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**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 Guardian-  
ship Subsidy**

*PURPOSE: This rule is to define the Adop-  
tion 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) Registered Childcare Provider. A license-exempt childcare provider maintaining requirements of the Children's Division to provide subsidized child care through a registration agreement;

(L) Relative. A person related to another by blood, adoption, or affinity within the third degree (grandparent, brother, sister, half-brother, half-sister, stepparent, stepbrother, stepsister, uncle, aunt, or first cousin).

(M) Kinship. A person who is non-related by blood, marriage, or adoption who has a close relationship with the child or child's family (godparents, neighbors, teachers, close family friends, and fellow church members) or a person who has a close relationship with the child or child's family and is related to the child by blood or affinity beyond the third degree; and

(N) 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) A subsidy agreement may include childcare services as a part of the basic subsidy package for children up to age thirteen (13) when both adoptive parent(s) or guardian(s) are working or going to school. Adoptive parent(s) or guardian(s) are required to utilize a licensed and contracted or registered child care provider. In unusual cases



where the medical, behavioral, or developmental needs of the child are such that it is medically, behaviorally, or developmentally necessary for the child to receive child care beyond age thirteen (13), the division may grant an exception and authorize payment for child care through the adoption or guardianship subsidy agreement for children over age thirteen (13). The determination of medical, behavioral, or developmental necessity shall not be made before the child reaches the age of twelve (12) years. These requests will be considered on a case-by-case basis. The adoptive parent(s) or guardian(s) shall submit a written request to the division for continued child care. In the request, the adoptive parent(s) or guardian(s) shall describe the medical needs and/or behaviors of the child which the parent(s) or guardian(s) believe qualifies the child for the continued childcare. The adoptive parent(s) or guardian(s) shall provide any and all information and documentation the Children's Division may determine is necessary and convenient to process the request, including, but not limited to—

1. A statement from a physician or mental health professional explaining why childcare is medically, behaviorally, or developmentally necessary;

2. A statement regarding the adoptive parent's(s') or guardian's(s') inability to locate community programs to assist with supervision of the child;

3. A statement including the hours of care needed per day or week, and anticipated duration of care shall be included in these requests;

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

5. The names and full contact information 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;

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

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

(B) The adoptive parent(s) or guardian(s) shall provide the Children's Division with any written authorizations to release informa-

tion which the Children's Division determines is necessary and convenient to process the request.

#### (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 dollars (\$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 rea-

sonably 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) Intensive In-Home Services (IIS) may be offered to the adoptive parent(s) or guardian(s) who is in need of intervention that may reduce the risk of the child entering out-of-home care;

(B) 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 residential services may begin and payment for such services is made.

#### 1. Residential Referral Process.

A. At any time, the adoptive parent(s) or guardian(s) 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(s) or guardian(s), 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 and/or adoptive parent(s) or guardian(s) are unwilling to utilize alternative resources to prevent placement in residential care, the adoptive parent(s) or guardian(s) must provide information necessary to evaluate the needs of the child to determine eligibility for placement in residential care.

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

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

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

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

H. If the adoptive parent(s) or guardian(s) 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(s) or guardian(s).

2. The 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(s) or guardian(s) 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(s) or

guardian(s) 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 which must be no more than ninety (90) days old and include an estimated discharge date and prognosis, monthly treatment summary, why a continued need for residential treatment exists, and a description of parental involvement with the facility's treatment plan;

(C) Youth with Elevated Needs Level B—A child shall 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(s) or guardian(s) are 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(s) or guardian(s)) is liable for the actions of his/her child as long as that adoptive parent(s) or guardian(s) have 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;

(D) Respite: Adoptive parent(s) or guardian(s) 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(s) or guardian(s) 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

(E) 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. It must be necessary for the child to effectively function in the home or vehicle;

2. The adoptive parent(s) or guardian(s) 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 adminis-

trative 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: section 453.073, RSMo Supp. 2009, sections 210.506 and 453.074, RSMo 2000, 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.*

*\*Original authority: 210.506, RSMo 1982, amended 1993, 1995; 453.073, RSMo 1973, amended 1978, 1981, 1982, 1985, 1997, 2001, 2005, 2008; and 453.074, RSMo 1985.*