

CHILDREN AND FAMILIES

DIVISION OF YOUTH AND FAMILY SERVICES

Legal Guardianship

Proposed Readoption with Amendments: N.J.A.C. 10:132A

Proposed New Rule: N.J.A.C. 10:132A-3.6

Authorized By: Eileen Crummy, Acting Commissioner, Department of
Children and Families.

Authority: N.J.S.A. 3B:12A-1, 3B:12A-6f, 30:4C-4(h), 30:4C-12.1,
30:4C-84 through 88 and 44:10-44 through 54.

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2008-185

Submit written comments by August 15, 2008 to:

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The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 10:132A, Legal Guardianship, is scheduled to expire on May 5, 2008. Pursuant to N.J.S.A. 52:14B-5.1c, this date is extended to November 1, 2008. The Division of Youth and Family Services (“DYFS” or “Division”) has reviewed these rules and has determined that, as amended, they continue to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required by Executive Order No. 66 (1978).

Subchapter 1 of the proposed readoption with amendments establishes the DYFS Legal Guardianship Subsidy Program within the Division of Youth and Family Services for children placed by the Division with relatives and family friends who obtain kinship legal guardianship through the Kinship Legal Guardianship Act. Subchapter 2 states the services provided by the program, a monthly maintenance payment and health care coverage. Subchapter 3 states the Division’s responsibilities under the Kinship Legal Guardianship Act, N.J.S.A. 30:4C-84 et seq.

Consistent with State and Federal mandates, the Division of Youth and Family Services encourages placement with relatives when a child at risk of abuse or neglect must be removed from his or her home. The Division realizes that placement with relatives, rather than placement with persons unfamiliar to the child, can promote a child’s well-being. This

concept applies to relatives who reside in New Jersey, as well as to relatives who live in another state. If the child is temporarily separated from his or her parents, relatives help the child maintain a sense of identity and continuity until he or she can return home. Similarly, permanent placement with relatives can be beneficial to a child who is unable to return to his or her own parents.

Likewise, the Division of Youth and Family Services established the DYFS Legal Guardianship Subsidy Program to provide financial services to children placed by the Division with relatives who subsequently obtain kinship legal guardianship. The relative must meet certain standards to ensure the child's protection and permanency.

The Division proposes the following amendments to the subchapter.

Pursuant to recently enacted statutes, N.J.S.A. 26:8A-1 et seq., the Domestic Partnership Act, and N.J.S.A. 37:1-28 et seq., the Division has added domestic partnerships and civil unions to the rules whenever marriage is mentioned. These additions are located at N.J.A.C. 10:132A-1.3(b), definition of relative, and N.J.A.C. 10:132A-1.6(b)2.

The Division is removing "or family friend" from the definition of DYFS Legal Guardianship Subsidy Program, at N.J.A.C. 10:132A-1.3(b), because it is redundant. This subsection defines a relative as including a family friend.

The Division is amending the definition of “household member” at N.J.A.C. 10:132A-1.3(c) to remove the phrase “... agrees to participate ...” and to substitute “participates.” This definition is more accurate than the current language.

The Division is removing the child’s income limit as an eligibility requirement for the program. Having an income limit for participating children is only required when Federal funding from Temporary Assistance for Needy Families is used. That funding is no longer available to fund this program. The following citations have been amended to remove this requirement: N.J.A.C. 10:132A-1.3(c), definition of income, N.J.A.C. 10:132A-1.6(b)7, 1.9(a)1, and 1.10(a)3.

The Division is amending the definition of “placed by the Division” at N.J.A.C. 10:132A-1.3(c) to remove “... the care of a public or private facility or ...” and replacing it with “placed.” While this is an accurate definition in general, it is not accurate for the specifics of this program. In order to be eligible for this program, a child must be removed from his or her home due to abuse or neglect and be placed with a relative by the Division. Once the Division has determined that the child’s case goal is kinship legal guardianship and the child has lived with the relative 12 months, the child and relative become eligible to apply for the program. This amendment clarifies the meaning of “placed by the Division” for the purpose of this program.

N.J.A.C. 10:132A-1.5(b)2 is amended to include a specific change in circumstances that the relative must report to the Division. That circumstance is a change in the household composition. The Division needs to know who is living in the household with a child in the program. Adding this circumstance to the rule emphasizes the importance of this notification.

The Division is amending N.J.A.C. 10:132A-1.6(a) to add that it is the Division's responsibility to determine that kinship legal guardianship is the permanent plan for the child. Only then is the Division representative required to advise the relative of the requirements of the program.

At N.J.A.C. 10:132A-1.6(b)1, the Division has removed "consent of the parent." The Division no longer accepts the written consent of the parent as legal authority to place a child in resource care. N.J.S.A. 30:4C-5, which required the voluntary consent and approval of the parent, was repealed on August 27, 2004.

The Division proposes to amend N.J.A.C. 10:132A-1.6(b)3 to remove a reference to an expired rule.

The Division proposes to amend recodified N.J.A.C. 10:132A-1.6(b)5 to remove the phrase "... interested in being approved for the program ...". This phrase seems to be misleading, as it is necessary for the

relative to actually obtain kinship legal guardianship in order for the relative to be eligible to receive money on the child's behalf.

The Division has operated the Legal Guardianship Subsidy Program since 2002. The Division found that the program was a valuable addition to attaining permanency for children. On September 1, 2005, New Jersey repealed the Long-Term Foster Care Custody Act, N.J.S.A. 30:4C-26.10 et seq. The Division plans to use the Legal Guardianship Subsidy Program as a more permanent plan for children for whom adoption is neither likely nor feasible and who may, previously, have been eligible for the Long-term Foster Care Custody program.

One difference between the Legal Guardianship Subsidy Program and the Long-Term Foster Care Custody program was that payments under the Legal Guardianship Subsidy Program could not be sent to relatives caring for New Jersey's children out-of-State. The Division is amending the rules at current N.J.A.C. 10:132A-1.6(b)5 and 1.10(a)6 to delete the requirement that the relative and child must live in New Jersey. By doing so, the Division is improving the opportunity of children who need a permanent home to have that permanency with relatives who live in another state.

The Division is amending N.J.A.C. 10:132A-1.7(a)2, 3, and 5 (as recodified) to more closely mirror the rules for the licensing of resource family parents. The Division wishes to bring the standards for these two programs into closer alignment. N.J.A.C. 10:132A-1.7(a)2 now agrees

with N.J.A.C. 10:122C-2.1(b)1 by establishing the age for becoming a relative caregiver under the program at 18 without any qualifications. N.J.A.C. 10:132A-1.7(a)3 contains new terminology related to child abuse. The Division has added that no household member has been responsible for significant risk of serious injury to a child caused by child abuse or neglect to bring this paragraph into agreement with 10:122C-5.5(b)1. Recodified N.J.A.C. 10:132A-1.7(a)5 and 10:122C-5.4(a)4 and 5 contain the same standard regarding the statutory list of crimes that preclude a relative from being paid through this program. Additional crimes and offenses have been removed from this paragraph.

The Division has added a new N.J.A.C. 10:132A-1.7(a)4, which states that the child's parent does not reside in the relative's home, unless an exception is made by the DYFS Director or his or her designee for rare and limited circumstances including, but not limited to, where the parent is dependent upon the caregiver because he or she is a minor or developmentally challenged and not capable of residing independently. Children are only eligible for the program when they cannot be returned to their parents' care. N.J.A.C. 10:132A-1.9(a)1 has been amended to also state the restriction and exception.

The Division proposes to amend recodified N.J.A.C. 10:132A-1.7(a)6 to remove "... age 14 years or older." In order to protect a child who may live with this family throughout his or her childhood, the Division needs to know of every criminal conviction of each person living in the home.

The Division is proposing a new standard at N.J.A.C. 10:132A-1.7(a)12, which requires the relative to have adequate income to support himself or herself and the family without depending on the maintenance payment from the DYFS Legal Guardianship Subsidy Program.

The Division is amending N.J.A.C. 10:132A-1.8(b) to clarify that the Division will notify the relative of disapproval for the program only when the child in question's case goal is kinship legal guardianship. The Division is also proposing to amend N.J.A.C. 10:132A-1.8(b)1 to require the Division to inform the relative of what he or she can do to remedy the reason for the disapproval.

At recodified N.J.A.C. 10:132A-1.10(a)3, the Division is amending "and" to "or." This amendment means that participation in the program shall be terminated when the relative no longer provides for the child's support or the child no longer lives with the relative.

By removing residency in New Jersey as an eligibility criterion and as a reason to terminate participation in the program, the Division can expand its use of this program to increase the availability of permanent families for New Jersey children who need them. The relative must meet certain standards to ensure the child's protection and permanency.

The Division proposes to amend N.J.A.C. 10:132A-1.11. In accordance with N.J.A.C. 10:120A-3.1(a)3 and this section, a relative, who wishes to become a kinship legal guardian for a child whose goal is

kinship legal guardianship, has the ability to appeal a denial or termination from the DYFS Legal Guardianship Program; a child, however, does not have this right. The Division is adding the specification that a relative can only request dispute resolution regarding a child whose case goal is kinship legal guardianship. The Division is removing the opportunity of a child, or someone on the child's behalf, to appeal his or her denial or termination from the program. The purpose of these proposed amendments is to eliminate duplication.

The Division is proposing to amend N.J.A.C. 10:132A-2.1(a)1 to remove the monthly payment of \$250.00 and substitute a payment that equals the rate paid for a child in resource family care, excluding any specialized rates. The purpose of this amendment is to make the rules match the *Modified Settlement Agreement for Charlie and Nadine H., et al. v. Jon S. Corzine, as Governor, and Kevin M. Ryan, as Commissioner, Docket No. 99-3678 (SRC)*, section H, 15. This section requires the State to raise the resource family reimbursement rates to the level of the United States Department of Agriculture's estimated cost of raising a child in a two-parent, middle-income family in the urban northeast by January, 2009.

The Division is adding new N.J.A.C. 10:132A-2.1(c). The new subsection (c) states that the Division will renegotiate the amount of the maintenance payment for up to one year when a child in the program is living away from home in a treatment facility. Previously, subsidy was terminated when the child was no longer residing in the home, but the Division believes that when the plan for the child is to return to the

caregiver's home, and the caregiver participates in the treatment plan, subsidy should be continued at a reduced rate to defray caregiver expenses associated with the child's placement. These expenses include, for example, visitation expenses, clothing, and gifts.

The Division is proposing an amendment to N.J.A.C. 10:132A-3.3(a)1, to remove the word "within" and add the words "at least." The Division believes that this wording more accurately states the intent of the statute, N.J.S.A. 3B:12A-5b(10).

The Division has amended N.J.A.C. 10:132A-3.5 to add additional information. The first amendment is to the section's heading, adding "is considering whether to" and deleting "may." The purpose of this amendment is to clarify for the reader that this section addresses motions to vacate a kinship legal guardianship order, which have been filed with the court.

The Division is amending N.J.A.C. 10:132A-3.5 to include the text of paragraph (a)1 within the lead in text of subsection (a). The current paragraph (a)2 is recodified as paragraph (a)1. The purpose of this recodification is to state that the Division prepares a parenting assessment when the court is determining whether a kinship legal guardianship order should be vacated and the child returned to his or her parent and either one of two additional conditions exist, as stated in recodified paragraph (a)1 and new paragraph (a)2 discussed below.

The Division is adding new N.J.A.C. 10:120A-3.5(a)2, (b) and (c) to state that the Division wants to participate in cases regarding vacating the kinship legal guardianship order which are before the court when the Division has information which would be helpful to the court in making the decision. The Division wishes to clarify its participation in these cases at new subsection (c) by stating specifically what the Division representative shall do and may do to prepare a parenting assessment.

Existing subsection (b) is recodified as subsection (d). The Division is also amending subsection (d) to clarify that the Division includes certain information in the parenting assessment only when the Division is actually preparing a parenting assessment, and not for every motion to vacate a kinship legal guardianship order.

In order for the Division to determine if it will take a position on a motion by the parent to vacate an order, the Division has proposed a set of nine factors related to child safety to consider at N.J.A.C. 10:132A-3.6.

As the Division has provided a 60-day comment period on this notice of proposal, it is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments for the Legal Guardianship Subsidy Program are expected to have a positive social

impact by enhancing protection and permanency for children placed with relatives by the Division. Consistent with State and Federal mandates, when a child's parents cannot provide a safe home, the Division of Youth and Family Services encourages the placement of the child with relatives, rather than with foster parents unfamiliar to the child. Once the relative has cared for the child for at least one year, the rule proposed for readoption with amendments establishes a program to provide financial assistance on behalf of a child whose relative makes a commitment through kinship legal guardianship to permanently care for a child when return home and adoption are not likely or feasible. The program also permits the Division to provide maintenance to children in a type of permanent placement that enables parents to retain certain rights.

The impact of the proposed amendments to the rules for each child and relative who live or move out-of-State is expected to be positive. The Division had 2,547 children in the DYFS Legal Guardianship Subsidy Program in July, 2007, with approximately 100 children living with relatives out-of-State as of February, 2008. Each child has access to maintenance payments and health care coverage through the program.

The impact upon the Division of Youth and Family Services is positive as the proposed amendments to the rules reflect good casework practice as well as State and Federal mandates regarding permanency for children.

Positive reaction to the rules proposed for readoption with amendments is anticipated from relatives caring for children placed by the Division, advocacy groups representing grandparents caring for their grandchildren, child advocacy agencies, and the press.

Economic Impact

The rules proposed for readoption with amendments have a positive economic impact on children placed with relatives by the Division and on the relatives with whom the children are placed. The legal guardian of each child approved for participation in the DYFS Legal Guardianship Subsidy Program receives an increased monthly maintenance payment on the child's behalf. The program also ensures that the child has health care coverage.

In July, 2007, the Division had 2,547 children receiving payments from the DYFS Legal Guardianship Subsidy Program.

In February, 2008, the Division had 100 children in the program living out-of-State. The amendments to these rules allow the expenditure of maintenance payments on behalf of these children, whose out-of-state relatives might otherwise have needed to provide care for the child independently, who might not have been able to provide a home for the child, or who would have needed to apply for Temporary Aid to Needy Families on behalf of the child in their state of residence.

The program requires that the child has health care coverage. The Division will provide New Jersey Medicaid for children who do not have coverage through their guardians or parents. Children who live out-of-state are still eligible for New Jersey Medicaid, but it is difficult to find providers willing to accept it outside of New Jersey. Out-of-State guardians may need to find another way to pay for the child's medical care.

These rules proposed for readoption with amendments do not have a direct effect on Federal funding, as the funding for this program is supported 100 percent by State funds.

Federal Standards Statement

The rules proposed for readoption with amendments do not exceed requirements of Federal law.

The rules proposed for readoption with amendments assist the Division to comply with the intent of Title IV-E of the Social Security Act. 42 U.S.C. §675(5)(E)(i) requires the Division to seek permanency through adoption for children who cannot return home, unless the child is being cared for by a relative. In this regard, Title IV-E recognizes kinship legal guardianship as an alternative permanent placement for a child in 42 U.S.C. §671(a)(15)(F).

Jobs Impact

The rules proposed for readoption with amendments are not anticipated to result in the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments have no impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments govern a public child protective services agency rather than a private business establishment. The rules govern and amend a program of the Division of Youth and Family Services to provide financial services to children placed by the Division with relatives who have obtained kinship legal guardianship. They propose no reporting, recordkeeping or other compliance requirements on small businesses. Therefore, a regulatory flexibility analysis is not required in accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Smart Growth Impact

The Division anticipates that the rules proposed for readoption with amendments will have no impact on the achievement of smart growth or

the implementation of the State Development and Redevelopment Plan.
The rules have no impact on smart growth concerns.

Full text of the rules proposed for readoption may be found in the
New Jersey Administrative Code at N.J.A.C. 10:132A.

Full text of the proposed amendments and new rule follows
(additions indicated in boldface thus; deletions indicated in brackets
[thus]):