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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

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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 which were previously executed and is finalized prior to the implementation of these regulations are subject to the regulations which were 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 NEBRASKA GUARDIANSHIP ASSISTANCE AGREEMENT. A Guardianship Assistance Agreement entered into between the Department and the Prospective Guardians in which the eligibility requirements for Title IV-E Kinship Guardianship Assistance have not been met.

003.04 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.

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

003.06 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 the Department 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 REQUIREMENTS. 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;
- (4) National Sex Offender Registry;
- (5) State-level criminal history; and
- (6) 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;
- (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 IN TITLE IV-E KINSHIP GUARDIANSHIP ASSISTANCE 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.

005.01(B) CHANGE IN SPECIAL SERVICES. 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;
- (H) Transportation; or
- (I) 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.

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.