

Children and Family Services Subsidized Guardianship Program

Service Chapter 623-10

North Dakota Department of Human Services
600 East Boulevard Avenue
Bismarck, ND 58505

CHILDREN AND FAMILY SERVICES
SUBSIDIZED GUARDIANSHIP PROGRAM

Division 20
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Subsidized Guardianship Program 623-10

Introduction 623-10-01 (Revised 2/20/07 ML #3066)

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The subsidized guardianship program provides a means for a monthly cash payment for the child's maintenance needs to an eligible guardian who provides care to an eligible child.

The information in this manual is not an exhaustive treatment of guardianship. It is intended to provide sufficient information to put subsidized guardianship in the context of the large framework of guardianship. The case worker's specific legal questions can be addressed to the state's attorney. An individual interested in serving as a guardian for a child should be advised to seek legal assistance to learn the ramifications of a legal guardianship.

The focus in this manual is on subsidized guardianship.

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**The Adoption and Safe Families Act of 1997 (ASFA) -
Guardianship as an Alternate Plan 623-10-01-01
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The Adoption and Safe Families Act of 1997 (P.L. 105-89) (ASFA) defined legal guardianship and identified it as a valid permanency option for children. Refer to ADDENDUM for the federal definition of guardianship and "Compilation of Titles IV-B and IV-E of the Social Security Act (11/19/97)," pages 35-39.

North Dakota's response to ASFA is a guardianship provision passed by the 1999 Legislature. This legislation provides the basis for guardianship implementation as a permanency option in several sections of the North Dakota Century Code. (ADDENDUM)

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Permanency Option 623-10-01-05
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The subsidized guardianship program is an additional permanency option for children. The subsidized guardianship program merges two separate and distinct processes:

1. Application for and approval of subsidy pursuant to the Department's program; and
2. Petition for and creation of a legal guardianship under the laws of the state of North Dakota.

Both processes must be completed to accomplish a subsidized guardianship. It is not possible to have a subsidized guardianship without establishment of a legal guardianship.

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**Overview - Subsidized Guardianship Program
623-10-01-10**

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Court ordered guardianship assign broad responsibilities for the child to the adult guardian. The court determines the nature and extent of the parents continuing relationship to the child.

- Maximum of 30 children for the first year of the biennium (1999-2001)
- Population: Youth age 16 – 18 will be given priority. Sibling groups which include a youth in the 16 – 18 age group will also be given priority consideration.
- Grant of \$490/month/child
- Assistance in paying for the expenses of the one-time non-recurring legal process for appointment as guardian.

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**Rule Out Other Permanency Options 623-10-01-15
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Subsidized guardianship is a limited resource which is an additional permanency option for children. It is used only after reunification with the family, termination of parental rights, and adoption have been ruled out.

Subsidized guardianship is a planned care setting which enables the adult guardian to assume the parental role without ongoing agency oversight. This is consistent with 'Guidelines for Public Policy and State Legislation Governing Permanence for Children', June 1999, DHHS, ACF, ACYF, Children's Bureau, which states the following:

- State law should authorize courts to award permanent guardianship to an individual or couple who will serve as permanent caregivers of a child without ongoing State supervision, based upon court determination that it is in the child's best interest.
- Because the goal of permanent guardianship is to create a permanent family for the child, guardians should be adult individuals or couples, rather than public or private agencies. Once a permanent guardianship is established, there should be no ongoing court review or agency supervision of the guardianship. (With exceptions such as related to divorce – to modify the order.)

If appropriate, a guardianship allows a child to have continued connection with his/her parents.

Some financial support for the child's needs, in the form of a monthly payment to the guardian, is provided for the child in subsidized guardianship.

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The child in a subsidized guardianship arrangement **may** be eligible for medical assistance (regular Medicaid).

The guardianship arrangement eliminates case worker administrative time spent in general case oversight, foster care reviews, and permanency planning meetings. **It is a permanent arrangement and should be considered only after exhausting all other permanency options.**

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Nature of the Guardian/ward Relationship
623-10-01-20

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A legal guardianship is a relationship of lasting duration similar in many respects to the parent/child relationship. The guardian stands in the shoes of a parent for the most, if not all, purposes. The guardian is the person who accepts responsibility for the personal well being of the minor.

The minor child or youth is called a "ward." It is the Department's policy that guardianship subsidies will be paid only to guardians who are 21 years of age and older.

The guardian must consent to entering the relationship (N.D.C.C. Sec. 27-20-02(9)). The consent of the ward is not required. However, for minors fourteen (14) years of age or older, the minor may nominate a person to be the guardian, and the court shall appoint that person unless the court finds the appointment contrary to the best interest of the minor. For example, Wanda, age fifteen (15), is in foster care and a prospective ward. Wanda has a closer relationship with Aunt Gail than she has with her other aunts and uncles. Wanda may express her preference for Aunt Gail to the court and ask that she be appointed legal guardian.

Legal guardianship carries with it certain rights and responsibilities by operation of law, i.e. automatically, without the guardian requesting them. Other rights and responsibilities attach to the relationship by order of the court, i.e. by the judge's decision in a particular case. Rights and responsibilities typically found in an order establishing a legal guardianship include decisions regarding the ward's daily activities, where the ward goes to school, the ward's

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regular medical care, reasonable methods of discipline, and signature for authorization to operate a motor vehicle, to name a few, as well as day-to-day welfare of the ward.

The intent of the subsidized guardianship program is that a fit and willing relative or other adult with whom the child has already established a relationship, such as a foster parent, will become the guardian. In those cases, the establishment of the legal guardian/ward status formalizes and gives legal recognition to an existing personal relationship. However, a legal guardian/ward relationship may be established without any pre-existing personal relationship between the guardian and the ward.

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Wards to Reside with the Guardian 623-10-01-25
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It is possible to create a legal guardianship in which the ward does not reside with the guardian, but lives in some other setting. This is not the intent of the Department's subsidized guardianship program. To be eligible for the subsidized guardianship, the guardian must agree that the ward's permanent residence will be with the guardian. In certain instances the ward may be briefly out of the home without affecting the subsidy, i.e. brief medical treatment.

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Persons Eligible to be a Guardian 623-10-01-30
(Revised 5/1/09 ML #3181)

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Under N.D.C.C. § 27-20-47(1)(b), the court may appoint “a fit and willing relative or other appropriate individual” as the child’s legal guardian. “Fit and willing relative or other appropriate individual” is defined in N.D.C.C. § 27-20-02(11) as “a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under chap. 50-11.3, to be a qualified person under chapter 30.1-27, and who consents in writing to act as a legal guardian.”

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Foster Home License Issues 623-10-01-35
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Children and Family Services (CFS) is reviewing N.D. Admin. Code chap.75-03-14 regarding any impediments to licensed foster parents serving as guardian for a child in their home. Administrative rule changes are being considered to address apparent conflicts. In the meantime, the established policy in regard to a child/youth remaining in the foster home after the court order expires or after age 18, is to continue to regard him/her as entering the home as a "foster child."

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**Duration of the Guardianship/Ward Relationship
623-10-01-40**

(Revised 2/20/07 ML #3066)

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Under N.D.C.C. § 30.1-27-01, “[t]he guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.” This is like the parent-child relationship which continues even though the parent and child are physically separated. For example, if a ward runs away from home and ends up in the custody of a public agency, the guardianship relationship continues. However the subsidy payment may be affected by the ward’s absence from the guardian’s home. The subsidized guardianship program is intended to assist the guardian with the expenses of maintaining the ward in the guardian’s home.

See section “Guardianship Subsidy Will Cease . . .” of this manual addressing the impact of ward’s absence on subsidy payments, and section on “Termination of the Guardian/Ward Relationship.”

The guardianship relationship will remain in effect even if subsidy payments are lowered, discontinued, interrupted, or are not commenced. **Prospective guardians should enter the relationship intending to continue, until the natural termination of the relationship.** Guardians and wards may be eligible for family preservation services in the same way that those services are available to parents in the community.

Encourage prospective guardians to thoughtfully consider all the implications of the guardian/ward relationship. Caution prospective guardians to avoid establishing a guardianship in expectation of a subsidy for which the child may not be eligible, or which may not be forthcoming for other reasons. See also section “Process” discussing the recommended sequence for application for the subsidy program and establishment of the legal guardianship. For a successful result,

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the two tracks must be pursued in tandem. See also "Establishing Subsidized Guardianship."

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**Child Support - Parental Responsibility 623-10-01-45
(Revised 11/1/08 ML #3167)**

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Child support is a parental responsibility. That responsibility continues when a legal guardian has been appointed for the child. (See: 623-10-20-15, Parental Obligations with Respect to Child in Guardianship.) A legal guardian is entitled to receive services from Child Support Enforcement on behalf of the child. The child support services to be provided to a legal guardian will depend on case specifics. For example, if the child is covered by an existing support order, Child Support Enforcement is authorized to re-direct the child support collections to the legal guardian. A legal guardian should be referred to Child Support Enforcement for information about any child support issues that may arise as a result of the guardianship.

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Guardianship Support Services 623-10-01-50
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Support services should be made available to the family in the same way as a biological family, to prevent disruptions. Although services would not be court ordered, the family should be able to apply for the family preservation services that are available.

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Independent Living Services 623-10-01-55
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The Independent Living Program is designed to serve youth who are in foster care or who have been in foster care. Independent Living Services will continue to be available to the former foster child who is in a guardianship arrangement, on the same basis and in the same payment manner (state/federal dollars) as prior to the guardianship.

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Native American Children 623-10-01-60
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Invite the tribal child welfare director/designee to permanency planning to be sure the tribe is made aware of consideration being given to guardianship as an alternate permanency plan for a Native American child from that particular tribe. All parties should be aware of guardianship as an alternate plan; termination of parental rights and adoption have been ruled out. In a guardianship, the child will not lose tribal affiliation.

When a guardianship is established, foster care payments are no longer made on behalf of the child.

A legal guardianship is considered a "foster care placement" under Section 1903(1)(i) of the Indian Child Welfare Act. Section 1903(1)(i) states in part, that a "child custody proceeding" shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in the home of a guardian. Therefore, the establishment of a legal guardianship implicates ICWA.

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Establishing Subsidized Guardianship 623-10-01-65
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Guardianship is considered only after other options such as return home, termination of parental rights, and adoption are ruled out. Any consideration of guardianship is the responsibility of the child's custodian (county, Division of Juvenile Services (DJS), tribe, Executive Director) working with the permanency planning committee. This discussion and agreement of the parties is necessary to proceed with exploration of a subsidy.

When a family permanency resource has been identified for a child in custody and guardianship appears the best alternate permanent arrangement, the child may be eligible for a subsidized guardianship. This is not an entitlement for either the subsidy or cost of establishing a legal guardianship.

It is important to keep in mind that two processes must be accomplished in tandem to effect a subsidized guardianship:

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Eligibility 623-10-05

Eligible Population Group 623-10-05-01
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1. Youth who are legally free for adoption and do not wish to or cannot be adopted.
2. Youth in temporary custody whose parents are incapacitated or unwilling to have anything to do with planning for the child and whose parental rights will not be terminated.
3. Eligibility is limited to children in the state foster care system for at least six months*, for whom the state has responsibility for maintenance payments.

Note that priority is given to youth 16+. Sibling groups will also be given priority status if one member of the group is 16+.

(*An exception to the six-month requirement can be requested and granted under certain circumstances.)

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Eligible Guardian 623-10-05-05
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In order to receive subsidy payment, the guardian must have received contingent approval for a subsidy for the child's needs prior to the guardianship appointment and must be at least 21 years of age. Guardianship requires a court assessment and a background check. Refer to "Persons Eligible to be a Guardian," in the "Introduction."

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**Excluded from Consideration of Subsidized
Guardianship 623-10-05-10**

(Revised 2/20/07 ML #3066)

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1. Medical subsidies.
2. Children who have not been in the state foster care system at least six months.*

Subsidy for guardianship must be approved by the custodian, (county, DJS, tribe, Executive Director), county director, regional supervisor, and the state office. If demand for subsidy exceeds resources, CFS will enlist the assistance of a review team to prioritize requests.

(* An exception can be requested and granted under certain circumstances.)

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**Residency in North Dakota Not Required for Guardian
623-10-05-15**

(Revised 2/20/07 ML #3066)

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The subsidized guardianship program is designed to serve North Dakota children in foster care (payment responsibility of the state) who need a permanency alternative. There are no North Dakota residency requirements for the guardian. This recognizes the fact that people move, families are scattered, and a "fit and willing relative" may live in another state. If the child fits the eligibility guidelines and subsidized guardianship slots are available, the determination to award a subsidy will be based on the health, safety, well being (best interests) of the child. In those cases, it may be required that the non-resident prospective subsidized guardian appoint an agent for service of process within North Dakota.

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Need 623-10-05-20
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North Dakota subsidized guardianship program does not have a means test for the guardian. The guardianship subsidy is for the child's maintenance needs.

Child's Income:

Any resources available to the child, such as SSI, other resources, must be used first. The child's income from various sources will be used to compute whether a subsidy is available to that child, and at what level. Refer to "Subsidized Guardianship Contingent Approval Request," SFN 1834, for computation.

Child's Assets:

The Foster Care Independence Act of 1999 amended Section 472(a) of the Social Security Act (42 USC 672(a)) related to the foster child's assets, raising that level to \$10,000. When the Department has sufficient information to implement this change for the foster care program, corresponding changes will be made in the guardianship program's treatment of the child's assets.

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Medical Eligibility Determination 623-10-05-25
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Medical assistance eligibility for a child in a guardianship is determined by county social services eligibility staff. These children will likely be poverty level eligible for Medicaid. The child is set up in their own case, and Medicaid will not look at parental income and assets unless the guardianship court order specifies that the parents are responsible for the child's needs. The guardian's income and assets are also not considered in determining the child's Medicaid eligibility. The guardian must be shown as an ineligible caretaker (custodian) for notice and child support purposes. An exception is in cases in which the guardian is a relative and the relative becomes eligible for Medicaid because of the child. In such cases the relative chooses to be an eligible caretaker.

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Application for Subsidy 623-10-10

Process 623-10-10-01 (Revised 2/20/07 ML #3066)

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- Rule out reunification, TPR, and adoption.
- Agreement by custodian/permanency planning committee that guardianship is appropriate alternate plan.
- Identification of potential guardian/child. Child's social worker discusses at permanency planning.
- Regional supervisor approval to apply for subsidy.
- Potential guardian files "Subsidized Guardianship Contingent Approval Request" with CFS.
- Home assessment including background check.
- Custodial agency is notified of Contingent Approval or non approval of subsidized guardianship.
- Prospective guardian files petition for appointment as guardian.
- Notice to all parties.
- Custodial representation at guardianship proceedings.
- GAL for child if court determines it is necessary.
- Agency representation in guardianship proceedings.
- When guardianship is awarded by court, a copy of order is forwarded to Children and Family Services.
- CFS forwards "Application for Subsidized Guardianship."
- Subsidized guardianship payments commence effective date guardianship begins. (Based on prior contingent approval requirement.) Subsidized guardianship payments are prorated from the date the guardianship is awarded and to date subsidized guardianship closes.

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- When guardianship is awarded by court, county closes foster care payments the effective date of the guardianship.

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**Prior Approval for Subsidized Guardianship Eligibility
623-10-10-05**

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Eligibility of the child for subsidized guardianship must be determined prior to the filing of the guardianship petition. This is done on the "Subsidized Guardianship Contingent Approval Request" form. The contingent approval request form includes information on the child's income and assets. The social worker may need to assist the prospective guardian in completing this form.

Any request for an exception to the policy limiting eligibility to children who have been in the state foster care system for at least 6 months must be submitted to the State Office prior to completing the "Subsidized Guardianship Contingent Approval Request."

All other sources of income available to the child should be reviewed and considered prior to filing the contingent approval form. The "Subsidized Guardianship Contingent Approval Request" is signed by all parties and forwarded to CFS.

If approved for the subsidy, the child's guardianship assistance will be based on the current payment rate for subsidized guardianship, taking into consideration the child's income and assets.

It is important to keep in mind that the guardianship subsidy rate is a flat rate which will not be adjusted when foster care rates change.

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**Notification of Subsidized Guardianship Contingent
Approval 623-10-10-10
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CFS will review the contingent subsidy approval request in relation to financial need and other subsidized guardianship criteria. The Division will consider the child's contingent subsidy application together with other contingent subsidy applications and prioritize, keeping in mind the limited funds available for subsidized guardianship.

The referring agency, the prospective guardian, and others will be notified, usually within 30 days, whether the contingent subsidy approval has been approved or denied. If denied, an explanation will be provided. If the request is approved, contingent subsidy approval is in effect for six months following the Department's approval. This allows time for the legal process of establishing the guardianship. If six months have elapsed and the guardianship has not been established by the court, the contingent subsidy approval is null and void. (When contingent approval of the subsidy is granted, funds are earmarked for that particular guardianship. If it does not take place, those funds are earmarked for another subsidized guardianship situation.)

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**Background Check for Prospective Guardian
623-10-10-15**

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N.D.C.C. § 50-11.3-01 provides that before appointment as a legal guardian under Chapter 27-20, the individual must be subject to an assessment that includes the result of a criminal history record investigation. In addition, any adult living in the household is also subject to a criminal history record investigation. In all cases, a criminal history record check will include a Bureau of Criminal Investigation (ND BCI) check and a fingerprint based FBI check. CFS pays for the BCI/FBI background checks.

The guardianship background check request must be submitted to CFS on the specific forms related to guardianship. (Refer to guardianship background check instructions in Procedures for Background checks, Prospective Guardians for Children, for complete information.)

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**Home Assessment is Furnished to the Court
623-10-10-20**

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This is a new program with no funding for staff resources. Agencies will determine how to accomplish the guardianship home assessment required by law to be furnished to the court.

If the home to be studied for guardianship is the child's current foster home, the agency may wish to furnish to the court the most recent foster home licensing study together with child specific issues and the child's relationship to the prospective guardian and others in the home. Please refer to the "Guardianship Assessment Outline," (Addendum), for guidelines on the child specific and child relationship issues.

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**Application for Subsidized Guardianship Form
Completed 623-10-10-25
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After the guardian has been named by the court, a copy of the court's order and the home assessment are forwarded to CFS. When CFS receives this information, an "Application for Subsidized Guardianship," SFN 1833, will be forwarded to the guardian for completion and signature.

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**"Agreement for Subsidized Guardianship," SFN 1832
623-10-10-30**

(Revised 2/20/07 ML #3066)

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Upon receipt of the completed "Application for Subsidized Guardianship," SFN 1833, CFS will complete the "Agreement for Subsidized Guardianship," SFN 1832, (based on the earlier "Subsidized Guardianship Contingent Approval Request," SFN 1833), and forward the agreement to the guardian(s) for signature. When the agreement is finalized, copies will be sent to the guardian(s) and involved agencies.

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Effective Date of Subsidy 623-10-10-35
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The subsidy is effective the date the court appoints the guardian, provided that date is after CFS has granted contingent approval for the subsidy. No retroactive subsidies will be paid.

In situations where the foster parents are appointed legal guardians of the child, it is possible for the foster care payment and guardianship subsidy to overlap the day the guardianship is awarded and foster care is closed.

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Payment 623-10-15

Subsidy Rate 623-10-15-01

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The subsidy rate is computed on a monthly basis at \$490. The subsidy is paid based on a daily rate of \$16.11. Partial months at the beginning and end of the subsidized guardianship are prorated.

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**Annual Review and Approval Requirement
623-10-15-05**

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The guardian must submit required review information annually to CFS to continue receiving a guardianship subsidy. It is the responsibility of the guardian to keep CFS informed of address changes. ("Guardianship Subsidy Agreement – Annual Review," SFN 1831.)

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Termination of Subsidy: Guardianship Subsidy will Cease Under the Following Conditions 623-10-15-10 (Revised 2/20/07 ML #3066)

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1. Child reaches age 18 and is not in school.*
2. Child custody or guardianship is awarded to another person.
3. Child is incarcerated.
4. Child is no longer living in the home.
5. Child dies.
6. Guardianship terminates for any reason.
7. CFS does not have guardian's current address, and mail is undeliverable.

The guardian has a duty to notify NDDHS within 30 days of any of the above and to return any guardianship subsidy payment received for any days after the guardianship has terminated.

* If the ward/guardianship relationship continues after the order appointing the guardian terminated at age 18, and the ward continues in school, the subsidy may be continued. The ward and guardian have the opportunity to apply for continuation of the subsidy, prior to its expiration at age 18. Refer to form: "Application for Continued Subsidy After Age 18," SFN 1830.

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Court Fees 623-10-15-15
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Refer to NDDSH – CFS, PI 00-01, “ASFA Related Court Costs,” if funds to establish a guardianship are required.

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**Relocation to Another State by Guardian/Child
623-10-15-20**

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North Dakota continues the financial responsibility for payment (with the same match), if the guardian/child moves from North Dakota to another state. It is the responsibility of the guardian to keep CFS informed of address changes.

Medical coverage for the child must be worked out between the two states prior to the move. It is not possible for North Dakota to guarantee medical coverage if the child moves to another state.

Interstate Compact on the Placement of Children (ICPC) is not involved in this situation, as no public agency is custodian. In the event the proposed placement resource resides in another state prior to guardianship being awarded, ICPC will apply. (Refer to Interstate Compact on the Placement of Children, Service Chapter 619-01.)

The legal guardianship continues even though the guardian and ward may relocate to another state. However, the legal guardian, by accepting appointment as guardian, "submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person." This means that even though the guardian has moved to another state, the guardian can still be made a party to a legal proceeding involving the child that is brought in North Dakota. This is referred to as "long-arm" jurisdiction, because the long arm of the court's power extends to the guardian, wherever he or she may be. For example, Aunt Gail goes to Arizona for the winter, leaving Wanda with another family so Wanda can finish her senior year of high school in her school in North Dakota. Wanda's uncle on the other side of her family becomes

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unhappy with the decisions Aunt Gail is making as guardian and brings a legal action in North Dakota to have Aunt Gail removed and himself appointed as guardian. Aunt Gail is subject to the jurisdiction of the court even though she is not physically present in North Dakota.

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Interstate Compact 623-10-15-25
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ICPC may apply when the proposed guardian resides in another state. N.D.C.C. 14-13, Article III, clearly spells out who must use the Compact when they "send, bring, or cause a child to be brought or sent" to another party state. If a state agency has custody of a child and the potential guardian resides in another state, ICPC applies. An ICPC request should be completed with the goal of guardianship indicated in the referral. If ICPC is approved, placement can be made as a relative or foster care placement. (Provided all foster care requirements are met.) The sending agency must continue its jurisdiction until the placement is terminated in accordance with Article V(a) of ICPC.

In the case of a child who is already placed in a receiving state in compliance with ICPC, appointment of the placement recipient as guardian by the sending state court is grounds to terminate the applicability of the ICPC when the sending and receiving state compact administrators concur on the termination pursuant to Article V(a) of ICPC. In such an instance, the court that appointed the guardian may continue its jurisdiction if it is maintainable under another applicable law.

If, subsequent to the making of an interstate placement pursuant to ICPC, a court of the receiving state appoints a non-agency guardian for the child, such appointment shall be construed as a request that the sending agency and the receiving state concur in the discontinuance of the application of ICPC to the placement. Upon concurrence of the sending and receiving states, the sending agency and an appropriate court of the sending state shall close the ICPC aspects of the case and the jurisdiction of the sending agency pursuant to Article V(a) of ICPC shall be dismissed.

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Guardianship Without Subsidy 623-10-15-30
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Guardianship may be a permanency option for some youth, with or without a subsidy. It should not be ruled out merely because of the limited number of subsidies available.

In situations where a subsidy may not be required or appropriate, the family may need assistance in the prospective guardianship home assessment, background check, filing guardianship papers, etc. Occasionally, when the state won't participate on an on-going basis in a subsidized guardianship, the state may participate financially in assisting in establishing that guardianship for the child.

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Legal Information - Guardianship 623-10-20

Caution 623-10-20-01 (Revised 2/20/07 ML #3066)

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This discussion is intended to give general background information on North Dakota law of guardianship for case workers and prospective guardians, and to point out some considerations and issues in creating and sustaining the guardian/ward relationship. The commentary is general in order to be applicable to varying fact situations. This discussion does not address the application of law to any individual. It is not intended to substitute for the advice of legal counsel. Individual cases must be analyzed on their unique facts. Many factors, some of which may not be readily apparent, can influence the result in a given case. The prospective guardian's legal counsel is indispensable to the creation of a valid legal guardianship that is appropriate for individual parties. Prospective guardians should always seek legal counsel to represent them in creating a guardianship.

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**The Lawyer-Client Relationship and the Social
Worker's Role 623-10-20-05**

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It is the social worker's role in the subsidized guardianship process to assist the prospective legal guardian in applying for the subsidy program, to make available general background information about the legal aspects of guardianship, and to assist the prospective guardian, if necessary, in securing legal counsel. Once the lawyer-client relationship is established, the prospective guardian as client has exclusive final decision making authority. The lawyer for the prospective guardian takes instruction from the client and not from other parties.

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**Rights and Responsibilities of Guardian
623-10-20-10**

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N.D.C.C. § 27-20-48.1(2) states that an individual appointed as a legal guardian has:

1. If there is a parent with remaining parental rights, the rights of a legal custodian; and
2. If there is no parent with remaining parental rights, the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment.

N.D.C.C. § 27-20-37 sets out the rights and duties of a legal custodian as follows:

- The right to the physical custody.
- The right to determine the nature of the care, placement, and treatment of the child, including ordinary medical care as well as medical or surgical treatment for a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, except for any limits the court may imposed.
- The right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child, subject to the conditions and limitations imposed by the court and to the remaining rights and duties of the child's parent or guardian.

N.D.C.C. § 30.1-27-09 states that a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of

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custody of the parent's minor and unemancipated child. The statute lists the following powers and duties:

1. The guardian must take reasonable care of the ward's personal effects (property).
2. The guardian may receive money for the support of the ward and shall apply it to the ward's current needs for support, care, and education.
3. The guardian is "empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care" and to consent to the marriage or adoption of the ward.
4. The guardian must report the condition of the ward and the ward's property as the court may order.

The statute states two instances in which the guardian does not have the same responsibilities as a parent:

1. The guardian is not obligated to provide from the guardian's own funds for the ward; and
2. The guardian is not liable to third persons by reason of the parental relationship of the ward. [30.1-27-09]

However, these statutes cited to this point should not be read in isolation. Other statutes located in various parts of the North Dakota Century Code create additional responsibilities or liabilities. In the area of motor vehicle operation, N.D.C.C. § 39-06-09 imputes the negligence of a minor operating a motor vehicle to the person who has signed the application of the minor for a permit or license.

Guardians may also be required to participate in the ward's treatment, or face contempt of court. N.D.C.C. § 27-20-27.1 declares:

It is the policy of this state that every parent or guardian has an obligation to participate in any treatment of the parent's or guardian's child as ordered by the juvenile court. The juvenile court may hold any parent or guardian

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who willfully fails to participate in treatment in contempt of court. (emphasis added)

Caution prospective guardians to get detailed legal advice on the scope of their responsibilities and liabilities from their legal advisor. This is especially important if there are particular issues concerning responsibility or liability and the prospective guardian has expectations about the extent of responsibility or liability.

General speaking, the guardian has the rights and responsibilities that a parent would ordinarily have. It may be helpful to think of parental rights and responsibilities as a bundle: In some cases, the guardian will have the entire bundle; in other cases, the court's order creating the guardianship may divide the bundle between the guardian and a parent or others, such as a grandparent. The division of the bundle of rights and responsibilities will depend on the facts of a given case, with the court being guided by the welfare and best interests of the minor. [30.1-27-04] An order appointing a legal guardianship terminates any authority of a parent that is granted to the legal guardian under that order. [27.20-46(2)] For example, the court order establishing Aunt Gail's legal guardianship of Wanda states that Aunt Gail may determine where Wanda will attend school and receive non-emergency medical care. Melanie, Wanda's mother, and Frank, Wanda's father, would no longer have authority to make those decisions, in view of the guardianship order. This does not mean that all Melanie's and Frank's parental rights and responsibilities are terminated, where there has been no judicial termination of parental rights. It does mean that the rights and responsibilities of the guardian and the parents must be examined individually.

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**Parental Obligations with Respect to Child in
Guardianship 623-10-20-15
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Parental child support responsibility continues with respect to a minor child who is subject to a guardianship order. The North Dakota Supreme Court has stated that a parent's obligations toward the child are not extinguished by the appointment of a legal guardian. (*Hobus v. Hobus*, 540 N.W.2d 158 (N.D. 1995)).

If a child support order does not exist at the time the guardianship is granted, an order may subsequently be established to ensure that parents fulfill their parental obligations related to support of the child.

The child support obligation does not always end with termination of parental rights.

Legal guardians, wards, and parents will need to refer to the order establishing the guardianship and to the order terminating parental rights, if any, to determine the status of a particular right or responsibility.

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**Parent Response to Establishment of Guardianship
623-10-20-20**

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Parents may be supportive of the legal guardianship. For example, a parent who is physically or mentally unable to fulfill the parent role may favor the idea of legal guardianship, with retention of those parental rights and responsibilities within the parent's capabilities. The bundle can be divided between the guardian and the parent so as to permit continued parental involvement with the child.

The court order establishing a legal guardianship may provide for parental visitation with the ward. Like other provisions, this will depend on the facts and circumstances of each case.

In some cases, there will be no division of the bundle of rights and responsibilities. Where a division of the bundle would benefit the ward, the parties may be able to agree to a division. If the parties cannot agree, the court will decide whether and how to divide the bundle.

Some parents may resist establishment of a legal guardianship. If parental rights have been terminated, the parent will not have a right to participate in the guardianship proceedings. If parental rights have not been terminated, the parent will receive notice and opportunity to be heard in the guardianship proceedings.

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**How Legal Guardianship is Established 623-10-20-25
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A legal guardianship may be established under either of two separate chapters of the North Dakota Century Code: The Uniform Juvenile Court Act (N.D.C.C. ch. 27-20) or the Uniform Probate Code chapter on Guardians of Minors (N.D.C.C. ch. 30.1-27). Legal guardianship for a child who is eligible for the subsidized guardianship program will most likely proceed under ch. 27-20, since the child is placed in foster care under that chapter, and it is children in foster care who are the focus of the subsidized guardianship program.

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**What to Expect at the Attorney's Office 623-10-20-30
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Usually, at the first visit to the attorney, the attorney will ask the prospective client (the prospective guardian) to fill out some informational forms. The attorney and prospective client will have an initial interview, which will cover the facts, the client's goals, review of any relevant documents the guardian may have, and the fee agreement. It is considered best practice in the legal profession to have a written fee agreement from the beginning of the representation so that everyone will be clear at all times what fees, expenses, court costs, and other items will be payable and who will be responsible for payment.

Practice note: Prospective legal guardians need to be aware of the importance of keeping the legal documents associated with the guardianship assembled and secure in a safe place. A suggestion would be to keep a copy of the order establishing the guardianship with other important papers such as their will, vehicle titles, mortgage, etc. It may also save time and energy in dealing with the attorney to keep all documents assembled and to bring them along to interviews and appointments. A pocket folder and a small calendar are inexpensive aids that can help the process work efficiently for all concerned.

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**Guardian Ad Litem for Guardianship Process
623-10-20-35**

(Revised 2/20/07 ML #3066)

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A guardian ad litem is a person who represents the interests of a minor in legal proceedings, where the minor's interest may not coincide with those of natural guardians, such as parents. Guardians ad litem may be familiar to social workers due to their involvement in child welfare proceedings.

The activities of the guardian ad litem may vary, depending on the circumstances of the individual case. Generally, the guardian ad litem has the responsibility to advocate the best interests of the minor. By the time the guardian ad litem is appointed in the legal "track" of the subsidized guardianship process, the prospective legal guardian will already have completed interviews and a home assessment. In most cases, persons not fit and willing or appropriate to be a legal guardian will have been ruled out, leaving little or no basis for objection by the guardian ad litem to the prospective legal guardian.

A guardian ad litem normally charges a fee for the representation, thus creating some additional expense; however, this expense may not fall on the prospective guardian. N.D.C.C. § 27-20-49 provides that the supreme court shall pay reasonable compensation for the guardian ad litem, unless the court finds that the parent or other persons legally obligated to care for and support the child are financially able to pay all or part of the compensation of the guardian ad litem.

Both chapter 27-20 and chapter 30.1-27 address circumstances under which the court may or must appoint a guardian ad litem for a minor to be made a ward, and the two chapters use very similar

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language. N.D.C.C. § 27-20-48 states the court shall appoint a guardian ad litem if the child has no parent, guardian (which the child will not have, since this is a proceeding to establish a guardian), or custodian appearing on the child's behalf or their interests conflict with the child's, or in any other case in which the interests of the child require a guardian ad litem. (Every child eligible for North Dakota's subsidized guardianship program has a public custodian.) The court may appoint a guardian ad litem upon a party's request, or on its own.

The North Dakota Supreme Court has adopted Rule 8.7, North Dakota Rules of Court, effective March 1, 2000, addressing the responsibilities of a guardian ad litem. In its present form, this rule is not binding on guardians ad litem in a petition for establishment of a legal guardian, but it may be a useful resource to understanding the guardian ad litem's role, and may suggest some ways in which the guardian ad litem could be helpful to the process.

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**Termination of the Guardian/Ward Relationship
623-10-20-40**

(Revised 2/20/07 ML #3066)

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A guardian's authority and responsibility terminates upon:

- Death of guardian or ward.
- Resignation of the guardian; but resignation of the guardian must be approved by the court, i.e. court order.
- Removal of the guardian by court order.
- Adoption of the ward.
- Marriage of the ward.
- Ward's attainment of majority (age 18) and not in school.*

- * If youth continues in school after age 18 and maintains relationship with former guardian, ward and guardian have opportunity to apply to continue subsidy.

If a guardian wants to terminate the guardianship, the guardian must petition the court. The guardian will have to state reasons for seeking termination and facts showing termination should be approved.

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Addendum 623-10-25

Federal Law 623-10-25-01

(Revised 2/20/07 ML #3066)

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The federal definition of legal guardianship is at Sec. 475(7) of "Compilation of Titles IV-B and IV-E of the Social Security Act" (11/19/97), pages 35-39:

The term "legal guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term 'legal guardian' means the caretaker in such a relationship.

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North Dakota State Law 623-10-25-05

(Revised 7/1/07 ML #3096)

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The juvenile court has concurrent jurisdiction with district court of proceedings for the appointment of a guardian for a minor which, if originated under N.D.C.C. 27-20, are governed by 27-20 and chapter 30.1-27.

N.D.C.C. 27-20-36.

An order establishing a legal guardianship is without limit as to duration.

N.D.C.C. 27-20-46.

This deals with the effect of an order terminating parental rights or appointment a legal guardian.

A new subsection was also added:

An order appointing a legal guardian terminates any authority of a parent that is granted to the legal guardian under that order. A parent subject to such an order is entitled to treatment as a party at any subsequent juvenile court proceeding regarding the child.

N.D.C.C. 27-20-47.

This section provides additional dispositions upon termination of parental rights, namely:

- b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian, or

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- c. Establish some other planned permanent living arrangement.

N.D.C.C. 30.1-27.

Appointment of a legal guardian.

1. In a proceeding under chapter 30.1-27, the court may:
 - a. Without terminating parental rights, appoint a fit and willing relative or other appropriate individual as the child's legal guardian if the court has determined that a lawful basis exists for terminating parental rights, but the child is unlikely to be placed for adoption; or
 - b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian if the child has not been placed for adoption within twelve months after a termination of parental rights.
2. An individual appointed as a legal guardian has:
 - a. If there is a parent with remaining parental rights, the rights of a legal custodian; and
 - b. If there is no parent with remaining parental rights, the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment.

N.D.C.C. 27-20-30. Disposition of deprived child.

1. If a child is found to be a deprived child, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child.
 - e. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian.

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N.D.C.C. 50-11.3-01. Criminal history record investigation required.

Before appointment as a legal guardian under 27-20, the individual must be subject to an assessment that includes the result of a criminal history record investigation made under this section. In addition, any adult living in the household of the individual to be appointed legal guardian must be subject to a criminal history record investigation.

The criminal history record investigation consists of the Bureau of Criminal Investigation (BCI) background check and a nationwide (FBI) background check under federal law.

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**Guardianship Assessment Outline 623-10-25-10
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1. Name of child – prospective guardian.
2. Attach compelling reasons why TPR is not an option (also reunification).
3. Guardians
 - handling child’s relationship with birth family.
 - current status of child’s visitation/therapy.
 - future plan to meet child’s special needs.
4. Child’s special needs and anticipated future needs.
5. Guardian’s motivation for providing care for the child.
6. Physical arrangement for child.
7. Plan for visitation.
8. Relationships with birth family, siblings, other significant people in child’s life.
9. Mental health issues.
 - Addiction.
 - Counseling/therapy.
 - Domestic violence.
 - Physical health concerns
10. History with child (contacts, visitations).
 - How related to child.
 - Years of relationship with child.
11. How do you see this child in relationship to guardian’s children?

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12. Financial issues.
 - Will child be covered by medical?
 - Other financial concerns?
 - Have you considered the financial impact of accepting care of another child in your home?
 - Adequate space for child in home?
13. Supervision.
14. Recommendations.
15. Background of care providers.
 - Who.
 - Married, education, occupation.
 - People in home.
 - Other children/step children.
 - Support systems of family.
16. Child abuse and neglect check.
17. Reference letters.
 - One from current case manager, if appropriate.
18. Current history of family receiving services.
19. Criminal history record investigation required. (N.D.C.C. 50-11.3.01).

“Before appointment as a legal guardian under 27-20, the individual must be subject to an assessment that includes the result of a criminal history record investigation made under this section.”

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Subsidy Application Track 623-10-25-15
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Identification of child in need of guardianship.

Identification of potential guardian.

SW discusses at Permanency Planning, gets concurrence on guardianship need.

SW completes **Subsidized Guardianship Contingent Approval Request**.

Subsidized Guardianship Contingent Approval Request is signed by the Prospective Guardian, Custodian, County Director, and Regional Supervisor and forwarded to CFS for review.

CFS approves or denies contingent approval request.

CFS notifies prospective guardian, county director, regional supervisor, and custodian of contingent approval.

Background check is initiated.

Home assessment is initiated.

Home assessment (including background check) completed and forwarded to the Court.

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After the guardian has been named by the court, a copy of the court order and home assessment is forwarded to CFS.

CFS sends out the **Application for Subsidized Guardianship** to the guardian for completion and signature.

Upon receipt of the **Application for Subsidized Guardianship**, CFS makes a final decision regarding the monthly subsidy.

Copy is sent to guardian along with the **Agreement for Subsidized Guardianship** form for signature. CFS receives signed **Agreement for Subsidized Guardianship** form.

Copies of approved Application and Agreement for Subsidized Guardianship are sent to county director, regional supervisor, and custodian.

County closes foster care case effective date of guardianship.

CFS initiates subsidized guardianship payments effective the date guardianship is awarded.

The guardian must submit the **Guardianship Subsidy Agreement – Annual Review** to CFS annually to continue a guardianship subsidy.

CHILDREN AND FAMILY SERVICES
SUBSIDIZED GUARDIANSHIP PROGRAM

Division 20
Program 600

Service 623
Chapter 10

Forms 623-10-30

**"Subsidized Guardianship Contingent Approval
Request," SFN 1834 623-10-30-01**

(Revised 2/20/07 ML #3066)

[View Archives](#)

Click [here](#) to view SFN 1834, which can be found in eforms.

CHILDREN AND FAMILY SERVICES
SUBSIDIZED GUARDIANSHIP PROGRAM

Division 20
Program 600

Service 623
Chapter 10

**"Application for Subsidized Guardianship," SFN 1833
623-10-30-05**

(Revised 2/20/07 ML #3066)

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CHILDREN AND FAMILY SERVICES
SUBSIDIZED GUARDIANSHIP PROGRAM

Division 20
Program 600

Service 623
Chapter 10

**"Agreement for Subsidized Guardianship, SFN 1832"
623-10-30-10**

(Revised 2/20/07 ML #3066)

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CHILDREN AND FAMILY SERVICES
SUBSIDIZED GUARDIANSHIP PROGRAM

Division 20
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Chapter 10

**"Guardianship Subsidy Agreement - Annual Review,"
SFN 1831 612-10-30-15**

(Revised 2/20/07 ML #3066)

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CHILDREN AND FAMILY SERVICES
SUBSIDIZED GUARDIANSHIP PROGRAM

Division 20
Program 600

Service 623
Chapter 10

**"Application for continued Subsidy After Age 18,"
SFN 1830 623-10-30-20
(Revised 2/20/07 ML #3066)**

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CHILDREN AND FAMILY SERVICES
SUBSIDIZED GUARDIANSHIP PROGRAM

Division 20
Program 600

Service 623
Chapter 10

Procedures for Background Checks, Prospective Guardians for Children, Outlines the Procedure for Background Checks 623-10-30-25

(Revised 7/1/07 ML #3096)

[View Archives](#)

Printed forms are used in collecting information used to secure background checks for prospective guardians. The forms are available from Children and Family Services. **Please do not copy the form for use, as this will result in delays in securing the background checks.**

Click [here](#) to view the Procedures for Background Checks document.

Background check forms and brochures:

- SFN 838, "Personal Authorization for Criminal History Background Check Inquiry-Foster Care of Children; Legal Guardian of Children or Adoption"

Click [here](#) to view SFN 838.

- SFN 377, "Background Check Address Disclosure"

Click [here](#) to view SFN 377, which can be found in eforms.

- Brochure, "Subsidized Guardianship for Children in Foster Care"

Click [here](#) to view this brochure.