

POLICY TRANSMITTAL NO. 04-57	DATE: NOVEMBER 18, 2004
CHILDREN & FAMILY SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF PLANNING, POLICY & RESEARCH

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:75-1-18 and 75-15-128.1.

EXPLANATION: **Policy revisions were approved by the Commission and the Governor as required by the Administrative Procedures Act.**

The revisions to Subchapters 1 and 15 of Chapter 75 reflect modifications to placement considerations and adoption assistance benefits for children as a result of House Bill (HB) 1734, creating the Bryar Wheeler Act, that became effective July 1, 2004.

340:75-1-18 is revised to reflect that the court must consider the order of custody preference and the person's background, per Sections 21.1 and 7003-8.1 of Title 10 of the Oklahoma Statutes, and that custody or visitation with a child is not granted to any person if the custody or visitation established will likely expose the child to a foreseeable risk of material harm.

340:75-15-128.1 is revised to reflect requirements for the continuation of adoption assistance payments for a child upon reaching 18 years of age. The child must have a severe physical or mental disability that warrants the continuation of assistance until the child reaches age 19. The child may be considered for continued assistance after reaching age 19 and until age 21 when the child has applied for Supplemental Security Income (SSI) and the initial application for SSI is pending or has been denied and the child's needs, behaviors, or conditions meet the criteria for difficulty of care (DOC) Rate IV or V as determined by the Oklahoma Department of Human Services. Adoption assistance payments terminate when SSI payments are approved, and in no event continue after the child reaches age 21.

Original signed on 10-14-04

Linda Smith, Director  
Children & Family Services Division

Marilynn Knott, Administrator  
Office of Planning, Policy & Research

WF # 04-17 (NAP)

## **INSTRUCTIONS FOR FILING MANUAL MATERIAL**

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following a “DHS” number, such as personnel policy at DHS:2-1 and personnel rules at OAC 340:2-1. The “340” is the Title number that designates DHS as the rulemaking agency; the “2” specifies the Chapter number; and the “1” specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, DHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, DHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at (405) 521-3611.

### **REMOVE**

340:75-1-18

340:75-15-128.1

### **INSERT**

340:75-1-18, pages 1-5, revised 11-4-04

340:75-15-128.1, pages 1-6, revised 11-4-04

**340:75-1-18. Dispositional hearing**

(a) **Dispositional hearing.** After a child is adjudicated deprived, the court holds a dispositional hearing, per Section 7003-5.5 of Title 10 of the Oklahoma Statutes. The court must enter a dispositional order on the same day or within 40 days of adjudication, unless the court finds on the record that the child's best interests are served by granting a delay. If the court grants a delay, the court must state why the delay is necessary and the minimum amount of time needed to resolve the reasons for delay. If a child is removed from the custody of the child's parent, the court or the Oklahoma Department of Human Services (OKDHS), as applicable, immediately considers concurrent permanency planning, in order that permanency occur at the earliest opportunity. ■ 1

(b) **Dispositional hearing purpose.** The purpose of the dispositional hearing is to determine the service needs of the child and family and custody of the child during the deprived case. The court considers all evidence that is helpful in determining the disposition that is in the child's best interests.

(1) At the hearing, the recommended treatment and service plan is presented to the court. The judge makes the final decision regarding whether the proposed treatment and service plan is accepted and whether a court order is issued regarding compliance with any or all recommendations. The family is ultimately responsible for only those recommendations that are court-ordered, per OAC 340:75-6-40.4.

(2) Each dispositional order includes a statement informing the child's parent(s) that the consequences of non-compliance with the court's requirements may include, as applicable, loss of custody of the child or termination of the parent's rights to the child. If reasonable efforts are required for the return of the child to the child's home, the parent of the child must be given at least three months to correct conditions that led to the adjudication of the child, prior to requesting termination of parental rights.

(3) Every disposition order is reviewed by the court at least once every six months until:

(A) conditions that caused the child's adjudication are corrected;

(B) the parent(s)' rights to the child are terminated and a final adoption is decreed;

(C) permanent care and custody of the child is awarded to another person or a kinship guardian is granted; or

(D) the court terminates jurisdiction.

(c) **Special rules regarding custody orders.** Before placing custody of a child with the parent, legal guardian, legal custodian, or other suitable person, the court must consider the order of custody preference and the person's background, per Sections 21.1 and 7003-8.1 of Title 10 of the Oklahoma Statutes.

(1) **Order of custody preference.** When a child is removed from the custodial parent and the court, in the child's best interests, is unable to release the child to the custodial parent, or, as the next priority preference, give placement to the noncustodial parent, custody is awarded, per Section 21.1 of Title 10 of the Oklahoma Statutes, to a:

(A) grandparent;

(B) person indicated by wishes of a deceased parent;

(C) relative of either parent;

(D) person in whose home the child has been living in a wholesome and stable environment; or

(E) any other person deemed by the court to be suitable. If the court determines custody of the child cannot be made according to the order of preference, the court must document the reasons in the court record.

(2) **Background considerations.** The court is prohibited from placing custody of a child with a person who is subject to the Oklahoma Sex Offenders Registration Act or with a person who is married to or living with a person who is subject to the Oklahoma Sex Offenders Registration Act.

(A) "Person" does not include a parent, legal guardian, or legal custodian of a child.

(B) Before awarding custody, the court must inquire whether the person has been previously convicted of any felony, relevant misdemeanor, or has such charges pending. A person requesting custody must respond to the court's inquiry by affidavit or sworn testimony and provide the court with an Oklahoma criminal history record.

(3) Presumptions against placement. Custody or visitation with a child is not granted to any person if the custody or visitation established will likely expose the child to a foreseeable risk of material harm. There is a rebuttable presumption that it is not in the child's best interests to have custody or visitation granted to a person who:

(A) is or has been subject to, or resides with anyone who is subject to the Oklahoma Sex Offenders Registration Act;

(B) was convicted of or resides with a person who was convicted of a crime of child abuse, neglect, or of a sexual nature;

(C) was convicted of or resides with a person who was convicted of domestic abuse within the past five years; or

(D) is found alcohol or drug dependent by clear and convincing evidence and expected in the near future to inflict or attempt to inflict serious bodily harm to self or others as a result of dependency.

(d) Dispositional options. Subject to the conditions and restrictions per OAC 340:75-1-18(c), the court makes one or more dispositional orders, including:

(1) placing the child under supervision by OKDHS in the child's own home with the child's custodial parent, legal guardian, or legal custodian from whom the child was removed, or placement with the noncustodial parent. The court may specify conduct to be followed by the parent and any other adult in the home. Supervision by OKDHS may not exceed one year unless extended by the court;

(2) placing the child with a suitable person, including a grandparent, relative, or other person specified in OAC 340:75-1-18(c)(1);

(3) placement of the child in the custody of a private institution or agency;

(4) ordering the child to receive counseling or other community-based services;

(5) committing the child to the custody of OKDHS;

(6) ordering the parent, legal guardian, legal custodian, stepparent, or other adult living in the home, or other person or agency receiving custody of the child, to follow any treatment and service plan prescribed by OKDHS;

(7) ordering a child's permanent care and custody transferred to another person upon the written consent of the parent(s) of the child, per OAC 340:75-1-18.2;

(8) ordering a child's permanent care and custody transferred to a kinship guardian, per OAC 340:75-1-18.3; and

(9) dismissing the petition and terminating its jurisdiction at any time for good cause when in the child's best interests.

**(e) Additional court determinations.** The court makes a determination whether:

(1) reasonable efforts:

(A) have been made to reunite the child with his or her family;

(B) are no longer feasible and are being made to secure an alternate permanent placement for the child;

(C) have been taken to finalize the permanent placement of the child; or

(D) to reunite the child with the family are not required, per OAC 340:75-1-18.4;

(2) an out-of-home placement continues to be appropriate and in the child's best interests; and

(3) services provided to assist any youth, 16 years of age or older, in the transition from out-of-home care to independent living are appropriate.

## **INSTRUCTIONS TO STAFF**

1. **Concurrent permanency planning.** Concurrent planning provides for reunification services while simultaneously developing an alternative plan if reunification efforts fail or are no longer feasible. Efforts are made early in the case process to determine the most appropriate placement for the child. When a petition to terminate parental rights is filed, the Child Welfare (CW) worker actively pursues the previously determined concurrent plan. If the plan is adoption, the CW worker ensures the identification, recruitment, and processing of a qualified adoptive family for the child is completed in a timely manner. Questions to consider when determining the appropriateness of the placement are listed in (1) through (4).

**(1) Are the siblings placed together?**

- (2) Is the child located in his or her own community, school district, or within close proximity of close family attachments?
- (3) Are appropriate services available and readily accessible?
- (4) Will this placement be able to provide permanency if efforts to reunite are unsuccessful?



**340:75-15-128.1. Adoption assistance benefits**

(a) Adoption assistance benefits may include Medicaid coverage, a monthly assistance payment, special services, reimbursement of non-recurring adoption expenses, or any combination of these. Children eligible for Title IV-E assistance are also eligible for available Title XX services.

(1) **Medicaid.** The child is eligible for the Oklahoma Medicaid program or the Medicaid program in the state of residence, if Title IV-E eligible. All necessary medical and dental care under the scope of that program is compensable at usual and customary charges, per OAC 340:75-15-129.

(2) **Monthly assistance payments.** A child may be eligible for a monthly assistance payment to provide financial support to families who adopt children considered difficult to place. Payments are made to eligible families as long as Oklahoma Department of Human Services (OKDHS) has sufficient funds available and is authorized to make payments under Form DCFS-68, Adoption Assistance Agreement, as allowable within the OKDHS budget.

(A) **Rates.** The standard rates for monthly adoption assistance payments correspond to the child's age set out in OKDHS Appendix C-20, Children and Family Services Division Rates Schedule, as amended from time to time, as approved by the Oklahoma Commission for Human Services (Commission).

(B) **DOC rate descriptions.** The difficulty of care (DOC) descriptions are guidelines from which the most appropriate DOC rate is determined for the eligible child. Not every situation will clearly fit into one DOC rate category. Consideration of the child's age is part of determining the appropriate rate category. Documentation that the child's needs, conditions, or behaviors fit the rate category is required from professional sources outside the adoptive family as well as from the adoptive family itself. Updated documentation may be required by OKDHS from time to time to establish a child's ongoing eligibility for a particular DOC rate. DOC descriptions are set out in OKDHS Appendix C-20 as amended from time to time, as approved by the Commission.

(3) **Special services.** Special services are used to meet the child's needs that cannot be met by the adoptive parent(s) and that are not covered under any other program for which the child would qualify.

(A) These services include corrective appliances, that may include costs of leg braces, prostheses, walkers, and similar appliances.

(B) Tutoring and private school tuition are not covered as special services, as the public school systems are mandated to provide all children with special needs with an appropriate public education.

(C) The child's needs are reviewed at least annually and special services may be approved for a limited time.

(D) The amount paid does not exceed the reasonable fee for the service rendered.

(E) The special service is negotiated with the adoptive parent(s), approved by Children and Family Services Division (CFSD) Adoption Assistance Section, and included in Form DCFS-68, Adoption Assistance Agreement.

**(4) Reimbursement of non-recurring adoption expenses.** Certain non-recurring expenses incurred by or on behalf of the adoptive parent(s) in connection with the adoption of a child with special needs may be reimbursed.

(A) **Reimbursable expenses.** Non-recurring adoption expenses are the reasonable and necessary adoption fees, court costs, attorney fees, and other expenses that are directly related to the legal adoption of a child with special needs, are not incurred in violation of state or federal law, and have not been reimbursed from other sources or funds. Financial reimbursement is available to the adoptive parent(s) of an eligible child for:

(i) adoption fees;

(ii) court costs;

(iii) attorney fees;

(iv) adoptive home study fee;

(v) costs incurred to obtain health and psychological reports on family members;

(vi) supervision of the adoptive placement by another agency;

(vii) transportation, food, and lodging for the adoptive parent(s) and child during the placement process; and

(viii) cost of fingerprinting paid by the adoptive parent(s).

(B) **Eligibility.** The child must meet all eligibility criteria for a child with special needs, per OAC 340:75-15-128.4, and have been placed for adoption in accordance with applicable state and local laws. The child does not have to be in the custody of OKDHS or a federally recognized tribe at the time of finalization of the adoption. The child does not have to meet the Title IV-E categorical eligibility requirements for adoption assistance, per OAC 340:75-15-128.2.

(C) **Amount of reimbursement.** Reimbursement of non-recurring adoption expenses, as defined in OAC 340:75-15-128.1(a)(4)(A), may be approved on behalf of the eligible child as described in (i) and (ii).

(i) **Finalized adoption.** Assistance is limited to documented actual expenses incurred up to a maximum of \$1,200 per child if the adoption is finalized. If an Order Terminating Parental Rights or Order Determining the Child Eligible for Adoption Without the Consent of a Biological Parent had to be obtained in the adoption case, a request for reimbursement up to a maximum of \$2,000 per child is considered by OKDHS on a case-by-case basis. In cases where siblings are placed together with the same adoptive family, each child is treated as an individual with separate reimbursement for non-recurring expenses.

(ii) **Non-finalized adoption.** A potential adoptive parent(s) whose trial adoption disrupts prior to finalization may be eligible for up to a maximum reimbursement of \$500 per child.

(D) **Approval and payment.** The request for reimbursement of non-recurring adoption expenses must be approved and Form DCFS-68, Adoption Assistance Agreement, signed by the adoptive parent(s) and OKDHS designee prior to finalization of the adoption. Payment is made directly to the adoptive parent(s) for approved amounts shown on the itemized statement as paid in full. Payment is made directly to a vendor, such as an attorney and private adoption agency, for the fee that the itemized statement indicates has not yet been paid in full by the adoptive parent(s). ■ 1

(E) **Interstate placement.** The provisions of OAC 340:75-15-128.5(b) apply to reimbursement of non-recurring adoption expenses in interstate adoptions.

(b) **Overpayments.** CFSD Adoption Assistance Section staff immediately notifies the adoptive parent(s) when it is discovered that an overpayment has occurred. The adoptive parent(s) is responsible for repayment, even if he or she is not responsible for causing the overpayment. If the adoptive parent(s) was previously the adopted child's foster parent(s) and foster care payments continued after adoption assistance

payments began, a repayment plan is required. The adoptive parent(s) is notified in writing of the overpayment and given 30 days in which to repay. Failure to repay results in an automatic reduction of no less than 10% of each future month's payment until the overpayment is satisfied. Any other types of overpayments are handled in the same manner.

(c) **Modification.** Form DCFS-68, Adoption Assistance Agreement, may be modified and the adoption assistance payment amount may be readjusted periodically when warranted by a change in circumstances and with the concurrence of the adoptive parent(s). A change in the child's eligibility for the DOC rate paid constitutes a change in circumstance.

(1) The adoption assistance payment amount may not be automatically adjusted without agreement of the adoptive parent(s) except for an across-the-board reduction or increase in OKDHS foster care reimbursement rates or DOC rates.

(2) Modification of Form DCFS-68, Adoption Assistance Agreement, is prospective only and may not be retroactive.

(3) If the parties cannot come to an agreement, OKDHS establishes the payment amount.

(4) The adoptive parent(s) has a duty to inform OKDHS of circumstances that would make the child ineligible for adoption assistance payments or eligible for payments of a different amount. OKDHS may require:

(A) the adoptive parent(s) to provide updated documentation of a child's ongoing eligibility for the payment amount received; and

(B) evaluation of a child by a suitably licensed or certified examiner selected by OKDHS if the child's eligibility is in question.

(d) **Termination.** Once an Adoption Assistance Agreement is signed and in effect, it is only terminated if one of the conditions described in (1) through (3) is met.

(1) The child has attained the age of 18 years, except where OKDHS determines that the child has a severe physical or mental disability that warrants the continuation of assistance until the child reaches the age of 19 years.

(A) The child may be considered for continued assistance after reaching the age of 19 years and until 21 years when the child has applied for Supplemental Security Income (SSI) and the initial application for SSI is pending or has been

denied and the child's needs, conditions, or behaviors meet the criteria for DOC Rate IV or V as determined by OKDHS.

(B) Prior to the child reaching 19 years, in order for adoption assistance to continue after the child's 19<sup>th</sup> birthday, the adoptive parent(s) must provide OKDHS documentation that:

(i) shows application for SSI benefits has been received by Social Security Administration (SSA) and is pending or has been denied; and

(ii) demonstrates the child's needs, conditions, or behaviors meet the criteria for DOC Rate IV or V. When the SSI application is pending, the adoptive parent(s) must provide documentation monthly to OKDHS that demonstrates due diligence in securing for SSA the necessary information to timely process the child's SSI application.

(C) Adoption assistance payments terminate when SSI payments are approved and in no event continue after the child reaches the age of 21 years.

(D) Failure to comply with OAC 340:75-15-128.1(d) results in termination of adoption assistance payments on the child's 19<sup>th</sup> birthday or on the month following failure to provide documentation on a pending SSI application, whichever occurs first.

(2) A determination is made by OKDHS that the adoptive parent(s) is no longer legally responsible for support of the child.

(3) OKDHS determines that the adoptive parent(s) is no longer providing financial support to the child. If a child is placed in out-of-home care, including psychiatric, residential, therapeutic, or foster family care, and the adoptive parent(s) continues to provide financial support to the child, adoption assistance may continue. The rate of payment may be renegotiated, as appropriate.

(e) **Death of adoptive parents or dissolution of the adoption.** Any child who was receiving Title IV-E adoption assistance at the time of the death of all of the child's adoptive parents or at the time the adoption dissolves may be eligible for adoption assistance if he or she is adopted again after October 1, 1997. A child receiving state funded adoption assistance is eligible if adopted after May 29, 1998. To be eligible, the child must continue to meet the special needs criteria and all of the requirements in (1) through (4).

(1) The prospective adoptive parent(s) must make application on Form DCFS-54,

Adoption Assistance Application.

(2) The prospective adoptive parent(s) must provide from a district or tribal court a copy of a file-stamped Petition for Adoption if requesting prefinalization adoption assistance or a Final Decree of Adoption if requesting adoption assistance to begin after adoption.

(3) OKDHS must be able to document the child was receiving Title IV-E or state funded assistance at the time of the death of the adoptive parent(s) or at the time the adoption dissolved.

(4) OKDHS must be provided documentation that the new adoptive parent(s) is not the biological parent(s).

(f) **Relocation by adoptive family to another state.** An Adoption Assistance Agreement signed on or after October 1, 1983 remains in effect regardless of the state in which the adoptive parent(s) is a resident at any given time.

### **INSTRUCTIONS TO STAFF**

**1. Approval and payment for non-recurring adoption expenses. The payment process for non-recurring adoption expenses is outlined in (1) through (3).**

**(1) The designated Adoption Assistance staff completes the Adoption Fees Authorization to Purchase screen in the Finance System and mails the authorization form to the vendor.**

**(2) The authorization is signed by both the vendor and an adoptive parent and is returned to Oklahoma Department of Human Services (OKDHS) Finance Division as shown on the form.**

**(3) OKDHS Finance Division issues payment to the vendor within ten business days of receipt of the authorization form.**