

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4107**

BY DELEGATES FOSTER, STEELE, BUTLER, WAXMAN,

CADLE, J. JEFFRIES, ANDERSON, FAST, KESSINGER,

LOVEJOY AND ROWE

[Introduced January 13, 2020; Referred to the Committee

on Health and Human Resources]

1 A BILL to amend and reenact §49-4-112 of the Code of West Virginia, 1931, as amended, relating  
 2 to requiring the Department of Health and Human resources to pay the attorney fees of  
 3 an adoptive parent in a subsidized adoption.

*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~~ shall recognize  
25 and provide for direct payment by the department of attorney's fees to an attorney representing  
26 the 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 as the existence of significant emotional ties developed between the child  
41 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 persons receiving funds for the child.

NOTE: The purpose of this bill is to require an agreement concerning subsidized adoption be required to provide for direct payment by the Department of Health and Human Resources the attorney's fees of the adoptive parent.

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