

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 204
“Subsidized Guardianship Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: section 234.6

State or federal law(s) implemented by the rulemaking:

- Fostering Connections to Success and Increasing Adoptions Act of 2008
- Iowa Code sections 232.117, 234.6, and 249A.4.
- Iowa Code section 232.104(2)“d”(2), section 232.104(6), chapter 232D and section 633.552.
- 1999 Iowa Acts, chapter 203, section 15, subsection 9.
- 2006 Iowa Acts, House File 2734, section 17, subsection 10.
- Social Security Act sections 472 and 473(d)(3).

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 28, 2023
10 a.m.

meet.google.com/nkg-jzin-yvp

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Health and Human Services (HHS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

Proposed Chapter 204 seeks to increase access to guardianship arrangements by implementing a Subsidized Guardianship Program to provide financial assistance to guardians of eligible children who are in foster care but are not able to be adopted and are not able to return home. Eligible children include those aged ten years or older or part of a sibling group with a child aged ten years or older, who have been previously under the custody of HHS, with a documented permanency goal of guardianship or another planned permanent arrangement. Prospective guardians must be licensed, have a significant relationship with the child, and seek a long-term commitment.

Payments to approved guardians may include:

- Monthly maintenance payments with the maximum monthly rate made pursuant to the foster family care maintenance rates.
- Guardianship subsidy at a rate negotiated with HHS, not to exceed the state’s current daily basic foster care rate plus any eligible daily special needs allowance or sibling allowance.
- Reimbursement for nonrecurring expenses necessary to finalize a guardianship up to \$2,000.
- Reimbursement for special services for the child such as outpatient medical care, travel expenses for family therapy, or equipment required to accommodate a special need.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

Legally responsible parents may incur a support debt under the child support recovery program for foster care payments made. Subsidy payments are considered foster care payments for the purpose of child support recovery. This is reflected in the figure below, labeled as “Child Support Debt Incurred.”

- Classes of persons that will benefit from the proposed rulemaking:

Guardians of eligible children who are in foster care but are not able to be adopted and are not able to return home.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Figures below are actuals incurred in the fiscal years shown.

Identified Impacts*

	SFY 2023	SFY 2024	SFY 2025	Three-Year Total
Costs				
Subsidy Payments to Guardians	-\$53,000	-\$299,000	-\$570,000	-\$858,000
Benefits				
Child Support Debt Incurred	Unknown	Unknown	Unknown	Unknown
Federal Title IV-E Funding	\$13,000	\$58,000	\$121,000	\$163,000
Improved Outcomes for Children under Guardianship	Qualitative	Qualitative	Qualitative	Qualitative
Net Value	-\$40,000	-\$241,000	-\$449,000	-\$695,000

*All monetary figures have been rounded to the nearest thousand.

- Qualitative description of impact:

The amount of subsidy is negotiated between HHS and the qualified guardian based on the needs of the child and circumstances of the family providing guardianship. Guardianship is a safe alternative to adoption, providing permanency for the youth without requiring formal termination of parental rights. HHS has continued to increase the number of children in the subsidized guardianship program since its inception in 2019. In SFY 2023, 139 children received a guardianship subsidy payment. Chapter 204 requires that other services available to meet the needs of an eligible child that are free of charge be explored and used prior to spending subsidy funds.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Any implementation costs incurred by HHS for operation of the adoption program are reflected in the cost-benefit analysis in the Regulatory Analysis for 441—Chapter 200 (IAB 11/1/23) and are not reflected here.

Federal funds received through the Title IV-E Federal Payments for Adoption Assistance Program are used to assist in funding subsidized guardianships. The federal participation rate varies; in SFY 2022, Iowa’s participation rate was 21.51 percent. These funds are reflected in the figure above, labeled as “Federal Title IV-E Funding.”

- Anticipated effect on state revenues:

Not applicable.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost-benefit analysis above shows a net value of -\$695,000 over the three fiscal years studied and improved outcomes for children in subsidized guardianship care. These costs may also be offset by support debt under the child support recovery program. The alternative to a child exiting the child welfare system through the Subsidized Guardianship Program is the child remaining in the child welfare system. Should a child remain in the child welfare system, the State would incur costs to maintain a child in need of assistance case that may continue until the child reaches the age of 18.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

HHS implements the Subsidized Guardianship Program in accordance with requirements of the Iowa Code and federal regulations; overall, HHS implements the program as directed and has little flexibility in determining program elements. HHS does maintain flexibility in identifying children eligible for guardianship subsidy assistance.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No answer provided.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

HHS has defined eligible children as those aged ten years or older or part of a sibling group with a child aged ten years or older, who have been previously under the custody of HHS. HHS believes the eligibility criteria described in this chapter is at the level necessary to provide for safe and stable guardianship arrangements for children in need of guardianship. Alternative approaches might include expanding or reducing the eligibility criteria detailed here.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 204 and adopt the following **new** chapter in lieu thereof:

CHAPTER 204 SUBSIDIZED GUARDIANSHIP PROGRAM

441—204.1(234) Definitions.

“*Child*” means either a person less than 18 years of age or a person 18, 19, or 20 years of age who meets one or more of the following conditions:

1. Is in full-time attendance at an accredited school pursuing a course of study leading to a high school diploma.
2. Is attending an instructional program leading to a high school equivalency diploma.
3. Has been identified by the director of special education of the area education agency as a child requiring special education as defined in Iowa Code section 256B.2(1).

“*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 a person to whom a child is related by blood, marriage, or adoption, or a person who has a significant, committed, positive relationship with the child.

“*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.

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 232D 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 has a documented permanency goal of:
 - (1) Guardianship; or
 - (2) Another planned permanent living arrangement.
- b. The child is either:
 - (1) Ten years of age or older and consents to the guardianship; or
 - (2) Part of a sibling group with a child aged ten or older.
- c. The child has lived in continuous foster family care with the prospective guardian for the six months before initiation of the guardianship subsidy.
- d. The prospective guardian is a licensed relative foster parent 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 shall be a relative as defined in this chapter.
 - (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.
- e. A child who is part of a sibling group with a child ten years of age or older may be eligible for subsidy if all criteria are met. The following conditions for the younger sibling shall also be met:
 - (1) The sibling is placed as a foster child in the same prospective guardian home.
 - (2) The guardian and the department agree it is appropriate for guardianship to be granted for the sibling.

204.2(2) *Residency.* The subsidized guardianship applicant or recipient need not reside in Iowa.

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

204.2(4) *Other services.* Other services available to meet the needs of the child that are free of charge, such as federal, state, and local governmental programs, or private assistance programs, shall be explored and used prior to the expenditure of subsidized guardianship funds.

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 a subsidized guardianship shall be made on the approved department form.

204.3(2) *Eligibility determination.* The determination of whether a child meets the eligibility requirements is made by the department. The proposed guardian shall be notified in writing of the decision of the department regarding the child’s eligibility for the program and the amount of subsidy to be provided.

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

204.3(4) *Redetermination.* The department shall review the child's eligibility, the needs of the child and the child's unearned income every 12 months. Reviews may be done more often if needed due to the child's need for special services, revision of the subsidy amount because of the child's age, or a request for review by the guardian.

204.3(5) *Determination of eligibility after age 18.* The department shall review the subsidy agreement when the child reaches the age of 17½ to determine whether the child is eligible to receive subsidy to the age of 21 to complete high school or equivalency or due to the child's physical, intellectual, or mental health disability.

a. A disability shall be diagnosed by a physician, a qualified mental health professional or a qualified intellectual disability professional.

b. The diagnosed disability shall be current within one year prior to the child's eighteenth birthday.

c. Documentation of the child's diagnosed disability shall be provided by the child's guardian to the department.

d. Upon the child's reaching the age of 18, the subsidy may continue until the child completes courses leading to a high school diploma or equivalency or reaches the age of 21. Documentation of school enrollment and completion shall be provided by the child's guardian.

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.

204.4(2) *Amount of subsidy.* Each time negotiations are completed, the department and the guardian shall complete and sign a new Guardianship Subsidy Agreement.

a. The maximum monthly maintenance payment for a child in subsidized guardianship shall be made pursuant to the foster family care maintenance rates according to the age and special needs of the child as found in 441—subrule 156.6.

(1) The rate for the guardianship subsidy shall not exceed the state's current daily basic foster care rate plus any daily special needs allowance or sibling allowance for which the child is eligible, as found in 441—subrule 156.6.

(2) Reserved.

b. If the subsidized guardianship payment is less than the maximum amount allowed, the guardian may request an increase if there is a substantial change in the child's needs and circumstances that requires additional resources.

c. Guardianship payments shall continue if the guardian dies or becomes incapacitated and has named a successor guardian in the Guardianship Subsidy Agreement or in any amendments to the agreement.

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 not exceed \$2,000.

204.4(5) *Special services.*

a. Reimbursement to the guardian family or direct payment made to a provider is limited to the following services.

(1) Outpatient individual or family services provided from a non-Medicaid provider only with approval from the department and when one of the following applies:

1. The services are not available from a Medicaid provider within a reasonable distance from the family.

2. The child and the family were receiving therapy or counseling from a non-Medicaid provider and it would not be in the child's best interest to disrupt the services.

3. Available Medicaid providers lack experience in working with foster, adopted, or blended families.

(2) Travel-related expenses including transportation, meals and lodging not covered by Medicaid for visitation or family therapy when the child is receiving Medicaid-paid services out of the home.

(3) Supplies and equipment as required by the child's special needs and unavailable through other resources.

(4) Funeral benefits at the amount allowed for a foster child in accordance with 441—156.8(234).

b. Any single special service and any special service delivered over a 12-month period costing \$500 or more shall have prior approval from the department prior to expending program funds.

c. For all Medicaid-covered services, the department shall reimburse at the same rate and duration as Medicaid as set forth in 441—79.1(249A).

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 legally responsible parent or parents.

441—204.6(234) Determination of ongoing subsidy eligibility and suspension of subsidy payments.

204.6(1) Eligibility for continuation of guardianship subsidy shall be evaluated when the department has good cause to suspect the guardian is not providing financial support or is no longer legally responsible for the child. Good cause includes, but is not limited to, the following circumstances:

- a. The child is placed in out-of-home care under Iowa Code chapter 232.
- b. A person alleges the guardian is not providing financial support to the child.
- c. A person other than the guardian is awarded legal custody of the child.
- d. A person other than the guardian is appointed as the guardian of the child.
- e. The child has applied for food assistance or other benefits.
- f. The child has not resided with the guardian for the past 30 consecutive days.
- g. The guardian is incarcerated.
- h. The guardian is awaiting trial for criminal charges related to harm caused to a child in the home.

204.6(2) The department will contact the child's guardian via letter, telephone, or electronic or other means and document such efforts if an evaluation is determined to be necessary.

204.6(3) If such an evaluation occurs, the child's guardian shall provide documentation of support, including receipts, to the department upon request.

204.6(4) Upon completion of the department's evaluation of the child's continued eligibility for guardianship subsidy, the department will issue a written notice to the guardian documenting required ongoing actions by the guardian, including an expectation of continued cooperation by the guardian to provide documentation of ongoing support to the child at the request of the department.

204.6(5) The department shall suspend guardianship subsidy payments if the guardian refuses to cooperate with any department evaluation designed to determine legal responsibility for the child or to determine whether the guardian is providing financial support for the child.

204.6(6) Through a Notice of Decision, the department will notify the guardian that the guardianship subsidy payment will be suspended, modified, or terminated.

204.6(7) When the child has resided out of the guardian's home for 30 consecutive days, the department shall request a renegotiation of the Guardianship Subsidy Agreement with the guardian to reduce or suspend payments as agreed to by the guardian.

441—204.7(234) Termination of subsidy. A Guardianship Subsidy Agreement remains in effect until the subsidy is terminated. 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 21 as specified by subrule 204.3(5).
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).
4. The relationship ends due to the death of the child.
5. The terms of the Guardianship Subsidy Agreement are concluded.
6. The guardian requests that the guardianship payment cease.
7. The department has determined the guardian is not providing financial support to the child.
8. The guardian fails to abide by the terms of the Guardianship Subsidy Agreement.
9. The guardianship case is terminated by court order.
10. The department funds for subsidized guardianship are no longer available.
11. Due to incapacity, the guardian can no longer discharge the responsibilities necessary to protect and care for the child, the guardianship has been or will be vacated, and a successor guardian was not named in the Guardianship Subsidy Agreement.
12. The death of the guardian when a successor guardian is not named in the Guardian Subsidy Agreement (one in a single-parent family or both in a two-parent family).

441—204.8(234) Reinstatement of subsidy. Reinstatement of the subsidy shall be made when the subsidy was terminated at the guardian's request and the guardian has requested reinstatement.

441—204.9(234) Appeals. The guardian may appeal adverse determinations pursuant to 441—Chapter 7.

441—204.10(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 11.