

OFFICE OF COLORADO'S  
**CHILD PROTECTION**  
**OMBUDSMAN**

INVESTIGATION REPORT CASE 2016-2074



Stephanie Villafuerte  
Child Protection Ombudsman  
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# LETTER FROM THE OMBUDSMAN

Dear Citizens and Stakeholders,

Every year we celebrate National Adoption Day in November. On this day, we finalize the adoptions of children and we celebrate the commitment that parents and children make to one another to become forever families. However, the day a child's adoption is finalized marks just one step in their parents' lifelong journey to care for these children.

Many children adopted in Colorado have experienced abuse, neglect, multiple placements and institutionalization. These experiences often cause physical, psychological, emotional and developmental harm which affects children throughout their lives. Colorado has increased its efforts to find more adoptive families for children in need of safe and caring homes. While these efforts are laudable, it is equally important for us to remember that we must also focus our attention and resources on the long-term well-being and stability of these families.

The Office of Colorado's Child Protection Ombudsman launched its investigation of Colorado's adoption assistance program on August 26, 2016. The opportunity to study this complex program comes at a crucial time in our state's history. During the past several years, Colorado has made tremendous efforts to reduce the number of children in the child welfare system who live in long-term congregate care.

Adoption has become an important tool in the efforts to increase the number of permanent and stable homes for Colorado's abused and neglected children.

The number of adoptions completed each year in Colorado has continued to increase. In 2014, 773 adoptions were completed, 803 adoptions were completed in 2015 and 846 adoptions were completed in 2016, according to data provided by the Colorado Department of Human Services.

At the same time, many agencies in Colorado's child welfare system have embraced a new approach to helping children and families. This approach encourages human services agencies to provide holistic services to both a child and their family to ensure the best future for both.

The success of Colorado's adoption assistance program is critical to these efforts. This program is designed to encourage adoption of children with high needs, as well as to support parents in the care and raising of these children. The goal is to create healthy children and healthy families. To break the cycle of intergenerational abuse.

The Office of Colorado's Child Protection Ombudsman is an integral part of Colorado's child protection system. We recognize how important it is to work with all stakeholders to be outcome based and forward focused, as we all consider the best ways to meet the needs of Colorado's children and families.

The goal of this report is to examine the adoption assistance program and issues affecting the delivery of services to families. The recommendations provided in this report are designed to create positive change for everyone touched by this important program.

Sincerely,  
Stephanie Villafuerte  
Child Protection Ombudsman

# AUTHORITY

## Introduction

By design, the Office of Colorado's Child Protection Ombudsman (CPO) serves as an independent, neutral problem solver that helps citizens navigate a complex child protection system in an expert and timely manner. The Ombudsman has independent access to child protection records that are not otherwise available to the public. This allows the CPO to objectively review and investigate complaints, deliver recommendations and drive systemic reform through research and education. Through objective study the CPO works to improve the delivery of services to children and families within the child protection system.

## Jurisdiction

The CPO receives *"complaints concerning child protection services made by, or on behalf of, a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of a child. The ombudsman may, independently and impartially, investigate and seek resolution of such complaints, which resolution may include, but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint."* See C.R.S. 19-3.3-103(1)(a)(I)(A).

Pursuant to C.R.S. 19-3.3-101 to 110, the CPO does not have the authority to:

- Investigate allegations of abuse and/or neglect.
- Interfere or intervene in any criminal or civil court proceeding.
- Review or investigate complaints related to judges, magistrates, attorneys or guardians ad litem.
- Overturn any court order.
- Mandate the reversal of an agency or provider decision.
- Offer legal advice.

## Public Disclosure

In meeting its statutory requirements to *"improve accountability and transparency in*

*the child protection system and promote better outcomes for children and families involved in the child protection system,"* as stated in C.R.S. 19-3.3-101(2)(a), the CPO will provide the public and stakeholders any recommendations it makes to an agency or provider. The CPO will do so by publicly releasing its investigation reports.

## Impartiality

To maintain its impartiality – and in keeping with statute – the CPO will independently collect information, records and/or documents from an agency or provider when reviewing and/or investigating a complaint. *"In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents."* See C.R.S. 19-3.3-103(1)(a)(II)(A).

## Confidentiality

Pursuant to C.R.S. 19-3.3-103(1)(a)(II)(B), the CPO treats all complaints as confidential, including the *"identities of complainants and individuals from whom information is acquired; except that disclosures may be permitted if the Ombudsman deems it necessary to enable the Ombudsman to perform his/her duties and to support any recommendations resulting from an investigation."*

Further, C.R.S. 19-3.3-103(3) states that *"the Ombudsman, employees of the office, and any persons acting on behalf of the office shall comply with all state and federal confidentiality laws that govern the state department or a county department with respect to the treatment of confidential information or records and the disclosure of such information and records."* These laws include, but are not limited to, the Colorado Children's Code, CAPTA, HIPPA and FERPA.

The CPO will release identifying information to the proper authorities for anyone who makes any statements of credible harm to themselves or to someone else.

# EXECUTIVE SUMMARY

Children adopted in Colorado excel on the soccer field. They create masterpieces in art classrooms, they are listed on the honor roll at school and they bring immeasurable joy to the families they make whole. The adoptive parents and countless individuals who work to find children homes have allowed the hundreds of children adopted in Colorado every year an opportunity to thrive. The lives of most of these children, however, will also be forever impacted by the events they experience before they were placed in a home that was safe. Some were exposed to drugs and alcohol in utero. Others were neglected when they came home from the hospital. Many suffered severe emotional and physical abuse at the hands of their biological parents. The Colorado adoption assistance program was designed to encourage families to adopt children with special needs and to ensure those families have the supports necessary to provide safe and caring environments.

The Office of Colorado's Child Protection Ombudsman (CPO) received a complaint on July 29, 2016, alleging statewide disparities in adoption subsidy payments and inconsistencies in practices among county human services departments (county departments). These county departments work directly with families to provide services and benefits available under the adoption assistance program. The issues alleged in the complaint have been raised previously.

More than 15 years ago, Colorado's adoption assistance program was audited. The audit identified several insufficiencies in the program, many of which still exist today. Disparate rates have long dominated the discussion surrounding adoption assistance in Colorado because they are the most tangible element of the program. How a child's needs are determined and predicting what those needs will entail years into the future are parts of the program that are much harder to quantify. They are, however, essential factors in the equation. Through 16 months of research, the CPO has found that disparate adoption subsidy rates represent one of the many symptoms of a long-neglected program.

The CPO's investigation, which was opened on August 26, 2016, examined all sides of the adoption assistance program – from the federal laws that established it, to the families requesting assistance. Extensive collaboration with the Colorado Department of Human Services (CDHS), county departments, non-profit agencies and dozens of adoptive families provided the CPO with unprecedented access and insight into Colorado's program. This report details four areas of the adoption assistance program in need of improvement:

**The Law** – Omissions in state law and inconsistent interpretations of federal law and state rules have long plagued the foundation of Colorado's program. These laws fail to give families and practitioners adequate guidance on the services and subsidies available under the program. This has resulted in inconsistent policies across the state.

**The Operating Structure** – Various legal interpretations have resulted in inconsistent practices at the local level, ultimately weakening the operating structure in which county departments administer the program. Without impactful review and support, county departments have independently developed practices to meet the needs of their communities. The unintended consequence of this is a level of inconsistent practice that goes beyond the healthy flexibility county departments need to deliver services and benefits to families in their community. Families across Colorado expressed frustration and confusion concerning the various practices among county departments. This frustration is heightened by the fact there currently is no central location where families may access complete and accurate information about the adoption assistance program.

**The Funding** – Adoption subsidies and services pose a unique and demanding consideration for county departments' budgets. The high cost of providing for adoptive children's complex needs, the duration of the subsidy and the future unforeseen needs of these children make it challenging to adequately fund the program. The current formula used to allocate funds for the adoption assistance program also appears insufficient in capturing the complete

needs of families utilizing the program. The result is that county departments are forced to weigh the distribution of appropriate adoption subsidies against the fiscal demands of other child welfare programs in their departments.

**The Services** – While adoption from foster care has become a priority statewide, less attention has been paid to providing adoptive families and children the post-adoption services that are necessary to ensure they can remain in their homes and their families have the services that are required to raise them successfully. Accessing services, especially mental health care, after an adoption is finalized can be difficult. There is a lack of post-adoption services available for children and families in Colorado.

The above issues impact all 59<sup>1</sup> county departments that administer the statewide adoption assistance program. Improving these areas will ensure families across Colorado receive equitable consideration for benefits and services. This study dissected an expansive and complex system. The CPO found many challenges within the system—some that may be resolved in the near future. Others, however, are more complex and will require additional study and analysis by all stakeholders involved in Colorado's adoption community.

## COMPLAINT SUMMARY

On July 29, 2016, the CPO received a written complaint filed on behalf of two statewide agencies that serve adoptive children and families. The complaint detailed statewide concerns about the administration of the adoption assistance program in Colorado. The complaint stated that *"there is no consistency in the manner in which adoption assistance negotiations occur or the rate of the subsidy offered, if any."*

Specifically, the complaint alleges families across Colorado are experiencing the following:

1. Adoptive families are not provided clear guidance or expectations concerning the negotiation process and therefore cannot meaningfully participate on behalf of their child.
2. Adoptive families are provided incomplete or inaccurate information concerning services that may be covered by adoption assistance.
3. Adoptive families are not provided adequate information explaining how their subsidy amount was determined.

The CPO opened its investigation on August 26, 2016.

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<sup>1</sup> There are 59 county human services departments in Colorado providing services to the state's 64 counties. Five departments provide services for two counties. Those departments are: Grand and Jackson counties; Gunnison and Hinsdale counties; La Plata and San Juan counties; Mineral and Rio Grande counties and Ouray and San Miguel counties.



# SCOPE AND METHODOLOGY OF CPO INVESTIGATION

This investigation represents an unprecedented examination of the adoption assistance program in Colorado – both in the breadth of the families and stakeholders who worked with the CPO, and the depth of the analysis. The CPO spent more than a year studying the adoption assistance program across the state. That research included review of hundreds of documents, including federal and state law, Colorado rules and county-specific policies and program materials. While this information formed the foundation of the CPO's investigation, the CPO also relied upon the experiences and perspectives of adoptive families and stakeholders to guide its research and, ultimately, to help create recommendations for improving Colorado's adoption assistance program. In writing this report, the CPO was acutely aware that there is no benefit to oversimplifying any aspect of this program or the experiences of anyone involved.

The adoption assistance program impacts adoptions in multiple systems, including families in the public child welfare system, families who adopt through non-profit, private child placement agencies (CPAs) and families who adopt through kinship placements. In fulfilling the charge of the complaint, however, the CPO's investigation and resulting report remained centered on adoptions from the public child welfare system. It is the CPO's hope that this report serves as a catalyst for further conversations that will address the unique needs of multiple stakeholder groups within the adoption community.

Below is a summary of the CPO's method for completing this investigation, a summary of the materials used and the stakeholders the CPO worked with, as well as a description of how this report was written.

## **CPO Research and Analysis**

Colorado's adoption assistance program is overseen by the Colorado Department of Human Services (CDHS), but each of the state's 59 county human services departments

administers the program in their community differently. To understand the intricacies of each of the 59 county departments' programs, the CPO created a survey. (See Appendix A) The survey consisted of 23 questions regarding the adoption assistance program and requested copies of the county departments' policies (if applicable) and any other documentation the county departments felt was pertinent. The survey was sent to all 59 county departments on April 25, 2017. The CPO received completed surveys from 56 county departments. Of the 56 county departments that responded to the CPO, three indicated that they do not currently have any written policies for their adoption assistance program. In total, county departments submitted hundreds of pages of policies, state-prescribed forms and other information packets.

The CDHS provided the CPO several sets of data and reports. In total, the CPO received the following information from the CDHS:

- Financial data for fiscal years 2014, 2015 and 2016, demonstrating a county-by-county breakdown of the number of adoptions finalized, average adoption subsidy payments (with and without Medicaid Only agreements), number of Medicaid Only Agreements and number of Title IV-E Eligible adoptions.
- Financial data for fiscal years 2015, 2016 and 2017 demonstrating a county-by-county breakdown of foster care subsidy payments.
- Data demonstrating a county-by-county breakdown of active adoption assistance agreements in Colorado.
- Information regarding the award and distribution of Promoting Safe and Stable Families Program funding by the Office of Early Childhood.
- Information memorandums regarding the average annual adoption assistance payments by county departments.
- Colorado Title IV-E Adoption Assistance Monitoring Instrument and Non-Title IV-E Adoption Assistance Monitoring Instrument.
- Adoption Assistance Program Review letters distributed to county departments reviewed in 2016.



- Agendas for voluntary quarterly information meetings between the CDHS and county department staff.
- Nineteen initial decisions by administrative law judges and the corresponding final agency decisions regarding families' appeals of county department subsidy determinations.

The CPO completed an extensive study of the federal and state laws that guide the adoption assistance program, as well as the state rules used by county departments to create their individual program policies. These laws are cited in detail throughout this report. The CPO reviewed the following:

- The Adoption Assistance and Child Welfare Act of 1980, 42 United States Code (U.S.C.) 673
- The United States Department of Health and Human Services Child Welfare Policy Manual
- Colorado Revised Statute (C.R.S.) 26-7-101 to 108
- 12 Code of Colorado Regulations (C.C.R.) 2509-1 to 10 (Throughout this report, this set of regulations is referred to as Volume VII or "state rule.")
- Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit, March 2002. (See Appendix B)

### **CPO Interviews with Stakeholders**

The CPO conducted dozens of interviews with stakeholders during its investigation. The CPO met with representatives from the following agencies:

- The Colorado Department of Human Services
- The Colorado Human Services Directors Association
- Non-profit private agencies that provide services to adoptive families in Colorado

### **CPO Interviews with Adoptive Families**

The CPO interviewed more than two dozen pre-and post-adoption families. Eight of those families filed formal complaints with the CPO. Those cases were handled as individual investigations according to CPO Case Practices and Operating Procedures. The CPO did not

find any violations of child protection policy or law on the part of the county departments in those investigations. These investigations did, however, provide insight into issues that are addressed in this report.

The families that spoke with the CPO worked with county departments of all sizes. Some worked with county departments in rural areas and others in urban centers. Grievances and levels of frustrations varied among the families. Every family that spoke to the CPO described an area of the program they felt could be improved.

The CPO acknowledges that its work, by design, centers on complaints regarding the child protection system. As such, the information received from families during this investigation was of that nature. While the CPO was interested in soliciting information from families with positive experiences, it was beyond the scope of the CPO's resources to complete a statewide survey of the more than 9,000 adoptive families receiving adoption assistance in Colorado.

### **Writing this Report**

The CPO elected not to identify adoptive families, individual county departments or individual stakeholders, such as agency directors or supervisors. This was done intentionally to keep the focus on issues affecting the adoption assistance program as a whole.

### **How to Read this Report**

The CPO issued 14 recommendations as a result of this investigation. These recommendations are located throughout the Findings and Recommendations section of this report, along with any responses from relevant agencies. A chart summarizing the CPO's recommendations and any agency response is available on page 10.

Throughout this report, the terms "adoption assistance program," "adoption subsidies" and "adoption services" will be used.

- **"Adoption assistance program"** denotes the statewide program as it is administered at the county level.
- **"Adoption subsidies"** refers exclusively to monthly cash payments awarded

to adoptive children and families by county departments.

- **“Adoption services”** denotes other benefits a family may receive as part of an adoption assistance agreement, such as a Medicaid Only subsidy, a non-recurring payment or respite care.

## OVERVIEW OF COLORADO’S ADOPTION ASSISTANCE PROGRAM

### Introduction

When a child is abused or neglected, child welfare services may remove that child from their home and place them in foster care. While systems work to safely reunite the child with their family, there are times when these efforts fail and the child needs a safe and permanent home. However, the ability of the child welfare system to find suitable adoptive homes is often complicated by the fact that these children are victims of abuse and neglect who have extensive medical and emotional needs requiring constant and costly care often throughout their lifetimes.

### History of the Federal Adoption Assistance Program

In 1980, the federal government passed the Adoption Assistance and Child Welfare Act (Act) to encourage the adoption of children from the foster care system.<sup>2</sup> This law was created in direct response to the growing number of children who languish in foster care.

Prior to the Act’s passage, few states reimbursed families for the costs of adoption and the raising of a special needs child. As such, the primary way that families could afford to care for these children was to continue to serve as foster parents and receive reimbursement. The lack of policies in this area inadvertently served as a disincentive for low to moderate income families who wanted to adopt but were unable to afford the high costs of providing care. The underlying purpose of the Act is to provide incentives for families of any economic status to adopt special needs children.<sup>3</sup>

The federal legislation provides financial incentives to states to maintain adoption assistance programs by partially reimbursing them for the costs of providing certain benefits

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<sup>2</sup> 42 U.S.C. 673

<sup>3</sup> Elizabeth Oppenheim, Alice Bussiere, Ellen C. Segal, Adoption Assistance for Children with Special Needs, ADOPTION LAW AND PRACTICE 9.01(2), 2000

and services to families. All states, including Colorado, have adoption assistance programs. Since the Act's passage, thousands of children have been adopted, children who otherwise might have remained in foster care.<sup>4</sup>

Multiple benefits are available under this program, including a monthly adoption subsidy (cash assistance), non-recurring adoption expenses and Medicaid. Additionally, "case services" may be available for special equipment, speech, occupational and physical therapies, and other mental health services if those services are not covered by the cash assistance benefit or Medicaid agreement.<sup>5</sup>

The adoption assistance program has helped thousands of children access services that are critical to their health and well-being. As of September 2017, 9,851 children in Colorado were receiving some form of adoption assistance.<sup>6</sup>

### The Subsidy Program

When a family decides to adopt a child, they may request an adoption subsidy (cash assistance) and other services to meet their adoptive child's needs. There are two types of adoption subsidies in Colorado: Title IV-E (comprised of federal, state and county funds) and Non-Title IV-E (comprised of state and county funds).<sup>7</sup>

In Colorado, children adopted through the child welfare system or through private non-profit adoption agencies may be eligible for adoption assistance. In Colorado, the Title IV-E program provides the greatest number of adoption subsidies for children. This program creates a partnership between the federal and state government that subsidizes adoptions

of children who satisfy specific eligibility and categorical criteria.<sup>8</sup>

Eligibility criteria are complex and evolving.<sup>9</sup> However, one significant eligibility determinant is whether the child has "special needs." This term is defined differently in each state, but in Colorado the definition includes: older youth, membership in a sibling group, physical disability, cognitive disability, emotional disability, learning disability and membership in a minority group.<sup>10</sup> Essentially, special needs are defined broadly to include characteristics that would make the child's adoption more difficult.

The amount of cash assistance a child is eligible for is determined by considering the "circumstances of the adoptive parent" and the "needs of the child."<sup>11</sup> The use of a means test is prohibited in negotiating an adoption assistance agreement and therefore it is impermissible to base the subsidy amount solely on the income and assets of the adoptive family.<sup>12</sup> The payment may not exceed the amount the child received in foster care.<sup>13</sup> Typically, families negotiate with human services agencies before the adoption is finalized, to determine the subsidy amount the child will receive, if any.

Federal law intends for the parties to negotiate the amount of the subsidy, to ensure that the unique needs of every child are considered and that no need is discounted solely upon the basis of a predetermined subsidy rate.

For nearly three decades, national researchers have questioned the fairness of the adoption assistance negotiation process and whether it is the most effective means of ensuring that children with comparable special needs are

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<sup>4</sup> Mary Eschelbach Hansen, Distribution of Federal Entitlement: The Case of Adoption Assistance, *The Journal of Socio Econ.* December 1, 2008

<sup>5</sup> Volume VII, 7.306.52

<sup>6</sup> Data provided by CDHS on September 26, 2017

<sup>7</sup> This is a county/state subsidy program for children whose biological parents' income exceed federal limits, but whose children still qualify as having special needs.

<sup>8</sup> 42 U.S.C. 673 (a)(1)(2); Elizabeth Oppenheim et al., *Adoption Assistance for Children with Special Needs*, ADOPTION LAW AND PRACTICE 9.01(2), 2000.

<sup>9</sup> As of October 1, 2017, the eligibility for Title IV-E adoption assistance is no longer related to a child's biological parent's eligibility for Aid to Families with Dependent Children (AFDC). This will increase the number of Colorado children eligible for a Title IV-E adoption subsidy. See ACF information memorandum ACYF-C13-IM-05, issued September 28, 2017.

<sup>10</sup> Volume VII 7.306.4

<sup>11</sup> 42 U.S.C. 673(a)(3)

<sup>12</sup> ACYF-CB-PA-01-01 (U.S. Department of Health and Human Services) (1/23/01)

<sup>13</sup> 42 U.S.C. 673(a)(3)

being treated similarly.<sup>14</sup> While the debate on this issue continues, the negotiation process remains a critical element of the federal law and as such guides Colorado practice.

Once a subsidy has been awarded, it is memorialized into a formal adoption assistance agreement. This agreement is legally binding upon the parties.<sup>15</sup> Federal law permits the subsidy to be readjusted periodically if there are changes in circumstances and with the *concurrence* of the adoptive family.<sup>16</sup> In Colorado, these agreements are reviewed every three years from the date of the initial agreement.<sup>17</sup>

Adoption subsidies terminate when a child turns 18, but, in some cases, the subsidy continues until the child turns 21, if the state determines that the child has a mental or physical handicap which warrants continued assistance.<sup>18</sup> Subsidies can be discontinued if the state determines that the parents are no longer legally responsible for the support or care of the child or if the state determines that the child is no longer receiving any support from the parents.<sup>19</sup>

Adoptive parents who disagree with an agency's decision to award a specific subsidy amount, to deny a subsidy, reduce the subsidy or terminate benefits have the right to appeal the agency's decision through the administrative hearing process.<sup>20</sup>

Adoption assistance is administered at the state and local levels. The CDHS is responsible for providing guidance and assistance to the state's 59 county departments, as well as ensuring the departments are in compliance with the rules and laws that define the program. County departments work directly with adoptive families to determine eligibility for the program, negotiate the adoption subsidy and/or services, finalize the adoption

assistance agreements and review those agreements on a scheduled, routine basis. Additionally, the county departments are responsible for making payments to the families, as the funds for the adoption assistance program are distributed to the county departments annually.

In Colorado, most adoption assistance falls into one of the following four categories:

**1. Monthly Subsidies (Cash Assistance) –**

Monthly cash payments based *"upon the circumstances of the adoptive family and the needs of the child."*<sup>21</sup> These payments may be made for the duration of the assistance agreement or during a set time period.

**2. Dormant or Medicaid Only –** No monthly subsidy payment is provided to the child.

The county department documents the child's special needs and notes the possibility that financial assistance may be needed in the future. The child is provided Medicaid.

**3. Non-Recurring Expenses –** The federal government reimburses states for one-time costs that are associated with facilitating the adoption process. These costs include adoption fees, home studies and attorney costs. Federal law will reimburse up to \$2,000 per child for these purposes. States are allowed flexibility in setting these rates to account for the differences in costs among various states and localities. The majority of county departments limit these funds to \$800 per child.

**4. Case Services –** A type of service provided to meet a child's special needs that are identified at the time of the child's adoption, but are not covered by the adoption subsidy or Medicaid.

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<sup>14</sup> Mary Eschelbach Hansen, Daniel Pollack, Unintended Consequences of Bargaining for Adoption Assistance Payments, FAMILY COURT REVIEW, Vol. 43, No. 3, July 2005 494-510.

<sup>15</sup> 42 U.S.C. 673 (a)

<sup>16</sup> 42 U.S.C. 673(a)(3)

<sup>17</sup> Volume VII, 7.306.401(E)

<sup>18</sup> 42 U.S.C. 673(a)(4)

<sup>19</sup> 42 U.S.C. 673(a)(4)

<sup>20</sup> 42 U.S.C. 671(a)(12)

<sup>21</sup> Volume VII 7.306.42(D)(4)

# FINDINGS AND RECOMMENDATIONS

## Recommendation Locator

<b>Recommendation 1</b>	ID: <b>2016-2074-F1(R1)</b> Page No. <b>16</b> Agency Addressed: <b>Colorado General Assembly</b> Agency Response: <b>Not Applicable</b>
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**Recommendation:** The Colorado General Assembly and stakeholders should work together to revise C.R.S. 26-7-101 to 108, to incorporate relevant federal language to provide clear guidance for entities administering the adoption assistance program.

<b>Recommendation 2</b>	ID: <b>2016-2074-F1(R2)</b> Page No. <b>16</b> Agency Addressed: <b>CDHS - Division of Child Welfare</b> Agency Response: <b>Agree</b>
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**Recommendation:** Work with stakeholders to amend Volume VII to:

- Ensure Volume VII accurately reflects federal and state law regarding the adoption assistance program.
- Ensure county departments' policies accurately interpret federal and Colorado legal standards regarding the adoption assistance program.

<b>Recommendation 3</b>	ID: <b>2016-2074-F2(R1)</b> Page No. <b>20</b> Agency Addressed: <b>CDHS - Division of Child Welfare</b> Agency Response: <b>Agree</b>
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**Recommendation:** Develop uniform descriptions of the types of services and subsidies offered under the adoption assistance programs to be used by county departments in their policies.

<b>Recommendation 4</b>	ID: <b>2016-2074-F2(R2)</b> Page No. <b>20</b> Agency Addressed: <b>CDHS - Division of Child Welfare</b> Agency Response: <b>Agree</b>
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**Recommendation:** Develop uniform guidance and/or rules to help guide practices during negotiations. The uniform guidance and/or rules should include the following elements:

- An explanation of the difference between the benefits and monthly subsidy rates available when the child is in foster care, compared to the benefits and rates available after the child is adopted.
- Clear guidance regarding who is allowed to participate in adoption assistance negotiations with county departments.
- An explanation of how county departments determine and communicate initial subsidy offers during adoption assistance negotiations.
- A "script" county departments and families may use as a resource during adoption assistance negotiations. This "script" will detail eligibility factors, the purpose of the subsidy, what issues will be discussed, services available, the role of Medicaid and future review and possible re-determination of subsidy amounts.

## Recommendation

# 5

ID: **2016-2074-F2(R3)**

Page No. **23**

Agency Addressed:  
**CDHS – Division of  
Child Welfare**

Agency Response:  
**Agree**

**Recommendation:** Study and evaluate the use of predetermined maximum subsidy amounts in Colorado using existing department resources. This study should include:

- a. Whether the setting of predetermined maximum subsidy amounts is consistent with the original intent of the federal adoption assistance program, which is designed to encourage the adoption of special needs children from the child welfare system. The results of this study should be made public and reported to the General Assembly.

## Recommendation

# 6

ID: **2016-2074-F2(R4)**

Page No. **23**

Agency Addressed:  
**CDHS – Division of  
Child Welfare**

Agency Response:  
**Agree**

**Recommendation:** If predetermined maximum subsidy amounts prove to be best practice, then the Colorado Department of Human Services' Division of Child Welfare should use existing department resources to study:

- a. Which method for setting predetermined maximum subsidy amounts best ensures that subsidy amounts support the long-term well-being and stability of adoptive children. The results of this study should be made public and reported to the General Assembly.

## Recommendation

# 7

ID: **2016-2074-F2(R5)**

Page No. **27**

Agency Addressed:  
**CDHS – Division of  
Child Welfare**

Agency Response:  
**Partially Agree**

**Recommendation:** Improve the monitoring program so it may provide more impactful direction to county departments. To do this, the Colorado Department of Human Services' Division of Child Welfare should:

- a. Include the perspective of adoptive families in the monitoring program.
- b. Deepen the program's analysis of **how** adoptive parents experience the adoption assistance program and **how** services and subsidies provided to children impact their long-term well-being and stability.
- c. Consider obtaining additional staff for the purpose of completing more substantive and consistent review of county departments' adoption assistance programs.

## Recommendation

# 8

ID: **2016-2074-F2(R6)**

Page No. **28**

Agency Addressed:  
**CDHS – Division of  
Child Welfare**

Agency Response:  
**Partially Agree**

**Recommendation:** Create training opportunities at the Colorado Child Welfare Training Academy, at each regional center, as well as on-site training opportunities in rural communities to ensure all relevant county department staff have equal access to training regarding the adoption assistance program. Any training curriculum should specifically address:

- a. The law and rules guiding the adoption assistance program.
- b. Access to adoption-informed training to ensure that the children and families are receiving the services that are most appropriate for their needs.



## Recommendation

# 9

ID: **2016-2074-F2(R7)**

Page No. **29**

Agency Addressed:  
**CDHS – Division of  
Child Welfare**

Agency Response:  
**Agree**

**Recommendation:** Complete an inventory of state-prescribed forms and ensure county departments are provided the most up-to-date forms.

## Recommendation

# 10

ID: **2016-2074-F2(R8)**

Page No. **30**

Agency Addressed:  
**CDHS – Division of  
Child Welfare**

Agency Response:  
**Agree**

**Recommendation:** Create an easily accessible portal on its website that contains information about the adoption assistance program. This portal should include:

- The most recent versions of all county departments' policies regarding their adoption assistance program.
- Information about the adoption assistance program, including eligibility, details about the services and benefits available under the program, the duration of these services and benefits and children and families' rights.
- Direct access to Colorado Revised Statute and Volume VII regarding adoption assistance.
- Information on the availability of reimbursement for non-recurring expenses.
- Information on the availability of mental health services.
- Information on the availability of the federal adoption tax credit.
- Revise and post the adoption assistance handbook, which should be updated annually.
- Contact information for the Adoption Program and Colorado ICAMA Administrator should be available on the same page as information about the adoption assistance program.

## Recommendation

# 11

ID: **2016-2074-F3(R1)**

Page No. **33**

Agency Addressed:  
**CDHS – Division of  
Child Welfare**

Agency Response:  
**Agree**

**Recommendation:** Track the **total** expenditures – including the cost of monthly subsidies and other services – at the state and county level for administering the adoption assistance program. It is vital to understand the total expense of administering the adoption assistance program to determine what gaps or opportunities exist for improving the long-term well-being and stability of children through service delivery.

## Recommendation

# 12

ID: **2016-2074-F3(R2)**

Page No. **33**

Agency Addressed:  
**CDHS – Division of  
Child Welfare**

Agency Response:  
**Agree**

**Recommendation:** Using existing department resources, study alternative methods of funding the adoption assistance program. The goal of this study should be:

- To decrease the variance of subsidy benefits across county departments.
- To explore alternative mechanisms that will enhance county departments' ability to support adoptive children and their families.



**Recommendation****13**ID: **2016-2074-F4(R1)**Page No. **36**Agency Addressed:  
**CDHS – Division of  
Child Welfare**Agency Response:  
**Agree**

**Recommendation:** The CPO recommends the Colorado Department of Human Services' Division of Child Welfare complete a statewide inventory of adoption-informed resources. This information should be used to create a strategic plan that will help connect families with post-adoption resources in every part of the state. This strategic plan should be made public and reported to the Colorado General Assembly.

**Recommendation****14**ID: **2016-2074-F4(R2)**Page No. **37**Agency Addressed:  
**CDHS – Division of  
Child Welfare**Agency Response:  
**Partially Agree**

**Recommendation:** Coordinate with the Colorado Department of Health Care Policy and Financing to:

- a. Identify the obstacles and barriers preventing adoptive parents from obtaining adoption-competent therapies and other treatments for their children.
- b. Study the rate at which adoptive children are accessing Medicaid services after finalizing their adoption.
- c. Study what services are being supplied by Medicaid providers to adoptive children and whether these services are meeting their specific needs.
- d. Make these findings public and report them to the Colorado General Assembly.

# The Law

## INTRODUCTION

The Adoption Assistance and Child Welfare Act of 1980 provides the legal framework for the administration of the Colorado adoption assistance program. States are provided guidance from the United States Department of Health and Human Services' Child Welfare Policy Manual regarding how to interpret the law.

Federal law provides standards and guidance that are not always reflected in the rules administered by CDHS, state law or the policies of county departments. The result is that the subsidies given to children are based upon differing understandings of the law by county departments, a circumstance that may inadvertently restrict the type of assistance given.

In Colorado, the adoption assistance program is governed by three bodies of law and rule.<sup>22</sup> The current legal guidance is insufficient – both in state law and rule. This has resulted in inconsistent interpretations of the law by county departments which, ultimately, results in county departments using different standards to determine what subsidies and services are provided to children. These inconsistencies are reflected in the 53 county department policies submitted to the CPO. Currently, neither state law nor rule require county departments, nor the CDHS, to routinely review whether written policies accurately reflect federal guidelines, as well as state law and rule.

## INCONSISTENCY IN LEGAL STANDARDS AND INTERPRETATIONS

Colorado's law regarding the adoption assistance program does not include standards contained in federal law or guidance.

Specifically, state law and rules lack standards and definitions for the following criteria,

which county departments use to determine adoption subsidies:

- Determining the needs of a child
- Circumstances of the family
- The future needs of the child

### ***Determining the Needs of the Child***

In Colorado, there is a wide variety of interpretations on how to define the "needs of the child." Understanding a child's needs plays a crucial role in determining a child's eligibility for, and the amount of, a Title IV-E subsidy.

Federal law states that the amount of the adoption subsidy *"shall be determined through agreement between the adoptive parents and the State or local agency administering the program."* Federal law requires that in determining the subsidy amount that two factors must be considered: *"The **circumstances of the adopting parents** and the **needs of the child being adopted**."* [Emphasis added]<sup>23</sup>

Each of these terms is defined in greater detail within federal law and guidance which states that, *"The payment agreed upon should combine with the parents' resources to cover the **ordinary and special needs** of the child **projected over an extended period of time and should cover anticipated needs, e.g. child care**."* [Emphasis added] *Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment."*<sup>24</sup>

Colorado state law arguably provides for both the "routine"<sup>25</sup> and "special needs"<sup>26</sup> of a child by stating, *"payments may include but are not limited to the maintenance costs, medical and surgical expenses, and other costs incidental to the adoption, care, training, and education of the child."*<sup>27</sup> While Colorado law implies the subsidy is for both "ordinary needs" and "special needs,"

<sup>22</sup> The three bodies of law and rule are: 42 U.S.C. 673, C.R.S. 26-7-101 to 108 and 12 Code of C.C.R. 2509-1 to 10.

<sup>23</sup> 42 U.S.C. 673(a)(3)

<sup>24</sup> ACYF-CB-PA-01-01 (U.S. Department of Health and Human Services) (1/23/01)

<sup>25</sup> C.R.S. 26-7-104(1)

<sup>26</sup> C.R.S. 26-7-101 defines "special needs" as a "child with a special, unusual, or significant physical or mental disability, or emotional disturbance, or such other condition which acts as a serious barrier to the child's adoption."

<sup>27</sup> C.R.S. 26-7-104(1)

it fails to explicitly state this. This is one of two crucial factors used to determine the subsidy amount that may be available to adopted children and their families.

State rules are also inconsistent in their interpretation of what constitutes “the needs of a child.” In one instance, Volume VII states, *“The county shall base the negotiation on the **special needs**<sup>28</sup> of the child and the circumstances of the adoptive parent.”* In a different section, the rules implicitly provide for both “ordinary needs” and “special needs” by stating, *“Adoption assistance is intended to help remove financial or other barriers to the adoption of Colorado children with **special needs** by providing assistance to the parent(s) in **caring for and raising of the child.**”*<sup>29</sup>

These inconsistent definitions have an impact on the administration of the program. In Colorado adoption assistance is often mischaracterized in county departments’ policies as being **solely for children with “special needs” at the time of their adoption**. More than half of the county department policies reviewed by the CPO include language inconsistent with the federal requirement that a child’s **“ordinary needs” and “special needs”** be considered **“over an extended period of time.”**

The ambiguity of these rules has created a statewide system that largely administers adoption assistance based solely upon the “special needs” of the child, using the narrow definitions provided in state law and rule. The result creates a conflict between administering agencies and families on precisely the purpose of the adoption subsidy and what it should cover.

This conflict in statutory interpretation has caused adoptive parents to appeal county departments’ subsidy determinations,

claiming that the subsidy offered by the county department did not contemplate both their adoptive child’s “ordinary needs” and “special needs.”<sup>30</sup> In some instances, administrative law judges (ALJs) who preside over these cases, have noted the inconsistencies between these three bodies of law.

### **Circumstances of the Family**

As stated previously, under the federal adoption assistance program, the “circumstances of the adopting parents” must be considered together with the “needs of the child” when negotiating the adoption assistance agreement.<sup>31</sup>

The federal government has broadly interpreted “family circumstance” to pertain to *“the adopting family’s capacity to incorporate the child into their household in relation to their lifestyle, standards of living and future plans, as well as their overall capacity to meet the immediate and future needs (including educational) of the child. This means considering the overall ability of the family to incorporate an individual child into their household.”*<sup>32</sup>

Colorado law, however, does not define “family circumstances” nor provide guidance on how “family circumstances” shall be considered in the determination of the adoption subsidy.

While Volume VII instructs county departments to consider “family circumstances,” it provides no definition or guidance on how this relates to the determination of the amount of an adoption subsidy. How “family circumstances” are considered varies between county departments. Of the 53 county department policies reviewed by the CPO, seven did not list “family circumstances” as one of the criteria that must be considered. Other county departments did acknowledge

<sup>28</sup> Volume VII 7.306.4(3)(d) Under Volume VII, a child has a special need if they experience one or more of the following factors as a barrier to their adoption: physical disability, mental disability, developmental disability, educational disability, emotional disability, hereditary factors, high risk children, other conditions or ethnic background.

<sup>29</sup> Volume VII 7.306.4(A)(3)

<sup>30</sup> The CPO was provided 19 initial decisions issued by ALJs during 2005, 2013, 2014, 2015 and 2016. Six of those cases involved appeals in which families argued their child’s needs were not properly considered by county departments.

<sup>31</sup> 42 U.S.C. 673(a)(3)

<sup>32</sup> ACYF-CB-PA-01-01 (U.S. Department of Health and Human Services) (1/23/01)

the necessity of examining “family circumstances.” Some of these county departments provided various tools or worksheets to document a family’s resources to determine whether a subsidy is required to help the family meet the needs of the child. During its review, the CPO was unable to identify a tool that county departments use consistently to calculate a family’s resources.

The ambiguity in law and the various processes used to obtain this information is the source of frustration for families. The varying methods used by county departments was particularly confusing for families who adopted children from multiple departments. Additionally, families reported that they were not provided clear explanations of how their circumstances potentially increased or decreased the amount of the subsidy provided to their child.

### **Future Needs**

The federal government has provided states with guidance regarding whether adoption subsidies may be used to cover a child’s “future needs.” Specifically, the guidance states that agencies should consider the, “*ordinary and special needs of the child projected over an extended period of time and should cover anticipated needs, e.g. child care.*”<sup>33</sup> Colorado law omits this critical federal guidance and as such unfairly limits the period of time and type of benefit a child may receive.<sup>34</sup>

Consideration of a child’s future needs is also not reflected in Volume VII. Nearly half of the county department policies submitted to the CPO include language that contradicts federal language in this area. Some county department policies consistently state that adoption assistance is intended solely for the “special needs” of the child and not the “routine expenses associated with the raising of the child.”

## **Recommendation**

# 1

**Recommendation:** The Colorado General Assembly and stakeholders should work together to revise C.R.S. 26-7-101 to 108, to incorporate relevant federal language to provide clear guidance for entities administering the adoption assistance program.

## **Recommendation**

# 2

**Recommendation:** The CPO recommends the Colorado Department of Human Services’ Division of Child Welfare work with stakeholders to amend Volume VII to:

- a. Ensure Volume VII accurately reflects federal and state law regarding the adoption assistance program.
- b. Ensure county departments’ policies accurately interpret federal and Colorado legal standards regarding the adoption assistance program.

**CDHS-DCW Response: AGREE** “The Department agrees to work with stakeholders, county departments, and the State Board of Human Services to review and make modifications to the Code of Colorado Regulations to more clearly reflect federal and state law expectations regarding the adoption assistance program. The Department also agrees to ensure county departments’ policies accurately interpret federal and state standards regarding the adoption assistance program. The Department currently reviews specific adoption assistance cases, at a minimum, every 3-years. The Department will modify this process to include review of county departments’ policies.”

<sup>33</sup> ACYF-CB-PA-01-01 (U.S. Department of Health and Human Services) (1/23/01)

<sup>34</sup> C.R.S. 26-7-104(1)

# The Operating Structure

## INTRODUCTION

Inconsistent interpretation of federal regulations, combined with insufficient guidance from state law and rule, has essentially weakened the state's ability to create a strong framework for supporting county departments in administering the adoption assistance program. Colorado is, by design, a local-control state. Responsibility and authority for administering child welfare programs are largely dispersed to the 59 county departments. Understanding the unique needs of residents, and available resources in their community, enables these departments to provide tailored services to families and children. By law, county departments are entitled to the flexibility necessary to ensure their adoption assistance program is responsive to the needs of adoptive families in their areas. While ensuring departments maintain flexibility is crucial, it is equally important that every family in Colorado have equal opportunities to access services provided under the adoption assistance program.

The CPO has identified five areas of concern within the current operating structure:

1. Inconsistencies in policy and practice
2. Inconsistency in the assessment of a child's needs and the determination of subsidies
3. Lack of meaningful program evaluation and support
4. Lack of training and support
5. Inadequate and inconsistent information being provided to adoptive families

The CDHS develops statewide procedures, policies and regulations that create a framework for county departments to operate within, and to ensure compliance with law and rule.<sup>35</sup> These procedures, policies and regulations are not designed to limit or control the discretion of county departments. Rather, they should serve as framework to ensure adoptive families have equal opportunities to access services, and county departments have clear guidance and reliable support in administering such services. Currently, there is no required or standardized

training for county department staff who negotiate adoption subsidies with families.

## INCONSISTENCIES IN POLICY AND PRACTICE

The current operating structure does not provide the necessary guidance or support that is needed to oversee this statewide program. This has resulted in outdated policies, inconsistent access to services and frustration on the part of families and stakeholders.

Specifically, the CPO found:

1. County departments use varying names to describe services and benefits available under the adoption assistance program. In some instances, these services also differ in content.
2. There are inconsistent practices and policies for conducting adoption assistance negotiations.

### **Types of Available Adoption Assistance**

Volume VII states that county departments are authorized to offer the following types of adoption assistance agreements:

#### **• Long-Term Adoption Assistance**

**Agreements** – "... to partially meet a child's daily needs on an indefinite basis. A long-term agreement is made when the family's financial situation precludes adoption and is unlikely to change or when a child's needs take an excessive toll on the family's financial and emotional resources. This sort of monthly payment may continue until the family's or child's circumstances change, or the agreement terminates as outlined in Termination of Adoption Assistance, Section 7.306.59, of the Adoption Assistance agreement rules."<sup>36</sup>

#### **• Time-Limited Adoption Assistance**

**Agreements** – "... to partially meet the everyday needs of the child for a specified period. These are start-up costs for those things that children placed for adoption do not always have, such as sufficient clothing. Agreement partially covers unmet needs that are time limited and non-renewable."<sup>37</sup>

<sup>35</sup> Per information the CDHS provided the CPO on July 31, 2017.

<sup>36</sup> Volume VII 7.306.4(A)(3)(h)(1)

<sup>37</sup> Volume VII 7.306.4(A)(3)(h)(2)

- **Dormant or Medicaid Only Adoption Assistance Agreement** – *“... there is no adoption assistance payment provided at this time. County departments shall document special needs for the child in the services record and in the State Department’s automated system that the potential need for financial adoption assistance exists and may need to be activated at a future time.”*<sup>38</sup>
- **Non-Recurring Adoption Expenses** – *“Reimbursement for the following non-recurring adoption expenses, not to exceed \$800 per child, is available to parents adopting children with special needs: (1) Legal fees (2) Adoption fees (3) Other expenses related to the legal adoption of the child(ren).”*<sup>39</sup>
- **Case Services Payments** – *“Case services are a type of purchased program service that support a case plan for children in out-of-home placement or an adoption assistance agreement. Case services are provided to meet a child’s special needs identified when the child is placed for adoption and which are not covered by the adoption assistance or Medicaid assistance agreements.”*<sup>40</sup>

County departments across the state use a variety of terms to describe these services. In addition to the titles stated above, here is a list of some of the different terms used to describe these services: “Maintenance,” “Provisional Services,” “Medical Subsidy,” “Professional Service Allowance,” “Private Insurance,” “Cash Assistance (lump sum and monthly cash payment),” “Deferred Agreement” and “Ongoing Financial.” The CPO recognizes that state-prescribed forms – which all adoptive families must sign – include a consistent list of services. However, many county department policies differ from information presented in these forms, and, often, families are not presented these forms until the day their adoption is finalized.

Similar categories of service not only vary in name, but vary in what services they provide to families. For example, Volume VII states that Non-Recurring Adoption Assistance Fees may not exceed \$800 per child and are available to cover legal and adoption fees, as well as other expenses. In administering this service, however, some county departments’ policies state that the department will not cover legal or adoption fees, such as filing fees or birth certificates. Other county departments state they will reimburse families for all of the above costs, as well as transportation costs for families completing their adoptions.

A second example of this issue is whether county departments consider respite and daycare as services available to families under the adoption assistance program. Families and stakeholders reported to the CPO that access to respite care may be vital in supporting adoptive families after finalization of their child’s adoption. Respite and daycare services may become a crucial service for a child whose needs change – including mental health or emotional disturbances – years after an adoption is finalized. The CPO found that 32 percent of the county department policies contained varying language about whether respite and day care services will be provided after an adoption is finalized. At least five departments indicated that respite care is not available under the adoption assistance program – contradicting the rule in Volume VII that states both respite and daycare services are available for children who qualify for a Title IV-E subsidy.<sup>41</sup> The remaining county departments address respite and daycare services in their policies, however, they include various criteria for accessing these services. Some examples include:

*“Respite – This is for time limited stays away from the home to help the family regroup. The reason for the respite must be directly related to the child’s special needs that were identified prior to the adoption... Day Care – This is only available for IV-E eligible children.*

<sup>38</sup> Volume VII 7.306.4(A)(3)(h)(3)

<sup>39</sup> Volume VII 7.306.53

<sup>40</sup> Volume VII 7.306.52

<sup>41</sup> Volume VII 7.306.52(D)(1) and Volume VII 7.306.52(D)(2)



*Families will be referred for day care services through Title XX.”*

*“Respite care may be available for critical or urgent needs and the Department may request that the family and/or child be in therapy in order to access respite care.”*

Families who worked with multiple county departments to complete adoption assistance agreements for their children, expressed frustration with the various descriptions of services and the lack of consistency between county departments.

### **Negotiation Practices**

The amount of an adoption subsidy or services that a family receives is subject to bargaining between the adoptive family and the county department. National debate has consistently centered on whether negotiations represent the most equitable way for families to access subsidies and services.<sup>42</sup>

This national debate is mirrored in negotiation practices in county departments across Colorado. Families reported two main areas of frustration with the negotiation process. The first centered on who is allowed to participate in and support the family through the negotiation process (also described as the “subsidy meeting”). For example, some county departments welcome anyone to the negotiation meeting the family wants present. Others do not allow a family’s attorney, guardians ad litem<sup>43</sup> or other professionals, such as CPA employees, according to stakeholders and the surveys submitted to the CPO.

Second, families are not provided consistent information about what to expect during negotiations and, as a result, reported feeling confused and unprepared to advocate for their children. One issue families repeatedly brought to the CPO’s attention was the dramatic decrease in the

monthly assistance rates children receive while in foster care compared to adoption.<sup>44</sup> The majority of county department policies accurately reflect the federal standard that the child’s adoption subsidy cannot exceed the monthly rate the family received while the child was in foster care. However, some families reported to the CPO that while they understood that was the case, they did not anticipate and were not prepared for the rate to dramatically decrease or to be eliminated completely.

According to the county department surveys and family accounts, several county departments prepare an initial offer for families. In such instances, these offers are communicated to families through email, the U.S. Postal Service or are presented first thing at the negotiation meeting. These offers often cause alarm among families, who had expected all the negotiations to take place at the meeting with the county department. Many families also told the CPO that they expected the negotiations to begin at the amount of the child’s foster care rate and work down. Several families expressed frustration when the county departments presented an initial subsidy offer that was half of the child’s foster care rate or, in several cases, a Medicaid Only subsidy.

Financial data provided by the CDHS indicates that during 2016, the average adoption subsidy amount awarded to children was an estimated 56 percent lower than the average foster care rate children received during the same year.

Additionally, both families and county departments described the uncomfortable position adoption assistance negotiations place them in. The two parties, who spend months working together to ensure the well-being and permanency of a child, can find themselves in conflicting positions when determining adoption subsidies and services.

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<sup>42</sup> Mary Eschelbach Hansen et al., Unintended Consequences of Bargaining for Adoption Assistance Payments, FAMILY COURT REVIEW, Vol. 43, No. 3, July 2005 494-510.

<sup>43</sup> In Colorado, a guardian ad litem is an attorney who provides best interest legal representation for children in dependency and neglect proceedings.

<sup>44</sup> Foster parents receive a monthly reimbursement to offset the cost of providing, food, shelter, clothing and other related expenses.



## Recommendation

# 3

**Recommendation:** The CPO recommends the Colorado Department of Human Services' Division of Child Welfare develop uniform descriptions of the types of services and subsidies offered under the adoption assistance programs to be used by county departments in their policies.

**CDHS-DCW Response: AGREE** "The Department agrees to develop uniform descriptions of the types of services and assistance offered under the adoption assistance program to be used by county departments in their policies. The Department will update the "Colorado Adoption Assistance Guide" to include, but not limited to, the following descriptions: Long-Term, Time-Limited, Dormant (Medicaid only), Non-Recurring Funds, and Case Services."

## Recommendation

# 4

**Recommendation:** The CPO recommends the Colorado Department of Human Services' Division of Child Welfare develop uniform guidance and/or rules to help guide practices during negotiations. The uniform guidance and/or rules should include the following elements:

- a. An explanation of the difference between the benefits and monthly subsidy rates available when the child is in foster care, compared to the benefits and rates available after the child is adopted.
- b. Clear guidance regarding who is allowed to participate in adoption assistance negotiations with county departments.
- c. An explanation of how county departments determine and communicate initial subsidy offers during adoption assistance negotiations.
- d. A "script" county departments and families may use as a resource during adoption assistance negotiations. This "script" will detail eligibility factors, the purpose of the subsidy, what issues will be discussed, services available, the role of Medicaid and future review and possible re-determination of subsidy amounts.

**CDHS-DCW Response: AGREE** "The Department agrees to Recommendation No. 4. The Department agrees to develop uniform guidance to improve consistency in practices during adoption assistance negotiations. The guidance and/or rules will support adoptive parents and county departments in the negotiation process. This guidance and/or rules will include:

- a. An explanation of the difference between the benefits and monthly assistance rates available when the child is in foster care, compared to the benefits and rates available after the child is adopted;
- b. Clear guidance regarding who is allowed to participate in adoption assistance negotiations with county departments;
- c. Examples of how county departments determine and communicate initial subsidy offers during adoption assistance negotiations; and

d. Examples of “scripts” county departments and families may use during adoption assistance negotiations. This “script” will detail eligibility factors, the purpose of the subsidy, what issues will be discussed, services available, future review and possible re-determination of subsidy amounts.

In Colorado’s state supervised/county administered child welfare system, county departments maintain the statutory authority to negotiate both foster care rates and adoption assistance. As stated in the response to Recommendation No. 2, the Department will incorporate a review of the county departments’ policies, including the county departments’ methodology for determining rates. Likewise, policy making in Colorado’s state supervised/county administered child welfare system is a collaborative process between the Department, stakeholders, county departments, and the State Board of Human Services. Due to this collaborative process, the Department is willing to commit to provide guidance, but cannot guarantee specific rule promulgation. The Department agrees to work with stakeholder, county departments, and the State Board of Human Services to determine if rule promulgation is needed to implement the recommended guidance.

The role of Adoption Medicaid will need to be addressed with the Colorado Department of Health Care Policy and Financing.”

### **INCONSISTENCY IN THE ASSESSMENT OF A CHILD’S NEEDS AND THE DETERMINATION OF SUBSIDIES**

Under Volume VII, a child qualifies as having a special need if one or more of the following nine factors act as a barrier to their adoption: physical disability, mental disability, developmental disability, educational disability, emotional disturbance, high risk children (such as HIV-positive, drug-exposed or alcohol exposed in utero), ethnic background or other conditions such as a child over the age of seven, a sibling group that should remain intact or a medical condition likely to require further treatment.<sup>45</sup>

County departments use a wide variety of methods for determining how a child’s needs correlate to an appropriate subsidy or service. Currently, there is not enough information available about these methods to determine whether one is more effective in determining subsidies and services that will support the long-term well-being and stability of a child.

The CPO identified two areas of concern regarding how county departments identify a child’s need for subsidies and services:

1. Inconsistency in the methods used to set a maximum subsidy amount and lack of explanation for how these amounts are determined.
2. Inconsistency in the use of assessment tools to determine a child’s needs.

### **Maximum Subsidy Rates**

County departments determine the maximum subsidy rates available under their programs. However, there are inconsistencies among county departments in how these rates are set. The CPO found that county departments use one of three methods to determine the maximum monthly subsidy payment available to families:

1. A department-wide cap is established without considering the individual child’s needs or “family’s circumstances.”
2. Maximum amounts are created for different categories of children. These categories vary between county departments and may include criteria such as a child’s age or level of care.
3. County departments directly cite the federal standard that an adoption subsidy may not exceed the amount the child was receiving, or would have received, while in foster care.<sup>46</sup>

Colorado law allows county departments to set maximum subsidy rates. Additionally, Volume VII states that each county department shall establish a maximum subsidy amount. That rule, however, provides no guidance for how that maximum should be determined. The rule states:

*“The county shall establish a maximum amount that could be provided to a family. The amount shall be no more than the rate that is*

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<sup>45</sup> Volume VII 7.306.4(A)(3)(d)

<sup>46</sup> Volume VII 7.306.41(E)(7)

*being paid for the child's current out-of-home care or that would have been paid if the child were in paid out-of-home care today."*<sup>47</sup>

This requirement of county departments has resulted in families feeling discouraged when they learn that their child's monthly adoption subsidy rate will be limited by a predetermined maximum amount before the subsidy negotiation takes place. For many families, these predetermined amounts were substantially less than the rate their child was receiving while in foster care.

Families were also concerned when some county departments awarded adoption subsidies based on categorical assignments. These categories outline the maximum subsidy a child may receive. A review of the county departments' policies found that there are predominately three types of categories currently in use:

- **Age Brackets:** More than half of county departments surveyed use Age Brackets to establish their maximum subsidy amounts. For example, one county department has a maximum subsidy rate for children ages 0 to 10, a maximum rate for children 11 to 15 and a maximum subsidy rate for children 15 to 18. Typically, the maximums are higher for the children in older age brackets. Maximum amounts for the same age groups vary by as much as \$100 between county departments of similar size.
- **Needs Based Brackets:** Needs Based Brackets are used by four county departments. For example, one county department has a maximum subsidy amount for children who fall in "Level One," a maximum subsidy rate for children who fall in "Level Two" and a maximum rate for children who fall in "Level Three." In some instances, amounts for the same level vary by more than \$500 between county departments of similar size.
- **Difficulty of Care Brackets:** Difficulty of Care brackets are used by two county departments. Levels are used in these brackets similar to the way levels are

used in the Needs Based Brackets. Amounts for the same level vary by as much as \$400 in county departments of similar size.

The CPO was not provided explanations about why a type of bracket was used by a county department or what analysis was used to determine the maximum amounts that were assigned to each category within the brackets.

### **Assessment Tools**

In determining a child's needs, county departments' practices generally fell within one of two categories, a study of the county department policies found. Some counties use assessment tools to determine a child's special needs. Other county departments did not use any tools and rely solely on a narrative history from the adoptive family and others familiar with the child. Almost all county departments required outside documentation, such as statements from physicians and mental health providers.

Sixteen county departments indicated they use some form of an assessment tool to determine a child's needs. Similar to the service types, the names and content of the assessment tools varied between county departments. Three types of assessment tools were submitted to the CPO: Needs Based Assessment, Difficulty of Care Assessment and Level of Care Assessment.

Some families said they were left questioning whether these tools adequately captured their child's immediate and long-term needs. In turn, families who worked with county departments that do not utilize assessment tools reported feeling concerned that there was not a more measured approach to considering their child's needs.

There is no analysis being performed to determine which assessment tools are the most effective method for measuring the needs of a specific child. As such, it is unclear whether the adoption assistance program is providing the services and benefits most likely to ensure adoptive children's long-term health and stability.

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<sup>47</sup> Volume VII 7.306.41(E)(7)

## Recommendation

# 5

**Recommendation:** The CPO recommends the Colorado Department of Human Services' Division of Child Welfare study and evaluate the use of predetermined maximum subsidy amounts in Colorado using existing department resources. This study should include:

- a. Whether the setting of predetermined maximum subsidy amounts is consistent with the original intent of the federal adoption assistance program, which is designed to encourage the adoption of special needs children from the child welfare system. The results of this study should be made public and reported to the General Assembly.

**CDHS-DCW Response: AGREE** "The Department agrees to Recommendation No. 5. The Department agrees to explore with stakeholders and county departments the use of predetermined maximum adoption assistance amounts in Colorado. The Department will commit existing resources to explore how Colorado may implement a predetermined maximum adoption assistance amount and if the interpretation of this implementation is consistent with the original intent of the federal adoption assistance program to encourage the adoption of special needs children from the child welfare system. The findings of this exploration will be made public and reported to the General Assembly through the Department's annual SMART Act hearing."

## Recommendation

# 6

**Recommendation:** The CPO recommends that if predetermined maximum subsidy amounts prove to be best practice, then the Colorado Department of Human Services' Division of Child Welfare should use existing department resources to study:

- a. Which method for setting predetermined maximum subsidy amounts best ensures that subsidy amounts support the long-term well-being and stability of adoptive children. The results of this study should be made public and reported to the General Assembly.

**CDHS-DCW Response: AGREE** "The Department agrees to Recommendation No. 6. As stated in the response to Recommendation No. 5, the Department agrees to explore with stakeholders and county departments maximum adoption assistance amounts. The Department will commit existing resources to explore what methodology best ensures adoption assistance amounts support the long-term well-being and stability of adoptive children. Should the Department determine setting maximum adoption assistance amounts is in the best interest for Colorado's adoption children, youth, and families, the Department will work with stakeholders, county departments, and the Child Welfare Allocation Committee to determine an appropriate methodology. The agreed upon methodology will be made public and reported to the General Assembly through the Department's annual SMART Act hearing."

## LACK OF MEANINGFUL PROGRAM EVALUATION AND SUPPORT

The ability to support how county departments administer adoption assistance – and ultimately improve the outcomes for adoptive families – is currently stunted by insufficient analysis and evaluation. Currently, the CDHS employs one person who is responsible for monitoring and analyzing the adoption assistance program, as well as, providing technical support and other guidance to 59 county departments. This person is also responsible for ensuring children adopted through private, non-profit child placement agencies have access to services and benefits. The CPO's independent analysis of the adoption assistance program mimics analysis completed by the state auditor's office 15 years ago. The disparities identified by the CPO and the state auditor demonstrate why more meaningful evaluation of the adoption assistance program is needed to improve outcomes for families and children.

### **CPO Analysis of Adoption Assistance Benefits**

There is a disparity among county departments in the percentage of Dormant or Medicaid Only subsidies awarded to families, compared to the percent of families that receive monthly adoption subsidies.<sup>48</sup> For example, two county departments of similar size finalized almost the same number of adoption assistance agreements during 2016, according to data from the CDHS. Of those agreements, one county department provided monthly adoption subsidies in 12 percent of its cases, while the other county department provided monthly adoption subsidies in 83 percent of its cases. In this instance, the data demonstrates that a family residing in one county was four times more likely to receive cash assistance, compared to a family living in a similarly situated county.

Additional analysis of the data showed:

- Among county departments that finalized 20 or more adoption assistance

agreements in 2016, the total number of Medicaid Only or Dormant subsidies ranged from 1 to 88 percent of the department's total subsidies.

- Among county departments that finalized 10 to 19 adoption assistance agreements in 2016, the total number of the Medicaid Only or Dormant subsidies ranged from 9 to 50 percent of the department's total subsidies.
- Among county departments that finalized one to nine adoption assistance agreements in 2016, the total number of Medicaid Only or Dormant subsidies ranged from 0 to 100 percent of the department's total subsidies.

While this analysis provides a picture of the various subsidies and services distributed by county departments, it does not provide any insight on whether these subsidies and services are beneficial or harmful in promoting successful adoptions in Colorado. This shortfall was previously identified 15 years ago, in the state auditor's report.

The performance audit found:

*"Currently, Division staff [CDHS] do not collect or review adoption subsidy rates set by all counties. We believe the Division should monitor adoption subsidy rates periodically to determine how these rates affect the Program as a whole. By doing this, Division staff may identify and work with counties to address potential problems with the varied rates set throughout the State. Additionally, the Division should report its monitoring results to the General Assembly on an annual basis."*<sup>49</sup>

The state auditor issued the following recommendation:

*"The Division of Child Welfare Services should establish procedures to collect and review rate information on an annual basis to determine how rates set by all counties affect the Subsidized Adoption Program."*<sup>50</sup>

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<sup>48</sup> According to data provided by the CDHS.

<sup>49</sup> *Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002.* (Page 52)

<sup>50</sup> *Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002.* (Recommendation 10)

The CDHS partially agreed with the recommendation and provided the following response:

*"The Department will meet with county representatives to develop a survey to collect and review subsidy rates on an annual basis to determine whether rates affect the Subsidized Adoption Program. The results of this survey will be presented to the Senate Health, Environment, Children and Families Committee and the House Health, Environment, Welfare and Institutions Committee."*<sup>51</sup>

Since 2003, an annual memorandum has been completed and shared with all county departments. The memo includes a spread sheet that details the number of adoptions that were finalized in each county, the average assistance payment in that county, the number of Medicaid Only agreements in that county and other statistics. The data is a summary of the past fiscal year. More recent memos include a paragraph which summarizes the data and offers some comparisons to the previous fiscal years. (The most recent memo is available in Appendix C.)

The CPO reviewed eight available memos.<sup>52</sup> As they currently exist, the memos are not fulfilling the two points of analysis recommended in the 2002 report by the state auditor. In addition to collecting rate information, the recommendation also suggested the data be used to "determine how rates set by all counties affect the Subsidized Adoption Program." These memos provide no analysis correlating how the rates awarded by county departments affect the adoptions assistance program as a whole.

Improved and increased analysis of adoption subsidies and services awarded by county departments, as well as the practices and policies that determine those amounts and services, will be necessary to determine how various adoption subsidies and services

help support families and correlate with successful adoptions in the state.

### **CDHS Monitoring of the Adoption Assistance Program**

Currently, the only requirement that the CDHS review county departments' adoption assistance programs is written in Volume VII. The 2002 State Auditor's Subsidized Adoption Program performance audit, identified several service areas – including many of the areas outlined in this report – that were inconsistent between county departments. According to the CDHS, the results of the audit led to the creation of the State Monitoring/Sanction Process of Adoption Assistance Programs in Counties in 2012.<sup>53</sup>

While the intent of the monitoring program was to address inconsistencies and compliance concerns, neither the rules dictating the monitoring program, nor the current method of reviewing county departments, accomplish this goal. The current method for reviewing county departments is primarily focused on compliance with federal law. The monitoring program does not effectively review practices employed by county departments and the outcomes those practices have for adoptive children.

The CPO found four areas of the monitoring program that prevent it from serving as an effective tool:

1. The review does not include consistent and meaningful review of county departments' administration of the program.
2. The review does not seek nor incorporate the experiences of adoptive families.
3. County departments may go as long as three years without a review.
4. Currently, the CDHS does not follow up with county departments to ensure all recommendations issued as part of these reviews are adhered to, according to CDHS staff.

<sup>51</sup> Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Page 53)

<sup>52</sup> CDHS provided the CPO annual memos for fiscal years 2003, 2009, 2010, 2011, 2012, 2013, 2014 and 2015.

<sup>53</sup> Per information the CDHS provided to the CPO on July 31, 2017.



Under Volume VII, the CDHS is required to randomly select cases from county departments' adoption assistance caseload.<sup>54</sup> A monitoring instrument is used to assess whether the handling of those cases was compliant with rule and law. The monitoring instrument is comprised of 14 categories and 77 points of inquiry. These include questions regarding the child's foster care placement and eligibility for adoption assistance. If the cases reviewed result in a passing score – 70 percent compliance with law and rules – the county department will then be reviewed again in three years.<sup>55</sup>

A county department that fails any review, will be reviewed the following year and *“offered technical assistance based on the issues identified during the review and will be required to develop a corrective action plan.”*<sup>56</sup> The CDHS will also have continued contact with departments between reviews.<sup>57</sup> To date, the CDHS does not have a record of any county department failing all three reviews during a three-year cycle. This monitoring tool does not provide an effective analysis for determining how services are administered to families. For example, this tool does not address how county departments consider the “family's circumstances” and the “child's needs” in determining the appropriate service or subsidy amount. Additionally, the CDHS review relies solely on documentation and conversations with county departments,

according to the CDHS. The reviews do not include conversations with adoptive families to determine whether they were provided an adequate explanation of the benefits available under the adoption assistance program.

The CDHS provided the CPO with 22 letters issued in 2016, informing county departments about whether they passed their review. Six of those letters did not address the county departments' policies for administering the program. Currently, there is no standardized tool for evaluating county human service departments' policies.

In instances in which the review resulted in recommendations to amend policies, there was inconsistent compliance by county departments and no additional follow up by CDHS.<sup>58</sup> This trend presents a unique concern for county departments that pass their review, but are also offered recommendations for improvement. In such instances, a county department will not be reviewed again for three years and whatever practice or policy noted by the CDHS may be allowed to continue. Without a more impactful and detailed method for assessing how departments are administering adoption assistance services and subsidies to families, the CDHS does not have the necessary information to determine whether families are receiving equal access to services between county departments.

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<sup>54</sup> Volume VII 7.306.43(A)

<sup>55</sup> Volume VII 7.306.43(B)(1)

<sup>56</sup> Volume VII 7.306.43(D)

<sup>57</sup> Per information the CDHS provided to the CPO on July 31, 2017.

<sup>58</sup> Per information the CDHS provided to the CPO on July 31, 2017.

<sup>59</sup> According to information provided by the CDHS during an interview on October 19, 2017.



## Recommendation

# 7

**Recommendation:** The CPO recommends the Colorado Department of Human Services' Division of Child Welfare improve the monitoring program so it may provide more impactful direction to county departments. To do this, CDHS-DCW should:

- a. Include the perspective of adoptive families in the monitoring program.
- b. Deepen the program's analysis of **how** adoptive parents experience the adoption assistance program and **how** services and subsidies provided to children impact their long-term well-being and stability.
- c. Consider obtaining additional staff for the purpose of completing more substantive and consistent review of county departments' adoption assistance programs.

**CDHS-DCW Response: PARTIALLY AGREE** "The Department partially agrees to Recommendation No. 7. The Department agrees to modify the review of county departments' adoption assistance programs to include how the county departments include the perspective of adoptive families, how the county departments consider the adoptive parents' experiences, and how the county departments' efforts potentially impact to the adoptive child(ren)'s long-term well-being and stability. The inclusion of these perspectives is within the scope of the county departments' process. As the supervising/monitoring entity for county practice, the Department does not provide any direct services to adoptive families. The Department agrees to submit a request for additional funding to support additional FTEs to complete more robust reviews of county departments' adoption assistance programs. The Department cannot commit to obtaining additional staff if funding is not available or the State of Colorado does not provide the funding to do so."

### TRAINING AND GUIDANCE

The complexity of the negotiation process is most felt by county department staff who are required to carry out legally binding negotiations without being provided adequate training on the legal implications of the adoption assistance program. As stated earlier in this section, there is no required or standardized training at the state level for county department staff who negotiate adoption subsidies with families. The CDHS holds voluntary, quarterly meetings around the state to provide updates concerning the adoption assistance program, as well as to discuss any issues identified by the county departments. Technical support is available as needed.<sup>60</sup>

At the direction of the CDHS, the CPO reviewed the continuing education classes available to county department employees. None of the classes available to employees address the adoption assistance program specifically, including families' rights under the program, nor any information regarding how to negotiate subsidies or provide appropriate services to families. There is no required curriculum for county department staff to complete before negotiating adoption subsidies.

Currently, the same CDHS staff member responsible for monitoring the program is also charged with providing voluntary training and technical support for

<sup>60</sup> Per information the CDHS provided to the CPO on July 31, 2017.

all 59 county departments. Families and stakeholders – including county departments and non-profit child placement agencies – conveyed frustration with the lack of guidance and support they receive in administering the adoption assistance program. The majority of county

human service directors that spoke with the CPO indicated they would appreciate an increase in guidance concerning the negotiation process. Similar sentiments were expressed by county departments featured in the 2002 audit.<sup>61</sup>

## Recommendation

# 8

**Recommendation:** The CPO recommends the Colorado Department of Human Services' Division of Child Welfare create training opportunities at the Colorado Child Welfare Training Academy, at each regional center, as well as on-site training opportunities in rural communities to ensure all relevant county department staff have equal access to training regarding the adoption assistance program. Any training curriculum should specifically address:

- a. The law and rules guiding the adoption assistance program.
- b. Access to adoption-informed training to ensure that children and families are receiving the services that are most appropriate for their needs.

**CDHS-DCW Response: PARTIALLY AGREE** "The Department partially agrees to Recommendation No. 8. The Department agrees to assess existing adoption services training through the Child Welfare Training Academy. The Department is not able to commit to the specific list of approaches if it is not assessed to be the most efficient and effective route to meeting the needs of county department staff. Based on this assessment, the Department will modify existing training, create new training opportunities, and ensure onsite technical assistance methods to best meet the diverse needs of county department staff. The Department will ensure incorporation of federal legislation, state statute and rule, and best practice expectations into the modified/enhanced/created training and technical assistance opportunities."

### INADEQUATE AND INCONSISTENT INFORMATION BEING PROVIDED TO ADOPTIVE FAMILIES

How families are notified about the adoption assistance program, and what information is provided, varies greatly across the state, according to a review of county department policies and survey responses. Adoptive families across the state said information about the program is not easily accessible. Many families expressed concern that the lack of information places them in a position where

they are not able to properly advocate for their children. Additionally, there is currently no central information portal that provides the public and adoptive families complete and clear information about Colorado's adoption assistance program.

Stakeholders told the CPO, that when families are not provided clear or consistent information, many turn to online support groups or chat rooms. Often, the information provided to families in these forums is

<sup>61</sup> Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Page 57)

not accurate and causes families to enter negotiations with an unfavorable impression of the county department.

### ***Inconsistent Information Provided to Adoptive Families***

Of the county departments that responded to the CPO's survey, roughly a quarter of them said they provide families written information about the adoption assistance program. The materials provided to families vary in depth. Some information packets include language pulled directly from Volume VII or state-mandated forms. On the other end of the spectrum, some county departments provide families with information handbooks. These handbooks contain an extensive amount of material, including a statement explaining the negotiation process, information on tax credits available to the family, resource referral lists for post-adoption support and guidelines on the legal process for adopting a child. Several departments that provide handbooks appeared to use different versions of the same document. When the CPO inquired about the document's origins, the CDHS stated an adoption guidebook for families existed at one time. That guidebook was last revised in 2014, but is no longer distributed by the CDHS.<sup>62</sup>

With few resources available to them, families expressed a desire for more relatable

materials and guidance outside of the county department they are negotiating with.

Additionally, the majority of county departments submitted state-mandated forms used to administer the adoption assistance program. An analysis of the forms revealed some county departments are using versions of the forms that are almost two decades old. Other county departments use versions that have been updated as recently as 2015.

### ***Lack of Central Information***

There is a lack of public information at the state and county level concerning the adoption assistance program. Information regarding the program's benefits and services mandated under federal law, state law and Volume VII are not easily obtainable by the public or families. Currently, there is no central location on the CDHS' website nor the county departments' websites that clearly lists families' rights and requirements of the adoption assistance program. There is no comprehensive list of all county department's written policies. At the time of the writing of this report, 34 county department policies were posted on the CDHS' website. Of those 34 policies, 16 were outdated.<sup>63</sup> Currently, the main adoption page of the CDHS' website does not contain meaningful or complete information about the adoption assistance program.

## **Recommendation**

# **9**

**Recommendation:** The CPO recommends the Colorado Department of Human Services' Division of Child Welfare should complete an inventory of state-prescribed forms and ensure county departments are provided the most up-to-date forms.

**CDHS-DCW Response: AGREE** "The Department agrees to complete an inventory of state-prescribed forms, and ensure county departments have improved access to and are utilizing the most up-to-date forms."

<sup>62</sup> Per information the CDHS provided in the CPO on July 31, 2017 in response to inquiry.

<sup>63</sup> These 16 policies include effective dates that differed from the more recently revised policies that were submitted to the CPO.

**Recommendation:** Create an easily accessible portal on its website that contains information about the adoption assistance program. This portal should include:

- a. The most recent versions of all county departments' policies regarding their adoption assistance program.
- b. Information about the adoption assistance program, including eligibility, details about the services and benefits available under the program, the duration of these services and benefits and children and families' rights.
- c. Direct access to Colorado Revised Statute and Volume VII regarding adoption assistance.
- d. Information on the availability of reimbursement for non-recurring expenses.
- e. Information on the availability of mental health services.
- f. Information on the availability of the federal adoption tax credit.
- g. Revise and post the adoption assistance handbook, which should be updated annually.
- h. Contact information for the Adoption Program and Colorado ICAMA Administrator should be available on the same page as information about the adoption assistance program.

**CDHS-DCW Response: AGREE** "The Department agrees to create an easily accessible page on its website containing information on the adoption assistance program. The adoption assistance program-specific page will include:

- a. The most recent versions of all county departments' policies regarding their adoption assistance program;
- b. Information about the adoption assistance program, including eligibility, details about the services and benefits available under the program, the duration of these services and benefits and children and families' rights;
- c. Direct access to Colorado Revised Statute and Code of Colorado Regulations regarding adoption assistance;
- d. Information on the availability of reimbursement for non-recurring expenses;
- e. Information on the availability of mental/behavioral health services;
- f. Information on the availability of the federal adoption tax credit;
- g. Direct access to the annually reviewed adoption assistance handbook; and
- h. Contact information for the Adoption Program and Colorado ICAMA Administrator."

# The Funding

## INTRODUCTION

The high costs of providing for adoptive children's complex needs, the duration of the subsidies and the unforeseen expenses for adopted children make the adoption assistance program a unique element of county departments' budgets. The current mechanisms dictating how funds are distributed for the adoption assistance program are insufficient. Similar to other areas of the adoption assistance program, additional research is needed to determine how to better provide funding for the adoption assistance program to ensure subsidies and services promote strong outcomes for children and families.

Specifically, the CPO found:

1. The formula used to distribute funds to county departments is insufficient in capturing the needs of the children and families receiving benefits under the program.
2. Current funding mechanisms inadvertently restrict the expansion of the adoption assistance program as they force county departments to balance the needs of adoptive children against the other areas of their child welfare programs.
3. Additional study is needed to consider alternative methods of funding the adoption assistance program.

## FUNDING THE ADOPTION ASSISTANCE PROGRAM

Colorado's adoption assistance program is funded with federal, state and county dollars. These funds are used by county departments to administer the two available forms of adoption assistance in Colorado.

The first is a Title IV-E subsidy.<sup>64</sup> Under this program, the federal government pays 50 percent of the subsidy, with the remainder

paid for by the state (30 percent) and the county department (20 percent). To be eligible, children must meet specific financial and categorical criteria.

The second subsidy program is a Non-Title IV-E Subsidy. This is a state subsidy program for children who are not eligible for a federal subsidy. In this instance subsidies are paid for with state and county funding – the state contributes 80 percent and the county department contributes 20 percent.

Children may be eligible for one but not both subsidy programs. Under federal law, the amount a child receives as an adoption subsidy may not exceed the amount the child was receiving – or would have received – as a monthly foster care subsidy.<sup>65</sup>

## INSUFFICIENT FORMULA

Funds for the adoption assistance program are included in the Child Welfare Block Grant (the block grant.) The CDHS' Child Welfare Allocation Committee (CWAC) is required by statute to determine how the block grant funds will be allocated to all county departments. The CWAC has created an allocation formula that uses a set of variables to determine how much each county department receives for their child welfare programs. The formula is dynamic and the CWAC continually reviews the ethics and effectiveness of the formula. Once the block grant has been distributed, state law ensures county departments have flexibility in spending the child welfare funds. There is no function in the formula that protects or restricts funds for adoption subsidies.<sup>66</sup>

At the time of the writing of this report, the allocation formula for determining county departments' block grants include two variables that represent costs associated with the adoption assistance program.<sup>67</sup> The two variables are:

<sup>64</sup> The statutory provisions governing adoption assistance program are in Title IV-E of the Social Security Act, and are commonly referred to as Title IV-E subsidy.

<sup>65</sup> 42 U.S.C. 673(3)

<sup>66</sup> Colorado Office of Performance and Strategic Outcomes, Division of Budget and Policy: June 28, 2016, Operational Memo, State Fiscal Year 2016-2017 Preliminary County Allocations

<sup>67</sup> House Bill 17-1052, which was signed in March 2017. This modified criteria that must be considered in setting the allocation formula. It has not yet been determined whether this change will impact how funds are distributed for the adoption assistance program.

- Average daily subsidy payment. This variable is determined by calculating the county department's average daily adoption subsidy (cash payment) during the three most recent fiscal years.
- Average number of new adoptions. This variable is determined by calculating the average number of adoptions completed each year for the three most recent fiscal years.

The first variable – average subsidy payments – does not adequately capture the total expense county departments incur in administering their adoption assistance payments. The current formula does not account for required benefits the county departments provide adoptive families, outside of monthly adoption subsidies. These benefits include case services and other expenses county departments may incur throughout the life of the adoption assistance agreement. Some examples of these expenses are medication, special therapies such as speech, occupational and physical therapies, as well as other services that are otherwise not provided for in the community or through Medicaid.<sup>68</sup>

In similar fashion, the second variable – average number of new adoptions – does not adequately capture the population in need of or receiving adoption assistance. Finalized adoptions fluctuate substantially year-to-year in counties of all sizes. For example, during the past three fiscal years, nine county departments finalized 20 or more adoptions each year, according to CDHS data. One of the nine county departments saw a 26 percent decrease in the number of finalized adoptions between fiscal year 2015 and fiscal year 2016, while a different county department saw a 115 percent increase during the same time period, CDHS data showed.

During the past fiscal year, three of the nine counties mentioned above reported to the CPO that monthly adoption subsidies accounted for 12, 17 and 25 percent of their annual block grant.

## RESTRICTIVE MECHANISMS

The current formula forces county departments

to weigh the immediate needs of children experiencing abuse or neglect, against the needs of a considerably smaller population of children whose immediate safety is less of a concern, but whose long-term needs are often expansive. The cost of providing a subsidy for a child being adopted is an expense that may last almost two decades. Continuing to distribute funds for adoption assistance through the block grant, provides county departments with little opportunity or ability to expand their programs.

## PREVIOUS RESEARCH

Colorado's adoption assistance funding mechanisms have been previously studied. The constricting nature of the current funding mechanism has previously been identified as a barrier to the expansion of the adoption assistance program. In 2012, the CDHS coordinated with the Annie E. Casey Foundation (AECF) to examine funding structures at the county and state level. Specifically, the AECF was tasked with studying the funding structure of out-of-home placements in Colorado. The AECF produced four recommendations, one specifically addressing the funding mechanisms for the adoption and guardianship subsidy programs. (A complete copy of the recommendations may be found in Appendix D.)

The recommendation for adoption and guardianship subsidies centered on two substantial changes to the program's structure. The AECF recommended that the CDHS:

1. Reduce county departments' share of guardianship and adoption subsidies from 20 percent to zero.
2. Any future subsidies awarded by county departments should be financed by funds outside of the child welfare allocation block. Meaning, the funds should be housed in a location where county departments are ensured they will be protected for the use of funding the adoption assistance program.

The AECF found that, "... forcing the cost of those cases to be absorbed by a County within the constraints of a fixed allocation impeded

<sup>68</sup> Volume VII 7.306.52



*the growth of adoption and guardianship cases, and, in turn, also constrains better permanency outcomes for children.”<sup>69</sup>*

The AECF went on to say that maintaining adoption and guardianship funds at the county level, “... will, overtime, discourage a County from growing its subsidy caseload

because that cost of doing so will increasingly consume ‘fiscal space’ within the annual allocation – crowding out other costs.”<sup>70</sup>

The AECF’s recommendations were not implemented.

## Recommendation

# 11

**Recommendation:** The CPO recommends the Colorado Department of Human Services’ Division of Child Welfare track the total expenditures – including the cost of monthly subsidies and other services – at the state and county level for administering the adoption assistance program. It is vital to understand the total expense of administering the adoption assistance program to determine what gaps or opportunities exist for improving the long-term well-being and stability of children through service delivery.

**CDHS-DCW Response: AGREE** “The Department agrees to track the total adoption assistance expenditures, including the cost of monthly assistance and other services, at the county department and state aggregate levels.”

## Recommendation

# 12

**Recommendation:** The CPO recommends the Colorado Department of Human Services’ Division of Child Welfare use existing resources to study alternative methods of funding the adoption assistance program. The goal of this study should be:

- a. To decrease the variance of subsidy benefits across county departments.
- b. To explore alternative mechanisms that will enhance county departments’ ability to support adoptive children and their families.

**CDHS-DCW Response: AGREE** “The Department agrees with Recommendation No. 12. The Department will commit existing resources to explore with stakeholders and county departments how Colorado may fund adoption assistance programs. Should the Department determine alternative methods of funding are beneficial to Colorado’s adoptive children, youth, and families, the Department will work with stakeholders, county departments, and the Child Welfare Allocations Committee to determine an appropriate methodology.”

<sup>69</sup> Annie E. Casey Memorandum to the Colorado Department of Human Services, Recommended Changes to the CDHS/ County Fiscal Relationship, 2012.

<sup>70</sup> Annie E. Casey Memorandum to the Colorado Department of Human Services, Recommended Changes to the CDHS/ County Fiscal Relationship, 2012.



## The Services

### INTRODUCTION

Adoption is often viewed as a “happy ending” for children who come from abusive or neglectful backgrounds. However, research on special needs adoptions and the impact of trauma on child development shows that adoption cannot erase the impact of early childhood experiences. In fact, intensive, professional help is often required to help both the child and the parent form and maintain a trusting relationship. Accessing this help – often referred to as “post-adoption services” – months or years after adoptions are finalized can be extremely difficult, according to families, county departments and non-profit agencies.

The CPO found two primary obstacles that affect families’ ability to access post-adoption services:

1. How a child’s future needs are determined during the adoption assistance negotiations. There are minimal centralized, statewide resources for families seeking post-adoption services.
2. Difficulty accessing adoption-informed providers who accept Medicaid.

The needs of adopted children and their families vary significantly across a continuum of child and family functioning. One of the most important services that is needed by families who adopt from the child welfare system is appropriate ongoing care to meet the high physical and mental health needs of their children. It is well documented that children in foster care have significant health care needs, including physical, dental and behavioral health problems. Several behavioral health problems are common for this population because of the trauma associated with the abuse and/or neglect, as well as removal from their homes. As such, comprehensive and coordinated health care is critical to their health, well-being and long-term outcomes.

In Colorado, there is no one place that families can access the post-adoption support and

services they need. While the child welfare system provides some support, this system is not designed for ongoing care or support of adoptive families. This is in large part because the primary mission of the child welfare system is prevention and detection of child abuse and neglect, not post-adoptive supports which require professionals with adoption competent experience and training. Many stakeholders believe that families should be able to access community support, without having to access the child welfare system.

Nationally, the lack of post-adoption services is related to a narrow view of the adoption process. Adoption is often viewed as a “single point in time rather than a lifelong process.”<sup>71</sup> The child welfare system in Colorado, like other states, expends a significant amount of resources on the front end of the process, such as the recruitment of adoptive parents. Equally important, however, is the need to develop resources that promote the long-term success of these relationships, which are inherently complex.

The age at which adoptive children present the highest need for services is not currently being tracked statewide. When post-adoption services are available there is no statewide evaluation of which services are most impactful in promoting the well-being of the child and the stability of the family. Additionally, existing tracking mechanisms in Colorado do not fully capture the number of disrupted adoptions, or provide meaningful analysis regarding why they disrupt and the impact the adoption subsidy or services had on the family.<sup>72</sup> Without this data, the CDHS and county departments will not be able to measure the effectiveness of existing adoption assistance or determine what supports are needed.

These omissions in research were recognized in the 2002 state auditor’s report, which ultimately recommended the CDHS “implement a process to collect, evaluate and report data on dissolutions and out-of-home placements of adopted children.”<sup>73</sup>

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<sup>71</sup> Adoption in America Today, Donaldson Adoption Institute, December 15, 2016

<sup>72</sup> Per information the CDHS provided to the CPO on July 31, 2017.

<sup>73</sup> *Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002.* (Recommendation One)

The state auditor's report also recognized the urgency in providing families post-adoption services. The report issued a recommendation that, *"The Division of Child Welfare Services should encourage counties to expand their post-adoption services and supports."*<sup>74</sup>

County departments have worked to provide additional services and help connect families with providers and non-profit organizations. But county human service directors say their departments' abilities to provide families with post-adoption services is limited. These constraints are the result of inadequacies in the systems most responsible for providing services, and the county departments' role in the life of an adoption.

County human service directors said families may be hesitant to return to them for services for a variety of reasons including the perceived stigma of being engaged with the department. They also expressed concerns that families' hesitancy to contact them often allows their crisis to escalate to a level in which the county department has limited services to offer.

### **ACCESS TO POST-ADOPTION SUPPORT**

Accounting for a child's future needs when determining adoption assistance subsidies or services proves difficult for families and county departments. The determination of adoption subsidies or services often rests on the needs that are apparent at the time the adoption assistance agreement is signed. What the adoption assistance agreements struggle to account for are the needs children may develop months or years from that day. Failing to account for a child's evolving needs may restrict their ability to access crucial services – such as mental health providers, specialized therapies and residential treatment – in the future.

Several families expressed fear and anxiety in their limited abilities to advocate for future services for their children. Many stated they were concerned that the support and guidance they received from the county departments while serving as foster parents,

would immediately stop after the adoption was finalized.

The difficulty of predicting a child's needs over a period of years is felt by both parents and county departments. This has led to adoption subsidy agreements which are limited in providing for future needs of children. As such, the need for statewide, centralized resources for adoptive parents and county departments becomes all the more critical.

Often, in Colorado, where a child lives affects their ability to access services after their adoption is finalized. Colorado has minimal centralized resources providing post-adoption services – such as crisis intervention, mental health care, adoption support groups and parenting classes – to families across the state. Often, access to and the type of post-adoption services available depends largely on where a family lives.

### **MEDICAID**

In addition to providing adoption assistance, county departments rely heavily on Medicaid to provide ongoing mental health and physical care for adopted children. In Colorado, the state's behavioral health system is comprised of multiple agencies, funding sources and focuses of care. Medicaid is a joint state and federal program that provides health care to eligible beneficiaries. The Colorado Department of Health Care, Policy and Financing (HCPF) oversees the administration of Medicaid that impacts qualified children in the child welfare system. HCPF contracts with Behavioral Health Organizations to provide services through a statewide managed care system. Families and many county departments find the Colorado behavioral health delivery system to be inadequate to handle the specialized needs of adopted children.

Families repeatedly expressed frustration with Medicaid Only subsidies. Locating providers who accept Medicaid and have adoption and trauma informed practices can be difficult. One adoptive parent explained that years after the family finalized their adoption, their child began to exhibit violent behaviors. The 10-year-

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<sup>74</sup> Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Recommendation Three)

old would run away from home in the middle of the night and eventually their child was placed on a 72-hour mental health hold. There were no residential treatment centers available under Medicaid and the family had exhausted several other options and their finances in searching for the appropriate treatment. Accessing services was vital for preserving the adoption, the adoptive parent told the CPO. This was one of many stories adoptive families shared with the CPO concerning the difficulty of accessing behavioral health services under Medicaid.

The ability to provide Medicaid to adoptive families is a crucial element of the adoption assistance program. Unfortunately, adoptive families often experience difficulty in locating adoption-informed providers who accept Medicaid. The Adoption Exchange, a non-profit agency in Colorado, maintains a directory of post-adoption mental health professionals. Several county departments stated that they used this directory routinely to help connect families with post-adoption services. The directory, which was updated in April 2017, includes providers who specialize in services such as attachment therapy, trauma care and

post-adoption concerns. The directory includes 88 providers based in 12 different counties. Of those 88 providers, 32 of them – 40 percent – accept Medicaid. Currently, those 32 adoption-informed providers are based in 10 counties across the state, according to the directory. None of those 10 counties were rural counties.

An analysis of the directory and data provided by the CDHS showed that 23 percent of the adoption assistance agreements that were finalized in 2016 were Medicaid Only subsidies. Meaning the families were not provided a monthly cash subsidy. Of the county departments that provided Medicaid Only subsidies during 2016, 70 percent were counties in which there is not currently an adoption-informed provider who accepts Medicaid, according to The Adoption Exchange's directory. (It should be noted that other providers not listed in the directory may be available.)

More than 75 percent of the families the CPO spoke to said they could not secure timely or appropriate behavioral health services for their adoptive children.

## Recommendation 13

**Recommendation:** The CPO recommends the Colorado Department of Human Services' Division of Child Welfare complete a statewide inventory of adoption-informed resources. This information should be used to create a strategic plan that will help connect families with post-adoption resources in every part of the state. This strategic plan should be made public and reported to the Colorado General Assembly.

**CDHS-DCW Response: AGREE** "The Department agrees to complete a statewide inventory of adoption-informed resources in partnership with the Colorado Department of Health Care Policy and Financing, stakeholders, and county departments. Based on this inventory, the Department, with its partners, will develop a communication plan to improve families' access to post-adoption resources regardless of geographic location. This plan will be made public and reported to the General Assembly through the Department's annual SMART Act hearing."

## Recommendation 14

**Recommendation:** The CPO recommends the Colorado Department of Human Services' Division of Child Welfare coordinate with the Colorado Department of Health Care Policy and Financing to:

- a. Identify the obstacles and barriers preventing adoptive parents from obtaining adoption-competent therapies and other treatments for their children.
- b. Study the rate at which adoptive children are accessing Medicaid services after finalizing their adoption.
- c. Study what services are being supplied by Medicaid providers to adoptive children and whether these services are meeting their specific needs.
- d. Make these findings public and report them to the Colorado General Assembly.

**CDHS-DCW Response: PARTIALLY AGREE** "The Department partially agrees with Recommendation No. 14. The Department respectfully requests the Child Protection Ombudsman of Colorado provide/assign this recommendation to the Colorado Department of Health Care Policy and Financing as these items are within that Department's scope and that Department's ability to modify, improve, etc. The Department is willing to work with the Colorado Department of Health Care Policy and Financing to identify the obstacles and barriers preventing adoptive parents from obtaining adoption-competent therapies and other treatments for their children; to review the rate at which adoptive children are accessing Medicaid services after finalizing their adoption; and to review what services are being supplied by Medicaid providers to adoptive children and whether these services are meeting their specific needs."

**CPO Reply:** The CPO agrees that this recommendation is the joint responsibility of both the Colorado Department of Human Services' Division of Child Welfare and the Colorado Department of Health Care Policy and Financing. As such, the CPO will ensure its report and recommendation are presented to the Colorado Department of Health Care Policy and Financing no later than 30 calendar days after the publication of this report. Additionally, the CPO will provide both agencies with any support they jointly determine is necessary to address this recommendation.

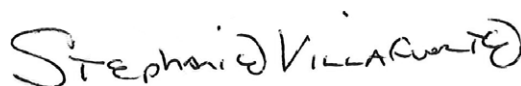
## CONCLUSION

The CPO would like to thank all the stakeholders who shared their time and expertise during throughout this investigation. Specifically, the CPO would like thank the Colorado Department of Human Services and the county human services departments for cooperation and willingness to share their knowledge and insight into the adoption assistance program. Finally, the CPO would like to thank the dozens of families who came forward to share their experiences in the hope of creating a better system for the children and the children waiting for the permanent homes.

Pursuant to C.R.S. 19-3.3-103(2), the CPO respectfully submits this report to the citizens of Colorado, the General Assembly and the Colorado Department of Human Services' Executive Director, Reggie Bicha.



Jordan Steffen  
Communications and Policy Director  
Office of Colorado's Child Protection Ombudsman



Stephanie Villafuerte  
Colorado Child Protection Ombudsman  
Office of Colorado's Child Protection Ombudsman

## **APPENDIX A**





## Office of Colorado's Child Protection Ombudsman Adoption Assistance Practices Survey

Thank you for participating in this survey. Please respond to the questions stated on pages 2 through 5. To help us understand how your department works with families, please provide original narratives about how you and your staff interact with prospective adoptive families. Please type your answer in the space provided below the question.

Some questions will ask you to submit supporting documentation. In those instances, please list the title of the document(s) you are submitting under the **List of Documents** prompt. See below instructions for submitting additional documentation.

After you've completed the survey and have gathered relevant documentation, please do the following:

- Convert the Word document with your responses into a PDF.
- Convert any supporting documentation into PDF format.
- Submit the survey and your supporting documents by emailing them to CPO's Communication and Policy Director, Jordan Steffen at [jsteffen@coloradocpo.org](mailto:jsteffen@coloradocpo.org).

Thank you again for your time and assistance on this important issue. Please do not hesitate to contact us with questions.

## FOUNDATIONAL POLICIES

1. Pursuant to Volume VII 7.306.41 (E)(3) and 7.306.42(D)(3), an “adoption assistance agreement shall be established in accordance with the county department’s written policy. The policy shall outline the criteria used for determining the amount of adoption assistance.”

- a. Does your department have written policies that outline: **(1) the adoption negotiation process, (2) how the amount of adoption assistance will be determined and (3) adoptive parent’s rights and remedies available throughout the process?**

**If applicable, please provide a copy of these policies.**

**List Documents:**

- b. Are these policies available to the public? If so, how?
- c. Does your agency have a process by which these policies are reviewed on a scheduled basis? If so, please explain the review process.
- d. If you do not have a written policy, please explain why.

## ADOPTION ASSISTANCE PROGRAM ELIGIBILITY

2. Colorado offers two adoption assistance programs: the Title IV-E program and the state and county only (Non-Title IV-E) program. These programs are “intended to help or remove financial or other barriers to the adoption of Colorado children with special needs by providing assistance to the parents in carrying for and raising the child.”

- a. How does your department inform families of your adoption assistance program, as required by Volume VII 7.306.4(A)(3)(f)?

**If applicable, please provide any information packets you distribute to prospective adoptive families before, during and after the negotiation process.**

**List Documents:**

- b. What information does your department provide to prospective adoptive families about the negotiation process?
- c. What information does your department generally request or require from prospective adoptive families during the negotiation process?

**If applicable, please provide any forms you require prospective adoptive families to complete before, during and after the negotiation process.**

**List Documents:**

## THE PROCESS

3. Once a child is freed for adoption, Volume VII 7.306.13 requires that a “Child’s Social Study” be prepared.

- a. What is your department’s process for conducting the study?
- b. Does your department collect additional information – beyond to the requirements under Volume VII 7.306.13(A) – to complete the child social study?

**If applicable, please provide any written policies regarding the completion of a child social study.**

**List Documents:**

4. Volume VII 7.306.4(A)(3)(d) requires departments to establish whether “a specific factor or condition (special need)” exists “to conclude that a child cannot be adopted without providing adoption assistance or medical assistance.”

- a. When assessing whether a child has **special needs**, how does your department determine whether a child meets the criteria listed in Volume VII 7.306.4(A)(3)(d)?
- b. Does your department have any additional practices and/or policies – beyond those stated in Volume VII 7.306.4(A)(3)(d) – that guide how your department determines whether a child is eligible for adoption or medical assistance?

**If applicable, please provide any forms or documentation your department requires of prospective adoptive parents when establishing whether a child is eligible for adoption or medical assistance.**

**List Documents:**

5. Volume VII, 7.306.4(A)(f) states that adoption subsidy agreements shall be based on “the child’s need and the **family’s circumstances**.”

- a. Please provide a narrative about how your agency defines **family circumstances** when negotiating adoption assistance with adoptive parent(s).
- b. What documents does your department request from prospective adoptive families that detail their **family circumstances**?

6. Pursuant to Volume VII 7.306.2(A), county departments are required to “conduct a face-to-face presentation interview with the prospective adoptive parent(s).”

- a. How does your department present prospective adoptive parents with information from the child’s record, as is required by Volume VII 7.306.2(B)?

**If applicable, please provide any policies – in addition to those stated in Volume VII 7.306.2 – that guide how your department conducts the presentation interview.**

**List Documents:**

7. Volume VII 7.306.41(E)(7) and 7.306.42(D)(6) provides that the “county shall establish a maximum amount” of adoption assistance that can be provided to a prospective adoptive family through an agreement.
  - a. If your department’s maximum amount for adoption assistance differs from the established foster care rate, please describe how your department established its maximum adoption assistance amount?
  - b. Does your department have an **exception** to the maximum adoption assistance amount? If so, please describe circumstances under which a child would qualify for this exception.
8. In negotiating an adoption assistance agreement, does your department allow for the participation of Guardians ad litem, private counsel, treatment providers, mental health professionals or physicians during the negotiation meetings?

**If applicable, please provide any policies your department has concerning who may attend the negotiation meeting.**

**List Documents:**

## **REVIEWS**

9. Volume VII 7.306.57(A), requires a department to review adoption assistance agreements every three years and defines the parameters of those reviews.
  - a. How does your department provide families with written notification of upcoming reviews?
  - b. How does your department determine whether a change in the original barriers to adoption warrants an adjustment to the adoption assistance agreement?

**If applicable, please provide any information your department gives families concerning the review process.**

**List Documents:**

## APPEALS

10. Per Volume VII, 7.306.6, "When the county department denies an application for adoption subsidy, or reduces or terminates the subsidy grant, the applicant or recipient shall have the right to appeal."

- a. Does your department have a written policy that advises prospective adoptive parent(s) of their right to appeal? Is this policy provided to the prospective adoptive parent(s)?

**If applicable, please provide a copy of the policy.**

**List Documents:**

## FUNDING

11. Child welfare funding is comprised of federal, state and local funding streams.

- a. In Fiscal Year 2015-2016, what was the total amount of funds your department spent on your adoption assistance program?
- b. Of the funds used to run your adoption assistance program, what was the total amount used to pay adoption subsidies in Fiscal Year 2015-2016?

**Please provide any documentation showing how funds were used for your department's adoption assistance program in Fiscal Year 2015-2016.**

**List Documents:**

## OUTREACH

12. As part of its investigation, the CPO is connecting with prospective adoptive families and adoptive families to learn more about their experiences with departments' adoption assistance programs. We're eager to learn what families found beneficial and helpful, as well as areas where they feel there could be improvements. To accomplish this, we would like to conduct a survey that captures a statewide sample of adoptive families. We have learned that many county departments have listservs that they use to communicate with adoptive families. We would like to email families and provide them with a brief survey regarding their experiences.

- a. If applicable, would your department be willing to share your listserv of adoptive families with the CPO so we may send them an electronic survey?

## **APPENDIX B**





# **REPORT OF THE STATE AUDITOR**

## **Subsidized Adoption Program Division of Child Welfare Services**

**Performance Audit  
March 2002**

**LEGISLATIVE AUDIT COMMITTEE  
2002 MEMBERS**

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Chairman

*Senator Ron Tupa*  
Vice-Chairman

*Senator Norma Anderson*  
*Representative Fran Coleman*  
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*Senator Stephanie Takis*  
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State Auditor

*Larry Gupton*  
Deputy State Auditor

*Monica Bowers*  
*Kevin Hopkins*  
*Julie Kennedy*  
*Jeannie Walter*  
Legislative Auditors



## STATE OF COLORADO

Joanne Hill, CPA  
State Auditor

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### OFFICE OF THE STATE AUDITOR

(303) 866-2051  
FAX(303) 866-2060

Legislative Services Building  
200 East 14th Avenue  
Denver, Colorado 80203-2211

March 26, 2002

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Subsidized Adoption Program in the Colorado Department of Human Services' Division of Child Welfare Services . The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Division of Child Welfare Services.

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**STATE OF COLORADO  
OFFICE OF THE STATE AUDITOR**

**REPORT SUMMARY**

**JOANNE HILL, CPA  
State Auditor**

**Subsidized Adoption Program  
Division of Child Welfare Services  
Performance Audit  
March 2002**

**Authority, Purpose, and Scope**

This audit of the Subsidized Adoption Program was conducted under the authority of Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of the state government. The audit was conducted in accordance with generally accepted government auditing standards. Audit work was performed from July 2001 through January 2002.

The audit evaluated all aspects of the Subsidized Adoption Program. We reviewed overall program effectiveness, the timeliness of the adoption process, the appropriate payment of adoption subsidies, the impact of varying subsidy rates, and the negotiation of adoption subsidy types and amounts.

This report contains findings and 14 recommendations for improving the Subsidized Adoption Program. We would like to acknowledge the efforts and assistance extended by management and staff from the Colorado Department of Human Services and county departments of social services. The following summary provides highlights of audit comments, recommendations, and responses contained in the report.

**Overview**

In Colorado, children can be adopted through private organizations or through the Department of Human Services. Many of the children available for adoption through the Department of Human Services have serious physical, mental, and emotional disabilities, or are difficult to place because of their age or membership in a sibling group. Colorado's Subsidized Adoption Program, administered by the Division of Child Welfare Services, plays a key role in placing these special needs children into permanent adoptive homes. The Program provides financial assistance to adoptive families which includes regular monthly adoption subsidies and Medicaid coverage for the adopted child.

Colorado's Subsidized Adoption Program consists of both a state/county program and a federal Title IV-E adoption assistance program. In Fiscal Year 2000 more than 80 percent of the children in the Program were enrolled under Title IV-E. Monthly adoption subsidies under the Title IV-E program are paid using 30 percent state funds, 20 percent county funds, and 50 percent federal funds. For subsidies that are not eligible for Title IV-E reimbursement, the State contributes 80 percent and the counties 20 percent of the funding.

*For further information on this report, contact the Office of the State Auditor at (303) 869-2800.*



## **SUMMARY**

Monthly adoption subsidy expenditures have increased nearly 600 percent over the past ten years, from \$3.2 million in State Fiscal Year 1992 to \$26.5 million in State Fiscal Year 2001. We were unable to obtain accurate figures for case services, nonrecurring adoption costs, and Medicaid because these cost categories are not discretely tracked. The number of children in the Program who receive subsidies has also increased, from just over 900 in Fiscal Year 1992 to over 4,000 in Fiscal Year 2000.

### **Program Effectiveness**

The primary purpose of the Subsidized Adoption Program is to find permanent adoptive homes for special needs children in the State's custody by providing financial assistance to families adopting these children. Data such as the number of successful and unsuccessful adoptions and reasons why they succeed or fail provide indicators of the extent to which the Program is accomplishing its goals.

In general, we found that the Division and counties do not collect, compile, and use dissolution and out-of-home placement data for the subsidized adoption population on an ongoing basis. We used information collected through file reviews of 168 cases to determine if subsidized adoption placements are resulting in permanent homes for children with special needs. We found that in 18 of the 168 cases in our sample (11 percent), children had to be placed outside of their adoptive homes. In half of these 18 cases, the reason for the out-of-home placement was an allegation of abuse or neglect of the child. In addition, six of the cases in our sample ended in dissolutions, four of which were due to abuse or neglect. The Division does not require counties to collect, evaluate, and report on this type of information. Tracking and evaluating both the number and causes of out-of-home placements and dissolutions can be useful in identifying ways to prevent future dissolutions and provide services and supports to families to better address crises that may arise.

### **Expediting the Adoption Process**

We found that Colorado ranks 25th among all states in the average amount of time that elapses between the termination of parental rights and the finalization of adoption. In Federal Fiscal Year 1999 Colorado reported that it took an average of about 15 months from the termination of parental rights to the finalization of adoption. The average time reported by other states ranged from about 6 months to about 26 months. Placing children in permanent adoptive homes as quickly as possible reduces the likelihood of multiple foster placements and reduces the State's foster care costs.

Although a number of factors may influence the amount of time required to finalize adoptions, we found that some counties have implemented practices that are particularly useful in expediting the adoption process, including concurrent planning and foster-adoption programs. Concurrent planning addresses a child's need for a permanent home by developing an alternative plan while, at the same time, working toward reuniting the child with his or her family. Foster-adoption programs are an expanded version of concurrent planning

and involve counties' placing children who are not yet legally available for adoption with foster parents who are willing to adopt the children if and when they become available. Using our sample of case files, we compared the time it took for Colorado's two largest counties to finalize adoptions between 1998 and 2000. We found that the county using a foster-adoption program was able to finalize nearly 60 percent of the cases in our sample within six months of the termination of parental rights. In contrast, the county that does not have a comprehensive foster-adoption program finalized none of the cases in our sample within 6 months and took over 18 months to finalize nearly 60 percent of the cases. In addition to shortening the adoption process, other advantages to using concurrent planning and foster-adoption programs include allowing ample time for children to bond with the adoptive family, allowing time to identify and address problems, and reducing the number of placements for the child.

## **Post-Adoption Services**

Research studies indicate that providing post-adoption services to families can be effective in preserving adoptive placements. Overall, Colorado counties provide limited post-adoption services and supports to families in the Subsidized Adoption Program. However, we found that four counties in our sample have good post-adoption services programs that include implementing educational and training programs for adoptive families, developing respite care programs, providing support groups to prevent dissolutions, and creating newsletters and handbooks that provide families with information on adoptive resources available in their communities. Funding for expanded post-adoption services programs may be available through federal Title IV-B monies or federal adoption incentive grants received by the State for increasing the number of adoptions finalized.

## **Assessing Children's Needs**

One of the main ways that counties assess children's special needs is using formalized, written assessment tools. We found that 13 counties in our sample of 20 use such tools to identify the needs of the children and determine the adoption subsidy amounts. The remaining seven counties use a less formal approach for identifying the severity of the child's needs—they meet with the families and discuss the children's needs. Although formal assessment tools can be helpful in determining children's needs, we found that many counties do not weight the factors in the assessment tools, so factors of varying importance may be considered of equal value. In addition, we found a lack of documentation, such as medical or mental health evaluations, to support some of the identified needs. In our sample of 89 cases where adoptions were finalized between 1998 and 2000, we found there was no documentation to support diagnoses of physical, mental, or emotional disabilities for 24 cases (27 percent). These diagnoses are used to measure the severity of the child's needs. It is important for counties to properly assess children's special needs to ensure that children receive the services they need and to establish subsidy amounts that are appropriate to meet those needs.

## **Adoption Subsidy Payments**

We identified a number of problems with adoption subsidy payments, including:

- The Division did not submit timely claims to the federal government for reimbursement of nonrecurring adoption costs incurred between July 1999 and June 2001. In Colorado, families adopting special needs children can be reimbursed for up to \$800 in costs they incur as part of the adoption process (known as "nonrecurring adoption costs"). Division records indicate that the State spent more than \$900,000 in nonrecurring adoption costs between July 1999 and June 2001. The State was eligible to be reimbursed for 50 percent of these costs, or more than \$450,000. As a result of our review of this issue, in January 2002 the Division submitted a retroactive request for reimbursement of costs incurred between October 1999 and June 2001. However, because the Division delayed its request for reimbursement, it was not able to request the 50 percent federal match, estimated at \$53,500, for costs incurred from July through September 1999.
- We estimate that the State paid about \$466,000 in unauthorized subsidies because counties continued paying adoption subsidies after children turned age 18. In general, federal statutes and state regulations require subsidy payments to end in the month following a child's 18<sup>th</sup> birthday. The State may be required to reimburse the federal government an estimated \$233,000 in unallowed payments due to the continuation of these subsidies.
- The Department's rules and regulations do not clearly describe how counties should handle adoption subsidies in out-of-home placement situations. Out-of-home placements occur when adopted children are placed in foster homes or treatment facilities, such as residential treatment centers, either to receive treatment related to behavioral or mental health issues or to address alleged abuse or neglect. We found that counties use a number of approaches for handling adoption subsidies when adoptive children are placed out of the home. Some counties suspend the adoption subsidy, some continue the subsidies and assess fees to the families for the out-of-home placements, and some continue the subsidies but do not assess fees to the families. When counties continue paying the subsidy but do not assess a fee, the government incurs a double cost for the children—first for the original adoption subsidy, second for the payment to the foster care home or treatment facility. The Division has not provided clear direction to counties on how to handle adoption subsidies in out-of-home placement situations.
- As part of its annual monitoring reviews over the past two years, the Division identified 15 subsidy cases in which the counties either did not create an initial adoption subsidy agreement or the agreements were not signed prior to the finalization of the adoption. Because the paperwork was not in compliance with state and federal requirements, these 15 cases were technically not eligible for either the Title IV-E or the state/county program. The Division directed the counties to reassign

the cases so that only state/county funds were being used. As a result of the reassignment, the 50 percent federal match for the subsidies will not be available, so the subsidies will be paid using 80 percent state funds and 20 percent county funds. We estimate these cases will cost the State about \$415,000 more over the term of the subsidies than if they had continued under the Title IV-E program.

## **Adoption Subsidy Negotiations**

We evaluated the methods used by counties to set rates and determine adoption subsidy types and amounts. We found:

- The adoption subsidy rates set in counties' policies and the average monthly subsidies paid by counties varied significantly. For instance, among the 20 counties in our sample, we found that the maximum adoption subsidies rates set in county policies ranged from \$423 per month to \$1,582 per month and the actual monthly subsidy payments made in Fiscal Year 2000 averaged between \$99 and \$714. While flexibility in the Program is generally good, we noted potential problems with the wide variation in rates. For example, counties with higher rates may attract prospective adoptive parents from other counties with lower rates. As a result, counties paying lower rates may encounter difficulties in finding prospective adoptive parents for children in their custody, and these children may languish in the foster care system.
- Two counties in our sample set their adoption subsidy rates higher than allowed because they include a respite care allowance in their subsidy rates. The Department's rules and regulations do not allow counties to include respite care in their adoption subsidy rates. We estimate that by including respite care in their rates, these two counties' exceeded the maximum allowable subsidy payment by nearly \$110,000 in Fiscal Year 2000.
- Improvements are needed in how counties negotiate adoption subsidies. We found that most counties do not consider the circumstances of the family when determining the type and amount of the subsidy, as required by federal and state regulations. In addition, the Division does not actively encourage counties to set adoption subsidies at the lowest amount that will meet the needs of the families.
- We found that 13 counties in our sample automatically increase the adoption subsidy amount when children enter new age categories. This practice does not address the three main criteria for determining subsidy amounts: whether the child's needs have intensified, the family's circumstances have worsened, or community resources are available free of charge to meet the child's needs.

Our recommendations and the Department's responses can be found in the Recommendation Locator.

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## RECOMMENDATION LOCATOR

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<b>Rec. No.</b>	<b>Page No.</b>	<b>Recommendation Summary</b>	<b>Agency Addressed</b>	<b>Agency Response</b>	<b>Implementation Date</b>
1	22	Implement processes to collect, evaluate, and report data on dissolutions and out-of-home placements of adopted children.	Division of Child Welfare Services	Agree	December 15, 2003
2	29	Explore and promote ways to expedite the adoption process, including the use of concurrent planning and foster-adoption programs.	Division of Child Welfare Services	Agree	July 1, 2003
3	33	Encourage counties to expand their post-adoption services and supports.	Division of Child Welfare Services	Agree	July 1, 2003
4	35	Assist counties in the proper assessment of children's needs.	Division of Child Welfare Services	Agree	July 1, 2003
5	39	Ensure that claims for reimbursements of nonrecurring adoption costs are submitted to the federal government each quarter by modifying the reporting and accounting systems to capture nonrecurring adoption costs.	Division of Child Welfare Services	Agree	July 1, 2003
6	41	Ensure the State is in compliance with federal and state requirements regarding subsidy payments after children reach the age of 18.	Division of Child Welfare Services	Agree	September 1, 2002
7	44	Improve how counties handle adoption subsidies when children are temporarily placed out of their adoptive homes.	Division of Child Welfare Services	Agree	July 1, 2003

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## RECOMMENDATION LOCATOR

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<b>Rec. No.</b>	<b>Page No.</b>	<b>Recommendation Summary</b>	<b>Agency Addressed</b>	<b>Agency Response</b>	<b>Implementation Date</b>
8	46	Work with the federal liaison to reinstate subsidized adoption cases that have been removed from the federal Title IV-E program due to technical problems with properly establishing the initial subsidy agreement.	Division of Child Welfare Services	Agree	December 1, 2002
9	47	Ensure that counties are aware of and in compliance with requirements to establish and sign adoption subsidy agreements in a timely manner.	Division of Child Welfare Services	Agree	July 1, 2003
10	52	Establish procedures to collect and review rate information on an annual basis to determine how rates set by all counties affect the Subsidized Adoption Program.	Division of Child Welfare Services	Partially Agree	December 1, 2003
11	54	Ensure counties comply with the program requirement that adoption subsidy rates do not exceed foster maintenance rates and do not include respite care allowances.	Division of Child Welfare Services	Agree	July 1, 2003
12	58	Provide more oversight and assistance to counties on how they should consider family circumstances when negotiating adoption subsidies.	Division of Child Welfare Services	Agree	July 1, 2003
13	60	Provide more direction to counties on how to negotiate the lowest adoption subsidy needed for families to meet the special needs of their adopted children.	Division of Child Welfare Services	Agree	July 1, 2003

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## RECOMMENDATION LOCATOR

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<b>Rec. No.</b>	<b>Page No.</b>	<b>Recommendation Summary</b>	<b>Agency Addressed</b>	<b>Agency Response</b>	<b>Implementation Date</b>
14	62	Ensure that counties make changes to the subsidy amounts based on the child's needs, the family's circumstances, and the availability of free community resources.	Division of Child Welfare Services	Agree	July 1, 2003

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# Overview of the Subsidized Adoption Program

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In Colorado, children can be adopted through private organizations or through county departments of human services/social services. Children available for adoption through county departments typically enter the State's child welfare system as a result of abuse and neglect and cannot be returned to their parents. Finding adoptive homes for these children, many of whom have serious physical, mental, and emotional disabilities, can be difficult, in part, because of the financial burdens imposed by their special needs. Colorado's Subsidized Adoption Program (the Program) plays a key role in placing these special needs children into permanent adoptive homes. The Program helps reduce financial barriers to adoption by providing assistance such as regular monthly adoption subsidies paid to the families and Medicaid coverage for the child. Additionally, the State and counties may pay for certain types of services not covered by Medicaid or the monthly subsidies, such as therapy and respite care. In Fiscal Year 2000, adoption subsidies were provided to families in 97 percent of the cases where adoptions were finalized. The Program benefits not only the special needs children who are placed in permanent homes but also the State by reducing the high costs of foster care for these children.

## Organization of Colorado's Subsidized Adoption Program

In Colorado, the Subsidized Adoption Program is overseen by the Department of Human Services' Division of Child Welfare Services (the Division) and administered at the local level by county departments of social services. The Division is responsible for providing guidance and technical assistance to counties and ensuring compliance with program requirements. In addition, the State Board of Human Services promulgates rules and regulations for the Subsidized Adoption Program. County departments provide direct services to families participating in the Program, including determining program eligibility, negotiating adoption subsidies, establishing subsidy agreements, making subsidy payments to families, and conducting annual redeterminations.

Colorado's Subsidized Adoption Program consists of both a state/county program and a federal Title IV-E adoption assistance program. The state/county program was created by the General Assembly during the 1973 Legislative Session. According to Section 26-7-

103, C.R.S., adoption subsidies may be paid to the families only if all of the following conditions are present at the time the child is placed for adoption:

- The child is in the custody of the Department or a licensed nonprofit child placement agency and is legally available for adoption. Children in the custody of a licensed nonprofit child placement agency must meet federal requirements for eligibility under Title IV-E of the federal Social Security Act.
- All reasonable efforts to place the child for adoption have been made without success prior to consideration of a subsidy.
- The child is one with special needs as determined by prognosis and diagnosis. Department rules and regulations define special needs as special, unusual or significant factors such as physical disabilities, mental retardation, emotional disturbances, hereditary factors, exposure to drugs or alcohol in utero, or other conditions that act as serious barriers to adoption including age or membership in a sibling group.
- The Department or licensed nonprofit child placement agency has determined that the adoptive family has the capability of providing for the nonfinancial needs of the child in all areas.
- The Department or licensed nonprofit child placement agency is financially responsible for the care of the child.

The federal Title IV-E adoption assistance program was created by Congress with the passage of the Adoption Assistance and Child Welfare Act of 1980. Congress was primarily concerned with moving children in state foster care systems into permanent adoptive homes when appropriate. This program was developed to provide ongoing financial and medical assistance to families adopting these children. In addition to the eligibility criteria set in state statute, a child must be defined as having special needs and meet one of the following four conditions to be eligible for the federal program:

- Be AFDC-eligible.
- Be eligible for Supplemental Security Income (SSI) benefits.
- Be a child of a minor parent in foster care.
- Be eligible due to prior Title IV-E adoption assistance eligibility.

In Fiscal Year 2000 more than 80 percent of the children in Colorado's Subsidized Adoption Program were enrolled in the federal Title IV-E program.

## Program Funding

Colorado's Subsidized Adoption Program is funded with federal, state, and county monies. The General Assembly appropriates funding for the Program through the Child Welfare Block Grant (the block grant). The block grant consists of funding for various types of out-of-home placements as well as the Subsidized Adoption Program. State statutes require the Child Welfare Allocation Committee (the Committee) to determine how the block grant funds should be allocated to counties. The Committee has created an allocation formula that is based upon certain factors, such as child welfare and out-of-home placement caseloads and costs. State statutes give counties flexibility in spending their child welfare funds.

Monthly subsidy expenditures have increased nearly 600 percent over the past ten years, from \$3.2 million in State Fiscal Year 1992 to \$26.5 million in State Fiscal Year 2001. We were unable to obtain accurate figures for case services and nonrecurring adoption costs because the Division combines these costs for subsidized adoption with those for foster care. We also tried to obtain Medicaid expenditures for children participating in the Program, but the Department of Health Care Policy and Financing's automated system does not track Medicaid expenditures for subsidized adoption cases in an aggregate form. This information is only available on a case-by-case basis. The Division of Child Welfare's automated database, TRAILS, is intended to have the capability of tracking case services and nonrecurring adoption costs in the future.

For monthly adoption subsidies under the federal Title IV-E adoption assistance program, the State contributes 30 percent of the funding, the counties 20 percent, and the federal government a 50 percent match. For subsidies that are not eligible for Title IV-E reimbursement, the State contributes 80 percent and the counties 20 percent of the funding.

As the table below shows, the number of children served, the total expenditures for monthly adoption subsidies, and the average monthly payments increased significantly between State Fiscal Years 1992 and 2000.

<b>Adoption Subsidy Payments</b> <b>State Fiscal Years 1992 to 2000</b>			
<b>Fiscal Year</b>	<b>Number of Children Served (FPE <sup>1</sup>)</b>	<b>Monthly Maintenance Subsidy Expenditures</b>	<b>Average Monthly Payments <sup>2</sup></b>
<b>1992</b>	930	\$3,200,280	\$287
<b>1993</b>	1,018	\$3,587,715	\$294
<b>1994</b>	1,297	\$4,237,800	\$272
<b>1995</b>	1,451	\$5,493,400	\$316
<b>1996</b>	1,782	\$7,050,054	\$330
<b>1997</b>	2,209	\$9,372,179	\$354
<b>1998</b>	2,631	\$11,842,813	\$375
<b>1999</b>	3,204	\$16,276,509	\$423
<b>2000</b>	3,909	\$21,535,566	\$459
<b>2001</b>	N/A <sup>3</sup>	\$26,545,767	N/A
<b>Percent Increase From 1992 To 2000</b>	<b>320.3%</b>	<b>572.9%</b>	<b>59.9%</b>
<b>Source:</b> Office of the State Auditor's analysis of the Colorado Department of Human Services' Fiscal Year 2001 and 2002 budget requests and expenditure data provided by the Division of Child Welfare Services. <sup>1</sup> The full participant equivalent (FPE) represents the average number of children served for an entire year. The total number of children served is larger than the FPE because some children included in the total may have been in the Program for less than 12 months. <sup>2</sup> Average monthly payments are calculated by dividing the Monthly Maintenance Subsidy Expenditures by the FPE and dividing the result by 12. <sup>3</sup> The Division was unable to provide the FPE or the number of children served in 2001 due to problems with its new automated case management system, TRAILS.			

Adoption subsidies are prohibited by federal and state law from exceeding foster care rates. For Fiscal Year 2000 the average monthly foster care rate was \$1,075. This includes family foster care, relative foster care, group homes, receiving homes, and shelter care.

## Audit Scope

This audit addressed all aspects of the Subsidized Adoption Program including:

- The overall effectiveness of the Program.
- The timeliness of the adoption process.
- The appropriate payment of adoption subsidies.
- The impact of varying subsidy rates on the Program.
- The negotiation of adoption subsidy types and amounts.

As part of our audit, we visited seven counties and interviewed various state and county staff involved in the adoption programs. We also reviewed a sample of 168 subsidy files. Our sample consisted of 89 cases in which adoptions were finalized between Calendar Years 1998 and 2000 and 79 cases in which subsidies were discontinued in Calendar Years 1999 and 2000. We also contacted an additional 13 counties to obtain information on recruitment of adoptive families, rate-setting policies, and negotiation and payment of adoption subsidies.

# Program Effectiveness

## Chapter 1

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### Background

Both state and federal laws and policies emphasize the importance of successfully placing children in permanent adoptive homes. For example, Section 19-5-100.2(1), C.R.S., states:

Adoption offers significant psychological, legal, economic, and social benefits not only for children who might otherwise be homeless but also for parents who are unable to care for their children and for adoptive parents who desire children to nurture, care for, and support. Conversely, the general assembly recognizes that disrupted adoptive placements often have a profound and negative impact on individuals.

Section 24-60-2401, C.R.S., further states that "it is desirable to find adoptive parents for children with special needs, to make payments in subsidization of adoption of such children, and to protect the interests of such children through their minority." Additionally, federal policy states that the Program "is intended to encourage an action that will be a lifelong social benefit to certain children and not to meet the short-term monetary needs during a crisis."

Thus, the Subsidized Adoption Program is intended to reduce financial barriers so that children with special needs can be placed in permanent adoptive homes. According to Department rules and regulations, special needs include a physical disability, mental retardation, emotional disturbance, hereditary factors, exposure to drugs or alcohol in utero, or other conditions that act as serious barriers to adoption including age or membership in a sibling group. In Fiscal Year 2000, nearly 97 percent of the children adopted through county departments of social services received some type of adoption assistance.

As the following table shows, the number of finalized adoptions and children served in the Program has increased significantly over a five-year period.

<b>Changes in the Subsidized Adoption Program From Fiscal Year 1996 To Fiscal Year 2000</b>		
<b>State Fiscal Year</b>	<b>Number of Finalized Adoptions</b>	<b>Cumulative Number of Children Receiving Adoption Subsidies</b>
1996	454	2,840
1997	571	3,292
1998	561	3,827
1999	717	4,611
2000	781	5,309
<b>Percent Change From 1996 To 2000</b>	<b>72.0%</b>	<b>86.9%</b>
<b>Source:</b> Information provided by the Division of Child Welfare Services.		

The proportion of children adopted as a percentage of children awaiting adoption has also slightly increased in recent years from 39 percent in Federal Fiscal Year 1998 to 42 percent in Federal Fiscal Year 1999. Nationally, the percentage of children adopted was 36 percent in Federal Fiscal Year 1999.

## **Collect and Evaluate Dissolution and Out-of-Home Placement Data**

The primary goal of the Subsidized Adoption Program is to find permanent adoptive homes for special needs children in the State's custody. Ideally, once a child is placed, the adoptive situation will not be interrupted by an out-of-home placement or a dissolution of the adoption. However, out-of-home placements and adoption dissolutions do occur. Because these children have special needs, which may include severe mental, physical, or emotional disabilities, out-of-home placements are not uncommon and program staff expect some such placements to occur. Out-of-home placements typically involve the short-term placement of a child in a foster home or treatment center and often occur because the child's behavior is beyond the control of the adoptive parents. However, out-of-home placements may also occur for other reasons, such as abuse or neglect of the child. Once the problem that caused the out-of-home placement is resolved, the child is often returned to the adoptive home. A dissolution may be the long-term outcome when



problems in the adoptive home cannot be resolved. Dissolutions occur when the adoption fails after finalization and the parental rights of the adoptive parents are terminated or relinquished. When a dissolution occurs, the child returns to the foster care system and may eventually be adopted by another family.

Currently the Division does not require counties to collect, evaluate, or report the number of and reasons for dissolutions and out-of-home placements. However, information on the causes of such placements and dissolutions can provide insight on weaknesses in program operations. These issues are discussed in greater detail in the following sections.

## **Dissolution Information Is Lacking**

Although the Division of Child Welfare Services knows the number of adoptions that are finalized each year, it does not know how many of those adoptions end in dissolution. We found that counties generally know when adoptions dissolve because adoption subsidies are stopped when parents are no longer legally responsible for their adopted children. However, counties do not typically compile or report the information to the Division. Only one county we contacted has established procedures for intake and adoption staff to identify and internally report dissolutions occurring within the county. As part of its data collection, this large county identified four adoption dissolutions in 1999 and 2000.

Having information on the number of adoptions that do not turn out to be permanent is important for two reasons. First, because permanent placement of these special needs children is the ultimate goal of the Program, the number of dissolutions is an important indicator of the Program's overall effectiveness. Second, knowing why dissolutions occur can be valuable in improving program operations. For example, if dissolutions typically result from abuse or neglect of the child, this may indicate the processes used to select prospective adoptive families are not working as well as they should.

We used information collected through case file reviews of 168 cases to determine if subsidized adoption placements are resulting in permanent homes for children with special needs. As part of our review, we identified six cases where the adoptions dissolved. All of these cases were located in one county and represent about 10 percent of the 62 cases we reviewed for this large county. In four cases, the children were removed from the home due to physical or sexual abuse or neglect, and the adoptions eventually dissolved. In the remaining two cases, the parents relinquished the children for reasons other than abuse or neglect. Because of our small sample size, we do not know if this percentage is representative of all subsidized adoptions.

According to the Child Welfare Practices Handbook, a variety of factors may contribute to the dissolution of an adoption, including:

- The adoptive child's age.
- The number of previous placements.
- The length of stay in the foster care system.
- Lack of preparation of the adoptive family or child.
- Previously unknown or undetected problems identified during the introduction of the child to the family.
- A mismatched child and family.
- Families "stretched too thin," without adequate education and training or support networks.

Some of these factors, such as the age of the child, are not within the control of the Division and county staff. However, other factors, such as how the child and family are matched and the services and supports provided to families after adoptions are finalized, are within the control of the counties and the Division and can influence whether an adoptive placement will be successful. Because the efforts of the Division and counties can impact the success of an adoption, it is important for them to have and use information on those adoptions that do not succeed. This type of information can help improve the Program. For instance, evaluating the reasons adoptions dissolve will help the Division and counties:

- Identify and address weaknesses in the processes used to screen and select adoptive parents.
- Determine what types of preservation services could be provided to families before and after the finalization of adoption.
- Develop methods to fully prepare both the families and the children for their new family situations.

The Division should require the counties to collect and report dissolution data on a regular basis. In addition, the Division should request information from the Judicial Department to help identify dissolutions. The Judicial Department maintains a database of all relinquishment and termination of parental rights hearings in Colorado. The Division could obtain information on such hearings on a periodic basis and compare it with subsidized adoption cases to help ensure that all relinquishments and terminations of parental rights related to subsidized adoptions are identified. The Division should also evaluate information on dissolutions routinely and work with the counties to identify trends and develop processes that could prevent dissolutions in the future. For example, for dissolutions that occurred because the child's behavior was beyond the control of the

parents, the Division and county should evaluate what services and supports were provided to the family and whether additional interventions could have been offered to prevent the dissolution.

## **Out-of-Home Placement Data Should Be Analyzed**

As with dissolutions, the Program may be able to impact the number of out-of-home placements through careful screening and matching and by offering post-adoption services to families. However, information on out-of-home placements for the subsidized adoption population is not analyzed by the Division or counties on an ongoing basis. The Division was unable to identify the number of out-of-home placements occurring in the Subsidized Adoption Program between 1998 and 2000.

As part of our review of subsidy files, we collected information on out-of-home placements and identified 18 cases in our sample of 168 cases (11 percent) in which children were placed out of the adoptive home. Specifically:

- In six cases, there were allegations of physical or sexual abuse of the child. Abuse was founded in three of these cases and the children were permanently removed from the adoptive home. In two cases, the children were returned to the adoptive home. In one case, the child was placed in a Residential Treatment Center but remained in contact with the adoptive family.
- In three cases, the county departments had received information that the adoptive parents were neglecting the child. Two of the cases were founded and the children were permanently removed from the adoptive home. The outcome of the third case is pending.
- In the nine remaining cases, the child was placed out of the adoptive home to address the child's behavior. In two of these cases, the child eventually returned home. In another two cases, the children remained in out-of-home placements, but the parents were still involved with their adopted children. In one case, the parents relinquished their parental rights. In two cases, the children turned age 18, making them ineligible for the Program. For the final two cases, we were unable to obtain information on whether the children returned to their adoptive families' homes.

These cases involving out-of-home placements raise concerns about the screening and selection process for prospective adoptive families. By tracking and evaluating this type

of information, the Division and counties can isolate specific problem areas and develop processes to reduce this figure. Out-of-home placement data are also useful in determining the types of services and supports that are needed to help a family through a crisis. For example, if information on out-of-home placements indicated that a significant number of such placements were due to severe problems with the child's behavior, the Division and the counties could evaluate the services and supports being provided to families to address this issue and identify the need for changes or improvements in the services.

Out-of-home placement data could be tracked through the Division's automated database, TRAILS. Whenever a child reenters the State's Child Welfare System, a record is established in TRAILS describing the reason for reentry and the type of out-of-home placement, to be used. Counties should collect data on out-of-home placements for their subsidized adoption cases on a quarterly basis and report this information to the Division. Together, the Division and the counties should follow up on all cases where a child is placed out of the adoptive home and evaluate whether changes to the Program are needed to help reduce such placements in the future.

Division staff stated that they plan to track dissolutions beginning in 2004 as part of their implementation of the federal Intercountry Adoption Act of 2000, which requires states to track dissolutions of children adopted from other countries. We believe the Division should expedite this initiative and take a proactive approach to tracking dissolutions and out-of-home placements related to the Subsidized Adoption Program by:

- **Developing a reporting format and mechanism for counties to use.** This may involve establishing fields within the Division's automated case management system, TRAILS, for counties to enter information on dissolutions and out-of-home placements.
- **Evaluating and reporting program outcomes.** The Division should, at a minimum, annually evaluate the number of and reasons for dissolutions and out-of-home placements. The Division should share this information with all counties to identify better ways to screen and select adoptive parents and to provide services designed to preserve adoptive placements.
- **Monitoring the data collected and reported by counties.** As part of its annual monitoring reviews, the Division should review counties' processes for collecting and reporting dissolutions and out-of-home placements to ensure that data collected are accurate and complete.

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## **Recommendation No. 1:**

The Division of Child Welfare Services should implement processes to collect, evaluate, and report data on dissolutions of adoptions and out-of-home placements of adopted children. This should include:

- a. Developing a mechanism for counties to report adoption dissolution and out-of-home placement information and providing training and technical assistance to all counties on the reporting mechanism.
- b. Periodically obtaining information from the Judicial Department on relinquishment and termination of parental rights hearings and matching the information with subsidized adoption cases to ensure all dissolved adoptions are identified.
- c. Monitoring the methods used by counties to collect and report outcome data to the Division.
- d. Evaluating data on dissolutions and out-of-home placements and working with counties to make program improvements based on the data evaluation.

## **Division of Child Welfare Services Response:**

Agree. The Department will monitor, provide training and technical assistance and evaluate county departments' use of automated reports of dissolutions. The Department will work with State Judicial on the collection of relinquishment and termination data. The Division will develop a report that will identify children with a finalized adoption who have a dissolution and reenter out of home care. The new Child Welfare Automated System, Colorado, TRAILS, currently contains the necessary fields to develop this report. The report will be produced periodically as defined by the Division of Child Welfare. Until the report can be developed, the Division will periodically survey the county departments to obtain this information. Additionally, upon receipt of the information from State Judicial the Department will annually match the information with subsidized adoption cases to ensure all dissolved adoptions are identified.

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## **More Emphasis Is Needed on Expediting the Adoption Process in Colorado**

As discussed earlier, the proportion of children adopted as a percentage of children awaiting adoption was only at 42 percent in 1999 (713 children adopted out of 1,682 awaiting adoption). This indicates that more than half of the children in the State's custody that were legally available for adoption had not been adopted at that time. Placing children into permanent adoptive homes in a timely fashion reduces the likelihood of multiple foster placements and reduces the State's foster care costs. We found that Colorado ranks in the middle of all states in the average amount of time elapsed between the termination of parental rights and the finalization of adoption. As the following chart shows, in Federal Fiscal Year 1999 Colorado reported that it took an average of 15.34 months from the termination of parental rights to the finalization of the adoption. This is an increase from Federal Fiscal Year 1998, in which the average was 13.87 months. The federal standard for the amount of time elapsed between the termination of parental rights and the finalization of the adoption is 24 months.

**Average Number of Months Between Termination of Parental Rights and  
Finalization of Adoption for Children in the Custody of the State**  
*Federal Fiscal Year 1999*

Rank	State	Average No. of Months	Rank	State	Average No. of Months
1	Wyoming	5.74	27	Maryland	15.96
2	Idaho	8.00	28	Massachusetts	16.00
3	Utah	8.96	29	Connecticut	16.01
4	Wisconsin	9.17	30	Washington	16.04
5	Rhode Island	9.44	31	Michigan	16.19
6	Delaware	9.98	32	Oregon	16.68
7	North Dakota	10.84	33	Nebraska	16.78
8	Illinois	11.38	34	Arizona	16.92
9	Arkansas	11.87	35	South Dakota	17.03
10	Pennsylvania	12.09	36	Florida	17.22
11	Alaska	12.21	37	Vermont	17.56
12	Hawaii	12.47	38	Kansas	17.64
13	Ohio	12.80	39	Louisiana	18.36
14	District of Columbia	12.87	40	Virginia	18.62
15	Missouri	13.10	41	Montana	18.74
16	New Jersey	13.16	42	Oklahoma	19.21
17	South Carolina	13.63	43	Alabama	19.65
18	New Hampshire	13.87	44	Nevada	19.86
19	California	13.91	45	Georgia	20.05
20	Indiana	14.25	46	Tennessee	20.63
21	North Carolina	14.43	47	West Virginia	21.85
22	Iowa	15.04	48	Kentucky	22.04
23	Texas	15.09	49	Minnesota	23.71
24	Mississippi	15.25	50	Maine	23.93
<b>25</b>	<b>Colorado</b>	<b>15.34</b>	51	New York	26.34
26	New Mexico	15.86			

**Source:** Office of the State Auditor's analysis of information reported in the U.S. Department of Health and Human Services' Adoption and Foster Care Analysis and Reporting System (AFCARS).

**Note:** Children in the custody of the state generally have special needs and are likely to be eligible for the Subsidized Adoption Program.

A number of factors may influence the amount of time required to finalize adoptions after the parental rights have been terminated. Some of these factors are not within the control of the Division and counties. For instance, the judicial process can be time-consuming, particularly if appeals on termination of parental rights rulings are filed. If a parent appeals a judge's decision to terminate his or her parent's rights, the child is not legally available for adoption until the appeal is resolved. This will prolong the process. However, the Division and counties can influence, to a certain extent, other factors affecting the length of the process. These include:

- **The amount of time it takes counties to find prospective adoptive parents.**  
Because not all families are prepared to adopt special needs children, counties sometimes encounter difficulties with finding parents to adopt children with multiple needs.
- **The amount of time it takes to transition a child into an adoptive home.**  
Counties and courts do not want to finalize adoptions until there is some assurance that the placement will be successful. To allow time for relationships to develop between the children and the prospective adoptive family, state statute requires in most cases that children be placed in a potential adoptive home for at least six months before the hearing on the petition to adopt. The petition must be filed and heard before the adoption can be finalized. The court has some discretion with this requirement if it finds good cause to extend or shorten the amount of time the child is placed in an adoptive home before finalization.

The Division does not track the amount of time it takes for counties to finalize adoptions. However, such information would be helpful to the Division, to counties, and to lawmakers in identifying the issues that affect the amount of time to finalize adoptions and in determining how to expedite the process.

Recent legislative initiatives passed at the federal and state levels have emphasized the need to expedite the adoption process. For example, the federal Adoptions and Safe Families Act (ASFA) of 1997 was enacted in part to expedite the process of finding permanent homes for children awaiting adoption. States are required to file a petition to terminate the parental rights of a child's parents if that child has been in foster care for 15 of the most recent 22 months. In addition, the Expedited Permanency Planning Program, created in 1994 by the Colorado Legislature, requires expedited court hearings for children under the age of six (and their siblings, as the court deems appropriate) who are removed from their homes. County departments are required to place the child in a permanent home within one year of the original removal. The legislation requires statewide implementation before



2004. All counties have implemented or are in the process of implementing Expedited Permanency Planning programs.

## **Foster-Adoption Programs Help Expedite the Adoption Process**

Counties can use a number of approaches to expedite the adoption process. One of the most effective approaches we observed is the use of concurrent planning and foster-adoption programs. Concurrent planning addresses children's need for a permanent home by developing an alternative plan while, at the same time, working toward reuniting children with their families. Concurrent planning is used when the likelihood of reunification is uncertain. A concurrent plan has one goal—permanency—and multiple paths to permanency, which may include reunification, guardianship, or adoption. We found that some counties have expanded their use of concurrent planning by developing and using foster-adoption programs. With these programs, counties place children who are not yet legally available for adoption with foster parents who are willing to adopt the children if and when they become available for adoption.

Children can be placed in a prospective adoptive family's home before the parental rights have been terminated or relinquished. However, termination or relinquishment of parental rights must occur before the petition to adopt is filed with and heard by the court. The adoption can only be finalized after a hearing on the petition to adopt has been held. If children can initially be placed with families that will eventually adopt them, the six-month requirement is met more quickly and the county and the courts can move forward to finalize the adoption. Other advantages to using foster-adoption programs include:

- **Allowing ample time for the child to bond with the family.** Division and county staff stated that it takes some children, particularly older ones, a longer period of time to transition into the adoptive home. If a county can place a child with a prospective adoptive family as soon as it is apparent that the parental rights will be terminated or relinquished, it is more likely that the child and adoptive family will be ready to begin the adoption process when the child becomes legally available for adoption.
- **Allowing time to identify and address problems.** Some prospective adoptive families lack experience in parenting special needs children. Foster-adoption programs can provide additional time for counties to effectively address these parenting needs and other problems that may arise before the adoption is finalized.

- **Reducing the number of placements for the child.** By placing a child with a foster family that intends to eventually adopt the child, counties may avoid having to place the child in another home.

Although many factors can affect the length of the adoption process, including actions taken by the courts, we found that counties that develop and use foster-adoption programs tend to shorten the adoption process. When we compared the time it took the two largest counties in the State to finalize adoptions in the sample of cases we reviewed, we found the county using a foster-adoption program (County A) was able to complete the overall process much more quickly than the county without such a comprehensive program (County B). The table below shows the amount of time that passed between the termination of parental rights and the finalization of adoption for children in our samples for these two counties.

<b>Breakdown of Time From Termination of Parental Rights To Finalization of Adoption for Cases in Our Sample</b>						
<b>County</b>	<b>Total No. of Cases in Sample</b>	<b>6 Months or Less</b>	<b>6+ Months to 12 Months</b>	<b>12+ Months to 18 Months</b>	<b>18+ Months to 24 Months</b>	<b>More Than 24 Months</b>
County A	26	58%	12%	4%	12%	15%
County B	30	0%	17%	27%	13%	43%
<b>Source:</b> Office of the State Auditor's analysis of information obtained from 56 subsidy files in which adoptions were finalized between 1998 and 2000.						

County A has implemented a foster-adoption program recruiting prospective adoptive families who are willing to adopt children not yet legally available for adoption. These families are usually licensed as foster homes when the child is first placed with them. If the child becomes legally free, the family is then able to adopt the child. This approach is used for all children under the age of six and on a case-by-case basis for older children, who are generally more difficult to place.

In contrast, County B does not have a comprehensive foster-adoption program due to problems with coordination between its child protection and adoption units. According to county staff, some child protection caseworkers do not inform the adoption units early in the process that a child's permanency plan may be adoption. Without this early notification, it is difficult for adoption staff to implement concurrent planning and identify a foster-adoption home for the child.

Although Colorado is finalizing adoptions at a quicker rate than the federal standard of 24 months, we encourage the Division to expand its efforts to further reduce the time needed for the overall adoption process by:

- Identifying best practices used by counties and sharing this information with all counties through written correspondences, training sessions, and on-site technical assistance.
- Obtaining information on how other states are able to finalize adoptions quickly and considering whether any of the practices in these states could be beneficial in Colorado.
- Exploring the option of providing incentives to counties that develop good practices in these areas. The Division could set aside a portion of future federal adoptive incentive grants awarded to the State for this purpose. Federal incentive grants are awarded to states that increase the number of finalized adoptions from year to year. Colorado received such grants in two of the past three years.
- Evaluating the flexibility provided within the current statutory language regarding a six-month trial period between placement of the child and the hearing on the petition to adopt. If the statutes do not provide sufficient flexibility to reduce this trial period when appropriate, the Division should seek statutory change to modify the language so that the adoption process can be expedited whenever possible.

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## **Recommendation No. 2:**

The Division of Child Welfare Services should explore and promote ways to expedite the adoption process, including the use of concurrent planning and foster-adoption programs. To accomplish this, the Division should:

- a. Collect, evaluate, and report data on the amount of time it takes counties throughout the State to complete the adoption process.
- b. Identify and share the effective practices used by counties and other states to expedite the adoption process and ensure successful adoptive placements.
- c. Provide ongoing training and technical assistance to counties on effective methods for expediting the adoption process.

- d. Explore ways to provide incentives to counties that consistently and effectively use these practices.
- e. Determine whether counties have sufficient flexibility and authority under the current law to reduce the six-month trial period on a case-by-case basis. If this flexibility and authority exists, the Division should assist counties in shortening this trial period on a case-by-case basis. If there is insufficient flexibility, the Division should recommend statutory changes to modify the language and allow the adoption process to be expedited.

### **Division of Child Welfare Services Response:**

Agree. The Department will enhance its sharing of information with county departments in order to address state of the art practice, and the importance of using data to document success.

- a. The Department will develop a report which breaks data by length of time it takes from termination to finalization of adoption by county on those counties which have the largest numbers of adoptions.
- b. The Adoptions Supervisors monthly meeting will focus a regular time to discuss effective practice.
- c. Technical assistance and ongoing training will be offered through the Adoption Supervisors Group and video conference training.
- d. A percentage of incentive dollars received in the future will be budgeted toward rewarding counties that are using effective practices.
- e. The Department will review the current law to assess for flexibility in reducing the six-month trial period and discuss with county departments best practice issues related to shortening the trial period on a case-by-case basis.

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## **Post-Adoption Services Are Important in Keeping Adoptive Families Intact**

As we discussed earlier, the Division and counties do not know the total number of adoptions that have resulted in dissolutions or experienced out-of-home placements.

However, research studies indicate that providing post-adoption services to families can be effective in preserving adoptive placements. For instance, Illinois law requires that post-adoption services, such as crisis intervention, comprehensive assessments, and resource referrals, be included in the state's family preservation program. A four-year study of the Illinois program found that 82 percent of the children in struggling adoptive families were able to remain with their adoptive families after services were provided.

Colorado currently provides limited post-adoption services and supports to families in the Subsidized Adoption Program. Post-adoption services and supports may include outpatient psychotherapy, treatment away from the home, respite care, educational services, and support groups. Most counties provide some services on a case-by-case basis. For instance, when a crisis arises, counties will often provide case services such as respite care or psychological treatment not covered by Medicaid or other community resources, or core services such as home-based intervention, intensive family therapy, sexual abuse treatment, and substance abuse treatment. However, few counties offer a broad range of support services, such as education and support groups, to all adoptive families.

We identified three counties from our site visit sample that routinely provide additional post-adoption services to families. The approaches taken by these counties range from small-scale efforts to comprehensive programs. For example:

- **El Paso** is in the process of developing an Adoption Resource Team that will be responsible for implementing an educational and training program for adoptive families, developing a respite program that trains respite providers who are capable of caring for special needs children, and providing support groups to prevent dissolutions. El Paso plans to gradually implement this program.
- **Mesa's** ongoing post-adoption services include a quarterly newsletter sent to adoptive families, special training sessions offered to families, and mentoring opportunities between families wishing to adopt and families that have adopted children through the county.
- **Mesa and Garfield** have created a handbook listing the various community resources available to adoptive families in their counties.

In addition, many counties, including Denver, have partnered with Preserving Safe and Stable Families' sites to offer support groups to families that have adopted or are waiting to adopt special needs children. Local communities throughout the State participate in Preserving Safe and Stable Families projects. These projects provide a number of services, including referrals and resources for respite care services, crisis intervention, and domestic

abuse. In Denver County, resources to continue these partnerships in the future are uncertain, but the Preserving Safe and Stable Families sites are setting aside some of their funding to continue these support groups.

Comprehensive post-adoption services and supports can be valuable components for preserving adoptive placements and reducing the risk of dissolutions. These services are particularly necessary when families encounter problems with their adoptive children's behaviors. According to Division and county staff, behavioral problems often do not surface until after the adoption is finalized, and if they are not addressed, they can result in adoption dissolutions. Some counties reported that families do not always ask for support services until family problems are out of control, sometimes past the point of repair. If counties offered post-adoption services and supports on a broader, ongoing basis, they might be able to intervene before the problems become major crises, ultimately reducing the incidence of dissolutions.

Several states have developed extensive post-adoption preservation programs to benefit families who have adopted children within their states. As mentioned earlier, Illinois statutes require that post-adoption services be offered to families. In addition, the Ohio Post-Adoption Special Service Subsidy (PASS) Program is a state-funded county-administered program that provides services including family preservation, medical assistance, counseling, and respite care to adoptive families. Services can be used to address preexisting conditions or conditions that develop related to the adoption process itself. These states may serve as models for Colorado to expand the services that are made available to all families involved in the Subsidized Adoption Program.

### **The Division Should Assist Counties in Finding Funding for Post-Adoption Services**

According to the Division and counties, funding to support post-adoption services programs is lacking. However, we identified two potential funding sources that the Division and counties may be able to access. First, the Division and counties could use a portion of the State's Title IV-B funds for post-adoption services and supports. Title IV-B funds are to be used to encourage and enable states to establish, expand, and operate a program of family preservation services, community-based family support services, time-limited family reunification services, and adoption promotion and support services. Specifically, these funds are allowable for services including:

- Preventing, solving, or assisting in the remediation of, problems that may result in the neglect or abuse of children.

- Preventing unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible.

In Fiscal Year 2001 the General Assembly allocated \$2.5 million of Title IV-B funds to the Division, which distributes these monies to counties that submit an approved plan for spending the funds. The Division should encourage counties to use some of their Title IV-B funding to offer more comprehensive post-adoption services and supports.

Second, the Division could set aside a portion of future adoption incentive funds to develop comprehensive post-adoption services programs in the State. In recent years the Division has received federal incentive grants for increasing the number of finalized adoptions from year to year. In the past these federal funds were used for purposes such as recruitment and support of adoptive placements. A portion of any future awards could be used to expand post-adoption services programs throughout the State.

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### **Recommendation No. 3:**

The Division of Child Welfare Services should encourage counties to expand their post-adoption services and supports by:

- a. Providing technical assistance and training to counties on how to effectively develop and implement post-adoption services programs. The Division should identify counties that have developed strong post-adoption services programs and should share these practices with other counties throughout the State.
- b. Identifying and pursuing funding sources that can be used to provide comprehensive post-adoption services and supports.
- c. Considering earmarking some portion of future incentive grants to expand post-adoption services.

### **Division of Child Welfare Services Response:**

Agree. The Department will strengthen post-legal adoption services and supports through its work with stakeholders to identify a menu of services that can be contracted for by the County Departments of Human/Social Services, the Colorado Adoptive Parent Coalition, the Adoption Exchange, Promoting Safe and Stable

Families sites and using the Title IV-B Part II funds to develop contracts to deliver a menu of services.

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## **Ensure That Counties Use Appropriate Methods to Assess Children's Needs**

Assessment tools can be helpful to counties in identifying how much assistance should be provided to a family to meet a child's special needs. We found that 13 counties in our sample (65 percent) use a formalized, written assessment tool to identify the needs of the child and determine the adoption subsidy amount. The remaining seven counties use a less formal approach for identifying the severity of the child's needs—they meet with the families and discuss the child's needs. Many of the assessment tools rate the severity of the child's needs on a level of care system by assigning numeric scores to various behavioral, medical, social, and educational factors. The more severe the child's needs, the higher the score assigned. The total score determines the level of care and/or maximum amount of the monthly subsidy that can be paid to the family. Twelve of the counties in our sample set their maximum adoption subsidy rates based upon this level of care system.

We identified two concerns with counties' processes for assessing the special needs of children in the Program. First, many counties do not weight the factors in their assessment tools, so factors of varying importance may be considered of equal value. Although we found some counties weight the factors they evaluate and assign higher point values to areas of greater concern, most counties do not follow this practice. For example, one assessment tool we reviewed contained a score for transportation and a score for behavior management. The transportation factor is intended to reflect the child's need to travel to various locations to receive services. The behavior management factor reflects the level of involvement by the adoptive parents in scheduling and monitoring time and activities to address the child's behavioral issues. The county considers behavior management issues to be more critical, and to have higher costs, than transportation. Therefore, the county weights the behavior management factor more heavily on its assessment form. Not all counties use this approach. Some appear to consider all factors to be of equal importance in determining the services that need to be provided to the child and the related subsidy amount.

Second, we found a lack of documentation to support some of the identified needs. Some types of disabilities need to be identified and documented by a medical or mental health professional, such as a physician or psychologist. We found some cases where counties



rated children's needs at higher levels of care based upon physical, mental, or emotional disabilities that were not documented in medical or psychological evaluations. Specifically, in our sample of 89 cases where adoptions were finalized between 1998 and 2000, we did not find documentation supporting diagnoses of physical, mental, or emotional disabilities for 24 cases (27 percent). The majority of these cases were located in one large county. The counties use these diagnoses to measure the severity of the child's needs. County staff confirmed that written evaluations of the children's disabilities were required to support the assessments in these cases. The counties did not know why the documentation for most of these cases was not present in the files we reviewed.

Properly assessing a child's special needs is important for two reasons. First, the needs must be accurately identified to help ensure that children receive the services they need. Second, an appropriate assessment of the needs impacts the amount of the adoption subsidy. Using methods that assess the child's needs at too low a level may result in the child not receiving appropriate services and in the family receiving a subsidy that does not adequately meet the child's needs. Conversely, rating children's needs too high may lead to the provision of unnecessary services and the payment of a subsidy that exceeds the needs of the family and the child.

We found that the Division has provided little direction to counties on how to assess children's needs. For instance, there is no guidance given in the Child Welfare Practices Handbook on how counties should assess the needs of children in the Program. Further, best practices used to assess children's needs are not shared with all counties. Although the Division currently holds monthly meetings for Subsidized Adoption supervisors, not all counties attend or receive information from these meetings. In addition, we found that the Division does not ensure that counties are properly assessing children's needs as part of its annual monitoring reviews.

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## **Recommendation No. 4:**

The Division of Child Welfare Services should assist counties in the proper assessment of children's needs by:

- a. Identifying and communicating best practices among counties, using communication methods that reach all counties.
- b. Providing ongoing training and technical assistance to counties on ways to use assessment tools and properly document the child's needs.

- c. Reviewing county procedures for assessing and documenting children's needs as part of its annual monitoring reviews.

### **Division of Child Welfare Services Response:**

Agree.

- a. In addition to the monthly Adoption Supervisors meeting, the Division will use its Web site and video conferencing to provide best practice information to counties.
  - b. The Adoption Supervisors meeting will be used to highlight assessment of children's needs.
  - c. During the Division's monitoring reviews, there will be assessment conducted of the procedures the counties are using to assess and document children's needs.
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# Adoption Subsidy Payments

## Chapter 2

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### Background

In Colorado's Subsidized Adoption Program, adoptive families can access four different types of financial assistance, as described below.

**Monthly subsidy payments.** Most families receive monthly subsidies intended to partially cover the unmet needs of the adoptive child. There are three different types of monthly subsidies:

- *Long-term subsidies* are intended to meet the child's needs on an indefinite basis. This subsidy is offered when a family's financial situation precludes adoption and is not likely to change or when a child's needs take an excessive toll on the family's situation. Monthly subsidies may continue until the child's needs change or the family's circumstances improve.
- *Time-limited subsidies* are intended to meet the everyday needs of the child for a specified period. This subsidy covers start-up costs for those things that children placed in adoption do not always have, such as sufficient clothing.
- *Dormant subsidies* are established through a subsidy agreement but have a payment of \$0. This type of subsidy is often established for families that initially do not want or need a monthly subsidy. If the family's circumstances or child's needs change in the future, however, the monthly subsidy amount can be renegotiated through a time-limited or long-term subsidy.

**Medicaid coverage.** Children in the Subsidized Adoption Program are eligible for Medicaid, which will pay for services such as routine medical screening, prescription drugs, and mental health services.

**Reimbursement of case services.** Case services are a type of purchased program service that supports the case plan for children in subsidized adoption. Case services are provided to meet the child's needs not covered by monthly adoption subsidies or Medicaid. Case services include items such as special equipment, some types of psychological services, and respite care.

**Reimbursement of nonrecurring adoption costs.** Colorado pays a one-time maximum of \$800 per child for nonrecurring adoption costs. These consist of costs incurred up to the time the adoption is finalized and include expenses such as legal fees, screening expenses, and transportation costs.

Although counties have flexibility in spending their Child Welfare block grant funds and are responsible for setting the subsidy amounts for each subsidized adoption case, the Division is responsible for the overall administration of the Program statewide. In our audit we found that the Division could improve its financial oversight of the Program and could further direct and assist counties in determining subsidy amounts by providing additional written policies and guidelines to all counties.

## **Submit Federal Reimbursement Claims on a Timely Basis**

Families adopting children with special needs are eligible for reimbursement of some or all of the costs associated with the adoption. These costs are referred to as "nonrecurring adoption costs" and consist of expenses such as legal and adoption fees. According to federal statutes and regulations, states must offer reimbursement of nonrecurring adoption costs to all families adopting children with special needs. These statutes and regulations require states to reimburse adoptive families up to a maximum of \$2,000 in nonrecurring adoption costs, but states are allowed to set a lower maximum limit. Colorado allows no more than \$800 to be reimbursed for nonrecurring adoption costs for each eligible child adopted. The federal government will reimburse states for 50 percent of these costs.

We found that the Department of Human Services has not been submitting claims to the federal government for reimbursement of nonrecurring adoption costs for the past several years. Department records indicate that the State spent over \$900,000 in nonrecurring adoption costs between July 1999 and June 2001. The State was eligible to be reimbursed for half of these costs, or more than \$450,000. The Department submits quarterly forms to the federal government to report the amount spent in the Subsidized Adoption Program and to request federal funds for the portion of those expenditures that are reimbursable. The quarterly reports submitted by the Department for the last two quarters of Calendar Year 1999 (July through December), all of Calendar Year 2000, and the first three quarters of Calendar Year 2001 (January through September) did not include the amounts spent by the Program on nonrecurring adoption costs. This is because counties do not distinguish between case services and nonrecurring adoption costs when they report their subsidized adoption costs to the Department. Because the funding sources for case services (80 percent state, 20 percent county funds) are different from

those for nonrecurring adoption costs (50 percent federal, 30 percent state, 20 percent county), accounting for and reporting of these costs should be separate.

According to federal regulations, claims for reimbursement can be submitted to the federal government up to two years after the costs are incurred. Subsequent to our discussion of this issue with the Division, the Department submitted a retroactive request in January 2002 for reimbursement of nonrecurring adoption costs incurred between October 1999 and June 2001. However, because the Department delayed its request for reimbursement until January 2002, it was not able to request the 50 percent match for nonrecurring adoption costs incurred from July through September 1999. The Division estimates the total of these costs for that quarter were about \$107,000, so the lost federal reimbursement was about \$53,500. It is important for the Division to track nonrecurring adoption costs on an ongoing basis so it can request all federal reimbursements for which it is eligible.

We estimate that the average annual subsidy paid for children in the Program is about \$5,500. If the Division had obtained the \$53,500 reimbursement to which it was entitled for nonrecurring adoption costs for the period July through September 1999, the Division would have freed up state funds that could have been used for other purposes.

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### **Recommendation No. 5:**

The Division of Child Welfare Services should ensure that claims for reimbursements of nonrecurring adoption costs are submitted to the federal government each quarter by modifying its reporting and accounting systems to capture nonrecurring adoption costs.

### **Division of Child Welfare Services Response:**

Agree. The Department has prioritized corrections, improvements, and modifications in the TRAILS system, which will assure claims can be submitted to the federal government to capture nonrecurring adoption costs.

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## **Discontinue Subsidy Payments In Accordance With Federal Law**

According to federal statutes and Department rules and regulations, adoption subsidies must end when a child reaches 18 years of age. The exception to this requirement is if the child's special need includes a physical or mental disability that specifically warrants the continuation of the assistance, in which case the subsidy can continue until age 21. For example, from the subsidy files we reviewed, we found that a child with cerebral palsy or Down's syndrome would qualify for continuation of subsidy payments past age 18. If a child does not meet the exception criteria, the subsidies are to be discontinued the month following the child's 18<sup>th</sup> birthday.

We found that 17 of the 20 counties in our sample have a policy to continue adoption subsidies past the child's 18<sup>th</sup> birthday if the child is still in high school regardless of whether the child has physical or mental disabilities that warrant the continuation. Typically, counties extend payments until a child graduates because the child is still under the care of the parents and some of these children are educationally delayed and do not graduate at or near their 18<sup>th</sup> birthday. Division managers indicated that despite the current regulations, they have authorized counties to continue adoption subsidies until children graduate from high school using only state and county funds.

## **The Division Paid an Estimated \$466,000 in Unauthorized Subsidies Over the Past Six Years**

From our review of subsidy files, we found that counties continuing adoption subsidies after children turned age 18 used federal Title IV-E funds to pay the subsidies. In our sample of 79 cases where the adoption subsidies ended in Calendar Years 1999 and 2000, we identified 24 cases (30 percent) where adoption subsidies were paid past the child's 18<sup>th</sup> birthday for reasons other than the child's having a mental or physical disability. Furthermore, for all of the Title IV-E cases discontinued between 1995 and 2000, we identified 219 cases (22 percent) that remained open past the child's 18<sup>th</sup> birthday. Accounting for cases that would be eligible for payments past age 18 due to mental or physical disabilities, we estimate that ineligible payments past a child's 18<sup>th</sup> birthday during this six-year period cost \$466,000. About \$233,000 of this amount is from federal Title IV-E funds.

According to the federal liaison for Colorado's Subsidized Adoption Program, if the State continues to pay subsidies using IV-E funds after a child's 18<sup>th</sup> birthday and the child does not have a physical or mental disability, the State is liable to the federal government for these funds. Therefore, the Division may be required to reimburse the federal government for the federal portion of the unallowed payments made over the past six years. The

Division should determine the amount of unallowed payments that were made to families and work with the federal government to determine the method and amount of repayment. Additionally, the Division should direct counties to comply with current requirements to stop all subsidy payments after the child's 18<sup>th</sup> birthday unless the child has a physical or mental disability that warrants extension.

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### **Recommendation No. 6:**

The Division of Child Welfare Services should ensure the State is in compliance with federal and state requirements regarding subsidy payments after children reach the age of 18 by:

- a. Developing and communicating written policies that are in compliance with federal and state requirements.
- b. Monitoring adoption subsidy payments on a regular basis.
- c. Working with the federal government to determine the method and amount of repayment for disallowed costs.

### **Division of Child Welfare Services Response:**

Agree. The Department will monitor subsidy payments as part of its annual monitoring plan.

As part of the Division's meetings with the federal government, the Department will address written policy and disallowed costs and communicate this information to county departments.

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## **Provide Guidance on the Payment of Subsidies When a Child Is Placed Out of the Adoptive Home**

On occasion an adopted child may be placed out of the adoptive home for a period of time, either to receive treatment related to behavioral or mental health issues or to address

alleged abuse or neglect. We found that counties use a number of approaches for handling adoption subsidies when children are placed out of the adoptive home. This is because the Division has not provided clear direction to counties on managing subsidies when this situation occurs. Typically, counties continue the adoption subsidy during the period of the out-of-home placement. However, some counties suspend the payments if the placement is due to abuse or neglect. When counties continue the subsidy during an out-of-home placement, they may assess a fee to the adoptive family to help cover the out-of-home placement cost. We found the following procedures were in use in the seven counties we visited:

- One county always assesses fees for out-of-home placements when the adoption subsidies are continued.
- Two counties sometimes assess fees for out-of-home placements. In these counties the fee assessment practices varied from case to case.
- One county never assesses fees for out-of-home placements when subsidies are continued.
- One county, at the time of our site visit, did not have a policy for assessing fees for out-of-home placements for subsidy cases. This county is in the process of developing a policy because it recently experienced its first out-of-home placement for a subsidy case.
- Two counties discontinue all subsidy payments when children are placed out of the home. As a result, these counties do not need to assess fees.

### **Clarify Reimbursement for Children Placed Outside of the Adoptive Home**

As discussed in Chapter 1, we identified 18 cases in our sample of 168 cases (11 percent) where children were placed out of the adoptive home. Nine cases involved the child's being placed out of the home due to behavioral issues and nine cases involved abuse or neglect situations. We found that counties handled subsidies for these cases as follows:

- Payments were continued in 13 cases (72 percent). In seven of these cases, fees were assessed for the out-of-home placements. In the remaining six cases, no fees were assessed.
- Payments were suspended in four cases (22 percent).



- Payments were initially suspended in one case (6 percent) but were later reinstated because of requirements stated in the Department's rules and regulations. No fees were assessed in this case.

We estimate counties spent more than \$21,000 in monthly adoption subsidies for the seven cases where adoption subsidies were continued and fees for the out-of-home placements were not assessed. When counties continue adoption subsidies for children in out-of-home placement without charging a fee for the placement, the government is essentially making double-payments for the care of the child during the out-of-home placement period. This is because children who are temporarily removed from their adoptive homes are typically placed in Residential Treatment Centers, Residential Child Care Facilities, or in foster homes, all of which are funded by federal, state, and county sources.

Department rules and regulations authorize counties to assess fees to families whose children are placed out of the home. These fees cannot exceed the monthly adoption subsidy payments to the family. The regulations do not stipulate a procedure for assessing fees. In addition, the Division does not examine financial records when conducting reviews of county subsidized adoption programs. As a result, the Division has not identified inconsistencies in the ways counties handle subsidies when adoptive children are placed out of the home.

## **The Division Should Align State Regulations With Federal Requirements**

Federal statutes and policies do not specifically address how adoption subsidies for Title IV-E cases should be handled when a child is temporarily placed outside of the adoptive home. However, they do describe the following circumstances in which a subsidy can be terminated:

- The child attains the age of 18, or 21 in cases where the State determines that the child has a mental or physical handicap which warrants continuation of assistance.
- The State determines that the parents are no longer legally responsible for the support of the child.
- The State determines that the child is no longer receiving any support from the parents.

Further, Title IV-E adoption subsidies can be reduced or stopped if the adoptive parents agree to the change.

The Department has attempted to provide guidance to counties in this area. Specifically, a guidance letter issued by the Department in 1997 states that if a child who is eligible for Title IV-E is placed out of the home for any reason, the adoption subsidy must be continued. Similarly, in a written response to a county inquiry in January 2001, the Department stated that subsidies cannot be suspended for Title IV-E cases when children are placed out of the home. However, these directives do not appear to be consistent with the Department's rules and regulations, which state:

- The county department shall terminate adoption assistance payments for subsidized adoption when the child is removed from the adoptive home because of abuse or neglect.
- When a child is receiving a state/county only subsidy and is absent from the home for over 30 calendar days, the adoption assistance payments and case services subsidy will be discontinued.
- Children with a Title IV-E adoption assistance subsidy who are out of the home for over 30 calendar days will continue to receive an adoption assistance payment unless the child is removed from the home because of abuse or neglect.

Division staff told us that they sent the revised rules and regulations cited above to the U.S. Department of Health and Human Services but have not received a response regarding the consistency of the requirements with federal law.

Our review of county procedures found that counties are unclear on how to handle adoption subsidies in out-of-home placement situations. As a result, it is important for the Division to establish and communicate to counties a clear policy on managing adoption subsidies when children are placed out of their adoptive homes. This policy should explain when counties should suspend adoption subsidies for children placed out of their homes and describe the procedures counties should use to assess fees for out-of-home placements. The Division should ensure that this policy is consistent with federal requirements by meeting with federal representatives on this issue and obtaining a written statement regarding the policy. Additionally, Division staff should ensure that counties are complying with this policy by reviewing cases involving out-of-home placements as part of their annual monitoring reviews.

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## **Recommendation No. 7:**

The Division of Child Welfare Services should improve how counties handle adoption subsidies when children are temporarily placed out of their adoptive homes by:

- a. Developing a written policy that clearly describes procedures for subsidy payments when children are placed out of their adoptive homes and that is consistent with both state and federal statutes and policies.
- b. Providing training and technical assistance to counties regarding the written policy.
- c. Ensuring that counties comply with the policy by reviewing financial records as part of its monitoring reviews.

### **Division of Child Welfare Services Response:**

Agree. The Department will develop a written policy to address the use of subsidy payments and will provide this information during the monthly Adoption Supervisors meetings and at regional training sessions. The monitoring reviews will be expanded to include reviewing of financial records.

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## **Federal Funding May Be Affected by Problems With Subsidy Agreements**

During Calendar Years 2000 and 2001, the Division conducted monitoring reviews of subsidized adoption programs in a sample of counties. These reviews primarily focused on determining whether children were eligible for the program financing their adoption subsidies. During these two years Division staff reviewed case files for nearly 300 cases in 19 counties.

As part of its monitoring reviews, the Division identified several cases where the county did not properly create the initial adoption subsidy agreement. Specifically, the Division determined that for 15 Title IV-E cases in 10 counties, either the counties did not create an initial adoption subsidy agreement or the county staff and/or the adoptive parents did not sign the initial agreement prior to the finalization of the adoption. Federal regulations require the adoption subsidy agreement to "be signed and in effect at the time of or prior to the final decree of adoption," and Department rules and regulations require the county department to "sign the subsidized adoption agreement before the adoption is finalized." Therefore, these 15 cases were technically not eligible for either the IV-E or the state/county program.

When Division staff identified these cases, they informed the counties of the issue and instructed them to change the funding from Title IV-E to the state/county program to avoid being out of compliance with federal requirements. Non-compliance with federal policies can result in the loss of federal funding for the Program. We question changing the program eligibility for these cases from Title IV-E to state/county based on a technicality; these children meet the requirements for participation in the Title IV-E program. One drawback to the Division's approach is that the State's cost for the monthly subsidies in these cases increases. The State pays 80 percent of the subsidy amount for state/county participants compared with 30 percent for Title IV-E participants. We estimate the State will have to pay an additional \$415,000 in subsidies if these cases continue until the children reach age 18. Changing the funding code for these cases does not affect the counties' costs. Because of the additional financial burden placed on the State, it is important for the Division to work with the federal liaison to try to reinstate cases for Title IV-E funding that are considered ineligible due to a technicality.

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### **Recommendation No. 8:**

The Division of Child Welfare Services should work with the federal liaison to reinstate subsidized adoption cases that have been removed from the federal Title IV-E program due to technical problems with properly establishing the initial subsidy agreement.

### **Division of Child Welfare Services Response:**

Agree. The Department will address this matter with the Region VIII federal liaison to determine if there is any more flexibility for reinstatement since the last time it was addressed.

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## **Assistance on Establishing Subsidy Agreements Is Needed**

In addition to cases identified by the Division's monitoring reviews, we found indicators that counties were not fully aware of the requirements for establishing subsidy agreements. In our sample of 89 subsidized adoption cases where adoptions were finalized between 1998 and 2000, we identified 3 cases in one county where subsidy agreements were not signed on time. We also identified 24 cases in another county where Medicaid coverage is provided, but no subsidy agreements have been established. Staff from this county stated

that they were unaware that they were required to establish subsidy agreements for Medicaid-only cases.

There are several ways the Division could improve county awareness of the need to establish agreements for all subsidized adoption cases in a timely manner. First, the Division could share its monitoring results with all counties in an aggregate format. Currently the Division does not communicate issues identified in its monitoring reviews to all counties to alert them to potential problem areas. Second, the Division should ensure that all counties either receive training in this area or are at least provided training materials. The Division has provided training to counties on how to properly establish subsidy agreements, but not all counties attend the training sessions and the training information is not disseminated to those who do not attend. Improvements in communication could help ensure that counties are aware of the requirements for establishing subsidy agreements. Finally, consequences such as monetary sanctions for repeated problems could help ensure compliance with these requirements. The Division is considering sanctioning a county that has failed its monitoring reviews for two consecutive years.

As mentioned earlier, it is important for the Division to ensure counties are complying with program requirements for establishing subsidy agreements. This is because non-compliance can result in the State losing Title IV-E funding, creating a greater financial burden on the State.

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## **Recommendation No. 9:**

The Division of Child Welfare Services should ensure that counties are aware of and in compliance with requirements to establish and sign adoption subsidy agreements in a timely manner. To accomplish this, the Division should:

- a. Provide training and technical assistance to all counties and communicate to all counties the issues identified in monitoring reviews.
- b. Establish monetary sanctions for repeated problems with properly developing subsidy agreements.

## **Division of Child Welfare Services Response:**

Agree.

- a. The Department will annually issue an agency letter to county departments informing them of trends found during the annual adoption monitoring review. Adoption training will be offered to county departments annually. Technical assistance will be provided to all counties upon request.
  - b. As a part of the corrective action process the Department has identified when to utilize fiscal sanctions as part of a failed corrective action.
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# Adoption Subsidy Negotiations

## Chapter 3

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### Background

In Colorado nearly all of the families that adopt children through county departments of social services receive some type of adoption assistance. In Fiscal Year 2000, adoption subsidies were provided to families in 97 percent of the cases where adoptions were finalized. Counties can provide varying levels of assistance to families adopting special needs children. These include:

- Medicaid coverage without a monthly adoption subsidy (all children in the Program are eligible for Medicaid);
- A short-term adoption subsidy with Medicaid coverage; or
- A long-term adoption subsidy with Medicaid coverage.

According to federal and state policies and regulations, counties can only increase or decrease the adoption subsidy amount based upon changes in the family's circumstances or the child's special needs identified at the time of the adoption.

### Review County Adoption Subsidy Rates

In 1997 the Colorado Legislature modified the ways counties set their foster care maintenance and adoption subsidy rates. Senate Bill 97-218 established provisions allowing counties to negotiate rates, services, and outcomes with providers and giving them flexibility in how they spend their child welfare funds. Prior to the passage of this bill, the Department was responsible for setting maximum rates for foster care and subsidized adoption.

The Department's rules and regulations state the following with regard to setting adoption subsidy rates:

The adoption assistance subsidy shall be established in accordance with the county department's written policy. The policy shall outline criteria used for determining the amount of the subsidy. The county shall establish a maximum amount that can be provided to a family. The monthly respite care that is provided under the foster care program is not a benefit under the subsidy program. If a child with developmental disabilities is receiving an allowance in addition to the foster care payment at the time the child is placed for adoption, the allowance may continue under the subsidy program if the child continues to meet the criteria.

Counties set multiple adoption subsidy rates and often base their adoption subsidy rates on the child's age and/or the severity of the child's needs. Specifically, we found:

- Eight counties in our sample (40 percent) set their adoption subsidy rates based upon the age of the child. In most of these counties, rates are set for three different age brackets: ages birth to 10 years, ages 11 to 14 years, and ages 15 to 21 years. Rates increase with each age bracket. For instance, a county may set the rate for children ages birth to 10 at \$349 and the rate for children ages 11 to 14 at \$392.
- Four counties in our sample (20 percent) set rates based upon a level of care system. Many counties use assessment tools to identify the severity of the child's needs and assign a level of care for each child. These levels range from 0 to 5, depending on the type of tool. Counties set rates for the different levels of care. For instance, a county may set the maximum subsidy rate allowed for children scored at Level 1 at \$600 and the rate for children scored at Level 2 at \$800.
- Eight counties in our sample (40 percent) use a combination of age categories and a level of care system to set their adoption subsidy rates.

In addition, counties are allowed to add on a special needs allowance for children who are physically or mentally disabled. Depending on the severity of the disability, there are three different amounts that can be added according to state policy: \$91, \$136, and \$183.

As the following table shows, the average monthly subsidy payments made by each county that had subsidized adoption cases in Fiscal Year 2000 varied significantly. The disparities in payments are not based on differences in the cost of living or cost of care in the counties. However, county averages can be skewed by the number and types of children served. For instance, a smaller county that only served two children in the year and one of the children had severe needs may have a higher average payment. It should be noted that we were unable to obtain rates policies from all counties in the State because the Division does



not collect information on rates and therefore does not provide counties with statewide comparisons.

Average Monthly Subsidy Payments Made by Counties With Subsidized Adoption Cases in Fiscal Year 2000					
County <sup>1</sup>	Size <sup>2</sup>	Average Payment	County	Size	Average Payment
El Paso	Large	\$615.99	Otero	Medium	\$323.81
Denver	Large	\$489.37	Logan	Medium	\$278.93
Arapahoe	Large	\$428.16	Eagle	Medium	\$198.66
Pueblo	Large	\$411.39	Rio Grande/Mineral	Medium	\$99.05
Mesa	Large	\$392.06	Summit	Small	\$695.20
Adams	Large	\$390.02	San Miguel	Small	\$576.55
Boulder	Large	\$376.64	Sedgwick	Small	\$541.46
Larimer	Large	\$374.67	Lake	Small	\$483.47
Jefferson	Large	\$368.93	Routt	Small	\$423.76
Weld	Large	\$354.99	Lincoln	Small	\$432.15
Teller	Medium	\$714.24	Bent	Small	\$397.48
Douglas	Medium	\$653.01	Park	Small	\$395.98
Prowers	Medium	\$532.81	Custer	Small	\$393.06
Chaffee	Medium	\$434.81	Archuleta	Small	\$386.81
La Plata	Medium	\$428.69	Gilpin	Small	\$377.30
Delta	Medium	\$405.16	Dolores	Small	\$360.72
Montrose	Medium	\$403.33	Baca	Small	\$354.73
Conejos	Medium	\$401.69	Costilla	Small	\$349.94
Montezuma	Medium	\$401.12	Clear Creek	Small	\$328.65
Alamosa	Medium	\$389.94	Washington	Small	\$319.79
Morgan	Medium	\$380.51	Kit Carson	Small	\$317.12
Fremont	Medium	\$361.72	Gunnison/Hinsdale	Small	\$311.00
Moffat	Medium	\$359.70	Kiowa	Small	\$296.80
Garfield	Medium	\$352.22	Yuma	Small	\$252.86
Las Animas	Medium	\$335.73	Statewide Average		\$459.13
Source: Data provided by the Division of Child Welfare Services.					
<sup>1</sup> Some counties did not have any subsidized adoption cases in Fiscal Year 2000 and are not included in the table.					
<sup>2</sup> The size of the county is based upon the Department's classification of counties.					

It is clear that the Legislature intended counties to have maximum flexibility in setting their rates. This has resulted in significant variations in rates among the counties. While this flexibility is generally good for the Subsidized Adoption Program, we noted potential problems. For example, because families can adopt children from counties other than those in which they reside, counties with higher rates may attract prospective adoptive families from other counties with lower rates. Therefore, counties paying lower rates may encounter difficulties in finding prospective adoptive parents for children in their custody, and these children may languish in the foster care system. Some counties in our sample indicated that they have struggled to explain to potential adoptive families why their rates are lower than rates provided in other counties in the State.

In addition, we found that higher rates may affect the amount of child welfare grant funds allocated to counties. As we discussed in the Overview section, Subsidized Adoption is part of the larger child welfare block grant. At the end of the year, counties that overspend their allocations from their child welfare block grants may receive additional funds to offset their overexpenditures. Surplus funds are first distributed to small- and medium-sized counties that have overspent their initial allocations, and these counties generally receive enough funds to completely offset their overexpenditures. After the distribution to the small- and medium-sized counties, any remaining funds are proportionally distributed to the large counties based upon how much the county overspent. This means that the more a county overspends, the more likely the county will receive a large amount of surplus funds. Although expenditures for the Subsidized Adoption Program generally represent a small proportion of the total child welfare expenditures, higher rates can contribute to the counties' overspending their initial block grant allocations. We identified at least one large county with some of the highest subsidized adoption rates in the State that received a large portion of the surplus funds.

Currently, Division staff do not collect or review adoption subsidy rates set by all counties. We believe the Division should monitor adoption subsidy rates periodically to determine how these rates affect the Program as a whole. By doing this, Division staff may identify and work with counties to address potential problems with the varied rates set throughout the State. Additionally, the Division should report its monitoring results to the General Assembly on an annual basis.

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### **Recommendation No. 10:**

The Division of Child Welfare Services should establish procedures to collect and review rate information on an annual basis to determine how rates set by all counties affect the Subsidized Adoption Program. Additionally, the Division should use the results of these

evaluations to present to the Senate Health, Environment, Children and Families Committee and the House Health, Environment, Welfare and Institutions Committee.

### **Division of Child Welfare Services Response:**

Partially agree. The Department will meet with county representatives to develop a survey to collect and review subsidy rates on an annual basis to determine whether rates affect the Subsidized Adoption Program. The results of this survey will be presented to the Senate Health, Environment, Children, and Families Committee and the House Health, Environment, Welfare, and Institutions Committee.

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## **Ensure That County Adoption Subsidy Rates Comply With Program Requirements**

Counties use foster care maintenance rates as a basis for determining adoption subsidy rates. Federal and state statutes do not allow adoption subsidy payments to exceed the amount that would be paid for the child in foster care. We found that 18 of the 20 counties in our sample (90 percent) set their adoption subsidy rates equal to or below their foster care maintenance rates. However, two counties set their adoption subsidy rates higher than allowed because they include a respite care allowance in their subsidy rates. This allowance is paid with state and county funds. Counties can add on a respite care allowance for foster care maintenance payments. However, as discussed earlier, the Department's rules and regulations do not allow counties to include respite care in their adoption subsidy rates. In addition, federal policies state that:

Special allowances that may be made on behalf of an individual child in certain situations in foster care, such as child care or clothing allowances, are not permitted as an allowable additional reimbursement in the adoption assistance program. Special allowances for individual children that are over and above the State's foster care payment standard cannot be included in the amount negotiated in the adoption assistance agreement since the adoption assistance payment cannot exceed the foster care maintenance rate for the child.

By including respite care in their rates, these two counties exceeded the maximum allowable subsidy payment by nearly \$110,000 in Fiscal Year 2000. These funds could have been used for other services.

We found that Division of Child Welfare Services staff are not collecting and reviewing counties' adoption subsidy rates to ensure that these rates are in compliance with federal and state requirements. Further, Division staff do not always review adoption subsidy rates when conducting their annual monitoring reviews of county programs. Although the monitoring tool is designed to capture adoption subsidy and foster care rate information for individual cases, staff do not always collect and use this information as intended. Without this rate information, it is difficult to ensure that subsidy rates are not higher than foster care rates and that they do not include a respite care allowance.

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### **Recommendation No. 11:**

The Division of Child Welfare Services should ensure that counties are complying with program requirements by:

- a. Comparing adoption subsidy rates to foster care maintenance rates on an annual basis to ensure that subsidy rates are not exceeding foster care rates and do not include respite care allowances.
- b. Ensuring that the tool used as part of the monitoring reviews is properly completed and the rate information is reviewed by the Division.

### **Division of Child Welfare Services Response:**

Agree.

- a. Annually the Department will collect and review subsidy rates to document that the subsidized adoption rate being paid is not higher than the foster care rate.
  - b. When conducting on-site monitoring, fiscal records will be reviewed to ensure respite care is not included.
-

## **Improve the Ways Counties Negotiate Adoption Subsidies**

Department rules and regulations require counties to make a good faith effort to negotiate adoption subsidies with prospective adoptive parents. Counties must negotiate with the adoptive parents to request the amount that is needed by the family to meet the child's special needs. According to the rules, this may be less than the amount for which the child qualifies. Federal and state statutes, regulations, and policies require counties to consider the following when negotiating adoption subsidies: (1) the child's documented special needs at the time of the adoptive placement; (2) the adoptive family's circumstances; and (3) the need to purchase services that are not available in the community free of charge.

As part of our audit, we evaluated the approaches used by counties to consider these three factors when negotiating adoption subsidies. Overall, we found that most counties only take into account the needs of the child when determining the subsidy amount. Little or no consideration is given to family circumstances and the availability of other community resources to address the special needs of the adopted children. Furthermore, many counties make little effort to negotiate lower subsidies, resulting in payments at the upper limit for most cases. In our review of subsidy files for 89 cases where adoptions were finalized between 1998 and 2000, we found that subsidy rates were set at the maximum amount allowed in 63 cases (71 percent). In the following sections we identify ways the Division and counties can improve how subsidies are negotiated.

## **Clarify Consideration of Family Circumstances**

Of the 20 counties we contacted during the audit, only 3 indicated that they consider the adoptive family's circumstances when determining the subsidy amount. The remaining 17 counties consider only the child's special needs to determine the amount of the subsidy. The counties indicated they do not consider family circumstances because federal and state policies and regulations do not allow a means test to be used for any purpose when developing subsidized adoption agreements. Specifically, federal policy states:

The use of a means test is prohibited in the process of selecting a suitable adoptive family, or in negotiating an adoption assistance agreement, including the amount of the adoption assistance payment. Title IV-E adoption assistance is not based upon a standard schedule of itemized needs and countable income. Instead the amount of the adoption assistance payment is determined through the discussion and

negotiation process between the adoptive parents and a representative of the State agency based upon the needs of the child and the circumstances of the family.

Generally, this language has been interpreted to mean that the income of the adoptive family cannot be considered when determining the adoption subsidy amount. However, two other sections within this policy indicate that the family's financial situation, including income, should be considered to a certain extent. These sections state:

- The payment that is agreed upon should combine with the parent's resources to cover the ordinary and special needs of the child projected over an extended period of time and should cover anticipated needs, e.g., child care. Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment.
- Consideration of the circumstances of the adoption parents has been interpreted [by the U.S. Department of Health and Human Services] to pertain to the adopting family's capacity to incorporate the child in their household in relation to their lifestyle, standard of living, and future plans, as well as their overall capacity to meet the immediate and future needs (including educational) of the child. This means considering the overall ability of the family to incorporate an individual child into their household. Families with the same incomes or in similar circumstances will not necessarily agree on identical types or amounts of assistance. The uniqueness of each child/family situation may result in different amounts.

The Department's rules and regulations also indicate that the financial situation of the family needs to be considered when determining the subsidy amount. Specifically, these rules and regulations state that adoption subsidies are intended "to help or remove financial barriers to the adoption of Colorado children with special needs by providing assistance to the parent or parents in the payment of expenses of caring for and raising the child." To identify the financial barriers, counties would need to evaluate the financial situations of adoptive families.

We found that one of the counties in our sample has developed an effective method for considering the circumstances of the family when negotiating adoption subsidies. This county requires prospective adoptive parents to complete a financial affidavit detailing the family's monthly income and expenses. The information from the affidavit is considered along with other family circumstances, such as whether the adoptive parents are close to retirement or are experiencing health problems, that could impact their ability to earn income. Therefore, this county takes a comprehensive approach to evaluating not only the

financial situation but also the lifestyle and standard of living of the family when determining an appropriate subsidy amount.

The Division recently notified this county that "the use of financial affidavits at any point in the process of an adoption subsidy is contrary to eligibility" for federal Title IV-E funding. The Division further stated that federal regulations prohibit counties from requiring families to complete financial affidavits. We could find no such prohibition in federal regulations, and the federal liaison for Colorado's Subsidized Adoption Program told us that financial affidavits may be used as part of the negotiation process as long as they are not extensive. It is possible that this county's financial affidavit could be considered extensive and is therefore not allowed. However, it appears that federal regulations do allow the use of an abbreviated affidavit. Counties collect some financial information from prospective adoptive families as part of the home study. This information may be useful when establishing adoption subsidy amounts.

The Department's rules and regulations provide limited guidance on how family circumstances should be considered during the negotiation process, as does the Child Welfare Practices Handbook, which is developed by Division staff. The Handbook states:

An adoption subsidy is child-focused, based on the child's needs and eligibility, not on the income level of the adoptive family. However, the adoptive family's financial ability to provide for the adoptive child's special needs can be a factor to consider when determining a level of monthly maintenance subsidy.

In addition, training offered by the Association of Administrators of the Interstate Compact on Adoption and Medical Assistance in August 2001 included a session on negotiating subsidies. This training highlighted the federal policy on negotiating adoption subsidies, including some information on how to consider family circumstances. However, some counties may not have attended this training. Several counties in our sample stated that they would like more direction from the Division on how to consider family circumstances when determining adoption subsidy amounts.

We also found that the Division does not determine whether counties are considering all required factors for negotiating adoption subsidies as part of its annual monitoring reviews of county subsidized adoption programs. The Division reviews documents to ensure the eligibility of the children in the Program but does not review any aspect of the subsidy payment amounts.

It is important for Division staff to provide more assistance on how counties should consider family circumstances as part of their negotiation process. This is because the

methods used by counties to determine adoption subsidy amounts can affect the total amount of resources available for the Program. As mentioned earlier, most of the counties in our sample tend to pay families the maximum amount allowed by their policies, based almost solely on the needs of the children. By not considering the circumstances of the family, these counties may be paying higher subsidies than needed. This could reduce the amount of resources available to find adoptive homes for other children in the state foster care system and to provide more assistance to families whose circumstances have worsened or whose children's needs have intensified.

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### **Recommendation No. 12:**

The Division of Child Welfare Services should provide more oversight and assistance to counties on how they should consider family circumstances when negotiating adoption subsidies by:

- a. Developing methods for counties to use for considering family circumstances when determining the adoption subsidy amount. This should include some abbreviated form of financial reporting by the family.
- b. Providing more training and technical assistance to counties on how to consider family circumstances as part of the negotiation process.
- c. Reviewing county procedures for considering family circumstances when conducting monitoring reviews.

### **Division of Child Welfare Services Response:**

Agree.

- a. The Department will clarify in rule that counties should utilize financial information, including assets, liabilities and insurance benefits when negotiating the initial subsidized adoption agreement.
  - b. Training and technical assistance to counties will include a focus on consideration of financial circumstances.
  - c. The Department will add this item to its monitoring instrument.
-



## Encourage Use of Low-Cost Subsidies

One of the main eligibility requirements for the Subsidized Adoption Program is that the child must have a special need that acts as a barrier to adoption. According to Department rules and regulations, special needs include a physical disability, mental retardation, emotional disturbance, hereditary factors, exposure to drugs or alcohol in utero, or other conditions that act as serious barriers to adoption including age or membership in a sibling group. The adoption subsidy is intended to help offset the costs of addressing these special needs. However, the subsidy is not the only resource available to families with special needs children. Medicaid coverage is provided to all children in the Program. For our sample of 168 subsidy cases, we found that nearly \$1.8 million was paid out for Medicaid services in Fiscal Years 2000 and 2001. Medicaid offers various services that can address the special needs of children in the Program, such as:

- Routine medical screenings.
- Speech, occupational, and physical therapy.
- Prescription drugs.
- Durable medical equipment.
- Oxygen and medical supplies.
- Mental health services.
- Physician and outpatient hospital care.

Mental health services are available through eight mental health contractors in Colorado called Mental Health Assessment and Service Agencies (MHASAs). Some of the mental health services provided through MHASAs include assessments, treatment plans, case management, and inpatient and outpatient services.

In addition to Medicaid, some other sources may be available in the adoptive family's community free of charge. These may include adoptive parent support groups, mentoring, respite care, special education, and early childhood screenings and evaluations. According to Department rules and regulations, counties are supposed to consider these other resources when determining the adoption subsidy amount for each case. However, we found most counties do not consider what Medicaid and other community resources will cover with regard to the child's needs. We found that fewer than half of the counties in our sample consider the extent to which Medicaid and other free community resources can address the child's special needs and adjust the subsidy amounts to reflect the availability of other resources. For some families, Medicaid coverage may be the only assistance needed to remove financial barriers to the adoption of the child. One small county has placed about 95 percent (17 cases) of the children adopted between 1997 and 2000 with

Medicaid-only subsidies. For these cases, staff determined that Medicaid sufficiently covered the needs of the child and a monthly subsidy was not needed.

The Division does not actively encourage counties to set adoption subsidies at the lowest amount that will meet the families' needs. However, it is important for the Division and counties to target their resources for the Program where they are most needed, such as recruiting adoptive parents for hard-to-place children. As mentioned earlier, 42 percent of the children awaiting adoption in Colorado in Federal Fiscal Year 1999 were actually adopted. This indicates that a majority of children were still awaiting adoption. By working to keep subsidy payments low, the Division could make additional resources available to help place more children in permanent adoptive homes. Further, department rules and regulations emphasize the importance of negotiating the lowest subsidy needed. These rules and regulations state that counties should "negotiate with adoptive parents to request the amount that is needed by the family to meet the child's special needs. This may be less than the amount for which the child qualifies." Counties should make every effort to identify no-cost resources outside of the Subsidized Adoption Program to cover the needs of the children and to consider these resources when negotiating subsidies to ensure the amounts are as low as possible while still meeting the needs of the family.

To encourage counties to negotiate adoption subsidies at the lowest amount needed for the family, the Division should identify best practices currently in use and share these approaches with all counties in the State. For instance, the Division should identify best practices used by counties to negotiate Medicaid-only and other low-cost subsidies and share this information with counties throughout the State. The Division currently holds monthly meetings for Subsidized Adoption supervisors that could serve as one forum for sharing such information. However, not all counties attend all supervisor meetings, so it is important for the Division to develop and implement other communication methods to reach all counties. This may include sending minutes from the monthly supervisor meeting to all counties in the State as well as creating and distributing agency letters to all counties on issues of importance.

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### **Recommendation No. 13:**

The Division of Child Welfare Services should provide more direction to counties on how to negotiate the lowest adoption subsidy needed for families to meet the special needs of their adopted children. This should include:

- a. Identifying counties that are successfully negotiating adoption subsidies at the lowest amount needed for the family and sharing this information with all counties in the State on a regular basis.

- b. Reviewing the methods used by counties to negotiate adoption subsidies as part of its annual monitoring visits.
- c. Providing technical assistance to counties struggling to effectively negotiate the lowest subsidy needed.

### **Division of Child Welfare Services Response:**

Agree.

- a. The Department will annually distribute information on successful negotiation techniques beginning July 1, 2003.
- b. The Department will add this item to its monitoring instrument.
- c. The Department will provide technical assistance upon request in this area.

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## **Some Counties Automatically Increase Subsidy Amounts When Children Enter New Age Categories**

According to federal and state requirements, subsidy amounts are to be based on the needs of the child, the family's circumstances, and the availability of free resources in the community. Subsidy amounts can be increased or decreased after the initial agreement is established when the child's documented special needs or the family's circumstances change. However, for Title IV-E cases, federal policy states that counties can only decrease subsidy amounts if the adoptive family agrees with the reduction. With the state/county program, the subsidy can be decreased if it is determined that the child's needs or family's circumstances have improved and the higher subsidy is no longer needed. Families can appeal decisions made by counties to reduce the amount of their subsidies.

As part of our review of 89 subsidy files where adoptions were finalized between 1998 and 2000, we evaluated information related to subsidy payments occurring in Calendar Years 1999, 2000, and 2001. We found that monthly subsidy amounts changed in 16 cases (18 percent). Subsidy amounts increased in 13 cases and decreased in 3 cases. Although some of the increases in the subsidy amounts were due to requests made by the families, six cases were due to changes in the age of the child. This is because 13 counties

in our sample automatically increase adoption subsidy rates when children enter new age categories. As discussed earlier in this chapter, some counties set some or all of their subsidy rates based upon the age of the child. Rates are often set for three different age categories, including (1) ages birth to 10 years old (2) ages 11 to 14 years old and (3) ages 15 to 21 years old. The maximum amount allowed for subsidy rates increases when children enter the new age categories. For instance, a county may set its maximum subsidy rates for children ages birth to 10 years old at \$349 and its rates for children ages 11 to 14 years old at \$392.

The practice of increasing payments when children enter new age categories is common in foster care where it is generally accepted that the cost of care for a child will increase as the child grows older. While we recognize that, in general, the cost of care may increase as children grow older, we question the practice of automatically increasing adoption subsidy rates as children age. This practice does not directly account for changes in the three main criteria for determining subsidy amounts—the child's special needs, the family's circumstances, and the availability of community resources. However, it does result in increased costs to the Program. We estimate that an additional \$19,000 would be paid for the six cases cited above if these cases continue until the children reach age 18. Rather than increasing payments based solely on age for children already in the Program, these resources could be used to find families for children awaiting adoption.

Currently the Department's rules and regulations are silent on whether adoption subsidies should be increased when children enter new age categories. We believe the Division should emphasize to counties through training sessions and agency letters that subsidy amount decisions are to be determined on a case-by-case basis. The Division should communicate to counties that subsidy rates should not be automatically increased when a child enters a new age category. Rather, decisions on the subsidy amount should be based upon how the child's special needs and the family's circumstances have changed and the availability of community resources free of charge.

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### **Recommendation No. 14:**

The Division of Child Welfare Services should ensure that counties make changes to subsidy amounts based on the child's needs, the family's circumstances, and the availability of free community resources by:

- a. Establishing a written policy to counties clarifying that subsidy rates are to be renegotiated based upon how the child's needs or family's circumstances have

changed. This policy should also detail how counties should document reasons for increasing rates, particularly due to changes in the child's age.

- b. Ensuring that counties are complying with the new policy through the annual monitoring reviews and the provision of technical assistance to counties, as needed.

### **Division of Child Welfare Response:**

Agree.

- a. The Department will draft rules concerning renegotiating subsidies based on needs.
  - b. The Department will add this item to their monitoring instrument.
-

The electronic version of this report is available on the Web site of the  
Office of the State Auditor  
**[www.state.co.us/auditor](http://www.state.co.us/auditor)**

A bound report may be obtained by calling the  
Office of the State Auditor  
**303-869-2800**

Please refer to the Report Control Number below when requesting the report.

**Report Control Number 1386**

## **APPENDIX C**



**COLORADO**  
**Office of Children,  
Youth & Families**  
Division of Child Welfare

Date: September 20, 2016

To: All County Human Services Directors

From: Ann Rosales, Director - Division of Child Welfare

Title: Average Adoption Assistance Payments by County for FFY 2015

Regarding: Adoption Assistance Payments to Families

Key Words: Adoption, Adoption Assistance, Subsidy

Number: IM-CW-2016-0049

**Information Memorandum**

The purpose of this memorandum from the Division of Child Welfare is to share with all county departments of human/social services information about adoption assistance rates across the state, county-by-county for State Fiscal Year 2015.

This communication has been sent to all county human/social service directors. Please forward pertinent information on to staff members as is necessary.

In March 2002, the State Auditor's Performance Audit of the Subsidized Adoption Program recommended that the State establish procedures to collect and review rate information on an annual basis to determine how rates set by all counties affect the adoption assistance program.

The attached excel worksheet provides the number of finalized adoptions per county, the number of children whose parental rights were terminated making them legally free for adoption, percentage of finalized adoptions for children legally free, the average adoption assistance payment per county with and without dormant (Medicaid only) agreements, the number of Medicaid only agreements per county, and the percentage of Medicaid only (dormant) agreements for State Fiscal Year 2015.

In SFY 2015, the parental rights of 483 Colorado children and youth were terminated. This is a significant decrease from 1301 indicated in the last Dear Director letter released in December 2014. There were 683 finalized adoptions during SFY 2015. The number of children and youth freed for adoption and the number of finalized adoptions does not ordinarily correlate one-to-one. There was a significant increase (11%) in the number of finalized adoptions between SFY 2014 and SFY 2015. Of the 683 new adoptions in SFY 2015, 185 or 27% of the new adoption assistance agreements were dormant or Medicaid only.

If additional information is required, please contact Constance Vigil, Adoption Program Administrator at 303-866-3209, [constance.vigil@state.co.us](mailto:constance.vigil@state.co.us).

We look forward to our work together to continue to improve the safety of Colorado's children and families.

Memo Website: <https://sites.google.com/a/state.co.us/cdhs-memo-series/home>



	A	B	C	D	E	F	G	H	I	J	K	L	M
1					% of Finalized				Avg. Assistance				% of
2			# of	# of	Adoptions for		Avg. Assistance		Payments for				Medicaid
3		# of	Legally	Finalized	Children		Payments for		SFY 2015		# of		Only
4	<b>County</b>	Finalized	Freed	Adoptions	Legally Free for		SFY 2015 Including		without		Medicaid		Agreements
5		Adoptions for	Children for	for	Adoption in		Medicaid Only		Medicaid Only		Only		for
6		SFY 2014	SFY 2015	SFY 2015	SFY 2015		Agreements		Agreements		Agreements		SFY 2015
7													
8	Adams	142	75	94	125		\$ 168.24		\$ 217.71		21		22
9	Alamosa	13	0	12	0		\$ 142.25		\$ 341.46		7		58
10	Arapahoe	83	31	65	209		\$ 243.73		\$ 363.44		22		34
11	Archuleta	0	0	7	0		\$ 233.77		\$ 409.03		3		43
12	Baca	0	0	0	0		\$ -		\$ -		0		0
13	Bent	0	3	2	67		\$ 300.06		\$ 600.12		1		50
14	Boulder	14	11	27	245		\$ 252.82		\$ 353.23		7		26
15	Broomfield	4	0	3	0		\$ -		\$ 256.41		0		0
16	Chaffee	1	0	1	0		\$ -		\$ 405.45		0		0
17	Cheyenne	0	0	0	0		\$ -		\$ -		0		0
18	Clear Creek	0	1	6	600		\$ -		\$ 1,115.48		0		0
19	Conejos	0	1	2	200		\$ -		\$ -		2		100
20	Costilla	2	0	3	0		\$ -		\$ -		3		100
21	Crowley	1	0	0	0		\$ -		\$ -		0		0
22	Custer	0	0	0	0		\$ -		\$ -		0		0
23	Delta	2	8	4	50		\$ -		\$ 896.46		0		0
24	Denver	135	91	118	130		\$ 298.00		\$ 361.87		20		17
25	Dolores	0	0	0	0		\$ -		\$ -		0		0
26	Douglas	12	3	9	300		\$ 295.85		\$ 377.58		2		22
27	Eagle	1	0	6	0		\$ -		\$ -		0		0
28	El Paso	100	19	117	616		\$ 313.81		\$ 360.73		16		14
29	Elbert	7	0	1	0		\$ -		\$ 549.93		0		0
30	Fremont	18	15	15	100		\$ 318.60		\$ 511.63		2		13
31	Garfield	1	4	6	150		\$ 423.74		\$ 637.00		2		33
32	Gilpin	2	1	0	0		\$ -		\$ -		0		0
33		538	263	380			\$ 2,990.87		\$ 7,757.53		108		

	A	B	C	D	E	F	G	H	I	J	K	L	M
34					% of Finalized				Avg. Assistance				% of
35			# of	# of	Adoptions for		Average Assistance		Payments for				Medicaid
36		# of	Legally	Finalized	Children		Payments		SFY 2015		# of		Only
37	<b>County</b>	Finalized	Freed	Adoptions	Legally Free for		for SFY 2015 Including		without		Medicaid		Agreements
38		Adoptions for	Children for	for	Adoption in		Medicaid Only		Medicaid Only		Only		for
39		SFY 2014	SFY 2015	SFY 2015	SFY 2015		Agreements		Agreements		Agreements		SFY 2015
40													
41	Grand	0	2	2	100		\$ 199.84		\$ 199.84		0		0
42	Gunnison	2	0	2	0		\$ 259.76		\$ 519.52		1		50
43	Hinsdale	0	0	0	0		\$ -		\$ -		0		0
44	Huerfano	2	3	1	33		\$ -		\$ -		1		100
45	Jackson	0	0	0	0		\$ -		\$ -		0		0
46	Jefferson	48	56	78	139		\$ 287.24		\$ 332.19		9		12
47	Kiowa	0	0	0	0		\$ -		\$ -		0		0
48	Kit Carson	0	0	0	0		\$ -		\$ -		0		0
49	La Plata	4	0	4	0		\$ 149.62		\$ 290.63		2		50
50	Lake	1	0	0	0		\$ -		\$ -		0		0
51	Larimer	33	9	28	311		\$ 45.10		\$ 420.87		25		89
52	Las Animas	4	6	6	100		\$ 276.75		\$ 414.12		2		33
53	Lincoln	2	0	0	0		\$ -		\$ -		0		0
54	Logan	13	0	7	0		\$ 482.33		\$ 482.33		0		0
55	Mesa	37	60	47	78		\$ 435.09		\$ 545.00		3		6
56	Mineral	0	0	0	0		\$ -		\$ -		0		0
57	Moffat	2	2	1	50		\$ -		\$ -		1		100
58	Montezuma	1	0	0	0		\$ -		\$ -		0		0
59	Montrose	5	2	10	500		\$ 383.76		\$ 426.95		1		10
60	Morgan	4	5	11	220		\$ -		\$ 441.21		0		0
61	Otero	9	1	5	500		\$ 374.00		\$ 468.72		1		20
62	Ouray	0	0	0	0		\$ -		\$ -		0		0
63	Park	0	9	3	33		\$ -		\$ -		3		100
64	Phillips	0	3	0	0		\$ -		\$ -		0		0
65	Pitkin	0	1	0	0		\$ -		\$ -		0		0
66		161	159	205			\$ 2,839.49		\$ 4,541.38		49		

[illegible]

## **APPENDIX D**

## **Recommended Changes To The CDHS/County Fiscal Relationship**

### **I. AECF continues to recommend that Colorado amend its statutes to increase the County share of congregate care placement costs from 20% to at least 30% effective 7/1/15.**

**Policy Rationale** - Though there have been improvements, notably in El Paso County, Colorado continues to overuse congregate care. In addition to being bad practice, this continues to have the potential to create cost pressures within the cost neutrality constraints of the State's IV-E demonstration. Colorado expressly committed itself to reducing and norming the congregate care share of the case mix in its demonstration proposal. Realignment of the State/County fiscal structure to create fiscal disincentives for congregate care usage should be tool to that end. Changes to the County cost sharing rate is the easiest and most efficient way to accomplish that objective while concomitantly generating placement cost savings which can be flexibly reinvested in new practice interventions and initiatives afforded by the demonstration operating environment. An AECF analysis of the cost impact that could result from norming congregate care to 15% of all paid placement days by developing and using a network of treatment foster homes suggests ANNUAL cost savings in excess of \$10 million in State and Federal demonstration funds using fiscal year 2012 data. Norming congregate care usage to 15% of the paid case mix is the "low hanging fruit" to generate the "seed capital" for initiative interventions envisioned under the demonstration.

AECF is cognizant that increasing the county share for congregate care usage from 20% to 30% will, in some instances, potentially create financial hardships in small Counties which experience very few placements in general and where any episode of residential placement is already a stress factor on County finances. AECF notes, however, that the CDHS already has in place a cost mitigation process for deep-end placements, and we believe that this process can be adjusted to reflect the increased cost-sharing and financed by using some of the overall savings that will be realized via norming the case mix to 15%.

### **II. AECF urges CDHS to propose, and advocate on behalf of, the elimination of any variable which distributes County allocation funding based on a County's volume/usage of congregate care.**

**Policy Rationale** – The county funding allocation formula that was adopted in June, 2013, includes a variable which distributes 5% of the funding available for the allocation based on each County's proportionate congregate care bed-day experience. In our opinion, inclusion of this variable in the allocation formula runs counter to good practice and creates a significant operational impediment to the State's desire to generate demonstration cost neutrality savings by reducing congregate care usage. The presence of this variable also creates distorted incentive for a County to do nothing to reduce congregate care usage because that County's proportionate share within the 5% set-aside will actually increase as other Counties reduce their congregate care usage. In sum, it is our view that the inclusion of this variable gains nothing and risks much. It is for that reason that we recommend that the CDHS seek and advocate for its removal from the allocation formula.

**III. AECF continues to recommend that Colorado amend its statutes to reduce the County share of foster care maintenance payments made to licensed relative caregivers from 20% to 8% effective 7/1/14.**

**Policy Rationale** - The use of unlicensed relative foster care is on the rise in Colorado and the State runs a high risk of becoming over-reliant on it. Assuming a child's safety is assured, there is nothing inherently wrong with using unlicensed relative caregivers as placement resources PROVIDED that Counties have fully and truthfully informed relative caregivers of:

- a. their option to seek a foster home license and the requirements necessary to do so; and
- b. the foster care maintenance payment that the caregiver would receive if licensed and the amount of any payment that they would receive if unlicensed; and
- c. the pathway to a guardianship and/or adoption subsidies that would be open to them as a licensed placement resource.

Presented with that fully disclosed information, a relative caregiver is perfectly permitted to make the informed decision forego licensing. The "rub" lies in the conflict of interest that is arising as Counties increasingly realize that unlicensed relative care allows them to avoid any local share for foster care placement costs by financing the case as a TANF cash assistance payment at a lower cost than a foster care payment. In that environment, it is not necessarily in a County's fiscal self-interest to honestly and fully disclose, in a completely unbiased manner, all of the options open to the relative caregiver, when the caregiver's choice has decided cost implications for the County. Reducing the County cost share for licensed relative care from 20% to 8% would act to mitigate the "conflict of interest" impact of the current cost share percentage by nominalizing the County fiscal implications of licensed relative care. It also sends a policy statement that within the pantheon of foster care placement settings, Colorado values relative caregivers over other care settings. That policy statement, in turn, will act to optimize and enhance of the "waiver of waivers" and the waiver of the "6 month wait" requirement for federal guardianship subsidy eligibility that Colorado expressly sought and received in its demonstration proposal with the stated goal of increasing relative placement supports and expanding the usage of guardianship subsidies to improve permanency and well-being outcomes for children.

AECF recognizes that this policy change will have the effect of increasing State dollar costs over time if licensed relative care markedly increases. At a macro level, some, but not all, of any such increased cost will be off-set by declining TANF usage and a corresponding lessening of fiscal pressures on TANF cash assistance payments and child care subsidies that increased TANF financed relative foster care can cause. To the extent that demonstration and TANF savings are insufficient to fully finance the cost of this recommendation, then AECF would urge that CDHS seek additional State funding for same in its budget submission.

**IV. AECF continues to recommend that Colorado amend its statutes to reduce the County share of relative guardianship and adoption subsidies from 20% to 0% effective 7/1/14, for each guardianship**

**and adoption subsidy executed on or after that date, and further finance the cost of those subsidies outside of any funding allocations that are provided to Counties.**

**Policy Rationale** - Current Colorado law presently imposes 20% County cost share for both adoption and guardianship subsidies, and the appropriation structure effectively requires the totality of those costs to be absorbed within the annual fixed funding allocations that are provided to each County. The adverse effective of this fiscal structure is two- fold -

- first, a 20% cost share rate conveys an implicit policy statement that a child's permanency outcome achieved via an adoption or guardianship subsidy is no more valued than allowing that child to remain in foster care. Fiscal policy should amplify and reinforce policy values, not be counterfactual to them; and

- second, forcing the cost of those cases to be absorbed by a County within the constraints of a fixed allocation impedes the growth of adoption and guardianship cases, and, in turn, also constrains better permanency outcomes for children. Adoption and guardianship subsidy cases have longer case lives and benefit consumption periods than foster care placement cases/costs because they are, by definition, permanency outcomes. Thusly, they are less variable than foster care placement caseload levels. Reimbursing County costs for these programs within a fixed allocation fiscal structure will, overtime, discourage a County from growing its subsidy caseload because that cost of doing so will increasingly consume "fiscal space" within the annual allocation - crowding out other costs.

Colorado's demonstration proposal expressly removes adoption and guardianship from the constraints of the cost neutrality imposed on the demonstration. This was a strategic choice by the State. It creates a fiscal incentive for the State to grow both caseloads without being constrained by the annual fixed funding allocation the State received for the demonstration, and, in turn, also incentivizes the State to improve permanency outcomes for children via adoption and guardianship. The irony though is that the wisdom and foresight Colorado showed in designing its demonstration's fiscal structure to remove adoption and guardianship costs from the demonstration's annual fixed allocation funding will likely be completely offset by the continued imposition on the Counties of the exact same fiscal structure Colorado itself designed its demonstration to avoid.

AECF recognizes that this recommendation can create significant new State dollar costs in later years as adoption subsidies covered by the change accumulate and aggregate. To the extent that the State is unwilling to plan for and make that new investment of funds, we would urge the State to consider several options which we believe, would have the effect of reducing future "out-year" cost accumulation. These are –

1. Implement an accounting method to recover from the annual funding appropriated for the County allocation some portion the State share of pre-existing adoption subsidies as they expire. The funding appropriated to the County allocation includes funds that are used to pay the State's current 80% share of pre-existing adoption subsidies. Further, the amount requested for the allocation appropriation each fiscal year includes an assumption of the amount that will be necessary for the State to meet its 80% share of pre-existing adoption subsidies. When a pre-existing subsidy expires, that 80% share of cost

becomes “unencumbered” within the allocation a County receives and it is available for any use allowed within the allocation – including a new adoption subsidy. If those funds are “recycled”, in whole or in part, for a new adoption subsidy, the State incurs no new cost because the funding appropriated for the allocation remains fixed. When, however, the State assumes responsibility for the 20% county share for new adoptions outside of the allocation structure for new adoptions this effectively means that the State incurs a new cost for a cost that would have normally been absorbed within already appropriated funds for the allocation - and for which funding continues to remain available therein. This creates something akin to the functional equivalent of the State “paying twice” - i.e., a commitment of new money from the General Fund, and an unencumbering of State funding within the allocation – money that a County will no longer be required to commit to new adoption subsidies. Development and implementation of an accounting method to recover some of the “unencumbered” allocation space created by implementing our recommendation would reduce its out-year costs; or

2. Finance the cost of new adoption and guardianship subsidies outside of the county allocation structure but still require a County cost share. If the County share was maintained at 20%, this would effectively reduce the State dollar cost of IV-E eligible subsidies from 50% to 30% of the gross cost and from 100% to 80% of the gross cost for subsidies that are not IV-E eligible; or

3. Only implement the recommendation for adoption and guardianship subsidies executed for children over a certain age or older. Colorado’s placement population is becoming increasingly saturated with older children. For a variety of reasons these children have a lower chance of achieving permanency and an increased risk of ultimately aging out of placement. Both are bad outcomes. Selectively targeting implementation of this recommendation to older aged children would both reduce “out-year” cost accumulation and create some degree of fiscal incentive/reward for Counties to target this population for improved permanency via guardianship or adoption if reunification is not a viable option; or.

4. Combine elements of the above options to create a hybrid method of reducing the out year costs.