



Iowa Department of Human Services

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GENERAL LETTER NO. 13-D-17

ISSUED BY: Bureau of Child Welfare and Community Services,
Division of Adult, Children and Family Services

SUBJECT: Employees' Manual, Title XIII, Chapter D, **GUARDIANSHIP**, Contents
(page 1), revised; pages 2 through 9, 12, 14, 15, 19, and 21, revised;
and page 12a, new.

Summary

Chapter XIII-D is revised to:

- ◆ Remove references to the State Juvenile Home in Toledo which is closed.
- ◆ Update the titles of supervisors, managers, and administrators.
- ◆ Add information on when a guardian needs to provide authorization for certain consents and approvals. This includes policy regarding release of social security numbers when the Department acts as the guardian.
- ◆ Revise the policy on parental decision-making authority.

Effective Date

Upon receipt.

Material Superseded

This material replaces the following pages from Employees' Manual, Title 13, Chapter D:

<u>Page</u>	<u>Date</u>
Contents (page 1)	June 25, 2010
2, 3	December 22, 1992
4, 5	February 23, 1993
6, 7	December 22, 1992
8	February 23, 1993
9, 12	June 25, 2010
14, 15, 19, 21	December 22, 1992

Additional Information

Refer questions about this general letter to your area social work administrator.

GUARDIANSHIP

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GUARDIANSHIP

STATUTORY AUTHORITY OF GUARDIAN (Cont.)

Policy (Cont.)

- C. To serve as custodian, unless another person has been appointed custodian. The rights and duties of the custodian are:
 - 1. To maintain or transfer to another the physical possession of that child.
 - 2. To provide food, clothing, housing, and medical care for that child.
 - 3. To consent to emergency medical care, including surgery.
 - 4. To sign a release of medical information to a health professional.
- D. To make periodic visits, if the guardian does not have physical possession or custody of the child.
- E. To consent to adoption and make any other decisions that the parents could have made when the parent-child relationship existed.

Comment

Someone other than the Department shall always be appointed as guardian ad litem for children under the guardianship of the Department. The child's attorney may also serve as the guardian ad litem.

Legal reference: Iowa Code Section 232.2, Subsections 11, 19, and 43

COURT COMMITMENT

Policy

The Department may become the legal guardian of a child following one of these court determinations:

- A. The child is adjudicated "to have committed a delinquent act" and guardianship is given to the Department for placement at the state institutions.

GUARDIANSHIPCOURT COMMITMENT (Cont.)**Policy** (Cont.)

- B. The child is adjudicated to be a "child in need of assistance" and guardianship is given to the Department for the placement at state institutions.
- C. The child is an unaccompanied refugee minor and is adjudicated to be a "child in need of assistance."
- D. The child's parents have had their parental rights terminated.
- E. The child's parents cannot be located or are unavailable or uninvolved to assume parental responsibilities, and parental rights have not been terminated.

Comment

Legal reference: Iowa Code Sections 232.52, 232.102, and 600.6

Procedure

The Department assumes guardianship duties for children only after the court orders the child into the guardianship of the Department. The specific wording in the court order is "guardianship is transferred to the Director of Human Services or designee."

Obtain a copy of the order giving guardianship of the child to the Department, or modifying a previous order, as soon as possible after the hearing. File a copy of the order in the county office's case file. If the court order is not immediately available, put a memo in the case file identifying date guardianship was given to the Department and follow up to be certain that the court order is received and filed in the child's record.

If the intent of the order is not clear or the order is not correctly worded, discuss the order with the supervisor as soon as possible. If the matter cannot be resolved on the local level, bring it to the attention of the service area manager.

If the recommendations by the court are contrary to the assessed needs of the child or the Department's philosophy or policy, try to resolve the matter on a local level through the supervisor. If the matter cannot be resolved locally, contact the service area manager to help resolve the situation.

GUARDIANSHIPCOURT COMMITMENT (Cont.)Children Adjudicated to Have Committed a Delinquent Act**Policy**

The Department receives the guardianship of children adjudicated "to have committed a delinquent act" only for purposes of placement at a state institution.

The director of the Department has designated the superintendents of state institutions as guardians for children committed to these facilities.

Comment

The juvenile court orders the child to the institution. The Department cannot place a child at an institution without a juvenile court ordering the placement.

The superintendent assumes guardianship responsibilities while the child is in placement at the institution.

Legal reference: Iowa Code Section 232.52, Subsection 2, paragraph e

Children in Need of Assistance**Policy**

The Department receives the guardianship of a child adjudicated to be a "child in need of assistance" following one of these court determinations:

1. The child has been designated as an unaccompanied refugee minor according to federal guidelines.
2. The child's parents have had their parental rights terminated.
3. The child has been ordered to the state institutions.
4. The juvenile court has determined a parent is not available to assume parental responsibilities of the child, and parental rights have not been terminated.

The director of the Department has designated service area managers and social work administrators to act as guardians for all children under the guardianship of the Department except those placed at state institutions. The director has designated the superintendents of the state institutions as guardians for the children committed to these facilities.

GUARDIANSHIP

COURT COMMITMENT (Cont.)

Children in Need of Assistance (Cont.)

Comment

Legal reference: Iowa Code Chapter 232, Subsections 102(2), 102(3), and 117(3)

ASSIGNMENT OF CASES

Policy

When guardianship of a child is transferred to the Department, the supervisor shall assign a social worker to the child.

Every area office shall maintain a list of children currently under guardianship by name, case number, birth date, and current placement.

The Division of Adult, Children and Family Services shall maintain a current list of all active guardianship cases from information sent by the Department's area offices.

Procedure

Notify the Division of Adult, Children and Family Services immediately upon commitment of a child to the guardianship of the Department and upon release from guardianship by the court, by obtaining majority age, or by adoption. Identify the child by name, case number, county of adjudication, birth date, and type of adjudication (child in need of assistance, parental rights terminated, or delinquent). Submit this on form 470-2989, *Guardianship Information*.

GUARDIANSHIP**ASSIGNMENT OF CASES** (Cont.)**Procedure** (Cont.)

For unaccompanied refugee minors, include both a social history and a placement agreement and send all the above information to the Division of Adult, Children and Family Services.

Children Committed to a State Institution**Policy**

No child shall be admitted to a state institution without a commitment order from the juvenile court of jurisdiction.

The institution remains responsible for the child and shall not discharge the child until the court dismisses the commitment or until the duration of the child's commitment has expired.

Comment

The superintendents at state institutions have been designated by the director to act as the guardian of a child while the child is committed to the institutions. This includes any time the child is on a trial home visit or away from the institution for any authorized or unauthorized absences.

When the Department has been given guardianship for the purpose of placement at a state institution, the Department may need to request that the court modify the guardianship order to secure the child's release from the institution. The court order releasing the child should specify that the Department be released as guardian and what status the child should have, i.e., custody, supervision, continued guardianship, or the Department case closed.

Procedure

The institution counselor assumes many of the functions of the social worker for a child placed in the institution. The social worker assigned to the child shall:

1. Cooperate and assist the institution in fulfilling the guardianship responsibility.
2. Visit the child at the institution.

GUARDIANSHIP

ASSIGNMENT OF CASES (Cont.)

| **Children Committed to a State Institution** (Cont.)

Procedure (Cont.)

3. Attend all staffings in person or by phone.
4. Complete a case permanency plan in collaboration with the institutional staff.
5. Maintain an active case record on the child.

RESPONSIBILITY FOR CONSENTS AND APPROVALS

Policy

The following requests require the authorization of the guardian:

- A. Non-emergency medical treatment including surgery, psychiatric care, and admission to a hospital.
- B. Obtaining a driver's license.
- C. Travel out of state and out of the country.
- D. Marriage.
- E. Enlistment in the armed forces.
- | F. Social security number.

The guardian is also responsible for consenting to the adoption of a child whose parental rights are terminated.

Comment

| **Legal reference:** Iowa Code Section 232.2, Subsection 19; and Section 600.7, Subsection 1

GUARDIANSHIPRESPONSIBILITY FOR CONSENTS AND APPROVALS (Cont.)**Procedure**

Whenever the parental rights still exist, you may ask the parents to give their written consent though parental consent is not required. If the parents consent, submit a copy of their consent to the service area manager (SAM) or superintendent. When the parents refuse, submit this information and the reasons for refusal along with the request for consent to the SAM or superintendent who will then make the decision whether to sign without the parent's consent.

Medical, Dental, Surgical and In-Patient Psychiatric Treatment**Policy**

When children require major medical, dental, surgical, or psychiatric care and treatment, the consent of the guardian is required.

The guardian shall consent to psychiatric treatment for a child only when the child agrees to enter treatment voluntarily. If the child refuses, it shall be necessary to return to court and follow involuntary commitment proceedings found in Iowa Code Chapter 229.

The guardian shall not consent to any procedure that will or could cause termination of the child's life (for example, authorizing no "code blue" response or no life support systems). The guardian shall consent to removal of life support systems only when it has been medically confirmed that the child is brain dead.

Comment

The guardian may be asked to consent to medical procedures which they may question. In these cases, the guardian's decision shall be made only after a thorough investigation is made to enable them to make an informed decision. This may require a second medical opinion.

Procedure

Use form 470-0738, *Guardianship Authorization*, when requesting the authorization. Complete all forms for the guardian's signature, except the signature itself, and submit it to the SAM or superintendent with any information or explanation needed. The SAM or superintendent shall thoroughly read, question, and delete if necessary, any wording or request that would not be in the best interest of the child.

See [XIII-D-Appendix](#) for instructions for completing form 470-0738.

GUARDIANSHIPRESPONSIBILITY FOR CONSENTS AND APPROVALS (Cont.)Obtaining a Driver's License**Policy**

The guardian's authorization is not needed for a child under the guardianship of the Department to receive a driver's license and permission to drive.

If the parents are unable or unwilling to give consent for a child in the Department's custody to obtain a driver's license or operator instruction permit and it is the child's best interest to obtain the license or permit, the Department may provide consent.

Comment

The guardian designee must be registered with the Department of Transportation (DOT), Office of Driver Services, to be able to consent for the child to obtain a driver's permit or license. The DOT maintains a list of approved DHS representatives, including social work supervisors, social work administrators, and service area managers. The state Office of Driver Services at 100 Euclid Avenue in Des Moines will distribute a list of registered designees to all examining stations.

Procedure:

Use DOT form 430018, *Parent's Written Consent to Issue Privilege to Drive or Affidavit to Obtain a Duplicate*, to give consent. The Department representative shall sign the form as the custodian, indicating the child is in the Department's custody by circling "ward" and sign on the signature line, including title.

The DOT will check the signature on the form against the approved list before allowing the child to obtain the license or permit.

Comment

See [XIII-D-Appendix](#) for instructions for form 470-0738. See [17-Appendix](#) for instructions for DOT form 430018.

GUARDIANSHIPRESPONSIBILITY FOR CONSENTS AND APPROVALS (Cont.)Social Security Number**Policy**

The Department is responsible to keep client social security numbers confidential except in specific circumstances for a specific purpose, and only with a signed release for that purpose. In general, foster parents may only use social security numbers upon the written release of the child's parents or guardian for the specific purpose requested.

Procedure**◆ Release of a Foster Child's Social Security Number When the Department is the Guardian**

The Department may release the social security number to the foster parents when DHS is the guardian. However, the foster parent will need to get a signed release of information from the Department to allow them to give that social security number to their tax preparer for income tax purposes only.

◆ Release of a Foster Child's Social Security Number When the Department is Not the Guardian

The foster child's parents retain their right to authorize or not authorize the release of their child's social security number to foster parents. Some of the foster child's parents may be claiming their child on their income taxes.

If asked by a foster parent, the worker should facilitate a conversation between the foster parent and the parent to obtain the appropriate release of information. If the foster parent is comfortable pursuing the discussion directly, the worker should ensure the foster parent is aware the parent has the right not to sign the requested release.

GUARDIANSHIP

RESPONSIBILITY FOR CONSENTS AND APPROVALS (Cont.)

Right to Due Process and Legal Representation

Policy

The Department acting as a child's guardian shall not waive or authorize anything that would or could violate the child's right to due process. The child must be represented by an attorney.

Comment

A child has the right to legal representation when taken into custody for a serious or aggravated misdemeanor or a felony and being questioned about the act, and at all juvenile court hearings. The child's guardian ad litem may attend any of the hearings. The child's guardian ad litem may attend any of the child's staffings or administrative reviews.

Legal reference: Iowa Code Sections 232.11, 232.89, and 232.113

Procedure

Do not give permission to any law enforcement officer to interview a child under the guardianship of the Department without an attorney being present. Invite the guardian ad litem to all staffings and reviews.

Adoption

Policy

The guardian shall consent to the adoption of a child whose parental rights are terminated when it is in the child's best interest.

Comment

It is expected that all children whose parental rights are terminated shall be adopted when it is in the child's best interest. Follow policy in 17-F(1) for the procedure for all children who have been or shall be placed in adoptive placements.

Legal reference: Iowa Code Section 600.7, Subsection 1

GUARDIANSHIP

RESPONSIBILITY OF SERVICE WORKER (Cont.)

Comment (Cont.)

- F. Submit required documents to the court and any other appropriate parties.
- G. Report to the court and the SAM all incidents that have significant impact on the care or welfare of the child.

Case Record

Policy

The social worker shall be responsible for setting up and maintaining a current record on the child at all times.

Procedure

Maintain the case record under the child's legal name as identified on the court order of commitment and by the child's state identification number. The record may also include the name the child is known by, preceded by a/k/a (also known as).

Place the guardianship order prominently in the legal section of the case record to be quickly accessible for proof of guardianship. Also include in the child's guardianship record:

1. Parts A, B, and C of the Case Permanency Plan.
2. The child's complete medical history.
3. A current physical.
4. The child's social history.
5. For adoption cases, a child study and other documents as specified under [Adoption](#).

GUARDIANSHIPRESPONSIBILITY OF SERVICE WORKER (Cont.)Case Plan**Policy**

A case permanency plan shall be written for all children under the guardianship of the Department. The initial case permanency plan shall include the following:

1. Face Sheet (Part A).
2. Initial Assessment (Part B).
3. Problem and Responsibility List (Part C).

Comment

The case permanency plan shall become part of the child's case record. Specific instructions on the development of the case permanency plan are in XIII-A and XIII-A-Appendix.

Legal reference: Iowa Code Section 232.2, Subsection 4; and 441 IAC 101.12, 103.12, and 130.7

Procedure

Develop a case permanency plan for each child for whom the Department has been named guardian. If the Department was involved with the child before the child coming under the Department's guardianship, update the permanency plan to reflect guardianship status. Include information from the juvenile court officer's social investigation or refer to specific information in that document in the case permanency plan.

If the child is committed to a state institution, complete the case permanency plan in consultation with the institutional staff.

With the institution staff, cooperatively develop an individual case plan (ICP) based on the case permanency plan and the institution's assessment of the needs. The child's ICP shall be developed at a staffing to be held within 30 days of the child entering the institution. Participate in this staffing in person or by phone.

GUARDIANSHIPUNAUTHORIZED ABSENCE OF CHILD FROM PLACEMENT (Cont.)Child Found in State**Policy**

When the child is located in state, first notify the court, then plan for the child to be returned to the placement or the institution. When the child is found and returned, cancel the police pick-up. Notify all pertinent people that the child has been located.

Child Found Out of State**Policy**

If notified that the child is apprehended in another state, contact the county sheriff's office to teletype a hold request for the child's return through provisions of the Juvenile Compact. The Interstate Compact Unit in Central Office will assume the responsibility for the necessary communication with the asylum state to effect the return of the child.

Comment

Consult [XIII-N, "Interstate Compacts,"](#) for specific information on the return of runaways found out of the state.

Legal reference: Iowa Code Section 232.171, Articles IV, V, and VI

DURATION OF RESPONSIBILITY OF GUARDIAN**Policy**

Unless terminated earlier by court order, the guardian's responsibilities and relationship to the child shall not terminate until the child reaches the age 18 or is legally adopted.

No dispositional order of a child adjudicated "to have committed a delinquent act" and placed at a state institution shall remain in effect longer than the maximum possible duration of a sentence which may be imposed on an adult for the commission of the act which the child was found to have committed.

Comment

The Department interprets the maximum duration section of the Juvenile Code to mean the maximum time a child can be committed to the State Training School. The Department may be involved in the child's life for a longer period of time than the maximum duration of an adult sentence for the same offense. The

GUARDIANSHIP

SEALING OF RECORDS

Policy

The assigned social worker shall maintain case records as long as the Department has guardianship of the child. When the child reaches majority or is otherwise released by the court from guardianship of the Department, the case shall be closed.

All adoption records are sealed after finalization. The information contained in these files is available to the adoptee only upon court order. Adoption subsidy case records are an exception to this policy. They must be kept until the child reaches majority age or three years after the record is closed for auditing purposes.

Procedure

Send notice of the guardianship dismissal to the Division of Adult, Children and Family Services on form 470-2989, *Guardianship Information*.

Adoption records shall be microfiched. Remove all staples and clips from the file and prepare the record for microfiche as directed in the State Records Management Manual, Procedure 600.2. Send the file to the Department of General Services to be microfiched. Send the microfiche to the Adoption Program, Division of Adult, Children, and Family Services.

When children are released from a state institution and the Department is then given custody or supervision, the records may remain open for that purpose until the court dismisses the Department's responsibility. These cases may then be closed, stored, or destroyed according to the usual practice for supervision or custody cases.