

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.

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.
- {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;

- c. 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.

{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
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.

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.

{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.

{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.

{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.

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.)

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.

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.

{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;
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 -
- 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.
 - 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.

{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.

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.)

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.

{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.

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.

For federal subsidy, a written agreement must be obtained in order to reduce for any reason.

{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.

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.
{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.)

{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.

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.

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}

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;
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.

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.

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

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}

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.

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.

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.

{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).

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 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.

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.

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).

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.

{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;
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.

{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.