

CHAPTER 204
SUBSIDIZED GUARDIANSHIP PROGRAM

PREAMBLE

This chapter implements 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. A subsidized guardianship agreement authorized under this chapter will remain in effect until the agreement is terminated under the terms of this chapter.

[ARC 8914B, IAB 6/30/10, effective 8/4/10; ARC 4167C, IAB 12/5/18, effective 2/1/19]

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).

“*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 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.

“*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.

[ARC 4167C, IAB 12/5/18, effective 2/1/19; ARC 5680C, IAB 6/16/21, effective 8/1/21]

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 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 worker 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.

[ARC 4167C, IAB 12/5/18, effective 2/1/19; ARC 5680C, IAB 6/16/21, effective 8/1/21]

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 worker 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 to make the determination of continued eligibility to the age of 21.

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.

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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 worker 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) and 441—paragraphs 156.6(4)“*b*” and “*f*.”

(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(1) and 441—paragraphs 156.6(4)“*b*” and “*f*.”

(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 service area manager or designee 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 rule 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 central office program manager 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 rule 441—79.1(249A).

[ARC 4167C, IAB 12/5/18, effective 2/1/19]

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.

[ARC 5680C, IAB 6/16/21, effective 8/1/21]

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 shall 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 shall 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) In the event the evaluation has determined the guardianship subsidy payment will be suspended, modified, or terminated, the department shall notify the guardian with proper notice, using Notice of Decision Form 470-5613.

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.

[ARC 5680C, IAB 6/16/21, effective 8/1/21]

441—204.7(234) Termination of subsidy. A Guardianship Subsidy Agreement shall remain in effect until the subsidy is terminated based on one of the grounds listed in this rule. 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 to facilitate the child's completion of high school or a high school equivalency diploma, or the department determines the child is eligible to receive a subsidy to the age of 21 due to the child's physical, intellectual, or mental health disability.

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 guardian or guardians die or are incapacitated (one guardian in a single-parent family or both guardians in a two-parent family), and a successor guardian is not named in the Guardianship Subsidy Agreement.

[ARC 8914B, IAB 6/30/10, effective 8/4/10; ARC 4167C, IAB 12/5/18, effective 2/1/19; ARC 5680C, IAB 6/16/21, effective 8/1/21; ARC 6507C, IAB 9/7/22, effective 11/1/22]

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.

[ARC 4167C, IAB 12/5/18, effective 2/1/19; ARC 5680C, IAB 6/16/21, effective 8/1/21]

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

[ARC 5680C, IAB 6/16/21, effective 8/1/21]

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.

[ARC 5680C, IAB 6/16/21, effective 8/1/21]

These rules are intended to implement Iowa Code section 234.6.

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