

ADMINISTRATIVE MEMORANDUM - PROTECTION AND SAFETY #2-97

December 29, 1997

TO: Foster Care Social Service Workers
Foster Care Social Service Supervisors
Protective Service Workers
Protective Service Supervisors
District Administrators
Local Office Administrators

FROM: Jessie K. Rasmussen, Director
Department of Health and Human Services

RE: Retroactive Approval of Adoption Subsidy

LB 788 was passed in the Nebraska Legislature and was signed by the Governor this year. It became law on September 13, 1997, as an addition to Parts 2 and 3 of Nebraska statutes 43-117.

The new law reads as follows:

Section 1. Section 43-117, Revised Statutes Supplement, 1996, is amended to read as follows (the underlined portion is new legislation):

43-117. (1) The Department of Health and Human Services may make payments as needed on behalf of a ward of the Department with special needs after the legal completion of his or her adoption. Such payments to adoptive parents may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. Payments for maintenance and medical care shall terminate on or before the child's 20th birthday.

(2) The Department of Health and Human Services shall pay the treatment costs for the care of an adopted minor child which are the result of an illness or condition if within three years after the decree of adoption is entered the child is diagnosed as having a physical or mental illness or condition which predates the adoption and the child was adopted through the Department, the Department did not inform the adopting parents of such condition prior to the adoption, and the condition is of such nature as to require medical, psychological or psychiatric treatment and is more intensive than ordinarily childhood illness.

(3) The Department of Health and Human Services shall conduct a medical assessment of the mental and physical needs of any child to be adopted through the Department.

Changes to PFPC Policy and Guidebook are being written. Pending their completion, this memo outlines eligibility for and the process to be used if an adoptive family of a former state ward makes a request for ongoing subsidy after finalization of the adoption as a result of this new law.

ELIGIBILITY FACTORS

All of the following criteria need to be present in order to open a retroactive subsidy under the new law:

- The child who was adopted was a ward of the Department of Health and Human Services at the time that the adoption was finalized.
- The adoptive family contacted the agency and made a written request for subsidy within three years after the date that the adoption was finalized.
- The child is diagnosed with a physical or mental illness or condition which was present prior to the adoption finalization.
- The agency did not inform the adoptive parents of these condition(s) prior to the adoption. This criterion can, be met even if the Department did have the information prior to the adoption. For example, it is possible that the condition could not be diagnosed prior to the adoption due to the age of the child. It also would exist if the Department had the information and did not provide it to the adoptive family.
- The condition requires medical, psychological or psychiatric treatment. Documentation from a medical professional stating that the condition was preexisting (prior to the adoption finalization) must be provided by the family.
- Treatment is more intensive than an ordinary childhood illness. This factor will also need to be documented by a professional.

APPROVAL PROCESS

Applications for this subsidy should be made in writing from the family on forms DSS-AS-50, "Determination of Child's Eligibility for Subsidized Adoption," and DSS-AS-51, "Application for Subsidized Adoption." However, the "application date" will be considered as the date on which the family made any written request about receiving retroactive subsidy.

The documentation of the child's special needs and preexisting conditions must be documented by a medical professional specifically addressing:

- The child's diagnosis
- Documentation that the child's condition is more intensive than an ordinary childhood illness
- The progress and length of anticipated treatment
- Length of time that the child has had the condition and that it was preexisting to the time of the finalization of the adoption

A team should be convened to make a decision on approvals of the subsidy based on the application, documentation and other information.

Margaret Bitz, Administrator of Children and Family Services, and Mary Dyer, Adoption Specialist, are available as team members to help make determinations of eligibility in these situations. It is recommended that you include them on the first few requests you receive. They will elicit the help of the Legal Division staff if needed.

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If the approval is made, DSS-AS-50 and DSS-AS-51 should be signed as approved. DSS-AS-52, "Subsidized Adoption Agreement," should be signed by all parties and the subsidy should be opened as an ongoing subsidy.

MEDICAID COVERAGE

If the subsidy is approved, a Medicaid card will be issued for the child. The adoptive family should be informed about the Medicaid program including:

- Medicaid providers must be used
- The family's health insurance will be billed before using Medicaid funds

COVERAGE FOR PREEXISTING CONDITIONS

Preexisting conditions covered in the subsidy include only those documented by the medical professional during the retroactive application process as existing prior to the adoption. For comprehensive information regarding coverage for preexisting conditions, see 390 NAC 6-003.03B, C, D.

RETROACTIVE APPROVALS

If a family makes a written application within three years of the date of the adoption, and during the approval process the three-year period expires, the child could receive subsidy if all other conditions are met.

Coverage under the subsidy will be made retroactive to either the date that the family made a written request, or the date that Medicaid coverage became effective, whichever is earlier. However, no bills will be paid for treatment prior to September 13, 1997, the effective date of the new law. Payment for Medicaid treatment during this retroactive period will be made at Medicaid rates even if the payment must be made from child welfare funds.

At the time of the application for retroactive subsidy, the family must be informed in writing that if the application is approved, bills prior to the actual issuance of the Medicaid card will be paid only to a Medicaid provider. Therefore, they are to be informed that they may want to be sure that their current provider is a Medicaid provider, or locate another provider who is a Medicaid provider. The family should also be informed that all payments will be made using Medicaid rates and Medicaid guidelines. Payment for bills during this retroactive period not falling under the Medicaid program will be the family's financial responsibility.

Sample Situation

The following situation could be used as an example: The X family's adoption of Y was finalized on January 15, 1995.

On January 2, 1998, the family made application for subsidy under the new law.

On February 2, 1998, an approval was given to open a subsidy. Medicaid coverage was retroactive to December 1, 1997.

The family applied within three years after the adoption, January 2, 1998, even though the approval was not given until after the three-year deadline, February 2, 1998.

Medicaid coverage is effective for the entire month that it is open. Therefore, coverage begins December 1, 1997, instead of December 2, 1997.

In this situation, the Medicaid coverage was made retroactive to the date prior to the family's request.

ITEMS NOT COVERED UNDER RETROACTIVE SUBSIDY

Retroactive subsidy is limited to payment related to medical treatment. Payments which cannot be covered include but are limited to:

- Maintenance payments
- Legal fees to finalize the adoption or as part of the process to request and set up the retroactive subsidy
- Other requests by the family for the payment of expense such as:
 - Respite care
 - Child care
 - Repairs to the home
- Payments made directly to the family as reimbursement for medical/psychiatric/psychological care

ASSESSMENT PRIOR TO ADOPTION

Section 3 of the new law mandates that the Department conduct an assessment of a child who is to be adopted. This assessment is to include mental and physical needs. Documentation should be retained in the child's file as to the assessments that were made as well as a signed statement from the adoptive family that these assessments were shared with them.

If the Department has shared assessments with the adoptive family regarding the child's special needs, and the adoptive family states that they do not want subsidy, documentation in writing with the parents' signature shall be retained in the child's file.

Margaret Bitz, Administrator of Children and Family Services, (402) 471-9457, and Mary Dyer, Adoption Specialist, (402) 471-9331, will be available to answer questions and discuss this new law.

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