DIVISION OF CHILDREN AND FAMILY SERVICES
ADMINISTRATIVE MEMO #14-2009

To:	**Children and Family Services Specialists, Supervisors, and Administrators; Income Maintenance-Foster Care Workers and Supervisors; and Service Area Administrators**
From:	**Edward H. Matney, Policy Section Administrator** Edward H. Matney **Division of Children and Family Services**
Approved by:	**Todd L. Reckling, Director** Todd L. Reckling **Division of Children and Family Services** **Department of Health and Human Services**
Date:	**December 18, 2009**
RE:	**Fostering Connections Act of 2008-Kinship Guardianship Assistance**
Effective:	**January 1, 2010**
Duration:	**Until revised or until Regulations are issued**
Contact:	**Mary Dyer, Program Specialist, Children and Family Services, Policy Section at (402)471-9331 or at mary.dyer@nebraska.gov** **Ruth Grosse, Business Analyst, Children and Family Services, Policy Section at (402)471-7785 or at ruth.grosse@nebraska.gov**

Purpose: The purpose of this memo is to inform staff of a federal program, based on the Fostering Connections to Success and Increasing Adoptions Act of 2008, and to require implementation.

Background: On the basis of Nebraska Statute and Department regulations, Nebraska provides Subsidized Guardianship for eligible children. The Fostering Connections Act allows the State the option of providing federally-funded guardianship subsidies to relatives. Nebraska has chosen to implement this option. It will not expand the population of children eligible for a subsidized guardianship. Instead, it will allow for the subsidies of some of those children to be federally-funded, with a state match. For eligible children, it also will provide the benefit of receiving Medicaid in the state of residence.

Implementation Instructions: Due to funding source and benefits to guardians, staff must first determine eligibility for Federal Kinship Guardianship Assistance. If the child and guardian are not eligible, then eligibility for State Subsidized Guardianship can be explored. The ability to establish eligibility for Federal Kinship Guardianship Assistance on N-FOCUS does not currently exist. Therefore, it will be necessary for workers to determine eligibility manually, and to provide

a monthly listing of all eligible children to Ruth Grosse. A review tool, including a template, will be issued within the next month.

KINSHIP GUARDIANSHIP ASSISTANCE

Purpose: Kinship Guardianship Assistance, also called Kinship Guardianship Subsidy, provides continued financial assistance for a child after a relative has been appointed legal guardian, and the Department's custody has been terminated. The program is designed to ensure that financial barriers or costs associated with a child's needs do not prevent the permanency option of guardianship for the child.

Criteria for Kinship Guardianship Subsidy: Eligibility for Kinship Guardianship Subsidy exists when all of the criteria in Numbers 1 through 4 are met:

1. The child:
    a. Is a ward of the Department at the time the guardianship petition is filed and the order of guardianship is issued; and
    b. Has been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and
    c. Is eligible for Title IVE foster care maintenance payments while residing for at least 6 consecutive months in the home of the prospective relative guardian. (A child would not have been eligible for Title IVE foster care maintenance payments unless the foster parent is licensed.); and
    d. Is under the age of 18; and
    e. If age 14 or older, has been consulted regarding the kinship guardianship arrangement; and
2. A determination has been made that neither return home or adoption is an appropriate permanency option for the child; and
3. The child demonstrates a strong attachment to the prospective relative guardian, and the relative guardian has a strong commitment to caring permanently for the child; and
4. A case plan/court report submitted to the court prior to completion of the subsidy agreement included a description of:
    a. The steps taken by the Department to determine that it is not appropriate for the child to be returned home or adopted;
    b. The reasons for separation of siblings, that is, the reasons that siblings of the child are not placed with the child and not being included in the guardianship action;
    c. The reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child's best interest;
    d. The ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment;
    e. The efforts made by the Department to discuss adoption by the child's relative foster parents as a more permanent alternative to legal guardianship, and, in the case of a

relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefore; and

f. The efforts made by the Department to discuss with the child's parent(s) the kinship guardianship assistance arrangement, or the reason why the efforts were not made.

Eligibility for the Sibling of a Child Who Meets the Criteria in Numbers 1 through 4 Above: A sibling of a child also is eligible when the sibling is

a. Under the age of 18;

b. A citizen or legal resident of the United States; and

c. Placed in the same guardianship arrangement, the Department and relative agree on the appropriateness of the guardianship, and the guardianship is being finalized at the same time.

Eligibility When the Guardian Is a Biological or Adoptive Parent: A biological or adoptive parent whose parental rights have been terminated by court or by a voluntary relinquishment is ineligible to receive a Kinship Guardianship Subsidy.

Discussion of the Need for Subsidy with the Prospective Relative Guardian: When guardianship becomes the appropriate permanency objective for the child, the CFS Specialist must discuss the need for a subsidy with the prospective relative guardian. This discussion must include the child's present and anticipated future needs and the prospective guardian's ability to meet those needs without subsidy. The assessment must include other programs, benefits, or resources available to meet the child's needs, including but not limited to:

a. Assets available to the child, such as trust accounts;

b. Child support (See 9-006.02C (1) for information about child support);

c. Benefits to which the child is entitled, for example, Social Security, Supplemental Security Income (SSI), Railroad Retirement, or Veterans Benefits;

d. Private insurance carried by the guardian or the child's parent;

e. Other public assistance programs such as Aid to Dependent Children (ADC); Aid to the Aged, Blind and Disabled (AABD); or Medicaid under the Children's Medicaid Assistance Program (CMAP). (See 477 NAC) A child cannot receive ADC or AABD and a subsidized guardianship payment simultaneously.

In Nebraska, guardians not related to the child are not eligible for an ADC payment for the child. Guardians who are related to the child (specified relatives) may be eligible for ADC relative payments.

Child Support: When parental rights are intact, and no child support order exists against one or both parents, the CFS Specialist must insure that a request is made for inclusion of child support in the guardianship order, unless a determination has been made that there is good cause not to request child support. (See 466 NAC 3-003 GOOD CAUSE EXEMPTION from the COOPERATION REQUIREMENT.)

Establishment of a guardianship does not eliminate the potential for court-ordered child support, including purchase of medical insurance.

When a child support order exists, and there is a subsidized guardianship, any child support paid is assigned automatically to the Department. The Department uses the funds to reimburse itself for payments made on behalf of the child. Assignment occurs even if the guardian is payee for the child support. This arrangement is to the guardian's benefit in most situations,

because the guardian need not be concerned about whether child support is being paid, or when. Instead, the guardian can count on receiving the maintenance payment established in the subsidy agreement on a monthly basis, whether or not the child support is paid. Should the current child support received by the Department be greater than the amount of the maintenance payment, special arrangements will be made so that the guardian receives the "excess" amount. (Child support is "current" only if there are no child support payments owed in arrears.)

Benefits Under Kinship Subsidized Guardianship: Kinship Subsidized Guardianship may include one or more of the following:

1. Maintenance: Maintenance subsidy is a monthly payment to the guardian to assist in meeting the child's day-to-day needs. The amount must not exceed the payment that would have been if the child had remained in a foster family home through the Department, as determined at the time of completion of the subsidized guardianship agreement. Any other maintenance payments received for the child must be deducted from the maximum amount prior to determining what the amount of the maintenance payment will be. Respite may be included in the maintenance payment. The maximum amount is determined at the time of completion of the subsidized guardianship agreement. Respite can be included only if the guardian was using respite for the child at the time of guardianship order.

The maximum guardianship maintenance payment is determined using the FCPay checklist at the time of finalization of the guardianship. "Other maintenance payments" include but are not limited to Social Security Benefits, SSI, or VA.

When appropriate, the CFS Specialist must encourage the guardian to use respite as a means of enhancing his/her ability to care for the child. It is paid so the guardian can have time away from the child and a break from dealing with the child's needs.

Usually respite under a subsidized guardianship agreement will be limited to children age 12 and under. If respite under the agreement ends at a particular age, and, due to the child's special needs, the child continues to require an adult's presence at all times, the worker, with supervisory agreement, can do a new subsidized guardianship agreement, extending the respite coverage.

2. Child Care: Child care will be provided in accordance with the Department's Child Care Subsidy Program (SEE 392 NAC). Payments will be made directly to the provider. If the guardian is not using child care at the time of the guardianship order, it cannot be included in the subsidy agreement.

As an alternative to inclusion of child care in the subsidy, or if it was not included, and the guardian later wants child care assistance, the guardian can apply to the Child Care Subsidy Program. Eligibility will be determined by that Program's regulations.

3. Medical/Surgical: The child receives Medicaid from the State in which s/he lives.

    a. A child residing in Nebraska will receive Nebraska Medicaid. Medical services, including mental health or substance abuse, will be available under subsidy only as provided by Nebraska's Medicaid program, using all applicable guidelines, rates, and requirements.

    b. A child residing outside of Nebraska at the time of the court's guardianship order or who moves to another state after finalization will receive Medicaid from the state in which the child lives. Nebraska Medicaid will be closed, and the child will

receive care and treatment under the regulations, requirements, and payment rates established in the other state's Medicaid Program. No additional medical coverage will be provided under the subsidy agreement.

It is important that guardians understand what services are provided under Medicaid, when pre-authorizations are needed, how to access services, and that Medicaid will pay only after available insurance has paid. They also need to understand that a Medicaid payment for any given services is payment in full. When the child has been in foster care with them prior to guardianship, the CFS Specialist must explain changes that will occur, e.g., the guardians will deal directly with providers and managed care.

4. Legal fees: Legal fees of up to $1500 may be paid if necessary to finalize the guardianship. Legal fees may include services of the attorney for purposes of finalization of the guardianship, plus filing fees for the guardianship. Legal fees may not include action to terminate a parent's rights. The maximum amount to be paid under the agreement must be specified on the subsidy agreement. In no case will payment be made in excess of the amount in the subsidy agreement.

The maximum amount to be approved generally is no more than $600. Legal fees for finalization of Kinship Guardianship Assistance are paid by the Child Welfare/OJS contractors directly to the attorney.

Determination of Eligibility: To determine eligibility, the CFS Specialist must:

1. Complete the form(s) and processes designated by the Department;
2. Forward the form(s) to the CFS Supervisor for approval or denial;
3. Notify the prospective guardian of the determination and right to an administrative appeal if the Kinship Guardianship Subsidy is denied.

Denial of Eligibility: If a subsidy is denied, guardianship may still be pursued without subsidy, or the worker may need to consider other permanency options.

Application for Subsidy: If the child is determined to be eligible for subsidy, the CFS Specialist must:

1. Assist the prospective guardian to complete and sign the subsidy application. The signature of both prospective guardians, if a married couple, is required;
2. Forward the form to the CFS Supervisor for approval; and
3. Inform the prospective guardian in writing of a decision to deny the application and the right to an administrative appeal.

Subsidy Agreement: After the application has been approved by the CFS Supervisor, the CFS Specialist must complete the subsidized guardianship agreement, discuss it with the prospective guardian, assure that the prospective guardian and CFS Supervisor sign the agreement, and assure that the prospective guardian is given a copy of the agreement. The agreement must:

1. Specify type, amount, purpose, and duration of subsidy; and
2. Be signed by the prospective guardian(s), CFS Specialist, and CFS Supervisor.

Timing of Subsidized Guardianship Agreement: The agreement must be signed by the prospective guardian(s), CFS Specialist, and CFS Supervisor prior to finalization of the guardianship.

Any original agreement signed after finalization of the guardianship is invalid. No item, payment, or service will be provided as part of the subsidy agreement unless it is specified in the original agreement.

Effective Date Of Subsidy: The subsidy begins as of the date the guardianship order is issued by the Court. If the guardianship is granted by the probate court, both an order by the court and a letter of guardianship are required in order to open the subsidy. If the guardianship is granted by the juvenile court the guardianship letter is not required to open the subsidy.

Interstate Applicability: The agreement shall remain in effect without regard to the state of residency of the relative guardian. (For Medicaid coverage across state lines, see #3 on Page 3.)

Increase in Maintenance: The Department will consider the Relative Guardian's written request for an increase in the maintenance payment, and increase may be approved when one or both of the following exist:

1. Child's Circumstances: The increase must be related to a mental health, behavioral, or physical disability that existed for the child prior to the establishment of the guardianship. Documentation must include current information (no more than six months old) from an appropriate professional knowledgeable of the type of disability that the child has (such as a physician or psychiatrist) that explains the recent change in functioning or behavior to justify an increase; or
2. Change in Family's Circumstances: One of the following circumstances must exist:
    a. Loss of employment, layoff, or work reduction of the major wage earner in the family, using the following criteria:
        i. If the loss results in an SSI or SSA payment only for the parent, the maintenance payment for the child can be increased to the amount that would be paid for maintenance if the child were in foster care at the time of the request.
        ii. If the loss results in an SSI or SSA payment for the child, the maintenance payment can be increased so that the total of the maintenance payment and the SSI or SSA benefit do not total more than the foster care maintenance payment would be if the child were in foster care at the time of the request.

Example I: The child's subsidy maintenance amount is $400. Using the current FCPay checklist, the child's foster care maintenance would be $800. The SSI payment will be $600. Since the current maintenance amount plus the SSI benefit are more than the child could receive in foster care, the child's subsidy maintenance amount will not be changed.

Example 2: The child's subsidy maintenance amount is $300. Using the current FCPay checklist, the child's foster care maintenance would be $1100. The SSI payment will be $600. Since the current maintenance amount plus the SSI benefit are $900 (or $200 less than the child's maintenance would be in foster care), the subsidy maintenance payment can be increased by $200. The new maintenance payment of $500, plus the SSI payment, will total the new FCPay amount of $1100.

        iii. If the work reduction is at the parent's choice, it must be due to the need for the parent to care for the child, based on a special need that existed prior to the initiation of the subsidy. Documentation must include a written statement from an appropriate professional (such as a physician or

psychiatrist) that explains the recent change in functioning or behavior of the child and the need for the parent to care for the child in lieu of employment.

b. Death of one of the guardians, which affects the financial circumstances of the family, and SSA or resulting benefits for the child are not available or, in combination with the current maintenance payment, are less than the maintenance payment would have been if the child were in foster care. The maintenance payment can be increased so that the combination of maintenance and SSA payment are no more than the maintenance payment would be if the child were in foster care at the time of the request. The maintenance payment will not be reduced if the total of the maintenance payment and SSA benefit are greater than the maintenance payment would be if the child were in foster care at the time of the request.

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The CFS Specialist must assess the needs and determine if they can appropriately be met in other ways, e.g., by community resources, before recommending to his or her supervisor that the request be granted or denied. If the supervisor approves the request, the amount of the maintenance payment after the increase will not exceed the amount of the foster care maintenance payment that would have been received for the child if the child were in foster care at the time of the request.

The decision regarding a request for increase in the subsidy will be made by the worker with responsibility for the Kinship Guardianship Assistance case, with supervisory approval.

When the relative guardian requests an increase, the worker must send the guardian a letter and appropriate forms to complete. If the worker determines that information is needed from professionals currently working with the child or family, the worker must request a release of information from the guardian as a condition for considering approval of the request. The worker must assess the needs and determine if they can appropriately be met in other ways, e.g., by community resources, and include that information in his or her recommendation to the supervisor.

Reduction In Subsidy: The subsidy will be reduced when one or more of the following exist:

1. The guardian requests a reduction, in writing;
2. The child receives an increase in benefits based on a birth parent's eligibility, e.g., Social Security or SSI benefits. The maintenance payment will be reduced by the amount of the increase;
3. The terms of the agreement for a particular type of coverage have been met (e.g., the agreement specified payment for child care until the child's 13th birthday, and the child has turned 13);
4. The child is not residing with the guardian, the guardian is continuing to provide financial support for the child, and the child's absence from the home is because:
    - The child is attending college or vocational training; or

- Has been placed out-of-home temporarily for reasons other than school (for example, the child has been placed in a facility for purposes of mental health treatment), and the guardian is cooperating in a plan for the child's return to the guardianship home.

In these situations, a determination must be made regarding the amount of financial support being provided by the guardian, and the subsidy must be reduced to that amount. This determination requires documentation, such as receipts, from the guardian. Clothing and personal needs up to the Department's AABD rate or transportation to visit the child can be considered as support for the child. Maintenance of the guardian's home cannot be considered to be support for the child. If the child is residing outside of the home for other reasons, or the guardian no longer is financially supporting the child, the guardianship subsidy must be terminated (see below, under Termination of Subsidy);

5. The guardian is no longer using the respite care portion of the payment for purposes of respite. For example, the need for and use of respite care usually will end when the child is gone from the guardian for activities such as having a job or dating; or
6. A change in regulations or law requires a reduction.

Termination of Subsidy: A Kinship Guardianship Subsidy will be terminated when any of the following occur, even if the guardianship itself remains intact:

1. Terms of the subsidy agreement have been met;
2. The Department determines the guardian is not using the subsidy to support the child;
3. The child reaches the age of majority;
4. The child dies;
5. The guardian dies;
6. The guardian requests termination of the subsidy;
7. The child no longer resides with the guardian, unless the guardian is continuing to provide financial support to the child, and the reason for the child's absence is that:
   - The child is attending college or vocational school;
   - The child has been placed out-of-home temporarily for reasons such as mental health treatment, and the guardian is cooperating in a plan for the child's return home.
8. A change in regulations or law makes the child no longer eligible for a subsidy;
9. Change in regulations or laws requires changes in the agreement, and the guardian refuses to sign a new agreement reflecting the changes; or
10. Guardianship is terminated by the court.

Notice of Action: Prior to termination of a subsidized guardianship, the Department will provide a written notice of action to the guardian. This notice will include the reason for the action and information regarding the guardian's right to an administrative appeal. The notice will be sent by certified mail, return receipt requested.

Transfer of Subsidy: Subsidy benefits cannot be transferred, even if the court appoints a new guardian.

Right to Appeal: The guardian has the right to an administrative appeal if the Department:

1. Denies the application for subsidy;
2. Reduces or terminates the agreement; or
3. Denies the guardian's request for an increase in maintenance.

Timeframe for Appeal: The appeal must be filed in writing within 30 days of the guardian's receipt of the change, denial, or termination. No change in coverage will occur while the appeal is pending.