

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF SECOND PUBLIC HEARING

December 16, 2020
1:00 p.m. Central Time
Nebraska State Office Building – Lower Level A
301 Centennial Mall South, Lincoln, Nebraska
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive additional comments on proposed changes to Title 479 Chapter 7 of the Nebraska Administrative Code (NAC)-*Guardianship Assistance Program*. These regulations govern the guardianship assistance agreements that may be entered into with the Department per state statute, or Title IV-E of the Social Security Act. The proposed changes set forth the application process, eligibility criteria, establish what can be included in guardianship assistance agreements, clarify the utilization of an established rate tool to determine assistance payments, and updates special service provisions. The proposed changes also remove internal direction to staff from the regulations, updates definitions, and updates formatting.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Due to the current public health crisis, the agency will enforce any Directed Health Measure Order on the size of gatherings that is in effect at the time of the hearing. In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments.

Interested persons may provide verbal comments by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may provide written comments by mail, fax, or email, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8223. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 479	Prepared by: Olivia Biggs
Chapter: 7	Date prepared: 8/3/2020
Subject: Guardianship Assistance Program	Telephone: 402.219.2740

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input checked="" type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency: **None.**

Political Subdivision: **None.**

Regulated Public: **None**

If indeterminable, explain why: **The fiscal impact is indeterminable because allowing for state funded guardianship assistance rate increase post guardianship is a new option. It is unknown how many guardians will request an increase and when requested, if the child and family circumstance will meet the criteria to qualify for a rate increase. Thus, the cost of the proposed regulations is indeterminable as assistance will be provided case-by-case per requirements for assistance as outlined in Title 479 NAC 7.**

DRAFT
07-18-2020

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

479 NAC 7

TITLE 479 CHILD WELFARE PAYMENTS

CHAPTER 7 GUARDIANSHIP ASSISTANCE PROGRAM

001. SCOPE AND AUTHORITY. This chapter governs guardianship assistance agreements that may be entered into with the Department pursuant to Nebraska Revised Statute (Neb. Rev. Stat.) § 43-284.02 or Title IV-E of the Social Security Act.

002. PRE-EXISTING AGREEMENTS. All subsidized guardianship agreements or guardianship assistance agreements executed and the guardianship is finalized prior to the implementation of these regulations are subject to the regulations in place at the time the guardianship was finalized.

003. DEFINITIONS. The following definitions apply:

003.01 GUARDIANSHIP ASSISTANCE AGREEMENT. Guardianship Assistance Agreement means a Nebraska Guardianship Assistance Agreement or a Title IV-E Kinship Guardianship Assistance Agreement between the Department and the Prospective Guardians to assist with the costs of care for the child who is the subject of the Guardianship Assistance Agreement.

003.02 MEDICAL PROFESSIONAL. Medical Professional means a physician or advanced practice registered nurse (APRN) or physician assistant (PA) when the APRN or PA is practicing under the supervision of a physician. A Medical Professional must be licensed by the Nebraska Department of Health and Human Services, Division of Public Health, or its equivalent in another state, at the time of service.

~~003.03 MENTAL HEALTH PROFESSIONAL. Mental Health Professional means a psychologist, psychiatrist, licensed mental health practitioner, licensed clinical social worker or licensed alcohol and drug counselor who provides mental health or substance use treatment services and is licensed by the Nebraska Department of Health and Human Services, Division of Public Health, or its equivalent in another state certified to provide medical or mental health treatment. Mental Health Professional includes a provisionally licensed mental health practitioner, a provisionally licensed psychologist, a provisionally licensed alcohol and a drug counselor.~~

003.043 NEBRASKA GUARDIANSHIP ASSISTANCE AGREEMENT. A Guardianship Assistance Agreement entered into between the Department and the Prospective Guardians and the eligibility requirements for Title IV-E Kinship Guardianship Assistance have not been met.

003.054 PROSPECTIVE GUARDIAN. The individual or individuals seeking to become the court-appointed guardian for the child who would be the subject of a Guardianship Assistance Agreement.

003.065 STEPPARENT. Stepparent means a person who is legally married to a parent of the child who is the subject of the guardianship assistance agreement.

003.076 TITLE IV-E KINSHIP GUARDIANSHIP ASSISTANCE AGREEMENT. A Guardianship Assistance Agreement entered into between the Department and Prospective Guardians when the Prospective Guardians are relatives of the child and are licensed to provide foster care and the Department has determined all eligibility criteria of this chapter and Title IV-E of the Social Security Act have been met.

004. GUARDIANSHIP ASSISTANCE AGREEMENTS. All guardianship assistance agreements are subject to the provisions in this chapter.

004.01 APPROVAL BEFORE GUARDIANSHIP IS FINALIZED. The guardianship assistance agreement must be signed by the guardian or guardians and DHHS prior to the date of the court order establishing the guardianship. When more than one individual is being appointed as guardian of a child, each individual seeking appointment as guardian must sign the agreement. The guardianship must be established by the court within six months of the Guardianship Assistance Agreement being signed by all parties. When the guardianship is not finalized within the six month time frame, the guardianship assistance agreement is no longer valid and a new application must be submitted by the potential guardians.

004.02 APPLICATION. An application for a Guardianship Assistance Agreement must be submitted by the prospective guardian prior to finalization of the guardianship. Eligibility will be determined based on the factors set forth in this chapter.

004.03 ELIGIBILITY FOR TITLE IV-E GUARDIANSHIP ASSISTANCE AGREEMENT. When the Department determines the child qualifies for guardianship assistance pursuant to Title IV-E of the Social Security Act, the child will be eligible for a Title IV-E Guardianship Assistance Agreement when all other eligibility requirements set forth in this chapter and Title IV-E of the Social Security Act are met. When all eligibility requirements of this chapter are met, but all eligibility requirements of Title IV-E of the Social Security Act are not met, the child will be eligible for a Nebraska Guardianship Assistance Agreement.

004.03(A) SUCCESSOR GUARDIAN. Notwithstanding any other provision, the eligibility of a child for a Title IV-E Kinship Guardianship Assistance Agreement under Title IV-E of the Social Security Act shall not be affected by reason of the replacement of a relative guardian with a successor guardian named in the Title IV-E Kinship Guardianship Assistance Agreement, including any amendment thereto.

004.04 ELIGIBILITY FOR GUARDIANSHIP ASSISTANCE AGREEMENT. To be eligible for a guardianship assistance agreement all eligibility criteria must be met.

004.04(A) ELIGIBILITY CRITERIA.

- (i) The child that is the subject of the Guardianship Assistance Agreement must be in the custody of the Department immediately prior to the guardianship being finalized;
- (ii) The child that is the subject of the guardianship assistance agreement must be a citizen of the United States or a qualified alien as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The Department must have documentation to confirm the child's United States Citizenship or qualified alien status;
- (iii) The child that is the subject of the Guardianship Assistance Agreement must be under 19 years of age;
- (iv) The child that is the subject of the Guardianship Assistance Agreement has resided in the home of the prospective guardian for at least six months;
- (v) The child that is the subject of the Guardianship Assistance Agreement cannot return to the home of the parents;
- (vi) The child that is the subject of the Guardianship Assistance Agreement demonstrates a strong attachment to the prospective guardian and the prospective guardian has a strong commitment to caring permanently for the child;
- (vii) Adoption would not be in the best interest of the child that is the subject of the Guardianship Assistance Agreement;
- (viii) Unless it is not in the best interests of the child, efforts were made to place the child without a Guardianship Assistance Agreement; and
- (ix) The prospective guardians verify that the guardianship cannot occur without a Guardianship Assistance Agreement because the child's present and anticipated future needs have been determined to exceed the family's ability to meet those needs without assistance.

004.04(B) PARENT ELIGIBILITY. No parent is eligible for a Guardianship Assistance Agreement on behalf of their child, even if parental rights have been relinquished or terminated. No stepparent is eligible for a Guardianship Assistance Agreement on behalf of their stepchild.

004.04(C) CRIMINAL RECORDS CHECK REQUIRMENTS. All Prospective Guardians and any individual 18 years of age or older residing in the Prospective Guardians' household must submit to the records checks set forth in this chapter and meet the approval requirements of this section in order for the Department to enter into a Guardianship Assistance Agreement with the Prospective Guardians.

004.04(C)(i) RECORDS TO BE SEARCHED. All Prospective Guardians and any individual 18 years of age or older residing in the Prospective Guardians' household must consent to the Department receiving all background checks identified in this section. For each Prospective Guardian and any individual 18 years of age or older residing in the Prospective Guardians' household, the following checks will be reviewed by the Department:

- (1) State Central Register or Registry of child protection maintained by any state in which the individual has lived within the past 5 years;
- (2) Nebraska Adult Protective Services Central Registry;
- (3) Appropriate local law enforcement agency;

- (34) National Sex Offender Registry maintained by any state in which the individual has lived within the past 5 years; and
- (5) State-level criminal history; and
- (46) Fingerprint-based National Criminal History Check.

004.04(C)(ii) CRIMINAL RECORDS APPROVAL REQUIREMENTS. If the Prospective Guardians or any individual 18 years of age or older residing in the household has a criminal history or history of child abuse or neglect, the Department will determine whether to enter into a Guardianship Assistance Agreement based on the provisions in this chapter.

004.04(C)(ii)(1) GUARDIANSHIP ASSISTANCE AGREEMENT NOT AUTHORIZED. The Prospective Guardians cannot enter into a Guardianship Assistance Agreement with the Department when:

- (a) Any of the Prospective Guardians or any individual 18 years of age or older living in the household has been convicted of a felony involving abuse or neglect of a child, spousal abuse, a crime against a child or children, or a crime of violence including rape, sexual assault, or homicide, but not including other physical assault or battery;
- (b) Any of the Prospective Guardians or any individual 18 years of age or older living in the household is identified as a perpetrator on a child abuse and neglect central registry or an adult abuse and neglect central registry; or
- (c) Any of the Prospective Guardian or any individual 18 years of age or older living in the household has a conviction date within the past five years for a felony involving a drug-related offense, physical assault or battery.

004.04(C)(iii) TIME FRAME FOR CRIMINAL RECORDS CHECK. To meet the requirements of this chapter, the results of the criminal records checks for each individual are valid for two years from the date the results were issued. If the Guardianship Assistance Agreement is not signed by all parties during the time frame when the results are valid, new criminal records checks will be required.

004.05 GUARDIANSHIP ASSISTANCE AGREEMENT PROVISIONS. A guardianship assistance agreement may include one or more of the following:

- (1) A Guardianship Assistance payment negotiated between the Department and the guardians in accordance with the Department's established rate determination tool. In no case may the amount of the guardianship assistance payment exceed the foster care maintenance payment which would have been paid by the Department if the child with respect to whom the Guardianship Assistance payment is made had been in a foster family home;
- (2) Special Services payments made for a specific service or item related to the child's needs for a specified period of time. No special services payments will be included if other resources or programs are available to assist with the services; or
- (3) Non-recurring expenses or one or both of the following:
 - (a) Legal fees directly related to the finalization of the guardianship for the child; or
 - (b) Funeral assistance if the child with respect to whom the Guardianship Assistance Agreement is made is diagnosed by a medical professional as being terminally ill and the life expectancy of the child is less than 20 years old. The prospective

guardians will not receive any funeral assistance under the Guardianship Assistance Agreement prior to the child's death. Any funds expended by the guardians in anticipation of the child's death will only be reimbursed by the Department if the child's death occurs during the duration of the Guardianship Assistance Agreement for the child.

004.05(A) GUARDIANSHIP ASSISTANCE PAYMENTS. The following provisions apply to all Guardianship Assistance Payments.

004.05(A)(i) DEDUCTIONS FROM PAYMENTS. Any other maintenance payments received for the child, such as Social Security Disability Insurance benefits or survivor benefits, Supplemental Security Income, Veteran's Administration benefits or Aid to Dependent Children benefits, will be deducted from the guardianship assistance payment.

004.05(A)(ii) CHILD SUPPORT. Any child support amount paid to the guardians for support of the child that is the subject of the Guardianship Assistance Agreement will be deducted from the guardianship assistance payment.

004.05(A)(iii) USE OF ASSISTANCE. A guardian who receives payment of guardianship assistance shall use the guardianship assistance funds for the benefit of the child. The Department will consider use of the guardianship assistance funds on the following supports and services as using the funds for the benefit of the child:

- (1) Clothing purchases;
- (2) Incidental items;
- (3) Insurance;
- (4) Food;
- (5) Housing, other than maintenance of the guardian's home;
- (6) Education; ~~or~~
- (7) Medical expenses; ~~or~~
- (8) Transportation.

004.06 DESIGNATION OF SUCCESSOR GUARDIAN. A prospective guardian who enters into a Guardianship Assistance Agreement with the Department must designate a successor guardian for the child in case of the death of the guardian. Payment of the guardianship assistance will cease upon the death of the guardian unless the Guardianship Assistance Agreement provides for assignment to a successor guardian. In the event an individual who was previously a parent for the child is appointed as guardian for the child, even if parental rights have been terminated or relinquished, payment of the guardianship assistance must cease.

004.06(A) EXCEPTION. Guardianship assistance payments can continue for up to six months following the death of the guardian or guardians pending the appointment of a guardian or conservator if the child is placed in the temporary custody of a family member or other individual. In the event this child is placed in the custody of an individual who was previously a legal parent for the child, even if parental rights have been terminated or relinquished, the guardianship assistance payment will cease.

004.07 REVIEW. The Guardianship Assistance Agreement will be reviewed every twelve months to determine:

- (1) That the child continues to be a legal dependent of the guardian;
- (2) The guardian continues to use the guardianship assistance payments for the benefit of the child; and
- (3) That the child continues to need the provisions of the Guardianship Assistance Agreement.

004.07(A) REVIEW TIME FRAMES. At the time of review, the guardian will receive a written notice of the Guardianship Assistance Agreement review and a review form from the Department. The guardian must return the review form to the Department within 30 days of the date of the notice or the Department may suspend the guardianship assistance payments.

004.07(B) SUSPENSION AFTER REVIEW. If the Department is unable to verify whether the guardian is legally responsible for the child or using the guardianship assistance payment for the benefit of the child, the Department may suspend issuance of the guardianship assistance payment until verification is received.

005. CHANGE IN GUARDIANSHIP ASSISTANCE AGREEMENT PROVISIONS. The guardian may request a change in the Guardianship Assistance Agreement provisions by submitting a written request on the Department approved form. Guardianship Assistance Agreement provisions may be modified if the Department determines an amended agreement is necessary based on a change in family circumstances, a change in the child's special needs or a change in law or regulation.

005.01 ~~CHANGE INCREASE~~ IN TITLE IV-E KINSHIP GUARDIANSHIP ASSISTANCE PAYMENT AGREEMENT. Title IV-E Kinship Guardianship Assistance Agreements may be modified as authorized by this section.

005.01(A) INCREASE IN ASSISTANCE PAYMENT. The guardian of a child who is the subject of a Title IV-E Kinship Guardianship Assistance Agreement may request an increase in the guardianship assistance payment. The guardian must provide documentation to support the need for an increase in the payment. The amount of the guardianship assistance payment must not exceed the amount the child would have received in foster care at the time of the request.

005.0~~2~~1(B) CHANGE IN SPECIAL SERVICES IN TITLE IV-E KINSHIP GUARDIANSHIP ASSISTANCE AGREEMENT. Special services may be added to a Title IV-E Kinship Guardianship Assistance Agreement when the Department determines there is a change in family circumstances or a change in the child's special needs.

005.02 CHANGE IN NEBRASKA GUARDIANSHIP ASSISTANCE AGREEMENTS. Nebraska Guardianship Assistance Agreements may be modified as authorized by this section.

005.02(A) INCREASE IN ASSISTANCE PAYMENT. The guardian of a child who is the subject of a Nebraska Guardianship Assistance Agreement may request an increase in

the guardianship assistance payment if either the child is at least 13 years old or the current guardianship has been established for at least five (5) years. The guardian must provide documentation to support the need for an increase in the payment. The amount of the guardianship assistance payment must not exceed the amount the child would have received in foster care at the time of the request.

005.02(B) CHANGE IN SPECIAL SERVICES. Special services may be added to Nebraska Guardianship Assistance Agreement when the Department determines there is a change in family circumstances or a change in the child's special needs.

006. EXTENDED GUARDIANSHIP ASSISTANCE. A young adult is eligible to participate in the Extended Guardianship Assistance program if:

- (A) The Young Adult is at least 19 years of age but less than 21 years of age;
- (B) The Young Adult was the subject of a Guardianship Assistance Agreement that took effect after the Young Adult had attained 16 years of age;
- (C) The Young Adult was the subject of the Guardianship Assistance Agreement until 19 years of age;
- (D) The Young Adult was previously adjudicated to be within the meaning of Neb. Rev. Stat. § 43-247(3)(a) or the equivalent under tribal law;
- (E) The Young Adult meets the education or employment criteria for the Bridge to Independence program; and
- (F) The Young Adult is not participating in the Bridge to Independence program.

006.01 USE OF FUNDS. A guardian who receives payment of Extended Guardianship Assistance shall use the guardianship assistance funds for the benefit of the Young Adult. The Department will consider use of the guardianship assistance funds on the following supports and services as using the funds for the benefit of the Young Adult:

- (A) Clothing purchases;
- (B) Incidental items;
- (C) Insurance;
- (D) Food;
- (E) Housing, other than maintenance of the guardian's home;
- (F) Education;
- (G) Medical expenses; ~~or~~
- (H) Transportation; or
- (H) Other services and supports the Department determines will help the young adult transition into adulthood.

007. CHANGE IN GUARDIAN INFORMATION. A Guardianship Assistance Agreement may be modified to add guardians when there is a court order appointing additional guardians and all of the following are met:

- (A) The guardian that entered into the current Guardianship Assistance Agreement continues to be a court-appointed guardian of the child;
- (B) The Department is provided a copy of the court order appointing additional guardians;
- (C) The added guardian meets all the requirements of a Prospective Guardian as set forth in this chapter; and
- (D) An amended Guardianship Assistance Agreement is signed by all guardians.

007.01 PAYMENT AFTER ADDING GUARDIANS. Payment will continue to be made in the same manner as before the modification, unless all guardians agree in writing that a change in payee should occur.

008. SUSPENSION OF GUARDIANSHIP ASSISTANCE PAYMENT. The Department may suspend the guardianship assistance payment when:

- (A) The Department determines the guardians are not using the guardianship assistance payment for the benefit of the child; or
- (B) The Department is unable to determine whether the guardians are using the guardianship assistance payment for the benefit of the child.

008.01 GUARDIANSHIP ASSISTANCE PAYMENT WHEN CHILD IS OUT OF HOME. When the child is no longer residing in the home of the guardian, the guardianship assistance payment may be reduced or terminated. To continue to receive a guardianship assistance payment, the guardian must provide documentation to the Department proving the amount of financial support used to benefit the child for each month. The Department will determine the amount of the guardianship assistance payment based on the documentation provided by the guardian.

008.01(A) EXCEPTION. When the child is the subject of a Title IV-E Kinship Guardianship Assistance Agreement, the guardianship assistance payment will be reduced only when agreed to in writing by all guardians who entered into the agreement.

009. REINSTATEMENT OF GUARDIANSHIP ASSISTANCE PAYMENT. When a guardianship assistance payment has been suspended or reduced, the full guardianship assistance payment may be reinstated when the Department determines the basis for suspension or reduction in payment has been resolved. A guardianship assistance payment cannot be reinstated if the guardians who entered into the current Guardianship Assistance Agreement are no longer the guardians of the child.

010. TRANSFER OF GUARDIANSHIP ASSISTANCE AGREEMENT. A Guardianship Assistance Agreement may not be transferred to new guardians, except as authorized in the Designation of Successor Guardian section of this chapter.

011. TERMINATION OF GUARDIANSHIP ASSISTANCE AGREEMENT. A Guardianship Assistance Agreement terminates when:

- (A) All guardians who have entered into the Guardianship Assistance Agreement request termination of the agreement;
- (B) The guardianship assistance agreement does not include a designation of guardian as allowed by law and all guardians are deceased;
- (C) The child reaches age 19;
- (D) The child dies;
- (E) The child becomes an emancipated minor;
- (F) The child marries or enlists in the military;
- (G) The Department determines all guardians who have entered into the Guardianship Assistance Agreement are no longer appointed by the court to be guardians of the child;
or

(H) The child is no longer residing with a guardian who has entered into the Guardianship Assistance Agreement and the guardian is not cooperating in a plan for the child to return home.

011.01 EXCEPTIONS. The following are exceptions to the termination criteria set forth in this chapter.

011.01(A) AGE EXCEPTION. When a child reaches age 19, the Guardianship Assistance Agreement will not terminate if the child is eligible for and enrolls in the extended guardianship assistance program. The Guardianship Assistance Agreement will terminate when the child is no longer enrolled in or eligible for Extended Guardianship Assistance.

011.02(B) OUT OF HOME EXCEPTION. When a child is no longer residing with a guardian, the Guardianship Assistance Agreement will not terminate if the child is attending college or vocational training, is living independently, or is residing in an out of home treatment facility, but continuing to receive supports and services from a guardian who entered into the Guardianship Assistance Agreement.

012. RIGHT TO APPEAL. A guardian or prospective guardian has the right to request a fair hearing as allowed by law, including, but not limited to, the provisions for appeal set forth in this chapter.

012.01 PROSPECTIVE GUARDIAN. The prospective guardian has the right to request a fair hearing under the Administrative Procedures Act if:

- (1) The prospective guardian disagrees with the determination by the Department that a child is ineligible for guardianship assistance;
- (2) The prospective guardian disagrees with the guardianship assistance payment determined by the Department;
- (3) The guardian disagrees with the determination by the Department that a child is not eligible for a Title IV-E Kinship Guardianship Assistance Agreement; or
- (4) The child was denied guardianship assistance based on a means test of the guardian's income.

012.01(A) TIMELINE TO APPEAL. The appeal must be filed in writing within 90 days of the action or inaction. No change in coverage will occur while the appeal is pending.

012.02 GUARDIAN. A guardian receiving guardianship assistance on behalf of a child has the right to request a fair hearing under the Administrative Procedures Act if:

- (1) The Department reduces or terminates the Guardianship Assistance Agreement;
- (2) Facts about the child's special needs were not presented to the guardian prior to finalization of the guardianship;
- (3) The guardians were not informed they could apply for a Guardianship Assistance Agreement when the child was in the Department's custody; or
- (4) The Department denied the request of the guardian for an increase in guardianship assistance payment ~~and the child is the subject of a Title IV-E Kinship Guardianship Assistance Agreement.~~

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07-18-2020

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

479 NAC 7

012.02(A) TIMELINE TO APPEAL. The appeal must be filed in writing within 90 days of when the action or inaction of the Department is known or should have been known by the guardian. No change in coverage will occur while the appeal is pending.

CHAPTER 7-000 SUBSIDIZED GUARDIANSHIP PROGRAM

~~7-001 Introduction: The Nebraska Department of Health and Human Services subsidized guardianship program provides continued financial assistance to a child after a legal guardian has been appointed and the Department's custody has been terminated.~~

~~7-001.01 Purpose: The subsidized guardianship program is designed to ensure that financial barriers or costs associated with a child's needs do not prevent the appointment of a guardian for a child as a preferred alternative to long term foster care.~~

~~7-001.02 Legal Basis: State funds may be used for subsidized guardianship payments on behalf of a child who was a Department ward, as provided in Neb. Rev. Stat., section 43-284.02. This is included in 001 or the proposed regulations.~~

~~7-001.03 Use of Other Resources: The guardian must use all available resources, benefits, and programs, including but not limited to private insurance coverage, care or services available through the education system. This is included, in part, in 004.05(2).~~

~~7-002 Child's Eligibility: A child is eligible for the subsidized guardianship program if s/he is a ward of the Department and meets the criteria for guardianship as follows: The child's eligibility is addressed in 004.04(A), the requirement that the child must be a state ward is in 004.04(A)(i).~~

- ~~1. The child has a documented behavioral, emotional, physical, or mental disability;~~
- ~~2. The child is a member of a sibling group of three or more to be placed together;~~
- ~~3. The child has a strong attachment to the potential guardian and has lived successfully for a minimum of six months in the home of the potential guardian; The 6 month requirement is found in proposed 004.04(A)(iv). The child's attachment to the guardian is found in proposed 004.04(A)(vi).~~
- ~~4. The child cannot return home despite all efforts to effect reunification; Found in proposed 004.04(A)(v).~~
- ~~5. The child cannot be adopted and all attempts to terminate parental rights have failed or the termination is not in the child's best interest; Adoption is not in the child's best interest is found in proposed 004.04(A)(vii).~~
- ~~6. The child is age 12 or older or, if under 12, is part of a sibling group or is attached to the proposed guardian and cannot be freed for adoption; and~~
- ~~7. The prospective guardian and the child can function effectively without Department supervision.~~

~~A child's eligibility ends upon the child's 19th birthday, when the child becomes emancipated or self-supporting, or when the guardianship order is terminated. The child is eligible until age 19 is in proposed 004.04(A)(iii).~~

~~Notwithstanding any other provision, the eligibility of a child for a kinship guardianship assistance payment under Title IV-E of the Social Security Act shall not be affected by reason of the replacement of a relative guardian with a successor guardian named in a kinship guardianship assistance agreement including any amendment thereto. This provision is found in proposed 004.03(A).~~

~~7-003 Agreement Prior to Guardianship Order: The agreement for subsidy, specifying type, amount, and duration of subsidy must be completed and approved before the order establishing guardianship is issued. The requirement tht the guardianship assistance agreement be signed prior to the date of the court order establishing the guardianship is found in proposed 004.01.~~

~~Any subsidy payments begin after the guardian has been appointed by the court.~~

~~7-004 Determining the Guardian's Need for Subsidy: When guardianship becomes the appropriate plan for the child, the child's worker must determine whether the prospective guardian will be able to meet the child's needs without subsidy. The worker must assess the following with the family: The propsepective guardians ability to meet the child's needs without assistance is found in proposed 004.04(A)(ix).~~

~~1. Need for Subsidy~~

~~a. The child's present and anticipated future needs; and~~

~~b. The prospective guardian's ability to meet those needs without subsidy. The assessment must consider other programs, benefits, or resources available to meet the child's needs, including but not limited to: The highlighted provisions are found in proposed 004.04(A)(ix).~~

~~(1) Public assistance including:~~

~~(a) Maintenance payments. If the ward is eligible for ADC, s/he also receives medical assistance.~~

~~Note: Nebraska guardians are not eligible for ADC payments, although specified relatives who are guardians or conservators are eligible for ADC relative payments if they meet other eligibility criteria;~~

~~(b) Medical assistance only. If the child needs medical assistance, the worker completes Form EA-117. Eligibility for MA is a separate determination from eligibility for subsidy. Eligibility is determined using GMAP guidelines (see Title 477;~~

~~(2) Supplemental Security Income (SSI), Veterans benefits, Social Security benefits, or Railroad Retirement benefits;~~

~~(3) Child support;~~

~~Note: Establishment of a guardianship does not eliminate the potential for child support by a parent. Child support can be ordered by the court to be paid directly to the guardian.~~

~~(4) Medically Handicapped Children's Program; and~~

~~(5) Private insurance coverage by the prospective guardian.~~ The deductions from a guardianship assistance payment are found in proposed 004.05(A)(i) and (ii). The requirement for the guardians to utilize other available resources is found in proposed 004.05(2).

2. Type(s) of subsidy: In some cases, only one or two types of subsidy coverage will be necessary.
3. Amount: If maintenance or other costs incidental to care of the child are being considered:
 - (a) The amount must be no more than payment would be if the child had remained in the Department's care; The guardianship assistance payment cannot exceed the amount of the child's foster care maintenance payment which would've been paid by the Department is found in proposed 004.05(1).
 - (b) Explore other maintenance payments or financial resources. The worker shall explain that any maintenance payments will be deducted from the agreed-to maintenance under subsidy; and The deductions from a guardianship assistance payment are found in proposed 004.05(A)(i) and (ii). The requirement for the guardians to utilize other available resources is found in proposed 004.05(2).
 - (c) If the guardian receives an ADC relative payment, the worker must establish a level of need for the child based on FCPAY and subtract \$222 for the maintenance payment. The remainder is the subsidized guardianship payment. If a family provides guardianship for siblings, deduct \$222 from the determined payment for the youngest child and \$71 for each of the older children.
4. Duration: Discuss how long the guardian anticipates needing assistance.

Assistance for child care or respite care ends when the child reaches age 13 unless the child has a special need. See 474 NAC 7-006.01 for the definition of special needs for child care.

{Effective }

7-004.01 Subsidy Approval: The worker and supervisor must complete and submit Form DSS-74, "Guardianship Referral Form," to the designated service area adoption staff for signature.

{Effective 9/20/95}

7-005 Types of Subsidy: Subsidized guardianship may include one or more of the following:

1. Maintenance: This includes monthly payments to the guardian to assist in meeting the child's day-to-day needs. The amount must not be greater than what would be paid for the child in foster care. A guardian's ability to receive a guardianship assistance payment as part of the agreement is found in proposed 004.05(1). This same section dictates that a guardianship assistance payment cannot exceed the foster care maintenance payment that would've been paid by the Department.
2. Medical/Surgical: This may include the following:
 - a. Payments to a medical practitioner for medical or surgical care. Payment is made by Medicaid at the Nebraska Medicaid rate; or

- ~~b. Payments for Residential Psychiatric Care (see 479 NAC 7-007).~~
- 3. ~~Other Costs Incidental to the Care of the Child: This includes payment for a specific service or item related to special needs of the child, including, but not limited to:~~
 - a. ~~Legal fees to obtain the guardianship not to exceed the usual and customary rate for such services within the community; This is found in proposed 004.05(3)(a).~~
 - b. ~~Expenses for transportation, lodging, and meals for the child and one adult to enable the child to receive medical care. Amounts paid must be no more than those paid for foster care (see 479 NAC 2-004.09B3); or Transportation costs may be included in the special services set forth in proposed 004.05(2).~~
 - c. ~~Expenses related to modifying a home to accommodate a special needs child, such as installation of a ramp, or widening of doors. The maximum to be paid is specified on the subsidy agreement.~~

{Effective }

~~7-005.01 Medical Assistance Provided Out of State: If the child and guardian live in another state, the child is eligible for medical assistance through Nebraska Medicaid as long as the child is receiving a maintenance payment from Nebraska.~~

~~If the child does not receive a maintenance payment from Nebraska, the child is no longer eligible for Nebraska Medicaid.~~

~~{Effective 9/20/95}~~

~~7-006 Initial Application and Agreement: The agreement for subsidy must be completed and approved before the guardianship is finalized. The agreement must include the type, amount, and duration of the subsidy. To obtain a subsidized guardianship, Form PS-74, "Subsidized Guardianship Agreement," is required. The requirement that the guardianship assistance agreement must be signed prior the court order establishing the guardianship is found in proposed 004.01.~~

~~The worker sends the completed form to the designated person in the service area. The designated person approves or disapproves the subsidy and returns the form to the worker. The worker advises the prospective guardian of the decision. If subsidy is approved, the worker continues with the plans for finalizing the guardianship. If subsidy is denied, guardianship may still be pursued without subsidy or the worker may need to consider other permanency options.~~

~~{Effective 9/20/95}~~

~~7-007 Residential or Inpatient Psychiatric Care~~

~~7-007.01 Type of Care: To be covered under subsidized guardianship, inpatient or residential care must be:~~

- ~~1. Provided in a facility licensed or approved by the appropriate agency for therapeutic or psychiatric care; and~~
- ~~2. Psychiatric or mental health treatment.~~

~~This care does not include that provided by foster or group homes or child caring agencies.~~

~~7-007.02 Length of Care: Residential Psychiatric Care may be provided under subsidized guardianship for a maximum of two years.~~

~~7-007.03 Restrictions: The Department will approve payment for residential or inpatient psychiatric care only if:~~

- ~~1. Care is anticipated to result in progress which will enable the child to return to the guardian or community;~~
- ~~2. Less restrictive or acute care alternatives or treatments are not appropriate or available, or have refused to accept the child;~~
- ~~3. The child cannot obtain appropriate care in the guardian's home or community;~~
- ~~4. The child's guardian will continue to remain involved with the child in planning for and making possible the return home;~~
- ~~5. This type of placement is in the child's best interests;~~
- ~~6. Other resources, including those of the child's parent(s), benefits, or programs are not available to cover the care; and~~
- ~~7. Approval for the placement is given by Nebraska Health Connection.~~

~~{Effective }~~

~~7-007.04 Documentation Required: Department staff must obtain the following documentation:~~

- ~~1. A report from a licensed psychiatrist or licensed clinical psychologist which includes:
 - ~~a. The presenting problem to be treated;~~
 - ~~b. Goal of treatment;~~
 - ~~c. Treatment which will be received;~~
 - ~~d. Anticipated results of treatment;~~
 - ~~e. Need for the proposed level of treatment as opposed to less restrictive alternatives; and~~
 - ~~f. Discharge plan, including available treatment resources.~~~~
- ~~2. A statement from the guardian which includes:
 - ~~a. How s/he will remain involved with the child in planning for the return home;~~
 - ~~b. How s/he will participate financially in the treatment and in meeting the child's needs, including the use of private insurance and personal resources;~~
 - ~~c. Plans for treatment and his/her involvement in the child's treatment after discharge;~~
 - ~~d. Commitment to the child returning home.~~~~

~~{Effective 9/20/95}~~

~~7-007.05 Approval/Denial Process: When a guardian requests approval for coverage of out-of-state residential treatment, the following process must be used:~~

- ~~1. The worker must:
 - ~~a. Discuss with the guardian the requirements and coverage which might be available, including use of other resources and the need for documentation;~~
 - ~~b. If appropriate, contact the child's parent(s) to determine the extent to which they can assist in covering costs;~~
 - ~~c. Assist the guardian in locating and considering less restrictive alternatives or programs, if appropriate;~~
 - ~~d. Assist the guardian in completion of Interstate Compact forms, if potential placement is out-of-state (see 474 NAC 5-024); and~~
 - ~~e. Submit a written recommendation for approval of care and necessary documentation to the approval team. This recommendation must include the worker's and supervisor's opinion whether:
 - ~~(1) This placement is the least restrictive alternative available;~~
 - ~~(2) This placement is in the child's best interest;~~
 - ~~(3) The guardian is involved and planning for the child's return home; and~~
 - ~~(4) The request should be approved;~~~~~~
- ~~2. Nebraska Health Connection will approve or deny the placement; and~~
- ~~3. The worker must notify the guardian of the decision regarding placement or continued stay.~~

~~{Effective }~~

~~7-007.06 Adjustment in Maintenance: When the child is approved for residential or inpatient psychiatric treatment, the worker must document with the guardian what, if any, maintenance the guardian will be providing for the child's needs (e.g., clothing or transportation to maintain the relationship with the child), and reduce the maintenance payment as appropriate.~~

~~{Effective }~~

~~7-007.07 Process After Placement: While the child is in residential or inpatient care, the worker must obtain progress reports from the facility every three months. These reports must show:~~

- ~~1. Progress toward the treatment goal;~~
- ~~2. Continuing need for treatment;~~
- ~~3. Prognosis and estimated length of treatment; and~~
- ~~4. The guardian's involvement in treatment and/or planning for return home.~~

~~The worker must review the reports, consult with his/her supervisor, and submit the reports with a recommendation regarding continuation of coverage for care to Nebraska Health Connection.~~

{Effective }

7-007.08 Payment Termination: The Department will no longer provide payment if:

1. Reasonable progress is not occurring and it is determined that treatment at that facility is no longer appropriate;
2. Treatment is no longer needed;
3. The plan is not to return the child to the guardian's home;
4. The guardian is no longer involved with the child or participating in treatment; or
5. Reports providing the information in 479 NAC 7-007.08 are not provided to the Department.

The worker must send written notice of payment termination to the guardian giving the date on which payment will cease; a minimum of 30 days notice is required. (A copy must be sent to the foster care specialist.)

Note: If the guardian has ceased his/her involvement with the child, the worker must consider whether a child protective services referral is appropriate.

{Effective 9/20/95}

7-008 Deletions or Termination in Subsidy: A subsidy can be terminated, a service deleted, or a maintenance payment decreased because of the following factors: Terms related to the suspension of a guardianship assistance payment is set forth in proposed section 008 and termination of a guardianship assistance agreement is set forth in proposed section 011.

1. Terms of the agreement have terminated;
2. The Department determines that the guardian is not legally responsible for the support of the child or the child is not receiving any support from the guardian; When the payment may be suspended because the department cannot determine if the payment is being used for the benefit of the child is set forth in proposed 008(A) and 008(B). A guardianship assistance agreement may be terminated for this same reason under proposed 011(G).
3. The child's eighteenth birthday; This provision is included in proposed 011(C), but the age has been changed from 18 to 19.
4. The guardian fails or refuses to be legally responsible for the support of the child, or to use the maintenance payment to meet the child's needs; A guardianship assistance agreement may be terminated for this same reason under proposed 011(G). Proposed 008(A) and 008(B) establishes that the payment may be suspended because the department cannot determine if the payment is being used for the benefit of the child.
5. The child is no longer residing with the guardian. If the child resides outside of the guardian's home, s/he must:
 - a. Be attending college or vocational training; or

~~b. Have been placed out of home for reasons other than school, and the guardian is cooperating in a plan for the child's return home. In this case, the worker must document with the family what portion of the maintenance is being used for the child's needs and decrease or stop the payment accordingly;~~

~~Note: For a temporary absence, see 479 NAC 7-009. Proposed 011(H) establishes when the Department can terminate an guardianship assistance agreement when the child is no longer residing with the guardian. Proposed 011.02(B) addresses when a child is attending school or vocational training.~~

~~6. The guardian requests termination of the subsidy; This provision is found in proposed 011(A).~~

~~7. A change in regulations or law makes the child no longer eligible for a subsidy;~~

~~8. The guardian refuses to cooperate in the process of renewing the agreement; Proposed 004.07 outlines the process for the annual review of the agreement and proposed 004.07(B) indicates that an assistance payment may be suspended until the guardian participates in the review.~~

~~9. The child no longer needs the medical care or special services that were specified in the subsidy agreement; or~~

~~10. The child dies. This provision is found in proposed 011(D).~~

~~Note: Subsidy benefits cannot be transferred even if the court appoints a new guardian. Proposed 004.06 explains that assistance agreements can only be transferred to when the original agreement includes a designation of a successor guardian.~~

{Effective }

~~7-009 Child's Temporary Absence: Subsidy may continue for a maximum of 90 days if a child is not residing with the guardian for reasons other than those specified in 479 NAC 7-008, if the plan is for the child and the guardian to be reunited. A similar provision is found in proposed 011(H), but the 90 day timeframe has been removed.~~

~~_____ {Effective 9/20/95}~~

~~7-010 (Reserved)~~

~~7-011 Closing Department Ward Case: Following receipt of the court order granting the guardianship, the worker must close the Department ward case.~~

~~7-012 Annual Review: The worker must review the guardianship subsidy every 12 months to determine the level of continued need and continuing eligibility. The requirement for an annual review is set forth in proposed 004.07.~~

~~_____ {Effective 9/20/95}~~

~~7-013 Right to Appeal: The guardian has the right to a fair hearing if the Department denies the application for subsidy or reduces or terminates the agreement. The right to appeal is set forth in proposed section 012.~~

~~7-014 Child Support Enforcement Services: The guardian has the responsibility to apply for non-public assistance child support services.~~

~~_____ {Effective 6/8/98}~~