

CHAPTER 6-000

**PERMANENCY FOR CHILDREN**

6-001

**PERMANENCY OBJECTIVES**

Every child committed to HHS and HHS-OJS and his/her family will have an appropriate permanency objective which identifies the main focus of the case plan and services. Determination of the permanency goal will be done with the family and take into consideration the best interests of the child. Services to children will be offered in their family home whenever possible. The permanency goals are as follows:

1. Family preservation pending return of legal custody to parent(s);
2. Reunification;
3. Adoption;
4. Legal guardianship;
5. Long-term foster care;
6. Independent living (child must be 16 years or older), and
7. Self-sufficiency with supports.

In considering out-of-home placement, the requirements of the Multiethnic Placement Act must be followed. Race, color, or national origin may not be the basis for:

1. Delaying or denying placement of a child for adoption or into foster care; or
2. Denying any person the opportunity to become an adoptive or foster parent.

6-001.01

**PERMANENCY CHOICES**

1. Family preservation.  
Family preservation will be the first consideration whenever the worker assessment indicates the child can be safely maintained in the home. Department services will then focus on returning legal custody to the parent(s).
2. Reunification.  
For any ward in out-of-home placement, reunification will be the first permanency goal considered. Once a ward has been placed back in the parental home, the goal then becomes family preservation. Alternatives to reunification will be considered only when the family has been given reasonable opportunities to reunify and those efforts have not been successful. (Refer to 390 NAC 8-004.)  
  
A plan for reunification will remain the permanency objective when a worker makes a referral to the county attorney requesting a motion for termination of parental rights be filed on a case. Reunification will remain the permanency objective until the court has made a decision.
3. Adoption.  
When reunification efforts have been exhausted or when reunification is not appropriate, the permanency objective to be considered is adoption. This objective is selected when a parent has relinquished parental rights or when the court has terminated a parent's rights, even if this decision is under appeal or action has not been taken on the other parent.

4. Legal Guardianship.  
Legal guardianship is considered as a permanency objective when:
  - a. All efforts to reunify the family have been exhausted,
  - b. The child cannot return home,
  - c. All reasonable efforts to secure adoption of the child have been unsuccessful, or
  - d. It is determined that adoption is not in the best interest of the child.
5. Long-Term Foster Care.  
When all efforts to achieve reunification, adoption or legal guardianship are unsuccessful, the objective of long-term foster care may be selected. This will be a planned formal agreement.
6. Independent Living.  
Independent living may be considered when it appears that reunification may not occur and adoption, legal guardianship and long-term foster care are not appropriate.
7. Self-Sufficiency with Supports.  
Self-sufficiency with supervision is an appropriate objective for a youth who experiences disabilities who is currently receiving and will continue to need a supervised living situation as an adult. Wards may require continuing involvement with the Department or another service agency or both after discharge from the state ward system.

6-002

## **ADOPTION**

When a child cannot be reunited with her/his family, adoption is the preferred alternative to long-term foster care or guardianship. When a child cannot return home, considering adoption as a permanency choice gives families an opportunity to plan for permanence for their child. Adoption as a plan is always based upon the child's best interest and specific needs.

6-002.01

### **LEGAL BASIS**

Nebraska's state plan for adoption services is based on federal requirements in Title IV-B of the Social Security Act, "Child Welfare Services"; Title IV-E of the Social Security Act "Federal Payments for Foster Care and Adoption Assistance"; and Public Law 96-272, "Adoption Assistance and Child Welfare Act of 1980".

Statutory references: Neb. Rev. Stat. 43-101 through 43-113.

6-002.02

DEPARTMENT'S ROLE

The Department is responsible for administering an adoption service program to:

- Recruit adoptive families for wards of the Department,
- Prepare adoptive families for placement for wards of the Department,
- Place and supervise placements of Department wards for adoption,
- Provide post-placement services,
- Provide post-finalization services including interpreting and administering the subsidized adoption program, and
- Administer inter-state and inter-country adoption.

Note: Private adoption agencies also provide adoption services.

The child's caseworker in consultation with supervisory staff or team assess if adoption is the appropriate plan for the child. An assessment will also be made in regard to the child's need for contact with the family of origin. The case consultation team should be included in the six month case conference.

Adoption will be handled by specially trained staff.

Barriers to adoption need to be considered and overcome. They may include:

- Legal readiness of the child,
- The risk of moving the child into an adoptive placement, and
- The child's readiness for adoptive placement.

6-002.03

TIMELINES FOR PLACEMENT

Every effort will be made by all staff involved in the adoption process to place the child in an adoptive home within nine months of the date when the child became free for adoption. (See Adoption Guidebook for procedures.)

If a placement cannot occur, a review and assessment of the placement progress will be made until there is an adoptive placement or change in permanency goal.

6-002.04 PLACEMENT CONSIDERATION AND GUIDELINES

To assure safety and continuity for children, a written adoptive home study of the family will be completed before the placement; and the family will be approved for placement when appropriate. A pre-placement home study will be filed with the court in all adoptive placements. All adoptive home studies must be done by the Department or a child placing agency licensed by the Department. (See Adoption Guidebook for guidelines.)

There are three exceptions to the adoptive home study requirement. They are:

1. The placement of a foster child by the Department or a licensed child placing agency into the home of a person who later files a petition to adopt that child. Such situations are exempt from a preplacement home study. There will be a postplacement home study completed by the Department or a licensed child placing agency and filed with the county court at least one week prior to the hearing to finalize the adoption.
2. The adoption by a stepparent does not require a home study, unless so ordered by the court. In this situation, a check of the Nebraska State Patrol and the Central Register of child protection cases is required.
3. A voluntary placement for purposes other than adoption made by a parent or guardian of a child without assistance from an attorney, physician, or other individual or agency which later results in adoption. In this situation, a post-placement home study is required to be completed and filed with the court a week before the adoption finalization hearing.

Statutory Reference: Neb. Rev. Stat. 43-107.

A team will select the adoptive family and make the decision to place the child. When choosing an adoptive family the team will consider the following:

- The child's best interest and needs, including any special needs;
- Preference of an adult relative instead of a non-related caregiver provided that the relative is appropriate and can meet the child's needs;
- Siblings will be placed together unless the placement would be detrimental to one or more of them;
- Bio-parent's requests regarding religion of the adoptive parents and openness;
- Accessibility of services needed by the child;
- Child's own preferences (for example, child's desire to be adopted by foster family, religion);
- Prospective family's ability to parent and meet the child's needs;
- Family's ability to accept and share with the child his/her family background;
- Family's ability to handle child's special need such as disability or behavior problems;
- Family's ability to accept openness of adoption;
- The child's attachment to potential adoptive family; and
- The child has been living with a foster family and the family requests the adoption.

#### 6-002.05

#### BIRTH PARENT

In some situations, the parent's circumstances may have changed to the extent that the child's best interest may be served by returning the child to the birth parent whose rights have been terminated by court or voluntary relinquishment. The only way parental rights can be restored is through adoption. When considering birth parents, assessment of the following will be made:

- Parent(s) demonstrate the ability to deal constructively with the original separation from the child, and
- Child's desire to be adopted by the birth parent.

An adoptive home study and approval will be completed for birth parent before placement. Before placement, notification of the Department's plan to place the child with the birth parent must be provided to the court that terminated parental rights and to the child's guardian ad litem.

#### 6-002.06

#### OPENNESS

Openness will be based on the child's best interest. Details of the child's degree or openness is only determined after the child is free for adoption; although assessment of what is best for the child can begin earlier. The Department will have input into an openness agreement between prospective adoptive parent and the birth parent of a prospective adoptee. (See Adoption Guidebook)

Statutory Reference: Neb. Rev. Stat. 43-138 through 43-141 and 43-146.

6-002.07

PLACEMENT PROCESS

Once the team has selected a prospective adoptive family, staff will:

- Prepare the child for adoption.
- Coordinate and share with all involved staff relevant information about the child and the pre-adoptive family.
- Arrange and coordinate for all information to be shared about the child with the pre-adoptive parents.
- Plan the transition for the child to the pre-adoptive family.
- Obtain the signature of the adoptive parent and child on the appropriate forms.
- Ensure appropriate notifications of the impending move are made (to the court, tribe, guardian ad litem, school and parent if there is openness).
- Support the pre-adoptive family and child through post-placement services.
- Document the information that is provided to the adoptive family in the child's file.
- No decision regarding placement may be accepted from the family for at least forty-eight hours following the formal meeting between the child and family.
- Inform the adoptive parent of the child's potential eligibility for subsidy.
- The Department may cover part of the family's expenses if the child's special needs will be a barrier to placement. The worker will determine the amount and what it is for and consult with supervisory staff for method of payment and appropriate amounts.
- No adoptive placement may be made unless there is a commitment to adopt by the prospective adoptive family.

Prospective and foster families will sign an Adoption Agreement to indicate their commitment to the adoption and the Department's designation of the family as an adoptive family. (See Adoption Guidebook)

6-002.08

POST-PLACEMENT SERVICES

Post-placement services are those provided before the finalization of adoption. The following is a list of services and guidelines for post-placement services.

6-002.08A

PAYMENT SERVICES

- Adoptive parents are expected to assume financial responsibility for the child. Exceptions may be made for a child with special needs, such as: race, age, disability, siblings placed together, or adoption by a foster family.
- The need for payment service is evaluated before the child's placement. The payment service plan should be to decrease assistance from the Department.
- The worker in charge of the case is responsible for changing the amounts each time a change is due.

6-002.08B SUPERVISION TIME FRAMES

- Supervision is provided by having regular family contact, home visits with both parents, visits alone with the child, and contact with other persons living in the home.
- A minimum of six months of post placement supervision is provided. For a special needs child one year is recommended.

6-002.08C FAMILY-CENTERED SUPPORT SERVICES

- Assist the family with the integration of the child into the family and the creation of a new family unit,
- Are family-focused rather than child-focused,
- Provide assessment of progress and the need for other services,
- Help the family plan for services the family will desire after the finalization.

6-002.09 ABUSE AND NEGLECT DURING POST-PLACEMENT

If the worker suspects possible abuse or neglect by an adoptive family member or another party whom the child has had contact with, the worker will immediately make a CPS referral. The Department will ensure an assessment of the alleged maltreatment and will notify law enforcement. In-home services will be provided in order to maintain the placement whenever possible. The worker supervising the placement will not conduct the assessment of the alleged maltreatment of an adoptive family member.

Emergency removal can occur:

- Only after the worker has assessed the risk of removal compared to the risk of harm to the child if not removed.
- After consultation with supervisory staff.

Mandatory Removal Situations:

- Life-threatening abuse or neglect or sexual abuse has been substantiated, and the perpetrator is unwilling to leave the home, or
- The worker observes signs of life-threatening abuse or neglect or sexual abuse.

Consultation with supervisory staff is required before a removal occurs.

6-002.10 PLACEMENT DISRUPTION

Placement disruption is the formal removal and termination of the placement and the plan for adoption by the prospective family.

Through consultation by worker, supervisory staff or teams a determination is reached by assessing the following:

- The Department has made all reasonable efforts to provide or arrange services to help the family resolve a possible disruption.
- The family has refused the services or services have been unsuccessful in resolving the causes of the possible disruption.
- A mutual agreement is reached among the prospective family, child (when appropriate), worker and supervisory staff that disruption is in the best interest of the child.
- A mutual agreement cannot be reached, but the worker and supervisory staff determine that the continuation of the placement is not in the best interest of the child.
- There is a risk of emotional or physical harm if the placement continues.
- The family is not willing or is unable to provide adequate care and/or parent the child, including substantiated abuse or neglect.

When considering disruption, the prospective adoptive family will be sent a written notice explaining the problems. They also are informed of the grievance procedure. If the family does not agree with the disruption, the written notice should also include ten-day advance notice of the proposed disruption. If the family files a formal grievance, no disruption will take place during the grievance time period.

NOTE: A child may be removed without advance notice when the child is in a mandatory emergency removal situation or the prospective family waives the ten-day notice in writing.

Once a placement has disrupted, the worker will follow the timelines for placement of a child with a prospective family.

After disruption, the former prospective family may maintain involvement with the Department up to three months to assist the family with the child's removal. This involvement does not include payment for services unless the family is eligible in their own right for a specific Department program.

6-002.11

#### GRIEVANCE PROCEDURE

If the prospective family does not agree with the placement disruption decision, they will submit a written grievance to the service Department's director five working days after the family has received the written notice of intent to disrupt.

The Director or her/his representative will conduct a grievance conference. The prospective family, worker, supervisory staff and any person the Director identifies, will participate in the conference.

The Director will review the determination and advise all parties in writing of her/his determination.

#### 6-002.12 PLACEMENT WITH FAMILIES APPROVED BY OTHER ADOPTION AGENCIES

When a child is placed with a family approved by another agency, the Department's guardianship remains intact until finalization. If the other agency is to supervise the placement, a letter of agreement is completed and signed by an authorized representative of the other agency and Department worker's supervisory staff. The agreement will outline and clarify the roles and responsibilities of the Department and other agency. While recommendations from the other agency will be considered, the Department has the right and ability to exercise guardianship rights in making all relevant decisions.

When a child is placed outside the state, all Interstate Compact Procedures will be followed.

For a complete listing of recommended practice see Adoption Guidebook.

#### 6-002.13 FINALIZATION OF ADOPTION

Nebraska statute states a child must reside with a family at least six continuous months before finalization. Once this occurs and the family is nearing completion of post-placement services, the worker will prepare for finalization.

Note: If foster parents are adopting, finalization may occur at any time after the child is free, as long as the child has resided with the family for six months.

The prospective adoptive parents will retain an attorney to finalize the adoption.

The Department staff assigned to the case will prepare an adoption packet. A list of the information to be contained in the adoption packet is found in the Adoption Guidebook. For subsidized adoption, the necessary forms will be completed and approval obtained. See Adoption Guidebook for information on program and forms.

The adoption packet will be reviewed by the designated adoption staff or supervisory staff in the District.

The completed adoption packet will be promptly sent to the family's attorney by certified mail.

For a Native American child, Department staff will advise the court of the court's responsibility to notify the Secretary of the Interior of the adoption.

After finalization, adoptive parents have full rights and responsibilities for their child. Post services that may be provided are:

- Processing requests for information after the decree,
- Subsidized adoption assistance,
- Consultation and referral, and
- Mediation of adoption with openness.

(For release of information after adoption - refer to 390 NAC 1-007, Release of Information.)

#### 6-002.14 TERMINATION OF AN ADOPTION OF NATIVE AMERICAN CHILDREN

If the adoption of a Native American child is vacated or terminated by court order or adoptive parent relinquishment, the court or agency authorized by the court will attempt to give notice to the biological parent(s) or prior Native American custodian that they have a right to petition the court for custody of the child. If the parent(s) or prior Native American custodian cannot be located, notice will be given to the child's tribe. All notice and preference requirements will be observed before making another foster or adoptive placement.

#### 6-002.15 ADOPTION PLACEMENT CONSIDERATIONS FOR NATIVE AMERICAN CHILDREN

To insure compliance with the Indian Child Welfare Act, the Department will actively pursue an adoptive placement of a Native American child in the following order of preference:

1. A member of the child's extended family,
2. Other members of the child's tribe, and
3. Other Native American families.

If a Native American child's tribe has established a different order of placement preference, the order the tribe has established will be followed as long as the placement is the least restrictive placement appropriate to meet the particular needs of the child.

Good cause to depart from the order of preference for placement listed above must be based upon one or more of the following considerations:

1. The request of biological parents or of the child, (if the child is age 12 or older) for a specific placement.
2. Extraordinary physical, medical, cultural, educational, or emotional needs of the child, as established through the written report or testimony of a person with the following qualifications:
  - a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organizations and child-rearing practices;

- b. A lay person having substantial expertise in delivery of children's and family services to Indians, and extensive knowledge of the prevailing social and cultural standards and child-rearing practices within the child's tribe.
3. The unavailability of suitable families for placement after a diligent search is completed for families, including at minimum but not limited to:
  - a. Contacting the child's tribal social service program,
  - b. Searching a list of all licensed foster homes in the state, and
  - c. Contacting nationally known Indian programs known to have available placement resources.

Justification for good cause to depart from the placement preference will be fully documented.

Statutory References: Indian Child Welfare Act of 1978, 25 U.S. Code, Sections 1901 et seq., The Nebraska Indian Child Welfare Act, Neb. Rev. Stat. Sections 43-1501 et seq.

#### 6-002.16 ADOPTION FINALIZATION PAYMENTS

The Adoption Finalization Payment Program provides a payment of \$1,000 to eligible adoptive parents for the year of adoption and \$1,000 per year for up to four succeeding years. Nebraska statute does not say what the money can or should be used for. The decision about whether to save it or how to spend it is the adoptive parent(s)'.

#### 6-002.16A LEGAL BASIS

Adoption Finalization Payments may be made using state funds as provided by Neb. Rev. Stat. Section 43-118.01.

#### 6-002.16B ESTABLISHING ELIGIBILITY

Eligibility is based on the following:

- The child must have been a ward of the State of Nebraska (a ward of the Department of Health and Human Services or the Department of HHS-OJS) at the time the adoption was finalized;
- The adoption must have been finalized on or after January 1, 2000 and on or before November 15, 2002;
- The child must:
  1. Be less than 19 years old;
  2. Not be emancipated; and
  3. Be living with the adoptive parents.

The adoptive parent(s) is/are eligible for Adoption Finalization Payments when:

- The adoptive parent(s)' parental rights to the child remain intact;
- The adoptive parent(s) maintain(s) primary financial responsibility for the child;
- The child's permanent address is with them; and
- The child is not married.

A child who is hospitalized or in a medical treatment facility, such as a residential treatment center or an intermediate care facility, for treatment purposes, is considered to be living with the adoptive parent(s). A child temporarily living in another setting while attending college or vocational training is considered to be living with the adoptive parents. A child who has resided a part of the year in another family home or a non-medical facility is not considered to be living with the adoptive parent(s) during that time, and therefore the adoptive parent or couple is not eligible for a payment for that year.

Except for the year of the adoption, these criteria must be met for the entire year for which the payment is requested.

#### 6-002.16C APPLICATION AND APPROVAL PROCESS

In order to receive a payment, the adoptive parent(s) must apply to the Department. The application must be made:

1. Each year ;
2. Between January 1 and January 31, for the preceding year (for example, when applying for payment for calendar year 2000, the adoptive parent(s) can apply only between January 1 and January 31, 2001); and
3. On a form supplied by the Department.

If an adoptive parent or couple does not apply for an eligible year, the parent or couple can apply again the next year. However, the parent or couple loses payment eligibility for the year for which no application was made. Failure to apply in one year does not extend eligibility beyond "the year of the adoption and up to four succeeding years."

The Department must approve or deny payment within 30 days of receipt of the application. Checks must be issued within 30 days of approval of the application.

#### 6-002.16D RIGHT TO APPEAL

If the request for payment is denied, the adoptive parent or couple has the right to appeal. The appeal must be in accordance with the Administrative Procedure Act. A statement of that right and information about the appeal process will be included with any denial.

#### 6-003 SUBSIDIZED ADOPTION

The Department subsidized adoption program provides or continues financial assistance for an eligible child age 18 or under after an adoption is finalized. This program ensures that financial barriers or costs associated with a child's special needs do not prevent adoption. The subsidy is to meet the child's needs by helping the parents meet their responsibilities.

Families adopting with subsidy will meet the same criteria established for any other adoptive family.

6-003.01

LEGAL BASIS

Subsidized adoption payments may be made:

- Using state funds as provided by Neb. Rev. Stat. §§ 43-117 and 43-118; or
- Through Title IV-E of the Social Security Act, Federal Payments for Foster Care and Adoption Assistance. (This requires a state match.)

6-003.02

ESTABLISHING ELIGIBILITY

6-003.02A

CRITERIA FOR SUBSIDY

A subsidized adoption will be considered based on:

1. The child's eligibility,
2. Efforts to place without subsidy,
3. The family's needs for subsidy.

1. 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:

- a. The child cannot or should not be returned to the legal biological parent(s) and one of the following criteria:
- b. 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;
- c. The child is considered to be a child with special needs and cannot be placed without assistance based on the following:
  - (1) Age (if age is the only special need, children age seven or younger generally are not considered eligible);
  - (2) Membership in a sibling group of three or more to be placed together;
  - (3) Behavioral, emotional, physical or mental disability; and
  - (4) Membership in a minority race (race by itself is not sufficient to make a child eligible for subsidy).

Eligibility for State Subsidy

A child eligible for state subsidy must:

- a. Meet the criteria above and be a ward of the Department at the time the adoption petition is filed; or
- b. 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.

### Eligibility for Federal Subsidy

A child who is eligible for federal subsidy must meet the criteria above and:

- a. Be a ward of the Department at the time the adoption petition is filed; and
- b. Be eligible for IV-E foster care or SSI at the time the adoption petition is filed.

### 2. Efforts to Place Without Subsidy

Federal and State law requires that efforts to place without subsidy be made before a child can be adopted with subsidy. In order to meet this requirement if the Department has done any of the following, the requirement is met:

- a. Register the child on an established adoption exchange for at least three months.
- b. Feature the child in the media to recruit a family.
- c. Determine that the potential family is best able to meet the child's needs after consideration of other families.
- d. 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).

### 3. Family's Needs

If the child is eligible, the worker will discuss the family's need for subsidy with the family.

#### 6-003.02B

#### 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, will be made after considering the following:

- Family's financial 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 was born to the family);
- Other programs, benefits or resources available to the family to meet the child's needs; and
- Adequacy of the family's insurance to cover medical needs.

#### 6-003.02C

#### TYPES OF SUBSIDY AND COVERAGE

There are three types of subsidy:

1. Federal subsidy,
2. State subsidy,
3. Federal subsidy with a state supplement.

A federal subsidy, if available, will be the first choice of the Department. Specifics and coverage for each are described below. The process for applying for and receiving subsidy is described in the Adoption Guidebook.

6-003.02C1

FEDERAL SUBSIDY

All federal subsidies will provide full Medicaid coverage, which includes Early and Periodic Screening, Diagnosis and Treatment (EPSDT), within the resident state's guidelines, regulations and rates.

Federal subsidy may also include a 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, such as, college. The amount must be less than the payment would be if the child had remained in a foster home through the Department. Other maintenance payments such as Social Security benefits, SSI, and Veteran's Benefits will be deducted from the agreed payment amount.

6-003.02C2

STATE SUBSIDY

This assistance may include one or more of the following:

1. Maintenance
2. Medicaid and Payment for Pre-existing Medical Conditions
3. Special Services

Maintenance

1. A monthly payment to adoptive parent to help in meeting the child's day-to-day needs. It is not intended to finance long-term plans, such as college. The amount must be less than the payment would be if the child had remained in foster care through the Department. Other maintenance payments such as Social Security benefits, SSI and Veteran's Benefits and ADC will be deducted from the subsidized adoption payment.
2. Medicaid and Payment for Pre-Existing Medical Conditions: The child may receive Medicaid if s/he:
  - a. Has a documented pre-existing medical need that is a barrier to adoption; and
  - b. Was receiving or was eligible to receive Medicaid before the adoption agreement was signed.

Payment is made to providers for medical or mental health care or treatment related to pre-existing medical or mental health needs that are documented and included on the subsidy agreement before the decree. This care may include psychiatric, psychological and mental health services, inpatient hospitalization, medications and prosthesis care needed to teach basic life skills, sustain life, or maintain a physical or medical. It does not include vocational training.

Payment for care for a pre-existing medical condition will be 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.

The care or treatment must be medically necessary and provided:

- a. By a medical practitioner or qualified mental health professional or prescribed by a physician; and
  - b. In the least intrusive, most family-like setting appropriate to meet the child's needs, as determined by the Department.
3. Special Services: Payments made for a specific service or item related to the child's needs and for a specified time period. They can be one-time only in nature. They may be covered only if other resources or programs are not able to provide them, and if the special service was specified on the subsidy agreement before the decree. 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 will be specified on the subsidy agreement.
  - b. Costs of integrating the child into the adoptive family, including furniture for siblings placed together, especially designed furniture because of a child's disability and training for adoptive parents in parenting a special needs child. The maximum amount to be paid will 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 to be paid will be specified on the subsidy agreement.
  - d. Expenses for transportation, lodging and meals for the child and one parent for the child to receive medical care or treatment for a pre-existing condition which was documented before finalization. The medical care or treatment does not need to be included for coverage. Amounts paid will be no more than those used for Department wards in foster care. (See Out-of-Home Placement Guidebook.)

#### 6-003.02C3

#### FEDERAL SUBSIDY WITH STATE SUPPLEMENT

When a child receives a federal subsidy but has needs that cannot be met through federal subsidy, pre-existing medical or special service components may be provided from state subsidy if the component was specified on the original subsidy agreement.

#### 6-003.02D

#### APPROVAL

Before the date of the adoption finalization, the application and agreement for subsidy, specifying type, amount, purpose and duration of subsidy must be completed and approved by designated staff person in charge of subsidized adoption. 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 Changes Section in this Chapter.)

### 6-003.03 POST-FINALIZATION SUBSIDY COVERAGE

Following the finalization of the adoption, the family has the following responsibilities:

- Meet the child's needs to the greatest extent possible without subsidy; and
- Explore and use other resources or funding sources such as private insurance coverage or service through the education system before requesting that a provider submit a bill for subsidy payment.

### 6-003.03A PAYMENT FOR CARE FOR PRE-EXISTING MEDICAL OR PSYCHIATRIC CONDITIONS

Payment will be made directly to the provider at the Nebraska Medicaid rate for medical services within applicable Medicaid guidelines.

If a child has a federal subsidy with a state supplement, payment for pre-existing medical services will be made 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 her/him, payment will not be made under state subsidy.

### 6-003.03B RESIDENTIAL OR ACUTE PSYCHIATRIC CARE

There are special considerations for children requiring residential or acute psychiatric care.

If the facility and service are covered by Nebraska Medicaid, the care will be covered only by Medicaid, using Medicaid procedures. If the facility or service is not covered by Nebraska Medicaid, the following requirements apply.

Medicaid payment for treatment in an inpatient acute setting must be prior authorized by the Peer Review Organization (PRO) if the provider is enrolled in Nebraska Medicaid. If the provider is not Medicaid eligible, then a local team including adoption staff and Central Office must review the situation for possible payment before the inpatient placement. This team will determine whether to authorize the service and review the stay.

To be covered under subsidy, inpatient or residential psychiatric care must be:

1. Provided in a facility licensed or approved by the appropriate agency for therapeutic, psychiatric care; and
2. Psychiatric or mental health or substance abuse treatment related to or resulting from a covered pre-existing condition.

This care does not include care provided by foster homes, licensed group homes or non-Medicaid, licensed child caring agencies.

Residential psychiatric care can be provided under subsidy for up to 18 months only. A local team including adoption staff and Central Office will review and approve the continued stay. (See Adoption Guidebook.)

6-003.03C            PAYMENT FOR INPATIENT ACUTE PSYCHIATRIC CARE

Payment for residential psychiatric treatment will be approved only if:

- Recommended by a psychiatrist or Ph.D, and,
- Approval for payment is given through the process used for Medicaid eligible child prior to the child's admission to the hospital or program;
- Approval for placement into a facility that is not a Medicaid provider will be given through a local team including adoption staff and Central Office before the placement;
- The primary diagnosis requiring treatment is related to or results from a pre-existing condition covered on the subsidy agreement;
- It is anticipated to result in progress which will enable the child to return to the family within 18 months;
- Less restrictive or acute care alternatives or treatments are not appropriate or available, or have refused to accept the child;
- The child cannot obtain appropriate care in her/his home or community;
- The child's family will continue to be involved with the child in planning for and making return home possible;
- This type of placement is in the child's best interests;
- Resources, benefits or programs not requiring subsidized adoption coverage are not available to cover the care; and  
(This includes the use of private insurance and reasonable use of private/family resources. See Adoption Guidebook for Approval/Denial Process.)

6-003.03D            REVIEW THE APPROVAL

While the child is in psychiatric residential or inpatient acute treatment, the worker, supervisor, and adoption staff in the District will review progress reports from the facility every three months for residential treatment center placements and weekly for acute inpatient treatment. Consultation with medical services staff is recommended. The team will review:

- Progress toward the treatment goal;
- Continuing need for treatment at this level of care;
- Prognosis and estimated length of treatment; and
- Involvement of the family in treatment and planning for the return home.

The decision regarding continuation of payment for treatment or hospitalization will be sent in writing to the family. If payment will terminate, the notice will include the date on which payment will stop. A minimum of 30 days notice is required.

The Peer Review Organization (PRO) will review the treatment for medical necessity on a regular basis for children in Medicaid fee for service in Medicaid enrolled facilities. If the PRO determines that the child does not need this level of care, they will deny continued stay and notify the adoption staff.

6-003.03E

PAYMENT TERMINATION

The Department will no longer provide payment for psychiatric residential or inpatient treatment if the Department determines that:

- Reasonable progress is not occurring and it is determined that treatment at the facility is no longer appropriate or as determined by the PRO;
- Treatment is no longer needed;
- The plan is not to return the child home;
- The family is no longer involved with the child or participating in treatment; or
- Reports providing the above information are not provided to the Department.

6-003.03F

GENERAL POST FINALIZATION SUBSIDY INFORMATION

6-003.03F1

RESIDENCY

A child's eligibility for subsidy is not affected by the state of residence of the adoptive parent. Specified coverage is provided regardless of the state of residence.

Medicaid coverage for children on the federal subsidy is provided by the state of residence, within that state's regulations and at that state's rate. Medicaid coverage for children on state subsidy who are living out of state continues to be provided by Nebraska. (See Adoption Guidebook for procedural information.)

6-003.03F2

REVIEW

Agreements must be reviewed every 12 months. A revised agreement may be done upon the request of the family, upon the Department's receipt of information regarding a change in family circumstances, or when a change in law or regulation indicates the need for a revision.

The review process is an evaluation of continued need for subsidy or for a change in the subsidy agreement. The parent will certify that:

1. The child continues to be a legal dependent of the parent; and
2. The need for specific coverage continues.

The process may result in renegotiation of the maintenance amount, deletion of time-limited coverages or pre-existing medical coverage, other changes in the agreement or termination of the subsidy agreement.

6-003.03F3

CHANGES

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

6-003.03F4

REINSTATEMENT OF SUBSIDY

In some circumstances, it is possible to reopen an original subsidy after the subsidized adoption case has been closed. The adoption specialist will review each request on an individual basis. She/he will make a final determination based on the original intent of the subsidy. Reinstatement is not possible if the parents are no longer the legal parents of the child.

6-003.03F5

TRANSFER OF SUBSIDY

It is not possible to transfer a subsidy agreement to a new adoptive parent or guardian, unless the person is a step parent who has adopted the child while married to an original adoptive parent.

6-003.03F6

RIGHT TO APPEAL

The adoptive family has the right to a fair hearing if the Department:

- Denies the application for subsidy,
- Reduces or terminates the subsidy agreement, or
- Refuses to pay for psychiatric residential or inpatient psychiatric treatment if psychiatric care is covered in the agreement.

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

6-003.03F7

DELETIONS OR TERMINATIONS IN 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. A state subsidy is terminated on the child's 19th birthday.
  - b. 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. If the child was eligible for Medicaid under state subsidy, s/he will continue to receive Medicaid under federal subsidy.
4. The parent(s) fails or refuses to be legally responsible for the support of the child, or to use the maintenance payment to meet the child's needs.
5. The child is no longer residing with the parents(s). If the child resides outside of the parent(s)' home, s/he must -
  - a. Be attending college or vocational training; or
  - b. Have been placed out-of-home for reasons other than school, and the family is cooperating in a plan for the child's return home. In this case, the worker shall document with the family what portion of the maintenance is being used for the child's needs (for example, clothing or transportation to maintain parent/child contact), and decrease or stop the payment accordingly.
6. The parent(s) request termination of the subsidy.
7. A change in regulations or law makes the child no longer eligible for a subsidy.
8. The parent(s) refuses to cooperate in the process of reviewing the agreement.
9. The child no longer needs the medical care, special services or respite or child care payment that were specified in the subsidy agreement; or
10. The child dies.

## 6-003.03G REIMBURSEMENT OF NONRECURRING ADOPTION EXPENSES

Nonrecurring adoption expenses may be paid one time only as a reimbursement to adoptive parents. The adopted child must meet the definition of a child with special needs. This nonrecurring adoption expense is available to both wards and children adopted privately and through private agencies (non-wards). The appropriate forms will be signed by the adoptive parent and the Department before finalization of the adoption. The maximum reimbursement for each child is \$1,500.00.

### 6-003.03G1 CONDITIONS NECESSARY TO QUALIFY

#### A. 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 adoption must meet the following special needs criteria:

1. The child cannot or should not be returned to the legal or biological parent(s), AND one of the following must be met:
2. 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;
3. 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; or
  - d. Membership in a minority race (race by itself is not sufficient to make a child eligible for subsidy).
4. The adoption must not violate Nebraska State law.

#### B. Other Considerations

In addition to the child's eligibility requirements, the following requirements apply:

1. Any child being adopted may qualify for nonrecurring subsidy if the child has a special need according to conditions necessary for eligibility for subsidy. This includes private adoptions, agency adoptions, Department adoptions and intercountry adoptions. Adoption by a step-parent is not eligible when there is a biological parent in the home.
2. Each child in a sibling group is to be treated as an individual. The \$1,500.00 maximum is available for each child that qualifies.

3. If a child who is eligible for subsidy is placed across a state line, the originating state is responsible for nonrecurring expense reimbursement if that state has signed an agreement with adoptive parents for ongoing subsidy. If there is no agreement for ongoing subsidy, the state in which the child is placed is responsible for the reimbursement of nonrecurring subsidy.  
Note: If required by statute, there must be an Interstate Compact on the Placement of Children (ICPC) in place between the two states in order for eligibility to exist.
4. A child does not have to be Title IV-E or SSI-eligible in order to qualify for a nonrecurring subsidy.

#### 6-003.03G2

#### REIMBURSABLE EXPENSES

Reimbursement may be made for the following expenses:

1. Reasonable and necessary adoption fees;
2. Court costs;
3. Attorney's fees;
4. Fee for adoption home study; and
5. Charges for agency supervision before finalization.

Note: Fees and charges listed in number 4 and 5 are reimbursable only if the adoptive family is billed by the agency and ultimately liable for payment. A donation to the agency is not reimbursable.

6. Charge for health and psychological examination of adoptive parents and child;
7. Charge for agency supervision before finalization; and
8. Reasonable cost of transportation, lodging, and food for the child and adoptive parent(s) when necessary to complete the placement or adoption process.

#### 6-003.03G3

#### NON-REIMBURSABLE EXPENSES

Reimbursement is not made for the following expenses:

1. Expenses that were reimbursed by another source;
2. Agency fees which were not billed but were paid by a free will offering or donation;
3. The cost of counseling for the adoptive family;
4. The one-time cost of remodeling the adoptive parents' home to accommodate the child; and
5. The expense of ongoing medical coverage.

The adoptive parent(s) will complete the necessary paperwork and submit it to the Department. All bills or requests for reimbursement must be submitted within two years of the adoption finalization date. The agreement is considered completed after payment is made. See Adoption Guidebook for forms and process.

6-003.04      ADOPTION SUBSIDIES FOR WARDS OF PRIVATE NON-PROFIT AGENCIES

The Department may provide financial assistance for a ward of a private non-profit agency after the adoption of the child is finalized.

6-003.04A                      PRE-FINALIZATION INFORMATION

6-003.04A1                      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.

6-003.04A2      CONDITIONS NECESSARY FOR ELIGIBILITY FOR SUBSIDY

The following conditions are necessary for eligibility for subsidy:

A.    Child's Eligibility

To be eligible for adoption subsidy, a child must meet the following criteria:

The child:

- a.    Cannot be adopted without subsidy (See "Efforts To Place Without Subsidy");
- b.    Cannot or should not be returned to the home of the legal or biological parent(s);
- c.    Is age 18 or younger;
- d.    At the time the adoption petition is filed is a ward of a private non-profit agency that is licensed in Nebraska to place children for the purpose of adoption;
- e.    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 at the time the adoption petition was filed;
  2.    The child meets the eligibility requirements for the SSI program before finalization of the adoption; or
  3.    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. If a child who is ADC eligible is placed through a voluntary placement agreement or a relinquishment without court jurisdiction there must be a judicial determination (within six months of removal from the home of a relative) that continuation in the home would be contrary to the welfare of the child.

Note:      A determination of reasonable efforts is not required. If a child is eligible for ADC or SSI, a court order is not necessary.

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 the foster/adoptive parent(s) so that breaking the attachment would be harmful to the child; or
- d. Behavioral, emotional, physical or mental disability.

**B. Efforts to Place Without Subsidy**

Federal law requires that efforts to place without subsidy be made before a child may be adopted with subsidy. The private agency will ensure that this occurs and document the efforts taken. (See Subsidized Adoption, 390 NAC 6-003.02A, I, Efforts to Place Without Subsidy.)

**C. Family's Need for Subsidy**

If the child is eligible and it appears that a subsidy will be needed, the private agency worker shall assess the need for subsidy and negotiate the type and amount with the family.

The family must meet as much of the expense as possible without subsidy and is responsible for exploring and using other resources which reasonable can be considered available and appropriate before using subsidy coverage. This includes private insurance coverage and care or services available through the education system.

6-003.04A3

**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 (that is, the child is eligible for Medicaid within the resident state's guidelines, regulations and rates); and
2. Title XX services for which the family is eligible.

Federal subsidy may also include a monthly payment to adoptive parents to assist in meeting the child's day-to-day needs. It is not intended to finance long-term plans, such as college. The amount will be less than the private agency would expend for the child if the child were their ward.

For regulations on nonrecurring subsidies, see 390 NAC 4-002, Adoption.

6-003.04A4

NEED FOR SUBSIDY

Information regarding the need for subsidy is found in 390 NAC 6-003.02B, Adoption, Need for Subsidy.

6-003.05

GENERAL SUBSIDY INFORMATION

6-003.05A

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 will continue to pay the maintenance subsidy if the child moves out of state; however, Medicaid is no longer provided by Nebraska. The state of residence must provide Medicaid within that state's regulations and at the state's rate.

Title XX services are provided by the state of residence based on the family's eligibility. If that state does not provide the requested services, the family may submit a request to the Department to cover the services. These requests will be considered case by case.

6-003.05B

REVIEW

Subsidy agreements must be reviewed every 12 months for subsidy payments and medical assistance to continue. Note: IV-E eligibility does not need to be redetermined.

A review may be done upon the request of the family or receipt by the Department or the private agency of information regarding a change in family circumstances.

The review process is intended to be an evaluation of the continued need for subsidy agreement. The parent(s) must certify that:

1. The child continues to be a legal dependent of the parent; and
2. The need for specific coverage continues.

The process may result in renegotiation of the maintenance amount (increase or decrease), deletion of time-limited coverages or other changes in the agreement or termination of the subsidy agreement.

6-003.05C

CHANGES

The parents will inform the private agency of changes in the child's or family's circumstances. The worker from the private agency will coordinate the changes with the family and the Department. (See Adoption Guidebook, Private Agencies)

6-003.05D

FAMILY RESPONSIBILITIES

The family is responsible for supplying needed documentation to continue the coverage and for notifying the private agency worker of changes in the family's or child's circumstances which would affect the subsidy.

The family is expected to determine their ability to cover medical costs from their private resources before requesting that a provider submit a bill for subsidy coverage.

If the family no longer needs the amount of maintenance they have been receiving, the private agency worker will make all reasonable efforts to obtain the family's agreement to reduce the amount of payment.

If a Medicaid provider is available but a family chooses not to use him/her, payment will not be made under state subsidy.

6-003.05E

REINSTATEMENT AND TRANSFER

The regulation for private agencies for reinstatement or transfer of a subsidy are the same as for the Department. See 390 NAC 6-003.03F4 and 6-003.03F5 for Subsidized Adoption for those regulations.

6-003.05F

RIGHT TO APPEAL

The adoptive family has the right to appeal to the Director of the Department for a hearing on any action or inaction regarding the amount of subsidy and the eligibility for medical assistance or the Department's failure to act within reasonable promptness. 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.

6-003.05G

ROLE OF PRIVATE AGENCY

The private agency will, through a worker, determine whether a child is eligible for subsidy, negotiate the amount and complete the necessary forms and submit them to the Department. The private agency worker will communicate with the family and Department throughout the process. After the finalization of the adoption, the private agency will do the paperwork for the annual review of the agreement and any time a change is made in the agreement. The Department will process the paperwork necessary for the initial subsidy and subsequent changes and renewals. (See Adoption Guidebook for forms and process).

6-003.05H DELETIONS OR TERMINATIONS IN SUBSIDY

The regulations for deletion or termination of the subsidy are the same for private agency wards and Department wards except the private agency wards are not eligible for a state subsidy between ages 18 and 19 as are Department wards. See 390 NAC 6-003.03F7, Deletions or Terminations in Subsidy for the regulations.

6-003.05I RETENTION OF RECORDS

Closed records are retained by the Department for four years.

6-004 **LEGAL GUARDIANSHIP**

When all efforts to reunify the child with his/her family have been exhausted and have been unsuccessful, and when there is no advantage to the child in pursuing termination of parental rights, legal guardianship may be appropriate to consider as a permanency plan for a child.

The Department will support a legal guardianship using the following as guidelines:

1. The child has a relationship with a prospective guardian and has lived successfully for a minimum of six months in the home of the guardian, or  
  
The worker has determined that the child will develop a relationship with a relative or foster parent who is committed to the guardianship plan.
2. The child cannot return home despite reasonable opportunities provided to the parents to correct the family conditions leading to the child's placement.
3. It is unreasonable to pursue adoption because:
  - a. Efforts to secure a voluntary relinquishment of parental rights and termination of parental rights by the court have been unsuccessful;
  - b. It has been determined that adoption is not in the child's best interest; or
  - c. Parental rights have been terminated but exhaustive efforts have not been able to secure an adoptive placement.
4. The prospective guardian and the child can function effectively without Department supervision.
5. The guardian is able and willing to support the child financially, or satisfactory financial arrangements can be made. If a guardian will need ongoing financial assistance to care for a child, eligibility for a guardianship subsidy will be pursued by the worker.
6. The child is age 12 or older, is part of a sibling group or is attached to the proposed guardian and adoption is not feasible.

6-004.01 SELECTION OF A GUARDIAN

The Department will use the following priorities in selecting a potential guardian:

1. Relative of the child.
2. Foster parent or another person with whom the child has an existing relationship.
3. New foster parent who is committed to the guardianship plan.

The child's wishes will be taken into consideration in any decision regarding a potential guardian.

6-004.02 CONSENT TO GUARDIANSHIP

The child, the prospective guardian, the child's guardian ad litem and the birth parents, if their parental rights are intact, will be consulted for consent to the guardianship. If parents object but the Department feels guardianship is in the child's and family's best interest, the worker should try to address the parent's objections or ask the court to address them at the guardianship hearing.

If a child under age 13 has objections to the guardianship, these will be explored with the child and the guardian ad litem; and a determination of the best interests of the child will be made. If a child age 14 or older objects to the guardianship, the guardianship will not be pursued.

The Department will send written notice of the plan for guardianship to these parties: the court, county attorney, guardian ad litem, parent's attorney and parents, if parental rights are intact.

To assure stability and continuity to the child, the worker will assist all parties involved to develop a written plan for visitation with any siblings, parents (if appropriate), and other relatives or important persons in the child's life.

6-004.03 FINALIZING GUARDIANSHIP

When guardianship is determined to be the plan of choice for a child, and the child has resided with the prospective guardian for a minimum of six months, the worker will advise the prospective guardian to retain legal counsel and file a petition in the county court of the county of his/her residence. The worker will appear in court to testify in support of the petition.

Upon approval of the court of the guardianship, the worker will close the case. Once the court order establishes guardianship, the Department no longer has any authority or responsibility for the child except as might exist due to a subsidized guardianship.

6-005

**SUBSIDIZED GUARDIANSHIP**

The subsidized guardianship program provides continued financial assistance to a child after a legal guardian has been appointed and Department's custody has been terminated. The program is designed to ensure that financial barriers or costs associated with a child's needs do not prevent the appointment of a guardian for a child as a preferred alternative to long-term foster care. The appointed guardian will use all available resources, benefits and programs, including but not limited to private insurance coverage, care or services available through the education system. A legally appointed guardian or conservator may apply for ADC for a child.

6-005.01

**LEGAL BASIS**

State funds may be used for subsidized guardianship payments on behalf of a child who was a ward of the Department, as provided in Nebraska Section 43-284.02, Reissue Revised Statutes of Nebraska, 1943.

6-005.02

**CHILD'S ELIGIBILITY**

A child is eligible for the subsidized guardianship program if she/he is a ward of the Department and meets the criteria for subsidized guardianship as follows:

1. Documented behavioral, emotional, physical or mental disability;
2. Membership in a sibling group of three or more to be placed together;
3. The child has a strong attachment to the potential guardian; or
4. The child is age 12 or older or, if under 12, is part of a sibling group or is attached to the proposed guardian and cannot be freed for adoption; and

A child's eligibility ends upon the child's 19th birthday, when the child becomes self-supporting or when the guardianship order is terminated.

6-005.03

**TYPES OF SUBSIDY**

Subsidized guardianship may include one or more of the following:

1. Maintenance: This includes monthly payments to the guardian to assist in meeting the child's day-to-day needs. The amount may not be greater than what would be paid for the child in foster care.
2. Medical/Surgical: This may include the following:
  - a. Payments to a medical practitioner for medical or surgical care. Payment will be made by Medicaid or at the Nebraska Medicaid rate.
  - b. Payments for residential psychiatric care. (See Residential Psychiatric Care in this Section.)

NOTE: Payment for care for a pre-existing medical condition will be paid from non-Medicaid funds only if the care is not covered under the Medicaid program or no 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.

3. Other Costs Incidental to the Care of the Child: This includes payment for a specific service or item related to special needs of the child, including, but not limited to -
  - a. Legal fees to obtain the guardianship, not to exceed the usual and customary rate for such services within the community; and
  - b. Expenses for transportation, lodging, and meals for the child and one adult to enable the child to receive medical care. Amounts paid will be no more than those paid for foster care.

#### 6-005.04 DETERMINING THE GUARDIAN'S NEED FOR SUBSIDY

Based on the child's current and future needs, one or more of the subsidy types may be used. A determination of these needs and the guardian's ability to meet these needs without assistance will be considered through the following:

1. Other programs and benefits to meet the child's needs.
2. Amount: If maintenance or other costs incidental to care of the child are being considered:
  - (a) The amount must be no more than payment would be if the child had remained in the Department's care; and
  - (b) Explore other maintenance payments or financial resources. The worker will explain that any maintenance payments will be deducted from the agreed-to maintenance under subsidy.
3. Duration: The anticipated time the child is expected to need assistance.

#### 6-005.05 AGREEMENT PRIOR TO GUARDIANSHIP ORDER

The agreement for subsidy will be completed and approved before the order establishing guardianship is issued. The agreement will include the type, amount and duration of the subsidy. Subsidy payments begin after the guardian has been appointed by the court. (See Guardianship Guidebook for process and forms.)

#### 6-005.06 RESIDENTIAL PSYCHIATRIC CARE

The purpose of residential or inpatient psychiatric care is to provide treatment when the child cannot benefit from less restrictive care.

6-005.06A

RESTRICTIONS

If the facility and service are covered by Nebraska Medicaid, the care will be covered only by Medicaid using Medicaid procedures. If the facility or service is not covered by Nebraska Medicaid, the following requirements apply:

To be covered under subsidized guardianship, inpatient or residential care must be:

1. Provided in a facility licensed or approved by the appropriate agency for therapeutic or psychiatric care; and
2. Psychiatric or mental health treatment.

Residential or inpatient psychiatric care may be provided under subsidized guardianship for a maximum of two years.

There is a separate process for coverage of out-of-state residential treatment.

(See Guardianship Guidebook for process.)

The Department will approve payment for residential or inpatient psychiatric care only if:

1. Care is anticipated to result in progress that will enable the child to return to the guardian or community;
2. Less restrictive or acute care alternatives or treatments are not appropriate or available, or have refused to accept the child;
3. The child cannot obtain appropriate care in the guardian's home or community;
4. The child's guardian will continue to remain involved with the child in planning for and making possible the return home;
5. This type of placement is in the child's best interests;
6. Other resources, including those of the child's parent(s), benefits, or programs are not available to cover the care; and
7. Approval for the placement is given by a local team including adoption staff and Central Office, before the residential placement.

6-005.06B

ADJUSTMENT IN MAINTENANCE

When the child is approved for residential psychiatric treatment, the worker and the guardian will determine what, if any, maintenance the guardian will provide for the child. The maintenance payment will be reduced as appropriate.

#### 6-005.06C REVIEW OF RESIDENTIAL OR INPATIENT PLACEMENT

While the child is in residential care or inpatient acute treatment , the worker will request progress reports from the facility every three months. These reports must include:

1. Progress toward treatment goal;
2. Continuing need for treatment;
3. Prognosis and estimated length of time treatment will be needed; and
4. The guardian's involvement in treatment or planning for return home.

If a child is Medicaid eligible, the Peer Review Organization (PRO) will be reviewing the treatment for medical necessity on a regular basis. If the PRO determines that the client does not need that level of care, they will deny continued stay and notify the worker.

#### 6-005.06D PAYMENT TERMINATION

The Department will no longer provide payment if:

- Reasonable progress is not occurring, and it is determined that treatment at that facility is no longer appropriate;
- Treatment is no longer needed;
- The plan is not to return the child to guardian's home;
- The guardian is no longer involved with the child or participating in treatment; or
- Reports providing the above information are not provided to the Department.

At least 30 days before payment termination, a written notice will be sent to the guardian giving the date on which payment will cease.

Note: If the guardian has ceased his/her involvement with the child, the worker will consider whether a child protective services referral is appropriate.

#### 6-005.07 ANNUAL REVIEW

The guardianship subsidy will be reviewed every 12 months to determine the level of continued need and continuing eligibility.

#### 6-005.08 RIGHT TO APPEAL

The guardian has the right to a fair hearing if the Department denies the application for subsidy or reduces or terminates the agreement.

6-005.09

TERMINATION OF GUARDIANSHIP PAYMENT

A subsidy can be terminated, a service deleted, or a maintenance payment decreased because of the following factors:

1. The terms of the agreement have terminated;
2. The Department determines the guardian is not legally responsible for the support of the child or if the child is not receiving any support from the parent;
3. The child's 19th birthday;
4. The guardian fails or refuses to be legally responsible for the support of the child or to use the maintenance payment to meet the child's needs;
5. The child is no longer residing with the guardian unless the child has been placed out of the home by the court or the Department and the guardian is cooperating in the child's return home (the payment may be decreased);
6. The guardian requests termination of the subsidy;
7. A change in regulations or law makes the child no longer eligible for a subsidy;
8. The guardian refuses to cooperate in the process of reviewing the agreement;
9. The child no longer needs the medical care, special services or respite or child care payment that were specified in the subsidy agreement; or
10. The child dies.

6-006

## INDEPENDENT LIVING

Independent living may be the permanency objective for a 16-year-old youth whose best interest is served by being self-sufficient. Services to prepare wards for independent living will be directed toward a goal or goals that will be included in a case plan and written service agreement. (See Other Permanency Objectives Guidebook, Independent Living Section II for goals, alternative services, written service agreement, case plan and process.) This policy section addresses services for wards with a permanency objective of independent living. See 390 NAC 5-000, Ongoing Services, for preparation for adulthood services.

### 6-006.01 ASSESSING INDEPENDENT LIVING AS A PERMANENCY GOAL

The worker will use all the following criteria in selecting independent living as a permanency objective:

- The ward is age 16 or older and in out-of-home care; and reunification, adoption, legal guardianship, or long-term foster care has been attempted but efforts have not been successful or it is not in the child's best interest or is no longer appropriate.
- The ward is capable of caring for himself/herself independently and providing for himself/herself financially, preferably through employment, or with supportive services or public financial assistance.
- The permanency objective can be reasonably achieved within 18 months of the selection.
- The ward is engaged full time in academic or vocational training or employment geared to self-sufficiency. A ward's lack of full-time participation in a program of education, training or employment will not disqualify him/her for this permanency objective.
- All services have been provided to the ward and while the ward is not demonstrating good potential for success, she/he is close to the age of majority.

If a ward has a disability which results in difficulty obtaining employment or prevents maximum independence or employment, this objective or the objective of self-sufficiency with supportive services should be considered. Both objectives provide an additional plan for the youth to become independent or semi-independent.

6-006.02

### PLANS FOR SELF-SUPPORT

When a ward is 16 years of age or older and not regularly attending an educational or training program or not working a minimum of 30 hours a week, the ward will have a plan for self-support signed by the ward. The worker and PALS specialist will develop the plan with the ward and others involved with her/him and ensure that the ward understands her/his responsibilities in implementing the plan. The written service agreement for wards preparing for independent living may meet this requirement if it specifically addresses the ward's responsibility in becoming financially self-supporting.

### 6-006.03 SPECIAL CONSIDERATIONS REGARDING WARDS WITH DISABILITIES

Prior to discharge, wards with mental illness, retardation, autism, developmental disability, or significant physical disability will be linked to specialized support services to make the transition to independent living. When the disability impairs the ward's ability to care for himself/herself, the goal of self-sufficiency will be considered.

The Department will help the ward access supportive services available in the Department or community.

### 6-006.04 ROLE OF CARE GIVERS WITH WARDS PREPARING FOR INDEPENDENT LIVING

The worker, PALS specialist, foster parent, residential staff or parent will determine the extent of the wards ability to make decisions. The goal will be to have the care giver serve as a mentor. The care giver, worker, PALS specialist, ward and parent, if appropriate, will work as a team to achieve the goals outlined in the ward's case plan and written service agreement.

Wards who choose to remain in their former foster home or facility after their 19th birthday will be provided with assistance in dealing with their change in status as a result of reaching the age of majority. This assistance will be provided before their 19th birthday. The worker will help the ward and the foster parent(s) understand the young adult's new role as an adult and the responsibilities that accompany this role.

### 6-006.05 YOUTH ELIGIBLE TO LIVE INDEPENDENTLY

In order to be placed into an independent living arrangement, a youth will:

1. Be age 16 or older,
2. Complete the Preparation for Adult Living (PALS) case plan, and
3. Demonstrate sufficient maturity and require minimal supervision in preparation for discharge.

**Note:** In carefully selected circumstances, the worker may consider an independent living arrangement for wards who are generally immature but who are highly motivated to live independently and who have been unsuccessful in a series of placements. These wards may have extensive histories of runaways and be unlikely to finish high school. An independent living arrangement should be considered only if all efforts at reunification, placement with relatives, or a stable out-of-home placement have failed.

Wards whose serious mental health or behavioral problems endanger themselves or others are generally not appropriate for independent living. The worker will carefully evaluate the ward's needs and consider the appropriateness of each available alternative. (See Other Permanency Objectives Guidebook, Independent Living Section II for process.)

#### 6-006.06 DECISION FOR INDEPENDENT LIVING ARRANGEMENT

The youth, parent(s), caregiver, PALS specialist and other members of the youth's support system will be involved in planning and transition to an independent living arrangement. (See Other Permanency Objectives Guidebook, Independent Living Section II for process.)

The worker will provide notification of the plan and date for an independent living arrangement seven days in advance of a move to:

- the parent(s) if parental rights are intact, and whereabouts are known;
- the legal guardian;
- the court and county attorney;
- the guardian ad litem; and
- the parent's attorney.

#### 6-006.07 WORKER EVALUATION OF PLACE OF RESIDENCE

If the ward will be sharing a residence with other youth or adults, the worker will check the Central Register for children and adults and obtain written permission from them to check the police records. This check is not required for wards residing in college dormitories.

If a Central Register or police records check indicates a history of child abuse or neglect or criminal behavior, the worker and PALS specialist will discuss the situation with the youth's parent and support system. A case consultation team may be used.

Before approving an independent living arrangement, the worker will make a home visit to assess the appropriateness of the residence, living arrangements, and person(s) residing in the home. The worker will document the assessment and approval of the arrangement in the case record.

#### 6-006.08 CONDITIONS DEFINED IN WRITING

The conditions for an independent living arrangement will be defined in writing, included in the written service agreement and signed by the ward and worker. These conditions will include the ward's responsibilities and any consequences of failure to comply with the conditions. A copy of this agreement will be sent to the worker responsible for payment.

If the ward fails to meet the defined conditions, the worker will reassess the youth's situation and develop a new plan.

#### 6-006.09 SERVICES AFTER YOUTH IS IN INDEPENDENT LIVING

Wards in an independent living arrangement will receive services during a six-month stabilization period.

These services may include but are not limited to:

- Financial management counseling,
- Advocacy in the workplace,
- Emotional support systems, and
- Further development of problem-solving skills.

The youth is responsible for maintaining the goals identified in the PALS case plan.

Support services and after-care services may be provided for a youth up to age 21 if she/he has been a state ward after age 16. A youth is not eligible for a financial payment through aftercare service. (See Other Permanency Objectives Guidebook, Independent Living Section II)

#### 6-006.10 TERMINATION OF AN INDEPENDENT LIVING ARRANGEMENT

Termination is appropriate when:

1. The ward decides no longer to participate in the program and the ward is residing in another alternative living arrangement, or
2. The ward has generally demonstrated unwillingness or inability to meet the requirements of the Department, of the program and terms of the agreement.

#### 6-006.11 MAINTENANCE PAYMENTS FOR WARDS IN INDEPENDENT LIVING ARRANGEMENTS

The placement worker and IMFC worker will determine available benefits and funding sources based on a budget for the youth's expenses. The youth's guardianship account will be used first if a deposit is required for rent or utilities. If such funds are not available, the youth can earn the deposit money or develop a plan to repay the money or do commensurate work. (See Other Permanency Objectives Guidebook, Independent Living, Section II, for budget form.)

If the ward is living in an apartment, payment may be made directly to the ward or when circumstances warrant, to the landlord with the remainder of the payment given to the ward. These arrangements will be specified in the independent living arrangement.

6-006.12 MAINTENANCE WHEN LIVING WITH A RELATIVE

If the ward resides with a relative as an independent living arrangement (relative is not acting as a parent figure), the relative has two options:

1. The maintenance payment will be sent to the ward who will be responsible for paying room and board to the relative, or
2. The relative may apply as relative payee through the Aid to Dependent Children Program. (This plan is recommended if the ward has not demonstrated her/his ability to manage her/his own money.)

The financial plan will be included in the ward's written service agreement, which all parties will have.

6-006.13 INCOME OF WORKING YOUTH

The income of working youth will be reported to the IMFC worker for consideration in the ward's budget.

6-006.14 MEDICAL CARE

Wards residing in independent living arrangements are eligible for Medicaid unless the ward's income exceeds Medicaid income or resource guidelines. If so, the placement worker and IMFC worker will determine the ward's responsibility for paying medical expenses.

6-006.15 TERMINATION OF SERVICES TO PREPARE WARDS FOR INDEPENDENT LIVING

Services will be terminated when:

- The Department's custody of the ward is terminated, the court has not ordered continued supervision or services, or there is no voluntary CPS or in-home services case on the family; or
- The ward has attained the goals outlined in his/her case plan and has received adequate preparation for independent living.