

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

December 17, 2020
1:00 p.m. Central Time
Nebraska State Office Building – Lower Level A
301 Centennial Mall South, Lincoln, Nebraska
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive additional comments on proposed changes to Title 479 Chapter 8 of the Nebraska Administrative Code (NAC)-*Adoption Assistance Program*. These regulations govern adoption assistance agreements that may be entered into with the Department per state statute or Title IV-E of the Social Security Act. The proposed changes made revisions to the application process, clarified eligibility criteria for all children regardless of funding source, revised eligibility criteria for adoption assistance agreements in a private adoption, removes some special service provisions, amended appeal rights to comply with federal regulations, removed internal direction to staff from the regulations and updated the formatting.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Due to the current public health crisis, the agency will enforce any Directed Health Measure Order on the size of gatherings that is in effect at the time of the hearing. In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments.

Interested persons may provide verbal comments by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may provide written comments by mail, fax, or email, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8223. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 479	Prepared by: Olivia Biggs
Chapter: 8	Date prepared: 6/23/2020
Subject: Adoption Assistance Program	Telephone: (402)-219-2740

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input checked="" type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency: None

Political Subdivision: None

Regulated Public: None

If indeterminable, explain why: We cannot predict the number of Adoption Assistance Agreements that will be completed. We have removed several special services CFS previously had in regulations to provide payment for.

DRAFT
07-10-2020

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

479 NAC 8

TITLE 479 CHILD WELFARE PAYMENTS

CHAPTER 8 ADOPTION ASSISTANCE PROGRAM

001. SCOPE AND AUTHORITY. This chapter governs Adoption Assistance Agreements that may be entered into with the Department pursuant to Nebraska Revised Statute (Neb. Rev. Stat.) §§ 43-117 and 43-118 or Title IV-E of the Social Security Act.

001.01 CONFLICT RESOLUTION. In the event there is a conflict between this chapter and any other Department regulations regarding the Adoption Assistance Program, this chapter shall be controlling.

002. PRE-EXISTING AGREEMENTS. All Subsidized Adoption Agreements or Adoption Assistance Agreements executed and the adoption finalized prior to the implementation of these regulations are subject to the regulations in place at the time the adoption was finalized.

003. DEFINITIONS. The following definitions apply:

003.01 ADOPTION ASSISTANCE AGREEMENT. Adoption Assistance Agreement means a Nebraska Adoption Assistance Agreement or a Title IV-E Adoption Assistance Agreement entered into between the Department and the Adoptive Parent(s) to assist with the costs of care for the child who is the subject of the Adoption Assistance Agreement.

003.02 ADOPTIVE PARENT. Adoptive Parent means the individual or individuals who either intend to adopt the child for whom adoptive assistance agreement is being requested or have adopted the child who is the subject of an adoptive assistance agreement.

003.03 MEDICAL PROFESSIONAL. Medical Professional means a physician or advanced practice registered nurse (APRN) or physician assistant (PA) when the APRN or PA is practicing under the supervision of a physician. A Medical Professional must be licensed by the Nebraska Department of Health and Human Services, Division of Public Health, or its equivalent in another state, at the time of service.

003.04 MENTAL HEALTH PROFESSIONAL. Mental Health Professional means a psychologist, psychiatrist, licensed mental health practitioner, licensed clinical social worker, or licensed alcohol and drug counselor who provides mental health or substance use treatment services and is licensed by the Nebraska Department of Health and Human Services, Division of Public Health, or its equivalent in another state certified to provide medical or mental health treatment. Mental Health Professional includes a provisionally licensed mental health practitioner, a provisionally licensed psychologist, and a provisionally

licensed alcohol and drug counselor.

003.05 NEBRASKA ADOPTION ASSISTANCE AGREEMENT. Nebraska Adoption Assistance Agreement means an Adoption Assistance Agreement entered into between the Department and the Adoptive Parent(s) and the eligibility requirements for Title IV-E Adoption Assistance have not been met.

003.06 STEPPARENT. Stepparent means a person who is legally married to a parent of the child who is the subject of the Adoption Assistance Agreement.

003.07 TITLE IV-E ADOPTION ASSISTANCE AGREEMENT. Title IV-E Adoption Assistance Agreement means an Adoption Assistance Agreement entered into between the Department and the Adoptive Parent(s) and all eligibility criteria of this chapter and Title IV-E of the Social Security Act have been met.

003.078 YOUNG ADULT. Young Adult means young adult as defined in Neb. Rev. Stat. § 43-4503.

004. ADOPTION ASSISTANCE AGREEMENTS FOR CHILDREN IN THE CUSTODY OF THE DEPARTMENT. All Adoption Assistance Agreements for children who are in the custody of the Department at the time the adoption is entered are subject to the provisions of this section.

004.01 APPROVAL BEFORE ADOPTION DECREE. The Adoption Assistance Agreement must be signed by the Adoptive Parent(s) and DHHS prior to the date of adoption. If two individuals are adopting a child, both individuals must sign the agreement. The adoption must occur within six months of the Adoption Assistance Agreement being signed by all parties. If the adoption does not occur within the six month time frame, the Adoption Assistance Agreement is no longer valid and a new application must be submitted by the Adoptive Parent(s).

004.02 ADOPTION ASSISTANCE AGREEMENT APPLICATION. An application for an Adoption Assistance Agreement must be submitted by the Adoptive Parent(s) prior to finalization of the adoption. Eligibility will be determined based on the factors set forth in this chapter.

004.03 ELIGIBILITY FOR TITLE IV-E ADOPTION ASSISTANCE AGREEMENT. When the Department determines the child qualifies for adoption assistance pursuant to Title IV-E of the Social Security Act, the child will be eligible for a Title IV-E Adoption Assistance Agreement when all other eligibility requirements set forth in this chapter and Title IV-E of the Social Security Act are met. When all eligibility requirements of this chapter are met, but all eligibility requirements of Title IV-E of the Social Security Act are not met, the child will be eligible for a Nebraska Adoption Assistance Agreement.

004.04 ELIGIBILITY FOR ADOPTION ASSISTANCE AGREEMENT. To be eligible for Adoption Assistance Agreement, all eligibility criteria and additional eligibility requirements of this section must be met.

004.04(A) ELIGIBILITY CRITERIA FOR THE CHILD. The child who is the subject of the

Adoption Assistance Agreement must meet the following criteria:

- (i) The child must be in the custody of Department;
- (ii) The child must be a citizen of the United States or an qualified alien as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The Department must have documentation to confirm the child's United States citizenship or qualified alien status;
- (iii) The child must be unable to return to the home of the parents; and
- (iv) The child must meet the special needs criteria set forth in this chapter.

004.04(B) GENERAL ELIGIBILITY CRITERIA. In order for a child to qualify for an Adoption Assistance Agreement, in addition to the eligibility criteria for the child, the following criteria must be met:

- (1) The Adoptive Parents meet the criteria set forth in the criminal records check section of this chapter;
- (2) The family's circumstances necessitate an Adoption Assistance Agreement as set forth in this chapter; and
- (3) Efforts were made to place the child without an Adoption Assistance Agreement.

004.024(B)(i) EXCEPTION TO EFFORTS. Efforts to place the child without an Adoption Assistance Agreement are not required if the Department determines it would not be in the best interests of the child.

004.04(C) SPECIAL NEEDS CRITERIA. To be eligible for an Adoption Assistance Agreement, the child that is the subject of the Adoption Assistance Agreement must meet at least one of the following special needs criteria:

- (1) The child is age eight (8) or older;
- (2) The child is a member in a sibling group of three or more and the adoptee and at least two of the siblings are placed in the same adoptive home;
- (3) A Medical or Mental Health Professional has diagnosed the child with a behavioral, emotional, physical or mental disability; or
- (4) A Medical or Mental Health Professional has determined the child to be at risk of a behavioral, emotional, physical or mental disability.

004.02(C)(i) DOCUMENTATION OF DIAGNOSIS. Documentation of a Medical professional's or Mental Health Professional's diagnosis or determination of risk must be less than six months old at the time the Adoption Assistance Agreement is signed by both parties.

004.04(D) FAMILY CIRCUMSTANCES. For a child to be eligible for an Adoption Assistance Agreement, the Adoptive Parent(s) must verify that the adoption cannot occur without an Adoption Assistance Agreement because the child's present and anticipated future needs have been determined to exceed the family's ability to meet those needs. Any adoption assistance payment that is agreed upon is not intended to cover all the costs of care of the child, but is for the purpose of assisting with the costs of care.

004.04(E) PARENT ELIGIBILITY. No parent is eligible for an Adoption Assistance Agreement on behalf of his or her child, even if parental rights have been relinquished or terminated. No stepparent is eligible for an Adoption Assistance Agreement on behalf of

his or her stepchild.

004.05 ADOPTION ASSISTANCE AGREEMENT PROVISIONS. An Adoption Assistance Agreement may include one or more of the following:

- (1) An adoption assistance payment negotiated between the Department and the Adoptive Parent(s) in accordance with the Department's established rate determination tool. In no case may the amount of the adoption assistance payment exceed the foster care maintenance payment which would have been paid by the Department if the child with respect to whom the adoption assistance payment is made had been in a foster family home;
- (2) Special ~~S~~services payments made for a specific service or item related to the child's needs for a specified period of time. No special services payments will be included if other resources or programs are available to assist with the services; ~~or~~
- (3) Non-recurring adoption expenses, including but not limited to:
 - (i) Legal fees directly related to the adoption of the child; ~~and~~
 - (ii) Funeral assistance if the child being adopted is diagnosed by a medical professional as being terminally ill and the life expectancy of the child is less than 20 years old.

004.05(A) ADOPTION ASSISTANCE PAYMENTS. The following provisions apply to adoption assistance payments.

004.05(A)(i) DEDUCTIONS FROM PAYMENTS. Any other maintenance payments received for the child, such as Social Security Disability Insurance benefits or survivor benefits, Supplemental Security Income, Veteran's Administration benefits, or Aid to Dependent Children benefits, will be deducted from the agreed to adoption assistance payment.

004.05(A)(ii) USE OF ASSISTANCE. An Adoptive Parent who receives ~~an adoption assistance~~ payment ~~of adoption assistance~~ shall use the adoption assistance funds for the benefit of the child. The Department will consider use of the adoption assistance funds on the following supports and services as using the funds for the benefit of the child:

- (1) Clothing purchases;
- (2) Incidental items;
- (3) Insurance;
- (4) Food;
- (5) Housing, other than maintenance of the Adoptive Parent's home;
- (6) Education;
- (7) Medical expenses; ~~or~~
- (8) Child support payments; ~~or~~
- (9) Transportation.

004.06 DESIGNATION OF A GUARDIAN. An Adoptive Parent who enters into an Adoption Assistance Agreement with the Department must designate a guardian for the child in case of the death of the ~~A~~adoptive ~~P~~parent(s) ~~or parents~~. Payment of the adoption assistance will cease upon the death of the ~~A~~adoptive ~~P~~parent(s) ~~or parents~~ unless the ~~A~~adoption ~~A~~assistance ~~A~~greement provides for assignment to a guardian or conservator. In the event

an individual who was previously a legal parent for the child is appointed as guardian for the child, even if parental rights have been terminated or relinquished, payment of the adoption assistance must cease.

004.06(A) EXCEPTION. Adoption assistance payments can continue for up to six months following the death of the ~~A~~adoptive ~~P~~parent(s) or parents pending the appointment of a guardian or conservator if the child is placed in the temporary custody of a family member or other individual. In the event this child is placed in the custody of an individual who was previously a legal parent for the child, even if parental rights have been terminated or relinquished, the adoption assistance payment will cease.

004.07 REVIEW. The Adoption Assistance Agreement will be reviewed every twelve months to determine:

- (1) That the child continues to be a legal dependent of the ~~A~~adoptive ~~P~~parent(s);
- (2) The ~~A~~adoptive ~~P~~parents continue to use the adoption assistance payments for the benefit of the child; and
- (3) That the child continues to need the provisions of the Adoption Assistance Agreement.

004.07(A) REVIEW TIME FRAMES. At the time of review, the Adoptive Parent(s) will receive a written notice of the ~~A~~adoption ~~A~~assistance ~~A~~greement review and a review form from the Department. The Adoptive Parent(s) must return the review form to the Department within 30 days of the date of the notice or the Department may suspend the adoption assistance payments.

004.07(B) SUSPENSION AFTER REVIEW. If the Department is unable to verify whether the Adoptive Parent is legally responsible for the child or using the adoption assistance payment for the benefit of the child, the Department may suspend issuance of the adoption assistance payment until verification is received.

004.07(C) OVERPAYMENTS. The Department may take all reasonable steps necessary to correct overpayments. Overpayments may be recouped from any future payments to the individual that received the overpayment, even if the future payments are for a different child or Young Adult.

004.08 CHANGE IN ADOPTION ASSISTANCE AGREEMENT PROVISIONS. Adoptive Parents may request a change in the Adoption Assistance Agreement provisions by submitting a written request on the Department approved form. Adoption ~~A~~assistance ~~A~~greement provisions may be modified if the Department determines an amended agreement is necessary based on a change in family circumstances, a change in the child's special needs or a change in law or regulation.

004.08(A) INCREASE IN ADOPTION ASSISTANCE PAYMENT. The Adoptive Parent(s) may request an increase in the adoption assistance payment. The Adoptive Parent(s) must provide documentation to support the need for an increase in the payment. The amount of the adoption assistance payment must not exceed the amount the child would have received in foster care at the time of the request.

004.08(B) CHANGE IN SPECIAL SERVICES. Special services may be added to an ~~A~~adoption ~~A~~assistance ~~A~~agreement when the Department determines there is a change in family circumstances or a change in the child's special needs.

004.09 EXTENDED ADOPTION ASSISTANCE. A ~~Y~~young ~~A~~adult is eligible to participate in the extended adoption assistance program if:

- (1) The Young Adult is at least 19 years of age but less than 21 years of age;
- (2) The Young Adult was the subject of an ~~A~~adoption ~~A~~assistance ~~A~~agreement that took effect after the Young Adult had attained 16 years of age;
- (3) The Young Adult was the subject of the subsidized ~~A~~adoption ~~A~~assistance ~~A~~agreement until 19 years of age;
- (4) The Young Adult was previously adjudicated to be within the meaning of Neb. Rev. Stat. § 43-247(3)(a) or the equivalent under tribal law;
- (5) The Young Adult meets the education or employment criteria for the Bridge to Independence program; and
- (6) The Young Adult is not participating in the Bridge to Independence program.

004.09(A) USE OF ~~FUNDS ASSISTANCE~~. An Adoptive Parent who receives payment of extended adoption assistance shall use the adoption assistance funds for the benefit of the Young Adult. The Department will consider use of the adoption assistance funds on the following supports and services as using the funds for the benefit of the Young Adult:

- (i) Clothing purchases;
- (ii) Incidental items;
- (iii) Insurance;
- (iv) Food;
- (v) Housing, other than maintenance of the guardian's home;
- (vi) Education;
- (vii) Medical expenses;
- (viii) Child Support Payments; ~~or~~
- (ix) Transportation; or
- (~~ix~~) Other services and supports the Department determines will help the young adult transition into adulthood.

004.10 SUSPENSION OF ADOPTION ASSISTANCE PAYMENT. The Department may suspend the adoption assistance payment when:

- (1) The Department determines the Adoptive Parents are not using the adoption assistance payment for the benefit of the child; or
- (2) The Department is unable to determine whether the Adoptive Parents are using the adoption assistance payment for the benefit of the child.

004.10(A) ADOPTION ASSISTANCE PAYMENT WHEN CHILD IS OUT OF HOME. When the child is no longer residing in the home of the Adoptive Parent(s), the adoption assistance payment may be reduced or terminated. To continue to receive an adoption assistance payment, the Adoptive Parent(s) must provide documentation to the Department proving the amount of financial support used to benefit the child for each month. The Department will determine the amount of the adoption assistance payment based on the documentation provided by the Adoptive Parent(s).

004.10(A)(i) EXCEPTION. When the Adoption Assistance Agreement is IV-E funded, the adoption assistance payment will be reduced only when agreed to in writing by the Adoptive Parent(s).

004.11 REINSTATEMENT OF ADOPTION ASSISTANCE PAYMENT. When an adoption assistance payment has been suspended or reduced, the full adoption assistance payment may be reinstated when the Department determines the basis for suspension or reduction in payment has been resolved. An adoption assistance payment cannot be reinstated if the Adoptive Parents who entered into the current adoption assistance agreement are no longer the legal parents of the child.

004.12 TRANSFER OF ADOPTION ASSISTANCE AGREEMENT. An Adoption Assistance Agreement may not be transferred to new Adoptive Parents.

004.13 FUNDING AFTER AGE 18. A child's eligibility for a Title IV-E Adoption Assistance Agreement must be re-determined when the child turns 18 years of age. This determination should occur immediately prior to the child turning age 18. If the child no longer continues to meet the Title IV-E eligibility requirements as set forth in 42 USC 673, Section 473 of the Social Security Act, the child's Adoption Assistance Agreement will no longer be covered by the Social Security Act and the Title IV-E Adoption Assistance Agreement will become a Nebraska Adoption Assistance Agreement.

005. ADOPTION ASSISTANCE FOR WARDS OF A LICENSED CHILD PLACEMENT AGENCY. All Adoption Assistance Agreement for children who are not in the custody of the Department and are in the custody of a child placement agency at the time the adoption is entered are subject to the provisions of this section.

005.01 APPROVAL BEFORE ADOPTION DECREE. The Adoption Assistance Agreement must be signed by the Adoptive Parent(s) and the Department prior to the date of adoption. If two individuals are adopting the child, both but individuals must sign the agreement. The adoption must occur within six months of the Adoption Assistance Agreement being signed by all parties. If the adoption does not occur within the six month time frame, the Adoption Assistance Agreement is no longer valid and a new application must be submitted by the Adoptive Parent(s).

005.02 ADOPTION ASSISTANCE APPLICATION. An application for an Adoption Assistance Agreement must be submitted by the Adoptive Parent(s) prior to finalization of the adoption. Eligibility will be determined based on the factors set forth in this section.

005.03 ELIGIBILITY FOR ADOPTION ASSISTANCE AGREEMENT. To be eligible for an Adoption Assistance Agreement, the following criteria must be met:

(1) The child must:

(a) Be a ward of a licensed child placing agency;

(b) Be age 18 or younger;

(c) Be a citizen of the United States or a qualified alien as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and the Department must have documentation to confirm the child's United States citizenship or qualified alien status;

- (d) Be unable to return to the home of the parents;
- (e) Meet the special needs criteria set forth in this section; and
- (f) Meet the Title IV-E eligibility requirements as set forth in 42 USC 673, Section 473 of the Social Security Act;
- (2) The Adoptive Parents meet the criteria set forth in the criminal records check section of this chapter;
- (3) The Department must be provided documentation verifying that efforts were made to place the child without adoption assistance; and
- (4) The family's circumstances necessitate adoption assistance as set forth in this chapter.

005.03(A) SPECIAL NEEDS. To be eligible for an Adoption Assistance Agreement, the child that is the subject of the Adoption Assistance Agreement must meet at least one of the following special needs criteria:

- (i) The child is age eight (8) or older;
- (ii) The child is a member in a sibling group of three or more and the adoptee and at least two of the siblings are placed in the same adoptive home; or
- (iii) A ~~M~~medical ~~P~~rofessional has diagnosed the child with a behavioral, emotional, physical or mental disability.

005.03(B) FAMILY CIRCUMSTANCES. For a child to be eligible for an ~~A~~adoption ~~A~~ssistance ~~A~~greement, the Adoptive Parent(s) must verify that the adoption cannot occur without an Adoption Assistance Agreement because the child's present needs have been determined to exceed the family's ability to meet those needs. Any adoption assistance payment that is agreed upon is not intended to cover all the costs of care of the child, but is for the purpose of assisting with the costs of care.

005.03(C) PARENT ELIGIBILITY. No parent is eligible for an Adoption Assistance Agreement on behalf of his or her child, even if parental rights have been terminated or relinquished. No stepparent is eligible for an Adoption Assistance Agreement on behalf of his or her stepchild.

005.04 CHILD PLACED ACROSS STATE LINES. If a child is placed across state lines and is in the custody of a private child placing agency, the Adoptive Parent must apply for adoption assistance in his or her state of residence. That state is responsible for determining whether the child qualifies for an ~~A~~adoption ~~A~~ssistance ~~A~~greement under that state's applicable laws.

005.05 ADOPTION ASSISTANCE AGREEMENT PROVISIONS. An Adoption Assistance Agreement may include one or more of the following:

- (1) An adoption assistance payment negotiated between the Department and the Adoptive Parent(s) in accordance with the Department's established rate ~~scheduled~~determination tool. In no case may the amount of the adoption assistance payment exceed the foster care maintenance payment which would have been paid by the Department if the child with respect to whom the adoption assistance payment is made had been in a foster family home;
- (2) Special ~~S~~ervices payments made for a specific service or item related to the child's needs for a specified period of time. No special services payments will be included if

- other resources or programs are available to assist with the services; or
- (3) Non-recurring adoption expenses, including but not limited to:
- (a) Legal fees directly related to the adoption of the child; and
 - (b) Funeral assistance if the child being adopted is diagnosed by a medical professional as being terminally ill and the life expectancy of the child is less than 20 years old.

005.05(A) DEDUCTIONS FROM PAYMENTS. Any other maintenance payments received for the child, such as Social Security Disability Insurance benefits or survivor benefits, Supplemental Security Income, Veteran's Administration benefits or Aid to Dependent Children benefits, will be deducted from the agreed to adoption assistance payment.

005.05(B) USE OF ASSISTANCE. An Adoptive Parent who receives an adoption assistance payment shall use the adoption assistance payment for the benefit of the child. The Department will consider use of the adoption assistance payment on the following supports and services as using the payment for the benefit of the child:

- (i) Child support payments;
- (ii) Clothing purchases;
- (iii) Incidental items;
- (iv) Insurance;
- (v) Food;
- (vi) Housing, other than maintenance of the guardian's home;
- (vii) Education;
- (viii) Medical expenses; ~~or~~
- (ix) Transportation; or
- (~~ix~~) Other services and supports the Department determines will help the young adult transition into adulthood.

005.06 DESIGNATION OF GUARDIAN. An Adoptive Parent who enters into an Adoption Assistance Agreement with the Department must designate a guardian for the child in case of the death of the ~~A~~adoptive ~~P~~parent(s) ~~or~~ parents. Adoption assistance payments will cease upon the death of the Adoptive Parent(s) ~~or~~ parents unless the Adoption Assistance Agreement provides for assignment to a guardian or conservator. In the event an individual who was previously a legal parent for the child is appointed as guardian for the child, even if parental rights have been terminated or relinquished, payment of the adoption assistance must cease.

005.06(A) EXCEPTION. ~~Adoption assistance p~~Payments ~~of an adoption assistance~~ can continue for up to six months following the death of the Adoptive Parent(s) ~~or~~ parents pending the court appointment of a guardian or conservator, if the child is placed in the temporary custody of a family member or other individual. In the event this child is placed in the custody of an individual who was previously a legal parent for the child, even if parental rights have been terminated or relinquished, payment of the adoption assistance will cease.

005.07 REVIEW. The Adoption Assistance Agreement will be reviewed every twelve months to determine:

- (1) That the child continues to be a legal dependent of the Adoptive Parent(s);
- (2) The Adoptive Parents continue to use the adoption assistance for the benefit of the child; and
- (3) That the child continues to need the provisions of the ~~A~~adoption ~~A~~assistance ~~A~~agreement.

005.07(A) TIME FRAMES. At the time of review, the Adoptive Parent(s) will receive a written notice of the Adoption Assistance Agreement review and a review form from the Department. The Adoptive Parent(s) must return the review form to the Department within 30 days of the date of the notice or the Department may suspend the adoption assistance payments.

005.07(B) SUSPENSION AFTER REVIEW. If the Department is unable to verify whether the Adoptive Parent is legally responsible for the child or using the adoption assistance payment for the benefit of the child, the Department may suspend issuance of the adoptive assistance payment until verification is received.

005.07(C) OVERPAYMENTS. The Department may take all reasonable steps necessary to correct overpayments. Overpayments may be recouped from any future payments to the individual that received the overpayment, even if the future payments are for a different child or Young Adult.

005.08 CHANGE IN ADOPTION ASSISTANCE AGREEMENT PROVISIONS. Adoptive Parents may request a change in the ~~A~~adoption ~~A~~assistance ~~A~~agreement provisions by submitting a written request on the Department approved form. Adoption Assistance Agreement provisions may be modified if the Department determines an amended agreement is necessary based on a change in family circumstances, a change in the child's special needs or a change in law or regulation.

005.08(A) INCREASE IN ADOPTION ASSISTANCE PAYMENT. The Adoptive Parent(s) may request an increase in the adoption assistance payment. The Adoptive Parent(s) must provide documentation to support the need for an increase in the payment. The amount of the adoption assistance payment must not exceed the amount the child would have received in foster care at the time of the request.

005.08(B) CHANGE IN SPECIAL SERVICES. Special services may be added to an Adoption Assistance Agreement when the Department determines there is a change in family circumstances or a change in the child's special needs.

005.08(C) EXTENSION TO AGE 19. Adoption Assistance Agreements entered into under this section terminate at age 18, unless the Adoptive Parents request to extend the Adoption Assistance Agreement to age 19 and the child continues to meet the Title IV-E eligibility requirements as set forth in 42 USC 673, Section 473 of the Social Security Act.

005.09 SUSPENSION OF ADOPTION ASSISTANCE PAYMENT. The Department may suspend the adoption assistance payment when:

- (1) The Department determines the Adoptive Parents are not using the adoption assistance payment for the benefit of the child; or

(2) The Department is unable to determine whether the Adoptive Parents are using the adoption assistance payment for the benefit of the child.

005.09(A) ADOPTION ASSISTANCE PAYMENT WHEN CHILD IS OUT OF HOME. When the child is no longer residing in the home of the Adoptive Parent(s), the adoption assistance payment may be reduced or terminated. To continue to receive an adoption assistance payment, the Adoptive Parent(s) must provide documentation to the Department proving the amount of financial support used to benefit the child for each month. The Department will determine the amount of the adoption assistance payment based on the documentation provided by the Adoptive Parent(s).

005.09(A)(i) EXCEPTION. When the Adoption Assistance Agreement is IV-E funded, the adoption assistance payment will be reduced only when agreed to in writing by the Adoptive Parent(s).

005.10 REINSTATEMENT OF ADOPTION ASSISTANCE PAYMENT. When an adoption assistance payment has been suspended or reduced, the full adoption assistance payment may be reinstated when the Department determines the basis for suspension or reduction in payment has been resolved. An adoption assistance payment cannot be reinstated if the Adoptive Parents who entered into the current adoption assistance agreement are no longer the legal parents of the child.

005.11 TRANSFER OF ADOPTION ASSISTANCE AGREEMENT. An Adoption Assistance Agreement may not be transferred to new Adoptive Parents.

006. ADOPTION ASSISTANCE AGREEMENTS WHEN MOVING FROM GUARDIANSHIP TO ADOPTION.

006.01 APPROVAL BEFORE ADOPTION DECREE. The Adoption Assistance Agreement must be signed by the Adoptive Parent(s) and DHHS prior to the date of adoption. If two individuals are adopting a child, both individuals must sign the agreement. The adoption must occur within six months of the Adoption Assistance Agreement being signed by all parties. If the adoption does not occur within the six month time frame, the Adoption Assistance Agreement is no longer valid and a new application must be submitted by the Adoptive Parent(s).

006.02 ADOPTION ASSISTANCE APPLICATION. An application for an Adoption Assistance Agreement must be submitted by the Adoptive Parent(s) prior to finalization of the adoption. Eligibility will be determined based on the factors set forth in this section.

006.03 ELIGIBILITY. To be eligible for an Adoption Assistance Agreement under this section:

- (A) The child that is the subject of the Adoption Assistance Agreement must be the subject of a subsidized guardianship agreement or guardianship assistance agreement with the Department at the time the adoption is finalized;
- (B) The child that is the subject of the Adoption Assistance Agreement will be adopted by an individual who signed the subsidized guardianship agreement or guardianship assistance agreement; and
- (C) The Adoptive Parents meet the criteria set forth in the criminal records check section

of this chapter.

006.04 PARENT ELIGIBILITY. A parent is not eligible for an Adoption Assistance Agreement on behalf of his or her child, even if parental rights have been terminated or relinquished. A stepparent is not eligible for an adoption assistance agreement on behalf of a his or her stepchild.

006.05 ADOPTION ASSISTANCE AGREEMENT PROVISIONS. The provisions of the Adoption Assistance Agreement will be the same provisions included in the guardianship assistance agreement or guardianship subsidy, except any provision related to Medicaid. A child's eligibility for Medicaid will be determined based on Nebraska Medicaid ~~laws and regulations~~. An Adoption Assistance Agreement may include one or more of the following:

- (1) An adoption assistance payment as set forth in the guardianship assistance agreement or guardianship subsidy. In no case may the amount of the adoption assistance payment exceed the foster care maintenance payment which would have been paid by the Department if the child with respect to whom the adoption assistance payment is made had been in a foster family home.
- (2) Special ~~S~~services payments made for a specific service or item if it is a provision included in the active guardianship agreement; or
- (3) Non-recurring adoption expenses, including but not limited to:
 - (a) Legal fees directly related to the adoption of the child; or
 - (b) Funeral assistance if it is a provision included in the active guardianship agreement.

006.05(A) DEDUCTIONS FROM PAYMENTS. Any other maintenance payments received for the child, such as Social Security Disability Insurance benefits or survivor benefits, Supplemental Security Income, Veteran's Administration benefits or Aid to Dependent Children benefits, will be deducted from the agreed to adoption assistance payment.

006.05(B) USE OF ASSISTANCE. An Adoptive Parent who receives an adoption assistance payment shall use the adoption assistance payment for the benefit of the child. The Department will consider use of the adoption assistance payment on the following supports and services as using the payment for the benefit of the child:

- (i) Child support payments;
- (ii) Clothing purchases;
- (iii) Incidental items;
- (iv) Insurance;
- (v) Food;
- (vi) Housing, other than maintenance of the guardian's home;
- (vii) Education;
- (viii) Medical expenses; ~~or~~
- (ix) ~~Transportation; or~~
- (x) Other services and supports the Department determines will help the child transition into adulthood.

006.06 ~~GOVERNED BY PRIOR SECTION DESIGNATION OF GUARDIAN.~~ When a child is eligible for an Adoption Assistance Agreement under this section, once the Adoption

~~Assistance Agreement and adoption are finalized, the agreement will become subject to all regulations in this chapter governing Adoption Assistance Agreements for children in the custody of the Department, unless otherwise set forth in this section. Adoptive Parents who enters into an Adoption Assistance Agreement with the Department must designate a guardian for the child in case of the death of the adoptive parent or parents. Adoption assistance payments will cease upon the death of the Adoptive Parent or Parents unless the Adoption Assistance Agreement provides for assignment to a guardian or conservator. In the event an individual who was previously a legal parent for the child is appointed as guardian for the child, even if parental rights have been terminated or relinquished, payment of the adoption assistance must cease.~~

~~006.06(A) EXCEPTION. Payment of an Adoption Assistance Agreement can continue for up to six months following the death of the Adoptive Parent or Parents pending the appointment of a guardian or conservator if the child is placed in the temporary custody of a family member or other individual. In the event this child is placed in the custody of an individual who was previously a legal parent for the child, even if parental rights have been terminated or relinquished, payment of the adoption assistance will cease.~~

~~006.07 REVIEW. The Adoption Assistance Agreement will be reviewed every twelve months to determine:~~

- ~~(1) That the child continues to be a legal dependent of the Adoptive Parents;~~
- ~~(2) The Adoptive Parents continue to use the adoption assistance for the benefit of the child; and~~
- ~~(3) That the child continues to need the provisions of the adoption assistance agreement.~~

~~006.07(A) TIME FRAMES. At the time of review, the Adoptive Parents will receive a written notice of the adoption assistance agreement review and a review form from the Department. The Adoptive Parents must return the review form to the Department within 30 days of the date of the notice or the Department may suspend the adoption assistance payments.~~

~~006.07(B) SUSPENSION AFTER REVIEW. If the Department is unable to verify whether the Adoptive Parent is legally responsible for the child or using the adoption assistance payment for the benefit of the child, the Department may suspend issuance of the adoptive assistance payment until verification is received.~~

~~006.08 INCREASE IN ADOPTION ASSISTANCE PAYMENT. The Adoptive Parents may request an increase in the adoption assistance payment. The Adoptive Parent must provide documentation to support the need for an increase in the payment. The amount of the adoption assistance payment must not exceed the amount the child would have received in foster care at the time of the request.~~

~~006.09 CHANGE IN SPECIAL SERVICES. Special services may be added to an Adoption Assistance Agreement when the Department determines there is a change in family circumstances or a change in the child's special needs.~~

~~007. RETROACTIVE ADOPTION ASSISTANCE AGREEMENTS. All retroactive Adoption Assistance Agreements will be Nebraska Adoption Assistance Agreements. To be eligible for a~~

retroactive Adoption Assistance Agreement all provisions of this section must be met.

007.01 ELIGIBILITY OF CHILD. A child who has already been adopted may be eligible for a retroactive Adoption Assistance Agreement if the following conditions met:

- (1) The child was in the custody of the Department at the time the adoption was finalized;
- (2) The child is a citizen of the United States or a qualified alien as defined in the Personal Responsibility and Work Opportunity Act of 1996 and the Department as documentation to confirm the child's citizenship or qualified alien status;
- (3) The Adoptive Parent(s) contacted the Department and made a written request for an Adoption Assistance Agreement within three (3) years from the date the adoption was finalized;
- (4) The child has been diagnosed with a physical or mental illness or condition that predates the adoption and the Department did not inform the adopting parents of such condition prior to the adoption, including when the Department did not have knowledge of the child's illness or condition prior to the adoption; and
- (5) The Department has been provided documentation from a Medical or Mental Health Professional that the child's illness or condition predated the adoption, is of such nature as to require medical, psychological, or psychiatric treatment and is more extensive than ordinary childhood illness.

007.01(A) REQUIRED DOCUMENTATION. The following documentation from a Medical or Mental Health Professional is required in order to meet the eligibility requirements of this section:

- (i) The child's diagnosis;
- (ii) The prognosis and treatment recommendations for the diagnosed illness or condition;
- (iii) The length of anticipated treatment; and
- (iv) Written confirmation that the illness or condition predated the adoption and is more extensive than ordinary childhood illness.

007.02 RETROACTIVE ADOPTION ASSISTANCE AGREEMENT PROVISIONS. A retroactive Adoption Assistance Agreement may include one or more of the following:

- (1) An adoption assistance payment negotiated between the Department and the Adoptive Parent(s) in accordance with the Department's established rate determination tool. In no case may the amount of the adoption assistance payment exceed the foster care maintenance payment which would have been paid by the Department if the child with respect to whom the adoption assistance payment is made had been in a foster family home;
- (2) Special services payments made for a specific service or item related to the child's needs for a specified period of time. No special services payments will be included if other resources or programs are available to assist with the services;
- (3) Non-recurring adoption expenses, including but not limited to:
 - (a) Legal fees directly related to the adoption of the child; and
 - (b) Funeral assistance if the child being adopted is diagnosed by a medical professional as being terminally ill and the life expectancy of the child is less than 20 years old; or
- (4) Reimbursement for or payment of medically necessary medical, psychological, or psychiatric treatment costs for the care of the eligible child which are the result of the

child's diagnosed illness or condition that predated the adoption.

007.02(A) PAYMENT OF TREATMENT COSTS. When treatment costs are included as a provision in the retroactive Adoption Assistance Agreement the provisions of this section apply.

007.02(A)(i) HEALTH INSURANCE. The family's health insurance will be billed before the Department will pay treatment costs. If the child is Medicaid eligible, Medicaid benefits must be exhausted before payment of treatment costs will be paid under the Adoption Assistance Agreement.

007.02(A)(ii) EFFECTIVE DATE. A child whose retroactive Adoption Assistance Agreement includes payment of treatment costs, will be eligible for payment of treatment costs that are incurred beginning on the date the written request for adoption assistance is received by the Department.

007.02(A)(iii) MEDICALLY NECESSARY. For the treatment to be considered medically necessary, the treatment services must be recommended in writing by a Medical or Mental Health Professional no more than 90 days prior to the start of the treatment services. Treatment services must be provided in a manner consistent with the Medicaid laws of the state in which the treatment is provided.

007.02(A)(iii)(1) RESIDENTIAL TREATMENT FACILITIES. For treatment costs in a residential treatment center or a psychiatric residential treatment facility to be considered medically necessary, the following provisions must be met:

- (a) The residential treatment center or psychiatric residential treatment facility must be licensed or approved for therapeutic or psychiatric care by the Division of Public Health of the Nebraska Department of Health and Human Services or the equivalent state agency or department in the state where the treatment facility is located;
- (b) The residential treatment service is anticipated to result in progress which will enable the child to return to the family or community;
- (c) Less restrictive care or treatment alternatives are not appropriate or available or have declined to provide treatment for the child; and
- (d) The family must continue to support the child during treatment, including planning for the child's reintegration into the family home.

007.02(A)(iv) PARTICIPATION IN SERVICES. When the Department is paying for treatment services, the child's family must participate in the child's treatment services when it is recommended in the child's treatment plan.

007.02(A)(v) PAYMENTS ISSUED TO PROVIDER. Payment for the child's treatment services will be made directly to the service provider. In the event a provider will not accept payment from the Department, the Department may reimburse the family directly when proof of payment to the service provider is received by the Department.

0078. CRIMINAL RECORDS CHECK REQUIRMENTS. The All Adoptive Parents and any individual 18 years of age or older residing in the Adoptive Parents' household must submit to the

records checks set forth in this chapter and meet the approval requirements of this section in order for the Department to enter into an Adoption Assistance Agreement with the Adoptive Parents.

0078.01 RECORDS TO BE SEARCHED. The Adoptive Parents and any individual 18 years of age or older residing in the Adoptive Parents' household must consent to the Department receiving all background checks identified in this section. For each Adoptive Parent and any individual 18 years of age or older residing in the Adoptive Parents' household the following checks will be reviewed by the Department:

- (A) ~~State~~ Central Register or Registry of child protection maintained by any state in which the individual has lived within the past 5 years;
- (B) Nebraska Adult Protective Services Central Registry;
- (C) ~~Appropriate local law enforcement agency;~~
- (D) ~~National Sex Offender Registry; maintained by any state in which the individual has lived within the past 5 years; and~~
- (E) ~~State-level criminal history; and~~
- (F) Fingerprint-based National Criminal History Check.

0078.02 CRIMINAL RECORDS APPROVAL REQUIREMENTS. If the Adoptive Parents or any individual 18 years of age or older residing in the Adoptive Parents' household have a criminal history or history of child abuse or neglect, the Department will determine whether to enter into an Adoption Assistance Agreement based on the provisions in this section.

0078.02(A) ADOPTION ASSISTANCE AGREEMENT NOT AUTHORIZED. The Adoptive Parent(s) cannot enter into an Adoption Assistance Agreement with the Department when:

- (i) Any Adoptive Parent has been convicted of a felony involving abuse or neglect of a child ~~or a vulnerable adult~~, spousal abuse, a crime against a child or children, or a crime of violence including rape, sexual assault, or homicide, but not including other physical assault or battery;
- (ii) Any Adoptive Parent is identified as a perpetrator on a child abuse and neglect central registry or an adult abuse and neglect central registry; or
- (iii) Any Adoptive Parent has a conviction date within the past five years for a felony involving a drug-related offense, physical assault or battery.

0078.03 TIME FRAME FOR CRIMINAL RECORDS CHECK. To meet the requirements of this chapter, the results of the criminal records checks for each individual are valid for two years from the date the results were issued. If the Adoption Assistance Agreement is not signed by all parties during the time frame when the results are valid, new criminal records checks will be required.

0089. CHANGE IN PARENT INFORMATION. An ~~Aa~~adoption ~~Aa~~assistance ~~Aa~~greement may be modified to add parents subject to the provisions in this section.

0089.01 STEPPARENT. A Stepparent may be added to the ~~Aa~~adoption ~~Aa~~assistance ~~Aa~~greement when:

- (A) The Stepparent has adopted the child;
- (B) The Adoptive Parent who entered into the current ~~Aa~~adoption ~~Aa~~assistance

Agreement requests to have the stepparent added:

- (C) The Stepparent meets all the requirements of an Adoptive Parent as set forth in this chapter;
- (D) The Department is provided a copy of the adoption decree; and
- (E) An amended Adoption Assistance Agreement is signed by both the parent and the stepparent.

0089.02 EFFECT OF DIVORCE ON AGREEMENT. If the Adoptive Parents that entered into the current Adoption Assistance Agreement divorce, the Adoptive Parent who is awarded legal custody of the child in the court order will be the Adoptive Parent to whom the adoption assistance payment is made. In the event the Adoptive Parents are awarded joint legal custody, payment will continue to be made in the same manner as before the divorce, unless both Adoptive Parents agree in writing that a change in payee should occur.

00910. TERMINATION OF ADOPTION ASSISTANCE AGREEMENT. This section applies to all Adoption Assistance Agreements. An Adoption Assistance Agreement terminates when:

- (A) All Adoptive Parents who have entered into the Adoption Assistance Agreement request termination of the agreement;
- (B) The Adoption Assistance Agreement does not include a designation of guardian or conservator as allowed by state law and the Adoptive Parents are deceased;
- (C) The child reaches age 19;
- (D) The child dies;
- (E) The child becomes an emancipated minor;
- (F) The child marries or enlists in the military; or
- (G) The Department determines the Adoptive Parents are not legally responsible for the support of the child as a result of a termination of parental rights or a relinquishment of parental rights.

00910.01 AGE EXCEPTION. When a child reaches age 19, the Adoption Assistance Agreement will not terminate if the child is eligible for and enrolls in the extended adoption assistance program. The Adoption Assistance Agreement will terminate when the child is no longer enrolled in or eligible for the extended adoption assistance program.

01011. RIGHT TO APPEAL. An adoptive family has the right to request a fair hearing as allowed by law, including, but not limited to, when:

- (1) The Adoptive Parent disagrees with the determination by the Department that a child is ineligible for adoption assistance;
- (2) The Adoptive Parent disagrees with the adoption assistance payment determined by the Department;
- (3) The Adoptive Parent disagrees with the determination by the Department that a child is not IV-E eligible;
- (4) The Adoptive Parent was denied adoption assistance based on a means test of the Adoptive Parents' income;
- (5) The Department reduces or terminates the Adoption Assistance Agreement;
- (6) Facts about the child's special needs were not presented to the Adoptive Parents prior to finalization of the adoption;
- (7) The Adoptive Parents were not informed they could apply for an Adoption Assistance Agreement when the child was in the Department's custody; ~~or~~

- (8) The Department denied the Adoptive Parents' request for an increase in adoption assistance payment due to a change in the Adoptive Parents' circumstances; or
(9) The Department has denied payment for treatment services under the provisions of a retroactive adoption assistance agreement.

04011.01 APPEAL TIME FRAME. The appeal must be filed in writing within 90 days of when the action or inaction of the Department is known or should've been known by the Adoptive Parent(s). No change in coverage will occur while the appeal is pending.

CHAPTER 8-000 SUBSIDIZED ADOPTION PROGRAM

8-001 Introduction: The Nebraska Department of Health and Human Services' subsidized adoption program provides or continues financial assistance for a child after an adoption is finalized.

8-001.01 Purpose: The subsidized adoption program is designed to ensure that financial barriers or costs associated with a child's special needs do not prevent adoption. The intent is not to provide a financial incentive to families to adopt, but to remove financial barriers to the adoption of children with special needs and enable adoption to occur. Subsidy is for the child, not the parents. It does not diminish parental rights and responsibilities, but is a means of providing assistance to them in meeting their responsibilities.

Adoption subsidy may be provided in the form of ongoing assistance or a one-time reimbursement.

8-001.02 Subsidy to Department Wards

8-001.02A Legal Basis: Subsidized adoption payments may be made to Department wards either:

1. Using state funds as provided by Sections 43-117 and 43-118, Neb. Rev. Stat.; or
2. Through Title IV-E of the Social Security Act, Federal Payments for Foster Care and Adoption Assistance. **The legal basis for the regulations is included in 001 of the proposed regulations.**

8-001.02B Conditions Necessary to Initiate Subsidy: A subsidized adoption is considered based on:

1. The child's eligibility;
2. Efforts to place without subsidy; and
3. The family's needs for subsidy. **Eligibility criteria is set forth in 004.04, 005.03, 006.03 of the proposed regulations.**

{Effective 9/20/95}

8-001.02B1 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:

The child cannot or should not be returned to the legal biological parent(s) and one of the following criteria:

1. 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;
2. 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;

- e. Behavioral, emotional, physical or mental disability; and
 - d. Membership in a minority race (race by itself is not sufficient to make a child eligible for subsidy);
3. The child must meet all of the following:
- a. Cannot be adopted without subsidy (see 479 NAC 8-001.02B2);
 - b. Cannot or should not be returned to the home of the legal/biological parents;
 - c. Is a ward of the Nebraska Department of Health and Human Services at the time the adoption petition is filed; and
 - d. Is age 18 or younger.
- {Effective 9/20/95}

~~8-001.02B1a Eligibility for State Subsidy: A child who is eligible for state subsidy must:~~

- 1. Meet the criteria in 479 NAC 8-001.02B1 and be a ward of the Department at the time the adoption petition is finalized; or
- 2. 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.

{Effective 8/25/12}

~~8-001.02B1b Eligibility for Federal Subsidy: A child who is eligible for federal subsidy must meet the criteria in 479 NAC 8-001.02B1 and:~~

- 1. Be a ward of the Department at the time the adoption petition is finalized and be eligible for Title IV-E foster care or SSI at the time the adoption petition is filed; and
- 2. Be a child with special needs who is in foster care placement with his/her minor parent if Title IV-E foster care payment is being made for the care of both. Eligibility criteria for a child in the custody of the Department is included in 004.04(A), 004.04(B), 004.04(C) and 004.04(D) of the proposed regulations.

{Effective 02/23/04}

~~8-001.02B2b(1) Non-Ward Eligibility for Federal Subsidy: The federal government has extended Title IV-E adoption eligibility to the following non-wards:~~

- 1. A child who is being adopted privately who is deemed eligible for SSI at the time the adoption petition is filed; or Eligibility for for wards of a licensed child placement agency (AKA private adoptions) is included in 005 of the proposed regulations.
- 2. A child who was receiving a Title IV-E subsidy in a previous adoption and that adoption dissolves (parents sign a relinquishment of parental rights or a court of competent jurisdiction terminates their parental rights) or the adoptive parents die is eligible for federal Title IV-E subsidy in a subsequent adoption. Eligibility for a Title IV-E subsidy is governed by Title IV, Part E of the Social Security Act and

004.03 and 005.03, of the proposed regulations reference the federal laws instead of repeating the law. The Department intends to utilize a Public Guidance Document to provide information to the public on how the Department interprets the law and regulation, and this Public Guidance Document will be able to be updated as the federal IV-E laws change.

~~If a child is placed across state lines and is not in the custody of the sending state, the adoptive parents must apply for subsidy in their state of residence. That state is responsible for determining whether the child qualifies for subsidy.~~ This requirement is included in 005.04 of the proposed regulations and does not apply to children in the custody of the Department, only children in the custody of a child placing agency.

~~{Effective 02/23/04}~~

~~8-001.02B1c Determination of Child's Eligibility: In each case in which a ward is being adopted, the worker must assess the child's eligibility for subsidized adoption, including the child's mental and physical needs. If the child qualifies, the worker must discuss the possibility of subsidized adoption with the adoptive parent(s). To determine a child's eligibility, the worker must:~~

1. Complete a Determination of Child's Eligibility and attach necessary documentation;
2. If pre-existing medical is to be covered, obtain documentation for each condition to be included consisting of a recent (no older than six months) report from a physician or qualified practitioner which states:
 - a. Diagnosis, including severity of condition;
 - b. Present and future care or treatment required or likely to be needed; and
 - c. If a specific procedure is required, when it likely will be completed and an estimated cost (required for dental or orthodontic work); and
3. Forward form and documentation to the designated staff.

The designated adoption worker must notify the worker of the determination in a timely manner.

{Effective 02/23/04}

8-001.02B2 Efforts to Place Without Subsidy: Federal and state law require that efforts to place without subsidy be made before a child can be adopted with subsidy. Efforts to place without subsidy are not required if the child is placed with a relative who plans to adopt the child. In order to meet this requirement if the Department has done any of the following, the requirement is met:

1. Register the child on an established adoption exchange for at least three months;
2. Feature the child in the media to recruit a family;
3. Determine that the potential family is best able to meet the child's needs after consideration of other families; or
4. 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. The requirement that efforts were made to place the child without an adoption assistance agreement is included in 004.04(B) and 005.03 of the proposed regulations.

{Effective 02/23/04}

~~8-001.02B3 Family's Need for Subsidy:~~ During the placement process or the post-placement period, the child's worker and supervisor shall determine whether the potential for subsidized adoption should be discussed with the family. If the child is eligible and it appears that subsidy will be needed, the worker shall assess the need for subsidy and negotiate the type and amount with the family.

A determination of the child's present and anticipated future needs and the family's ability to meet those needs without assistance must be made after considering the needs of the child and the circumstances of the family. The payment that is agreed upon in combination with the parent(s)' resources should cover the ordinary and special needs of the child projected over an extended period of time and should cover anticipated needs.—This is included in 004.04(D) and 005.03(B) of the proposed regulations.

{Effective 02/23/04}

~~8-001.02B3a Resources Available for the Child:~~ Subsidy is intended to be used only if other resources are not available, including those through other programs or in the community.—This is included in 004.04(D), 004.05 and 005.005.03(B), and 005.05 of the proposed regulations. These sections state that adoption assistance is not intended to cover all costs of care of the child, but is for assisting with the costs of care and also state that no services will be provided that could be provided if other resources or programs are available.

~~8-001.02B4 Approval of Family for Adoption of a Child With Subsidy:~~ Families adopting with subsidy must meet the same criteria established for any other adoptive family, with the major factor being ability to meet the child's needs on a permanent basis. If all other criteria contained in the Home Study (see the Adoption Services Guidebook) are met and finances are the only barrier, subsidy may be considered, if the child is eligible.

~~8-001.02B5 Approval Before Adoption Decree:~~ The application and agreement for subsidy, specifying type, amount, purpose, and duration of subsidy must be completed and approved before the date of adoption finalization. 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 479 NAC 8-001.02F1b.)—The requirement that the agreement be signed by all parties prior to the adoption being finalized is included in 004.01, 005.01, and 006.01 of the proposed regulations.

8-001.02C Types of Subsidy

~~8-001.02C1 Federal Subsidy:~~ This type of subsidy is also known as Adoption Assistance or Title IV-E subsidy. The funding source is federal, with state match. A federal subsidy, if available, is the first choice of the Department. All federal subsidies must include:

1. Full medical coverage (i.e., the child continues to be eligible for Medicaid, including HEALTH CHECK within the resident state's guidelines, regulations, and rates); and
2. Services defined by policy to be available to the child through the Social Services block grant.

Federal subsidy may also include maintenance coverage -- monthly payment to the adoptive parent to assist in meeting the child's day-to-day needs. The amount must be less than the payment would be if the child had remained in foster care through the Department. A Title IV-E adoption assistance agreement is defined in 003.07 of the proposed regulations and the eligibility requirements to be eligible for a Title IV-E assistance agreement are set forth in Title IV-E of the Social Security Act and will be referenced in a public guidance document. The provisions available as part of a Title IV-E adoption assistance agreement are found in 004.05 and 005.05 of the proposed regulations.

~~When a child whose subsidy includes child care is approaching the age of 13, the worker must discuss with the family the ongoing need for payment for this service. If the adoptive parent agrees, in writing, to end this service, the worker must end the child care authorization. (The worker cannot end the authorization without written agreement of the adoptive parent, even if the subsidy agreement stated that child care would cease at a specific time.)~~

When a child who had been receiving federal subsidy reaches the age of 18 years and does not qualify as disabled, either by SSI eligibility or determination by the Department's Medical Review Team, the child can be transferred to a state maintenance and medical subsidy. This provision is included in 004.13 of the proposed regulations.

{Effective 02/23/04}

~~8-001.02C2 State Subsidy: The funding source for this assistance is state general fund appropriation. It may include one or more of the following:~~

- ~~1. Maintenance: 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 (e.g., college). The amount must be less than the payment would be if the child had remained in foster care through the Department; This provision is included in 004.05(1) and 006.05(1) of the proposed regulations.~~
- ~~2. Medicaid and Payment for Pre-existing Medical: The child may receive Medicaid if s/he:
 - ~~a. Has a documented pre-existing medical need which is a barrier to adoption; and~~
 - ~~b. Was receiving or was eligible to receive Medicaid before execution of the adoption agreement.~~~~

~~When a child whose subsidy includes child care is approaching the age of 13, the worker must discuss with the family the ongoing need for payment for this service. If there is no special need, as defined in 392 NAC 1-003, or if the subsidy agreement states that child care payments will end upon the 13th birthday, the worker must end the child care authorization.~~

~~Payment for care for a pre-existing medical condition is 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.~~

~~Payment is made to providers for medical or mental health care or treatment related to pre-existing medical or mental health needs which were identified and documented on the subsidy agreement before the decree. This care may include psychiatric, psychological, and mental health services, inpatient hospitalization, and care needed to teach basic life skills, sustain life, or maintain a physical/medical condition, as well as medications and prostheses. It does not include vocational training.~~

The care or treatment must be medically necessary and provided:

- a. By a medical practitioner or qualified mental health professional and/or prescribed by a physician; and
- b. In the least restrictive, most family-like setting appropriate to meet the child's needs, as determined by the Department.

3. **Special Service:** Special services are payments made for a specific service or item related to the child's need(s) and for a specified time period. They can be one-time only in nature. Special services may be covered only if other resources or programs are not available to provide them. These services may include, but are not limited to—**This is included in 004.05(2) and 006.05(2) of the proposed regulations.**
 - 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.—**This is included in 004.05(3) and 006.05(3) of the proposed regulations.**
 - b. Costs of integrating the child into the adoptive family, including items such as furniture for three or more siblings placed together or where specially designed furniture is required because of a child's disability, or training for adoptive parents in parenting a special-needs child. The maximum amount to be paid must 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 amount to be paid must be specified on the subsidy agreement; or
 - d. Expenses for transportation, lodging, and meals for the child and one parent for the child to receive medical care/treatment for a pre-existing condition. Amounts paid will be no more than those used for child welfare foster care. (See 479 NAC 2-002.11.) The condition must have been documented before finalization, but the medical care/treatment itself need not be included for coverage. **Although transportation is not spelled out in the proposed regulations, transportation services could be authorized as a special service which is included in 004.05(2) and 006.05(2) of the proposed regulations.**

{Effective 02/23/04}

~~8-001.02C3 Federal With State Supplement:~~ When a Department ward who is receiving a federal subsidy has needs which cannot be met through federal subsidy, preexisting medical or special service components may be provided from state subsidy.

8-001.02D Initial Subsidy Application

~~8-001.02D1 Need for Subsidy:~~ The worker must determine the child's present

~~and anticipated future needs and the family's ability to meet those needs without assistance, considering the following:~~

1. Family 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 were born to the family;
2. Other programs, benefits, or resources available to the family to meet the child's needs; and
3. Adequacy of the family's insurance to cover medical needs. (The worker must obtain documentation from the family showing what insurance will cover.)

{Effective 02/23/04}

~~8-001.02D2 Type of Subsidy:~~ In some cases, the only assistance needed will be medical or special service without maintenance. This is included in the provisions sections because not all provisions are guaranteed in each agreement. Those sections are 004.05, 005.05 and 006.05.

~~8-001.02D3 Amount:~~ If maintenance is being considered the amount must be less than the payment would be if the child had remained in agency care and the coverage must be no greater than would have been provided if the child had remained a ward. Payment may be as little as \$10. (In foster parent adoptions, a larger maintenance amount will be a more frequent occurrence.) This provision is included in 004.05, 005.05, and 006.05.

The worker must explain that other maintenance payments which they might receive for the child (e.g., Social Security benefits, SSI, Veteran's benefits, ADC) will be deducted from the agreed-to maintenance payment under subsidy (see 479 NAC 8-001.02B3a).

~~Exception for Federal IV-E Subsidy:~~ Payment cannot be reduced without the written agreement of the adoptive parent for any reason, including an increase in other resources such as SSI, SSA, or VA benefits. This is included in proposed section 004.10(A)(i).

{Effective 02/23/04}

~~8-001.02D4 Duration:~~ The worker must consider the length of time the family anticipates needing assistance. This determination might include the family's financial situation (e.g., a parent completing school) or correction of the child's medical problem.

~~8-001.02D5 Application Process:~~ (Note: Application may be made only after the child's eligibility has been approved, see 479 NAC 8-001.02B1). An initial application for subsidy is processed.

~~8-001.02E Review:~~ No review of the subsidy is required. A revised agreement may be done upon the request of the family, Department receipt of information regarding a change in family circumstances, or when a change in law or regulation indicates the need for a revision.

~~{Effective 02/23/04}~~

~~8-001.02E1 Increase in Subsidy:~~ The Department cannot arbitrarily reject a request for an increase in the subsidy. The worker must consider an increase requested by the adoptive parent(s). The amount of the subsidy increase must not exceed the amount the child would have received in foster care at the time of the request. It can be based on the child's special needs or on the life choices by the adoptive parent(s), such as resigning one's job to stay at home with the adopted child or to return to school. The family must complete and sign a Subsidized Adoption Renewal or Change Request. The worker and supervisor must approve or deny the request. If the request is approved, the worker and supervisor must sign the Subsidized Adoption Renewal or Change Request. The worker sends the original to the family, forwards a copy to State Ward Medical, and retains a copy for the case record. **This is included in 004.08 and 005.08.**

~~If the request is not approved, the worker must send a Notice of Finding with a copy of the Subsidized Adoption Renewal or Change Request to the family with the reason for the denial of the requested changes.~~

~~{Effective 02/23/04}~~

~~8-001.02E2 Reduction in Subsidy:~~ If the family no longer needs the amount of maintenance they have been receiving, the worker should make all reasonable efforts to obtain the family's agreement to reduce the amount of the payment. For example, if the child no longer received child care, that amount would be reduced from the payment.

~~The worker must consider reduction when a child is placed out of the adoptive home or if the worker determines that the child is receiving maintenance from another source not previously computed in determining maintenance.~~

~~The family must complete and sign a Subsidized Adoption Renewal or Change Request. The worker and supervisor sign the Subsidized Adoption Renewal or Change Request. The worker sends the original to the family and retains a copy for the case record.~~

~~{Effective 02/23/04}~~

~~8-001.02E2a Change in Federal IV-E Subsidy:~~ Payment cannot be reduced without the written agreement of the adoptive parent for any reason, including an increase in other resources such as SSI, SSA, or VA benefits.

~~{Effective 02/23/04}~~

8-001.02F Change in Subsidy

8-001.02F1 Change in Medical Subsidy

~~8-001.02F1a Change in Medical Coverage: In order to be covered under subsidy, each medical condition must be specified on the initial agreement.~~

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

~~{Effective 02/23/04}~~

8-001.02G Determination of Maintenance and Medical

~~8-001.02G1 Maintenance: Any maintenance payments received for the child (e.g., Social Security benefits, SSI, VA, ADC) will be deducted from the agreed-to maintenance payment under state subsidy. This is included in 004.05(A)(i) and 005.05(A) of the proposed regulations.~~

~~For federal subsidy, a written agreement must be obtained in order to reduce for any reason. This is included in 004.10(A)(i) and 005.09(a)(i) of the proposed regulations.~~

~~{Effective 02/23/04}~~

8-001.02G2 Medical

~~8-001.02G2a Payment/Coverage for Pre-existing Medical Care/Treatment Rate: Payment will be made directly to the provider at Nebraska Medicaid rate within applicable Medicaid guidelines, or at the rate established for child welfare medical payments within child welfare medical guidelines. If no rate has been established, the rate will be determined by Medical Services staff, using "usual and customary" as a general guideline. When a Department staff questions whether a particular service is coverable under the specified pre-existing condition, staff shall ask the provider to submit a statement~~

~~regarding if/how it is related, and/or the adoption specialist shall request an opinion from Medical Services staff.~~

~~8-001.02G2b Payment for Medical from Non-Medicaid Funds: Payment for pre-existing medical will be paid 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 him/her, payment will not be made under state subsidy.~~

~~8-001.02H Family's Responsibilities: The family must meet its responsibilities to as great an extent possible without subsidy, and is responsible for exploring and using other resources or funding sources which reasonably can be considered available and appropriate before using subsidy coverage. (See 479 NAC 8-001.02D1 for further clarification.) The family is also responsible for supplying needed documentation to continue the coverage and for notifying the Department of changes in the family's or child's circumstances which would affect the subsidy. This is included in 004.04(D) and 005.03(B) of the proposed regulations.~~

~~8-001.02H1 Medical: Before requesting payment under subsidy either through Medicaid or pre-existing medical/mental health, the family must use other available resources, benefits, and programs, including but not limited to private insurance coverage and care or treatment available through the education system. The family is expected to make a self-determination regarding ability to cover medical costs from its private resources before requesting that a provider submit the bill for subsidy coverage.~~

~~8-001.02J Residence Provisions: 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.~~

~~8-001.02J1 Federal Subsidies: Medicaid coverage of children is provided by the state of residence within that state's regulations and at that state's rate.
{Effective 02/23/04}~~

~~8-001.02J2 State Option Subsidies: Medicaid coverage for children who are living out of state can be provided by the state of residence provided that state allows Medicaid coverage for state-funded children. If the resident state disallows medical coverage, the child's medical coverage continues to be provided by Nebraska.
{Effective 02/23/04}~~

~~8-001.02K Reinstatement of Subsidy: In some circumstances it is possible to reopen an original subsidy after the subsidized adoption case has been closed. The worker must submit these requests to the designated adoption staff who will consider them on an individual basis. The designated adoption staff must make a final determination based on the original intent of subsidy (i.e., making possible adoption and a permanent family for the child). Reinstatement is not possible if the parents are no longer the legal parents of the child.
{Effective 9/20/95}~~

~~8-001.02L Transfer of Subsidy: It is not possible to transfer a subsidy agreement to new adoptive parents, unless the person is a stepparent who has adopted the child while married to an original adoptive parent. When a request of this type is received, the worker must assist the parent(s) to complete a Recertification/Change Request and submit it to the designated staff for approval. This is included in 004.12 and 005.11 of the proposed regulations.
{Effective 9/20/95}~~

~~8-001.02M Inpatient Psychiatric Care: The purpose of inpatient psychiatric care is to~~

~~provide treatment when the child cannot benefit from less restrictive care.~~

~~8-001.02M1 Type of Care: To be covered under subsidy, inpatient psychiatric treatment must:~~

1. Be provided in a facility licensed or approved by the appropriate agency/department (e.g., Nebraska Department of Health) for therapeutic, psychiatric care or JCAH accredited;
2. Be psychiatric or mental health treatment related to or resulting from a covered pre-existing condition; and
3. Follow admission procedures as outlined in 471 NAC 20-000 ff.

For children covered under subsidized adoption but residing in another state, that state's Medicaid procedures for inpatient admission must be followed.

Care provided by foster or group homes or child caring agencies is not considered inpatient psychiatric care.

8-001.02N Out of State Residential Care

8-001.02N1 Length of Care: Residential Psychiatric Care can be provided under subsidy for up to 18 months only. Payment for treatment in an inpatient setting will be an exception and must be approved by the adoption specialist, Central Office.

8-001.02N2 Restrictions: Payment for residential psychiatric care will be approved only if:

1. It is related to or results from a pre-existing condition covered on the subsidy agreement;
2. It is anticipated to result in progress which will enable the child to return to the family or community;
3. Less restrictive or acute care alternatives/treatments are not appropriate or available, or have refused to accept the child;
4. The child cannot obtain appropriate care in his/her own home or community;
5. The child's family will continue to remain involved with the child in planning for and making possible return home;
6. This type of placement is in the child's best interests; and
7. Other resources, benefits, or programs are not available to cover the care. (This includes the use of private insurance and reasonable use of private/family resources).

{Effective 9/20/95}

~~8-001.02N3 Approval/Denial Process: When a family requests approval for coverage of out-of-state residential or inpatient psychiatric treatment, the following process must be used:~~

- ~~1. The worker must:
 - a. Discuss with the family the requirements and coverage which might be available, including use of other resources and the need for documentation;
 - b. Assist the family in locating and considering less restrictive alternatives/programs, if appropriate;
 - c. Request the family to provide necessary reports or a release of information so that the worker can obtain them. If the family refuses, the worker shall deny the request based on lack of information; and
 - d. Submit a written recommendation for approval of care and necessary documentation to the designated district adoption staff. This recommendation must include the worker's and supervisor's opinion whether or not:
 - (1) This placement is the least restrictive alternative available;
 - (2) This placement is in the child's best interest;
 - (3) The family is involved and planning for the child's return home; and
 - (4) The request should be approved.~~
- ~~2. The placement must be approved or denied by:
 - a. The Peer Review Organization for a Medicaid-eligible child in a Medicaid-enrolled facility; or
 - b. A team including adoption staff and the Central Office adoption specialist for a facility that is not enrolled in Medicaid or a child who is not Medicaid-eligible.~~
- ~~3. The worker must notify the family of the decision regarding placement or continued stay;~~
- ~~4. The family will be involved in the child's treatment as recommended by the facility; and~~
- ~~5. If the placement is approved and is to be outside of Nebraska, the worker must assist the family in completion of Interstate Compact forms.~~

~~{Effective 9/20/95}~~

~~8-001.02N4 Documentation Required: The documentation needed from the facility is as follows:~~

- ~~1. A report from a licensed psychiatrist or licensed clinical psychologist which includes:
 - a. A complete diagnosis and its relationship to a pre-existing condition covered under the subsidy agreement;
 - b. Goal of treatment, including involvement of family;
 - c. Treatment which will be received;~~

- ~~d. Anticipated results of treatment;~~
- ~~e. Need for the level of treatment as opposed to less restrictive alternatives; and~~
- ~~f. A discharge plan, including available treatment resources.~~

2. A statement from the parent(s) which includes:
 - a. How they will remain involved with the child in planning for the return home;
 - b. How they will participate financially in the treatment and in meeting the child's needs, including the use of private insurance and personal resources;
 - c. Plans for treatment and their involvement in the child's treatment after discharge; and
 - d. Their commitment to the child returning home.

{Effective 9/20/95}

~~8-001.02N5 Process After Placement:~~ While the child is in psychiatric residential inpatient treatment, the worker shall obtain progress reports from the facility every three months. These reports must show:

1. Progress toward the treatment goal;
2. Continuing need for treatment and at the present level of care;
3. Prognosis and estimated length of treatment that will be needed; and
4. The family's involvement in treatment and/or planning for return home.

~~The worker shall review the reports, consult with his/her supervisor, and submit the reports with a recommendation regarding continuation of coverage for care to the designated district adoption staff. The designated district adoption staff must consult with the Central Office adoption specialist and/or Medical Services, as appropriate, to determine if the Department will continue to pay for treatment/hospitalization, based on 479 NAC 8-001.02M, and must notify the worker of the determination. The worker must send written notice of the decision to the family. If payment will terminate, the notice must include the date on which payment will cease; a minimum of 30 days notice is required.~~

{Effective 9/20/95}

~~8-001.02N5a Payment Termination:~~ The Department will no longer provide payment if:

1. Reports are not provided;
2. Progress is not occurring and it is determined that treatment at that facility is no longer appropriate;
3. Treatment is no longer needed;
4. The plan is not to return the child home; or
5. The family is no longer involved with the child.

~~Note: If the family has refused contact with the child, or involvement in planning for the child, the worker must consider whether a child protective services referral is appropriate.~~

8-001.02P Right to Appeal: The adoptive family has the right to a fair hearing if the Department:

1. Denies the application for subsidy;
2. Reduces or terminates the subsidy agreement; or
3. Refuses to pay for psychiatric residential or inpatient psychiatric treatment if psychiatric care is covered in the agreement.

The appeal must be filed in writing within 90 days of the action or inaction. (See PAF 4-4 for completion of Form DA-6.) No change in coverage will occur while the appeal is pending.

{Effective 02/23/04}

~~8-001.02P1 Right to Appeal Federal Title IV-E Subsidy:~~ The adoptive family has the right to request and be granted a fair hearing if the adoptive parents allege they were denied subsidy due to:

1. Facts about the child's special needs were not presented to the parents prior to finalization of the adoption;
2. Subsidy was denied based on a means test of the adoptive parents' income;
3. Adoptive parents disagree with the determination that the child is ineligible for subsidy;
4. The adoptive parents were not informed of subsidy available to the child in the Department's custody;
5. The agency decreased the amount of subsidy without the concurrence of the adoptive parents; or
6. The agency denied the parents' request for an increase in subsidy due to a change in the adoptive parents' circumstances.

No change in coverage will occur while the appeal is pending. (See Adoption Guidebook, Section XXIII.) The rights of appeal are included in section 010 of the proposed regulations.

{Effective 02/23/04}

~~8-001.02Q Deletions or Termination in Subsidy:~~

~~8-001.02Q1 Deletion or Termination of State 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 state subsidy is terminated on the child's 19th birthday.

{Effective 02/23/04}

8-001.02Q2 Deletion or Termination of Federal IV-E Subsidy: Termination or deletion of federal IV-E subsidies are made because of the following factors:

1. The terms of the agreement have terminated;
 2. The child is beyond the age of eligibility. 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;
 3. The parents requested termination of the subsidy;
 4. The child dies;
 5. The child re-enters foster care and the Department determines that the parents are:
 - a. No longer legally responsible for support of the child; or
Note: A parent is considered no longer legally responsible for support of the child when parental rights have been terminated or relinquished, or when the child becomes an emancipated minor, marries, or enlists in the military;
 - b. No longer providing any support to the child.
Note: Any support is defined as various forms of financial support, such as:
 - (1) Child support payments;
 - (2) Clothing purchases;
 - (3) Incidental items;
 - (4) Transportation, meals, and lodging for visits with the child and/or to participate in family therapy;
 - (5) Expenses for long distance phone calls.Maintenance of the home for the child is not included as support.
If the family is providing any of these forms of support but the amount of money spent on them appears to be less than the subsidy amount, the worker must discuss with the family the possibility of reducing the maintenance payment. However, it cannot be reduced without the family's written agreement.
- Note: If a and b are not present, the subsidy cannot be reduced without written consent of the adoptive parent.

When an adoption assistance may be terminated is set forth in section 009 of the proposed

regulations. The primary difference in the proposed regulations is that there is not a specific section related to when a child is placed into the custody of the Department. The intent of the Department is that the termination requirements apply in all situations, whether or not the child is in the custody of DHHS.

~~8-001.02R Subsidized Adoption Case Record: For organization of the case record, see 479-000-318.~~

~~8-001.02R1 Case Closure:~~ Closed records are sent to the vault for storage.

~~8-001.02R2 Retroactive Approval of Subsidy:~~ Subsidy may be approved retroactively using state funds as provided by Neb. Rev. Stat., section 43-117. **This provision is included in proposed regulations at 007.02(A)(ii).**

Retroactive approval of subsidy for a child who has already been adopted must be approved only if all the following conditions are met:

1. The child who was adopted was a ward of the Department at the time the adoption was finalized;
2. The adoptive family contacted the Department and made a written request for subsidy within three years after the date the adoption was finalized;
3. The child is diagnosed with a physical or mental illness or condition that was present prior to the adoption finalization;
4. The Department did not inform the adoptive parents of this condition(s) prior to the adoption even if the Department did not have the information prior to the adoption;
5. The condition requires medical, psychological, or psychiatric treatment. Documentation from a medical professional stating that the condition was pre-existing (prior to the adoption finalization) must be provided by the family; and
6. Treatment is more intensive than the ordinary childhood illness. This factor must be documented by a professional.

{Effective 02/23/04}

~~8-001.02R2a Documentation:~~ The child's special needs and pre-existing conditions must be documented by a medical professional specifically addressing:

1. The child's diagnosis;
2. Documentation that the child's condition is more intensive than an ordinary childhood illness;
3. The progress and length of anticipated treatment;
4. Length of time that the child has had the condition and that it was pre-existing to the time of the finalization of the adoption.

{Effective 02/23/04}

These provisions are included in Section 7 of the proposed regulations.

~~8-001.02R2b Approval:~~ Approval for retroactive subsidy must be made by a team comprised of service area staff and staff from Central Office, Office of Protection and Safety. (See guidebook for processing of approval.)

{Effective 02/23/04}

~~8-001.02R2c Subsidy Provided Retroactively:~~ If the subsidy is approved retroactively, a Medicaid card will be issued for the child. The adoptive family must be informed about the Medicaid Program including:

1. ~~The family's health insurance will be billed before using Medicaid funds;~~ This provision is included in Section 007.02(A)(i) of the proposed regulations
2. ~~Payment will only be made to Medicaid providers at Medicaid rates and Medicaid guidelines;~~
3. ~~Payment for bills during this retroactive period not falling under the Medicaid Program will be the family's financial responsibility;~~
4. ~~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.~~ The effective date for payment is included in Section 007.02(A)(ii) of the proposed regulations.

~~Payment will be made for medical bills associated with the special needs back to the date of application or the beginning of Medicaid coverage, whichever is earlier. These bills will only be paid if Medicaid would have covered them, to a Medicaid provider, and at Nebraska Medicaid rates.~~

~~{Effective 02/23/04}~~

~~8-001.02R2d Items Not Covered Under Subsidy Approved Retroactively: Subsidy approved retroactively is limited to payments related to medical treatment. Payment which cannot be covered includes but is not limited to:~~

1. ~~Maintenance payments;~~
2. ~~Legal fees to finalize the adoption as a part of the process to request and set up the retroactive subsidy;~~
3. ~~Expenses such as:
 - a. ~~Respite care;~~
 - b. ~~Child care;~~
 - c. ~~Repairs to the home;~~~~
4. ~~Payments made directly to the family as reimbursement for medical/psychiatric/psychological care that the family had already paid. (Payment must be made only to the provider).~~

~~8-001.03 Adoption Subsidies for Wards of Private Nonprofit Agencies: The Nebraska Department of Health and Human Services may provide financial assistance for a ward of a private nonprofit agency after the adoption of the ward is finalized.~~

~~This is included in the proposed regulations at section 005.~~

~~8-001.03A 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.~~

~~8-001.03B Conditions Necessary to Initiate Subsidy:~~

~~8-001.03B1 Child's Eligibility: To be eligible for adoption subsidy, a child must meet the following criteria:~~

- ~~1. The child must meet all of the following:
 - ~~a. Cannot be adopted without subsidy (see 479 NAC 8-001.03B2);~~
 - ~~b. Cannot or should not be returned to the home of the legal or biological parents;~~
 - ~~c. Is age 18 or younger;~~
 - ~~d. Is a ward of a private nonprofit agency that is licensed in Nebraska to place children for the purpose of adoption at the time the adoption is finalized;~~
 - ~~e. At the time the adoption petition is filed, the child 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 when the child was first removed from the biological family. State regulations that were in place on July, 1996, must be used (see 479 NAC 2-009.01A);~~
 - ~~(2) 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 (see 479 NAC 2-009.01B1 #1). Regarding current regulations, if an ADC-eligible child is placed through a voluntary placement agreement or a relinquishment without court jurisdiction, there must be a judicial determination within six months of removal of the child from the home of a relative) that continuation in the home would be contrary to the welfare of the child; or~~
~~Note: A determination of reasonable efforts is not required.~~
 - ~~(3) The child meets the eligibility requirements for the SSI program at the time the adoption petition is filed and at finalization of the adoption;~~~~~~
- ~~2. 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 foster/adoptive parent(s) so that breaking the attachment would be harmful to the child; or
 - d. Behavioral, emotional, physical, or mental disability; and
- The eligibility information is included in proposed 005.03 and 005.03(A) and (B).

Note: Being a member of a minority race also is considered a special need. If applicable, it should be noted. However, race by itself is not sufficient to make a child eligible for subsidy.

- 3. If a child is eligible for SSI, no court order is necessary.
{Effective 02/23/04}

~~8-001.03B1a Determination of Child's Eligibility:~~ To determine a child's eligibility, the private agency worker must :

- 1. Complete Determination of Child's Eligibility for Subsidized Adoption - Private Agency Wards and attach necessary documentation. Form DSS-551 may be submitted with the Determination of Child's Eligibility for Subsidized Adoption - Private Agency Wards;
- 2. Complete the Family Financial Information, Initial Eligibility and Review; and
Note: If the child is receiving SSI or was receiving ADC in a specified relative's home at the time the adoption petition was filed, the Family Financial Information, Initial Eligibility and Review is not necessary.
- 3. Forward the forms, documentation, and a copy of the court order (if appropriate), to the adoption specialist, Human Services Division, Nebraska Department of Health and Human Services.

The adoption specialist must review the Determination of Child's Eligibility for Subsidized Adoption - Private Agency Wards to determine if the child meets eligibility as a special needs child. The adoption specialist must notify the private agency worker if additional information is needed. If the adoption specialist determines that this is a special needs child, s/he must send a copy of the Family Financial Information, Initial Eligibility and Review and the Determination of Child's Eligibility for Subsidized Adoption - Private Agency Wards along with a copy of the court order, if appropriate, and the birth certificate to the appropriate local office worker for IV-E eligibility determination. The worker must forward a Notice of Action to the adoption specialist with notification of IV-E eligibility within 30 days.

The adoption specialist must notify the private agency worker of the eligibility determination within 45 days.

~~8-001.03B2 Efforts Toward Placement Without Subsidy: Federal laws require that efforts to place without subsidy be made before a child may be adopted with subsidy. Efforts to place without subsidy are not required if the child is placed with a relative who plans to adopt the child. The private agency must ensure that this occurs and document the efforts taken. The following may be used to document efforts to place without subsidy:~~

- ~~1. Registration on an established adoption exchange(s) for at least three months with no appropriate responses. For Native American children, this must include listing on the exchange for the appropriate tribe;~~
- ~~2. Featuring the child in media to recruit a family (television shows, newspaper articles, or magazines);~~
- ~~3. Documentation that this family is best able to meet the child's needs after consideration of all appropriate families approved by the agency submitting the request or available on the Nebraska Department of Health and Human Service's adoption exchanges. (This documentation must include a listing of the other families and why they were not able to meet the child's needs); and/or~~
- ~~4. This particular placement was the only one considered, because of best interests of the child (that is, in cases where attachment to foster parents exists, it would not be in the best interests of a child to move him or her to another family which might be able to adopt without subsidy. (This documentation by itself is adequate);~~

~~{Effective 02/23/04}~~

~~8-001.03B3 Family's 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 must be made after considering the needs of the child and the circumstances of the family. The payment that is agreed upon, in combination with the parent(s)' resources should cover the ordinary and special needs of the child projected over an extended period of time, and should cover anticipated needs.~~

~~{Effective 02/23/04}~~

This is included in the proposed regulations at 005.03(B)

~~8-001.03B4 Approval of Family for Adoption of a Child With Subsidy: Families adopting with subsidy must meet the same criteria established for any other adoptive family, with the major consideration being ability to meet the child's needs on a permanent basis. If all other criteria set by the private agency are met and finances are the only barrier, subsidy may be considered, if the child is eligible. This is included in the proposed regulations at 005.03.~~

~~8-001.03B5 Approval Before Adoption Decree: The application and agreement for subsidy, specifying type, amount, purpose, and duration of subsidy must be completed and approved before the date of adoption finalization. This is included in the proposed regulations at 005.02.~~

~~8-001.03C 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 (i.e., the child is eligible for Medicaid, including HEALTH CHECK, within the resident state's guidelines, regulations, and rates), and~~
- ~~2. Social Services block grant for which the family is eligible.~~

~~Federal subsidy may also include maintenance payment to adoptive parents to assist in meeting the child's day-to-day needs. The amount must be less than the private agency would expend for the child if the child were their ward.~~

~~If additional payment for adoption expenses is required, see 390 NAC 6-003.03G for Reimbursement of Non-Recurring Adoption Expenses. The Adoption assistance agreement provisions are included in 005.05, these are the same regardless of whether the agreement is federally funded or state funded. Medicaid is not included as part of the assistance agreement, and is determined based on Medicaid regulations. Medicaid regulations will make a child who is the subject of a Title IV-E Adoption Assistance Agreement eligible for Medicaid.~~

~~{Effective 02/23/04}~~

~~8-001.03D 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 must continue to pay the maintenance subsidy if the child moves out of state; however, Medicaid coverage is no longer provided by Nebraska. The state of residence must provide Medicaid, within that state's regulations and at that state's rate (see 479-000-304). Provisions governing children placed across state lines are found in the proposed regulations at 005.04 and indicate that when a child is placed across state lines the adoptive parents must apply for adoption assistance in their state of residence.~~

~~Social Services Block Grant services are provided by the state of residence based on the family's eligibility.~~

~~8-001.03E Initial Subsidy Application~~

~~8-001.03E1 Need for Subsidy: The agency worker must determine the child's present and anticipated needs and the family's ability to meet those needs without assistance, considering the following:~~

1. Family 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 were born to the family;
2. Other programs, benefits, or resources available to the family to meet the child's needs; and
3. Adequacy of the family's insurance to cover medical needs. (The private agency worker shall obtain documentation from the family showing what insurance will not cover.)

~~8-001.03E2 Type of Subsidy:~~ In some cases, the only assistance needed will be medical. Maintenance will be included only if necessary.

~~8-001.03E3 Amount:~~ If maintenance is being considered, the amount must be less than the payment would be if a foster care payment were being made by the private agency. Payment may be as little as \$10. (In foster parent adoptions, a larger maintenance amount will be a more frequent occurrence, as the foster care payment was included by the family in its budgeting. **The highlighted section is included in proposed regulations at 005.05(1).**)

~~The agency worker must explain that other maintenance payments which they might receive for the child (e.g., Social Security benefits, SSI, Veteran's benefits, ADC) cannot be reduced without the written agreement of the adoptive parent for any reason, including an increase in resources such as SSI, SSA, or VA benefits.~~
{Effective 02/23/04}

~~8-001.03E4 Application Process:~~ Application can be made only after the child's eligibility has been approved, see 479 NAC 8-001.03B1. To process an initial application for subsidy:

1. The private agency worker must:
 - a. Complete assessment and negotiation process with the family (see 479 NAC 8-001.03B3);
 - b. Complete a Determination of Child's Eligibility for Subsidized Adoption - Private Agency Ward;
 - c. Complete or assist the family to complete Application for Subsidized Adoption - Private Agency Wards with appropriate signatures;

- d. Complete Insurance Information (see PAF 1-6);
 - e. Complete Third Party Agreement for Medical Care (see PAF 9-45);
and
 - f. Forward the Determination of Child's Eligibility for Subsidized Adoption - Private Agency Ward and Application for Subsidized Adoption - Private Agency Wards to the adoption specialist, Office of Protection and Safety, HHSS, in a timely manner.
2. The adoption specialist must review the Application for Subsidized Adoption - Private Agency Wards and return it to the private agency worker in a timely manner with approval, denial or further questions;
 3. Upon receipt, the private agency worker must notify the family of approval/denial or make arrangements to renegotiate or clarify the request;
 4. Within 21 days of approval of the application, the worker must:
 - a. Prepare Subsidized Adoption Agreement - Private Agency Wards;
 - b. Obtain necessary signatures;
 - c. Forward to the adoption specialist, Office of Protection and Safety, HHSS;
 5. The private agency worker must send the adoption specialist, Office of Protection and Safety, HHSS, a copy of the adoption petition and decree in a timely manner after the adoption is finalized; and
 6. The adoption specialist sends a copy of all forms to the eligibility worker when the adoption is finalized.

{Effective 02/23/04}

8-001.03F Review: No review of the subsidy is required.

A revised agreement may be done upon the request of the family, the Department's or private agency's receipt of information regarding a change in family circumstances or when a change in law or regulation indicates the need for a revision. A family may request a change in adoption assistance payments and special services as set forth in proposed 005.08

Note: IV-E eligibility does not need to be redetermined

{Effective 02/23/04}

8-001.03F1 Family Request for Change: If the family requests a change on Form DSS-553 accompanied by a letter from the family explaining the reasons, the private agency worker makes an in-person contact with the family to discuss the requested changes in the agreement and/or to explore requests for other post-legal adoption services. If the worker feels that the request is inappropriate, s/he must deny it. If the request is appropriate, the worker must forward the appropriately signed Form DSS-553 and a letter from the family explaining their reasons for requesting a change to the adoption specialist, HHSS, Office of Protection and Safety, for approval with a copy to the eligibility worker.

~~The adoption specialist must approve or deny the request in a timely manner and return it to the private agency worker with a copy to the IM worker or send a request for further information. If the adoption specialist approves the change, the private agency worker must prepare and sign a new Subsidized Adoption Agreement - Private Agency Wards.~~

~~The private agency sends the original to the family and two copies to the adoption specialist, and retains one for the case record. The adoption specialist sends a copy to the eligibility worker. If the child resides outside of Nebraska, the adoption specialist sends a copy of the completed and signed Subsidized Adoption Agreement - Private Agency Wards and DSS-553 to the eligibility worker in the resident state.~~

~~If the adoption specialist requests more information, the adoption specialist negotiates the changed agreement with the private agency and notifies the eligibility worker of the new agreement.~~

~~If the adoption specialist does not approve the change, the adoption specialist returns Form DSS-553 to the private agency with a copy to the eligibility worker.~~

~~{Effective 02/23/04}~~

~~8-001.03G Change in Subsidy~~

~~**8-001.03G1 Increase:** The private agency worker must consider the family's request for an increase in maintenance subsidy. The amount of the subsidy increase must not exceed the amount the child would have received in foster care at the time of the request. It can be based on the child's special needs or on the life choices by the adoptive parent(s), such as resigning one's job to stay at home with the adopted child or returning to school. The private agency worker must forward a letter from the family explaining their reasons for requesting an increase along with the Subsidized Adoption Review or Change Request. The worker's request to the adoption specialist must describe the amount of the requested increase and reason for the request.~~

~~{Effective 02/23/04}~~

~~**8-001.03H Family's Responsibilities:** The family is responsible for supplying the private agency worker with information about changes in the family's or child's circumstances that could affect the subsidy.~~

~~{Effective 02/23/04}~~

~~**8-001.03J Reinstatement of Subsidy:** In some circumstances it is possible to reopen an original subsidy after the subsidized adoption case has been closed. The private agency worker must submit these requests to the adoption specialist who will consider them on an individual basis. S/he must make a final determination based on the original intent of subsidy (i.e., making possible adoption and a permanent family for the child). Reinstatement is not possible if the parents are no longer the legal parents of the child. **This is included in the draft regulations at 005.10.**~~

~~**8-001.03K Transfer of Subsidy:** It is not possible to transfer a subsidy agreement to new adoptive parents, unless the person is a stepparent who has adopted the child while married to an original adoptive parent. When a request of this type is received, the private agency parent must assist the parent(s) to complete Form DSS-553 and submit it to the adoption specialist for approval (see 479 NAC 8-001.03F2a). **This**~~

provision is included in the draft regulations at 005.11, step parents may be added to agreements as set forth in proposed 008.01.

~~8-001.03L Right to Appeal: The adoptive family has the right to request and be granted a fair hearing if the parents allege they were denied subsidy due to:~~

- ~~1. Facts about the child's special needs were not presented to the parents prior to finalization of the adoption;~~
- ~~2. Subsidy was denied based on a means test of the adoptive parents' income;~~
- ~~3. The adoptive parents disagree with the determination that the child is ineligible for subsidy;~~
- ~~4. The adoptive parents were not informed of subsidy available to the child in the Department's custody;~~
- ~~5. The agency decreased the amount of subsidy without the concurrence of the adoptive parents; or~~
- ~~6. The agency denied the parents' request for an increase in subsidy due to a change in the adoptive parents' circumstances.~~

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

~~This is included in the proposed regulations at section 010.~~

~~{Effective 02/23/04}~~

~~8-001.03M Deletions or Termination in Subsidy: Termination or deletion of federal IV-E subsidies are made because of the following factors:~~

- ~~1. Terms of the agreement have terminated;~~
- ~~2. The child is beyond the age of eligibility. Subsidy is terminated:
 - ~~a. 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~~
 - ~~b. 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.~~~~
- ~~3. The parent(s) requested termination of the subsidy;~~
- ~~4. The child dies;~~
- ~~5. The child re-enters foster care and the Department determines that the parents are:
 - ~~a. No longer legally responsible for support of the child; or~~~~

~~Note: A parent is considered no longer legally responsible for support of the child when parental rights have been terminated or relinquished, or when the child becomes an emancipated minor, moves, or enlists in the military.~~

~~b. No longer providing any support to the child; The termination of adoption assistance agreements is set forth in the proposed regulations at 009.~~

~~Note: Any support is defined as various forms of financial support such~~

as:

- (1) Child support payments;
- (2) Clothing purchases;
- (3) Incidental items;
- (4) Transportation, meals, and lodging for visits with the child and/or to participate in family therapy; or
- (5) Expenses for long distance phone calls.

Maintenance of the home for the child is not included as support.

If the family is providing any of these forms of support but the amount of money spent on them appears to be less than the subsidy amount, the worker must discuss with the family the possibility of reducing the maintenance payment. However, it cannot be reduced without the family's written agreement.

Note: If a and b are not present, the subsidy cannot be reduced without written consent of the adoptive parents. The use of adoption assistance for the support of the child and deductions from the assistance payment are set forth in the proposed regulations at 006.05(A) and 006.05(B), 004.05(A)(i), and 004.05(A)(ii), 004.09(A) 005.05(A), and 005.05(B).

{Effective 02/23/04}

~~8-001.03N Retention of Closed Records: Closed records are sent to the vault for storage.~~

{Effective 9/20/95}

~~8-002 MEDICAID for CHILDREN LIVING in NEBRASKA with STATE FUNDED ADOPTION ASSISTANCE from ANOTHER STATE: Nebraska is a COBRA-Reciprocity state. Therefore, Nebraska will provide Medicaid coverage for child/ren living in Nebraska who has a state funded adoption assistance agreement from another state. Additionally the other state:~~

- ~~1. Is a member of the Interstate Compact on Adoption and Medical Assistance; and~~
- ~~2. Reciprocates by extending Medicaid to Nebraska children who have Nebraska state funded adoption assistance living in the state.~~