

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Introduced**

## **Senate Bill 504**

BY SENATORS SYPOLT AND ROMANO

[Introduced February 1, 2019; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-112 of the Code of West Virginia, 1931, as amended, relating  
2 to the payment of attorney fees in subsidized adoptions or guardianships directly to the  
3 attorney.

*Be it enacted by the Legislature of West Virginia:*

#### **ARTICLE 4. COURT ACTIONS.**

##### **§49-4-112. Subsidized adoption and legal guardianship; conditions.**

1 (a) From funds appropriated to the Department of Health and Human Resources, the  
2 secretary shall establish a system of assistance for facilitating the adoption or legal guardianship  
3 of children. An adoption subsidy shall be available for children who are legally free for adoption  
4 and who are dependents of the department or a child welfare agency licensed to place children  
5 for adoption. A legal guardianship subsidy may not require the surrender or termination of parental  
6 rights. For either subsidy, the children must be in special circumstances because one or more of  
7 the following conditions inhibit their adoption or legal guardianship placement:

8 (1) They have a physical or mental disability;

9 (2) They are emotionally disturbed;

10 (3) They are older children;

11 (4) They are a part of a sibling group; or

12 (5) They are a member of a racial or ethnic minority.

13 (b)(1) The department shall provide assistance in the form of subsidies or other services  
14 to parents who are found and approved for adoption or legal guardianship of a child certified as  
15 eligible for subsidy by the department, but before the final decree of adoption or order of legal  
16 guardianship is entered, there must be a written agreement between the family entering into the  
17 subsidized adoption or legal guardianship and the department.

18 (2) Adoption or legal guardianship subsidies in individual cases may commence with the  
19 adoption or legal guardianship placement, and will vary with the needs of the child as well as the  
20 availability of other resources to meet the child's needs. The subsidy may be for special services

21 only, or for money payments, and either for a limited period, or for a long term, or for any  
22 combination of the foregoing.

23 (3) The specific financial terms of the subsidy shall be included in the agreement between  
24 the department and the adoptive parents or legal guardians. The agreement ~~may recognize and~~  
25 shall provide for direct payment by the department of attorney's fees to an attorney representing  
26 the adoptive parent. The attorney shall submit an invoice for his or her work along with a copy of  
27 the final order to the caseworker responsible for the child or children. If funds exist, the invoice  
28 shall be paid within 45 days of submission of the invoice by the attorney.

29 (4) The amount of the time-limited or long-term subsidy may in no case exceed that which  
30 would be allowable from time to time for the child under foster family care or, in the case of a  
31 special service, the reasonable fee for the service rendered.

32 (5) In addition, the department shall provide either Medicaid or other health insurance  
33 coverage for any special needs child for whom there is an adoption or legal guardianship  
34 assistance agreement between the department and the adoptive parent or legal guardian and  
35 who the department determines cannot be placed with an adoptive parent or legal guardian  
36 without medical assistance because the child has special needs for medical, mental health or  
37 rehabilitative care.

38 (c) After reasonable efforts have been made without the use of subsidy and no appropriate  
39 adoptive family or legal guardian has been found for the child, the department shall certify the  
40 child as eligible for a subsidy in the event of adoption or a legal guardianship. Reasonable efforts  
41 to place a child without a subsidy shall not be required if it is in the best interest of the child  
42 because of the factors as the existence of significant emotional ties developed between the child  
43 and the prospective parent or guardian while in care as a foster child.

44 (d) If the child is the dependent of a voluntary licensed child-placing agency, that agency  
45 shall present to the department evidence of the inability to place the child for adoption or legal  
46 guardianship without the use of subsidy or evidence that the efforts would not be in the best

47 interests of the child. In no event may the value of the services and assistance provided by the  
48 department under an agreement pursuant to this section exceed the value of assistance available  
49 to foster families in similar circumstances. All records regarding subsidized adoptions or legal  
50 guardianships are to be held in confidence; however, records regarding the payment of public  
51 funds for subsidized adoptions or legal guardianships shall be available for public inspection  
52 provided they do not directly or indirectly identify any child or persons receiving funds for the child.

NOTE: The purpose of this bill is to require the West Virginia Department of Health and Human Resources to make payment of attorney fees as allowed by law directly to the attorney instead of to the adoptive parent, in order to end acts of fraud and mistake wherein the adoptive parent/s fraudulently or mistakenly convert the attorney payment to their personal use thereby defrauding the State of West Virginia and the attorney. The bill also requires the department to make timely payment.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.