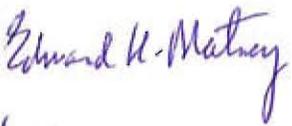


DIVISION OF CHILDREN AND FAMILY SERVICES
ADMINISTRATIVE MEMO # 5-2011
(Replaces Administrative Memos #14-2009, #4-2010, and #15-2010)

To: All Children and Family Services Staff

From: Edward H. Matney, Policy Section Administrator 
Division of Children and Family Services

Approved by: Todd L. Reckling, Director 
Division of Children and Family Services
Department of Health and Human Services

Date: April 22, 2011

RE: Fostering Connections Act of 2008-Kinship
Guardianship Assistance

Effective: Immediately

Duration: Until Revised or Until Regulations Are Issued

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Purpose: The purpose of this memo is to remind staff of the existence of the Federal Kinship Guardianship Assistance Program (also known as GAP), remove the suggested amount from the boxed text under "Legal Fees" (a change recommended by the Federal Administration for Children and Families), and provide information about GAP forms.

Background: In December, 2009, the Division of Children and Family Services issued an Administrative Memo that introduced GAP. The memo was re-issued in July, 2010, as Administrative Memo #4-2010 and again in December, 2010, as Administrative Memo #15-2010, to provide new interpretations and instructions issued by the U.S. Department of Health and Human Services. This re-issuance replaces all former versions of the memo.

Order of Preference: A child must be determined ineligible for GAP before determining him or her eligible for a state subsidized guardianship. GAP is the program of choice for several reasons, including the State's ability to utilize federal funds; benefits to the child and guardian that are available under GAP, but not under the State Subsidized Guardianship Program; and the federal requirement that GAP be available to any eligible child.

Processing Eligibility: The ability to establish eligibility for GAP 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. The list must include: Master Case Number and the name, date of birth, and Social Security Number of the child.

KINSHIP GUARDIANSHIP ASSISTANCE
PROGRAM
(GAP)

Purpose: The Kinship Guardianship Assistance Program (GAP) provides continued financial assistance for a child after a relative has been appointed legal guardian, and DHHS 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.

Benefits Under GAP: The subsidy under GAP 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 made if the child had remained in a foster family home through DHHS, 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. 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. "Other maintenance payments" include but are not limited to Social Security Benefits, Supplemental Security Income, or Veterans Benefits.

2. **Child Care:** Child care will be provided in accordance with the DHHS Child Care Subsidy Program (See Title 392 of the Nebraska Administrative Code). 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 coverage is available only if a maintenance payment is being made. 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/Nonrecurring Expenses: Legal fees of up to \$2,000 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 court or filing fees for the guardianship.

Legal fees may not include action to terminate a parent's rights or the attorney's review of, or discussion of, the subsidy agreement. The maximum amount to be paid under the agreement must be negotiated and specified on the subsidy agreement. In no case will payment be made in excess of the amount in the subsidy agreement. The worker must assure that the prospective guardian is aware that any amount above that stated in the subsidy agreement is the responsibility of the guardian.

DHHS will make the payment for legal fees and court costs to the attorney rather than to the guardian.

Criteria for GAP: Eligibility for GAP exists when all of the criteria in numbers one through five, below, are met:

1. The child:
 - a. Is a DHHS ward 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 IV-E foster care maintenance payments while residing for at least six consecutive months in the home of the prospective relative guardian. (A child would not have been eligible for Title IV-E foster care maintenance payments unless the prospective guardian was licensed as a foster parent.); and
 - d. Is age 17 or younger, or if age 18 meet one of the criteria in "1)" through "5)" below:

In addition to the required annual reviews, this expansion of eligibility after the child's 18th birthday will require a one-time special review, to insure that one of the criteria below in "1)" through "5)" is met. Three months prior to the child's 18th birthday, the assigned worker must send the DHHS-designated review form to the guardian(s). If the review form is not returned within one month of the child's 18th birthday, the worker must attempt to contact the guardian(s) again, by letter and/or phone or whatever method is appropriate, to obtain the information. If no response is received, or if the child does not meet the eligibility criteria below in "1)" through "5)," the worker must change the subsidy from federal to state, beginning with the month following the child's 18th birthday.

- 1) The child is completing secondary education or a program leading to an equivalent credential;

"Completing" means that the child is enrolled and has a reasonable plan for receipt of a high school diploma or its equivalent. In Nebraska, an individual who completes a GED program receives a diploma. If the child lives in another state, that state's definition of "equivalent credential" will be used.

- 2) The child is enrolled in an institution which provides post-secondary or vocational education;

The program may be part or full-time. Enrollment is considered to be continued through normal periods of class attendance, vacation, and recess, unless the student graduates, drops out, is suspended or expelled, or is not registered for the next normal school term, excluding summer school. A student otherwise enrolled and on a semester, summer, or other break is considered to be enrolled. Eligibility continues for up to 90 days if the child must temporarily leave school because of illness, injury, or a situation that is beyond the child's control.

- 3) The child is participating in a program or activity designed to promote, or remove barriers to, employment;

Programs or activities meeting this criterion include such things as Job Corps or classes on resume writing, interview skills, or use of computer technology or literacy.

- 4) The child is employed for at least 80 hours per month; or

The child can be employed part-time or fulltime, at one or more places of employment, as long as the employment is for 80 or more hours per month.

- 5) The child is incapable of doing any of the above-described activities in "1)" through "4)" above, due to a medical condition.

"Medical" includes both physical and mental health conditions. A determination that this criterion applies requires a statement from an appropriate qualified professional that the child is incapable of any of the activities listed in a through d. The statement must be applicable to the child's ability between the 18th and 19th birthdays, which usually will mean that a current statement will be needed.

The existence of an SSI determination might not assure that a child meets this criterion, because the child might be disabled, but still capable of one of the activities above in "1)" through "4)."

- 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 nor adoption is an appropriate permanency option for the child; and
3. The guardianship is established through a court order, and the prospective guardian is a relative; and
4. 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
5. A case plan/court report submitted to the court prior to completion of the subsidy agreement included a description of:
 - a. How the child meets the eligibility requirements in 1-4, above,
 - b. The steps taken by DHHS to determine that return to the home or adoption is not appropriate;
 - c. Efforts DHHS has made to discuss adoption with the child's relative foster parent and the reasons why adoption is not an option;
 - d. Efforts DHHS has made to discuss guardianship by the relative with the child's parent(s) or the reasons why efforts were not made;
 - e. The reason why a permanent placement with a prospective relative guardian and receipt of a guardianship assistance payment is in the child's best interests;
 - f. Efforts made by DHHS to discuss with the child's parent(s) the kinship guardianship assistance arrangements or why efforts were not made; and
 - g. If the child's placement with the prospective relative guardian does not include siblings, a description of the reasons why the child is separated from siblings during placement.

Sibling Eligibility for GAP: A sibling of a child meeting the eligibility criteria also is eligible when the sibling is:

1. Under the age of 18;
2. A citizen or legal resident of the United States; and
3. Placed with the same relative under the same guardianship arrangement, and DHHS and the relative agree on the appropriateness of the guardianship.

The sibling does not have to be placed simultaneously with the Title I/VE eligible child.

Eligibility When a State Subsidized Guardianship Already Exists: The U.S. Department of Health and Human Services has issued an interpretation that a state can convert existing state subsidized guardianships to GAP. In order to do this conversion, a determination must be made that the child meets all eligibility criteria for the federal program. When this determination is made, an amended subsidy agreement must be done, to include all federally-required elements.

Ineligibility of a Biological or Adoptive Parent: A child is ineligible for GAP when the person assuming guardianship is a biological or adoptive parent whose parental rights have been previously terminated by a court or by a voluntary relinquishment.

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:

1. Assets available to the child, such as trust accounts;
2. Child support;
3. Benefits to which the child is entitled, for example, Social Security, Supplemental Security Income ("SSI"), Railroad Retirement, or Veterans Benefits;
4. Private insurance carried by the guardian or the child's parent; and
5. 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 Title 477 of the Nebraska Administrative Code.) 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 a good-cause exception is appropriate. (See Title 466 of the Nebraska Administrative Code.)

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 DHHS. DHHS 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. 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 DHHS 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.)

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

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

Written 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 amount of, and manner in which the kinship guardianship assistance payment will be provided;
2. Specify the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child;

3. Specify any additional services and assistance for which the child and relative guardian will be eligible under the agreement, if any;
4. Specify the procedure by which the relative guardian may apply for additional services;
5. Provide that the agreement will remain in effect without regard to the state of residency of the relative guardian;
6. Specify the amount that DHHS will pay for nonrecurring expenses associated with obtaining legal guardianship of the child, not to exceed \$2,000; and
7. Be signed by the prospective guardian(s), CFS Specialist, and CFS Supervisor.

Timing of Subsidized Guardianship Agreement: The original 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. See below for information related to increases or decreases in maintenance amounts.

The CFS Supervisor must review and sign the agreement before it is presented to the prospective guardian for signature.

Amended Subsidy Agreements: An amended subsidy agreement is required when the maintenance amount is increased or decreased, or when a state subsidized guardianship is determined eligible for GAP.

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.

State Subsidies Determined Eligible for GAP: Eligibility for Kinship Guardianship Assistance will begin as of the date the amended guardianship assistance agreement is signed.

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, please review the relevant information on pages two and three of this memo.)

Increase in Maintenance: DHHS 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 (such as a physician or psychiatrist) knowledgeable about the type of disability that the child has 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 Social Security Administration ("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 exceed the amount that the foster care maintenance payment would have been if the child had been in foster care at the time of the request.

Example 1: 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 have been if the child had been 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 is greater than the maintenance payment would have been if the child had been in foster care at the time of the request.

Example: The child's subsidy maintenance amount is \$300. Using the current FCPay checklist, the child's foster care maintenance amount would be \$1100. The SSI payment will be \$600. Since the current maintenance amount plus the SSI benefit is \$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.

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 had been 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 GAP 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, for example, 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 DHHS 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 a job, etc.; or

6. A change in regulations or law requires a reduction.

Termination of Subsidy: The GAP case will be terminated when any of the following occurs, even if the guardianship itself remains intact:

1. Terms of the subsidy agreement have been met;
2. DHHS 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 the 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. A 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, DHHS 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 with return-receipt service.

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 DHHS:

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.

Forms: The forms for this program are available on the DHHS Forms Website. (To access the information, go to the main page of the DHHS internal website and click on "FORMS website.") They will not be available in hard-copy/paper form. The appropriate worker can complete them on line and print them, or can print and then complete them. In either case, the forms must be printed for appropriate signatures and distribution. In addition, the forms will be sent to the lead contractors (NFC and KVC) in PDF format for their direct access.

The forms are:

- PS-84 Federal Guardianship Assistance Program (GAP), Determination of Eligibility-Eligible Child [Form must be signed by appropriate DHHS staff persons.]
- PS-85 Federal Guardianship Assistance Program (GAP), Determination of Eligibility-Sibling of Eligible Child [Form must be signed by appropriate DHHS staff persons.]
- PS-86 Federal Guardianship Assistance Program (GAP), Application [Form must be signed by prospective guardian(s) and appropriate DHHS staff persons.]
- PS-96 Federal Guardianship Assistance Program (GAP), Agreement [Form must be signed by prospective guardian(s) and appropriate DHHS staff persons.]
- PS-81 Federal Guardianship Assistance Program (GAP), Cover Letter to Guardian [The letter will be sent to the Guardian(s) to explain the PS-97.]
- PS-97 Federal Guardianship Assistance Program (GAP), Educational/Employment Eligibility Requirements [Form is completed by the Guardian(s) when the child is reaching his or her 18th birthday.]