

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4551

BY DELEGATES HILL AND PACK

(BY REQUEST OF THE WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES)

[Introduced January 27, 2020; Referred to the
Committee on Health and Human Resources then
Finance.]

1 A BILL to amend and reenact §49-4-112 of the Code of West Virginia, 1931, as amended, relating
2 to subsidized adoption; establishing criteria for the continued receipt of adoption subsidies;
3 providing an enhanced definition of support; and establishing mechanisms to limit the
4 subsidy for families with children in long-term residential placement.

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~~ members 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 provide for direct payment by the department of attorney's fees to an attorney representing the
26 adoptive parent.

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

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

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

42 (d) If the child is the dependent of a voluntary licensed child-placing agency, that agency
43 shall present to the department evidence of the inability to place the child for adoption or legal
44 guardianship without the use of subsidy or evidence that the efforts would not be in the best
45 interests of the child. In no event may the value of the services and assistance provided by the

46 department under an agreement pursuant to this section exceed the value of assistance available
47 to foster families in similar circumstances. All records regarding subsidized adoptions or legal
48 guardianships are to be held in confidence; however, records regarding the payment of public
49 funds for subsidized adoptions or legal guardianships shall be available for public inspection
50 provided they do not directly or indirectly identify any child or person receiving funds for the child.

51 (e) Notwithstanding any other provision of this section, a payment may not be made to
52 adoptive parents or legal guardians with respect to a child:

53 (1) Who has attained:

54 (A) Eighteen years of age, unless the department determines that the child has a mental
55 or physical handicap which warrants the continuation of assistance or the child is continuing his
56 or her education or actively engaging in employment;

57 (B) Twenty-one years of age;

58 (2) Who has not attained 18 years of age, if the department determines that the adoptive
59 parent or legal guardian is no longer supporting the child. For the purposes of this subdivision,
60 “support” shall mean such actions as to maintain a familial bond with the child.

61 (f) Adoptive parents and legal guardians who receive adoption subsidy payments pursuant
62 to this section shall keep the department informed of circumstances which would, pursuant to
63 §49-4-112(e) of this code, make them ineligible for the payment.

NOTE: The purpose of this bill is to define criteria for continuing to receive an adoption subsidy when the adopted child is placed out of the home, to establish an enhanced definition of the “support” requirement codified in the Federal Social Security Act, 42 U.S.C §673(a)(4)(A)(ii), and to provide mechanisms for reducing the subsidy for families with children in long-term residential placement.

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