

**CHILDREN AND FAMILY SERVICES
ADMINISTRATIVE MEMO # 3-09**

TO: Service Area Administrators
Child and Family Services Administrators, Supervisors, and Staff
Income Maintenance-Foster Care Supervisors and Staff

FROM: Todd L. Reckling, Policy Section Administrator
Division of Children and Family Services

Todd L Reckling

Approved by: Todd A. Landry, Director
Division of Children and Family Services

Todd A. Landry

Date: February 23, 2009

Contact Person: Mary Dyer, Program Specialist
(402)471-9331 or mary.dyer@nebraska.gov
or
Ruth Grosse, Business Analyst
(402)471-7785 or ruth.grosse@nebraska.gov

Regarding: **Adoption Assistance Payments**

Effective Date: **February 23, 2009**

Duration: Until revised.

Purpose: To clarify instructions for completion of the Adoption Assistance Agreement and remind staff of existing regulations for adoption assistance payments.

Action Required: See 1-3 below.

Each year, the State Auditor conducts an audit of Federal (IVE) adoption assistance cases. Sample cases are chosen from all cases in which a payment was made during a specified 6 month period. These same cases are reviewed by Child Welfare program staff in Central Office, for factors not reviewed by the auditors. In addition, Central Office program staff review other cases that are brought to their attention for a variety of reasons. Based on findings from the State FY 2007-2008 audit, and from the reviews done by Child Welfare program staff, the following instructions and reminders are provided:

1. Instructions for the Adoption Subsidy Agreement, found in the Adoption Services Guidebook, state that only the signatures of the "worker" and the adoptive parent(s) are required. Effective as of the date of this memo, the requirement is changed to include the signature of the adoptive parent(s), the CFS Specialist, and a CFS Supervisor. The expectation is that the Supervisor will review the agreement and assure its accuracy prior to signing. If the Supervisor cannot be present when the adoptive parent signs (parents

sign) the agreement, it is recommended that s/he review and sign the agreement before it is presented to the adoptive parent(s) for signature. In no case will the agreement be considered final, or will a copy of the agreement be given to the adoptive parent(s), until the Supervisor has reviewed and signed. These changes will be made to the Guidebook prior to March 1, 2009.

2. Payment of legal fees for finalization of an adoption: The following language is found at 390 NAC 6-003.02C2, 3.a., and at 479 NAC 8-001.02C2, 3.a.:

"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 to be paid must be specified on the subsidy agreement. "

In a number of cases reviewed, it was found that legal fees were paid in error, because the payment was greater than the amount in the subsidy agreement.

Reminder:

- a. The "maximum amount to be paid" is the total payment to the attorney, including not only the attorney's services, but also any other fees, e.g., filing fees, that the attorney charges. It is not acceptable for the agreement to have statements such as, "Attorney fees of \$500, plus filing fees," or "Attorney fees of \$100/hour."
 - b. It is the responsibility of the CFS Specialist to assure that the adoptive parent(s) understand(s) that:
 - The Department's payment to an attorney will be no more than the amount in the agreement; and
 - If the attorney representing the adoptive parent charges more than specified in the agreement, the difference will be the responsibility of the adoptive parent. In the process of hiring their attorney, the adoptive parent(s) should discuss with the attorney the amount to be billed and the payment source.
3. Payment of maintenance under subsidized adoption agreements: The following language is found at 390 NAC 6-003.02D and 479 NAC 8-001.02B5:

"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 (the) designated staff person in charge of (the) subsidized adoption."

In a number of cases, the amount of maintenance payment being made was either less than or more than the amount specified in the agreement, resulting in an error.

Reminder: The maintenance payment received by the adoptive parent must match the amount specified on the subsidy agreement. Caution must be used to assure that this match exists. If an error is found, one of the following corrective actions is necessary:

- a. If the payment is less than the amount in the subsidy agreement, the payment must be increased, unless the adoptive parent has agreed in writing to the lower amount. If the parent has agreed to the lesser amount, a revised subsidy agreement must be done;
- b. If the payment is more than the amount in the subsidy agreement, the payment being made must be decreased to the amount stated in the agreement. Notice must be sent to the adoptive parent explaining that the amount was in error and that the corrected amount is the amount in the subsidized adoption agreement, which is a legal document. The notice also must tell the adoptive parent that an appeal can be filed and that the adoptive parent has the right to request an increase in the maintenance payment (see Adoption Services Guidebook, pp. 48-49 for additional information).
- c. If an overpayment has occurred and the adoption subsidy is a federal subsidy, notice must be sent to Ruth Grosse for purposes of correcting the Department's claim for federal funds.