



# WYOMING DEPARTMENT OF FAMILY SERVICES

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<b>Policy Title:</b>	Legal Guardianship										
<b>Effective Date:</b>	10/20										
<b>Revision Date:</b>	<b>Original:</b> 2/99 Updated: 10/02, 3/10, 1/13, 10/20, 1/21,5/21										
<b>Approval</b>	<table style="width: 100%; border: none;"> <tr> <td style="width: 60%; border: none;"><u>APPROVED</u></td> <td style="width: 40%; border: none;"><u>1-12-2021</u></td> </tr> <tr> <td style="border: none;">Korin A. Schmidt, Director</td> <td style="border: none;">Date</td> </tr> <tr> <td style="border: none;"></td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;"><u>Lindsey D. Schilling, SSD Sr. Administrator</u></td> <td style="border: none;"><u>5-21-2021</u></td> </tr> <tr> <td style="border: none;"></td> <td style="border: none;">Date</td> </tr> </table>	<u>APPROVED</u>	<u>1-12-2021</u>	Korin A. Schmidt, Director	Date			<u>Lindsey D. Schilling, SSD Sr. Administrator</u>	<u>5-21-2021</u>		Date
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## **WYOMING PRACTICE MODEL**

The Department of Family Services’ Wyoming Practice Model (WPM) is a solution-focused, family centered approach that uses strategies and techniques that build on the children, youth and family’s strengths in an effort to find solutions that ensure safety, permanency, and well-being for children. The Department has integrated elements of evidence-based practices and techniques into its overall case management philosophy. WPM is a term encompassing both the philosophy itself and tools used to support our best practice casework.

## **FEDERAL AND STATE AUTHORITY**

Wyoming Statutes: 3-1-101 through 3-1-111 and 3-2-102

Federal Statutes, Social Security Act:

- 473(d)(3)(A-C)**, [42 U.S.C. §673(d)(3)(A-C)];
- 473(a)(4)(A&B)**, [42 U.S.C. §673(a)(4)(A&B)];
- 473 (d)(1)(A-C)**, [42 U.S.C. §673(d)(1)(A-C)];
- 473 (d)(2)**, [42 U.S.C. §673(d)(2)];
- 473(b)(1-4)**, [42 U.S.C. §673(b)(1-4)];
- 471(a)**, [42 U.S.C. §671(a)];
- 471(a)(28)**, [42 U.S.C. §671(a)(28)];
- 471(a)(20)(C)**, [42 U.S.C. §671(a)(C)];
- 475(1)(F)**, [42 U.S.C. §675(1)(F)];
- 479(B)(c)(1)(C)(ii)(II)**, [42 U.S.C. §679c(1)(C)(ii)(II)].

## **DEFINITIONS**

**Case Plan:** The Department's written document which outlines the outcomes, goals, and tasks in order to meet the needs of the family with regards to safety, permanency and well-being of the child. {Wyoming Child Protection Rules, Chapter 1, Section 4}

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**Child:** A person under eighteen (18) years of age. {W.S 14-3-202, W.S. 14-3-402,W.S. 14-6-201, 14-6-402}

**Concurrent Plan:** A case plan developed in addition to the child's main case plan with other possible outcomes to assure safety and permanency for the child. {Wyoming Child Protection Rules, Chapter 1, Section 4}

**Diligent Search:** Efforts made to contact absent parents, relatives and others. {Wyoming Adoption Rules, Chapter 1, Section 3}

**Interstate Compact on Adoption and Medical Assistance (ICAMA):** A compact established to ensure that children subject to a IV-E guardianship subsidy agreement moving across state lines receive medical and other services. {Wyoming Adoption Rules, Chapter 1, Section 3}

**Interstate Compact on the Placement of Children (ICPC):** The compact in place to ensure protection and services to children who are placed across state lines for foster care, guardianship, or adoption. {Wyoming Adoption Rules, Chapter 1, Section 3}

**Legal Guardian:** A person appointed by court order to be the guardian of a minor child who is required to exercise the powers and duties of a guardian pursuant to that court order and applicable statutes. {Social Security Act, Part IV-E, 42 U.S.C. §670}

**Permanency:** An individualized, most appropriate, permanent plan for the child, including but not limited to family reunification, adoption, guardianship, or Another Planned Permanent Living Arrangement. {Wyoming Child Protection Rules, Chapter 1, Section 4}

**Reasonable Efforts:** The term "reasonable" generally means fair, proper, just, moderate, or suitable under the circumstances. Reasonable efforts means doing what is reasonable; it does not mean doing everything that is possible. {W.S 14-3-202, W.S. 14-3-402,W.S. 14-6-201, 14-6-402}

**Relative:** For purposes of the guardianship policy and procedures only, relative is defined as: adult siblings, grandparents, great grandparents, aunts, uncles, a parent of a sibling of the child (if the parent has legal custody of the sibling), and kin. Kin are individuals who are unrelated by birth or marriage, but have a significant relationship that would take on the characteristics of a family relationship. Kin is a person to whom the child or child's family had a significant emotional tie prior to Department involvement. {Social Security Act, Part IV-E, 42 U.S.C. §67; Wyoming Adoption Rules, Chapter 1, Section 3 and Public Law 113-183; Preventing Sex Trafficking and Strengthening Families Act}

**SNAP:** Supplemental Nutrition Assistance Program (SNAP) is designed to promote the general welfare and safeguard the health and well being of the nation's population by raising the levels of nutrition among low-income households.

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**Subsidized Guardianship:** The granting of financial and/or medical assistance to an approved prospective guardian which may include a monthly cash subsidy, one-time non-recurring guardianship expenses, and/or Medicaid coverage. Medicaid may only be included in a Guardianship Subsidy Agreement for IV-E eligible guardianships.<sup>470</sup> {Social Security Act, Part IV-E, 42 U.S.C. §670}

### **PURPOSE**

The purpose of this policy is to outline the Department's process for selecting an appropriate legal guardian for a child in Department custody, as well as outlining steps the agency shall take to finalize the legal guardianship.

Guardianship is designed to provide protection to children who are deprived of natural care and protection from his/her parents.<sup>1</sup> Legal guardianship involves the transfer of legal responsibility for a child in Department custody to a private caregiver who becomes the legal guardian of the child.

### **Policy:**

The Department shall not pursue legal guardianship until reasonable efforts have been exhausted to reunite the child with their family and the Department has documented why adoption is not in the best interest of the child. The Department may proceed with legal guardianship as the permanency plan for a child in the Department's custody, even if a parent of the child does not consent, so long as appropriate notice of the guardianship proceedings are provided to that parent.<sup>2</sup>

In accordance with the Department's Diligent Search Policy, the Department shall search for relatives and kin of the child when locating an appropriate legal guardian, as preference shall be given to relatives and kin with whom the child has an existing relationship. Both relatives and kin may be eligible for a IV-E guardianship subsidy, if other eligibility requirements are met. Other prospective guardians may be eligible for a state funded subsidy.

### **Locating Appropriate Legal Guardians:**

The Department shall consider the following when selecting an appropriate legal guardian:

- A.** Qualified relatives and kin.
- B.** In the absence of qualified relatives or kin, another prospective guardian with whom the child demonstrates a strong attachment.
- C.** The Department shall pursue a legal guardianship with the person who is best qualified and willing to serve as guardian.
  - (i)** The child's guardian cannot also have a professional relationship with the child where there may be financial gain for the prospective guardian, as this would constitute a conflict of interest.

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<sup>1</sup> W.S. 3-1-101 through 3-1-111

<sup>2</sup> W.S. 3-2-102

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### **Evaluating Prospective Legal Guardians:**

- A.** The Department shall evaluate prospective legal guardians to determine the best fit for the child based upon their specific needs.
  - (i)** The Department gives preference to an adult relative caregiver over a non-related caregiver when determining a placement for a child, provided the adult relative caregiver meets all relevant child protection standards.
  - (ii)** The Department shall ensure that a home study has been completed and approved, including background checks and appropriate certification requirements.
    - (a)** Background checks, to include fingerprints and central registry screens, will be completed on any prospective legal guardian and any other adults living in the home of the prospective legal guardian.<sup>3</sup>
  - (iii)** The Department shall ensure all health and safety requirements have been completed by the prospective legal guardians.

### **Legal Guardianship Requirements:**

The Department shall assure all of the following requirements are met before the legal guardianship is finalized:

- A.** The child is under 18 years of age and has been in the legal custody of the Department immediately prior to establishing the legal guardianship;
- B.** The child has resided with the prospective legal guardian for at least six (6) months immediately prior to filing the petition for legal guardianship and entering into a *Guardianship Subsidy Agreement*. However, the six (6) months placement requirement may be waived by the District Manager for sibling groups when at least one (1) sibling meets all legal guardianship requirements;
  - (i)** In order for a child to be eligible for a IV-E guardianship subsidy, the six (6) month requirement cannot be waived. Children eligible for a IV-E guardianship subsidy must meet all legal guardianship requirements, including the child being eligible for IV-E foster care maintenance payments while residing for at least six (6) consecutive months in the home of the prospective relative guardian.
  - (ii)** The six month requirement shall not be waived in the absence of extenuating circumstances. The Department shall carefully consider the stability of the placement and the potential consequences of pursuing the guardianship prior to six months, which will include the child being ineligible for IV-E guardianship.

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<sup>3</sup> 471(a)(20)(C), [42 U.S.C. §671(a)(C)]

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- C.** Reunification of the child with his/her parent(s) and adoption have been ruled out as permanency goals, despite reasonable efforts having been made to reunite the family or to seek adoption of the child;
- D.** The child has a strong attachment to the prospective legal guardian(s) and the prospective legal guardian(s) has a strong commitment to caring permanently for the child;
- E.** Children age 14 years of age and older have participated in creating the legal guardianship arrangement.
- F.** The legal guardian(s) is able to support the child financially or is able to with the assistance of a subsidy or other resources which may be available to the child.
  - (i)** Guardians may be eligible to receive Relative Caretaker POWER; however, the guardian cannot receive both a subsidy and POWER assistance.
  - (ii)** Guardians may also apply to receive child support and/or social security benefits on behalf of the child in their care.
  - (iii)** Prior to the finalization of the guardianship, financial arrangements such as monthly subsidy payments and Medicaid/health insurance matters shall be agreed upon by the Department and the prospective guardian(s).
- G.** If the prospective legal guardian is located outside of Wyoming, the Department shall follow the Department's Interstate Compact on the Placement of Children (ICPC) policy to ensure that appropriate home studies have been completed and approved by the receiving state.
- H.** In most cases, the prospective legal guardian(s) is already an approved adult relative home or a certified foster home, and the health and safety requirements have already been met. If not, the requirements shall be completed. The prospective guardian may qualify for a state funded foster care maintenance payment while completing certification and Legal Guardianship requirements.

### **Establishing a Legal Guardianship:**

- A.** The Attorney General's (AG) office provides legal assistance to the Department to establish legal guardianships for children in Department custody. The AG's office reviews legal guardianship requests for appropriateness and prepares all necessary petitions and filings.
- B.** A legal guardianship is not fully effective until the Order of Guardianship is entered, then the Oath of Guardians is signed and filed, and Letters of Guardianship are entered by the Clerk of District Court. The juvenile court case should not be dismissed before all of these steps are completed.
- C.** If the guardianship is going to be subsidized, the subsidy agreement shall be entered into before the Order of Guardianship is entered.

### **Case Plan Requirements:**

- A.** Once guardianship is identified as the most appropriate permanency option for the child, an updated *Case Plan* shall be completed with guardianship listed as the permanency goal.
- (i)** The Department shall include a description of the following within the case plan:
    - (a)** The steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted;
    - (b)** The reasons for any separation of siblings during placement;
    - (c)** The reasons why a permanent placement with a fit and willing relative through guardianship is in the child's best interest;
    - (d)** The ways in which the child meets the eligibility requirements for a kinship guardianship;
    - (e)** Efforts the Department has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to adopt, documentation of reasons;
    - (f)** Efforts made by the state to discuss with the child's parent or parents the guardianship arrangement or the reasons why the efforts were not made.<sup>4</sup>

### **Guardian's Report:**

The Department shall notify the prospective legal guardian about their responsibility to routinely report to the Department and the court regarding the child in their care.<sup>5</sup>

- A.** The guardian shall complete a written report regarding the overall condition of the ward in their care. The signed report shall be filed with the court within the guardianship proceedings, and provided to the Department. At a minimum, the report shall cover the following:
- (i)** The physical condition of the ward, including level of disability or functional incapacity (if applicable);
  - (ii)** Primary residence;
  - (iii)** Treatment, care, and activities of the ward;
  - (iv)** A description of those actions the guardian has taken on behalf of the ward.

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<sup>4</sup> 475(1)(F), [42 U.S.C. §675(1)(F)]

<sup>5</sup> W.S. 3-2-109(a)

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- B.** The report must be completed and filed with the court according to the following timelines:
- (i)** Within six (6) months of the guardian's appointment;
  - (ii)** Every six (6) months following the initial report;
  - (iii)** Within thirty (30) days of his removal or resignation from, or the termination of, the guardianship;
  - (iv)** At other times as the court may order.
- C.** If a guardian's report is not timely filed, the court may enter an order for the guardian to show cause why the guardian should not be held in contempt.
- D.** If the guardian's report is not provided to the Department according to the court timelines, any applicable guardianship subsidy may temporarily be suspended per the terms of the *Guardianship Subsidy Agreement*.

### **Permanent Legal Guardianships:**

- A.** If a child will be aging out of foster care and the Department has reason to believe that the child will not be able to manage their own affairs as an adult, due to a developmental and/or emotional disability, the Department shall notify the Attorney General's office and make all reasonable efforts to establish a permanent legal guardianship.

### **Applicability of Title IV-E Plan Requirements**

**Social Security Act, sections 471(a)(2) through (9), (12), (13), (20)(C), (25), (26), and (28) through (32)** [42 U.S.C. §671(a)(2) through (9), (12), (13), (20)(C), (25), (26), and (28) through (32)] are applicable to the guardian assistance program.

### **Policy Oversight and Training Review:**

Every two years by assigned Social Services Analyst

### **New Policy**

***Effective:*** Date: October 1, 2020

***New Policy:*** The Legal Guardianship Policy will reflect federal IV-E requirements allowing IV-E payments to support the Guardianship Program. The policy and procedure have been updated to ensure day-to-day practice is compliant with federal IV-E requirements, which will allow the Department to receive federal reimbursement for children who are determined to be eligible for a IV-E guardianship subsidy. These children will also be categorically eligible for IV-E Medicaid, which is a valuable resource for both the child and their guardian(s). Lastly, the Department can receive federal reimbursement for one-time, non-recurring expenses for children who are eligible for a IV-E guardianship subsidy; however, field staff have been encouraged to continue utilizing the Attorney General's office to finalize guardianships, at no expense to the agency.

***Reference:*** IV-E Plan

***Federal Child and Family Services Review: Permanency Outcome 1 and Well-being 1***