

<b>Protection and Safety Procedure Update #14-2012</b>	
Regarding:	Continuance of adoption subsidy agreement after death of the adoptive parent
Date Effective:	10/16/12
Contact:	Deanna Brakhage at 402-477-9331 or deanna.brakhage@nebraska.gov
Director Approval:	Thomas D. Pristow

**Philosophy:**

The Division of Children and Family Services believes it is in the best interests of children to ensure continuity of adoption subsidies in the event of an adoptive parent's death. Continuing the adoption subsidy via a designated guardian will provide financial assistance in order to meet the needs of the adoptive child.

**Procedure:**

1. All adoption subsidy agreements for children who are wards of DHHS or who had a state subsidized guardianship at the time of the adoption being finalized MUST include designation by the adoptive parent(s) of a guardian for the child if the adoptive parent (if only one) or adoptive parents (if two) die while the agreement is in effect. The agreement should also contain an assignment of the assistance to the guardian or conservator upon the death of the adoptive parent(s).
2. For adoption subsidy agreements that do not have an assignment to a guardian or conservator:
  - a. The child can continue to receive medical services or other non-monetary services as specified in the agreement, including child care for the caregiver, for up to six months.
  - b. Eligibility for financial assistance specified in the agreement (maintenance and respite) can continue for up to six months following the death of the adoptive parent(s). Payment can be made only to a guardian or conservator appointed by the court. Once the guardian or conservator is appointed, payments will be made retroactively to the date of the death of the adoptive parent(s).
3. For adoptions completed with an assignment to a guardian or conservator:
  - a. The child can continue to receive medical or other non-monetary services as specified in the agreement, including child care for the caregiver.
  - b. Eligibility for financial assistance specified in the agreement (maintenance and respite) can continue for the time frame established in the original agreement if the child remains eligible for subsidy as specified in DHHS regulations. Payments can be made only after someone has been appointed as guardian or conservator by the court. Once the guardian is appointed, payments will be made retroactively to the date of the death of the adoptive parent(s).
4. When a child receiving a State Adoption Subsidy under the above provisions is placed with DHHS or another child placement agency, payment of financial assistance under the subsidy agreement ceases.

Federal vs. State Adoption Subsidy

1. Federal statute does not allow transfer of a federal subsidy to anyone other than the adoptive parent(s). Therefore, if the adoptive parent(s) of a child who was a ward and had a federal subsidy die, the subsidy provided to the guardian or conservator will be changed from federal to state. (If the adoption was a private or private agency adoption, the federal subsidy cannot be changed to a state subsidy.)

2. Federal statute does not allow for reducing the amount of a federal subsidy without the agreement of the adoptive parent(s). Therefore, cessation of the payment of financial assistance merely because a child is placed with DHHS or another child placing agency will not apply to federal subsidies.

#### Revised or Amended Subsidy Agreements

As of the effective date of the law, July 19, 2012, all subsidized adoption agreements, whether the subsidy is federal or state, must include the designation. The form, which is included at the end of this memo, will allow designation of more than one person. (It is important to note that the adoptive parent's designation of a guardian in the subsidy agreement does not prohibit that adoptive parent from designating a different guardian in a will or power of attorney.)

#### Requirement of Guardian or Conservator

Prior to making a payment to a court-appointed guardian or conservator, DHHS will require that the court-appointed guardian or conservator sign a statement that s/he understands the conditions of the subsidy, including ongoing eligibility requirements for the child and reporting requirements for the caregiver.

#### Actions Required:

1. When discussing subsidized adoption with persons who will be adopting a DHHS ward or are adopting a child for whom they have a state subsidized guardianship, DHHS staff\* must inform the adoptive parent(s) about the requirement for designation of a guardian.
2. When a child with a state adoption subsidy is placed with DHHS or a child placing agency, DHHS staff\* must stop the maintenance payment.
3. When a child with a federal adoption subsidy will receive the subsidized adoption benefits after the death of the adoptive parent(s), DHHS staff\* must change the subsidy from federal to state.

(\*DHHS staff is designated as the case manager or permanency specialist.)

#### **References:**

Nebraska Revised Statute 43-117.03 and 43-118.02

## Adoption Subsidy Agreement Attachment

### **Designation of Guardian and Conservator (Required if the adoption will be subsidized)**

I/we designate \_\_\_\_\_ to be guardian and conservator for \_\_\_\_\_, the child being adopted, in the event of my/our death and upon his or her appointment as the guardian or conservator by the court, assign to him or her any adoption assistance under this agreement.

If my first choice for guardian or conservator is not able to fulfill the duty, I designate \_\_\_\_\_ as guardian and conservator and upon his/her appointment as guardian or conservator, I assign to him/her any adoption assistance under this agreement.

I also understand that a Court may appoint a guardian or conservator for my child other than the person(s) I have designated above. In the event none of the persons I designated are appointed, or if a successor is appointed that I have not designated, I assign to the guardian or conservator appointed by the court any adoption assistance under this agreement.

### **Signatures**

\_\_\_\_\_  
Signature of Adoptive Parent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Adoptive Parent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of DHHS staff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of DHHS Supervisor

\_\_\_\_\_  
Date