

ARTICLE 4. INDIANA ADOPTION ASSISTANCE AND GUARDIANSHIP ASSISTANCE PROGRAMS

Rule 1. Title IV-E Adoption Assistance and State Adoption Subsidies

465 IAC 4-1-1 Purpose

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 1. The purpose of this rule is to establish the procedures that the department will use to process requests for adoption assistance under the federal Title IV-E adoption assistance program (AAP) and state adoption subsidies (SAS) as authorized by 42 U.S.C. 673 and IC 31-19-26.5, respectively. (*Department of Child Services; 465 IAC 4-1-1; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-2 Definitions

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 2. The definitions in sections 3 through 20 of this rule apply throughout this rule. (*Department of Child Services; 465 IAC 4-1-2; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-3 "Adoption assistance" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 3. "Adoption assistance" means payments made or benefits provided by the department to an adoptive parent, as specified in section 21 of this rule, pursuant to an adoption assistance agreement. (*Department of Child Services; 465 IAC 4-1-3; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-4 "Adoption assistance account" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5-10; IC 31-25-2-7

Sec. 4. "Adoption assistance account" means the account established under IC 31-19-26.5-10 for the purpose of funding adoption assistance payments. (*Department of Child Services; 465 IAC 4-1-4; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-5 "Adoption assistance agreement" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 5. "Adoption assistance agreement" means a written agreement between the department and an adoptive parent regarding adoption assistance, including Title IV-E adoption assistance agreements, state adoption subsidy agreements, and any agreements or court orders entered in compliance with IC 31-19-26 before its repeal. The agreement shall include:

- (1) the amount of any payments that the department will make to the adoptive parent;
- (2) a provision that the agreement shall remain in effect regardless of the state of which the adoptive parents are residents at any given time; and
- (3) any applicable terms and conditions relating to continuation, termination, suspension, or future changes in the terms or amount of any payments provided under the agreement.

(*Department of Child Services; 465 IAC 4-1-5; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-6 "Adoption assistance periodic payment amount" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 6. "Adoption assistance periodic payment amount" means the amount or payment rate specified in an adoption assistance agreement for the benefit of an adoptive child, other than nonrecurring adoption expenses described in section 21(4) of this rule. (*Department of Child Services; 465 IAC 4-1-6; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-7 "Adoptive child" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 7. "Adoptive child" means an individual who, before becoming eighteen (18) years of age:

(1) has been or is being adopted by an adoptive parent; and

(2) is the beneficiary of an adoption assistance agreement.

(*Department of Child Services; 465 IAC 4-1-7; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-8 "Adoptive parent" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 8. "Adoptive parent" means an individual at least eighteen (18) years of age who has applied for or has entered into an adoption assistance agreement with the department. (*Department of Child Services; 465 IAC 4-1-8; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-9 "Department" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-9-2-38.5; IC 31-19-26.5; IC 31-25-1-1; IC 31-25-2

Sec. 9. "Department" means the department of child services established under IC 31-25-1-1, or any local office of the department. (*Department of Child Services; 465 IAC 4-1-9; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-10 "Foster care maintenance payment rate" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 10. "Foster care maintenance payment rate" means the applicable per diem rate paid by the department for care of a foster child placed by, or with approval of, the department, as determined by the department under 465 IAC 2-16, 465 IAC 2-17, or 465 IAC 2-18. (*Department of Child Services; 465 IAC 4-1-10; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-11 "Hard to place child" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-51; IC 31-19-26.5; IC 31-19-27

Sec. 11. "Hard to place child" means a child as defined in IC 31-9-2-51 who is:

(1) eligible for the special needs adoption program (SNAP) established and operated by the department under IC 31-19-27; and

(2) disadvantaged because the child is a ward who is either:

(A) at least two (2) years of age; or

(B) a member of a sibling group in which at least one (1) child is at least two (2) years of age.

(Department of Child Services; 465 IAC 4-1-11; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-1-12 "Nonrecurring adoption expense agreement" or "NRAE agreement" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 12. "Nonrecurring adoption expense agreement" or "NRAE agreement" means an adoption assistance agreement, or portion of an adoption assistance agreement, that provides for payment or reimbursement for reasonable and necessary adoption fees, court costs, attorney fees, and other expenses that are directly related to the adoption of a special needs child, as provided in 42 U.S.C. 673(a)(6)(A), 45 CFR 1356.41, and section 21(4) of this rule. *(Department of Child Services; 465 IAC 4-1-12; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)*

465 IAC 4-1-13 "Parent" or "parents" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 13. "Parent" or "parents" means the legal or biological mother or father of a child. The term includes either the singular or plural of the word "parent". *(Department of Child Services; 465 IAC 4-1-13; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)*

465 IAC 4-1-14 "Sibling group" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 14. "Sibling group" means a group of two (2) or more children who:

(1) are children of the same parent;

(2) are or will be adopted by the same adoptive parent; and

(3) are residing or will reside in the same home.

(Department of Child Services; 465 IAC 4-1-14; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-1-15 "Special needs child" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 15. "Special needs child" means an adoptive child described in section 22(b) of this rule. *(Department of Child Services; 465 IAC 4-1-15; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)*

465 IAC 4-1-16 "State" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 16. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States. *(Department of Child Services; 465 IAC 4-1-16; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)*

465 IAC 4-1-17 "State adoption subsidy" or "SAS" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18
Affected: IC 31-19-26.5

Sec. 17. "State adoption subsidy" or "SAS" means payments that are or may be made by the department pursuant to IC 31-19-26.5 to an adoptive parent of a child who is:

- (1) a special needs child;
- (2) a hard to place child; and
- (3) not eligible for Title IV-E adoption assistance.

(Department of Child Services; 465 IAC 4-1-17; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-1-18 "State adoption subsidy agreement" or "SAS agreement" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18
Affected: IC 31-19-26.5-7

Sec. 18. "State adoption subsidy agreement" or "SAS agreement" means an adoption assistance agreement that may include any of the following:

- (1) Periodic payments of a state adoption subsidy on behalf of the child, as provided in IC 31-19-26.5 and section 24 of this rule.
- (2) Eligibility for Medicaid, as provided in IC 31-19-26.5-7 and section 23(3) of this rule.
- (3) Payment of nonrecurring adoption expenses as specified in section 21(4) of this rule.

(Department of Child Services; 465 IAC 4-1-18; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-1-19 "Title IV-E adoption assistance agreement" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18
Affected: IC 31-9-2-17.8; IC 31-25-2-7

Sec. 19. "Title IV-E adoption assistance agreement" means an adoption assistance agreement entered into by the adoptive parents and the department that may include any of the following:

- (1) Periodic payment of Title IV-E adoption assistance on behalf of the child, as provided in 42 U.S.C. 673 and section 24(1) of this rule.
- (2) Eligibility for Medicaid, as provided in 42 U.S.C. 673(b)(1), 42 U.S.C. 1396a(a)(10)(A)(i)(I), and section 23(3) of this rule.
- (3) Payment of nonrecurring adoption expenses as specified in section 21(4) of this rule.

(Department of Child Services; 465 IAC 4-1-19; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-1-20 "Ward" defined

Authority: IC 31-19-26.5-12; IC 31-25-2-18
Affected: IC 31-9-2-134.5; IC 31-19-26.5; IC 31-34

Sec. 20. "Ward" means a child:

- (1) who is a subject of an open child in need of services case as set forth in IC 31-34; and
- (2) for whom the department has wardship, as defined in IC 31-9-2-134.5, under an order entered by a juvenile court.

(Department of Child Services; 465 IAC 4-1-20; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-1-21 Types of adoption assistance

Authority: IC 31-19-26.5-12; IC 31-25-2-18
Affected: IC 12-15; IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

INDIANA ADOPTION ASSISTANCE AND GUARDIANSHIP ASSISTANCE PROGRAMS

Sec. 21. Adoption assistance may include any of the following:

- (1) Title IV-E adoption assistance program (AAP): a periodic payment to an adoptive parent on behalf of an eligible child, pursuant to 42 U.S.C. 673 and this rule.
- (2) State adoption subsidy (SAS): a periodic payment to an adoptive parent on behalf of a child eligible for a state adoption subsidy pursuant to IC 31-19-26.5 and this rule.
- (3) Medicaid: participation in Indiana's Title XIX Medicaid program under IC 12-15 and all applicable provisions of 405 IAC.
- (4) Nonrecurring adoption expenses (NRAE): subject to the limitation determined under section 24(5) of this rule, payment or reimbursement for reasonable and necessary adoption fees, court costs, attorney fees, and other expenses that are actually incurred and directly related to the adoption of a special needs child, excluding expenses that were:
 - (A) incurred or paid in violation of any federal or state law; or
 - (B) reimbursed to the adoptive parent from another source of funds.

(Department of Child Services; 465 IAC 4-1-21; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-1-22 General eligibility requirements

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 11-8-8; IC 31-9-2-22.5; IC 31-9-2-107; IC 31-19-9-8; IC 31-19-11-1; IC 31-19-26.5; IC 31-25-2-7; IC 31-25-2-8; IC 31-33-8-12

Sec. 22. (a) In order to qualify for any assistance under the Indiana adoption program, the adoptive child and adoptive parents shall meet all of the following general eligibility requirements:

- (1) The child is a ward of the department when the petition for adoption is filed or otherwise meets the requirements in 42 U.S.C. 673.
 - (2) The child is a special needs child.
 - (3) The department has completed a criminal history check, as defined in IC 31-9-2-22.5, as required by 42 U.S.C. 671(a)(20).
 - (4) The adoptive child is either:
 - (A) a United States citizen; or
 - (B) a qualified alien, as defined in 8 U.S.C. 1641(b), who is not ineligible for a federal public benefit under 8 U.S.C. 1613.
 - (5) A Title IV-E adoption assistance agreement or state adoption subsidy agreement has been signed by the adoptive parent and the department before the final decree of adoption is entered by the court. The department will prepare the applicable agreement in a form prescribed by the department.
- (b) An adoptive child is a special needs child if all of the following conditions are met:
- (1) The department has determined, as to each identified parent of the child, that the child cannot or should not be returned to, or placed in, the home of the child's parent and:
 - (A) parental rights of the child's parent have been terminated;
 - (B) the department has filed a petition to terminate the parental rights of the child's parent;
 - (C) the child's parent has signed a consent to the adoption; or
 - (D) consent of the child's parent is not required under IC 31-19-9-8.
 - (2) One (1) of the following conditions exists:
 - (A) The child is at least two (2) years of age.
 - (B) The child is a member of a sibling group in which one (1) child is at least two (2) years of age.
 - (C) The child has a medical condition or a physical, mental, or emotional disability that is expected to require continuous or long term medical treatment, as determined by a physician licensed in Indiana or another state or territory.
 - (3) Except as provided in subsection (c), reasonable but unsuccessful efforts have been made to place the child in an adoptive home without providing adoption assistance, including, but not limited to:
 - (A) Internet posting of nonidentifying information about the child;

(B) photo listing of the child in a picture book published and distributed by the department (or any similar program that publicizes wards available for adoption) for a minimum of six (6) months; or

(C) other unsuccessful efforts by the department or a licensed child placing agency to recruit adoptive parents who can meet the child's needs without adoption assistance.

(c) Reasonable efforts need not be made to place the child without adoption assistance, if to do so would be against the best interests of the child because of the existence of:

(1) significant emotional ties with a prospective adoptive parent while in the care of such adoptive parent as a foster child; or

(2) other special factors or circumstances documented in the child's case file, including placement with a relative, as defined in IC 31-9-2-107(c)(2) through IC 31-9-2-107(c)(12).

(d) Each adoptive parent, and every member of the adoptive parent's household who is at least fourteen (14) years of age, must successfully complete a criminal history check (as defined in IC 31-9-2-22.5), and a check of any and all applicable sex or violent offender registries (as described in IC 11-8-8), in the time and manner as specified by the department.

(e) Adoption assistance is not available if the criminal history check reveals that an adoptive parent or household member:

(1) has ever been convicted of a felony as enumerated in 42 U.S.C. 671(a)(20)(A) involving:

(A) child abuse or neglect;

(B) spousal abuse (domestic battery);

(C) a crime against a child (including child pornography); or

(D) a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery;

(2) has been convicted, within five (5) years before the date of the check, of a felony based on:

(A) physical assault or battery against an adult; or

(B) a drug related or alcohol related offense;

(3) has been convicted of a felony that would prohibit the court from granting a petition for adoption by the adoptive parent or household member, as described in IC 31-19-11-1(c);

(4) is a sex or violent offender, or a sexually violent predator, for whom the court is prohibited from granting a petition for adoption pursuant to IC 31-19-11-1(d);

(5) has ever been convicted of a misdemeanor relating to the health and safety of a child; or

(6) has a record of any of the following, unless the department approves a waiver request as provided in subsection (f):

(A) Any felony conviction.

(B) Four (4) or more misdemeanor convictions.

(C) A juvenile adjudication for an act that, if committed by an adult, would be a felony described in IC 31-19-11-1(c).

(D) A substantiated determination of child abuse or neglect, under IC 31-33-8-12, or comparable law in any state.

(f) An adoptive parent may request a waiver of any record based on the results of a criminal history check conducted under IC 31-9-2-22.5, applicable to the adoptive parent or any household member, that is described in subsection (e)(6). A waiver may be requested, considered, and granted or denied, under the procedure and criteria specified in the applicable department policy relating to evaluating background checks for adoptions. If a waiver request is granted, the department will not deny adoption assistance eligibility based solely on the existence of a record described in subsection (e)(6). (*Department of Child Services; 465 IAC 4-1-22; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-23 Specific eligibility requirements

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 23. In addition to the general eligibility requirements set forth in section 22 of this rule, the following specific eligibility requirements apply to each type of adoption assistance:

(1) An adoptive child is eligible for Title IV-E adoption assistance if the department determines that the child meets all of the federal Title IV-E adoption assistance program eligibility requirements, as set forth in 42 U.S.C. 673.

(2) An adoptive child is eligible for state adoption subsidy periodic payments if the department determines that the child:

- (A) is not eligible for the Title IV-E adoption assistance program; and
 - (B) is a hard to place child.
- (3) An adoptive child is eligible for participation in Indiana's Title XIX Medicaid program, if:
- (A) a Title IV-E adoption assistance agreement is signed on behalf of the child; or
 - (B) each of the following conditions is satisfied:
 - (i) A state adoption subsidy agreement is signed on behalf of the child.
 - (ii) The child has, or is likely to have due to a family history, prenatal exposure or other factors, a medical condition or disability, that existed before the filing of the adoption petition.
- (4) An adoptive parent is eligible to receive payment of nonrecurring adoption expenses if the department determines that the child:
- (A) is a special needs child; and
 - (B) meets all of the federal eligibility requirements for nonrecurring adoption expenses as set forth in 42 U.S.C. 673 and 45 CFR 1356.41.

(Department of Child Services; 465 IAC 4-1-23; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-1-24 Indiana adoption assistance program periodic payments and benefits; conditions

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 24. The forms of adoption assistance described in section 21 of this rule are subject to the following terms and conditions:

- (1) The periodic payment amount under a Title IV-E adoption assistance agreement, or state adoption subsidy agreement, shall:
- (A) be negotiated between the department and the adoptive parent, taking into consideration the circumstances of the adoptive parent and the needs of the adoptive child;
 - (B) not exceed the foster care maintenance payment rate that would have been paid on behalf of the child in foster care;
 - (C) be paid to the adoptive parents at regular intervals determined by the department;
 - (D) be subject to increase or decrease during the term of the agreement:
 - (i) by agreement between the department and the adoptive parent, due to a change in the child's or family's circumstances; or
 - (ii) in the discretion of the department, by a percentage equivalent to the percentage of any increase or decrease in the applicable foster care maintenance payment rate;
 - (E) begin under any adoption assistance agreement after a copy of the final decree of adoption and the signed adoption assistance agreement are submitted to the department; and
 - (F) be effective as of the date of entry of the final decree of adoption.
- (2) The department may unilaterally, without consent of the adoptive parent or amendment of the agreement, institute an across-the-board reduction of the state adoption subsidy payment amount specified in the adoption assistance agreement, if:
- (A) the department determines that the reduction is necessary due to the insufficiency of available funds; and
 - (B) the state adoption subsidy agreement authorizes the department to make percentage reductions in the periodic payment.

The department will send to the adoptive parent, not less than thirty (30) days before the effective date of any reduction of the periodic payment amount under this subdivision, a notice stating the effective date and amount of the reduced periodic payment, the reasons for the reduction, and the estimated time and conditions for expiration of the reduction.

- (3) If the child is determined to be eligible for Medicaid, Medicaid coverage for the adoptive child under an adoption assistance agreement will begin when a copy of the final decree of adoption and the signed adoption assistance agreement are submitted to the department.
- (4) Medicaid benefits shall be provided in accordance with applicable provisions of 405 IAC.
- (5) Nonrecurring adoption expenses payable to an adoptive parent pursuant to a signed NRAE agreement shall not exceed

the amount allowable by state or federal law per eligible child for whom an adoption assistance agreement has been signed.

(6) A request for payment of nonrecurring adoption expenses pursuant to a signed NRAE agreement must be submitted to the department in the manner prescribed by the department no later than two (2) years after:

(A) entry of the final decree of adoption; or

(B) if a final decree of adoption is not entered, the earlier of:

(i) notice to the department of a decision not to proceed with the adoption; or

(ii) the filing of a motion to dismiss a petition for adoption.

(Department of Child Services; 465 IAC 4-1-24; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-1-25 Determinations of eligibility and periodic payment amounts

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 25. (a) The Indiana adoption assistance program application form shall be available on the department's website and through the department's local offices.

(b) A completed Indiana adoption program application must be submitted to the adoptive child's family case manager, or directly to the department if the child does not have a family case manager, no later than ten (10) days after a petition for adoption is filed. If the application is incomplete, or the department needs additional information for purposes of determining eligibility, the department may request the additional information and set a time deadline for its submission.

(c) Not later than forty-five (45) days after receipt of a complete application, the department will review the application, determine eligibility, and issue a final adoption program eligibility determination.

(d) If the application is approved, a department attorney will represent the department to negotiate the adoption assistance periodic payment amount with the adoptive parent and adoptive parent's attorney, if applicable, in accordance with guidelines and procedures established by department policy.

(e) If the department determines that negotiations concerning the adoption assistance periodic payment amount have been concluded without agreement between the adoptive parent and the department, the department will send to the adoptive parent, or the adoptive parent's attorney, a final offer letter stating the amount that the department will agree to pay for periodic payments.

(f) Upon receipt of the department's final offer letter, the adoptive parent may do the following:

(1) Sign and return to the department the adoption assistance agreement, or amendment to a previously signed agreement containing the periodic payment amount, specifying the amount the department has agreed to pay, subject to the right of administrative review and appeal of the periodic payment amount as provided in 465 IAC 3-2-5 and 465 IAC 3-3-3.

(2) Submit a request for administrative review of the periodic payment amount, within the time and in the manner provided in 465 IAC 3-2-5.

(g) Upon receipt of:

(1) a signed adoption assistance agreement or amendment under subsection (f)(1);

(2) a timely request for administrative review under subsection (f)(2); and

(3) a final decree of adoption of the adoptive child, entered after the date of signature of the original adoption assistance agreement;

the department will commence payment of the periodic payment amount stated in the signed agreement or amendment, as provided in section 24 of this rule.

(h) If the amount of the periodic payment determined under subsection (g) is changed, based on the result of an administrative review or hearing conducted under the applicable provisions of 465 IAC 3, the department will pay the revised periodic payment amount, retroactive to the payment commencement date as determined under section 24 of this rule. The revised payment amount should be documented by an appropriate amendment of the adoption assistance agreement. *(Department of Child Services; 465 IAC 4-1-25; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)*

465 IAC 4-1-26 Funding priorities

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 26. (a) The funds available to the department to pay for Title IV-E adoption assistance, state adoption subsidies, and nonrecurring adoption expenses shall be determined periodically on the basis of amounts:

- (1) appropriated by statute for adoption assistance payments; or
- (2) placed in the adoption assistance account.

(b) Funds in the adoption assistance account or otherwise available for adoption assistance payments shall be applied in the following order of priority for the current state fiscal year:

- (1) Payments due under all Title IV-E adoption assistance agreements.
- (2) Payments due under agreements signed or court orders entered before January 1, 2009.
- (3) Payment of any obligations for nonrecurring adoption expenses.
- (4) Payments due under all state adoption subsidy agreements.

(c) After all obligations described in subsection (b) have been paid or committed, sufficient funds shall be obligated for payments identified in subsection (b) that will become due during any subsequent state fiscal year for which appropriations have been enacted. (*Department of Child Services; 465 IAC 4-1-26; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-27 Periodic reports

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 27. (a) All adoptive parents who have entered into adoption assistance agreements with the department shall submit a fully completed adoption program status report at times and in the form required by the department.

(b) If the adoptive parent:

- (1) fails timely to submit a completed adoption program status report; or
- (2) submits a report that the department has reason to believe is inaccurate;

the department may initiate an assessment of the adoptive child, adoptive parent, and family situation to determine whether a reportable event or other change in circumstances has occurred that may require modification or suspension of periodic payments, or termination of the agreement. (*Department of Child Services; 465 IAC 4-1-27; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-28 Reportable events

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 5-9-4-1; IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 28. (a) All adoptive parents who have entered into adoption assistance agreements with the department shall notify the department in writing, within ten (10) days of the occurrence, of any event that is a change in the circumstances of the adoptive child or family that could affect either continuing eligibility or the amount of periodic payments as provided in the agreement.

(b) In the event the adoptive parent is unavailable or otherwise fails to provide the notice required under this section, a person acting on behalf of the adoptive parent may submit to the department the required notice of a reportable event.

(c) A reportable event includes, but is not limited to:

- (1) an adoptive parent moves to a new residence;
- (2) the adoptive child:
 - (A) moves out of the home of the adoptive parent;
 - (B) is placed outside the adoptive parent's home in another home or residential facility;
 - (C) is married;
 - (D) is no longer attending school;
 - (E) receives notice of a call to active duty in the United States armed services or the national guard, as specified in IC 5-9-4-1(a)(2); or
 - (F) has new health insurance coverage;
- (3) the adoptive parent is no longer legally responsible for care, supervision, or support of the child;
- (4) another person or agency is supporting the adoptive child in whole or in part;

- (5) the adoptive child or an adoptive parent dies; or
- (6) if the adoption decree was entered after the adoptive child's sixteenth birthday, and periodic payments are being made after the adoptive child's eighteenth birthday, the adoptive child is:
 - (A) not employed for at least eighty (80) hours per month;
 - (B) not attending school or a vocational or educational certification or degree program;
 - (C) not participating in a program or activity designed to promote or remove barriers to employment; or
 - (D) no longer incapable of performing any of the activities in clauses (A) through (C) due to a documented medical condition.

(Department of Child Services; 465 IAC 4-1-28; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-1-29 Suspension of payments under adoption assistance agreements

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-19-26.5; IC 31-34; IC 31-37; IC 31-40-1-5

Sec. 29. (a) The department may suspend payments under a state adoption subsidy agreement, if:

- (1) the department has not received the required status report under section 27 of this rule within ten (10) days after the due date, as specified in the agreement or in a notice requesting the report; or
- (2) the status report as submitted to the department does not substantially comply with the information required in the department's report form and applicable instructions;

until the required adoption program status report has been submitted, reviewed, and approved by the department.

(b) The department may suspend payments under a state adoption subsidy agreement if:

- (1) the adoptive child has become a ward; and
- (2) the department is paying foster care maintenance payments for out-of-home care and supervision of the child.

(c) Subject to subsections (d) and (e), the department may suspend payments under an adoption assistance agreement on the ground that the adoptive parent is no longer providing financial support to the child. The department may reinstate payments suspended under this subsection, with any modifications to the agreement that may be appropriate under the circumstances and agreed to between the department and the adoptive parent, if at any time the adoptive parent resumes regular financial support of the child.

(d) The department will not automatically suspend payments as provided in subsection (c), solely because the adoptive child is temporarily residing in a home or facility other than the home of the adoptive parent, and is being supported in that out-of-home placement by a person or agency other than the adoptive parent. Before suspending payments under subsection (c), the department must determine by a preponderance of evidence, based on the particular facts and circumstances, that the adoptive parent is not providing financial support, as determined by the department, for the child while the child is residing in another home or facility.

(e) No periodic payments will be made for the period of time that payments are suspended under this section.

(f) If the adoptive child is the subject of a pending child in need of services case under IC 31-34, or a pending delinquency case under IC 31-37, the department may request the adoptive parent to agree to a modification of the periodic payment amount provided in the adoption assistance agreement. If the adoptive parent and department fail to agree to such a modification, the department shall request the court having jurisdiction over the case to determine the obligation of the adoptive parent to provide financial support for the child while the child is residing in an out-of-home placement approved or ordered by the court, as provided in IC 31-40-1-5. The department may offset the amount payable under a support order against the amount of the periodic payment otherwise payable to the adoptive parent under the adoption assistance agreement.

(g) If the adoptive child is residing outside of the home of the adoptive parent, and subsection (f) does not apply, the department may request the adoptive parent to agree to a modification of the periodic payment amount. If the adoptive parent and the department fail to agree to a modification requested under this subsection, the department may administratively suspend the parent's periodic payment amount, in whole or part.

(h) The department shall suspend payments under an adoption assistance agreement, on the ground that the child no longer meets the requirements specified in section 32(c) or 32(e) of this rule. The department may reinstate payments suspended under this subsection, with any modifications to the agreement that may be appropriate under the circumstances and agreed to between the department and the parent, if the child subsequently meets any applicable requirements under section 32(c) or 32(e) of this rule.

(Department of Child Services; 465 IAC 4-1-29; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-1-30 Termination of adoption assistance agreements

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 5-9-4-1; IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7; IC 31-35

Sec. 30. (a) Unless the agreement is continued pursuant to section 32 of this rule, an adoption assistance agreement shall terminate effective on the date the adoptive child has attained eighteen (18) years of age.

(b) An adoption assistance agreement shall terminate upon the occurrence of any of the following events:

(1) The adoptive child becomes emancipated.

(2) The adoptive child commences active duty in the United States armed services or the national guard, as specified in IC 5-9-4-1(a)(2).

(3) The adoptive parent is no longer legally responsible for the care, supervision, or support of the adoptive child.

(4) The adoptive child dies.

(5) Each adoptive parent of the child has died.

(6) The adoptive child's adoption is terminated.

(7) The parent-child relationship between the adoptive child and each adoptive parent is terminated under IC 31-35, or comparable law in another state.

(c) For terminations pursuant to subsection (a), the department will provide notice of termination of an adoption assistance agreement to the adoptive parent at least ninety (90) days before the effective date of the action. The notice will include information and instructions concerning continuation eligibility and procedures under section 32 of this rule.

(d) For terminations pursuant to subsection (b), the department will provide notice of termination of an adoption assistance agreement to the adoptive parent within ten (10) days after receipt of notice of the occurrence. The notice shall include a statement of the reason or reasons for termination as determined by the department.

(e) The effective date of termination of an adoption assistance agreement under this section shall be the date of the occurrence of the applicable event.

(f) If the parent has received a payment attributable to a time after the effective date of termination, as determined under subsection (e), the parent shall be obligated to repay the amount of that payment to the department. *(Department of Child Services; 465 IAC 4-1-30; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)*

465 IAC 4-1-31 Modification of adoption assistance agreements

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-19-26.5; IC 31-25-2-7

Sec. 31. (a) An adoptive parent may, during the term of an adoption assistance agreement, submit a modification request to change the periodic payment amount.

(b) A request for modification may not be submitted more frequently than once in a twelve (12) month period.

(c) In considering a request for modification under this section, the department may request from the adoptive parent, or any other source, additional information that may be relevant to consideration of the modification request. The department will advise the adoptive parent of its decision concerning the modification request within sixty (60) calendar days of receiving the requested information.

(d) Any modified periodic payment amount requested and approved under this section cannot exceed the foster care maintenance payment rate that the child would have received if the child were in foster care.

(e) Modifications may be limited to a period of time during which the basis for modification is expected to continue. Upon expiration of that time period, the periodic payment amount shall revert to the previous amount as provided in the adoption assistance agreement before approval of the modification, or, if applicable, the reduced amount determined under section 24(2) of this rule. A temporary modification under this subsection may be extended by request of the adoptive parent and agreement of the department.

(f) An approved modification under this section must be reflected in a written amendment to the adoption assistance

agreement. (*Department of Child Services 465 IAC 4-1-31; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-1-32 Continuation of adoption assistance agreements beyond age 18

Authority: IC 31-19-26.5-12; IC 31-25-2-18

Affected: IC 20-18-2-18; IC 21-17-6-1; IC 31-9-2-17.8; IC 31-19-26.5-9; IC 31-25-2-7

Sec. 32. (a) Adoption assistance will not be continued beyond the date on which the adoptive child becomes eighteen (18) years of age, unless continuation of adoption assistance has been approved by the department, or by court order based on an agreement entered into before January 1, 2009, for payment of a subsidy under IC 31-19-26 (repealed).

(b) The department may continue adoption assistance under an adoption assistance agreement for an adoptive child who has attained eighteen (18) years of age, if the department determines, based on applicable department policy and guidelines, that the child has a mental or physical disability that warrants the continuation of assistance. The application for continuation under this subsection must include documentation from a medical doctor, psychiatrist, or psychologist licensed in the state of Indiana or in the state of residence of the adoptive child indicating a mental or physical disability that is expected to require continuous or long term treatment and limits the child's ability to be self-supporting.

(c) The department may continue payment of state adoption subsidy under a state adoption subsidy agreement, for an adoptive child who has attained eighteen (18) years of age, if the department determines, based on applicable department policy and guidelines, that:

(1) the child is or will be enrolled in and attending:

(A) an accredited secondary school (as defined in IC 20-18-2-18) for purposes of completing graduation requirements of the school;

(B) a postsecondary educational institution described in IC 21-17-6-1; or

(C) a course of career or technical education leading to gainful employment; and

(2) the adoptive parent meets the requirements of IC 31-19-26.5-9(b)(2), relating to the child's financial support and dependent status.

(d) The amount of a state adoption subsidy continuation payment under subsection (c) shall be determined by agreement among the department, the adoptive child, and the adoptive parent.

(e) An adoptive child for whom a final adoption decree was entered after the child's sixteenth birthday will be approved for continuation of a Title IV-E adoption assistance agreement after the child's eighteenth birthday upon documentation that the child is or will be:

(1) employed for at least eighty (80) hours per month;

(2) attending school or a vocational or educational certification or degree program;

(3) participating in a program or activity designed to promote or remove barriers to employment; or

(4) incapable of performing any of the activities in subdivisions (1) through (3) due to a documented medical condition.

(f) A completed continuation application must be received by the department not more than ninety (90) days or less than thirty (30) days prior to the child's eighteenth birthday.

(g) Except as provided in subsection (h), adoption assistance continued under this section will terminate not later than the date of the adoptive child's twenty-first birthday.

(h) Adoption assistance continued under subsection (e) will terminate not later than the date of the child's twentieth birthday.

(*Department of Child Services; 465 IAC 4-1-32; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

Rule 2. Title IV-E Guardianship Assistance Program and State Guardianship Assistance Program

465 IAC 4-2-1 Purpose

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 1. The purpose of this rule is to establish the procedures that the department will use to process requests for guardianship assistance under the federal Title IV-E guardianship assistance program (GAP) and state guardianship assistance program (SGAP)

as authorized by 42 U.S.C. 673 and IC 31-9-2-17.8, respectively. (*Department of Child Services; 465 IAC 4-2-1; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-2 Definitions

Authority: IC 31-25-2-18
Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 2. The definitions in sections 3 through 18 of this rule apply throughout this rule. (*Department of Child Services; 465 IAC 4-2-2; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-3 "Child" defined

Authority: IC 31-25-2-18
Affected: IC 29-3-8-9; IC 31-9-2-13; IC 31-9-2-17.8 IC 31-25-2-7; IC 31-25-2-8

Sec. 3. "Child" means a child as defined in IC 31-9-2-13(d) who before becoming eighteen (18) years of age:
(1) has been, or is being, made the subject of a guardianship to which IC 29-3-8-9 applies; and
(2) is the beneficiary of a guardianship assistance agreement.

(*Department of Child Services; 465 IAC 4-2-3; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-4 "Department" defined

Authority: IC 31-25-2-18
Affected: IC 31-9-2-38.5; IC 31-9-2-76.6; IC 31-25-1-1; IC 31-25-2

Sec. 4. "Department" means the department of child services established under IC 31-25-1-1, or any local office of the department. (*Department of Child Services; 465 IAC 4-2-4; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-5 "Foster care maintenance payment rate" defined

Authority: IC 31-25-2-18
Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 5. "Foster care maintenance payment rate" means the applicable per diem rate paid by the department for care of a foster child placed by, or with approval of, the department, as determined by the department under 465 IAC 2-16, 465 IAC 2-17, or 465 IAC 2-18. (*Department of Child Services; 465 IAC 4-2-5; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-6 "Guardian" defined

Authority: IC 31-25-2-18
Affected: IC 29-3-1-6; IC 29-3-8-9; IC 31-25-2-7; IC 31-25-2-8

Sec. 6. "Guardian" means an individual described in IC 29-3-1-6 who:
(1) has been either:

- (A) appointed and is acting as guardian for a child, subject to the provisions of IC 29-3-8-9; or
- (B) identified and approved as a prospective guardian eligible to receive guardianship assistance under this rule on behalf of an eligible child; and

(2) meets the conditions and requirements of section 21 or 31(c) of this rule, as determined by the department.

(*Department of Child Services; 465 IAC 4-2-6; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-7 "Guardianship assistance" defined

Authority: IC 31-25-2-18
Affected: IC 31-25-2-7; IC 31-25-2-8

Sec. 7. "Guardianship assistance" means payments made or benefits provided by the department to the guardian, as specified in section 19 of this rule, pursuant to a guardianship assistance agreement. (*Department of Child Services; 465 IAC 4-2-7; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-8 "Guardianship assistance agreement" defined

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 8. "Guardianship assistance agreement" means a written agreement between the department and a guardian regarding guardianship assistance, including a Title IV-E guardianship assistance agreement or a state guardianship assistance agreement entered into pursuant to IC 31-9-2-17.8. The agreement shall include:

- (1) the amount of any payments that the department will make to the guardian, and the manner in which those payments will be made;
- (2) a provision that the agreement shall remain in effect regardless of the state in which the guardian resides at any given time;
- (3) any applicable terms and conditions relating to continuation, termination, suspension, or future changes in the terms or amount of any payments provided under the agreement;
- (4) the manner in which the payment amount may be adjusted periodically, in consultation with the guardian, based on the circumstances of the guardian and needs of the child; and
- (5) any additional services and assistance for which the child and guardian will be eligible, and the procedure by which the guardian may apply for additional services as needed.

(*Department of Child Services; 465 IAC 4-2-8; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-9 "Guardianship assistance periodic payment amount" defined

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 9. "Guardianship assistance periodic payment amount" means the amount or payment rate specified in a guardianship assistance agreement for the benefit of a child who is the subject of the guardianship, other than nonrecurring guardianship expenses described in section 19(4) of this rule. (*Department of Child Services; 465 IAC 4-2-9; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-10 "Nonrecurring guardianship expenses" or "NRE" defined

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 10. "Nonrecurring guardianship expenses" or "NRE" means a portion of a guardianship assistance agreement that provides for payment or reimbursement for reasonable and necessary guardianship fees, court costs, attorney fees, and other expenses that are directly related to the creation of a guardianship of a child as provided in 42 U.S.C. 673(d)(1)(B)(iv) and section 19(4) of this rule. (*Department of Child Services; 465 IAC 4-2-10; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-11 "Permanency plan" defined

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8 IC 31-34-21-7; IC 31-34-21-7.5; IC 31-37-19-1

Sec. 11. "Permanency plan" means a plan described in IC 31-34-21-7.5 for a child who is a child in need of services or adjudicated as delinquent that has been approved by a juvenile court pursuant to IC 31-34-21-7 or IC 31-37-19-1. (*Department of Child Services; 465 IAC 4-2-11; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-12 "Relative" defined

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-9-2-88; IC 31-9-2-107; IC 31-25-2-7; IC 31-25-2-8

Sec. 12. "Relative" means a person, other than a parent (as defined in IC 31-9-2-88), who has a relationship to a child described in IC 31-9-2-107(c). (*Department of Child Services; 465 IAC 4-2-12; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-13 "Sibling group" defined

Authority: IC 31-25-2-18

Affected: IC 29-3-8-9; IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 13. "Sibling group" means a group of two (2) or more children that includes at least one (1) child who is at least thirteen (13) years of age or is otherwise eligible for guardianship assistance under this rule, and:

- (1) are children of the same parent;
- (2) are or will be residing with the same guardian who is subject to IC 29-3-8-9; and
- (3) are residing or will reside in the same home.

(*Department of Child Services; 465 IAC 4-2-13; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-14 "State" defined

Authority: IC 31-25-2-18

Affected: IC 29-3-8-9; IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 14. "State" means any state of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States. (*Department of Child Services; 465 IAC 4-2-14; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-15 "State guardianship assistance" defined

Authority: IC 31-25-2-18

Affected: IC 29-3-8-9; IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 15. "State guardianship assistance" means payments that are or may be made by the department pursuant to IC 31-9-2-17.8:

- (1) to a guardian who is subject to IC 29-3-8-9; and
- (2) on behalf of a child who is not eligible for Title IV-E guardianship assistance under 42 U.S.C. 673(d)(3).

(*Department of Child Services; 465 IAC 4-2-15; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-16 "State guardianship assistance agreement" defined

Authority: IC 31-25-2-18

Affected: IC 29-3-8; IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 16. "State guardianship assistance agreement" means a guardianship assistance agreement that may include any of the following:

- (1) Periodic payments of state guardianship assistance on behalf of the child, as provided in IC 31-9-2-17.8 and section 19(2) of this rule.
- (2) Payment of nonrecurring expenses as specified in section 19(4) of this rule.

(*Department of Child Services; 465 IAC 4-2-16; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-17 "Title IV-E guardianship assistance agreement" defined

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 17. "Title IV-E guardianship assistance agreement" means a guardianship assistance agreement that may include any of the following:

(1) Periodic payment of Title IV-E guardianship assistance on behalf of the child, as provided in 42 U.S.C. 673(d) and section 19(1) of this rule.

(2) Eligibility for Medicaid, as provided in 42 U.S.C. 673(b)(1), 42 U.S.C. 1396a(a)(10)(A)(i)(I), and section 19(3) of this rule.

(3) Payment of nonrecurring expenses as specified in section 19(4) of this rule.

(Department of Child Services; 465 IAC 4-2-17; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-2-18 "Ward" defined

Authority: IC 31-25-2-18

Affected: IC 31-9-2-134.5; IC 31-25-2-7; IC 31-25-2-8; IC 31-34

Sec. 18. "Ward" means a child:

(1) who is a subject of an open child in need of services case as set forth in IC 31-34; and

(2) for whom the department has wardship, as defined in IC 31-9-2-134.5, under an order entered by a juvenile court.

(Department of Child Services; 465 IAC 4-2-18; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-2-19 Types of guardianship assistance

Authority: IC 31-25-2-18

Affected: IC 12-15; IC 12-17.6; IC 29-3-8-9; IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8; IC 31-34-21-7.5

Sec. 19. Guardianship assistance may include any of the following:

(1) Title IV-E guardianship assistance program (GAP): a periodic payment to a guardian on behalf of an eligible child, pursuant to 42 U.S.C. 673(d) and this rule.

(2) State guardianship assistance program (SGAP): a periodic payment to a guardian on behalf of a child eligible for a guardianship subsidy pursuant to IC 31-9-2-17.8 and this rule.

(3) Health insurance: subject to determination of eligibility as provided in section 24(c) of this rule, participation in:

(A) Indiana's Title XIX Medicaid program under IC 12-15 and all applicable provisions of 405 IAC; or

(B) the children's health insurance program (CHIP) under IC 12-17.6.

(4) Nonrecurring guardianship expenses (NRE): Subject to the limitation determined under section 23(6) of this rule, reimbursement for reasonable and necessary guardianship fees, court costs, attorney fees, and other expenses that are actually incurred and directly related to the creation of the guardianship of a child, excluding expenses that were:

(A) incurred or paid in violation of any federal or state law;

(B) reimbursed to the guardian from another source of funds; or

(C) ongoing expense created by the preparation or submission of any report regarding the assets of the child that may be required by the court creating or monitoring the guardianship.

(Department of Child Services; 465 IAC 4-2-19; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-2-20 Eligibility of child

Authority: IC 31-25-2-18

Affected: IC 29-3-8-9; IC 31-9-2-17.8; IC 31-9-2-46.9; IC 31-25-2-7; IC 31-25-2-8; IC 31-34-1; IC 31-34-11-2; IC 31-34-20-1; IC 31-34-21-7; IC 31-34-21-7.5; IC 31-37-1; IC 31-37-19-1; IC 31-37-19-6.5

Sec. 20. A child who meets all the following criteria shall be eligible for assistance under this rule:

- (1) Except as provided in subdivision (2), the child is either:
 - (A) not less than thirteen (13) years of age; or
 - (B) a member of a sibling group at least one (1) of whom is not less than thirteen (13) years of age or is otherwise eligible under subdivision (2), if:
 - (i) both the child and the eligible sibling will be placed with the same guardian in the same home; and
 - (ii) the department has approved the placements for both children, in the manner specified by applicable department policy.
- (2) The department has approved, in the manner specified by applicable department policy, an application for guardianship assistance under this rule on behalf of a child who does not meet the eligibility criterion under subdivision (1), if:
 - (A) the child has:
 - (i) a medical condition; or
 - (ii) a physical, mental, or emotional disability; and
 - (B) the child's condition or disability:
 - (i) has been diagnosed or determined to exist by a physician licensed in Indiana or another state; and
 - (ii) is expected to be permanent or continue until a time after the child becomes twenty-one (21) years of age.
- (3) The child has been approved for legal guardianship as a permanency plan by an order entered under IC 31-34-21-7.5 or IC 31-37-19-1 by a juvenile court having jurisdiction over the child, if the order finds and states compelling reasons for selecting guardianship as the preferred choice among available permanency plan options.
- (4) The child must be currently eligible to receive foster care maintenance payments (under 42 U.S.C. 672) while residing in a licensed foster family home (as defined in IC 31-9-2-46.9), in which at least one (1) foster parent is a relative of the child.
- (5) The child must have been adjudicated a child in need of services pursuant to IC 31-34-1 or a delinquent child pursuant to IC 31-37-1.
- (6) The child must have been removed from the child's home and placed in a foster family home (as defined in IC 31-9-2-46.9), under supervision of the department or another public agency that has an agreement with the department, pursuant to a dispositional decree entered under IC 31-34-20-1 or IC 31-37-19-1.
- (7) The child must be residing with a guardian who meets the eligibility requirements specified in section 21 of this rule.
- (8) The child must have resided with the guardian in the guardian's home for a continuous period of time not less than six (6) months.
- (9) The permanency plan for the child approved by the juvenile court pursuant to IC 31-34-21-7.5 or IC 31-37-19-1 must require the appointment of a legal guardian for the child, subject to IC 29-3-8-9.
- (10) The child is either:
 - (A) a United States citizen; or
 - (B) a qualified alien, as defined in 8 U.S.C. 1641(b), who is not ineligible for a federal public benefit under 8 U.S.C. 1613.
- (11) For purposes of a Title IV-E guardianship assistance agreement, the child must meet any additional eligibility requirements for a kinship guardianship assistance payment, as specified in 42 U.S.C. 673(d)(3).
- (12) If the child is residing with a successor guardian who meets the eligibility requirements specified in section 31(c) of this rule, the eligibility requirements in subdivisions (4), (7), and (8) do not apply to eligibility of the child for assistance under this rule.

(Department of Child Services; 465 IAC 4-2-20; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-2-21 Eligibility of guardian

Authority: IC 31-25-2-18

Affected: IC 11-8-8; IC 29-3; IC 31-9-2; IC 31-25-2-7; IC 31-25-2-8; IC 31-27-4; IC 31-33-8-12; IC 31-34-21; IC 31-37-19-1; IC 31-37-20-2

Sec. 21. (a) Except as provided in subsection (b), a guardian who meets all the following criteria shall be eligible to receive assistance on behalf of a child who is eligible for assistance under section 20 of this rule:

INDIANA ADOPTION ASSISTANCE AND GUARDIANSHIP ASSISTANCE PROGRAMS

- (1) The guardian must be a relative of the child, as defined in IC 31-9-2-107(c), who is not the child's parent.
- (2) The guardian must reside in a home that is licensed as a foster family home under IC 31-27-4, or a comparable law of the state in which the home is located.
- (3) For purposes of eligibility as a relative under IC 31-9-2-107(c)(12), the guardian must be an individual who:
 - (A) was a de facto custodian for the child (as defined in IC 31-9-2-35.5) for a period of time before the child became a ward of the department; or
 - (B) has been approved as a relative of the child, for purposes of receiving guardianship assistance as provided in this rule, by:
 - (i) the department, in a report submitted to the court for purposes of a permanency hearing under IC 31-34-21-7 or IC 31-37-19-1, or a periodic review hearing under IC 31-34-21-2 or IC 31-37-20-2, that is held subsequent to approval of a permanency plan for legal guardianship of the child; and
 - (ii) the court, in an order entered following the permanency hearing or periodic review hearing at which the report was submitted and considered.
- (4) The guardian, upon establishment of a legal guardianship under IC 29-3, or comparable law of the state where the guardian resides, must be legally responsible for providing care, support, maintenance, education, and supervision, including financial support as provided in IC 29-3-8-9(f), as necessary or appropriate to meet the needs and promote the welfare of the child.
- (5) The guardian must meet each of the following criteria, as shown by a home study or evaluation of the guardian and child prepared or approved by the department:
 - (A) Have the current and projected continuing ability, through resources available to the guardian as supplemented by any assistance provided under this rule, to provide for the child's physical, mental, emotional, educational, and psychological needs, upon termination of supervision of the child by the department.
 - (B) Have the continuing ability, willingness, and motivation to access and obtain appropriate services outside the home that:
 - (i) are necessary or appropriate for the health, education, development, and well-being of the child; and
 - (ii) will assist the child in becoming a self-supporting adult to the maximum extent feasible.
 - (C) Have established a nurturing, stable relationship with the child in which the child indicates a desire to continue a family relationship and residence with the guardian in the guardian's household.
 - (D) Have demonstrated the ability to determine and regulate an appropriate level of relationship and ongoing contacts with any parent or other relative of the child, consistent with the safety and best interests of the child, and in conformity with any plan of visitation ordered or approved by the court in:
 - (i) the child in need of services or delinquency proceeding; or
 - (ii) any other court proceeding relating to continuing custody of, or visitation with, the child.
- (6) Each guardian, and every member of the guardian's household who is at least fourteen (14) years of age, must successfully complete a criminal history check (as defined in IC 31-9-2-22.5), and a check of any and all applicable sex or violent offender registries (as described in IC 11-8-8), in the time and manner as specified by the department.
- (7) Guardianship assistance is not available if the criminal history check reveals that a guardian or household member:
 - (A) has ever been convicted of a felony as enumerated in 42 U.S.C. 671(a)(20)(A) involving:
 - (i) child abuse or neglect;
 - (ii) spousal abuse (domestic battery);
 - (iii) a crime against a child (including child pornography); or
 - (iv) a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery;
 - (B) has been convicted, within five (5) years before the date the check is conducted, of a felony based on:
 - (i) physical assault or battery against an adult; or
 - (ii) a drug related or alcohol related offense;
 - (C) has been convicted of a felony that would prohibit the court from granting a petition for guardianship by the guardian or household member, as described in IC 29-3-7-7;
 - (D) is a sex or violent offender, or a sexually violent predator, for whom the court is prohibited from granting a

petition for guardianship pursuant to IC 29-3-7-7;

(E) has ever been convicted of a misdemeanor relating to the health or safety of a child; or

(F) has a record of any of the following, unless the department approves a waiver request as provided in subdivision (8):

(i) Any felony conviction.

(ii) Four (4) or more misdemeanor convictions.

(iii) A juvenile adjudication for an act that, if committed by an adult, would be a felony described in IC 29-3-7-7.

(iv) A substantiated determination of child abuse or neglect under IC 31-33-8-12, or comparable law in any other state.

(8) A guardian may request a waiver of any record based on the results of a criminal history check conducted under IC 31-9-2-22.5, applicable to the guardian or any household member, that is described in subdivision (7)(F). A waiver may be requested, considered, and granted or denied, under the procedure and criteria specified in the applicable department policy relating to evaluating background checks for guardianships. If a waiver request is granted, the department will not deny guardianship assistance eligibility based solely on the existence of a record described in subdivision (7)(F).

(9) The eligible child must consent in writing to establishment of a legal guardianship for the child and placement with the selected guardian, if the child is:

(A) at least sixteen (16) years of age; and

(B) competent, as determined by the department, to provide informed consent to the placement and terms of the guardianship assistance agreement.

(10) The eligible child who is at least thirteen (13) years of age must be consulted concerning the proposed guardianship and the selected guardian.

(b) A successor guardian to whom section 31(c) of this rule applies is not required to meet the criteria specified in subsection (a)(1), (a)(2), and (a)(3). (*Department of Child Services; 465 IAC 4-2-21; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-22 Determinations of eligibility and periodic payment amounts

Authority: IC 31-25-2-18

Affected: IC 29-3-8; IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 22. (a) The Indiana guardianship program application shall be available on the department's website and through each of the department's local offices.

(b) A completed Indiana guardianship assistance program application must be submitted to the subject child's family case manager or directly to the department if the child does not have a currently assigned family case manager, before or within ten (10) days after a petition to establish a legal guardianship for the child is filed. If the application is incomplete, or if the department needs additional information for purposes of determining eligibility, the department may request the additional information and set a time deadline for its submission.

(c) Not later than forty-five (45) days after receipt of the completed application, the department will review the application, determine eligibility, and issue a final guardianship assistance program eligibility determination.

(d) If the application is approved, a department attorney will represent the department to negotiate the guardianship assistance periodic payment amount with the guardian and the guardian's attorney, if applicable, in accordance with guidelines and procedures established by department policy.

(e) If the department determines that negotiations concerning the guardianship assistance periodic payment amount have been concluded without agreement between the guardian and the department, the department will send to the guardian, or the guardian's attorney, a final offer letter stating the amount that the department will agree to pay for periodic payments.

(f) Upon receipt of the department's final offer letter, the guardian may do the following:

(1) Sign and return to the department the guardianship assistance agreement, or amendment to a previously signed agreement containing the periodic payment amount, specifying the amount the department has agreed to pay, subject to the right of administrative review and appeal of the periodic payment amount as provided in 465 IAC 3-2-5 and 465 IAC 3-3-3.

(2) Submit a request for administrative review of the periodic payment amount, within the time and in the manner provided in 465 IAC 3-2-5.

(g) Upon receipt of:

(1) a signed guardianship assistance agreement or amendment under subsection (f)(1);

(2) a timely request for administrative review under subsection (f)(2); and

(3) a final order creating the guardianship and containing any terms or conditions required under applicable provisions of IC 29-3-8, entered after the date of signature of the original guardianship assistance agreement;

the department will commence payment of the periodic payment amount stated in the signed agreement or amendment, as provided in section 23 of this rule.

(h) If the amount of the periodic payment determined under subsection (g) is changed, based on the result of an administrative review or hearing conducted under the applicable provisions of 465 IAC 3, the department will pay the revised periodic payment amount, retroactive to the payment commencement date as determined under section 23 of this rule. The revised payment amount should be documented by an appropriate amendment of the guardianship assistance agreement. (*Department of Child Services; 465 IAC 4-2-22; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-23 Guardianship assistance payments and benefits; conditions

Authority: IC 31-25-2-18

Affected: IC 29-3-5; IC 29-3-8-9; IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8; IC 31-34-21-7.5; IC 31-34-21-11

Sec. 23. The forms of guardianship assistance described in section 19 of this rule are subject to the following terms and conditions:

(1) The periodic payment amount under a Title IV-E guardianship assistance agreement, or state guardianship assistance agreement, shall:

(A) be negotiated between the department and the guardian, taking into consideration the circumstances of the guardian and the needs of the child;

(B) be for an amount that is more than zero dollars (\$0) but does not exceed the foster care maintenance payment rate that would have been paid on behalf of the child in foster care;

(C) be paid to the guardian at regular intervals determined by the department;

(D) be subject to increase or decrease during the term of the agreement:

(i) by agreement between the department and the guardian, due to a change in the child's or family's circumstances; or

(ii) in the discretion of the department, by a percentage equivalent to the percentage of any increase or decrease in the applicable foster care maintenance payment rates;

(E) begin under any guardianship assistance agreement after a copy of the final order creating the guardianship and the signed guardianship assistance agreement are submitted to the department; and

(F) be effective as of the date of entry of the order creating the guardianship containing the provisions required in IC 29-3-8-9(f).

(2) The department may unilaterally, without consent of the guardian or amendment of the agreement, institute an across-the-board reduction of the payment amount specified in a state guardianship assistance agreement, if:

(A) the department determines that the reduction is necessary due to the insufficiency of available funds; and

(B) the state guardianship assistance agreement authorizes the department to make percentage reductions in the periodic payment.

The department will send to the guardian, not less than thirty (30) days before the effective date of any reduction of the periodic payment amount under this subdivision, a notice stating the effective date and amount of the reduced periodic payment, the reasons for the reduction, and the estimated time and conditions for expiration of the reduction.

(3) If the child is determined to be eligible for Title IV-E guardianship assistance and thus eligible for Medicaid, Medicaid coverage for the child under a guardianship assistance agreement will begin when a copy of the order creating the guardianship and the signed guardianship assistance agreement are submitted to the department.

(4) Medicaid benefits shall be provided in accordance with applicable provisions of 405 IAC.

(5) Nonrecurring expenses payable to a guardian pursuant to a signed NRE agreement shall not exceed the amount allowable by state or federal law per eligible child for whom a guardianship assistance agreement has been signed.

(6) A request for payment of nonrecurring guardianship expenses pursuant to a signed NRE agreement must be submitted to the department in the manner prescribed by the department no later than two (2) years after:

(A) entry of the order creating the guardianship; or

(B) if a final order creating a guardianship is not entered, the earlier of:

(i) notice to the department of a decision not to proceed with the guardianship; or

(ii) the filing of a motion to dismiss a petition for appointment of a guardian.

(Department of Child Services; 465 IAC 4-2-23; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-2-24 Medical insurance coverage for child

Authority: IC 31-25-2-18

Affected: IC 12-15-2-14; IC 12-17.6-3; IC 12-17.6-4-2; IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 24. (a) This section applies if the child is not eligible for guardianship assistance under a Title IV-E guardianship assistance agreement.

(b) The guardian shall apply on behalf of the child for continuation of any medical insurance or assistance for which the child is eligible under IC 12-15-2-14, IC 12-17.6-3, or any other applicable law that provides financial assistance for medical or health care expenses.

(c) Eligibility of the child for Medicaid or the children's health insurance program (CHIP) while a resident of Indiana shall be determined by the family and social services administration, division of family resources.

(d) If the child is not eligible for:

(1) medical insurance or assistance provided through the Indiana Medicaid program or CHIP; or

(2) the Medicaid or other state health insurance program available in the state where the child is residing with the eligible guardian;

the guardian shall obtain private health insurance coverage for the child that provides benefits substantially equivalent to the benefits that would be provided under IC 12-17.6-4-2 if the child were eligible for coverage under IC 12-17.6-3.

(e) The guardian must maintain medical insurance coverage for the child, in the manner provided in this section, as a condition to continued eligibility for monthly assistance payments under this rule. The guardian shall provide to the department, upon request, satisfactory evidence that the required coverage is in effect. *(Department of Child Services; 465 IAC 4-2-24; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)*

465 IAC 4-2-25 Other assistance

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 25. The department may provide to the guardian, at the time the guardianship assistance agreement is approved, information concerning resources that may be available to the guardian or child through the department or other community agencies, to assist the guardian in providing for the child's physical, mental, psychological, educational, and other needs appropriate to the child's development and transition to adult status and independent living. *(Department of Child Services; 465 IAC 4-2-25; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)*

465 IAC 4-2-26 Child care and supervision

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 26. The department will not be responsible for monitoring the guardian's care and supervision of the child during the time the guardianship assistance agreement is in effect, or for providing any services to the child, except as provided in this rule or in the guardianship assistance agreement. *(Department of Child Services; 465 IAC 4-2-26; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)*

20170111-IR-465160216FRA)

465 IAC 4-2-27 Guardianship administration

Authority: IC 31-25-2-18

Affected: IC 29-3-6-1; IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 27. (a) The guardian receiving assistance under this rule on behalf of an eligible child shall be responsible for compliance with all duties and responsibilities of a legal guardian under any applicable provision of IC 29-3, including filing with the court having jurisdiction over the guardianship of any required pleadings, reports, documents, or accounts with respect to the guardianship estate.

(b) The guardian shall give the department notice of all hearings in the guardianship proceedings as required by IC 29-3-6-1, including notice to the department during any time that a guardianship assistance agreement is in effect.

(c) The department shall have no responsibility for administration of the guardianship, accounting to the child or court for any activities of the guardian, or disposition of the proceeds of monthly assistance payments made to the guardian on behalf of the child. (*Department of Child Services; 465 IAC 4-2-27; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-28 Periodic reports

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 28. (a) All guardians who have entered into guardianship assistance agreements with the department shall submit a completed guardianship program status report at times and in the form required by the department.

(b) If the guardian:

(1) fails timely to submit a completed guardianship program status report; or

(2) submits a report that the department has reason to believe is inaccurate;

the department may initiate an assessment of the child, guardian, and family situation to determine whether a reportable event or other change in circumstances has occurred that may require modification, suspension, or termination of the guardianship assistance agreement, termination of the legal guardianship, or appointment of a different guardian for the child. (*Department of Child Services; 465 IAC 4-2-28; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-29 Reportable events

Authority: IC 31-25-2-18

Affected: IC 5-9-4-1; IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

Sec. 29. (a) A guardian who has entered into a guardianship assistance agreement with the department shall notify the department in writing, within ten (10) days of the occurrence of any reportable event that is a change in the circumstances of the child or family that could affect either continuing eligibility or the amount of periodic payments as provided in the guardianship agreement.

(b) In the event the guardian is unavailable or otherwise fails to provide the notice required under this section, a person acting on behalf of the guardian may submit to the department the required notice of a reportable event.

(c) A reportable event includes, but is not limited to:

(1) the guardian moves to a new residence;

(2) the child:

(A) moves out of the home of the legal guardian;

(B) is placed outside the guardian's home in another home or residential facility;

(C) is married;

(D) is no longer attending school;

(E) receives notice of a call to active duty in the United States armed services or the national guard, as specified in IC 5-9-4-1(a)(2); or

- (F) has new health insurance coverage;
- (3) the guardian is no longer legally responsible for care, supervision, or support of the child;
- (4) another person or agency is supporting the child in whole or in part;
- (5) the child or a guardian dies;
- (6) the guardian has become physically or mentally incapacitated to the extent that the guardian is no longer able to provide adequate or appropriate care and supervision of the child; or
- (7) if the order creating the guardianship is entered after the child's sixteenth birthday, and periodic payments are being made after the child's eighteenth birthday pursuant to a guardianship assistance agreement, the child is:
 - (A) not employed for at least eighty (80) hours per month;
 - (B) not attending school or a vocational or educational certification or degree program;
 - (C) not participating in a program or activity designed to promote or remove barriers to employment; or
 - (D) no longer incapable of performing any of the activities in clauses (A) through (C) due to a documented medical condition.

(Department of Child Services; 465 IAC 4-2-29; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA)

465 IAC 4-2-30 Suspension of payments under guardianship assistance agreements

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8; IC 31-34; IC 31-37; IC 31-40-1-5

Sec. 30. (a) The department may suspend payments under a state guardianship assistance agreement, if:

- (1) the department has not received the required status report under section 28 of this rule within ten (10) days after the due date, as specified in the agreement or in a notice requesting the report; or
- (2) the status report as submitted to the department does not substantially comply with the information required in the department's report form and applicable instructions;

until the required guardianship program status report has been submitted, reviewed, and approved by the department.

(b) The department may suspend payments under a state guardianship assistance agreement if:

- (1) the child has become a ward; and
- (2) the department is paying foster care maintenance payments for out-of-home care and supervision of the child.

(c) Subject to subsections (d) and (e), the department shall suspend payments under a guardianship assistance agreement on the ground that the guardian is no longer providing financial support to the child. The department may reinstate payments suspended under this subsection, with any modifications to the agreement that may be appropriate under the circumstances and agreed to between the department and the guardian, if at any time the guardian resumes regular financial support of the child.

(d) The department will not automatically suspend payments as provided in subsection (c), solely because the child is temporarily residing in a home or facility other than the home of the guardian, and is being supported in that out-of-home placement by a person or agency other than the guardian. Before suspending payments under subsection (c), the department must determine by a preponderance of evidence, based on the particular facts and circumstances, that the guardian is not providing financial support, as determined by the department, for the child while the child is residing in another home or facility.

(e) No periodic payments will be made for the period of time that payments are suspended under this section.

(f) If the child is the subject of a pending child in need of services case under IC 31-34, or a pending delinquency case under IC 31-37, the department may request the guardian to agree to a modification of the periodic payment amount provided in the guardianship assistance agreement. If the guardian and department fail to agree to such a modification, the department shall request the court having jurisdiction over the case to determine the obligation of the guardian to provide financial support for the child while the child is residing in an out-of-home placement approved or ordered by the court, as provided in IC 31-40-1-5. The department may offset the amount payable under a support order against the amount of the periodic payment otherwise payable to the guardian under the guardianship assistance agreement.

(g) If the child is residing outside of the home of the guardian, and subsection (f) does not apply, the department may request the guardian to agree to a modification of the periodic payment amount. If the guardian, the child's residential custodian, and the department fail to agree to a modification requested under this subsection, the department may administratively suspend the guardian's periodic payment amount, in whole or part.

(h) The department shall suspend payments under a guardianship assistance agreement, on the ground that the child no longer meets the requirements specified in section 33(b) of this rule. The department may reinstate payments suspended under this subsection, with any modifications to the agreement that may be appropriate under the circumstances and agreed to between the department and the guardian, if the child subsequently meets any applicable requirements under section 33(b) of this rule. (*Department of Child Services; 465 IAC 4-2-30; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-31 Termination of guardianship assistance agreements

Authority: IC 31-25-2-18

Affected: IC 5-9-4-1; IC 29-3; IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8; IC 31-34-9; IC 31-34-21-7.5

Sec. 31. (a) The department shall terminate any periodic payment and guardianship assistance agreement approved under section 22 of this rule upon occurrence of any of the following events:

- (1) The child's attainment of eighteen (18) years of age, except as provided in subsection (d).
- (2) Entry of a court order awarding legal custody of the child to a person other than the guardian.
- (3) Incarceration of the child in an adult correctional facility pursuant to a sentence and commitment order of a court of competent jurisdiction.
- (4) Detention of the child in a juvenile detention center for a period of time of not less than one hundred eighty (180) days, pursuant to an order of a juvenile court having jurisdiction of the child.
- (5) Entry of a dispositional decree in a child in need of services proceeding based on events occurring while the child is residing with the guardian and subsequent to the date of approval of the guardianship assistance agreement, if the dispositional decree provides for removal of the child from the home of the guardian.
- (6) Death of the child.
- (7) Except as provided in subsection (c), death or incapacity of the guardian.
- (8) The child becomes emancipated.
- (9) The child commences active duty in the United States armed services or the national guard, as specified in IC 5-9-4-1(a)(2).
- (10) Termination of the legal guardianship by order of the court having jurisdiction in the guardianship proceeding.
- (11) Resignation of each guardian and appointment of a successor guardian for the child.

(b) The department may terminate any periodic payment and guardianship assistance agreement approved under section 22 of this rule, upon occurrence of any of the following events:

- (1) The child is no longer residing in the home of the guardian.
- (2) The guardian has failed to submit to the department the information required or requested by the department for the guardianship program status report pursuant to section 28 of this rule.
- (3) The guardian is not providing financial assistance necessary or adequate for the support and maintenance of the child.
- (4) Except as provided in subsection (c), the guardian no longer satisfies one (1) or more of the criteria specified in section 21 of this rule.
- (5) The guardian has failed to maintain health insurance, or has failed to maintain Medicaid or children's health insurance program (CHIP) eligibility and coverage on behalf of the child, as required by section 24 of this rule.
- (6) The child has been determined to be a child in need of services by an order entered by a juvenile court in a proceeding commenced under IC 31-34-9 after approval of the guardianship assistance agreement.
- (7) Except as provided in subsection (c), a successor guardian has been appointed for the child in the guardianship proceeding.
- (8) The department has determined that appropriated funds are no longer available to support continuation of state guardianship assistance periodic payments.

(c) The department shall make monthly assistance payments to a successor guardian on behalf of the child, as determined under applicable provisions of sections 23 and 32 of this rule, if the successor guardian:

- (1) is named in the guardianship assistance agreement (including any amendment to the agreement that was effective before the date of death or determination of incapacity of the original guardian);
- (2) has been appointed by the court in the guardianship proceeding as the child's guardian;

- (3) meets all eligibility requirements under section 21(a)(4) through 21(a)(10) of this rule; and
- (4) complies with all duties and responsibilities of the guardian under:
 - (A) any applicable provision of this rule; and
 - (B) the guardianship assistance agreement as approved and signed by the department and the original guardian, or any new guardianship assistance agreement signed by the department and the successor guardian.
- (d) The department may continue monthly assistance payments to the guardian on behalf of the child, after the child has attained eighteen (18) years of age, as provided in section 33 of this rule.
- (e) The department shall send notice of termination of assistance under this section to the guardian at the guardian's current or last known address. The notice shall include a statement of the reason or reasons for termination as determined by the department.
- (f) The effective date of termination of a guardianship assistance agreement under this section shall be the date of the occurrence of the applicable event.
- (g) If the guardian has received a payment attributable to a time after the effective date of termination, as determined under subsection (f), the guardian shall be obligated to repay the amount of that payment to the department.
- (h) For terminations pursuant to subsection (a)(1), the department will provide notice of termination of a guardianship assistance agreement to the guardian at least ninety (90) days before the effective date of the action. The notice will include information and instructions concerning continuation eligibility and procedures under section 33 of this rule.
- (i) For terminations pursuant to this section, other than subsection (a)(1), the department will provide notice of termination of a guardianship assistance agreement to the guardian within ten (10) days after receipt of notice of the occurrence. (*Department of Child Services; 465 IAC 4-2-31; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-32 Modification of guardianship assistance agreements

Authority: IC 31-25-2-18

Affected: IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

- Sec. 32. (a) A guardian who is receiving periodic payments under a guardianship assistance agreement may, during the term of the agreement, submit a modification request to change the periodic payment amount.
- (b) A request for modification may not be submitted more frequently than once in a twelve (12) month period.
 - (c) In considering a request for modification under this section, the department may request from the guardian, or any other source, additional information that may be relevant to consideration of the modification request. The department will advise the guardian of its decision concerning the modification request within sixty (60) calendar days of receiving the requested information.
 - (d) Any modified periodic payment amount requested and approved under this section cannot exceed the foster care maintenance payment rate that the child would have received if the child were in foster care.
 - (e) Modifications may be limited to a period of time during which the basis for modification is expected to continue. Upon expiration of that time period, the periodic payment amount shall revert to the previous amount as provided in the guardianship assistance agreement before approval of the modification, or, if applicable, the reduced amount determined under section 23(2) of this rule. A temporary modification under this subsection may be extended by request of the guardian and agreement of the department.
 - (f) An approved modification under this section must be reflected in a written amendment to the guardianship assistance agreement. (*Department of Child Services 465 IAC 4-2-32; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

465 IAC 4-2-33 Continuation of guardianship assistance agreements beyond age 18

Authority: IC 31-25-2-18

Affected: IC 29-3-8-9; IC 31-9-2-17.8; IC 31-25-2-7; IC 31-25-2-8

- Sec. 33. (a) Guardianship assistance will not be continued beyond the date on which the child becomes eighteen (18) years of age, unless continuation of guardianship assistance has been approved by the department.
- (b) A child for whom an order creating a guardianship containing the requirements set out in IC 29-3-8-9 was entered after the child's sixteenth birthday will be approved for continuation of guardianship assistance after the child's eighteenth birthday upon

documentation that the child is or will be:

- (1) employed for at least eighty (80) hours per month;
 - (2) attending school or a vocational or educational certification or degree program;
 - (3) participating in a program or activity designed to promote or remove barriers to employment; or
 - (4) incapable of performing any of the activities in subdivisions (1) through (3) due to a documented medical condition.
- (c) A completed continuation application for purposes of subsection (b) must be received by the department not more than ninety (90) days nor less than thirty (30) days prior to the child's eighteenth birthday.
- (d) Guardianship assistance continued under subsection (b) will terminate not later than the date of the child's twentieth birthday. (*Department of Child Services; 465 IAC 4-2-33; filed Dec 14, 2016, 12:05 p.m.: 20170111-IR-465160216FRA*)

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