

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 516**

SENATORS BOSO, SWOPE, AND MARONEY, *original sponsors*

[Originating in the Committee on the Judiciary;

Reported on February 12, 2019]



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's fees in subsidized adoptions or guardianships directly to the  
3 attorney; requiring an attorney to submit certain documentation to the caseworker  
4 responsible for the child or children; and requiring Department of Health and Human  
5 Resources to pay invoices within 45 days, if funds are available.

*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~~ a child who is legally free  
4 for adoption and who ~~are dependents~~ is a dependent of the department or a child welfare agency  
5 licensed to place children for adoption. A legal guardianship subsidy may not require the  
6 surrender or termination of parental rights. For either subsidy, ~~the children~~ a child must be in  
7 special circumstances because one or more of the following conditions inhibit ~~their~~ the child's  
8 adoption or legal guardianship placement:

9 (1) ~~They have~~ The child has a physical or mental disability;

10 (2) ~~They are~~ The child is emotionally disturbed;

11 (3) ~~They are older children~~ The child is an older child;

12 (4) ~~They are~~ The child is a part of a sibling group; or

13 (5) ~~They are~~ The child is a member of a racial or ethnic minority.

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

19           (2) Adoption or legal guardianship subsidies in individual cases may commence with the  
20 adoption or legal guardianship placement, and will vary with the needs of the child as well as the  
21 availability of other resources to meet the child's needs. The subsidy may be for special services  
22 only, or for money payments, and either for a limited period, or for a long term, or for any  
23 combination of the foregoing.

24           (3) The specific financial terms of the subsidy shall be included in the agreement between  
25 the department and the adoptive parents or legal guardians. The agreement ~~may recognize and~~  
26 shall provide for direct payment by the department of attorney's fees to an attorney representing  
27 the adoptive parent or the legal guardian. The attorney shall submit an invoice for his or her work  
28 that is in compliance with rules of the State Auditor, along with a copy of the final order, to the  
29 caseworker responsible for the child or children. If funds exist, the department shall pay the  
30 invoice within 45 days of submission of the invoice and final order by the attorney. The department  
31 shall propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code,  
32 setting forth a fee schedule for attorneys representing adoptive parents and legal guardians in  
33 these cases.

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

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

43           (c) After reasonable efforts have been made without the use of subsidy and no appropriate  
44 adoptive family or legal guardian has been found for the child, the department shall certify the

45 child as eligible for a subsidy in the event of adoption or a legal guardianship. Reasonable efforts  
46 to place a child without a subsidy shall not be required if it is in the best interest of the child  
47 because of the existence of significant emotional ties developed between the child and the  
48 prospective parent or guardian while in care as a foster child.

49 (d) If the child is the dependent of a voluntary licensed child-placing agency, that agency  
50 shall present to the department evidence of the inability to place the child for adoption or legal  
51 guardianship without the use of subsidy or evidence that the efforts would not be in the best  
52 interests of the child. In no event may the value of the services and assistance provided by the  
53 department under an agreement pursuant to this section exceed the value of assistance available  
54 to foster families in similar circumstances. All records regarding subsidized adoptions or legal  
55 guardianships are to be held in confidence; however, records regarding the payment of public  
56 funds for subsidized adoptions or legal guardianships shall be available for public inspection  
57 provided they do not directly or indirectly identify any child or persons receiving funds for the child.