

SPECIAL NEEDS ADOPTION SERVICES

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

This act modifies the Human Services Code to provide a description of the types of special needs adoption services available to adoptive parents and the eligibility for those services.

The act amends the description of duties for the Division of Child and Family Services regarding financial support for adoptions. The act makes technical changes to adoption assistance agreements under interstate compacts.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

62A-4a-105, as last amended by Chapters 274 and 370, Laws of Utah 1998

ENACTS:

62A-4a-801, Utah Code Annotated 1953

62A-4a-802, Utah Code Annotated 1953

62A-4a-803, Utah Code Annotated 1953

62A-4a-804, Utah Code Annotated 1953

62A-4a-805, Utah Code Annotated 1953

62A-4a-806, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

62A-4a-807, (Renumbered from 62A-4a-108, as last amended by Chapter 251, Laws of Utah 1999)

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **62A-4a-105** is amended to read:

62A-4a-105. Division responsibilities.

The division shall:

(1) administer services to children and families, including child welfare services, youth

28 services, domestic violence services, and all other responsibilities that the Legislature or the
29 executive director may assign to the division;

30 (2) establish standards for all contract providers of out-of-home care for children and
31 families;

32 (3) cooperate with the federal government in the administration of child welfare, youth
33 services, and domestic violence programs and other human service activities assigned by the
34 department;

35 (4) provide for the compilation of relevant information, statistics, and reports on child and
36 family service matters in the state;

37 (5) prepare and submit to the department, the governor, and the Legislature reports of the
38 operation and administration of the division in accordance with the requirements of Sections
39 62A-4a-117 and 62A-4a-118;

40 (6) promote and enforce state and federal laws enacted for the protection of abused,
41 neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in
42 accordance with the requirements of this chapter, unless administration is expressly vested in
43 another division or department of the state. In carrying out the provisions of this subsection, the
44 division shall cooperate with the juvenile courts, the Division of Youth Corrections, and with all
45 public and private licensed child welfare agencies and institutions to develop and administer a
46 broad range of services and supports. The division shall take the initiative in all matters involving
47 the protection of abused or neglected children if adequate provisions have not been made or are
48 not likely to be made, and shall make expenditures necessary for the care and protection of those
49 children, within the division's budget;

50 (7) provide substitute care for dependent, abused, neglected, and delinquent children,
51 establish standards for substitute care facilities, and approve those facilities;

52 (8) provide ~~[financial support]~~ adoption assistance to persons adopting ~~[physically~~
53 ~~handicapped, mentally handicapped, older, or other hard-to-place]~~ children ~~[who, immediately~~
54 ~~prior to adoption, were legal wards of the state]~~ with special needs under Part 8 of this chapter.
55 The financial support provided under this subsection may not exceed the amounts the division
56 would provide for the child as a legal ward of the state;

57 (9) cooperate with the Division of Employment Development in the Department of
58 Workforce Services in meeting social and economic needs of individuals eligible for public

59 assistance;

60 (10) conduct court-ordered home evaluations for the district and juvenile courts with
61 regard to child custody issues. The court shall order either or both parties to reimburse the division
62 for the cost of that evaluation, in accordance with the community rate for that service or with the
63 department's fee schedule rate;

64 (11) provide noncustodial and in-home preventive services, designed to prevent family
65 breakup, family preservation services, and reunification services to families whose children are in
66 substitute care in accordance with the requirements of this chapter and Title 78, Chapter 3a,
67 Juvenile [~~Courts~~] Court Act of 1996;

68 (12) provide protective supervision of a family, upon court order, in an effort to eliminate
69 abuse or neglect of a child in that family;

70 (13) establish programs pursuant to Section 62A-4a-250, and provide services to runaway
71 and ungovernable children and their families;

72 (14) provide shelter care in accordance with the requirements of this chapter and Title 78,
73 Chapter 3a, Juvenile [~~Courts~~] Court Act of 1996;

74 (15) provide social studies and reports for the juvenile court in accordance with Section
75 78-3a-505;

76 (16) arrange for and provide training for staff and providers involved in the administration
77 and delivery of services offered by the division in accordance with this chapter;

78 (17) provide domestic violence services in accordance with the requirements of federal
79 law, and establish standards for all direct or contract providers of domestic violence services.
80 Within appropriations from the Legislature, the division shall provide or contract for a variety of
81 domestic violence services and treatment methods;

82 (18) ensure regular, periodic publication, including electronic publication, regarding the
83 number of children in the custody of the division who have a permanency goal of adoption, or for
84 whom a final plan of termination of parental rights has been approved, pursuant to Section
85 78-3a-312, and promote adoption of those children;

86 (19) provide protective services to victims of domestic violence, as defined in Section
87 77-36-1, and their children, in accordance with the provisions of this chapter and of Title 78,
88 Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings;

89 (20) have authority to contract with a private, nonprofit organization to recruit and train

90 foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and
91 (21) perform such other duties and functions as required by law.

92 Section 2. Section **62A-4a-801** is enacted to read:

93 **Part 8. Adoption Assistance**

94 **62A-4a-801. Legislative purpose.**

95 The purpose of this part is to provide adoption assistance to eligible adoptive families to
96 establish and maintain a permanent adoptive placement for a child who:

97 (1) immediately prior to adoption was a legal ward of the state; and

98 (2) has a special need.

99 Section 3. Section **62A-4a-802** is enacted to read:

100 **62A-4a-802. Definitions.**

101 (1) (a) "Adoption assistance" means direct financial subsidies and support to adoptive
102 parents of a child with special needs or whose need or condition has created a barrier that would
103 prevent a successful adoption.

104 (b) "Adoption assistance" may include state medical assistance, reimbursement of
105 nonrecurring adoption expenses, or monthly subsidies.

106 (2) "Child who has a special need" means a child who cannot or should not be returned
107 to the home of his biological parents and who meets at least one of the following conditions:

108 (a) the child is five years of age or older;

109 (b) the child is under the age of 18 with a physical, emotional, or mental disability;

110 (c) the child is three years of age or older, but under 18 years old, and a member of a
111 minority, racial, or ethnic group; or

112 (d) the child is a member of a sibling group placed together for adoption.

113 (3) "Monthly subsidy" means financial support to assist with the costs of adopting a child
114 who has a special need.

115 (4) "Nonrecurring adoption expenses" means reasonably necessary adoption fees, court
116 costs, attorney's fees, and other expenses which are directly related to the legal adoption of a child
117 who has a special need.

118 (5) "State medical assistance" means the Medicaid program and medical assistance as
119 defined in Subsections 26-18-2(4) and (5).

120 (6) "Supplemental adoption assistance" means financial support for extraordinary,

121 infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state
122 medical assistance, or other public benefits for which a child who has a special need is eligible.

123 Section 4. Section **62A-4a-803** is enacted to read:

124 **62A-4a-803. Eligibility.**

125 (1) The Board of Child and Family Services shall establish by rule, eligibility criteria for
126 the receipt of adoption assistance and supplemental adoption assistance.

127 (2) Eligibility determination shall be based upon:

128 (a) the needs of the child;

129 (b) the resources available to the child; and

130 (c) the federal requirements of Section 473, Social Security Act.

131 Section 5. Section **62A-4a-804** is enacted to read:

132 **62A-4a-804. Adoption assistance.**

133 (1) Pursuant to federal requirements of Section 673 et seq. of the Social Security Act, the
134 Division of Child and Family Services:

135 (a) shall provide for:

136 (i) payment of nonrecurring adoption expenses for an eligible child who has a special need;

137 and

138 (ii) state medical assistance when required by federal law; and

139 (b) may provide for monthly subsidies for an eligible child who has a special need.

140 (2) Payment of nonrecurring adoption expenses may not exceed \$2,000 and shall be

141 limited to costs incurred prior to finalization of an adoption.

142 (3) The level of monthly subsidy under Subsection (1)(b) shall be based on:

143 (a) the child's present and long-term treatment and care needs;

144 (b) available resources; and

145 (c) the family's ability to meet the needs of the child.

146 (4) (a) The level of monthly subsidy may increase or decrease when the child's level of
147 need or the family's ability to meet the child's need changes.

148 (b) Either the family or the division may initiate changes to the monthly subsidy.

149 (5) Financial support provided under Subsection (1)(b) may not exceed the amount the
150 division would provide for the child if the child were a legal ward of the state.

151 Section 6. Section **62A-4a-805** is enacted to read:

152 **62A-4a-805. Supplemental adoption assistance.**

153 Based upon annual appropriations levels and board policy, the division may provide
154 supplemental adoption assistance for children who have a special need. Supplemental adoption
155 assistance may be provided only after all other resources for which a child is eligible have been
156 exhausted or determined to be unavailable.

157 Section 7. Section **62A-4a-806** is enacted to read:

158 **62A-4a-806. Termination or modification of adoption assistance.**

159 (1) Adoption assistance may not be terminated or modified unless the division has given
160 adoptive parents notice and opportunity for a hearing as required in Title 63, Chapter 46b,
161 Administrative Procedures Act.

162 (2) Adoption assistance shall be terminated if any of the following occur:

163 (a) the adoptive parents request termination;

164 (b) the child reaches 18 years of age, unless approval has been given by the division to
165 continue beyond the age of 18 due to mental or physical disability, but in no case shall assistance
166 continue after a child reaches 21 years of age;

167 (c) the child dies;

168 (d) the adoptive parents die;

169 (e) the adoptive parent's legal responsibility for the child ceases; or

170 (f) the state determines that the child is no longer receiving support from the adoptive
171 parents.

172 Section 8. Section **62A-4a-807**, which is renumbered from Section 62A-4a-108 is
173 renumbered and amended to read:

174 ~~[62A-4a-108].~~ **62A-4a-807. Interstate compact adoption assistance agreements.**

175 (1) As used in this section:

176 (a) "Adoption assistance" means financial support to adoptive parents provided under the
177 Adoption Assistance and Child Welfare Act of 1980, Title IV (e) of the Social Security Act, and
178 Title XIX of the Social Security Act.

179 (b) "Adoption assistance agreement" means a written agreement between the division and
180 adoptive parents, or between any other state and adoptive parents, providing for adoption
181 assistance.

182 (2) The division may develop and negotiate interstate compacts for the provision of

183 medical identification and assistance to adoptive parents who receive adoption assistance. An
184 interstate compact shall include:

185 (a) a provision for joinder by all states;

186 (b) a provision for withdrawal from the compact upon written notice to the parties, with
187 a period of one year between the date of the notice and the effective date of withdrawal;

188 (c) a requirement that each instance of adoption assistance to which the compact applies
189 be covered by a written adoption assistance agreement between the adoptive parents and the
190 agency of the state which initially agrees to provide adoption assistance, and that any agreement
191 is expressly for the benefit of the adopted child and is enforceable by the adoptive parents, and by
192 the state agency providing adoption assistance;

193 (d) a provision that a child who is the subject of an adoption assistance agreement with
194 another party state, and who subsequently becomes a resident of this state, shall receive medical
195 identification and assistance in this state under the Adoption Assistance and Child Welfare Act of
196 1980, Title IV (e) of the Social Security Act, and Title XIX of the Social Security Act, based on
197 his adoption assistance agreement;

198 (e) a provision that a child who is the subject of an adoption assistance agreement with the
199 division, and who subsequently becomes a resident of another party state, shall receive medical
200 identification and assistance from that state under the Adoption and Child Welfare Act of 1980,
201 Title IV (e) of the Social Security Act, and Title XIX of the Social Security Act, based on his
202 adoption assistance agreement; and

203 (f) a requirement that the protections of the compact continue for the duration of the
204 adoption assistance and apply to all children and their adoptive parents who receive adoption
205 assistance from a party state other than the state in which they reside.

206 (3) (a) The division shall provide services to a child who is the subject of an adoption
207 assistance agreement executed by the division, and who is a resident of another state, if those
208 services are not provided by the child's residence state under an interstate compact.

209 (b) The division may reimburse the adoptive parents upon receipt of evidence of their
210 payment for services for which the child is eligible, which were not paid by the residence state, and
211 are not covered by insurance or other third party medical contract. The services provided under
212 this subsection are those for which there is no federal contribution, or which, if federally aided, are
213 not provided by the residence state.

214 ~~[(4) No later than October 1, 1999, the division shall report to the Legislative Health and~~
215 ~~Human Services Interim Committee on the funding of services to families that have adopted a~~
216 ~~child who was previously in the custody of the state. That report shall:]~~
217 ~~[(a) describe services, including financial assistance, that have been provided with state~~
218 ~~monies;]~~
219 ~~[(b) identify mechanisms for ensuring that adequate funding is available for services to the~~
220 ~~child and the adoptive family until the child reaches 18 years of age;]~~
221 ~~[(c) include a review of methods used by other states to ensure funding of on-going~~
222 ~~support of adopted children and their adoptive families;]~~
223 ~~[(d) identify any known instances where the division has been unable to provide reasonable~~
224 ~~levels of service because of a lack of state funds; and]~~
225 ~~[(e) include other recommendations by the division.]~~

Legislative Review Note
as of 1-2-01 9:25 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel