

DIVISION OF CHILDREN AND FAMILY SERVICES
ADMINISTRATIVE MEMO #5-2010

To: Children and Family Services Specialists, Supervisors, and Administrators; Income Maintenance Workers, Supervisors, and Administrators; and Service Area Administrators

From: Edward H. Matney, Policy Section Administrator
Division of Children and Family Services



Approved by: Todd L. Reckling, Director
Division of Children and Family Services
Department of Health and Human Services



Date: August 23, 2010

RE: Eligibility for State Subsidized Adoption for
Children Receiving State Subsidized Guardianship

Effective: Immediately
Duration: Until regulations are issued

Contact: Mary Dyer, Adoption Specialist, Children and Family
Services, Policy Section at (402) 471-9331 or at
mary.dyer@nebraska.gov

Purpose: The purpose of this memo is to provide information on the availability of adoption subsidy for children who were wards of the Department and have a state subsidized guardianship.

Background: In 2009, the Nebraska Legislature amended Nebraska Revised Statute 43-117 (LB 91). Prior to the amendment, only a child who was a ward of the Department at the time of the order of guardianship could be eligible for a state adoption subsidy. The amendment expands eligibility to include a child who was the subject of a state guardianship subsidy immediately preceding the adoption.

Eligibility Requirements: Eligibility for state funded adoption subsidy as a result of this change in state law exists only when:

- The guardianship was ordered by a court of competent jurisdiction.
- The guardian has a valid state subsidized guardianship agreement with the Department. If any of the reasons for termination of the subsidized guardianship exist, the subsidized guardianship must be closed, and the child is not eligible for an adoption subsidy. (The reasons for termination of a state subsidized guardianship are found at 390 NAC 6-005.09 Termination of Guardianship Payment.)
- The adoption subsidy is approved by the Department and the agreement is signed by the guardian and the Department prior to finalization of the adoption.

Coverage Provided: Coverage under the adoption subsidy can be no more than coverage provided under the valid guardianship subsidy agreement that is in effect. For example:

- The maintenance payment can be no more than the amount in the subsidized guardianship agreement; and
- Payment for services such as child care and respite, and Medicaid coverage, can be provided only if they were included in the existing subsidized guardianship agreement.

Implementation: Any adoption under this new law will be a private adoption, as the child will not be in the custody of the Department at the time of the adoption. The Department's only responsibility is to process the adoption subsidy application. The Department will not pay any of the costs for the adoption or home study, unless the guardian/prospective adoptive parent applies and qualifies for a non-recurring adoption subsidy.

Attached to this memo is an information sheet to be given to guardians who are considering adopting the child and have questions about this new law. In addition, guardians who believe they meet the above requirements, are planning to adopt the child for whom they receive a state guardianship subsidy, and are interested in receiving a state adoption subsidy or a non-recurring subsidy must be referred to Mary Dyer, Adoption Specialist. Ms. Dyer can provide the required application form(s) and will process the application(s) and agreement(s).

Responsibilities of the Guardian: Because the child is not a ward of the Department, the adoption is a private adoption. Therefore, the guardian is responsible for providing all documentation required for processing the adoption subsidy application, and for assuring that the agreement is completed prior to finalization of the adoption.

The guardian also is responsible for assuring that statutory requirements for finalization of the adoption are met. Generally, it will be necessary for the guardian to retain an attorney to assist in preparing the legal documents and filing the petition with the court for finalization of the adoption. The Department cannot provide legal advice or legal assistance to the guardian.

If the adoption is to be finalized in Nebraska, the guardian will need a completed post placement adoption home study prior to, or as part of, filing the adoption petition, per Nebraska statute. The Department will not conduct such home studies, nor will the Department pay contractors to conduct such home studies. The guardian may want to contact one of the licensed private adoption agencies that conduct such home studies. The web site for a listing of these agencies is: adoptionnebraska.com.

Non-Recurring Subsidy: If the child is considered to be a child with special needs, he or she may qualify for a one time only subsidy to reimburse the guardian for the actual expenses associated with the adoption, including expenses such as attorney's fees, fees for the home study, and court costs. Reimbursement for the home study is possible only if the guardian is actually billed for that service. Donations to a private agency for completion of a home study cannot be paid under a non-recurring subsidy. Additional information regarding non-recurring subsidy can be found at 390 NAC 6-003.03G.

Information Regarding Receipt of State Subsidized Adoption Following State Subsidized Guardianship

Background: In 2009, the Nebraska Legislature amended NE Rev. Statute 43-117. Prior to the amendment, only a child who was a ward of the Department at the time the guardianship was ordered could be eligible for a state adoption subsidy (state adoption assistance). The amendment expands eligibility to include a child who was the subject of a state guardianship subsidy immediately preceding the adoption.

Eligibility Requirements: Eligibility for state funded adoption subsidy as a result of this change in state law exists only when:

- The guardianship was ordered by a court of competent jurisdiction.
- The guardian has a valid state subsidized guardianship agreement with the Department. If any of the reasons for termination of the subsidized guardianship exist, the subsidized guardianship must be closed, and the child is not eligible for an adoption subsidy. (The reasons for termination of a state subsidized guardianship are stated in Department regulations at 390 Nebraska Administrative Code 6-005.09 Termination of Guardianship Payment. This regulation can be accessed online at www.sos.state.ne.us/rules-and-regs/research/Rules/Health_and_Human_Services_System/Title-390/Chapter-6.)
- The adoption subsidy is approved by the Department and the agreement is signed by the guardian and the Department prior to finalization of the adoption.

Coverage Provided:

Coverage under the adoption subsidy can be no more than coverage provided under the valid guardianship subsidy agreement that is in effect. For example:

- The maintenance payment can be no more than the amount in the subsidized guardianship agreement; and
- Payment for services such as child care and respite, and Medicaid coverage, can be provided only if they were included in the existing subsidized guardianship agreement.

(See below for a summary of non-recurring adoption subsidy.)

Responsibilities of the Guardian: Because the child is not a ward of the Department, the adoption is a private adoption. Therefore, the guardian is responsible for providing all documentation required for processing the adoption subsidy application, and for assuring that the agreement is completed prior to finalization of the adoption.

The guardian also is responsible for assuring that statutory requirements for finalization of the adoption are met. Generally it will be necessary for the guardian to retain an attorney to assist in preparing the legal documents and filing the petition with the court for finalization of the adoption. The Department cannot provide legal advice or legal assistance to the guardian.

If the adoption is to be finalized in Nebraska, the guardian will need a completed post placement adoption home study prior to, or as part of, filing the adoption petition, per Nebraska statute. The Department will not conduct such home studies, nor will the Department pay contractors to conduct such home studies. (See information below on the possibility of reimbursement of these expenses under a non-recurring subsidy.) The guardian may want to contact one of the licensed private adoption agencies that conduct such home studies. The web site for a listing of these agencies is: adoptionnebraska.com.

Non-Recurring Subsidy: If the child is considered to be a child with special needs, he or she may qualify for a one time only subsidy to reimburse the guardian for the actual expenses associated with the adoption, including expenses such as attorney's fees, fees for the home study, and court costs. Reimbursement for the home study is possible only if the guardian is actually billed for that service. Donations to a private agency for completion of a home study cannot be paid under a non-recurring subsidy.

Additional information regarding non-recurring subsidy can be found in Department regulations at 390 NAC 6-003.03G, which can be accessed online at www.sos.state.ne.us/rules-and-regs/research/Rules/Health_and_Human_Services_System/Title-390/Chapter-6.

Contact Person: Guardians who believe they meet the above requirements, are planning to adopt the child for whom they receive a state guardianship subsidy, and are interested in receiving a state adoption subsidy or a non-recurring subsidy can contact Mary Dyer, Adoption Specialist, Children and Family Services, Policy Sections at (402) 471-9331 or at mary.dyer@nebraska.gov. Ms. Dyer can provide the required application form(s) and additional information on processing the application(s) and agreement(s).