

HUMAN SERVICES DEPARTMENT [441]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 204, “Subsidized Guardianship Program,” Iowa Administrative Code.

The proposed amendments would rescind provisions for the five-year federal demonstration waiver project for guardianship subsidy and replace them with a permanent program.

The legislation authorizing the Department to operate the guardianship subsidy program specified that the Department could do so through an approved waiver to Title IV-E of the Social Security Act or through potential amendments to the Social Security Act that would allow federal funding under Title IV-E to be used for guardianship subsidies. With the passage of Public Law 110-351, the Fostering Connections to Success and Increasing Adoptions Act of 2008, federal funding is now available for an ongoing guardianship subsidy program.

These amendments remove the federal waiver requirement to have an experimental and control group of children. Under the waiver, only children in the experimental group are eligible for the guardianship subsidy benefit. These amendments will allow all qualifying children to receive this benefit. Guardianship subsidies awarded under the demonstration waiver will continue.

The amendments also:

- Add documentation requirements for the decision to pursue guardianship instead of adoption;
- Remove minimum age limits for the child and the current provision for extending the subsidy past the child's eighteenth birthday (a state may raise the maximum age of eligibility under the federal program beginning with federal fiscal year 2011);
- Remove the requirement that the child has been in foster care for at least 6 of the past 12 months;
- Require that the guardian be licensed as a foster parent and meet all of the requirements of 441—Chapter 113, including criminal and child abuse record checks and training.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before October 13, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 234.6 and 2006 Iowa Acts, chapter 1184, section 17, subsection 10.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 204, Preamble**, as follows:

PREAMBLE

This chapter implements a ~~five-year demonstration waiver project for a~~ the subsidized guardianship program as authorized by Public Law 110-351, the Fostering Connections to Success and Increasing Adoptions Act of 2008. The purpose of the program is to provide financial assistance to guardians of eligible children who are not able to be adopted and who are not able to return home. ~~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.~~

ITEM 2. Rescind the definition of “Sibling group” in rule **441—204.1(234)**.

ITEM 3. Adopt the following new definitions in rule **441—204.1(234)**:

“Relative” means, for this chapter, a person related to a child by blood, marriage, or adoption or a person with whom the child has resided, with whom the child has had significant and meaningful 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.

"Significant and meaningful contact" means that a person has maintained continued interest in the child, has made a genuine effort to maintain communication with the child, and has established and maintains a place of importance in the child's life.

ITEM 4. Amend rule **204.2(234)** as follows:

441—204.2(234) 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. The child’s eligibility for subsidized guardianship shall be documented in the child’s case permanency plan.

~~204.2(1) General conditions of eligibility~~ Permanency plan. ~~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~~ child’s case permanency plan documents:

a. The steps taken to determine that reunification and adoption are not appropriate;

b. That adoption has been discussed with the proposed guardian;

c. The reason adoption by the proposed guardian was not the pursued; and

d. 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:~~

~~(1) 14 years of age or older and t consents 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.~~

204.2(2) Consent. If the child is 14 years of age or older, the child consents to the guardianship.

~~d. 204.2(3) Placement. The child has lived in continuous placement with the prospective guardian for the six months before initiation of the guardianship subsidy.~~

~~e. The guardian is a person who has a significant relationship with the child and demonstrates a willingness to make a long term commitment to the child's care.~~

~~(1) The guardian may be a relative or nonrelative,~~

~~(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.~~

~~f. The child has been randomly selected to participate in the waiver demonstration project.~~

204.2(4) Guardian. The guardian is a person who:

a. Meets the definition of "relative" in rule 441--204.1(234);

b. Demonstrates a willingness to make a long-term commitment to the child's care; and

c. Meets all licensing requirements in 441--Chapter 113 and is licensed to operate a foster family home.

204.2(5) Best interest. Placement with that guardian is in the best interest of the child.

When a sibling group is placed with the guardian, the placement must be appropriate for all of the siblings. The best-interest determination must be documented in the child's case permanency plan.

~~204.2(2)~~ **204.2(6)** Residency. The subsidized guardianship applicant or recipient need not reside in Iowa. The agreement shall remain in effect without regard to the guardian's state of residency.

~~204.2(3)~~ **204.2(7)** 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.~~

ITEM 5. Amend rule **204.4(234)** as follows:

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

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 copy of the agreement shall be provided to the guardian.

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.~~ 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.

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.~~

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

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

b. No change.

202.4(3) and **202.4(4)** No change.

ITEM 6. Amend rule **204.5(234)** as follows:

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, unless parental rights have been terminated.

ITEM 7. Amend rule **204.6(234)** as follows:

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. No change.

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

4. and 5. No change.

6. The guardian requests that the guardianship subsidy payment cease.

7. to 10. No change.

ITEM 8. Amend **441—Chapter 204, implementation statement**, as follows:

These rules are intended to implement Iowa Code section 234.6 and 2006 Iowa Acts,
~~House File 2734~~ chapter 1184, section 17, subsection 10.