

EFFECTIVE
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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

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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.

003.08 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 met 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.

004.04(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 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 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 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;
- (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 Adoptive Parent(s). Payment of the adoption assistance will cease upon the death of the Adoptive Parent(s) 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.

004.06(A) EXCEPTION. Adoption assistance payments can continue for up to six months following the death of the Adoptive Parent(s) 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 Adoptive Parent(s);
- (2) The Adoptive 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 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.

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 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.

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 Adoption Assistance 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 Young 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 Adoption Assistance Agreement that took effect after the Young Adult had attained 16 years of age;
- (3) The Young Adult was the subject of the subsidized Adoption Assistance 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 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 adoptive parent's home;
- (vi) Education;
- (vii) Medical expenses;
- (viii) Child Support Payments;
- (ix) Transportation; or
- (x) 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 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 Medical Professional 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 Adoption Assistance Agreement, 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 Adoption Assistance Agreement 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 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; 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 adoptive parent's home;
- (vii) Education;
- (viii) Medical expenses;
- (ix) Transportation; or
- (x) 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 Adoptive Parent(s). Adoption assistance payments will cease upon the death of the Adoptive Parent(s) 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 payments can continue for up to six months following the death of the Adoptive Parent(s) 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 Adoption Assistance 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 Adoption Assistance 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 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 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;
- (ix) Transportation; or
- (x) Other services and supports the Department determines will help the child transition into adulthood.

006.06 GOVERNED BY PRIOR SECTION. 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.

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 are 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 has 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.

008. CRIMINAL RECORDS CHECK REQUIREMENTS. The 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.

008.01 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;
- (E) State-level criminal history; and
- (F) Fingerprint-based National Criminal History Check.

008.02 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.

008.02(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.

008.03 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.

009. CHANGE IN PARENT INFORMATION. An Adoption Assistance Agreement may be modified to add parents subject to the provisions in this section.

009.01 STEPPARENT. A Stepparent may be added to the Adoption Assistance Agreement when:

- (A) The Stepparent has adopted the child;
- (B) The Adoptive Parent who entered into the current Adoption 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.

009.02 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.

010. 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.

010.01 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.

011. 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;

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- (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;
- (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.

011.01 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.