

## Process to Successfully Effectuate a Subsidized Guardianship

**Definition:** The **Subsidized Guardianship** Program provides financial assistance to caregivers who agree to be the legal guardian for a youth who has been residing with the proposed guardian in licensed family foster care, under Iowa Code Chapter 232 for at least 6 consecutive months. Guardianship is a safe alternative to adoption, providing permanency for the youth without requiring formal termination of parental rights.

**Identified Problem:** Department of Health and Human Services (HHS) and Juvenile Court must understand the identified legal process to assist with facilitating a subsidized guardianship for children in HHS care and custody. This process includes specific procedures from the Child in Need of Assistance (CINA) permanency proceeding recommending Subsidized Guardianship to the closure of the CINA proceedings and after the establishment of the guardianship. This process will ensure the subsidized guardianship payment can begin, the juvenile court case can safely close, and HHS can be relieved of ongoing court supervision in the case. In addition, this time period needs to allow Title IVE approved foster care payments to be made to the family and child without disruption until the subsidized guardianship payments can begin after the establishment of the guardianship case.

**Solution:** A formal process has been developed to ensure Subsidized Guardianships are provided as an option when appropriate, that the outlined steps are followed, and the family is supported through the process. The processes, including the responsibilities of HHS, legal advocates, and the court, are described within this document as a guide for ongoing practice.

In preparation of a permanency hearing in which subsidized guardianship is being recommended the HHS Social Work Case Manager (SWCM) is to follow the rules in the Employees' Manual Title 18, Chapter F(2) regarding [Subsidized Guardianship](#) and [Iowa Administrative Code 441.204](#) as well as the process and recommendations outlined in this document. SWCM's can also get additional support from their service area subsidy worker who is the designated local HHS staff expert on the subsidized guardianship process.

**Targeted Audience:** Child Welfare staff including but not limited to Department of Health and Human Services Social Worker Case Managers (SWCM), County Attorneys, Guardian Ad Litem and Juvenile Court Judges.

### Eligibility Requirements for Subsidized Guardianship

HHS SWCMs will need to ensure all eligibility requirements for guardianship subsidy are met under Iowa Administrative Code 441.204.2(234) and the Manual page 10. The guardian named in the permanency order for a child is eligible for subsidy when **all** of the following conditions exist:

- The child has a documented permanency goal of:
  - Guardianship: or another planned permanent living arrangement.
    - For case planning purposes, when determining if Subsidized Guardianship is an appropriate permanency goal for a child(ren) it is unlikely a goal of Guardianship or another planned permanent living arrangement will be in place. The permanency goal will be recommended in the HHS case plan during the final hearing when Subsidized Guardianship is ordered by the Juvenile Court.
- The child is either:
  - Ten years of age or older and consents to the guardianship or part of a sibling group with a child aged ten or older when residing in the same licensed family foster home as a sibling aged ten or older.
- The child has lived in continuous licensed foster family care with the prospective guardian for the six months **IMMEDIATELY PRIOR** to the initiation of the guardianship subsidy.

- 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.
- The guardian is a relative as defined in this chapter. ("Relative" means, for this chapter only, 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.) This can include a foster parent who is not biologically related to the child.

Placement with the guardian must be in the best interest of the child. The best-interest determination must be documented in the case file. 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:

- The sibling is placed as a foster child in the same prospective guardian home;
- The guardian and the department agree it is appropriate for guardianship to be granted for the sibling.

### **HHS SWCM Case Work Requirements**

SWCM is to make efforts to ensure the child and parents understand what guardianship means for the child's future and for the parents' right and responsibilities. The parents must understand the plan for guardianship of their child(ren). Subsidized Guardianship can be ordered by the Court without the consent of the biological parents. Financial responsibility such as child support can continue for biological parents even after the establishment of a guardianship.

SWCM is to make additional efforts to ensure all court parties associated with the case are aware of the recommendation of Subsidized Guardianship as the permanency goal for the child(ren). SWCM should know the position of the court parties and whether or not court parties are in support of the permanency goal.

**NOTE:** Consult with all youth, age 10 and older, and at younger ages when appropriate, regarding entering into a subsidized guardianship living arrangement. Youth should also give legal consent (age 14) when needed at the time of the entry of the guardianship order to meet Iowa Code requirements. However, if the youth is not able to legally consent to the guardianship due to a cognitive or other impairment, discuss alternatives with the youth's guardian ad litem, including the willingness of the guardian ad litem to legally consent on the youth's behalf.

SWCM is to discuss the option of obtaining legal counsel with the family. The Department of Health and Human Services (HHS) can reimburse to families who enter into a subsidized guardianship agreement all reasonable expenses incurred by the proposed guardian that are directly related to finalizing the legal guardianship of a child(ren). These expenses are limited to attorney fees, court filing fees, and other court costs. The total costs cannot not exceed \$2,000 per child and will be reimbursed directly to the guardian(s) upon their appointment at the conclusion of the court proceedings. If the proposed guardian(s) determine legal counsel is appropriate, then the proposed guardian(s) are responsible for finding and retaining legal counsel for the process. HHS is unable to make referrals or recommendations for legal counsel through any portion of the proceedings. Prior to the permanency hearing or hearing to recommend subsidized guardianship in Juvenile Court, SWCM should have a formal meeting with the proposed guardian(s) to fill out all required HHS subsidized guardianship paperwork which includes:

- Form [470-3632, Guardianship Subsidy Application](#)
- Form [470-3631, Guardianship Subsidy Agreement](#)
- Form [470-5535, Application for Foster Care and Subsidized Adoption Medicaid](#)

### **HHS SWCM Case Permanency Plan Documentation**

The HHS Case Permanency Plan which should be prepared by the assigned SWCM for the CINA permanency hearing and recommends guardianship to the court must include clear and convincing evidence that ([Manual](#) pages 9 and 11):

- The child meets the eligibility requirements as outlined above;
- The steps taken to determine that return to the parental home or adoption is not appropriate;

- The efforts made to discuss adoption with the child's prospective guardian and the reasons why adoption is not an option;
- The efforts made to discuss guardianship with the child's parent or parents or the reasons why efforts were not made;
- The reason why a permanent placement with a prospective guardian and receipt of a guardian assistance payments is in the child's best interests; and
- The reasons for any separation of siblings during placement.
- If the child is not placed with siblings, the case plan must also include a description of the reasons why the child is separated from siblings during placement.
- Services were offered to the child's family to correct the situation that led to the child's removal;
- The child cannot be returned home;
- An adoption would not be a viable permanency option;
- The birth parents support the guardianship recommendation if parental rights have not been terminated; Or the efforts made to discuss guardianship with the youth's parents or the reason efforts were not made;
- The child is not in need of child welfare services;
- The child has been living with the prospective guardian for the past six consecutive months in a licensed family foster care placement;
- The prospective guardian has a significant relationship with the child and demonstrates a willingness to make a long-term commitment to the child's care;
- The child has agreed to the guardianship and displays a bonded relationship with the proposed guardian.
- The assessment of the prospective guardian shows that:
  - The guardian can meet the needs of the child and
  - The guardian's home is safe and stable; and Guardianship is in the best interest of the child.

SWCM's Case Permanency Plan should also contain the following language in the recommendation portion of the Case Permanency Plan providing language which can be placed in the Court's permanency order: HHS SWCM recommends the Court findings include the following:

- Pursuant to Iowa Code §232.104(2)(d)(2) guardianship and custody of the minor child, [child's name], is placed with the Iowa Department of Health and Human Services for placement with [proposed guardian(s)] for the purpose of establishing guardianship in a subsequent 232D proceeding with [proposed guardian(s)].
- That after the inception/creation of the subsequent processing pursuant to 232D, [proposed guardian(s)] be appointed as guardian(s) for the minor child, [child's name], in the [XX] County 232D Juvenile Guardianship Case.
- That upon issuance of Letters of Appointment in [XX] County Juvenile Guardianship Case, the above-captioned case be closed and the juvenile court's jurisdiction in the CINA matter be terminated.
- That the Court schedule a hearing to ensure that the [XX] County Juvenile Guardianship Case has been established. This hearing may be cancelled upon completion of the [XX] County Juvenile Guardianship Case.

#### **Language Required in Juvenile Court Order for Subsidized Guardianship**

The court order for a Subsidized Guardianship should include all the following language:

- Pursuant to Iowa Code §232.104(2)(d)(2) guardianship and custody of the minor child, [child's name], is placed with the Iowa Department of Health and Human Services for placement with [proposed guardian(s)] with the intention of establishing guardianship with [proposed guardian(s)].

- That after the inception/creation of the subsequent processing pursuant to 232D, [proposed guardian(s)] be appointed as guardian(s) for the minor child, [child's name], in the [XX] County 232D Juvenile Guardianship Case.
- That upon issuance of Letters of Appointment in [XX] County Juvenile Guardianship Case, the above-captioned case be closed and the juvenile court's jurisdiction in the CINA matter be terminated.
- That the Court schedule a hearing to ensure that the [XX] County Juvenile Guardianship Case has been established. This hearing may be cancelled upon completion of the [XX] County Juvenile Guardianship Case.

### **Court information required after CINA Proceeding and entering of final Guardianship**

When the court order with the language outlined above is received and reviewed by HHS for correctness, the SWCM will notify the proposed guardian (or family's attorney, if the family has retained counsel) the court order has been filed. If proposed guardians have not been sent a copy of the order, SWCM potentially should provide a copy of this court order to the proposed guardians in order for the family to have available to complete the needed filings/reports with the Clerk of Court.

Once the court order filed in the CINA proceedings is received by the proposed guardian, they or their counsel will take the court order and completed paperwork (as outline above) to the clerk of court to file under the new JGJV number. The Clerk of Court theoretically should be initiating the JGJV number upon the filing of the Juvenile Court Permanency Order, but this may not always be a timely process.

### **Required documents for Legal Establishment of Subsidized Guardianship**

After the CINA permanency hearing, the proposed guardians or their legal counsel must file the required documents with the Clerk of Court. will need to file with the Clerk of Court. These forms need to be completed for each child if there are multiple children. Each child will have his/her own guardianship court case and only the case number specific to that child should be on each form. The required forms are as follows:

- **Oath** (For two-person guardians, each needs to complete his/her own Oath.)
- **Rule 8.37 – Form 1: Protected Information Disclosure** (For two-person guardians, each needs to complete his/her own Protected Information Disclosure.)
- **Rule 8.37 – Form 2: Background Check Information for a Proposed Guardian of a Minor** (For two-person guardians, each needs to complete his/her own background check. The background check costs \$15 per guardian. However, if there are multiple children there is only one \$15 per guardian charge, as only one background check will be completed, and the results will then be filed on each child's case.)
- **Rule 8.37 – Form 4: Guardian's Initial Care Plan for Protected Minor** (For two-person guardians, both can sign same form for initial care plan.)
- **Rule 8.37 – Form 5: Guardian's Annual Report for Protected Minor** (For two-person guardians, the Annual Report will need both guardian's signatures.)
- **Rule 8.37 – Form 6: Guardian's Final Report for Protected Minor**

NOTE: These forms can be obtained from the Clerk of Court or online at the Iowa Courts website. Go to [lowacourts.gov](http://lowacourts.gov). On the top of the page locate "For the Public" and hover over it to utilize the drop box and navigate to "Court Forms". Click on Guardian and Conservator. Scroll down to Rule 8.37 Form 1-6. As of this writing, the Oath is not listed on this page.

### **Successful HHS Case Closure**

After the required paperwork is filed by the proposed guardians, the Juvenile Court receives notice that the Letters of Appointment have been entered establishing the guardianship have been filed in EDMS under the JGJV number and the Juvenile Court issues the following order closing the Juvenile Case:

- On the XXth day of [month] 20XX, the above-captioned matter was brought before the court following transfer of the guardianship of the children in interest from the Child in Need of Assistance proceedings to Juvenile Court Guardianship proceedings and following notification that letters of appointment have been issued for the guardian on XX DATE. Being advised in the circumstances, the court **FINDS** that the permanency order entered herein should be terminated because the purposes of the order have been accomplished and the children in interest are no longer in need of supervision, care or treatment to be afforded by the Child in Need of Assistance proceedings as provided in Iowa Code Sections 232.103(4)(a) and 232.104(7).
- **IT IS THEREFORE ORDERED** that the permanency order entered herein is hereby terminated, the Iowa Department of Health and Human Services is relieved of any further duties of supervision in the matter, counsel of record is hereby relieved of further duties of representation herein, all hearings scheduled before the Juvenile Court herein are canceled, and the Child in Need of Assistance cases closed.

SWCM obtains a copy of the Letters of Appointment from the guardians or their attorney for HHS file.

Effective date: The effective date of the guardianship subsidy payment shall be the date the Letters of Appointment are filed. This date should be included in the final order closing the juvenile case. If this order does not contain the date that the Letters of Appointment were filed, SWCM contact the family to obtain the Letters of Appointment.

Guardianship file: SWCM's will need to compile a guardianship file to be provided to the ongoing HHS Service Area Guardianship Subsidy worker. This worker will ensure monthly payments are provided to the child and family in subsidized guardianship until the agreement is concluded.

To set up a guardianship subsidy for a qualified child and guardian, you must:

- Receive an application from the guardian. Form 470-3632
- Negotiate the amount of subsidy payment.
- Complete a subsidy agreement with the guardian. Form 470-3631
- Send a notice of decision. Form 470-5613
- Make data system entries.
- Receive the court order/appointment for guardianship.
- Compile a guardianship file to be housed in the local field office and managed by the assigned guardianship subsidy worker.
- The following should be included in the subsidized guardianship case file
  - Attorney bill (if applicable)
  - Completed Notice of Decision form # 470-5613
  - Completed and signed Subsidized Guardianship Application, form 470-3632
  - Completed and signed Subsidized Guardianship Agreement, form 470-3631
  - Initial Foster Care Placement Agreement, form 470-0716
  - Court order with guardianship appointments
  - Letters of Appointment
  - Case Plan completed for the court hearing recommending subsidized guardianship
  - Child's Birth Certificate
  - Child's Social History (if one is available)
  - Resource Family's Home Study
  - Pertinent Psychological Information on the child