# STATE OF NEW YORK

7659--A

Cal. No. 1269

# IN SENATE

April 25, 2006

Introduced by Sen. MEIER -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the social services law and the surrogate's court procedure act, in relation to adoption subsidy benefits for eighteen to twenty-one year old adopted children who suffer the death of one or both adoptive parents

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Subdivision 1 of section 453 of the social services law is amended by adding three new paragraphs (e), (f) and (g) to read as follows:

**(e) Upon the death of the sole or surviving adoptive parent or both adoptive parents after the eighteenth birthday and before the twenty-first birthday of the adopted child, where such adoptive parent or parents were receiving adoption subsidy payments at the time of death, such subsidy payments shall continue but shall be made to the guardian of the child on behalf of such child, where the child consents to the appointment of a guardian. Such subsidy payments shall be made retroactively from the death of the adoptive parent or parents to the appointment of a guardian, and shall continue until the twenty-first birthday of the child. If, however, there is no willing or suitable person to be appointed as guardian, or the child does not consent to the appointment of a guardian, such subsidy payments shall be made retroactively from the death of the adoptive parent or parents and shall continue to be made until the twenty-first birthday of the child: (i) through direct payments to the child, if the social services official determines that the child demonstrates the ability to manage such direct payments; or (ii) to a representative payee certified by the social services official.**

**(f) Upon receipt of notification of the death of the sole or surviving adoptive parent or both adoptive parents after the eighteenth birthday**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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and before the twenty-first birthday of the adopted child, where such adoptive parent or parents were receiving adoption subsidy payments at the time of death, the social services official shall notify the child of: (i) the processes available to continue subsidy payments until the twenty-first birthday of the child including appointment of a guardian under the surrogate's court procedure act, application to be approved for direct subsidy payments, or the appointment of a representative payee; and (ii) the right of the child to be involved in all such processes.

(g) Where the social services official has determined that the child does not demonstrate the ability to manage direct subsidy payments, the social services official shall certify payment to a representative payee on behalf of the child. Subsidy payments received by the representative payee shall be held and used strictly for the use and benefit of the child. Designation of the appropriate entity or individual and investigation of an individual for certification as a representative payee shall be conducted by the social services official responsible for payment of the adoption subsidy pursuant to this section.

(i) The social services official may designate an employee of the social services district to be the representative payee responsible for receipt of the adoption subsidy on behalf of the child only where the official determines that such employee has no conflict of interest in performing the duties and obligations as representative payee. If the child resides in a social services district other than the district responsible for payment of the adoption subsidy, the social services district in which the child resides may be designated the representative payee and a social services official of such district shall select an employee of such social services district to be responsible for receipt of the adoption subsidy as the representative payee, only where the official determines that such employee has no conflict of interest in performing the duties and obligations as a payee. Where a voluntary authorized agency has a prior relationship with a child, or where the social services district does not have sufficient or appropriate staff available to perform the functions of the representative payee, the social services district may contract with a voluntary authorized agency as the representative payee on behalf of the child where the social services district determines it would be in the best interests of the child to do so.

(ii) The social services official may designate an individual for certification as a representative payee who shall perform the functions and duties of a representative payee in accordance with the best interests of the child. In determining whether an individual is appropriate to be certified as the representative payee, the social services official shall first consult with the child and shall give the child's preferences significant weight. The child's preference shall be determinative of the representative payee only where such preference does not conflict with the best interests of the child. Prior to designation of an individual by the social services official for certification as a representative payee, the social services official shall:

(A) collect proof of identity and a verifiable social security number of the nominated representative payee;

(B) conduct an in-person interview of the individual;

(C) investigate any potential conflicts of interest that may ensue if such individual is certified; and

(D) determine the capabilities and qualifications of the individual to manage the subsidy payment for the child.

(iii) (A) If, after completion of the investigation, the social services official is satisfied that the individual is qualified, appropriate and will serve the best interests of the child, the social services official shall certify the selected individual as the representative payee for the child.

(B) If the twenty-first birthday of the child occurs while awaiting the certification of a representative payee, the child shall be entitled to retroactive direct payment of subsidy payments since the death of the adoptive parent or parents after the eighteenth birthday of the child.

(iv) The representative payee shall submit reports to the social services official no less than once a year describing the use of the payments in the preceding year. Such reports shall be submitted by December thirty-first of each year. The social services official may also request reports from time to time from the representative payee. If a representative payee fails to submit a report, the social services official may require that the representative payee appear in person to collect payments. The social services official shall keep a centralized file and update it periodically with information including the addresses and social security or tax-payer identification numbers of the representative payee and the child.

(v) The social services official shall revoke the certification of a representative payee upon:

(A) determining that the representative payee has misused the payments intended for the benefit of the child;

(B) the failure of the representative payee to submit timely reports or appear in person as required by the social services official after such failure; or

(C) the request of the child upon good cause shown.

(vi) The social services official shall notify the child of the contact information of the representative payee within five days of making a designation.

(vii) A child may appeal the refusal of the social services official to certify the individual preferred by the child for certification as the representative payee or revoke the certification of a representative payee upon request of the child pursuant to section four hundred fifty-five of this title.

§ 2. Subdivisions 1 and 2 of section 455 of the social services law, as amended by chapter 253 of the laws of 1990, are amended to read as follows:

1. Any person aggrieved by the decision of a social services official or an official of the [~~department~~] office of children and family services not to make a payment or payments pursuant to this title or to make such payment or payments in an inadequate or inappropriate amount or the failure of a social services official or an official of the [~~department~~] office of children and family services to determine an application under this title within thirty days after filing, may appeal to the [~~department~~] office of children and family services which shall review the case, give such person an opportunity for a fair hearing thereon, and render its decision within thirty days. The [~~department~~] office of children and family services may also, on its own motion, review any such decision made by a social services official or any case in which a decision has not been made within the time specified. All decisions of the [~~department~~] office of children and family services shall be binding upon the social services district involved and shall be complied with by the social services official thereof.

2. The only issues which may be raised in a fair hearing under this section are (a) whether the social services official or an official of the [~~department~~] **office of children and family services** has improperly denied an application for payments under this title, or (b) whether the social services official or an official of the [~~department~~] **office of children and family services** has improperly discontinued payments under this title, or (c) whether the social services official or an official of the [~~department~~] **office of children and family services** has determined the amount of the payments made or to be made in violation of the provisions of this title or the regulations of the [~~department~~] **office of children and family services** promulgated hereunder**, or (d) whether the social services official improperly refused to certify the individual preferred by a child for certification as the representative payee or improperly denied a request by a child to revoke the certification of a representative payee pursuant to section four hundred fifty-three of this title**.

§ 3. Subdivision 27 of section 103 of the surrogate's court procedure act, as amended by chapter 231 of the laws of 1999, is amended to read as follows:

27. Infant. Any person under the age of eighteen years; provided, however, **that for purposes of appointment of a guardian of an infant, the term infant also shall include a person who is under the age of twenty-one years who consents to the appointment of a guardian after the age of eighteen. It is further provided** that such definition shall not be applicable to any provision relating to the New York Uniform Transfers to Minors Act, nor to section 1716 of this act.

§ 4. Subdivision 1 of section 1706 of the surrogate's court procedure act, as amended by chapter 636 of the laws of 1987, is amended to read as follows:

1. Where process is not issued or upon the return of process**,** the court shall ascertain the age of the infant, the amount of his personal property, the gross amount of the rents and profits of his real estate during his minority and the sufficiency of the security offered by the proposed guardian. If the infant is over the age of 14 years the court shall ascertain his preference for a suitable guardian. **Notwithstanding any other section of law, where the infant is over the age of eighteen, the infant shall consent to the appointment of a suitable guardian.**

§ 5. Subdivision 2 section 1707 of the surrogate's court procedure act, as amended by chapter 287 of the laws of 1981, is amended to read as follows:

2. The term of office of a guardian of the person or property so appointed expires when the infant attains majority, **unless the infant consents to the continuation of or appointment of a guardian after his or her eighteenth birthday, in which case such term of office expires on his or her twenty-first birthday,** or after such other shorter period as the court establishes upon good cause shown; except that the term of office of a guardian of the person of an infant expires upon the infant's marriage prior to attaining majority.

§ 6. This act shall take effect immediately; provided however that the provisions of this act shall apply to those children who are between the ages of eighteen and twenty-one on the effective date of this act who would have been eligible for the provisions of section one of this act at the time of the death of their adoptive parent or parents had this act been in effect.

# NEW YORK STATE SENATE
# INTRODUCER'S MEMORANDUM IN SUPPORT
## submitted in accordance with Senate Rule VI. Sec 1

**BILL NUMBER:** S7659A

**SPONSOR:** MEIER

**TITLE OF BILL**:
An act to amend the social services law and the surrogate's court procedure act, in relation to adoption subsidy benefits for eighteen to twenty-one year old adopted children who suffer the death of one or both adoptive parents

**PURPOSE**:
To allow adoption subsidies to continue upon the death of one or both adoptive parents.

**SUMMARY OF PROVISIONS**:
Section one amends 453 of the social services law by adding new subdivisions (e), (f) and (g) which continue the payment of adoption subsidies upon the death of an adoptive parent(s) prior to the twenty-first birthday of an adopted child and sets forth the process by which such subsidies shall be paid, including the possible appointment of a representative payee and the investigation of such representative payee.

Section 2 amends section 455 of the social services law to allow aggrieved persons to pursue a fair hearing regarding decisions of a representative payee on adoption subsidies.

Sections 3, 4 and 5 amend the surrogate's court procedure act to allow those individuals between the ages of 18 and 21 to have a guardian appointed as long as the person consents to such appointment.

Section 6 provides for an immediate effective date provided the provisions shall apply to those individuals between the ages of 18 and 21 who would have been eligible for the provisions of this act at the time of the death of their adoptive parent(s) had this act been in effect.

**PRIOR LEGISLATIVE HISTORY**:
New bill.

**JUSTIFICATION**:
Current law inadequately addresses how to handle adoption subsidies for adopted youth between the ages of eighteen and twenty-one upon the death of their adoptive parent(s). The law states that these subsidy payments shall be made to the adoptive parent(s) until the child's twenty first birthday. The law also states that, should the adopted parent(s) dies before the child reaches the age of twenty-one, the subsidy payments shall continue under the same terms to whomever is appointed legal guardian. However, New York State Family Courts have no jurisdiction to appoint a legal guardian for persons who are eighteen years of age or older. Therefore, young adults between the ages of 18 and 21 lose their

intended subsidy benefits upon the death of their adoptive parents. The young adults in this situation face financial instability which can have long term consequences for their career prospects and/or educational opportunities. This bill would amend New York law to allow the payments to continue when a child loses one or both adopted parent.

**FISCAL IMPLICATIONS**:
The fiscal implications will be limited since only a limited number of adopted children lose one or both adopted parents while they are between the ages of 18 and 21.

**EFFECTIVE DATE**:
Immediately, provided the provisions shall apply to those individuals between the ages of 18 and 21 who would have been eligible for the provisions of this act at the time of the death of their adoptive parent(s) had this act been in effect.

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