

# **LEGAL GUARDIANSHIP GUIDEBOOK**

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# LEGAL GUARDIANSHIP

## SECTION I

### PURPOSE

Legal guardianship establishes, through a court, a long-term commitment between a child and family, and at the same time, it allows for future contact and relationship between the child and the biological family. Some situations where this might be appropriate are:

A child has a strong positive emotional attachment to his biological parent and the parent maintains a relationship with the child, but is not able to be a full time parent, and the child has a committed caregiver;

A child is working toward independence rather than attachment to a family and has a committed caregiver;

A relative is attached to the child and is making a long-term commitment to provide care, but does not wish to adopt the child.

## SECTION II

### CASE CONFERENCE

If a worker is considering legal guardianship for a child, she/he will hold a case conference with her/his supervisor and specialized adoption staff. Other people invited to the conference could include the permanency plan reviewer and guardian ad litem. The team will discuss the child's needs, wishes and situation, the provider's role, wishes and situation and determine if adoption or legal guardianship is the most appropriate goal. The best interest of the child will be the deciding factor.

## SECTION III

### GUIDELINES FOR LEGAL GUARDIANSHIP AS PLAN

The Department will support a legal guardianship using the following as guidelines:

1. The child has a relationship with a prospective guardian and has lived successfully for a minimum of six months in the home of the guardian; or  
The worker has determined that the child will develop a relationship with a relative or foster parent who is committed to the child's placement.
2. The child cannot return home despite reasonable opportunities provided to the parents to correct the family conditions leading to the child's placement;
3. It is unreasonable to pursue adoption because:
  - a. Efforts to secure a voluntary relinquishment of parental rights and termination of parental rights by the court have been unsuccessful;
  - b. It has been determined that adoption is not in the child's best interest; or
  - c. Parental rights have been terminated but exhaustive efforts haven't been able to secure an adoptive placement;
4. The prospective guardian and the child can function effectively without Department supervision;
5. The guardian is able and willing to support the child financially, or satisfactory financial arrangements can be made. If a guardian will need ongoing financial assistance to care for a child, eligibility for a guardianship subsidy will be pursued by the worker;
6. The child is age 12 or older, is part of a sibling group or is attached to the proposed guardian and adoption is not feasible.

#### Selection of a Guardian

The Department will use the following priorities in selecting a potential guardian:

1. Relative of the child.
2. Foster parent or another person with whom the child has an existing relationship.
3. New foster parent who is committed to the guardianship plan.

The child's wishes will be taken into consideration in any decision regarding a potential guardian.

## SECTION IV

### WORKER RESPONSIBILITY AFTER LEGAL GUARDIANSHIP BECOMES PLAN

After the worker and team decide legal guardianship will be the permanency objective for the child, the worker will explain the meaning and responsibilities of guardianship to the prospective guardian, child and parents, if parental rights are intact.

If the parent has objections but the Department feels guardianship is in the child's and family's best interest, the worker should try to address them or ask the court to address them at the time of the guardianship hearing.

If a child, under age 13 has objections to the guardianship, the worker should explore these with the child, guardian ad litem and prospective guardian. The worker will determine the best interest of the child. If a child age 14 or older objects to the guardianship, then it will not be pursued.

The worker will inform the court of jurisdiction in the juvenile matter, the guardian ad litem, parent, and parent's attorney, if rights are intact, in writing of the plan for guardianship. The plan should be included in the court report.

In preparation for the finalization of the guardianship in county court the worker will:

- Provide support for the potential guardian and child prior to the finalization hearing;
- Assist the family and child in preparing for finalization of guardianship, including discussing:
  - Support services;
  - Changes in roles;
  - Relationship with child's biological family, including developing a written visitation plan, if needed;
  - Determine family's ability to meet the child's needs without a subsidy;
  - Inform the family of Department's and other agencies' programs which offer assistance;
  - Advise the family to start the process to apply for a change of payee if the child receives SSI or SSA;
  - Advise the family of the subsidized guardianship program, IF ELIGIBLE; (See Subsidized Guardianship Section VI, this Guidebook);
  - Complete subsidy paperwork and receive approval for subsidy PRIOR TO the guardianship hearing, if eligible (See Subsidized Guardianship Section VI, this Guidebook.);

(NOTE: Subsidy cannot be approved after the guardianship hearing.)

- Prepare packet for guardianship hearing; (See Section V, this Guidebook)
- Inform court of jurisdiction for the juvenile matter, guardian ad litem and parent's attorney of guardianship hearing date.

NOTE: Not all children are appropriate to receive a subsidized guardianship. The family's eligibility for other programs should be explored before deciding whether to pursue a subsidized guardianship. For example, the family may be eligible for ADC if they are a relative to the child. (See Subsidized Guardianship, Section VII, this Guidebook for criteria for subsidy.)

## SECTION V

### FINALIZING GUARDIANSHIP

#### A. Guardianship Packet for Court

The worker will prepare a packet of information for the court hearing for the finalization of the legal guardianship. This packet will be sent to the prospective guardian's attorney who will file the petition in the county court where the prospective guardian resides. The family is responsible for choosing an attorney. If needed, the worker can provide names of some attorneys who have done guardianships in the past. The designated adoption staff or local legal support may know of attorneys who are knowledgeable in this area. If parental rights are not intact, the guardian ad litem is a possible resource. It is possible for the Department to pay for the legal fees for the guardianship based on the usual and customary rate in the county where the guardianship hearing will be held. (See Subsidized Guardianship, Section VI, this Guidebook.)

The packet for the attorney should contain the following information:

- Cover letter to attorney (see sample);
- Court Order indicating DSS custody;
- Child's Birth Certificate;
- Death Certificate of parent, if applicable;
- Termination of Parental Rights Court Order, if applicable;
- Relinquishment of Parental Rights, if applicable;
- Guardianship summary (see sample).

#### B. Court Hearing

The worker should attend the guardianship hearing with the family and be prepared to testify in support of the guardianship. The worker should request at the time of the hearing, certified copies of the court order for the family, the child's record, the Income Maintenance file and court of jurisdiction on the juvenile matter. The family may need two or three copies of the court order so they can obtain legal documents after the hearing.

#### C. Case Closure

Following the court hearing finalizing the guardianship, the worker will:

- Advise the court of jurisdiction on the juvenile matter of finalization of the guardianship and request that the case be dismissed (Copies of the Guardianship order should be sent to the court.);
- Close the case.

(See Case Management Guidebook, Discharge of a Ward and Case Closure Sections)

## SECTION VI

### SUBSIDIZED GUARDIANSHIP

#### Purpose of Subsidized Guardianship

The subsidized guardianship program is designed to ensure that financial barriers or costs associated with a child's special needs don't prevent the appointment of a guardian for a child as a preferred alternative to long-term foster care. State funds are used for this program. It is only available to wards of the Department.

The legal guardian must use all available resources, benefits and programs before subsidized guardianship. This includes but is not limited to private insurance coverage, child support, and care and treatment available through the community or education system. The legal guardian, if a relative, may be eligible for ADC-relative payee benefits.

## SECTION VII

### ELIGIBILITY FOR SUBSIDIZED GUARDIANSHIP

A child is eligible for the subsidized guardianship program if she/he is a ward of the Department and meets the criteria for subsidy as follows:

1. The child has a documented behavioral, physical or mental disability;
2. The child is a member in a sibling group of three or more to be placed together;
3. The child has a strong attachment to the potential guardian;
4. The child is age twelve or older or, if under twelve, is part of a sibling group or is attached to the prospective guardian and cannot be freed for adoption;

The child's eligibility ends upon the child's 19th birthday, when the child reaches age of majority or lives independently or when the guardianship order is terminated.

The types of subsidy and determination of the need for subsidy are found in the 390 NAC 6.005.

## SECTION VIII

### AGREEMENT PRIOR TO GUARDIANSHIP ORDER

The agreement for subsidy, subsidy type, amount and duration must be completed and approved before the order establishing guardianship is issued. Subsidy payments begin after the guardian has been appointed by the court.

SECTION IX  
TYPES OF SUBSIDY

Subsidized guardianship may include one or more of the following:

1. Monthly Maintenance

This includes monthly payments to the guardian to assist in meeting the child's day-to-day needs. The amount may not be greater than what would be paid for the child in foster care. The worker will negotiate the amount with the guardian prior to the guardianship hearing. The subsidy will be reviewed yearly. The child may be eligible for other benefits such as SSI, SSA, Veterans benefits, Railroad Retirement or child support. The amount of the benefit will be deducted from the subsidy amount.

Child care while the guardian works or attends school may be included in the subsidy at Department child care rates but should be time-limited. The rules for payment for child care for a foster care placement apply. If the child's needs change significantly, an increase in subsidy may be considered. If the cost of caring for the child decreases, the subsidy will decrease.

As a child gets older, it can be expected that the need for the guardian to pay for respite or child care for her/him no longer will exist and therefore the maintenance payment should be decreased accordingly. When the child reaches age 12, if payment for either of these reasons is included, the guardian should be asked to explain why that inclusion continues to be necessary. The question is to be addressed each year at the time of the review.

2. Medical Assistance

a. Assistance for medical or surgical care for pre-existing conditions may be provided for the child. The payment will be made by Nebraska Medicaid or in accordance with Nebraska Medicaid policy and rates. Medicaid eligibility will need to be determined separately by the IM worker. Eligibility for subsidized guardianship does not automatically make a child eligible for Medicaid. The child's eligibility for Medicaid will be reviewed annually. The Nebraska Medicaid rules will apply.

If the child and family live in another state, medical assistance will be provided to the child through Nebraska Medicaid if a maintenance payment for subsidized guardianship is made from Nebraska. (The child retains Nebraska residency for Medicaid purposes.) If the child does not receive a maintenance payment from Nebraska through a subsidized guardianship, the child loses her/his residency for Nebraska Medicaid purposes.

b. Residential Psychiatric Treatment (See 390 NAC 6.005, Subsidized Guardianship.)

3. Other Costs incidental to the care of the child

This includes payment for a specific service or item related to the 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; and

- b. Expenses for transportation, lodging and meals for the child and one adult to enable the child to receive medical care. Amounts paid will be no more than those paid for children in foster care.

## SECTION X

### DETERMINING NEED FOR SUBSIDIZED GUARDIANSHIP

When guardianship becomes the appropriate plan for the child, the worker will determine whether the prospective guardian will be able to meet the child's needs without subsidy. The worker will assess the following with the family:

1. Need for Subsidy:
  - a. The child's present and anticipated future needs; and
  - b. The prospective guardian's ability to meet the child's needs without subsidy. The assessment will consider other programs, benefits or resources available to meet the child's needs, including but not limited to:
    - (1) Public assistance (Note: In Nebraska, guardians are not eligible for ADC payments, although specified relatives who are guardians are eligible for ADC-relative payments if they meet other eligibility criteria) The subsidy payment cannot subsidize the ADC-relative payment. The ADC-relative payment covers food, clothing, sundries, home supplies, utilities, laundry and shelter, meals prepared away from home, therapeutic diet, meals furnished to a household employee, substance to obtain medical care and moving expenses.
    - (2) Supplemental Security Income (SSI), Veteran's benefits, Social Security 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.
2. Types of subsidy: In some cases only one or two types of subsidy coverage will be necessary. For example, legal fees only or maintenance and medical assistance may be the only needs.
3. Amount: If maintenance or other costs incidental to the 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; and
  - b. Other maintenance payments or financial resources must be explored. The worker will explain that any monthly benefits or maintenance payments will be deducted from the agreed-to maintenance under subsidy.
  - c. If the guardian receives an ADC-relative payment, the worker should establish a level of need for the child based on FCPAY and subtract \$222.00 for the maintenance payment. The remainder is the subsidized guardianship payment. If a family provides guardianship for siblings, deduct \$222.00 from the determined payment for the youngest child and \$71.00 for each of the older children.
4. Duration: Discuss how long the guardian anticipates needing assistance. The subsidy may continue through age 19 or until no longer needed, whichever is sooner.

## SECTION XI

### SUBSIDIZED GUARDIANSHIP AGREEMENT

The agreement for subsidy will be completed and approved before the guardianship is finalized. The agreement will include the type, amount and duration of the subsidy.

Two forms are required to obtain a subsidized guardianship:

- DSS-74, "Guardianship Referral Form", and
- DSS-75, "Application/Agreement for Subsidized Guardianship".

See forms and instructions in this guidebook for use and distribution.

Both forms, the DSS-74 and DSS-75, can be completed at the same time by the worker. The guardian's signature is required on the DSS-75, the "Application/ Agreement for Subsidized Guardianship".

The worker will send both completed forms to the designated person in the District. The designated person will approve or disapprove the subsidy and return both forms to the worker. The worker will advise the prospective guardian of the decision. If subsidy is approved, the worker will continue with the plans for guardianship finalization. If subsidy is denied, guardianship may still be pursued without subsidy or the worker may need to consider other permanency options.

Distribution of approved "Application/Agreement for Subsidized Guardianship":

- Child's file,
- Prospective guardian,
- Income maintenance worker,
- State ward medical unit, and
- Child Support Enforcement.

## SECTION XII

### ANNUAL REVIEW

The guardianship subsidy will be reviewed every 12 months by the IM worker to determine the level of continued need and continued eligibility. The child's eligibility for Medicaid will be reviewed at this time.

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