other involvement with the HHS system. The supervisor will assign the case. Guidelines for case assignment are in the Case Assignment and Case Process Guidebook.

8-001.11

DISPOSITIONAL COURT REVIEWS  
FOR CHILD WELFARE ADJUDICATIONS

At least every six months after the first dispositional hearing, the worker will prepare a written case plan and court report for the court and all other interested parties concerning the family and child using the Department's designated format.\*\*

Between dispositional reviews, Department staff will notify the court and all interested parties, including tribal authorities if appropriate, of all significant decisions made regarding the child's placement, including:

- Any change in placement, including return home or removal from a parental home;

NOTE: Written notice will be sent to all interested parties at least seven days before the placement is changed for what a court had previously determined was an appropriate placement. The Department will make immediate changes in placement without court approval only if the child is in a harmful or dangerous situation OR when the foster parents request removal. Court approval will be sought within 24 hours of an emergency change in placement to comply with statute.

Statutory Reference: Neb. Rev. Stat. 43-285.

- Approval for the child's marriage or entrance into the armed forces;
- Department's plan to discharge a youth;
- Removal from a foster home as a result of alleged or substantiated abuse or neglect or licensing action;
- Any change in the case plan affecting the parents; and
- Any other significant change in the plan for the child.

\*\* See Court and Legal Issues Guidebook, Forms Section.

FOR CHILDREN WITH JUVENILE OFFENDER ADJUDICATIONS

In cases of a juvenile adjudicated as a delinquent (43-247 Subdivision 1, 2, 4) and placed in the custody of HHS-OJS at a disposition hearing, the following court processes will apply:

- Court reviews will be held for any juvenile offender committed to HHS-OJS when in an out-of-home setting, other than a YRTC, every six months or at the request of the juvenile offender.
- When HHS-OJS proposes to change the placement of a juvenile offender who has not been conditionally released from the YRTC to a more restrictive setting as described in 8-001.10 and 7-004.01B. See 390 NAC 8-001.12.

8-001.12 PLACEMENT CHANGE HEARINGS FOR JUVENILE OFFENDERS

For Juvenile Offenders committed to HHS-OJS at disposition, for a level of placement (treatment) other than the YRTC:

- a. The move of such juvenile offenders to a more restrictive setting is subject to court approval. The court and involved parties must be notified in writing 15 days in advance of an anticipated placement change and a court hearing must be held before the placement change is made. The involved parties include: the juvenile, the judge, county attorney, guardian ad litem, parent, parent's attorney- if involved and the youth's attorney- if involved.

The Department has the authority to make an immediate temporary change without prior approval of the committing court only if the juvenile offender is:

- in a harmful or dangerous situation,
- suffering a medical situation,
- exhibiting behavior which warrants temporary removal, or
- placed in a non-state-owned facility and such facility has requested that the juvenile be removed.

Approval of the committing court will be sought within 15 days of making an immediate temporary change if the youth is to remain at the temporary setting or if the youth will be moved to a setting which is more restrictive than the previous setting.

If a youth who is moved to a lateral or less restrictive setting requests an administrative hearing within 15 days of the date of the notice, the Department will determine whether it is in the best interest of the juvenile offender for the proposed change to occur with due consideration being given to public safety. The designated person in the Service Area will determine whether the proposed change is in the youth's best interest with due consideration of community safety. The administrative hearing decision is subject to appeal by the juvenile to the committing court. See Court and Legal Guidebook for Juvenile Offenders for details on the process.

- b. The juvenile offender may be moved to a placement within the same category or to a less restrictive setting without a court hearing. Written notice must be given to the court and the involved parties as listed above 15 days before the proposed change. The youth may request an administrative hearing within 15 days of the notice. (See 390 NAC 8-001.01 for Dispositions of Juvenile Offenders and the Court and Legal Guidebook for Juvenile Offenders for details.)

8-001.12A                      Reports to the Court For Juvenile Offenders

A.        For Court Reviews of Out-Of-Home Placement

When the juvenile offender committed to HHS-OJS for community placement has been in out-of-home care for six months, the court will review the case. The Department's case plan and court report, prepared on the Department's designated format, will be sent to the court before the hearing reviewing the child's out of home placement. The report will address whether the out-of-home placement remains in the child's best interest with due consideration of community safety. The child's permanency plan will also be identified in the case plan and court report. The report will be sent seven days before the hearing or as required by local court protocol.

B.        For Transfer Hearings

If the Department proposes to move the juvenile offender to a more restrictive setting, the report to the court will describe the following:

- a.        the plan outlining the proposed change, and
- b.        the reasons for the proposed change, including provision for community safety.

8-002

### REVIEW OF ALL COURT ORDERS

A systematic review of all court orders for juvenile and status offenders, and child abuse, neglect, and dependency cases will occur to ensure:

- Due process;
- Compliance with the law ensuring least intrusive service provision;
- The order contains the necessary language for the Department to receive federal funding;
- That the child and family fall within the eligibility criteria for services through the Department.

From the date of the court order, the Department has 30 days to appeal the order and ten days to request a review by the Juvenile Review Panel. Juvenile offender cases do not qualify for the Juvenile Review Panel. If an order is received after the ten and 30 day timeframes, orders will still be reviewed and addressed if problematic.

(See 390 NAC 1-006, Population Served.)

8-002.01

#### STAFF RESPONSIBILITIES

Worker	Upon receipt of a written or oral order, refer order to supervisory staff for immediate review.
Supervisory Staff	Review all court orders and advise worker of any problems or questions. Mobilize legal support if required and make referral. Monitor progress and resolution of order.
Legal Staff	Review Problematic Order. Prepare legal response if required. Complete legal action if required. Advise worker and supervisory staff of progress. Resolution of problem.

NOTE: The Department will carry out an order unless the Department has filed an appeal and a stay of the court order has been issued, or the Department legal staff has advised otherwise, or an interim order has been entered.



8-002.02

INADEQUATE ADJUDICATIONS

Inadequate adjudications create barriers to providing services to families and are often discovered in cases that initially enter the Department via the court system or in existing court-involved cases as a result of plea bargaining.

An inadequate adjudication occurs when the adjudication will not allow for appropriate services to be provided. When an inadequate adjudication is identified, written information will be provided to the county attorney requesting an additional adjudication.

If the county attorney fails to respond to the information within the requested amount of time, duplicate information will be forwarded to the Department legal support for review and response. The worker staff may use the child's guardian ad litem as a resource to address the court. For further information regarding inadequate adjudications and examples, refer to Court and Legal Issues Guidebook.

8-003                    **ADJUDICATIONS OF CHILD WELFARE STATUS OFFENSE  
AND JUVENILE DELINQUENCY**

When a ward who has an adjudication as abused or neglected or dependent which is still in effect, and then is adjudicated as a delinquent, the Department will continue to provide services to the child and family, unless the court terminates the Department's custody. The Protective Service worker will consult with the Juvenile Services Officer on the juvenile delinquency adjudication and determine how to best serve the needs of the child and family. The workers will present to the County Attorney and Court a recommendation that addresses the ward and his/her delinquent behavior, in order for an appropriate disposition to be determined. The recommendation may be a commitment to probation or parole supervision (HHS-OJS). The worker may consult with the Department's legal representatives in these situations.

When a ward who has an adjudication of juvenile delinquency and is subsequently adjudicated as abused, neglected, or dependent, the Department will provide services to meet the needs of the child and family. The Juvenile Services Officer will consult with the Protective Service worker and determine how best to serve the child and family. A recommendation which addresses the family's and child's issues will be provided to the court.

Statutory Reference: Neb. Rev. Stat. 43-286 (1) (a).

8-004                    **VOLUNTARY RELINQUISHMENT**

The Department's relinquishment services consist of:

1. Relinquishment Counseling

The purpose of relinquishment counseling is not to obtain a relinquishment but rather to provide information to parent(s) to ensure that he/she is making an informed decision, keeping in mind the philosophy that, if possible, children belong with their parent(s). Counseling includes advising parent(s) of services that will help him/her to parent the child. The parent(s) may receive counseling from alternative sources, for example, adoption agencies.

2. Completing the relinquishment and processing the legal documents when a determination has been made that relinquishment is in the child's and family's best interest.

The Department will provide relinquishment of parental rights services in the following instances:

1. At parental request when the child and family are receiving child welfare services through the Department.
2. When a worker is considering action to terminate parental rights.

Relinquishment services can be provided either directly or through a referral to another agency. Both the child (consistent with age) and the family will receive appropriate counseling regarding the potential relinquishment.

Relinquishment of a child to the Department is effective upon written acceptance by the Department. Relinquishment to the Department is irrevocable and transfers guardianship and full parental rights to the Department. (See Special Circumstances on Relinquishing a Native American.)

#### 8-004.01 SPECIAL CIRCUMSTANCES REGARDING A NATIVE AMERICAN CHILD

In the case of a Native American child, the relinquishment counseling will also include an explanation:

1. That the parents may withdraw their relinquishment for any reason at any time before the final adoption decree is entered;
2. That a relinquishment will not be taken unless the parents' intent is that it is final, in order to provide permanency to the child;
3. That the relinquishment must be executed before a judge of a court of competent jurisdiction; before the tribal court, if it has jurisdiction over the child, or district, county or juvenile court in cases;
4. That the judge of the court must sign a certificate that the terms and consequences of the relinquishment were fully explained, in detail, to each consenting party, and that each person understood the consequences of his/her signing;
5. That the court must also certify that each consenting party understood the explanation, and if that party's primary language is not English the details and consequences were interpreted into a language that person understands;
6. No consent for relinquishment can be given before or within ten days after the birth of a Native American Child.

#### 8-004.01A WITHDRAWAL OF RELINQUISHMENT OF A NATIVE AMERICAN CHILD

If parents of a Native American child chooses to withdraw their relinquishment before a decree of adoption, the relinquishment becomes invalid. Following receipt of a written request to withdraw consent, the relinquishment is rescinded.

#### 8-004.02 RELINQUISHMENT REQUIREMENTS FOR ALL CASES

Once counseling has been provided, a determination will be made whether a relinquishment is in the best interest of the child and family. The worker will also determine whether the Department is the best agency to accept the relinquishment.

Because of the critical nature of the decision here, supportive consultation will be provided to the worker through Department adoption staff or team. Consultation of this nature will best insure consistency and quality service to families and children.

8-004.03

RIGHTS OF FATHERS

For a child to be legally free for adoption, fathers who have legal rights must have their rights terminated either by voluntary relinquishment or court order. A man who claims to have legal rights to a child must meet one of the following conditions:

1. He is listed as father on the birth certificate;
2. He was married to the mother at the time of the child's birth or within ten months before the birth;
3. He has filed a claim of paternity with the Department during the pregnancy or within five days of the child's birth;
4. He has adopted the child legally;
5. He has been declared the father through judicial proceedings such as a divorce or paternity action; or
6. He has lived with the child or performed normal parental functions, for a legally significant period of time, holds himself out as the father, and otherwise acknowledges paternity.

8-004.04

CONDITIONS FOR COMPLETING A RELINQUISHMENT

1. A relinquishment must be given by:
  - a. Both parents.
  - b. Only one parent, if:
    - (1) The other parent is deceased and proof of the death is available for the case record; or
    - (2) The other parent's rights have been properly voluntarily relinquished or legally terminated, and a record of such is available for the case record; or
    - (3) There is a plan in progress to properly deal with the other parent's rights; or
    - (4) No legal paternity exists and the father has not lived with the child or performed parental functions, such as providing child support, and a "No Intent to Claim Paternity" certificate has been obtained to verify whether a claim has been made.
  - c. Parents who have not been under the influence of alcohol or drugs including illegal substances, prescription or non-prescription mind-altering drugs within the past 24 hours.
  - d. A person or agency vested with the right to relinquish the child for adoption.
  - e. A person believed to be mentally and emotionally able to understand his/her legal rights and the consequences of relinquishment. If a legal guardian for the parent has been appointed by the court, the guardian's involvement and signature on the relinquishment are required. If no court action has been taken and staff have reservations about a parent's competency, then a relinquishment Will not be taken until a report from a psychiatrist or psychologist is received that specifically indicates that the parent is competent to relinquish parental rights.

2. A relinquishment must be completed:
  - a. Without fraud. The worker discussing the relinquishment will fully inform the parents of the results of relinquishment and of signing the relinquishment form.
  - b. At the parents' choice. Relinquishments will not be taken if there is any reason to believe that pressure or threats have been applied to parents to relinquish their rights and that the decision to relinquish is not being made independently.
    - (1) If a termination petition has been filed, the pending termination may be viewed as duress. In these cases, no relinquishment will be taken without involvement of the parents' attorney to assure that the parents' rights are protected. If parents desire to relinquish their parental rights following the filing of a petition to terminate parental rights, the relinquishment will be secured during a court hearing so the relinquishment is part of a court record.
    - (2) No promises regarding the type of family, continued contact with child by parents or other family member, etc., will be made to parents in securing the relinquishment.
  - c. With full information regarding options. Prior to taking a relinquishment, the parents will receive:
    - (1) Information about possible programs, services and support systems that might enable them to parent the child.
    - (2) Information about options in the community to provide relinquishment services or other services indicated.
3. In the child's best interest:
  - a. Adoption must be the preferred plan for the child;
  - b. Relinquishment will not be done to evade judicial proceedings or child support orders.
4. No less than 48 hours after the birth of the child in the case of newborn, unless the child is a Native American child and then no less than ten days after the birth of the child. (See Special Circumstances regarding a Native American Child, this section.)

Note: A relinquishment by a minor parent is legally valid.

8-004.05

#### PROCESSING THE RELINQUISHMENT

Once counseling has been completed and the worker and parents determine that completing a voluntary relinquishment is in the best interest of the child and family, the worker and parents will fill out the required forms. If the case is involved with the juvenile or county court, the worker will consult with the involved legal counsel and consideration will be given to having the relinquishment taken in court. If the child involved is a Native American child, the worker will notify the county attorney of the need to set the matter for hearing before the appropriate court.

See Court and Legal Issues Guidebook, Forms Section.

8-004.06 NOTICE OF ACCEPTANCE OF RELINQUISHMENT

Within two working days of receipt of the relinquishment, an adoption staff will review the forms and circumstances of the relinquishment and:

1. If one parent has relinquished but the rights of another legal parent remain intact, the Department will usually not accept the relinquishment until action is taken regarding the other parent's rights.
2. Send a letter accepting the relinquishment to the worker and the parent(s), if their address is known;
3. If the relinquishment cannot be accepted, the adoption staff will send a letter of non-acceptance to the parents and the worker with a detailed explanation of why the relinquishment is not being accepted and a request that the parents immediately contact the worker about the plan for the child.

8-005 TERMINATION OF PARENTAL RIGHTS

The Department will consider recommending termination of parental rights action when:

- A child has been in out-of-home placement 18 or more consecutive months; and
- Parents have made no progress in meeting the goals of the case plan, or have made insufficient progress to adequately protect a child; or
- Adoption is the recommended plan of choice for a child; or
- Severing parental ties is in the child's best interest; or
- An assessment shows there may be grounds for termination of parental rights, even if the child has been in out-of-home care less than 18 consecutive months.

If the parents can be contacted, they will be advised of the decision. The possibility of a voluntary relinquishment by the parents will first be explored before court action is initiated.

8-005.01 SITUATIONS THAT WILL BE CONSIDERED FOR TERMINATION OF PARENTAL RIGHTS ACTION

Under Nebraska Statute, the following may result in a request for a filing to terminate parental rights:

1. The parents have abandoned the child for six months or more immediately before the filing of the petition;
2. The parents have substantially and continuously or repeatedly neglected the child and refused to give the child necessary parental care and protection;

3. The parents, being financially able, have failed to provide the child with the necessary subsistence, education, or other care necessary for the child's health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the child is lodged with others and such payment has been ordered by the court;
4. The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, and this conduct is found by the court to be seriously detrimental to the health, morals or well-being of the child;
5. The parents are unable to perform their parental responsibilities because of mental illness or mental deficiency, and there are reasonable grounds to believe that this condition will continue for a prolonged, indeterminate period;
6. Reasonable opportunities were provided to the parents, under the direction of the court, but the parents failed to correct the conditions leading to the dependency, neglect, or abuse of the child as previously determined by the court; or
7. The child has been in an out-of-home placement for 18 or more consecutive months; and the parents have not corrected the conditions leading to the child's out-of-home placement, in spite of reasonable efforts and services to the parents ordered by the court or offered by the Department or other designated agency.

Statutory Reference: Neb. Rev. Stat. 43-292.

#### 8-005.02            SEEKING JUDICIAL TERMINATION OF PARENTAL RIGHTS

When the worker determines that permanency may best be attained for a child through judicial termination of parental rights, the worker will consult with the guardian ad litem and the case consultation team. After seeking the support of the guardian ad litem, the worker will request that the county attorney file a petition to terminate parental rights.

In cases of a Native American child, the worker will notify tribal authorities of the request.

Once a determination is made that termination of parental rights action should be pursued, a written request for this action will be sent to the county attorney. The request will include the relevant case information supporting the termination of parental rights action.

#### 8-005.03            INVOLVEMENT OF HHS SYSTEM LEGAL STAFF

When the county attorney has not acted within 60 days of the written request for termination of parental rights action and following reasonable contacts by the protective service supervisory staff, the HHS System's legal representatives will be contacted to secure action on the termination of parental rights.

#### 8-005.04 SPECIFIC SERVICES TO PARENT, CHILD AND CARE GIVER

The parents, the child as appropriate to her/his age, and the care giver of the child will each be provided with the following:

- The reasons the Department has recommended a termination of parental rights;
- An explanation of the process and services, including the services that will continue during the legal process; and
- Assistance in dealing with questions and feelings that arise during the process.

#### 8-005.05 SERVICES FOLLOWING TERMINATION OF PARENTAL RIGHTS

When the court has ordered termination of parental rights, the worker will inform the child, the care giver, and all pertinent professionals involved with the child along with all Department staff who serve the child. A certified copy of the court order terminating parental rights will be filed in the child's case record.

Casework support may be provided to the birth family up to one month following termination to help the family through the transition. The worker will develop and facilitate a plan for closure based on the child's best interest.

#### 8-005.06 TERMINATION APPEAL

If a termination order is appealed within 30 days, an adoptive placement cannot occur during the appeal, but a foster-adoptive placement may occur. During the appeal process, ongoing contact or visitation with the parent will not occur unless ordered by the court or unless the worker determines that such contact is in the child's best interest.

#### 8-006 **BEHAVIORAL ACCOUNTABILITY MEETING FOR JUVENILE OFFENDER CASES**

The Behavioral Accountability Meeting is an informal administrative procedure to review the behavior of any juvenile offender who is not abiding by the Conditions of Liberty Agreement. Adjustments may need to be made to the Conditions of Liberty Agreement. The use of this meeting is at the discretion of the Juvenile Services Officer.

The Behavioral Accountability Meeting is done to review and modify the Conditions of Liberty Agreement, motivate the juvenile offender and refocus him/her on the reasons s/he came to the attention of the Department.

The juvenile offender and Juvenile Services Officer, the juvenile offender's parent, whenever possible and other interested parties, when appropriate attend the Behavioral Accountability Meeting. The meeting is conducted by a designated person within HHS-OJS who is knowledgeable of juvenile law and Partnerships for Protecting Children and Communities policies and practices. The Service Area Administrator will designate people to serve as hearing officers.



If at the outcome of the hearing the designated person believes the juvenile will not abide by the Conditions of Liberty Agreement, the matter may be referred for formal revocation proceedings. The goal is for the juvenile offender to change his/her behavior to be consistent with the Conditions of Liberty Agreement.

#### 8-006.01 Behavioral Accountability Meeting Process

The Behavioral Accountability Meeting process is as follows:

The designated person serves as the hearing officer and conducts the hearing. The involved parties discuss and review the allegations of the violation conditions of liberty. The juvenile offender is given the opportunity to respond to the allegations. The designated person, after consulting with the Juvenile Services Officer, will decide the action which may include one or more of the following:

- Continue current Conditions of Liberty Agreement;
- Directives to juvenile offender, parent, or Juvenile Services Officer;
- Change Conditions of Liberty Agreement, services or both;
- Reclassify youth's supervision level;
- Change youth's placement;
- Restrict youth's liberty (house arrest); or
- Decision to file for revocation hearing.

If a youth is determined to be at risk of running, or threatening to harm him or herself or others, the worker may decide to take the youth into protective custody and place the youth in a more restrictive setting.

A report of the action of the Behavioral Accountability Meeting will be prepared by the person serving as the hearing officer.

#### 8-007 PRELIMINARY HEARING FOR JUVENILE OFFENDERS

A Preliminary Hearing is an informal hearing conducted by a Hearing Officer to determine whether there is probable cause to believe the juvenile offender committed acts which violate his/her Conditions of Liberty Agreement and, if so, to determine whether the juvenile offender's detention is necessary pending the revocation hearing. The preliminary hearing will occur as soon as practicable and no later than within 72 hours from the time the juvenile is apprehended and detained.

Case Law Reference: Morrisey v. Brewer (408 US 471 {1972}).

Written notice will be provided to the youth and his/her parent at least 24 hours in advance of the Preliminary Hearing. The youth may waive the 24 hour interval. The notice includes the allegations of parole violation and the description of the preliminary hearing process, including where and when.

8-007.01 Preliminary Hearing Process

8-007.01A Juvenile Offender's Rights

The juvenile offender has the following rights for the Preliminary Hearing:

- Notice of the alleged violations at least 24 hours before the preliminary hearing;
- Receipt of an explanation of the purpose of the preliminary hearing;
- Request a continuance of the hearing;
- Request representation by counsel under certain circumstances;
- Call witnesses and cross-examine adverse witnesses, unless the Preliminary Hearing Officer finds good cause for not allowing confrontation; and
- Present evidence and documentation.

The Preliminary Hearing Officer decides if conditions exist for the juvenile offender to be represented by counsel. See Case Assignment and Case Process Guidebook for conditions. If the Preliminary Hearing Officer finds the juvenile offender may be represented by counsel, the juvenile offender may pay for one or an attorney may be appointed by the state. The youth may request one continuance. The request is decided by the Preliminary Hearing Officer.

8-007.01B Preliminary Hearing

The Preliminary Hearing is conducted by an impartial Preliminary Hearing Officer who is an HHS employee who has not been involved in the case. The Hearing Officer may be a supervisor or a Juvenile Services Officer not involved with the juvenile offender. S/he will have knowledge of juvenile law and Partnerships for Protecting Children and Communities policy and practice and be designated by the Service Area Administrator. The juvenile offender, parent, when possible, the Juvenile Services Officer, witnesses, when necessary and the Hearing Officer attend the hearing. The hearing occurs near the place of the alleged violation or arrest.

The Preliminary Hearing Officer reviews the process, reads the allegations of violations against the juvenile offender and advises the juvenile offender of his/her rights. The Juvenile Services Officer provides supporting documentation and calls witnesses when necessary. The youth is given the opportunity to respond to the allegations, present relevant information, question adverse witnesses and call witnesses. The rules of evidence will not apply at this hearing. The hearing officer may rely on any available information. The Preliminary Hearing Officer makes a finding within 48 hours of the conclusion of the hearing and advises all parties. A written summary of the decision is sent to the juvenile offender, his/her parent, and the Juvenile Services Officer after the hearing.

Statutory Reference: Neb. Rev. Stat. 43-419

8-007.01C

Possible Actions

The Preliminary Hearing Officer has two possible decisions: determine whether probable cause exists that the juvenile offender has violated a condition of his/her liberty (parole) and determine the level of restrictiveness required for the juvenile offender pending the revocation hearing. If cause is found, the juvenile offender may remain in the physical custody of HHS-OJS and be detained or the youth may return to (parole) supervision in the community pending a revocation hearing. Where probable cause is found, the hearing officer may also recommend a community sanction instead of revocation. (See Court and Legal for Juvenile Offenders Guidebook.) If cause is not found, the youth returns to community supervision.

8-008

**REVOCATION HEARING FOR JUVENILE SERVICES CASES**

The Revocation (Parole Violation) Hearing is a formal revocation procedure that will ensure due process rights and render a decision regarding a juvenile offender's status which is in the best interest of the juvenile offender and the community. This formal hearing is held within 14 days after the preliminary hearing, if the juvenile offender is being held pending the revocation hearing. Reasonable continuances may be granted by the hearing officer for the juvenile to prepare for the hearing.

8-008.01

Hearing Process

8-008.01A

Juvenile Offender's Rights

The juvenile offender has the same rights for this hearing as for the Preliminary Hearing. (See 390 NAC 8-007.01A).

The juvenile offender will be provided with notification of the Revocation Hearing at least 24 hours before a hearing on the allegations. This notice must contain a concise statement of the purpose of the hearing and the factual allegations upon which evidence will be offered.

The juvenile offender's parents will be notified of the hearing and allegations. The parents may attend the hearing.

The Department will provide representation by legal counsel for the juvenile offender for the Revocation Hearing unless legal counsel is available to the juvenile offender.

The juvenile offender may waive his or her right to a hearing and admit to the allegations after the juvenile:

- \* receives notice of the revocation hearing,
- \* is notified of the possible consequences,
- \* is informed of his or her rights pertaining to the hearing, and
- \* has had an opportunity to confer with his or her parents or recommitment custodian and legal counsel.

This waiver and admission will be in writing and submitted with a recommended disposition by the hearing officer to the Administrator of the Office of Juvenile Services or his or her designee.

Statutory References: Neb. Rev. Stat. 43-421 through 43-423.

8-008.01B Hearing Procedures

The Hearing Officer will be an attorney licensed to practice law in the state of Nebraska and may be an employee of the Department of Health and Human Services or may be an independent contractor. If the hearing officer is an employee of the Department, he or she will not be assigned to any duties requiring him or her to give ongoing legal advice to any person employed by or who is a contractor with the office. The Hearing Officer will have knowledge of the juvenile process and Partnerships for Protecting Children and Communities policy and practice.

Statutory Reference: Neb. Rev. Stat. 43-420

This administrative hearing is not open to the public or the media. The juvenile offender may object to non-involved people attending. The decision about who attends is made by the Hearing Officer. The hearing will be tape recorded. Strict rules of evidence do not apply.

The juvenile offender is advised of his or her rights. Evidence is presented and witnesses are examined and cross-examined on behalf of the youth and HHS-OJS. The Juvenile Services Officer makes a recommendation for action. The Hearing Officer is the decision maker.

8-008.01C Disposition of Administrative Revocation Hearing

The Hearing Officer decides, based on the preponderance of the evidence, whether the detention (return to YRTC) of the juvenile or other restrictions are necessary for the safety of the juvenile or for public safety. The decision is rendered within 48 hours or promptly upon the conclusion of the hearing with written notice to the parties after the hearing.

The Hearing Officer will determine whether the detention (return to YRTC) of the juvenile or other restrictions are necessary for the safety of the juvenile or for the public safety. The Hearing Officer will prepare a written recommended disposition to the Administrator of the Office of Juvenile Services or his or her designee. The written disposition will include the restrictions needed for the juvenile pending a final decision and administrative appeal. The Administrator or designee will promptly affirm, modify or reverse the recommended disposition.

If the decision is to revoke the youth's parole or liberty, the youth is returned to the YRTC.

If the juvenile offender is returned to parole status in the community, the youth will be placed in an adequate setting to meet his or her needs. Changes may be made to the Conditions of Liberty Agreement, the case plan or both.

8-008.01D Decision Appeal

The decision of the Administrator or his or her designee may be appealed pursuant to the Administrative Procedures Act. The Department will be deemed to have acted within its jurisdiction if its action is in the best interest of the juvenile with due consideration of public safety. The appeal will in all other respects be governed by the Administrative Procedures Act.

Statutory Reference: Neb. Rev. Stat. 43-423.

## CHAPTER 9-000

### 9-001 INTERSTATE COMPACT ON PLACEMENT OF CHILDREN (ICPC)

Nebraska is among those states that have enacted law called the Interstate Compact on Placement of Children. The law provides for child placement activities to be uniformly conducted among states. Following the Interstate Compact law helps assure uniform services to children placed across state lines. The Department has established procedures that insure compliance with the Interstate Compact. (See ICPC Guidebook for procedures).

Statutory Reference: Neb. Rev. Stat. 43-1101.

#### 9-001A PLACEMENTS COVERED BY INTERSTATE COMPACT

Interstate Compact procedures will be followed whenever a request to place a child into Nebraska is received or whenever the Department is seeking to place a child into another state into any of the following:

- Adoptive home,
- Foster home,
- Group home,
- Relative home,
- Parent home when the child is under the jurisdiction of a court,
- Child-caring institution, or
- Residential treatment center.

No child will be placed from Nebraska into another state or from another state into Nebraska until:

- A home study or adoptive study is completed, and
- Approval to place is granted from the Interstate Compact Administrators in each state.

Placements of children who aren't wards of the Department are also covered by the Interstate Compact law. An example of non-ward placement covered by the Compact is a private adoptive placement.

#### 9-001B EXCEPTIONS TO INTERSTATE COMPACT

The Interstate Compact doesn't apply to the placement of children into another state to reside in any of the following:

- Inpatient hospitals or other medical facilities for acute medical or psychiatric care;
- Boarding schools; or
- Home of a relative when placed by a parent or legal guardian and the child is not under the jurisdiction of a court.

9-001C RETURN OF A CHILD TO SENDING STATE

A ward will be returned to Nebraska at the request of the state in which the child is placed. Conditions that may cause such a request under the Interstate Compact law are:

- Placement disruption;
- Placement made prior to approval of the receiving state;
- Loss of license by a child care facility; or
- Completion of treatment plan in a residential treatment facility.

Nebraska may request that a child be returned to the sending state under the conditions listed above.

9-001D COORDINATION OF INTERSTATE COMPACT

To assist with the consistent application of the Interstate Compact law and services to children, all requests for placement of children from Nebraska into another state, or from another state into Nebraska, will be coordinated through the Interstate Compact Administrator. The Interstate Compact Administrator will:

- Consult, support and assist staff;
- Negotiate reasonable response times to requests,
- Communicate with other state Compact Administrators to achieve placement outcomes identified by staff; and
- Maintain and process necessary documentation on all Interstate Compact cases.

All requests and action on Interstate Compact cases will be documented in writing.

9-001E SERVICES TO CHILDREN UNDER INTERSTATE COMPACT

Effort will be made to complete home studies or adoptive studies, or to respond to special requests, within six weeks of the assignment of the request. If staff are unable to meet the time frame, staff will contact their Compact Administrator with the reasons for the delay and arrive at a reasonable completion date. The Nebraska Compact Administrator will then contact the sending state to renegotiate a completion date based upon the staff input.

Some situations may be designated for priority processing. These include situations where the child is under two years of age, is in emergency shelter, or has spent substantial time in the home of the proposed placement AND the proposed placement is a parent, stepparent, grandparent, adult sibling, aunt, uncle, or the child's legal guardian. In cases designated as priority, Nebraska staff will, to the greatest extent possible, complete the home study and approved or disapprove the placement no later than 20 business days after receiving the request. Overnight mail will be used at each step of the process.

Following placement of a child into Nebraska, staff will:

- Visit the child and family appropriately based upon the home study and history of the child,
- Assist the family in coordinating services approved and authorized by the sending state,
- Open Nebraska Medicaid for IV-E eligible children,
- Document progress of the child and family and any other information requested by the sending state, and
- Report on services provided and child and family progress to the sending state at the agreed-upon intervals.

## 9-002 INTERSTATE COMPACT ON JUVENILES

Nebraska is among the states that have enacted law called the Interstate Compact for Juveniles (ICJ). The Interstate Compact for Juveniles provides a legal method whereby juveniles may move to an environment outside the state in which they were sentenced without losing the advantage of supervision or escaping from the jurisdiction of the state in which they were sentenced. The Department has established procedures that insure compliance with the Interstate Compact on Juveniles. See Interstate Compact Guidebook for procedures.

### 9-002A PROVISIONS OF THE LAW

The law provides the following:

- \* Cooperative supervision of delinquent juveniles on probation or parole.
- \* The return, from one state to another, of delinquent juveniles who have escaped or absconded,
- \* The return, from one state to another, of non-delinquent juveniles who have run away from home; and
- \* Additional measures for the protection of juveniles and the public as agreed to between two states.

The law applies to delinquent juveniles who have been adjudged to be within the provisions of subdivision (1), (2), or (4) of Section 43-247 of Nebraska Revised Statutes and who at the time the compact is invoked, is still subject to the jurisdiction or supervision of an agency or institution pursuant to an order of a court of competent jurisdiction.

Statutory Reference: Neb. Rev. Stat. 43-1002.

### 9-002B State Responsibilities

Nebraska and other states in the Compact will accept supervision of a juvenile if s/he has the proper residence, school and employment qualifications.

The supervising state (receiving state) must use the same standards of supervision for juveniles sent from other states as it does for juveniles in its own custody or supervision.

The sentencing state (sending state) may retake a person being supervised under the Compact at any time. The sending state's representative needs to present proper identification and a copy of the committal court paper proving the state the state s/he re[resents has jurisdiction. No juvenile can be returned to any state, however, without first assuring that rights have been afforded him/her through *Morrissey v. Brewer* (408 US 471 [1972]) and other Supreme Court decisions.

#### 9-002C Investigation of Juvenile Requesting Placement

Nebraska will complete investigations of a program in Nebraska in a timely manner. The Compact Administrator will receive applications from the requesting state and send it to the supervisor for assignment.

#### 9-002D Transfer to Another State

If a juvenile on parole, desires to transfer to another state, the following procedures must be followed:

- \* The juvenile must indicate his/her desire to transfer by completing and signing a memorandum of understanding and waiver.
- \* The ICJ Administrator will request an investigation and courtesy supervision from the receiving state.
- \* When acceptance has been acknowledged by the receiving state, the juvenile will be authorized to be sent to the receiving state.
- \* The receiving state will be requested to provide courtesy supervision for the juvenile.

See Interstate Compact Guidebook for process and forms.

#### 9-002E RETURN TO SENDING STATE

The committing state (sending state) may retake a juvenile parolee being supervised under the compact in another state at any time, without formalities. No juvenile parolee can be returned to any state, however without first assuring that the juveniles rights and Supreme Court decisions regarding due process have been afforded the juvenile.



CHAPTER 10-000

**EDUCATIONAL FUNDS FOR WARDS PROGRAM**

The authorized costs associated with the education of wards of any court or department of the State of Nebraska will be paid under specific circumstances.

This chapter contains the policy of the Department regarding eligibility for payment and types of services paid for by the Department. This information is available as a reference for workers and support staff.

Worker Responsibility

This program is administered centrally to pay for education services for state wards. The worker will assist Finance and Accounting by completing a verification form for bills received by Central Office for education services for designated wards. (See Education Funds Guidebook for verification form.)

10-001

**LEGAL BASIS**

The basis for these policies is Neb. Rev. Stat. 79-215, 83-108.04, and 43-2. Statutes, 1943.

10-002

**ELIGIBILITY**

Children and youth between the ages of five and 18 who are wards of any court or department of the State of Nebraska are eligible for state ward education funds in the following settings:

**SETTING:**

**ELIGIBLE IF:**

**PAYMENT FOR:**

Public School

- A. Ward resides in a licensed group home Center for Developmental Delays or Licensed child care agency, AND,
- B. The facility isn't in the school district where:
  - 1. The ward resided at the time of wardship; and
  - 2. The ward's parent(s) reside.

Regular or special education based on formula; transportation. (See 390 NAC 10-004 and Education Funds Guidebook.)

Note: Wards in foster family homes aren't eligible for State Ward Education Funds.

Residential Treatment Program with a School

- A. The facility is eligible as an institution as defined in 390 NAC 10-003 AND,
- B. The agency responsible for the child's residential program makes the placement (not a school district decision), AND,
- C. The ward is verified for and receives special education services in this school.

Note: The decision about what education program the child receives and where it is provided is made by the school district where the facility is located.

Special education based on Approved rate from NDE. (See 390 NAC 10-004 and Education Funds Guidebook.)

Inpatient Psychiatric Hospital Setting

- A. The hospital meets the definition of institution found in 390 NAC 10-003 AND,
- B. The ward enters the hospital for a psychiatric, mental health or substance abuse evaluation, AND,
- C. The agency responsible for the child's residential program makes the placement, (not a school district decision), AND,
- D. The primary purpose of the hospitalization remains evaluation. If the purpose becomes treatment, refer to 390 NAC 10-004.

Education costs as determined in 390 NAC 10-004. (See Education Funds Guidebook.)

County Detention Centers

- A. The center is eligible as defined in 390 NAC 10-003.01

Costs of Education based on a formula. (See Education Funds Guidebook.)

**10-003**

**DEFINITIONS**

10-003.01

**DEFINITION OF INSTITUTION**

An institution is a public or private facility, not owned or operated by the public school district, that operates a residential and special education program with an approved special education rate established by the Nebraska Department of Education.

This definition of institution includes school programs with an approved rate run by psychiatric hospitals and group homes and child care agencies. It doesn't include parochial schools or Youth Rehabilitation Treatment Centers.

Statutory Reference: Neb. Rev. Stat. 79-445.

10-003.02

**DEFINITION OF COUNTY DETENTION CENTERS**

To be eligible for payment, county detention homes or centers must meet the following criteria:

1. Be selected by the county board with jurisdiction over a detention home,
2. Have agreed or contracted with the county board to provide educational services, and
3. Have been approved by the State Department of Education.

Statutory Reference: Neb. Rev. Stat. 43-2,110.

10-004

**PAYMENTS FROM THE DEPARTMENT FOR EDUCATION FOR WARDS**

1. Payments for Education Services Provided by Public Schools

Wards in their own homes and in foster family homes are not eligible for state ward education funds.

When the eligibility criteria for public schools are met, the school district will receive payment as follows:

- a. Non-Disabled Students

- (1) Regular Education

If an eligible ward isn't disabled and doesn't receive a special education program or special services, payment for regular education will be based on a formula. (See Education Funds Guidebook for Formula.)

(2) Regular Program with Special Services

If an eligible ward is in a full-time regular program, but does receive other services such as speech therapy or physical therapy, those services will be paid based on the approved rate established by the Department of Education. Payment will be based on the percentage of time the youth receives these services. (See Education Fund Guidebook for process.)

b. Disabled Students

If an eligible ward is disabled and requires educational programming or other special services, payment will be authorized for costs relating to the youth's special educational programming.

Special services such as speech therapy or physical therapy will be paid based on the approved rate established by the Department of Education. Payment will be based on the percentage of time the youth receives these services. (See Education Fund Guidebook for process and formula.)

c. Transportation

Transportation costs will be reimbursed when necessary and according to guidelines established by the Department of Education.

2. Payments to Class I School Districts

When a ward from a Class I school district is placed outside of that district but continues to or will attend the school she/he would have attended if she/he had remained in the resident school district, the ward isn't eligible for state ward education funds.

3. Payments to County Detention Homes or Centers

Payment for wards placed in a county detention home or center as defined in statute will be authorized based on all actual costs related to the ward's educational programming, regardless of the ward's county of residence.

Statutory reference: Neb. Rev. Stat. 43-2,110.

#### 4. Payments to Institutions

##### a. Inpatient Psychiatric Hospital Settings

###### (1) Evaluation or Assessment

If an eligible ward enters a psychiatric hospital for an assessment or evaluation, payment of the ward's educational program will be based on the approved rate from the Department of Education if the ward is eligible for special education. If the ward isn't eligible for special education, the regular education rate will be paid.

###### (2) Treatment

If the primary purpose of the hospitalization becomes treatment or, in any case, if the hospitalization extends beyond 30 days, the ward will be referred to the school district where the ward lived prior to hospitalization for verification of the ward's disability and eligibility for special education. If the ward is eligible for special education, the approved rate from the Department of Education will be paid by the Department. If the ward isn't eligible for special education, within three months of placement the facility will be reimbursed for those days the ward attended until the verification was made plus the three-month period after the placement. The ward will then be moved into an appropriate education program. (See Education Funds Guidebook.)

##### b. Residential Treatment Program with a School

If the criteria for residential psychiatric facilities described in 390 NAC 10-002 are met, and the child is eligible for special education, the approved rate from the Department of Education will be paid to the facility.

If the criteria described in 390 NAC 10-002 are met and the child isn't eligible for special education, a re-evaluation will be done to determine if the child is eligible for special education. A determination of the child's eligibility for special education will be made within three months of placement in the residential facility in order for the program to be eligible for state ward education funds. If the child is determined to be ineligible for special education, state ward education funds will be paid for those days the child attended until the verification decision was made not to exceed three calendar months. The Department will continue to pay up to one month while the ward is moved into an appropriate education program.

Children in an emergency shelter facility, attending the facility operated school, must be eligible for special education in order to receive this funding. The short-term nature of the placement does not allow time for a special education verification. The child should attend public school if s/he is not verified for special education.

CHAPTER 11-000

**SPECIFIC ISSUES FOR THE CHILDREN  
IN THE CUSTODY OF THE DEPARTMENT**

Decisions regarding a child who is a ward residing with the parent should be made by the parent. The worker will intervene when a parental decision regarding a child who is a ward is likely to harm the family or child.

When a child is in out-of-home placement, the worker will involve at least the parent, foster parent and child in decision-making. Decisions are made in keeping with the best interest of the child, safety, case plan and the permanency goal.

When parental rights have been terminated or relinquished or the parent's whereabouts are unknown, or the parent chooses not to be involved, the Department is responsible for all decision-making based on the best interest of the child, safety, the case plan and the permanency goal.

**11-001 DAILY CARE DECISIONS IN OUT-OF-HOME CARE PLACEMENTS**

Foster care providers or residential staff will make decisions involved with the daily care of the child such as:

- personal hygiene,
- discipline (in accordance with Department policy), and
- family routines.

NOTE: Daily care decisions are always made in accordance with Department policies and guidelines and licensing requirements. Special conditions about daily care will be determined by the worker.

Certain decisions regarding care of children have potential implications to the cultural practices and religious beliefs of a family. To avoid violating a child and family's culture and religious beliefs, the Department will attempt to involve the parent in decisions about care of children. Routine care decisions having particular potential for cultural and religious implications are:

- haircutting and hair coloring,
- body piercing,
- tattoos,
- clothing
- dating,
- driver's license,
- cultural practices,
- religious or spiritual practices,
- photographs, and
- social and school activities.

Decisions will be made with respect for the cultural and religious beliefs of the child and family. The worker may consider the need for input from the guardian ad litem.

11-002

**SPECIFIC SENSITIVE ISSUES**

11-002.01

GENERAL ISSUES

11-002.01A

ALCOHOL USAGE

Permission for children to consume alcohol will be given only if it is part of a formal, generally accepted religious ceremony.

11-002.01B

CAR OR MOTORCYCLE PURCHASE

No Department employee will sign permission for purchase or use of a motorcycle for a ward or co-sign for the purchase of a car for a ward.

The worker, with parental consent and consent of the care giver, may approve the purchase of a car if the ward:

- Has a valid driver's license;
- Demonstrates maturity to handle the responsibility of motor vehicle ownership;
- Demonstrates a commitment to obey relevant laws and regulations;
- Has enough money to purchase license and insurance and maintain a car; and
- Has proof of insurance and maintains insurance.

A ward's guardianship account may be used for a car purchase only if it is required for school or employment.

NOTE: A ward's use of his/her vehicle may be restricted according to guidelines established by parent, worker and caregiver. A juvenile offender's use of his/her vehicle may be restricted through the Conditions of Liberty agreement.

11-002.01C

WARDS WHO HAVE CHILDREN

The Department has no authority over the child of a Department ward unless a court has taken jurisdiction over the ward's child and placed custody with the Department. The Department will offer education, guidance and support to the ward in making parenting decisions.

If a ward has a child living with her/him in a foster home, group home, or child-caring institution, the child of the ward may receive a foster care payment. If foster care payment is arranged, the child is then not eligible for Temporary Aid to Needy Families (TANF). The foster care payment can be paid directly to the provider or to the ward. Payment will be made to the ward unless s/he has shown s/he is not able to handle his/her money. If paid to the ward, the ward then is responsible to pay the placement provider for the child's living expenses. The foster care payment is the base rate of the Foster Care Payment Determination according to the child's age.

Note: Effective December 1, 1992 through June 30, 1995, the unborn child of a ward is eligible for a foster care payment beginning with the first day of the mother's third trimester of pregnancy.

A child of a ward will not be eligible for a foster care grant if the ward:

- Loses his/her eligibility for a foster care grant,
- Is living independently with her/his child, or
- Is separated from his/her child.

The worker will refer the ward to the income maintenance worker to determine if the ward's child is eligible for other programs through the Department.

If the ward who is a parent is placed at a YRTC, the ward needs to make appropriate arrangements for his/her child. If s/he is unable to do so, the county attorney or law enforcement will be contacted for possible action.

11-002.01D

DEATH OR IMMINENT DEATH OF A WARD

In the event of imminent or actual death of a ward, the worker will notify the following:

- The parent(s), when parental rights are intact;
- The court and all involved attorneys; and
- The supervisory staff, who will notify the Director.



#### 11-002.01E DISCIPLINE OF CHILDREN IN OUT-OF-HOME PLACEMENT

The worker will inform out-of-home providers that the following must never be used for discipline of children:

- Denial of necessities;
- Chemical or mechanical restraints;
- Derogatory remarks, abusive profane language;
- Yelling, screaming or threats of physical punishment;
- Physical punishment of any kind - spanking, slapping, pinching, shaking, biting, etc;
- Striking with inanimate objects; and
- Rough handling.

Any violation of this policy will be reported to the local licensing staff and to the local child protective service staff immediately.

For children at a YRTC, physical, mechanical or chemical restraints or lock-up may be used by designated staff when deemed appropriate under YRTC policies.

#### 11-002.01F DRIVER'S LICENSE

The worker, with consent of the parent and caregiver, may allow the child to obtain a license or permit. Driving is a privilege earned through showing responsibility.

The ward must complete a driver's education course before taking the driver's examination. If a driver's education course is unavailable, this requirement may be waived.

A condition of parole for children committed to HHS-OJS is that the child not operate or purchase any motor vehicle without written permission of the worker. If the child owns a vehicle before being on parole, the child cannot operate it without permission of the worker.

#### 11-002.01G EMPLOYMENT

The worker may give approval for a ward to be employed.

The following factors will be taken into consideration:

1. The ward's desire to be employed;
2. Employment is part of the overall plan for the child;
3. The care providers and parent support the decision; and
4. Child labor laws are not violated.

#### 11-002.01H FIREARMS AND OTHER LETHAL WEAPONS AND HUNTING

The worker will not permit children to maintain in their possession any type of firearm, rifle, shotgun, BB gun or any lethal weapon. Nebraska law states that it is "unlawful for any person under the age of 18 years to possess a pistol, revolver or any other form of short-barreled firearm." Neb. Rev. Stat. 28-1204(1).

A ward may be permitted to hunt within Nebraska, only when meeting the following conditions:

- Successfully completed an approved hunter's safety course and is 16 years of age or older;
- Has approval of the parent(s), worker and care giver(s);
- Has obtained a hunting permit; and
- Is properly supervised by the parent(s) or foster parent(s).

For juvenile offenders who obtain permission, this must be reflected in the Conditions of Liberty agreement.

The worker will evaluate the following in determining the appropriateness of the ward's taking a hunter's safety course:

- The ward's maturity and
- The ward's history of behavior, including any history of violence, assaults or improper use of firearms.

#### 11-002.01I FUNERAL ARRANGEMENTS

The parent(s) is financially responsible to provide for the funeral. If the parent is not financially able to provide for the funeral expenses and burial, the expenses may be paid through state funds but must not exceed usual and customary charges or a referral may be made for county burial assistance. If parental rights are terminated or parent(s) cannot be located, supervisory staff will assist the worker in making the funeral arrangement. The following information will be provided to the mortician:

- Name of child,
- Location of child,
- Child's birthdate and place of birth,
- Date of death, and
- Parent's names.

If the child has a guardianship account, it will be used to defray the funeral and burial expenses. A headstone may be provided by the Department if no other funds are available.

#### 11-002.01J FURLOUGHS FROM YRTC

Furloughs for youth at the YRTC will be part of the total case plan. Furloughs may be granted to prepare the child for re-entry into the community. The Juvenile Services Officer will determine when furloughs are appropriate in consultation with the YRTC staff, the parolee and the family.

11-002.01K

GUARDIANSHIP ACCOUNT

Funds from a ward's guardianship account will be used to meet the expenses of a child not covered through other funding sources such as private insurance and Medicaid. The Department will approve expenditure of guardianship funds for, but not limited to, the following:

- Clothing,
- School expenses,
- Expenses related to high school graduation,
- Special learning devices,
- Bicycles,
- Contact lenses,
- Orthodontic appliances,
- Other non-medically required items,
- The purchase of a car, if required for school attendance or employment, and
- Car insurance.

Funds from the guardianship account will not be used for:

- General spending money and
- The purchase of guns or other weapons.

When a ward is discharged from the Department, all funds held by the Department for a ward will be immediately transferred to one of the following:

- The Social Security Administration for disbursement to the appropriate party when SSI or RSDI benefits are involved;
- The ward when she/he is age 17 or older and is living independently of the parent;
- The ward's parent(s), if the ward is still a minor and is dependent upon her/his parent;
- The adoptive parent(s) in cases of adoption; and
- The guardian or conservator, if one has been appointed by the court.

(See Case Management Guidebook, Discharge of a Ward for procedures for authorizing guardianship fund.)

A youth committed to the YRTC receives funds to be used for his/her own personal needs. This is kept in a separate account. The youth receives the remaining money when s/he leaves the YRTC.

11-002.01L

ILLEGAL DRUGS OR USE OF ANOTHER INDIVIDUAL'S  
PRESCRIPTION DRUGS

Under no circumstances will a child be permitted to use or possess another individual's prescription drugs or illegal drugs.

11-002.01M

LEISURE ACTIVITIES

Children on parole will be encouraged to participate in age appropriate leisure activities. When a child requests permission to participate in organized sports, the worker will consult with the parent and the child's physician. If the child's parent and physician and therapist, when involved, approve the child's request, the worker will give permission to participate. If the child's parent disapproves and the worker supports the child's request, the worker will contact the guardian ad litem for legal resolution. If the child's physician disapproves based on medical limitations, the worker will not give permission.

11-002.01N

MARRIAGE

The worker may grant a ward permission to marry after considering the following:

- The child is 17 years old or older;
- The ward's parent(s) (if parental rights are intact) and the court approve the plan; and
- The two parties demonstrate maturity and are able to financially support themselves.

Upon marriage, children adjudicated as abuse, neglect, dependent or status offenders are considered to be an adult and are discharged. (See 390 NAC 3-008, Ongoing Services, Case Evaluation and Case Closure.) Youth adjudicated as juvenile delinquents may remain on parole if they are married.

11-002.01O

MECHANICAL RESTRAINTS WITH JUVENILE OFFENDERS

Every juvenile offender apprehended and detained by a Juvenile Services Officer must be mechanically restrained through the use of wrist or leg restraints or both. This applies to transportation of the juvenile offender from the point of apprehension and detention to a detention facility or from a detention facility to a YRTC. A Juvenile Services Officer may also use restraints in transporting a juvenile offender under the following situations:

- To protect public safety,
- To prevent the child from injuring himself/herself or others, or
- To ensure the juvenile offender's presence.

The use of wrist or leg restraints or both is determined by the Juvenile Services Officer. These restraints will never be used as punishment and should not be applied for more time than is absolutely necessary. When possible, the need for restraints should be anticipated and assistance from law enforcement officers arranged.

11-002.01P

MILITARY SERVICE

The worker may grant a ward permission to enter the military service, after considering the following:

- The ward is age 17 or older;
- The ward's parent(s) (if parental rights are intact) and the court approve the plan; and
- The youth has demonstrated maturity to handle the responsibilities of military service.

Upon entrance into the military and completion of basic training, the child is discharged from the Department's responsibility. (See 390 NAC 3-008, Ongoing Services, Case Evaluation and Closure.)

Youth on parole cannot enter or enlist in the military unless discharged from HHS custody.

11-002.01Q

MONEY HANDLING

A worker will not act as a middle person in transmitting or transferring money from one party to another.

11-002.01R

RELEASE OF PHOTOGRAPHS AND IDENTIFYING INFORMATION

No photographs or slides of a Department ward or other identifying information regarding a Department ward may be released for use on posters, in presentations, press releases, or newsletters without the written consent of the worker.

The worker may grant release of photographs and identifying information after considering the following:

- Legal status of parental rights (if parental rights are intact, written parental consent must be obtained);
- The ward's opinions and wishes; and
- The use of the material (For example, if a child is identifiable, will it be detrimental to the child or his/her family). If a situation is questionable, the worker will not give consent.

11-002.01S

RELIGION

The Department will provide reasonable opportunities for a child in out-of-home care to maintain his/her religious beliefs and practices. The following will be used as guidelines in providing reasonable opportunities:

- The child's religion is assumed to be that of his/her parent unless the family indicates otherwise.
- The child's religious beliefs will be respected by the out-of-home care providers. This includes providing reasonable opportunities for the child to practice his/her religious beliefs and honor religious dietary practices, if applicable.
- The foster care provider will not require the child to practice the foster care provider's faith (that is, be baptized, receive communion, be confirmed, witness or go to confession).
- The foster care provider may require the child to attend a place of worship with the family. If the child's family, the child or the worker sees this as interfering with the child's practice of his/her religion, other arrangements must be made.
- If the child wishes to change his/her religious faith or practice to the foster care provider's religion, parental permission is required unless the parent(s) is unavailable. If parental rights have been terminated, the worker may authorize a change in the child's religion based on the child's best interest.

The worker will consult with others if the child is involved in any religious practice which may constitute a danger to himself/herself or others. The consultation will determine appropriate ways to best serve the child.

11-002.01T

RUNAWAYS

When a child is determined to have run away, the worker will take the necessary steps to locate and recover the child. The worker will notify law enforcement and the parent and provider, if the child is placed out of the home, as soon as possible. (See Case Management Guidebook, Specific Issues for process.)

When the child is located, the worker should determine the child's current status and future placement and services. (See Guidebook for practice.)

11-002.01U

TOBACCO

Use of tobacco by children in the care of the Department is discouraged not only because of the law prohibiting sale of tobacco to persons age 17 or younger but also because of the serious health hazard that tobacco use presents. The Department staff will not give permission to use, purchase or provide tobacco products for children age 17 or younger.

11-002.01V

TRAVEL

When a child in out-of-home placement will be leaving the State of Nebraska for more than 72 hours, the parent(s), will be notified of the child's travel plans before departure. If the child will be leaving the State of Nebraska for a substantial period of time, the court or guardian ad litem will be notified of the child's travel plans before the child's departure. If the parent(s) disapproves and the worker supports the travel plans, the worker will contact the guardian ad litem for legal resolution.

All travel will be supervised by the foster parent or responsible adult if travel is a part of an approved activity. The worker will have access to an itinerary of the child's travel including a means of contacting for emergencies, if at all possible.

Juvenile offenders will not leave the state of their residence without written permission of the worker. Juvenile offenders need parental permission to leave the county of their residence.

11-002.02

EDUCATIONAL ISSUES

11-002.02A

NOTIFICATION TO SCHOOL DISTRICTS

Department staff will send written notification to the school district where the child resides within seven days of each of the following situations:

- When a child becomes a ward of the Department (whether removed from the home or not);
- When a child enters a new school district;
- If a child's parents' rights are terminated or relinquished;
- The court dismisses HHS custody;
- The child is adopted;
- A parent who was absent returns; and
- A child who was a ward turns 19 years old.

This applies to pre-school and school age children. See Out of Home Care Guidebook for form letter for notification to school district where the child resides.

11-002.02B

APPOINTMENT OF EDUCATIONAL ADVOCATE (SURROGATE PARENT)

The Individual with Disabilities Education Act established special education rights for children with developmental disabilities. These include the appointment of a surrogate parent by school districts when the child is a ward of the Department. The school district determines whether a surrogate parent needs to be appointed or not. A Department employee will not serve as the surrogate parent. Parents who retain and exercise the authority to make decisions regarding their child's education should be allowed to exercise those rights.

Department staff will provide written information to use in deciding to appoint a surrogate parent. The form letter to the school superintendent will provide this information and will be sent under conditions described in 11-002.02A. See Out of Home Care Guidebook for form letter.

#### 11-002.02C DISCIPLINE OF CHILDREN BY SCHOOL PERSONNEL

If a public school official in Nebraska has used corporal punishment on a child, the worker will immediately report the incident to law enforcement.

Nebraska statute prohibits corporal punishment in public schools. Neb. Rev. Stat. 28-1413.

The school official may be charged with violating Neb. Rev. Stat. 28-924, which prohibits a public servant from violating state law. The official may also be charged with assault.

If a child attends a private or public school outside of Nebraska, permission will not be given for the use of corporal punishment on a child.

#### 11-002.02D EDUCATIONAL PLACEMENT IN NON-PUBLIC SCHOOL SETTING

Department wards generally will receive educational programs through public school systems. However, educational placements in a non-public school (including "Rule 13 Schools" and approved or accredited private or parochial schools) may be considered upon the request of the parent, at parental expense and with no cost to the Department.

Guidelines:

Placement in a non-public approved or accredited school may be approved by the worker when:

- The school placement is requested by a parent whose rights are intact (If parental rights are terminated the school placement is consistent with the case plan.);
- The parent supports the school placement financially and there is no cost to the Department;
- The school can provide for the child's special educational needs, if any.

Placement in a "Rule 13 School" may be approved only when:

1. The school placement is requested by a parent whose parental rights are intact and the goal is reunification;
2. The parent signs a statement that she/he believes that the requirements for school approval and accreditation violate her/his religious beliefs;
3. The parent supports the school placement financially; and
4. The county superintendent states in writing that the school can meet the child's educational needs; the worker concurs with this assessment. The worker may obtain an independent assessment or consultation to determine if the placement is appropriate.



If parental rights are not intact, the ward will not be able to attend a "Rule 13 School" because the second requirement cannot be met.

Note: "Rule 13" school work may not be transferable or acceptable to a public school college or vocational school.

References: Nebraska Department of Education, Title 92, Chapter 13, "Rule 13".

11-002.03

## LEGAL ISSUES

### 11-002.03A APPREHENSION AND DETENTION OF JUVENILE OFFENDERS

Designated staff of HHS may apprehend and detain children committed to HHS-OJS as juvenile offenders. All staff doing this action must be trained in apprehension and detention practices. A Juvenile Services Officer will try to resolve issues with the juvenile offender and family before a juvenile is apprehended and detained. If this is not successful, the worker will consult with the supervisor. If it is concluded that an apprehension and detention is needed, trained workers should do the apprehension and detention using law enforcement personnel when the safety of the worker or the public may be endangered. Restraint equipment should be available for use in all apprehension and detention situations. (See 390 NAC 11-002.01O for use of mechanical restraints.)

11-002.03B

### BAIL OR PAYMENT OF FINES

For Children Adjudicated as Abuse, Neglect, Dependent or Status Offender

Bail or legally assessed fines may be paid from the ward's own guardianship account. When the ward has no funds in an account, the worker will first contact the parents to arrange payment. If the parent(s) is unable to arrange payment, the worker will then consult with supervisory staff or team to resolve the issue.

In cases where the Department pays a fine or posts bail, a repayment plan will be established with the child. Repayment by the ward can come from employment or by doing volunteer work.

For Children Adjudicated as Delinquent

The Department will not post bail for children adjudicated as delinquent. Payment of fines by these children will be addressed in the case plan.

11-002.03C CRIMINAL ACTIVITY BY CHILDREN WHO ARE WARDS

Workers should cooperate with law enforcement officials when the latter are trying to detect and apprehend children who are wards known to be or suspected of being involved in law violations. If workers have definite information which might assist law enforcement, they should provide such facts to the appropriate authorities.

11-002.03D NAME CHANGE

The worker may consent to changing a child's name if it is in the best interest of the child. The parent(s) will be consulted if parental rights are intact. Parent(s)' wishes will be strongly considered. If reunification is the plan, the parent(s) approval must be obtained.

11-002.03D LAW ENFORCEMENT OPERATIVES

Children who are wards will not be allowed to act as law enforcement operatives.

11-002.03F SEARCHES AND SEIZURE

Juvenile Services Officer may search a juvenile offender and his/her surroundings when there is reasonable cause to believe the juvenile offender is in violation of his/her Conditions of Liberty Agreement or in possession of contraband. Whenever possible the Juvenile Services Officer will consult with his/her supervisor before any search. Before searching surrounding property for weapons, drugs, drug paraphernalia and other contraband, the Juvenile Services Officer will obtain permission from the parent or owner of the property for entry and search. If permission is not given, the worker will contact law enforcement to proceed with obtaining a warrant. The Juvenile Service Officer may seize evidence of a parole violation, law violation or contraband. If a juvenile is living independently, the juvenile can consent to the search of the living premises. (See Case Management for Juvenile Offenders and Status Offenders Guidebook for details.)

11-002.04 MEDICAL ISSUES

11-002.04A ABORTION

A female ward has the right to obtain a legal abortion. The decision to obtain an abortion is the ward's. The child's worker will provide unbiased information to the ward regarding alternatives and appropriate agencies and resources for further assistance. The worker will not encourage, discourage, or act to prevent or require the abortion.

If a ward decides to have an abortion, the consent of the parent(s) or Department is not required, but notification may be required unless the conditions listed below exist.

The decision to tell or not to tell the ward's parent is made by the ward. If the ward decides not to tell her parents, the worker will honor that request. When parental rights are intact and the ward decides to tell her/his parent(s), the worker will help the ward inform her parent(s) of her decision.

Since there may be circumstances under which the worker needs to release information (e.g. medical complications), the worker will inform the ward that her/his decision may not remain confidential.

Nebraska law also requires women seeking abortions to be given informed consent 24 hours before the abortion is to be performed, except in an emergency.

Abortions may be funded through the Department's Medical Assistance Program only in cases where the life of the mother will be endangered if the fetus is carried to term.

NOTE: Under Nebraska law, written notification by the physician or the physician's agent to the parent is required 48 hours before the abortion is required for teens age 17 or younger. Notification IS NOT required if:

1. The attending physician certifies in writing in the pregnant ward's medical record that continuation of the pregnancy provides an immediate threat and grave risk to the life or health of the pregnant ward AND there is sufficient time to provide the required notification;
2. The abortion is authorized in writing by the parent or guardian (other than the Department) who is entitled to notification;
3. The pregnant ward declares that she is a victim of abuse, neglect or sexual abuse, in which case, notice of her declaration must be provided to the department or law enforcement as required by Neb. Rev. Stat. 28-7111; and
4. A judicial parental notification waiver is obtained from a juvenile, county or district court judge.

Nebraska law establishes time limits on this decision stating, "No abortion shall be performed after the time at which, in the sound medical judgment of the attending physician, the unborn child clearly appears to have reached viability, except when necessary to preserve the life or health of the mother."

Statutory references: Neb. Rev. Stat. 71-6901 et seq.  
Neb. Rev. Stat. 28-329.

11-002.04B

## AUTOPSY

Because the Department's guardianship terminates at the time of the child's death, the Department will not give consent to autopsy after a child's death. The child's parent(s) may then give consent. If parental rights are terminated, any consent for an autopsy will be given by the physicians in the Health and Human Services System.

11-002.04C BIRTH CONTROL, FAMILY PLANNING AND SEX EDUCATION

The worker will:

- Arrange for birth control counseling or refer for birth control all age-and-behavior-appropriate male and female wards. (The U.S. Supreme Court has ruled the State cannot deny minors from obtaining contraceptives without parental consent).
- Take into consideration the child's and parent's request for services consistent with their respective religious beliefs.
- Permit the ward treatment for venereal disease without parental consent as outlined in Nebraska Statutes 71-1121, R.R.S., 1986.
- Ensure that education regarding sexuality, birth control and family planning services are part of an overall plan leading to adult responsibility.

11-002.04D

HIV/AIDS

To protect children from discrimination as a result of being tested for the human immunodeficiency virus (HIV), the decision to test a child for the HIV antibody will be carefully made on an individual basis. It is the role of the worker to give written informed consent when a child's situation meets the conditions in the protocols in the Case Management Guidebook, Specific Issues section. A child will not be tested for HIV unless there is a reasonable cause to believe the child has been exposed to the virus. Children may be tested either through an approved Counseling, Testing, Referral and Partner Notification Site (CTRPNS) or through the child's medical care provider, depending on the individual child's situation per the procedures outlined in the guidebook. Informed consent is required for all HIV and AIDS testing.

To preserve confidentiality, an HHS approved CTRPNS will be used whenever possible, particularly for older youth who engage in risk behaviors. These sites provide for the greatest degree of confidentiality as well as appropriate pre- and post-test counseling regarding the child's risk behaviors.

The Interagency Agreement on HIV/AIDS counseling and testing will guide decision-making for children with this condition. (See protocol in Guidelines for Decision-Making in Case Management Guidebook.)

The following four situations should guide decision making for informed consent by the Department for HIV testing:

1. **Medical Testing:** When a child has medical symptoms, with or without other identified risks of HIV exposure, and when a medical provider asks for informed consent to test the child because of these medical indications, it is appropriate for the worker to give informed consent for the child to be tested in a hospital or clinic as part of the medical evaluation. Even though the testing is done by a medical provider and will become part of the child's medical record, the use of the CTRPNS for counseling services for older children regarding their risk behaviors should be considered and encouraged.

HHS staff should give informed consent for HIV testing for medical reasons in the following situations:

- a. The child has hemophilia;
  - b. The child is an infant born to a mother known to be HIV antibody positive; that is, has AIDS, has HIV disease, or is known to be an HIV carrier;
  - c. The child is an infant under three years of age who was born to a mother known to be at risk for HIV infection but whose HIV status is unknown and cannot be determined either through her medical record or through current testing. Behaviors that may put the mother at risk for HIV infection include: use of injectable drugs, engaging in sex for money, having multiple sex partners, etc.;
  - d. The child has medical signs or symptoms which are suggestive of an HIV related illness;
  - e. The child is pregnant. (HIV testing during pregnancy is recommended for all women. In addition, pregnant youth should be encouraged to visit the CTRPNS for appropriate pre and post test counseling.)
2. Children's Behaviors. Older children who engage in behaviors that put them at risk for HIV infection (for example, multiple sex partners, sex for money, and use of injectable drugs) should be individually evaluated. The use of the Counseling, Testing and Partner Notification Sites should be strongly considered not only for the testing but more importantly for the pre and post test counseling which is available. (Using the Counseling, Testing and Partner Notification Sites protects the child's confidentiality, which is a very important consideration for children who are wards.)
  3. Exposure to Child's Blood. Health care facilities are required to have policies in place to protect their health care workers. These policies are governed by OSHA regulations and by state statutes. When a health care worker has accidentally been exposed to blood or other potentially infectious body fluids of a state ward, the facility will contact the worker per their policies to request informed consent for HIV testing of the ward. Such events include the accidental exposure of blood to a health care worker's non-intact skin, mucous membranes, or subcutaneous tissue such as through a needle stick injury. The worker should establish that the medical facility has a policy addressing procedures for accidental exposure to blood that meet both OSHA requirements and state statute requirements 1) for getting informed consent for testing from the child's legal guardian; 2) for ensuring that the fact of HIV testing and the results of the testing are kept confidential and do not become part of the patient's medical record; 3) for ensuring that the HHS caseworker for the ward is given the results of the HIV testing. If these conditions are met, the worker should give informed consent as soon as possible after the exposure to allow the health care worker to be treated with a preventive course of medication. The caseworker may seek consultation from an HHS physician at any time.
  4. Forensic Issues. Any information related to HIV infection that may be needed in a court of law (for example, prosecution for child abuse) must be obtained through the regular medical delivery system. Information from CTPNS cannot be used for forensic purposes because it is confidential under the law.

### Results of Testing

If a child tests positive for HIV in any of the above four situations, the child will be immediately referred to an appropriate provider for further medical evaluation and treatment. The child will be provided with age appropriate counseling and support to assist him/her in emotionally and physically dealing with the condition. The child's parents, foster parents, or immediate caregiver and the child's guardian ad litem will be advised of the child's condition and course of treatment.

#### 11-002.04E GENERAL INFORMED CONSENT FOR MEDICAL DIAGNOSIS AND TREATMENT

It is the responsibility of the worker to talk to providers of mental health, substance abuse and medical services to obtain information about the risks and benefits of treatment in order to give informed consent. Informed consent is sometimes given verbally but a written signature may be required. The worker should involve the parent(s), Guardian ad litem, county attorney and the judge, as appropriate. The worker may seek consultation from physicians within the HHS System.

(See Case Management and Case Management for Juvenile Offenders and Status Offenders Guidebooks, Conflict Resolution for guidelines if there is a disagreement about treatment.)

#### 11-002.04F MEDICAL DECISION MAKING

When the Department is guardian of a child resulting from court action or voluntary relinquishment, the Department is legally authorized to make all decisions regarding medical treatment while recognizing the importance of parental involvement in decision making. The worker is responsible for such decisions but will involve the parents (when parental rights are intact) to the maximum extent possible. The worker may give the foster care provider or contracted residential facilities consent to obtain emergency or routine medical treatment. Exception: permission for HIV antibody testing or other screening tests for AIDS must follow established Department policy and protocol.

#### 11-002.04G ORGAN DONATIONS

If the death of a ward is imminent, the hospital where the ward is located is responsible for seeing and following through with requests for organ donations. If parental rights are not intact, the worker will consent to an organ donation after consulting with the medical director of the Department and consultation with supervisory staff, Guardian ad litem and the court. If parental rights are intact, consult the above along with the parents.

#### 11-002.04H STERILIZATION

Children and youth who are wards of the Department will not be sterilized. If a medical procedure that may or will result in sterilization is medically necessary for reasons other than sterilization, the worker may consent after consulting with the supervisor or team, the parent(s), guardian ad litem, court, physicians and legal staff in the HHS System.

11-002.04I WITHHOLDING OR WITHDRAWAL OF LIFE SUPPORT

HHS does not request that a physician order the withholding or withdrawal of life supports from a terminally ill ward.

However, when a physician recommends and requests informed consent for the withholding or withdrawal of life supports from a state ward, the following process shall be used to decide whether such consent will be given:

The Director of the Department is responsible for making the decision to withdraw or withhold life support from a terminally ill ward. The decision will be reviewed in light of the child's neurological devastation or proximal death or both. The Director will have input from a central office team consisting of one of the HHS physicians, legal counsel, and a CPS program specialist and from the local office team consisting of the child's parents (when parental rights are intact), the child's worker, the guardian ad litem, and the District Administrator.

Department legal counsel will be contacted for any legal action necessary.

When a request to withdraw or withhold life support is made, the worker will instruct the medical providers to continue life support pending a decision by the director. The worker in conjunction with the central office team will then be responsible to collect relevant information for the Director's decision, including letters from the child's attending physicians and a report from the hospital ethics committee.

If a decision is made to give such informed consent, all parties will be notified in writing that HHS intends to give such consent within a stated period of time. "All parties" means the parents or their attorneys if they are represented by legal counsel, the guardian ad litem, the county attorney and the judge. Informed consent will be given to the medical provider in writing.

If a decision is made not to give informed consent, the medical provider will be notified in writing by the Director.

11-002.04J PARENTAL OBJECTIONS TO MEDICAL CARE AND TREATMENT

If a parent objects to medical treatment, the worker and parent should gather information and seek medical advice or evidence of need for treatment. If the parent still objects but the worker's assessment indicates the need for medical care and treatment, the worker will consult with the supervisor. The supervisor and worker should involve the physicians or lawyers or both within the HHS System.

The parent, whose rights are intact, will be advised of the recommended medical care that the HHS staff believe should be done. If the parent still disagrees, then:

1. For low risk situations, the worker will discuss the issue with the guardian ad litem and give consent; and
2. For high-risk situations, the worker will involve the guardian ad litem, county attorney and judge as appropriate.

11-002.04K            PARTICIPATION IN MEDICAL RESEARCH PROJECTS

Department staff will not give permission for Department wards to participate in medical research because of the complicated legal and ethical ramifications of the practice. **EXCEPTION:** An exception may be granted if a ward would receive direct treatment or therapy that might benefit the ward. An example of this is a terminally ill child with a rare cancer for which there is no known treatment but for which there is a treatment protocol involving experimental subjects. In this type of situation, the protocol will be evaluated by staff in the Medical and Legal Divisions of the HHS System. The child, parents, guardian ad litem and judge must be consulted. The decision should be made jointly.



TITLE 390 CHILD WELFARE AND JUVENILE SERVICES

CHAPTER 12-000 COUNTY JUVENILE SERVICES AID PROGRAM

12-001 SCOPE AND AUTHORITY: The County Juvenile Services Aid Program is authorized in the Juvenile Services Act, Neb. Rev. Stat. §§ 43-2401 to 43-2414, and was created by LB 640, Laws 2001. The purpose of the Program is to prevent the increasing number of juveniles in secure or more restrictive settings by:

1. Developing community-based non-secure juvenile services that will prevent inappropriate placements in more restrictive settings distant from a juvenile's family and community; and
2. Increasing capacity for non-secure community-based services to juveniles.

Funding must be used for the establishment and provision of community-based programs and services for juveniles cited by law enforcement for law violation(s) and adjudicated juvenile offenders, and to increase capacity for community-based services to juveniles as identified in a Comprehensive Juvenile Services Plan.

#### 12-002 DEFINITIONS

Commission means the Nebraska Commission on Law Enforcement and Criminal Justice.

Department means the Nebraska Department of Health and Human Services.

HHS-OJS means the Department's Office of Juvenile Services.

YRTC means Youth Rehabilitation and Treatment Center.

#### 12-003 ELIGIBILITY CRITERIA

1. Only individual counties or groups of counties within the State of Nebraska are eligible for funding under the County Juvenile Services Aid Program.
2. Counties must develop and adopt a Comprehensive Juvenile Services Plan that meets the requirements of 390 NAC 12-004. The plan must be approved by the Commission and submitted to the Department to make a county or group of counties eligible for funding through the Program.
3. Counties must submit an application that meets the requirements of 390 NAC 12-005.
4. Starting on June 1, 2002, counties must apply for Program funding no later than June 1 of each year.
5. Counties choosing not to apply for funds in a given fiscal year may make application for funding the following year. Funds not applied for will go unspent and be returned to the state's General Fund at the end of the fiscal year.

12-004 COMPREHENSIVE JUVENILE SERVICES PLAN:

12-004.01 Plan Requirements: The Comprehensive Juvenile Services Plan must be prepared in accordance with the U.S. Juvenile Justice and Delinquency Prevention Act of 1974 and the requirements in Neb. Rev. Stat. §§ 43-2405 and 43-2406.

12-004.02 Plan Development

12-004.02A: A county may develop its own individual Comprehensive Juvenile Services Plan or develop a plan with a group of counties.

12-004.02B: Any portion of a plan dealing with administration, procedures, and programs of the juvenile court must not be submitted to the Department without the concurrence of the presiding judge(s) of the court(s) having jurisdiction in juvenile cases for the geographic area(s) to be served.

12-004.02C: Programs or services established by Comprehensive Juvenile Services Plans must conform to the family policy tenets prescribed in Neb. Rev. Stat. §§ 43-532 to 43-534.

12-004.02D: A county or group of counties may apply to the Commission in fiscal year 2001-02 or fiscal year 2002-03 for a county planning grant to aid in the development and adoption of the Comprehensive Juvenile Services Plan.

12-004.03 Plan Revision: Any county/group of counties making a revision to its Comprehensive Juvenile Services Plan must submit to the Commission and the Department a revised plan that specifies the revision and reasons for the revision, including how the change impacts desirable outcomes.

12-004.04 Program Design: In the Comprehensive Juvenile Services Plan, counties must design programs that satisfy the following objectives:

1. Address the preventive, diversionary, and disposition needs of juveniles;
2. Encourage coordination of the elements of the juvenile service system; and
3. Provide an opportunity for local involvement in developing community programs for juveniles with the objectives of family preservation, least restrictive yet most effective interventions, active family participation, local treatment, and alternatives to secure detention.

12-005 APPLICATION REQUIREMENTS: The application must contain all information requested on the "Application for LB 640 County Juvenile Services Aid Funds", attached and incorporated into these regulations. (See Attachment 1.)

12-006 DISTRIBUTION OF FUNDS: The Department will distribute funds to counties meeting the eligibility criteria in 390 NAC 12-003 based upon the following:

1. A formula based solely on the total number of residents per county who are twelve years of age through eighteen years of age, as provided by the most recently available federal Census data.
2. Aid provided to a county or group of counties will be reduced by the cost to the state for care of juveniles from that county or group of counties who, as determined by a risk and needs assessment instrument of HHS-OJS, do not meet the criteria established by rule and regulation under Neb. Rev. Stat. § 43-406 that identifies the types of offenders appropriate for YRTC or more restrictive placement, but who are in fact committed to HHS-OJS for placement at a YRTC or more restrictive level.
3. Funds will be distributed upon confirmation that the county or group of counties has met the eligibility criteria.
4. Any unclaimed funds by a county cannot be applied for by any other county or group of counties.

#### 12-007 REQUIREMENTS OF COUNTIES RECEIVING PROGRAM FUNDS

12-007.01 Match Requirements: Counties must provide a 40% local match from non-state sources for aid funds received from the state. Any local expenditure for community-based programs for delinquent juveniles may be applied toward the local match requirement. Counties acting as a group must provide a 40% match to the group's total distribution, not a 40% match from each individual county. It is the responsibility of each county or group of counties to provide and verify their 40% match funds. A copy of the 40% match verification must be included with the required annual report.

12-007.02 Use of Funds: Funding received by counties must be used exclusively to assist counties in the implementation and/or operation of non-secure programs or services identified in their Comprehensive Juvenile Services Plan, including programs or services for assessment and evaluation, prevention of delinquent behavior, diversion, non-secure shelter care, intensive juvenile probation services, restitution, family support services, and family group conferencing. A county may develop, enhance, or expand non-secure programs or services. Funding must not be used for construction of secure detention facilities, secure youth treatment facilities, secure youth confinement facilities, capital construction, or the lease or acquisition of facilities.

12-007.03 Site Visits: Counties must allow periodic site visits at the Department's discretion by HHS-OJS staff for the purpose of review and evaluation of expenditures and programming supported by Program funds.

12-007.04 Reporting Requirements: Counties must submit annual reports. Failure to submit the annual report will result in the withholding of future funds until the required report is submitted. The report must be submitted by September 1 of each year and must include:

1. Total number of youth served by all programming and services funded by the County Juvenile Services Aid Program within a county or region of counties, the number of youth served by each service, and the location of services.
2. Description of the youth served: age; grade level; gender; race; status in juvenile system (i.e. HHS-OJS, probation, law violator); type of law violation committed; adjudication finding (i.e. Neb. Rev. Stat. § 43-247 (1), (2), (4); pending; none); any substance abuse or mental health need diagnosed or known.
3. Total number of units/hours of service provided, specific type of service and average length of service for each type.
4. Total number of youth placed in detention and residential treatment.
5. Total number of youth committed to the YRTC's – Kearney and Geneva.
6. Total number of youth placed in out-of-state facilities, programs, or services.
7. Evaluation of programs/services including:
  - a. Statistical measurement of the program(s) or service(s) to assess goal accomplishment in accordance with outcomes as noted in the Comprehensive Juvenile Services Plan.
  - b. Narrative of program accomplishments focusing on effectiveness of program components in relationship to meeting outcomes as identified in the Comprehensive Juvenile Services Plan.
  - c. Projection or forecast of youth and program resource needs for the following year.
8. Total expenditures for the reporting year and the previous fiscal year for all juvenile programming, percentage of county operating budget expended on juveniles, and a breakdown of expenditures by service or program.
9. Total expenditures for the reporting year and the previous fiscal year for detention, residential treatment, and non-residential treatment.
10. Request for any technical assistance needed from the Department in the upcoming months.