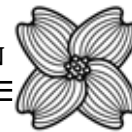




RULES OF
Department of Social Services
Division 35—Children’s Division
Chapter 38—Adoption and Guardianship Subsidy

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TITLE 13 – DEPARTMENT OF SOCIAL SERVICES
Division 35 – Children’s Division
Chapter 38 – Adoption and Guardianship Subsidy

13 CSR 35-38.010 Adoption and Guardianship Subsidy

PURPOSE: This rule is to define the Adoption and Guardianship Subsidy Program.

(1) Definitions. For purposes of this section, the following terms shall mean –

(A) Division. The Missouri Department of Social Services, Children’s Division;

(B) Child or Youth. A person within the state who is under the age of eighteen (18), or in the custody of the Children’s Division, who is in need of medical, dental, educational, mental, or other related health services and treatment, or who belongs to a racial or ethnic minority, who is five (5) years of age or older, or who is a member of a sibling group, and for whom an adoptive home is not readily available. A child or youth is also a person covered by an 18+ adoption subsidy agreement as set forth in section (13) of this regulation;

(C) Subsidy Agreement. The agreement between the adoptive parent(s) or the legal guardian(s) and the Children’s Division to delineate services which the Children’s Division will provide to the child at the time of adoption or guardianship until such time as the subsidy agreement ends;

(D) Maintenance Payments. The amount that the division will contribute to cover the cost of food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, and liability insurance with respect to a child;

(E) Nonrecurring Expenses. One (1)-time expenses directly related to the adoption or legal guardianship of a special needs child. Nonrecurring expenses include, but are not limited to, the following: legal fees, private agency fees, and nonrecurring placement-related expenses including, but not limited to, pre-placement transportation, lodging and meal expenses, expenses for adoption studies, health and psychological examinations, and supervision of the adoptive placement prior to the finalization of the adoption up to a maximum amount provided in this regulation;

(F) Youth with Elevated Needs. A child meeting the criteria set forth in 13 CSR 35-60.070;

(G) Medical Foster Care. A licensed foster home utilized to meet the needs of a child with extraordinary medical needs. Medical foster parents must have a foster parent license and must receive specific training from qualified medical care providers specific to the unique medical needs of the child and meet the requirements set out in 13 CSR 35-60.070;

(H) Respite. The provision of periodic and/or intermittent, temporary substitute care of children who are in the care and custody of the Children’s Division and placed in a licensed foster, relative, or kinship resource home. Respite services may be approved as part of an adoption or guardianship agreement;

(I) Intensive In-Home Services (IIS). A short-term, intensive, home-based, crisis intervention program that combines skill-based interventions with maximum flexibility so that services will be available to families according to their individual needs. The goal of IIS is to offer families in crisis the alternative of remaining together safely, averting out-of-home placement of children whenever possible. IIS are, however, offered solely to families that have a child or children at imminent risk of removal from the home due to neglect, abuse, family violence, mental illness, delinquency, or other circumstances when approved by the Children’s Division. Services provided assist with

crisis management and restoration of the family to an acceptable level of functioning;

(J) Residential Care. A facility providing twenty-four (24) hour care in a group setting to children who are unrelated to the person operating the facility and who are unattended by a parent or guardian;

(K) Relative. A grandparent or any other person related to another by blood or affinity or a person who is not so related to the child but has a close relationship with the child or the child’s family. A foster parent or kinship caregiver with whom a child has resided for nine (9) months or more is a person who has a close relationship with the child. The status of a grandparent shall not be affected by the death or the dissolution of the marriage of a son or daughter.

(L) Licensed Foster Family. A private residence of one (1) or more family members providing twenty-four- (24-) hour care to one (1) or more but less than seven (7) children who are unattended by a parent or guardian and unrelated to either foster parent by blood, marriage, or adoption and licensed through the Children’s Division.

(2) Eligibility Criteria for Adoption/Legal Guardianship Subsidy.

(A) In order for a child to qualify for an adoption or guardianship subsidy, the child shall meet the following eligibility criteria:

1. The child must be under the age of eighteen (18) at the time of adoptive or guardianship placement; and

2. At the time of planning for adoption or legal guardianship, the child must meet one (1) of the following circumstances:

A. Be in the custody of the Children’s Division; or

B. Children placed in Missouri through a private child-placing agency that are Title IV-E eligible are eligible for Missouri adoption subsidy per Title 42 U.S.C. Section 673(c) (2008). The applicant for the adoption subsidy shall provide sufficient information to the division to determine that the child is Title IV-E eligible; or

C. Be in the custody of a child-placing agency licensed in accordance with sections 210.481 through 210.531, RSMo, the Division of Youth Services (DYS), or the Department of Mental Health (DMH); and a “child with special needs” as defined by the characteristics listed below:

(I) The child cannot or should not be returned to the home of his or her parents. If the division has determined that the child cannot or should not return home, and the child meets the statutory definition of special needs with regard to specific factors or conditions, then the division shall ask whether the prospective adoptive parent(s) are willing to adopt without subsidy. If the adoptive parent(s) say they cannot adopt the child without adoption subsidy, the requirement for a reasonable, but unsuccessful, effort to place the child without providing adoption subsidy under Title 42 U.S.C. Section 673(c) (2008) shall be satisfied;

(II) The division determines, with respect to the child, that a specific condition or conditions of the child exists, because of which it is reasonable to conclude that such child cannot be placed with adoptive parent(s) or guardian(s) without providing subsidy. A child to be determined as previously unadoptable and eligible for subsidy shall meet one (1) or more of the following conditions:

(a) Physical Handicap. Any physical abnormality or condition, whether congenital or not, which requires or is likely to require treatment or the purchase of special equipment or services;

(b) Intellectual impairment. Mental development



below an IQ of eighty (80) or other intellectual dysfunction as documented by psychological testing;

(c) Racial or Ethnic Minority. The child’s ancestry is not Caucasian; and

(d) Other Conditions.

I. Age. The child is five (5) years old or older and has not reached the age of eighteen (18) years or twenty-one (21) years if the child’s condition requires extraordinary treatment or rehabilitative services.

II. Member of a sibling group. Two (2) or more children who are siblings and are being placed with the same family.

III. Developmental disability. Any documented physical or mental condition not otherwise listed which prevents the child from functioning at the normal level for his or her age.

IV. A mental or emotional disturbance. A diagnosed and documented condition which impairs the child’s mental functioning, including learning dysfunctions.

V. Social maladjustment. A severe behavioral condition or inadequate social development which interferes with the child’s ability to form satisfactory relationships with others.

(III) The child has a history, which includes circumstances such as long-term out-of-home care, incest, or social or genetic complication in the family background, which provides other impediments to adoption.

(B) Children who have a subsequent adoption or guardianship because of the dissolution of their adoption or guardianship or the death of their adoptive parent(s) or guardian(s) continue to be eligible for assistance under Title IV-E or Missouri funded subsidy in a subsequent adoption if they were previously eligible.

(C) Unless specifically authorized by federal law, there shall be no income eligibility requirement (means test) for the prospective adoptive parent(s) or guardian(s) in determining eligibility for an adoption or guardianship subsidy.

(3) Ineligible Children for Missouri Adoption and Legal Guardianship Subsidy—The following children shall not be eligible for adoption or guardianship subsidy:

(A) Children being adopted internationally or children adopted from other states who are not Title IV-E eligible and are in the custody of a private child-placing agency;

(B) Children in the custody of Missouri juvenile courts, even though they may receive a payment while in other types of out-of-home care; or

(C) Children being adopted by a stepparent or biological parent whose rights were previously terminated.

(4) Ineligible Placements for Missouri Adoption and Legal Guardianship Subsidy—The following prospective adoptive parent(s) or guardian(s) shall not be eligible to receive an adoption or guardianship subsidy:

(A) Felony convictions – Any person who has a felony conviction for child abuse or neglect, spousal abuse, a crime against children (including child pornography), or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; and

(B) Any person who in the past five (5) years has had a felony conviction for physical assault, battery, or a drug-related offense.

(5) Application Process.

(A) Any prospective adoptive parent(s) or legal guardian(s) who believe that he or she may be eligible to receive a subsidy

on behalf of a qualified child shall complete an application on a form approved by the division.

(B) The division may require the prospective adoptive parent(s) or legal guardian(s) to provide any documents or other materials necessary to verify any information necessary to complete the application process. The application shall be supplemented with such additional information and documentation as the division may require or the applicant for the subsidy may choose to submit for consideration. All information furnished by an applicant for a subsidy shall be complete, accurate, and truthful. The division may reject an application or reject renewal of an adoption subsidy or guardianship agreement if the division determines that the applicant for the subsidy has failed to provide complete, accurate, or truthful information.

(C) For initial applications, the burden of proof shall be on the applicant to establish eligibility for the subsidy and that they are qualified to receive requested services.

(6) General Regulation Governing All Adoption and Guardianship Subsidy Agreements—The following provisions will govern all agreements for adoption and guardianship subsidy:

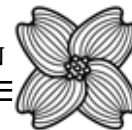
(A) Agreements approved to age eighteen (18) will continue until the last day of the month of the child’s eighteenth birthday unless previously terminated in the manner provided by law;

(B) All adoption and guardianship subsidy agreements shall be in writing on a form provided by the division. The division shall not be obligated to provide or pay for any services, maintenance payments, or non-recurring expenses which are not expressly and specifically set out in the agreement. The agreement will not be effective unless and until it is signed by the director of the Children’s Division or the director’s authorized designee and the adoptive parent(s) or legal guardian(s);

(C) Unless otherwise required by law, the Children’s Division will not approve or pay for any service through an adoptive or guardianship subsidy agreement which is otherwise paid for or reasonably available at no cost or at reasonable cost through any other sources and which the child or the adoptive parent(s) or guardian(s) may be eligible to receive. Examples of other sources include, but are not limited to, the following: any other governmental programs, programs offered by schools and school districts, private insurance, any public insurance programs (including Medicaid (MO HealthNet) programs), other community-based services, and services and programs provided by not-for-profit organizations;

(D) Under no circumstances will the division or the state of Missouri pay for any services which exceed the authorized amount for the service as set forth in the service section of the agreement. Any amounts which may be due to a provider which exceed the amount that the division is obligated to pay under the agreement shall be the sole responsibility of the adoptive parent(s) or guardian(s). The adoptive parent(s) or guardian(s) shall pay, be responsible for, and indemnify the state of Missouri, the Department of Social Services, and the Children’s Division for any amounts which the division may be required to pay in excess of the amounts set forth in the agreement;

(E) Except as otherwise provided in subsection (6)(F) of this regulation, the division is not obligated to make payments to a provider for services authorized through a subsidy agreement, unless the division has a currently active contract with the provider. The division shall not be obligated to pay for any service provided by the service provider, unless the service



provider provides an invoice satisfactory to the division itemizing the date the service was provided, describing the nature of the service provided, and stating the amount for the service. The division will pay services directly to the provider. The use of contracted providers is required when a contract may be established. All receipts submitted for reimbursement must be submitted within one hundred eighty (180) days of the service being provided. The division shall not be responsible for paying for any service billed or invoiced to the department later than one hundred eighty (180) days from the date that the service was provided.

(F) The division shall reimburse the adoptive parent(s) or guardian(s) for payments made directly by the adoptive parent(s) or guardian(s) to the provider where the provider of the service does not have a contract with the division only if the division agrees in writing before the service is provided to make the payment and if all of the following conditions are met:

1. The service is one (1) which the division has expressly agreed to pay in the subsidy agreement;

2. The adoptive parent(s) or guardian(s) establishes that there is no service provider having a contract with the division who is reasonably available to provide the service. In cases where the adoptive parent(s) or guardian(s) identifies an appropriate provider who does not have a contract with the division or the state, the division may decide, in its sole discretion, whether or not to enter into a contract with the provider and pay for the services directly, or whether to agree to reimburse the adoptive parent(s) or guardian(s) under this paragraph;

3. The adoptive parent(s) or guardian(s) provides timely documentation satisfactory to the division that the service has actually been provided and that it was provided by a qualified provider of the service. Documentation satisfactory to the division includes providing an invoice and a receipt prepared by the provider; and

4. The adoptive parent(s) or guardian(s) shall provide the invoice and paid receipt to the division no later than thirty (30) days from the date that the service was provided and paid for by the adoptive parent(s) or guardian(s), but under no circumstances shall the division be obligated to reimburse the adoptive parent(s) or guardian(s) for services provided later than ninety (90) days from the date that the services were provided; and

(G) Payment for nonrecurring adoption or guardianship expenses shall be made only after the adoption or guardianship is final. The division will not pay for any nonrecurring adoption or guardianship expenses which are not expressly set out in writing in the adoption or guardianship subsidy agreement or in a separate document executed by the adoptive parent(s) or guardian(s) and by the director of the Children's Division or his/her designee. Under no circumstances shall the division or the state of Missouri be obligated to pay any nonrecurring adoption or guardianship expenses, based on any oral representations made by an employee of the Children's Division or the Department of Social Services. These expenses are not eligible for payment if applied for after final adoption or guardianship. All expenses paid under the guardianship subsidy agreement will only be paid after legal guardianship has been granted by the probate court to a qualified relative in the manner authorized by law.

1. Under no circumstances will an adoption or guardianship subsidy agreement or payment be made to reimburse the adoptive parent(s) or guardian(s) for payment for services provided by the adoptive parent(s) or guardian(s), or member of the adoptive parent(s) or guardian(s) household.

2. The division will not pay for services that are a duplication of other available services.

3. The parties to the agreement may by mutual written agreement amend the terms of the subsidy to better meet the needs of the adoptive child. Under no circumstances shall a subsidy agreement be amended without the consent of the adoptive parent(s) or legal guardian(s), or amended in any manner which may be a violation of federal law. Adoptive parent(s) or guardian(s) who wish to request that a subsidy agreement be amended shall submit a written request to amend the agreement. The burden of proof to amend the agreement shall be on the party seeking to amend the agreement. The request shall include the following information: a copy of the agreement, the specific provisions of the agreement they are seeking to amend, a detailed statement of the factual basis for the request for amendment, and include all documentation to support the request to amend the agreement.

4. Overpayments – Any amounts paid to the adoptive parent(s) or guardian(s) in excess of what is required by the subsidy agreement shall be an overpayment which is and shall be immediately due and payable to the division. The adoptive parent(s) or guardian(s) have the duty to notify the division within ten (10) days when he or she receives any information which would lead a reasonable person to believe that an overpayment has been made. The adoptive parent(s) or guardian(s) must promptly repay any overpayment and shall fully cooperate and promptly provide any and all information that the division may require to investigate and ascertain whether an overpayment has been made. If the division determines that an overpayment has been made, the division shall notify the adoptive parent(s) or guardian(s), in writing, specifying the amount of the overpayment, the factual basis for the assessment of the overpayment, and the specific provisions of the subsidy agreement, regulation, or law upon which the assessment is based.

(7) Maintenance Payment.

(A) Each adoption or guardianship subsidy may provide for a maintenance payment. The maintenance payment may be –

1. A continuous monthly payment for a sum certain through the termination of the agreement; or

2. A continuous monthly payment towards the child's care which periodically diminishes over a period of not longer than four (4) years at which time it ceases; or

3. A continuous monthly payment for a sum certain towards the child's care for a period of more than four (4) years; or

4. A monthly payment for a sum certain which is continued for a limited time after legal adoption, not exceeding four (4) years. This payment is to aid the adoptive parent(s) in integrating the care of the new child in their home.

(B) There shall be three (3) maintenance rates for subsidy agreements: standard rate, medical rate, and rate for Youth with Elevated Needs Level A.

1. The standard rate is the default rate and shall not exceed the standard foster care maintenance rate subject to appropriations. At the time of placement, no payment may exceed the maintenance rate paid if the child had remained in out-of-home care, even when used in combination with other benefits available to the child.

2. A child shall qualify to receive the medical foster care rate or Youth with Elevated Needs Level A rate only if the adoptive parent(s) or the legal guardians(s) and child meet the qualifications for the Youth with Elevated Needs regulations as set forth in rule 13 CSR 35-60.070.



3. In order to qualify for the medical foster care rate the adoptive parent(s) or guardian(s) must have the same qualifications as a licensed medical foster parent as set forth in rule 13 CSR 35-60.070.

(8) Request for Medical Rate or Youth with Elevated Needs Level A Rate.

(A) In accordance with the procedures set forth below, any adoptive parent(s) or guardian(s) may request an increase from the standard rate to the Medical or Youth with Elevated Needs Level A maintenance rate.

(B) The adoptive parent(s) or guardian(s) shall submit a written request to increase the rate. In the request, the adoptive parent(s) or guardian(s) shall specifically describe the medical condition or behavior of the child which the adoptive parent(s) or guardian(s) believe qualifies the child for the higher maintenance rate. The adoptive parent(s) or guardian(s) shall provide any and all information and documentation to the Children’s Division necessary to process the request for the higher maintenance rate, including, but not limited to –

1. The names and full contact information and reports for all medical care providers for the child for all relevant times, including all physicians, hospitals, and clinics which have provided care, diagnosis, or treatment for the child;

2. The names and full contact information and reports for all mental and behavioral health care providers for the child for all relevant times, including all therapists, licensed clinical social workers, psychologists, hospitals, and clinics which have provided care, diagnosis, and treatment for the child;

3. The names, addresses, and full contact information and reports for all schools and educational institutions which provided educational services and/or assessments for the child;

4. The names, addresses, and full contact information and reports for any other person who may have information necessary to assess the medical, behavioral, and/or developmental needs of the child;

5. The adoptive parent(s) or guardian(s) shall provide the Children’s Division with any written authorizations to release information which the division determines is necessary and convenient to process the request; and

6. The adoptive parent(s) or guardian(s) shall have the burden to establish by a preponderance of the evidence that the child meets the eligibility requirements of Medical Level or Youth with Elevated Needs Level A.

(C) In order to qualify as a Youth with Elevated Needs, the child must meet the same criteria as a child in alternative care as required in 13 CSR 35-60.070, and the adoptive parent(s) or guardian(s) shall meet the training requirements set forth in 13 CSR 35-60.070. However, if the adoptive parent(s) or guardian(s) reside out of state or were not licensed foster families with the Missouri Children’s Division –

1. They shall have completed at least eighteen (18) hours of equivalent training specific to the needs of the adopted child which has been approved by the Children’s Division;

2. The adoptive parent(s) or guardian(s) shall provide the Children’s Division with the name and the address of the provider of the training program and a copy of the training curriculum;

3. Once the training has been approved, the division may reimburse the out-of-state adoptive parent(s) or guardian(s) for training up to ninety dollars (\$90) per hour if there is a charge. A receipt must be provided to the division by the adoptive parent(s) or guardian(s) prior to payment; and

4. The adoptive parent(s) or guardian(s) must provide documentation of successful completion of the program.

(D) Adoptive parent(s) or guardian(s) of children receiving the medical maintenance – In order to qualify to receive the medical maintenance rate, the adoptive parent(s) or guardian(s) shall receive individualized medical training provided by the child’s health care provider or other provider and approved by the division to enable the adoptive parent(s) or guardian(s) to meet the specialized medical needs of the child.

1. The training shall be individualized to the child’s specific health care needs.

2. The adoptive parent(s) or guardian(s) must provide documentation of successful completion of the program.

(E) Subsidy agreements or amendments to subsidy agreements which include maintenance payments at the medical or Youth with Elevated Needs Level A shall be written to be reviewed every two (2) years or to age eighteen (18) due to their condition being such that they are not expected to improve. The Children’s Division shall fully review the needs of the child in cooperation with the adoptive parent(s) or guardian(s). The Children’s Division shall review and consider any and all information that the adoptive parent(s) or guardian(s) may submit for review and shall request information from all professionals who have provided diagnostic care or treatment for the child. In the event that the child’s needs are such that the child no longer qualifies as a Youth with Elevated Needs, the standard maintenance rate shall apply. However, the burden shall be on the Children’s Division to establish by a preponderance of the evidence that there has been a substantial and continuing change in the medical or behavioral needs of the child such that the child no longer meets the criteria of a Youth with Elevated Needs. Nothing in this subsection shall apply to any adoption subsidy agreement entered before the effective date of this regulation without the consent of the adoptive parent(s) or guardian(s).

(F) At the time of placement, the amount paid is determined by information obtained from the adoptive parent(s) or guardian(s) as to what financial assistance they need to meet the needs of the child and the resources available to the child such as OASDI, VA, SSI, etc.

(9) Medical and Dental Care.

(A) A child eligible for adoption subsidy or guardianship subsidy shall be eligible to receive MO HealthNet benefits to the extent authorized by law.

(B) The Children’s Division shall not pay for any services which are covered by the MO HealthNet program. Notwithstanding any provision of an adoption subsidy agreement, any services paid for by the MO HealthNet program shall constitute payment in full for those services, and the Children’s Division shall not be responsible for or liable to pay for any amounts in excess of the amount paid by MO HealthNet. Services covered by MO HealthNet do not require special approval by the Children’s Division in the service section of the agreement; however, nothing in this subsection shall be construed to supersede the requirements of the MO HealthNet program, and the requirements of the MO HealthNet program for preapproval of services shall apply for any services administered by the MO HealthNet program.

1. Adoptive parent(s) or guardian(s) are encouraged, but not required, to add their adopted child or ward to their private insurance. Payment for an insurance deductible as prescribed by their private health insurance plan is the responsibility of the adoptive parent(s) or guardian(s). If an adoptive parent(s) or guardian(s) has added the adopted child or ward to their private health insurance, they must use their private health insurance, if the child is covered in their policy, before using



MO HealthNet. However, the adoptive parent(s) or guardian(s) must indicate to the provider that the child is also eligible for MO HealthNet coverage.

2. The Children’s Division will not pay for any medical or dental services in whole or in part received from non-MO HealthNet providers without prior approval by signature of the director of the Children’s Division to the subsidy amendment.

3. The Children’s Division may agree to pay for orthodontic services through adoption or guardianship subsidy when the services are determined to be medically necessary by the MO HealthNet Division according to eligibility criteria of the MO HealthNet program, but only if a MO HealthNet provider is not located within one hundred (100) miles round-trip of the residence of the child. The Children’s Division will not pay any amounts in excess of the MO HealthNet rates for orthodontic services under this section. The Children’s Division will not be responsible for payment of orthodontic services without prior written approval of the division. The adoptive parent(s) or guardian(s) will be responsible for any costs for orthodontic care obtained prior to written approval from the division.

(10) Childcare.

(A) Eligibility for subsidized childcare shall be determined by Department of Elementary and Secondary Education (DESE) and governed by the regulations of DESE.

(B) The division or child-placing agency may provide referrals to DESE or DESE’s authorized representatives to apply for subsidized childcare.

(11) Nonrecurring Adoption or Legal Guardianship Expenses.

(A) The Children’s Division may include in an adoption or guardianship subsidy agreement a provision to pay reasonable nonrecurring adoption or legal guardianship expenses. The expenses that the division will pay shall be listed specifically in the agreement. The division will not pay for any expenses which are not specifically provided for in the agreement. All receipts submitted for reimbursement must be submitted within one hundred eighty (180) days of service completion. Any nonrecurring adoption or guardianship expenses, including, but not limited to, attorney fees, court costs, and litigation expenses incurred by the adoptive parent(s) or guardian(s) in excess of the amount set forth in the agreement shall be the sole responsibility of the adoptive parent(s) or guardian(s). Nonrecurring adoption or legal guardianship expenses which may be covered are the following:

1. Nonrecurring placement-related expenses may be reimbursed up to one thousand dollars (\$1,000) and are limited to –

A. Pre-placement transportation: This expense is paid at the current customary rate established by the Children’s Division for use of a personal automobile or the charge of air or ground transportation; and

B. Lodging and food: Reimbursed using division travel guidelines for both in-state and out-of-state travel;

2. Legal fees include attorney’s fees, court costs, publication expenses, and Guardian Ad Litem (GAL) costs for the adoptive parent(s) or guardian(s) in adoption or the guardianship case filed in a court of competent jurisdiction.

A. Attorney’s fees will be reimbursed at a rate not to exceed one hundred dollars (\$100) per hour to a maximum of one thousand five hundred dollars (\$1,500) in non-contested adoption cases and up to three thousand dollars (\$3,000) in a contested case. Legal fees for guardianship subsidies may be reimbursed up to one hundred dollars (\$100) per hour to a maximum of five hundred dollars (\$500) in non-contested guardianship cases and up to one thousand five hundred dol-

lars (\$1,500) if the guardianship is contested.

B. The attorney’s fees, court costs, and litigation expenses which the Children’s Division may agree to cover under a subsidy agreement shall only include those fees, costs, and litigation expenses which are reasonably necessary to pay for the adoption count of the adoption petition. Nothing in this regulation shall be construed to require the division to pay for attorney’s fees, costs, or litigation expenses related to the termination of parental rights or other portions of any legal proceedings involving the child. Nothing in this regulation shall be construed to require the division to pay for the attorney’s fees, litigation expenses, and court costs for any other person, including the natural or legal parent(s) to defend the petition for adoption or guardianship petition;

3. Private agency fee reimbursement up to three thousand five hundred dollars (\$3,500). Such costs may include the adoption study, including health and psychological examination, and supervision of the placement prior to adoption finalization; and

4. Payment for nonrecurring expenses shall not include those paid for or provided through resources available to the adoptive parent(s) or guardian(s), court, or the agency facilitating the placement. Examples of these resources include –

A. A private agency waives the cost of the family assessment (home study) or the placement support services;

B. The adoptive parent(s) claimed the Missouri adoption tax credit for nonrecurring adoption expenses;

C. The adoptive parent(s) or guardian(s) has private insurance providing payment for certain services included in an adoption/guardianship; and

D. A service provider has waived the cost for the service.

(12) Additional Services – An adoption or guardianship subsidy agreement may include provisions for the Children’s Division to provide the following:

(A) The division may offer available Intensive In-Home Services (IIS) or other services to the adoptive parent or guardian for the family who is in need of intervention that may reduce the risk of the child entering out-of-home care;

(B) For all existing adoption and guardianship subsidy agreements amended on or after June 25, 2024, and for all adoption and guardianship subsidy agreements executed or amended on or after June 25, 2024, payment for care and treatment of a child in a residential setting (hereinafter referred to in this regulation as “residential treatment”) (all levels) may be included in a subsidy agreement or added to the subsidy agreement through an amendment only as provided in this subsection. The amendment must be approved and signed by the authorized signature of the Department of Social Services before payment for such services is made.

1. The division may approve payment, in whole or in part, for residential treatment of a child in a subsidy agreement only if all of the following criteria and conditions are met:

A. The division has determined that care and treatment of the child out of the home in a residential setting is the least restrictive setting and the program is necessary and appropriate to meet the child’s needs. The division may require that the child and family exhaust all reasonably available, less restrictive treatment modalities for the child before entering into an agreement to pay for residential treatment;

B. The division has determined that it is necessary for the child to receive treatment at a particular level of care in a residential setting;

C. The child has been accepted for treatment by a residential facility that is licensed by the state to provide the



treatment, and the facility is either an enrolled MO HealthNet provider, an enrolled provider of the Medicaid program in the state in which the child is located, or a facility contracted with the state of Missouri for payment for the services;

D. Except as provided in subparagraph (12)(B)1.G. below, the child has received an approved prior authorization for treatment in the identified residential treatment facility. The approved prior authorization must be in writing and include a determination that the child requires residential treatment at a particular level of care to a reasonable degree of professional certainty according to the eligibility standards specified in this regulation.

(I) For children covered by a subsidy agreement, who are residents of the State of Missouri and are participants in the MO HealthNet program, the prior authorization must be provided by the MO HealthNet Division or the provider contracted with the MO HealthNet Division to make those determinations.

(II) For children covered by a subsidy agreement who are not residents of the state of Missouri, but who are participants in the MO HealthNet program, then the prior authorization must be provided by the MO HealthNet Division or the managed care provider contracted with the MO HealthNet Division to make those determinations.

(III) For children who are not residents of the state of Missouri, who are not current participants in the MO HealthNet program, and are participants in another state’s Medicaid program, prior authorization shall be provided by the Medicaid program from the other state.

(IV) For children who are not residents of the state of Missouri, who are not current participants in the MO HealthNet program, and are either not participants in another state’s Medicaid program or the other state’s Medicaid program does not pay for residential treatment, then the division will use the exception procedure in subparagraph (12)(B)1.G. below to determine eligibility for subsidized residential treatment;

E. Every child receiving payment for residential treatment through a subsidy agreement shall have a current written plan of care;

F. The division will only enter into a subsidy agreement to pay for residential treatment if the facility is the closest available facility to the child’s home that provides the array of services that the division determines are necessary for the child at a contract price for those services agreeable to the division;

G. In exceptional, extraordinary, and unusual circumstances, the division may, in its discretion, waive the requirement in subparagraph (12)(B)1.D. of this regulation that the child has received prior authorization for payment through a subsidy agreement for residential treatment, but only if all of the following criteria are met:

(I) All of the other criteria for eligibility for payment for treatment in a residential care facility have been met;

(II) Either the adoptive parent or guardian has filed an appeal of the denial of prior authorization, or the child is a resident of a state whose Medicaid program does not include payment for the necessary residential treatment;

(III) The child’s treating or examining, psychiatrist, psychologist, physician, advanced practice psychiatric nurse, marital and family therapist, nurse practitioner, licensed professional counselor, or licensed clinical social worker certifies to a reasonable degree of medical certainty in writing that treatment in a residential facility at the indicated level of care is necessary. The division may at any time, in its discretion, require the child to be examined and the certification and child’s records reviewed by other licensed medical professionals for an independent assessment of the necessity for residential

treatment. The division will determine what weight shall be given to conflicting opinions of medical experts;

(IV) The division determines that funds are available to pay for the treatment in a residential facility;

(V) The duration of the waiver shall be determined as follows:

(a) In the case where the waiver was triggered by a request for administrative review of the denial of a request to approve residential treatment, the waiver shall extend until the appeal has been decided on administrative review. The division may extend the waiver period if there is a request for judicial review of the administrative decision; or

(b) In the case where the waiver was necessary because the child is a resident of a state whose Medicaid program does not include payment for the necessary residential treatment, the waiver shall be subject to the continuing care reviews as provided in this regulation; or

(c) The division determines that treatment in a residential facility is no longer necessary, such as where the child is discharged from residential treatment; and

(VI) The division determines that the child may be a danger to self or others.

2. Responsibilities of the adoptive parent or guardian. The implementation of a subsidy agreement to subsidize payment for residential treatment does not and shall not absolve the adoptive parent or guardian of any and all of the duties and responsibilities that they may have toward the child under law. The fact that the division has entered into a subsidy agreement for payment for residential treatment does not mean that the child is or has been placed in the legal or physical custody of the division.

A. The adoptive parent or guardian shall be responsible for researching and exhausting all reasonably available, less restrictive, community-based care and treatment modalities before the division will approve subsidized residential treatment. The division may provide referrals and information to support the adoptive parent or guardian in that effort.

B. The adoptive parent or guardian shall remain responsible for the support of the child throughout the child’s residential treatment and making arrangements for the physical care, custody, and placement of the child when treatment in a residential care facility is no longer necessary. This duty of support shall include both financial support and exercising all duties of a parent or guardian, including but not limited to making decisions for the child, visiting the child, actively participating with the provider in all aspects of the management of the child’s care and treatment, and engaging in active efforts to enable the child to return home.

C. If the adoptive parent or guardian is unable or unwilling to exercise these efforts or does not actively demonstrate a desire for the child to be returned to their home, then the division may take one (1) or more of the following actions:

(I) Decline to authorize payment for residential treatment under a subsidy agreement;

(II) Institute any available remedy for the modification or termination of the subsidy agreement, in whole or in part;

(III) Take any other action authorized by law, including a referral to the juvenile officer or the child welfare authorities of another state for investigation, assessment or other appropriate action.

D. The adoptive parent or guardian shall provide all required documentation necessary for determining eligibility, and continuing eligibility, for residential treatment to MO HealthNet or MO HealthNet’s contracted Managed Care provider, the Residential Treatment Provider, and the division.



This includes but is not limited to executing Health Insurance Portability and Accountability Act (HIPAA) and Family Education Rights and Privacy Act (FERPA) compliant consents to authorize the release of all information and records deemed necessary.

3. Residential treatment that is eligible for payment under a subsidy agreement.

A. The subsidy agreement may include payment on behalf of a child who is the subject of a subsidy agreement in a residential treatment facility for –

(I) The reasonable and necessary cost for room and board for the child at the rate specified in the contract between the division and the provider of residential treatment;

(II) If the division has granted a waiver as provided in subparagraph (12)(B)1.G., then the division will pay the provider the agreed-upon amount for necessary residential treatment specified in the contract between the division and the provider of residential treatment; or

(III) Discharge planning. The division may, but is not required to, pay for residential treatment for a limited period of time specified in the subsidy agreement to allow the family to establish and implement the necessary in-home or community-based treatment for the child, provided that the parent and guardian exercise diligent and active efforts to implement and complete the discharge plan within the time specified in the subsidy agreement. Discharge planning extensions shall be reviewed monthly or more frequently as necessary.

B. The subsidy agreement shall not include, and the division is not required to pay through a subsidy agreement for, any one (1) or more of the following:

(I) Residential treatment and other services that are covered by MO HealthNet or the Medicaid program of any state;

(II) Residential treatment that is covered by any policy of insurance that provides coverage for the child;

(III) Residential treatment that is not necessary;

(IV) Residential treatment that is beyond the scope of the participant’s plan of care or discharge plan;

(V) Residential treatment that is available to the child through other government or privately funded programs, including but not limited to schools and school districts, community-based services, and services provided by not-for-profit and religious organizations;

(VI) Residential treatment provided after the approved length of stay or after the child is discharged from the facility;

(VII) Residential treatment on behalf of a child to a provider who does not have a contract to provide the service with the state of Missouri; or

(VIII) Residential treatment and other services that are provided by a provider who is not qualified and licensed to provide the treatment in the location where the treatment is provided.

4. Payments for residential treatment shall be made directly to the provider of the residential treatment pursuant to a contract between the state of Missouri and the provider. The adoptive parent or guardian and child shall not be a party or be a third-party beneficiary of the contract between the state of Missouri and the provider. No payments shall be made to a provider that is not currently licensed in good standing to provide the care and treatment. No payments shall be made directly to the adoptive parent or guardian. No payments shall be made to a provider who is either not an enrolled Medicaid provider or who does not have a contract with the state of Missouri to provide the service. The laws and regulations governing contracting with the state of Missouri shall govern all contracts for

services under this regulation.

5. For the division to determine that residential treatment at a specific level of care is necessary, all of the criteria in subparagraphs (12)(B)5.A.-H. must be met, subject to the definition of “medical condition” specified in subparagraph (12)(B)5.I.

A. The child’s medical condition must satisfy all of the eligibility requirements of 13 CSR 35-38.010(12)(B).

B. The child must have one (1) or more current diagnosed medical condition(s), injury, or illness. The diagnosis may be final or provisional.

C. The diagnosis must have been made by a medical professional who is licensed and qualified by law to make that diagnosis.

D. Care and treatment in a residential facility for the child’s diagnosis meets the generally accepted standard for care and treatment for the child’s diagnosed condition.

E. Care and treatment in a residential setting is not experimental and is not mainly prescribed for the convenience of the child or the child’s parents or guardian.

F. Care and treatment in a residential setting is reasonably necessary to protect the life, safety, and health of the child.

G. The care and treatment is not optional or for purely cosmetic purposes.

H. Treatment at home or in a lower level of care for the medical condition has been ruled out by a medical professional who is licensed and qualified to determine whether the treatment is medically inappropriate.

I. In this regulation the phrase “medical condition” includes a diagnosed physical, psychiatric, psychological, and/or developmental condition.

6. The following documentation shall be submitted to determine whether residential treatment is necessary:

A. A report of a full assessment by a licensed and qualified health care professional using the most recent version of the Daily Living Activities (DLA-20) assessment process and tool. If a DLA-20 assessment process and tool is not available, the division may, in its discretion, accept an assessment using an equivalent, current assessment tool, provided that the assessment and tool is evidence-based, objective, generally accepted, and actually used in the medical community as a tool used for assessments for care and treatment in residential facilities. The assessment must be completed by a clinician licensed in the state in which the tool is administered who is trained and qualified to use the tool. The assessment and tool must be the most recent version of the tool as of the date of the assessment. Other tools that may be used when a DLA-20 assessment is not available may include the Level of Care Utilization System (LOCUS) for youth over age eighteen (18), the Child and Adolescent Level of Care/Service Intensity Utilization System (CALOCUS-CASII) for children aged six to eighteen (6-18), and the Early Childhood Service Intensity Instrument (ESCII) for children aged zero to five (0-5);

B. Any relevant child/youth psychiatric/behavioral health diagnoses;

C. The most recent psychiatric evaluation completed by a psychiatrist, psychologist, or advanced practice nurse, if one is available;

D. A statement detailing the rationale for residential treatment at the requested level of care;

E. Documentation of previous treatment history and outcome of treatment, if applicable and available;

F. Documentation of the name, address, telephone number, email address, and all other contact information for the adoptive parent or legal guardian of the child;

G. A discharge plan when available. Discharge planning



shall start at admission and shall be continuously developed and evaluated throughout the child’s stay in residential treatment;

H. The child’s parent or guardian shall complete and submit a Residential Treatment Referral, CS-9, to the best of their ability in cooperation with the assigned subsidy worker. The adoptive parent or guardian shall sign the form and certify that the information that they have provided is true, complete, and accurate to the best of their personal knowledge, information, and belief.

7. The adoptive parent or guardian shall have the burden of proof to establish by a preponderance of the evidence that the child is eligible for both initial and continuing treatment in a residential care facility at a particular level of care.

8. Except as otherwise provided elsewhere in these regulations, the division shall not approve payment for residential treatment in a residential care facility in a subsidy agreement for more than six (6) consecutive months. The division may enter into subsequent amended subsidy agreements that include payment for treatment in a residential setting following the continuing stay review procedures.

9. Continuing stay reviews. All subsidy agreements that include residential treatment services shall be subject to continuing stay reviews. The purpose of the continuing stay review is to determine whether ongoing residential treatment is necessary. All continuing stay reviews must include evidence that clearly supports the need for ongoing treatment at the requested level of care and must clearly identify why the child’s treatment needs can’t be treated at a lower level of care. The same procedures, standards, and criteria for initial approval of residential treatment services shall apply to continuing stay reviews.

A. The division may accept the continuing stay review decision of the primary payer for the purpose of approving continued subsidized residential treatment if all other eligibility requirements of this regulation are met.

B. When the division approves a prior authorization waiver, the division will conduct the continuing stay review to determine continued eligibility for subsidized residential treatment services.

(I) The division will conduct a continuing stay review within thirty (30) days prior to the expiration of the approved residential treatment services, and more frequently as the division determines necessary.

(II) Documentation. The child’s adoptive parent or guardian shall be responsible for providing all of the documentation to determine whether ongoing residential treatment of the child is necessary at a specified level of care. The adoptive parent or guardian may request the division to provide assistance in gathering the required documentation, provided that the request is made in a timely manner and the adoptive parent or guardian executes any required authorizations for the release of information. The documentation shall be the most current available information and shall include –

- (a) The child’s plan of care since last review; and
- (b) Treatment progress notes, to include any progress notes from the child’s treating psychiatrist, psychologist, physician, and/or therapists; and
- (c) Family therapy progress notes since last review, or detailed documentation to establish whether family therapy sessions are not occurring or have been excused; and
- (d) Any updates to the child’s diagnoses and prognosis; and
- (e) Medications prescribed to the child, including any changes to medications; and

(f) The child’s discharge plan to include any details currently available including any established outpatient providers, appointment dates and times, recommended treatment level of care; and

(g) The efforts that the adoptive family or guardian have engaged in to participate in the child’s care, treatment, and discharge plan; and

(h) A new DLA-20, or equivalent assessment of whether treatment in a residential setting is necessary by a clinician trained and qualified to perform the assessment, if requested by the residential treatment provider, the payer of coverage for residential treatment, the adoptive parent or guardian, or the division.

10. Residential referral process. The procedures in this subsection shall govern all requests for payment for services, care, and treatment in a residential setting through an adoption or guardianship subsidy agreement.

A. At any time, the adoptive parent or guardian may request residential services. The division may refer the case to an IIS provider. If the division determines that IIS is appropriate, the division may provide IIS rather than residential services.

B. Community resources are to be researched by the adoptive parent or guardian, with the assistance of their division caseworker and the child’s care manager (if applicable), and efforts documented prior to making a residential treatment referral.

C. In the event that IIS is ineffective in remedying the situation and other community resources have not produced the necessary change in the family unit and/or adoptive parent or guardian are reasonably unable to access alternative resources to prevent placement in residential care, the adoptive parent or guardian must provide information necessary to evaluate the needs of the child to determine eligibility for placement in residential care.

D. The adoptive parent or guardian shall obtain the necessary documentation regarding the child’s condition from appropriate professionals (psychological, psychiatric, etc.).

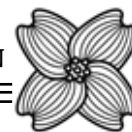
E. The adoptive parent or guardian shall make diligent efforts to place the child in close proximity to their home to allow involvement by the adoptive parent or guardian in the child’s treatment.

F. The adoptive parent or guardian are responsible for making arrangements for actual placement into the residential facility.

11. Any adoptive parent or guardian who believes that they are aggrieved by an adverse decision regarding or prior authorization that is made by the MO Health Division, the managed care provider contracted with the MO HealthNet Division to make that decision, or the Medicaid program of another state shall first exhaust his or her administrative and judicial remedies under that program;

(C) The provisions of this subsection shall apply to all adoption and guardianship subsidy agreements executed prior to June 25, 2024.

1. Residential care services (all levels) may be included in a subsidy agreement or added to the subsidy agreement through an amendment, but only if residential care is the least restrictive treatment setting and program appropriate to meet the child’s needs. The amendment must be signed by the director of the Children’s Division before payment for such services may begin. All amendments and proposed amendments covering residential care and treatment services to adoption and guardianship subsidy agreements existing prior to June 25, 2024, are governed by subsection (12)(B) above and not this subsection.



2. Residential referral process.

A. At any time, the adoptive parent or guardian may request residential services. The division may refer the case to an IIS provider. If the division determines that IIS is appropriate, the division may provide IIS rather than residential services.

B. Community resources are to be researched by the adoptive parent or guardian, with the assistance of their division caseworker, and efforts documented prior to making a residential treatment referral.

C. In the event that IIS is ineffective in remedying the situation and other community resources have not produced the necessary change in the family unit or the adoptive parent or guardian is unwilling to utilize alternative resources to prevent placement in residential care, the adoptive parent or guardian must provide information necessary to evaluate the needs of the child to determine eligibility for placement in residential care.

D. The adoptive parent or guardian shall obtain the necessary documentation regarding the child's condition from appropriate professionals (for example, psychological or psychiatric).

E. Efforts shall be made to place the child in close proximity to their home to allow involvement by the adoptive parent or guardian in the child's treatment.

F. The adoptive parent or guardian is responsible for making arrangements for actual placement into the residential facility.

G. Once a child has been approved for residential treatment, the adoptive parent or guardian shall be referred to the out-of-home care program. A Family Centered Services (FCS) case may be opened to provide services to work toward reintegration.

H. If the adoptive parent or guardian is unwilling to be a part of this process and has no desire for the child to be returned to their home, residential treatment may not be authorized through subsidy, and other permanency options shall be discussed with the family. If the child enters the custody of the Children's Division, the division will pursue child support from the adoptive parent or guardian.

3. The Children's Division will not pay for residential services at a more intensive treatment level and at a higher rate unless the director of the Children's Division agrees in writing to pay for the more intensive treatment level. To request approval to pay at a higher rate for a more intensive treatment level in the residential setting –

A. The adoptive parent or guardian shall submit a written request and state in detail the reasons that it is necessary for the child to be placed at a more intensive treatment level. The adoptive parent or guardian shall provide any and all documentation that the division may require to ascertain whether the more intensive treatment level is necessary; and

B. The documentation submitted must include current records and reports no more than ninety (90) days old and include an estimated discharge date and prognosis, monthly treatment summary, explanation of a continued need for residential treatment, and a description of parental involvement with the facility's treatment plan;

(D) Youth with Elevated Needs Level B – A child may be placed in a Youth with Elevated Needs Level B Home if this service is determined necessary for the child by the Children's Division in conformity with the procedures and eligibility criteria set forth in 13 CSR 35-60.070 and a Level B Home is available and has accepted the child for placement. The Elevated Needs Level B Home is for the purpose of treating a child's behavioral issues so they may be successfully reintegrated into the adoptive or

guardianship home.

1. The adoptive parent or guardian is to be referred to the out-of-home care program, a voluntary case is to be opened, and services are to be offered in order to work towards reintegration into the adoptive or guardianship home.

2. Youth with Elevated Needs Level B placements may be authorized for only six (6) months at a time. Upon the sixth month, the need for placement and level of care must be reviewed in a Family Support Team (FST) meeting.

3. An amendment requesting funding for Youth with Elevated Needs Level B placements shall be submitted to the division for approval. The amendment must be signed by the director of the Children's Division before Youth with Elevated Needs Level B services may begin and payment for such services made.

4. With regard to agency liability of an adopted or guardianship child voluntarily placed in a Youth with Elevated Needs Level B placement, any legally recognized parent (biological or adoptive parent or guardian) is liable for the actions of his/her child as long as that adoptive parent or guardian has not been relieved of legal custody. If the division does not have legal custody of a child, the division is not liable for the child;

(E) Respite. Adoptive parent or guardian may receive respite as a special service on a case-by-case basis through subsidy when a documented need exists to age eighteen (18). Respite care shall be provided according to any regulations promulgated by the division governing respite care.

1. The adoptive parent or guardian shall provide a letter requesting this service describing in detail the child's need for respite.

2. All paid receipts submitted for reimbursement must be submitted within one hundred eighty (180) days of the service being provided.

3. Respite shall be approved in accordance with maintenance approval; if a child receives traditional maintenance to age eighteen (18), respite may be approved to age eighteen (18) as well. If a child receives medical or Youth with Elevated Needs Level A maintenance to age eighteen (18) due to their condition being such that they are not expected to improve, respite may also be approved to age eighteen (18). However, if medical or Youth with Elevated Needs Level A maintenance is only approved for a two- (2-) year time period, respite should only be approved for two (2) years; and

(F) If the child has a disabling condition as defined by the Americans with Disabilities Act, the Children's Division within its discretion may include in an adoption or guardianship subsidy agreement a provision to pay for minor modifications of the residence of the child or vehicle used to transport the child under the following conditions:

1. The modification must be necessary for the child to effectively function in the home or vehicle;

2. The adoptive parent or guardian must be unable to acquire these services independent of the subsidy and have exhausted all available private and public community resources;

3. All expenses, modifications, and services shall be approved for payment pursuant to procurement laws and regulations including but not limited to 1 CSR 40-1.010 through 1 CSR 40-1.090; and

4. The division will pay for the least expensive, appropriate alternative to meet the needs of the child.

(13) 18+ Adoption Subsidy Agreement. The Children's Division may approve an adoption subsidy to continue beyond the age



of eighteen (18) up to the age of twenty-one (21) when the child has an extraordinary documented physical, dental, or mental health need that requires care beyond the age of eighteen (18). These 18+ Adoption Subsidy Agreements are negotiated on an annual basis with the adoptive parent(s) according to the youth’s current needs and with the intent of transitioning the youth from subsidy services to adult community services to ensure all necessary services are in place for the youth’s success when subsidy is no longer available.

(A) Six (6) months prior to a youth covered by an adoption subsidy agreement’s eighteenth birthday, the adoptive parent(s) may make a request in writing to the Children’s Division for the division to assess whether or not the child is eligible for an 18+ adoption subsidy agreement. The division will make a determination as to whether or not the youth has an extraordinary documented physical, dental, or mental health need that requires care through a subsidy agreement beyond the age of eighteen (18). Documentation of need from the youth’s physician, psychiatrist, psychologist, or dentist shall be obtained and submitted as supporting documentation of need.

(B) The adoptive parent(s) shall be made aware of the need to transition the youth from adoption subsidy to adult community services to meet the youth’s needs and provide referral information and assistance with obtaining these services as needed. The adoptive parent(s) shall be advised they are required to apply for and participate in all such programs and services as may be reasonably necessary to meet the needs of the youth as indicated in the contract.

(C) The Children’s Division will not approve an 18+ adoption subsidy agreement for any child whose mental, physical, or dental needs may be met or otherwise paid for or reasonably available at no cost or at reasonable cost through any other services and which the child or the adoptive parent(s) or guardian(s) may be eligible to receive on behalf of the child.

(14) Termination of an adoption or legal guardianship subsidy agreement shall take place if any of the following events occur:

(A) The child has attained the age of eighteen (18) and there is no 18+ adoption subsidy agreement or the maximum age of twenty-one (21) if there has been an 18+ agreement in effect; or

(B) The division determines that the adoptive parent(s) or guardian(s) are no longer legally responsible for support of the child; or

(C) The division determines that the adoptive parent(s) are no longer providing any support to the child; or

(D) The adoption subsidy agreement expires.

(15) Administrative and Judicial Review.

(A) Scope and Purpose. This establishes the procedures for the resolution of disputes involving the delay, overpayment, denial, amount, or type of adoption or guardianship subsidy for applicants for or participants in the adoption and/or guardianship subsidy program.

(B) Notice of Case Action. The division shall provide a written notice of case action to an applicant or participant of any decision on an application for subsidy and any decisions relating to an existing subsidy agreement to delay, deny, and/or modify the amount or type of the subsidy. The notice shall state the date of the decision and –

1. State generally the factual and legal basis for the division’s action;

2. State the effective date of the action, if applicable; and

3. Notify the applicant or the subsidy participant of his or her right to administrative review. Attaching a copy of this regulation to the division’s notice of case action shall be sufficient

notice to comply with this subsection.

(C) Right to Administrative Review. Any person who believes that he or she is aggrieved by any delay in the adoption or guardianship subsidy process, or believes that he or she is aggrieved by the division’s decision regarding the denial, amount, or type of adoption or guardianship subsidy program shall have the right to request administrative review following the procedures set forth in this regulation.

(D) Standard of Review and Burden of Proof. The decision shall be based on competent and substantial evidence on the whole record as in administrative hearings in contested cases. The preponderance of evidence standard shall apply. For initial applications and for requests for amendments to existing subsidy agreements, the burden of proof shall be on the applicant for subsidy or amendment to the subsidy agreement.

(E) Process for Administrative Review.

1. Requests for Administrative Review. A request for administrative review must be received by the division no later than thirty (30) days from the date of the division’s decision. The request for administrative review shall be in writing and shall set out, generally, the reasons why the applicant or participant believes he or she is aggrieved by the decision. If there is a current adoption subsidy agreement in place, at the request of the adoptive parents, the division shall stay implementing its decision and keep the existing agreement in place until a final decision on the request for administrative review has been made. If the division’s decision is finally affirmed, the division may seek reimbursement for any amounts overpaid to the adoptive parents pending the final decision.

2. First Level Review. Within thirty (30) days of the receipt of a request for administrative review, the division shall convene a panel of three (3) persons who are employees of the division, at least one (1) of whom is not responsible for the case management of, or the delivery of services to, either the child, the adoptive parent(s) or the prospective adoptive parent(s), guardian(s), or the prospective guardian(s). The panel shall review the request for administrative review, the materials submitted with the request, the division’s file, and any written materials submitted by the division. At the request of the person seeking administrative review, the panel may convene an informal meeting which shall be open to participation by the applicant, the child, and/or the child’s adoptive parents. The meeting shall be an informal settlement conference, the rules of evidence shall not apply, and no record of the meeting shall be kept. The panel may affirm, reverse, or modify the initial agency decision, or it may refer the case to a formal administrative hearing. If the person(s) requesting the hearing is not satisfied by the first level review, they may request in writing, within thirty (30) days of the decision of the panel, the referral of the case for an administrative hearing.

3. Administrative Hearing. In the event that the request for review is not resolved at the first level of review, the person requesting the review may request a hearing before a hearing officer of the Division of Legal Services of the Department of Social Services. The hearing shall be on the record and the rules of evidence shall apply as in administrative hearings in contested cases. The parties shall be afforded the right to adduce relevant evidence, to call witnesses, and to compel the attendance of witnesses by subpoena.

4. Hearing decision and right to judicial review. The hearing officer shall issue a written decision setting forth his or her findings of fact, conclusions of law, and decision after hearing, which shall be the final decision of the division. The written decision shall notify the parties of their right to request judicial review pursuant to section 536.100, RSMo.



*AUTHORITY: sections 207.020.1(5), 453.073, 453.074, 536.010(6), and 660.017, RSMo 2016, and Young v. Children's Division, State of Missouri Department of Social Services, 284 S.W.3d 553 (Mo. 2009).** Original rule filed March 1, 2010, effective Oct. 30, 2010. Emergency amendment filed June 10, 2024, effective June 25, 2024, expired Feb. 27, 2025. Amended: Filed June 10, 2024, effective Jan. 30, 2025.

**Original authority: 207.020, RSMo 1945, amended 1961, 1965, 1977, 1981, 1982, 1986, 1993, 2014; 453.073, RSMo 1973, amended 1978, 1981, 1982, 1985, 1997, 2001, 2005, 2008, 2014; 453.074, RSMo 1985, amended 2014; 536.010, RSMo 1945, amended 1957, 1976, 2004, 2005, 2006; and 660.017, RSMo 1993, amended 1995.*

13 CSR 35-38.011 Definition of Guardianship Services

PURPOSE: This rule defines guardianship services.

(1) Guardianship services are defined as assessment and evaluation of the child and his/her needs; arrangements for care of the child prior to guardianship placement; placement of the child with an approved guardianship provider; placement support activities until the guardianship is legally completed; pre- and post-guardianship counseling to the natural parent and the guardian(s) regarding the guardianship arrangement; legal services associated with completing a guardianship; medical, dental, psychiatric, or psychological services for the child as needed; and subsidized guardianship.

AUTHORITY: section 453.072, RSMo Supp. 2009. Original rule filed May 27, 2010, effective Nov. 30, 2010.*

**Original authority: 453.072, RSMo 1999, amended 2001, 2005, 2008.*

13 CSR 35-38.021 Provision of Guardianship Services

PURPOSE: This rule sets criteria for provision of guardianship services.

(1) The Children's Division shall accept home assessments from families having an approved family assessment completed by the division, or other licensed child-placing agencies; registration of children designated as available for placement; and will cooperate with other state, regional, and national exchanges in the registration of children with special needs.

(2) The Children's Division shall provide subsidized guardianship services to children who are considered to have special needs and who have no other financial resources or limited financial resources.

(3) In order for a child to be determined eligible for subsidized guardianship services, he/she shall meet one (1) or more of the following conditions:

(A) Physical Handicap. Any physical abnormality or condition, whether congenital or not, which requires or is likely to require treatment or the purchase of special equipment or services;

(B) Intellectual Impairment. Mental development below an IQ of eighty (80) or other intellectual dysfunction as documented by psychological testing;

(C) Racial or Ethnic Minority. The child's ancestry is not Caucasian; and

(D) Other Conditions.

1. Age. The child is five (5) years old or older and has not

reached the age of eighteen (18).

2. Member of a sibling group. Two (2) or more children who are siblings and are being placed with the same guardian.

3. Developmental disability. Any documented physical or mental condition not otherwise listed which prevents the child from functioning at the normal level for his/her age.

4. Mental or emotional disturbance. A diagnosed and documented condition which impairs the child's mental functioning, including learning dysfunctions.

5. Social maladjustment. A severe behavioral condition or inadequate social development which interferes with the child's ability to form satisfactory relationships with others.

(4) In order for a guardian to be eligible for subsidy, he/she shall be a grandparent or great-grandparent, aunt or great-aunt, uncle or great-uncle, adult sibling, or adult first cousin of the child who has been approved as a guardianship placement by the Children's Division, a licensed or approved child-placing agency; or for a family residing outside Missouri, a governmental child-placing agency or a licensed or approved child-placing agency in that state; and shall cooperate in providing information for the division to reach an agreement with the guardian regarding the amount of services, length of time of services, and types of services for which the division will make a subsidy payment and shall sign an agreement specifying the terms of the guardianship subsidy.

AUTHORITY: section 453.072, RSMo Supp. 2009. Original rule filed May 27, 2010, effective Nov. 30, 2010.*

**Original authority: 453.072, RSMo 1999, amended 2001, 2005, 2008.*

13 CSR 35-38.030 Definition of Adoption Services

PURPOSE: This rule defines adoption services.

(1) Adoption services are defined as assessment and evaluation of the child and his/her needs; arrangements for care of the child prior to adoptive placement; placement of the child with an approved adoptive family; placement support activities until the adoption is legally completed; pre- and post-adoptive counseling to natural and adoptive parents regarding adoption; legal services associated with freeing a child for adoption; recruitment, assessment, approval, and selection of appropriate adoptive family resources; medical, dental, psychiatric, or psychological services for the child as needed; subsidized adoption; and cooperation with other state, regional, and national adoption exchanges or photo-listing services for the purpose of assuring permanent care of children.

AUTHORITY: section 207.020, RSMo 2000. This rule was previously filed as 13 CSR 40-38.010. Original rule filed Dec. 30, 1975, effective Jan. 9, 1976. Amended: Filed June 28, 1983, effective Nov. 11, 1983. Moved and amended: Filed May 27, 2010, effective Nov. 30, 2010.*

**Original authority: 207.020, RSMo 1945, amended 1961, 1965, 1977, 1981, 1982, 1986, 1993.*

13 CSR 35-38.040 Provision of Adoption Services

PURPOSE: This rule sets criteria for provision of adoption services.



(1) The Children’s Division shall accept home assessments from families having an approved adoptive family assessment completed by the division, or other licensed child-placing agencies; registration of children designated as available for adoptive placement; and will cooperate with other state, regional, and national exchanges in the registration of children with special needs.

(2) The Children’s Division shall provide subsidized adoption services to children who are considered to have special needs and who have no other financial resources or limited financial resources.

(3) In order for a child to be determined eligible for subsidized adoption services, he/she shall meet one (1) or more of the following conditions:

(A) Physical Handicap. Any physical abnormality or condition, whether congenital or not, which requires or is likely to require treatment or the purchase of special equipment or services;

(B) Intellectual Impairment. Mental development below an IQ of eighty (80) or other intellectual dysfunction as documented by psychological testing;

(C) Racial or Ethnic Minority. The child’s ancestry is not Caucasian; and

(D) Other Conditions.

1. Age. The child is five (5) years old or older and has not reached the age of eighteen (18) years or twenty-one (21) years if the child’s condition requires extraordinary treatment or rehabilitative services.

2. Member of a sibling group. Two (2) or more children who are siblings and are being placed with the same family.

3. Developmental disability. Any documented physical or mental condition not otherwise listed which prevents the child from functioning at the normal level for his/her age.

4. A mental or emotional disturbance. A diagnosed and documented condition which impairs the child’s mental functioning, including learning dysfunctions.

5. Social maladjustment. A severe behavioral condition or inadequate social development which interferes with the child’s ability to form satisfactory relationships with others.

(4) In order for a family to be eligible for subsidy, they shall be approved for adoptive placement by the Missouri Children’s Division, a licensed or approved child-placing agency; or for a family residing outside Missouri, a governmental child-placing agency or a licensed or approved child-placing agency in that state; and shall cooperate in providing information for the division to reach an agreement with the family regarding the amount of services, length of time of services, and the types of services for which the division will make a subsidy payment; and shall sign an agreement specifying the terms of the adoption subsidy.

AUTHORITY: section 207.020, RSMo 2000. This rule was previously filed as 13 CSR 40-38.020. Original rule filed Dec. 30, 1975, effective Jan. 9, 1976. Amended: Filed Aug. 18, 1977, effective Dec. 11, 1977. Emergency amendment filed Oct. 2, 1981, effective Oct. 12, 1981, expired Jan. 13, 1982. Amended: Filed Oct. 2, 1981, effective Jan. 14, 1982. Amended: Filed Jan. 10, 1983, effective April 11, 1983. Amended: Filed June 28, 1983, effective Nov. 11, 1983. Moved and amended: Filed May 27, 2010, effective Nov. 30, 2010.*

**Original authority: 207.020 RSMo 1945, amended 1961, 1965, 1977, 1981, 1982, 1986, 1993.*