

# PROPOSED RULE CHANGES

## CHAPTER 204

### SUBSIDIZED GUARDIANSHIP PROGRAM

#### PREAMBLE

This chapter ~~implements~~ rescinds the rules for a five-year federal demonstration waiver project for a subsidized guardianship program to provide financial assistance to guardians of eligible children who are not able to be adopted and who are not able to return home. This chapter will now implement the subsidized guardianship program as authorized by the federal Fostering Connections to Success and Increase Adoption Assistance Act passed on October 7, 2008. ~~The purpose of the project is to test new approaches to service delivery for improving outcomes for children and families and to allow children a more permanent placement than they have in foster care.~~

~~Eligible children will be randomly assigned to a control group or to an experimental group. Children assigned to the control group will not be eligible to receive subsidized guardianship. Children assigned to the experimental group will be eligible to receive subsidized guardianship if all other conditions are met. This waiver project may be extended or renewed after the five years through reauthorization by the federal government.~~

#### **441—204.1(234) Definitions.**

*“Child”* means a person who has not attained the age of 18.

*“Department”* means the Iowa department of human services.

*“Guardianship subsidy”* means a monthly payment to assist in covering the cost of room, board, clothing, and spending money for the child.

*“Nonrecurring expenses”* means reasonable and necessary guardianship fees, court costs, attorney fees, and other expenses that are directly related to finalizing the legal guardianship of a child. These expenses shall be limited to attorney fees, court filing fees and other court costs.

*“Relative”* means, for this chapter, a person related to a child by blood, marriage or adoption, or an individual with whom the child has resided or had significant contact, or with whom the child has close emotional ties. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child’s tribe.

*“Sibling group”* ~~means at least two children who are whole or half siblings. A sibling group may include adopted children who have a common parent. Stepsiblings are not included as part of the sibling group.~~

## PROPOSED RULE CHANGES

### 441—204.2(234) Eligibility.

**204.2(1) General conditions of eligibility.** The guardian named in a permanency order under Iowa Code section 232.104(2) “d”(1) or Iowa Code chapter 633 for a child who was previously in the custody of the department is eligible for subsidy when all of the following conditions exist:

~~a. The child’s case permanency plan documents the steps taken to determine that reunification and adoption are not appropriate, that adoption has been discussed with the relative and the reason adoption was not pursued, and that the child has a documented permanency goal of:~~

~~(1) Long term foster care;~~

~~(2) (1) Guardianship; or~~

~~(3) (2) Another planned permanent living arrangement.~~

~~b. The child has been in a licensed foster care placement and has lived in foster care for at least 6 of the last 12 months.~~

~~c. The child is either:~~

~~b If the child is 14 years of age or older and they must consent to the guardianship; or~~

~~(2) 12 years of age or older and guardianship has been determined to be in the child’s best interest; or~~

~~(3) Under 12 years of age and part of a sibling group with a child aged 12 or older.~~

~~d. c~~ The child has lived in continuous placement with the prospective guardian for the six months before initiation of the guardianship subsidy.

d. The child demonstrates a strong attachment to the prospective guardian.

~~e.. The guardian is a person who has a significant relationship with the child meets the definition of relative in 204.1, and demonstrates a willingness to make a long-term commitment to the child’s care.~~

~~(1) The guardian may be a relative or nonrelative.~~ (1) The guardian must be licensed as a foster family home and meet all licensing requirements in 441 Chapter 113.

(2) Placement with that guardian must be in the best interest of the child. The best-interest determination must be documented in the ~~case file~~ child’s case permanency plan.

~~f. The child has been randomly selected to participate in the waiver demonstration project. The child’s eligibility for subsidized guardianship shall be documented in the child’s case permanency plan.~~

## PROPOSED RULE CHANGES

**204.2(2) Residency.** The subsidized guardianship applicant or recipient need not reside in Iowa. The agreement shall remain in effect without regard to the state residency of the guardian.

**204.2(3) Unearned income.** The family or the guardian shall provide to the department worker documentation from the source of the child's unearned income.

**204.2(4) Other services.** Rescinded IAB 10/11/06, effective 11/1/06.

**204.2(5)** The child and any siblings of the child may be placed with the same prospective guardian if this is an appropriate placement for all of the siblings.

**441—204.3(234) Application.** Applications for the subsidized guardianship program may be made at any county office of the department.

**204.3(1) Application forms.** Application for guardianship subsidy shall be made on Form 470-3632, Application for Guardianship Subsidy.

**204.3(2) Eligibility determination.** The determination of whether a child meets eligibility requirements shall be made by the department.

**204.3(3) Effective date.** The effective date of the subsidy payment shall be the date the guardianship order is signed if all other conditions of eligibility are met.

**204.3(4) Redetermination.** Rescinded IAB 10/11/06, effective 11/1/06.

**441—204.4(234) Negotiation of amount of subsidy.**

**204.4(1) Subsidy agreement.** The amount of subsidy shall be negotiated between the department and the guardian, and shall be based upon the needs of the child, and the circumstances of the family. Each time negotiations are completed, the Guardianship Subsidy Agreement, Form 470-3631, shall be completed and signed by the guardian and the department worker.

a. The guardian shall be provided with a copy of the Guardianship Subsidy Agreement, Form 470-3631.

~~**204.4(2) Amount of subsidy.** The department shall enter into the agreement based upon available funds. Each time negotiations are completed, the department worker and guardian shall complete Form 470-3631, Guardianship Subsidy Agreement.~~

a. The guardianship subsidy shall be based on a flat daily foster care rate adjusted according to the needs of the child and the circumstances of the family.

## PROPOSED RULE CHANGES

(1) The rate for the guardianship subsidy shall not exceed the state's current daily basic foster care rate plus any daily level 1 or 2 special needs allowance or sibling allowance for which the child is eligible, as found at 441—subrule 156.6(1) and 441—paragraphs 156.6(4)“b” and “f.”

(2) Rescinded IAB 1/3/07, effective 1/1/07.

*b.* If the payment is less than the maximum amount allowed, the guardian may request an increase if the child's or family's needs and circumstances require additional resources.

**204.4(3) Placement outside of home.** If a child needs to be placed out of the guardian's home and the plan is for the child to return to the guardian ~~within six months~~, a partial subsidy amount may be negotiated.

**204.4(4) Nonrecurring expenses.** The nonrecurring expenses necessary to finalize a guardianship shall be limited to the amount found in 441—subparagraph 201.6(1)“a”(7).

**441—204.5(234) Parental liability.** These subsidy payments are considered foster care payments for purposes of child support recovery and as such create a support debt for the parents.

**441—204.6(234) Termination of subsidy.** The subsidy shall terminate when any of the following occur, and a notice shall be sent which states the reason for the termination:

1. The child reaches the age of 18. ~~unless the department determines that the subsidy may continue until the child reaches the age of 19 to facilitate the child's completion of high school or a high school equivalency diploma.~~

2. The child marries or enlists in the military.

3. ~~The child no longer lives with the guardian, except for placement outside the home as limited by subrule 204.4(3).~~ The guardian is no longer using the maintenance payments to support the child.

4. The relationship ends due to the death of the child or the death of the guardian of the child (one in a single-parent family or both in a two-parent family).

5. The terms of Form 470-3631, Guardianship Subsidy Agreement, are concluded.

6. The guardian requests that the guardianship payment cease.

7. Due to incapacity, the guardian can no longer discharge the responsibilities necessary to protect and care for the child, and the guardianship has been or will be vacated.

## PROPOSED RULE CHANGES

8. The guardian fails to abide by the terms of Form 470-3631, Guardianship Subsidy Agreement.
9. The guardianship case is terminated by court order.
10. ~~The department funds for subsidized guardianship are no longer available.~~

**441—204.7(234) Reinstatement of subsidy.** Reinstatement of the subsidy shall be made when the subsidy was terminated because of the guardian's request, and the guardian has requested reinstatement.

**441—204.8(234) Appeals.** The guardian may appeal adverse determination pursuant to 441—Chapter 7.

**441—204.9(234) Medical assistance.** Children eligible for subsidy are entitled to medical assistance as defined in 441—Chapter 75. When an Iowa child receives medical assistance from another state, Iowa shall discontinue paying any medical costs the month following the move unless additional time is necessary for a timely notice of decision to be provided to the guardian.

The funding source for medical assistance is based on the following criteria:

1. Children from Iowa residing in Iowa shall be covered by Iowa's medical assistance.
2. Children from Iowa residing in another state shall receive medical assistance from the state of residence if eligible. Iowa shall provide medical assistance for children not eligible in their state of residence. Medical assistance available in the family's state of residence may vary from Iowa's medical assistance.
3. Children from another state residing in Iowa shall continue to be covered by the other state's medical assistance unless the state has adopted the adoption assistance interstate compact and a contract between Iowa and the other state exists.

These rules are intended to implement Iowa Code section 234.6 and 2006 Iowa Acts, House File 2734, section 17, subsection 10.

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