

Act No. 15
Public Acts of 2009
Approved by the Governor
April 9, 2009
Filed with the Secretary of State
April 9, 2009
EFFECTIVE DATE: April 9, 2009

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2009**

Introduced by Senators Clark-Coleman, Jansen, Pappageorge, Birkholz, Switalski, Gleason, Hunter, Anderson, Whitmer, Jacobs, Basham, Barcia, Cherry, Olshove, Scott, Thomas, Prusi, Brater, Clarke and Allen

ENROLLED SENATE BILL No. 227

AN ACT to amend 2008 PA 260, entitled "An act to provide for subsidy payments to certain guardians of minors; and to provide for duties and responsibilities of certain state departments and agencies," by amending the title and sections 1, 2, 3, 4, 5, 6, and 9 (MCL 722.871, 722.872, 722.873, 722.874, 722.875, 722.876, and 722.879) and by adding sections 5a and 5b; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

TITLE

An act to provide for assistance payments to certain guardians of minors; and to provide for duties and responsibilities of certain state departments and agencies.

Sec. 1. This act shall be known and may be cited as the "guardianship assistance act".

Sec. 2. As used in this act:

- (a) "Child" means a person less than 18 years of age.
- (b) "Department" means the department of human services.
- (c) "Eligible child" means a child who meets the eligibility criteria set forth in section 3 for receiving guardianship assistance.
- (d) "Guardian" means a person appointed by the court to act as a legal guardian for a child under section 19a or 19c of chapter XIIA of the probate code, MCL 712A.19a and 712A.19c.
- (e) "Guardianship assistance agreement" means a negotiated binding agreement regarding financial support as described in section 5 for children who meet the qualifications for guardianship assistance as specified in this act or in the department's administrative rules.
- (f) "Legal custodian" means an individual who is at least 18 years of age in whose care a child remains or is placed after a court makes a finding under section 13a of chapter XIIA of the probate code, MCL 712A.13a.
- (g) "Probate code" means the probate code of 1939, 1939 PA 288, MCL 710.21 to 712A.32.

(h) "Relative" means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, or the spouse of any of the above, even after the marriage has ended by death or divorce. The parent of a man who the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child may be considered a relative under this act but this is not to be considered as a finding of paternity and does not confer legal standing on the putative father.

(i) "Title IV-E" refers to the federal assistance provided through the United States department of health and human services to reimburse states for foster care, adoption assistance payments, and guardianship assistance payments.

Sec. 3. A child is eligible to receive guardianship assistance if the department determines that all of the following apply:

(a) The child has been removed from his or her home as a result of a judicial determination that allowing the child to remain in the home would be contrary to the child's welfare.

(b) The child has resided in the home of the prospective guardian for, at a minimum, 6 consecutive months.

(c) Reunification or placing the child for adoption is not an appropriate permanency option.

(d) The child demonstrates a strong attachment to the prospective guardian and the guardian has a strong commitment to caring permanently for the child.

(e) If the child has reached 14 years of age, he or she has been consulted regarding the guardianship arrangement.

Sec. 4. (1) Subject to subsection (2), a guardian who meets all of the following criteria may receive guardianship assistance on behalf of an eligible child:

(a) The guardian is the eligible child's relative or legal custodian.

(b) The guardian is a licensed foster parent and approved for guardianship assistance by the department. The approval process shall include criminal record checks and child abuse and neglect central registry checks on the guardian and all adults living in the guardian's home as well as fingerprint-based criminal record checks on the guardian. If the guardian's fingerprints are stored in the automated fingerprint identification system under section 5k of 1973 PA 116, MCL 722.115k, the department shall use those fingerprints for the criminal record check required in this subdivision.

(c) The eligible child has resided with the prospective guardian in the prospective guardian's residence for a minimum of 6 months before the application for guardianship assistance is received by the department.

(2) Only a relative who is a licensed foster parent caring for a child who is eligible to receive title IV-E-funded foster care payments for 6 consecutive months is eligible for federal funding under title IV-E for guardianship assistance. A child who is not eligible for title IV-E funding who is placed with a licensed foster parent, related or unrelated, and who meets the requirements of section 3(a) to (e) may be eligible for state-funded guardianship assistance.

(3) If a child is eligible for title IV-E-funded guardianship assistance under section 3 but has a sibling who is not eligible under section 3, both of the following apply:

(a) The child and any of the child's siblings may be placed in the same relative guardianship arrangement in accordance with chapter XI of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, if the department and the relative agree on the appropriateness of the arrangement for the sibling.

(b) Title IV-E-funded relative guardianship assistance payments may be paid on behalf of each sibling placed in accordance with this subsection.

Sec. 5. (1) Subject to the provisions of this act, the department may pay guardianship assistance to an eligible guardian on behalf of an eligible child.

(2) The guardian shall apply for guardianship assistance under this act to the department.

(3) For a child who is eligible under section 3 and a guardian who is eligible under section 4, the department may negotiate and enter into a written, binding guardianship assistance agreement with the child's prospective guardian and shall provide the prospective guardian a signed copy of the guardianship assistance agreement.

(4) The guardianship assistance agreement shall specify all of the following:

(a) The amount of the guardianship assistance to be provided under the agreement for each eligible child, and the manner in which the payment may be adjusted periodically in consultation with the guardian, based on the guardian's circumstances and the child's needs.

(b) The additional services and assistance the child and the guardian will be eligible for under the guardianship assistance agreement.

(c) The procedure by which the guardian may apply for additional services, if needed.

(d) That the department will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of an eligible child, to the extent the total cost does not exceed \$2,000.00.

(5) The guardianship assistance agreement shall remain in effect without regard to the state residency of the guardian.

(6) A guardianship assistance payment on a child's behalf shall not exceed the foster care maintenance payment that would have been paid on that child's behalf if he or she had remained in a foster family home.

(7) The department shall review the eligibility of the guardian and the child for continuation of guardianship assistance annually. The guardian shall provide the eligibility information requested by the department for purposes of the annual review.

(8) The department shall make an eligibility determination within 30 days after receipt of a request for guardianship assistance.

Sec. 5a. For a child whose permanency plan includes placement with a guardian and will include the receipt of guardianship assistance payments, the department shall include in the case service plan for the child all of the following:

(a) The steps that the child placing agency or the department has taken to determine that reunification or placing the child for adoption is not an appropriate permanency option.

(b) The reason for any separation of siblings during placement.

(c) The reason a permanent placement through guardianship is in the child's best interest.

(d) The way in which the child meets the eligibility criteria for a guardianship assistance payment.

(e) The efforts the child placing agency or the department has made to discuss adoption by the prospective guardian as a permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons.

(f) In cases where the parental rights have not been terminated, the efforts the department has made to discuss with the child's birth parent or parents the guardianship assistance arrangement, or the reasons why the efforts were not made.

Sec. 5b. The legal guardianship shall be a judicially created relationship as provided for under sections 19a and 19c of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.19a and 712A.19c, between the child and his or her guardian that is intended to be permanent and self-sustaining as evidenced by the transfer to the guardian of the following parental rights with respect to the child:

(a) Protection.

(b) Education.

(c) Care and control of the person.

(d) Custody of the person.

(e) Decision making.

Sec. 6. (1) The department shall not provide guardianship assistance after 1 of the following occurs:

(a) The child reaches 18 years of age.

(b) The department determines that the guardian is no longer legally responsible for support of the child.

(c) The department determines that the child is no longer receiving any support from the relative guardian.

(d) The death of the child.

(e) The child is adopted by the guardian or another individual under the Michigan adoption code, chapter X of the probate code, MCL 710.21 to 710.70, or the adoption laws of any other state or country.

(f) The guardianship is terminated by order of the court having jurisdiction in the guardianship proceeding.

(g) The death of the guardian.

(2) The department shall send notice of termination of guardianship assistance under this section by mail to the guardian at the guardian's current or last known address and to the court with jurisdiction over the guardianship case. Notice mailed under this subsection shall include a statement of the department's reason for termination.

Sec. 9. An applicant for guardianship assistance under this act or a guardian or child who has received guardianship assistance under a guardianship assistance agreement may appeal a decision of the department denying the application, establishing or modifying the guardianship assistance, or terminating guardianship assistance according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Enacting section 1. Section 10 of the subsidized guardianship assistance act, 2008 PA 260, MCL 722.880, is repealed.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

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Governor