

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 52

BY SENATOR SYPOLT

[Introduced February 10, 2021; 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. A legal guardianship subsidy may not require the
5 surrender or termination of parental rights. For either subsidy, the children must be in special
6 circumstances because one or more of the following conditions inhibit their adoption or legal
7 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 services to
14 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 shall 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 services, money

21 payments, for a limited period, or for a long term, or for any combination of the foregoing.

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

30 (4) The amount of the subsidy may in no case exceed that which would be allowable for
31 the child under foster family care or, in the case of a service, the reasonable fee for the service
32 rendered.

33 (5) The department shall provide either Medicaid or other health insurance coverage for
34 any special needs child for whom there is an adoption or legal guardianship assistance
35 agreement, and who the department determines cannot be placed without medical assistance.

36 (c) The department shall certify the child as eligible for a subsidy to obtain adoption or a
37 legal guardianship if it is in the best interest of the child.

38 (d) All records regarding subsidized adoptions or legal guardianships are to be held in
39 confidence; however, records regarding the payment of public funds for subsidized adoptions or
40 legal guardianships shall be available for public inspection provided they do not directly or
41 indirectly identify any child or person receiving funds for the child.

42 (e) A payment may not be made to adoptive parents or legal guardians of child:

43 (1) Who has attained 18 years of age, unless the department determines that the child
44 has a special need which warrants the continuation of assistance or the child is continuing his or
45 her education or actively engaging in employment;

46 (2) Who has obtained 21 years of age;

47 (3) Who has not attained 18 years of age, if the department determines that the adoptive
48 parent or legal guardian is no longer supporting the child by performing actions to maintain a
49 familial bond with the child.

50 (f) Adoptive parents and legal guardians who receive subsidy payments pursuant to this
51 section shall keep the department informed of circumstances which would, pursuant to §49-4-
52 112(e) of this code, make them ineligible for the payment.

NOTE: The purpose of this bill is to ensure the department makes timely payment of fees.

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