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AN ACT

RELATING TO KINSHIP GUARDIANSHIPS; PROVIDING FOR SUBSIDIZED
GUARDIANSHIPS; ESTABLISHING ELIGIBILITY CRITERIA FOR
GUARDIANSHIP ASSISTANCE PAYMENTS; PROVIDING FOR GUARDIANSHIP
ASSISTANCE AGREEMENTS; REPEALING SECTION 40-10B-2 NMSA 1978
(BEING LAWS 2001, CHAPTER 167, SECTION 2).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 40-10B-1 NMSA 1978 (being Laws 2001,
Chapter 167, Section 1) is amended to read:

"40-10B-1. SHORT TITLE.--Chapter 40, Article 10B NMSA
1978 may be cited as the "Kinship Guardianship Act"."

SECTION 2. Section 40-10B-3 NMSA 1978 (being Laws 2001,
Chapter 167, Section 3) is amended to read:

"40-10B-3. DEFINITIONS.--As used in the Kinship
Guardianship Act:

A. "caregiver" means an adult, who is not a parent
of a child, with whom a child resides and who provides that
child with the care, maintenance and supervision consistent
with the duties and responsibilities of a parent of the
child;

B. "child" means an individual who is a minor;

C. "department" means the children, youth and
families department;

D. "guardian" means a person appointed as a

1 guardian by a court or Indian tribal authority or a person
2 authorized to care for the child by a parental power of
3 attorney as permitted by law;

4 E. "guardianship assistance agreement" means a
5 written agreement entered into by the prospective kinship
6 guardian and the protective services division or juvenile
7 justice division of the department or Indian tribe prior to
8 the establishment of the guardianship by a court;

9 F. "guardianship assistance payments" means
10 payments made by the department to a kinship guardian or
11 successor guardian on behalf of a child pursuant to the terms
12 of a guardianship assistance agreement;

13 G. "guardianship assistance program" means the
14 financial subsidy program provided for in the Kinship
15 Guardianship Act;

16 H. "kinship" means the relationship that exists
17 between a child and a relative of the child, a godparent, a
18 member of the child's tribe or clan or an adult with whom the
19 child has a significant bond;

20 I. "legal custody" means a legal status that vests
21 in a person, department or agency the rights and obligations
22 that would otherwise vest by law in a parent;

23 J. "parent" means a biological or adoptive parent
24 of a child whose parental rights have not been terminated;

25 K. "relative" means an individual related to a

1 child as a spouse, parent, stepparent, brother, sister,
2 stepbrother, stepsister, half-brother, half-sister, uncle,
3 aunt, niece, nephew, first cousin or any person denoted by
4 the prefix "grand" or "great", or the spouse or former spouse
5 of the persons specified;

6 L. "subsidized guardianship" means a guardianship
7 that meets subsidy eligibility criteria pursuant to the
8 Kinship Guardianship Act; and

9 M. "voluntary placement agreement" means a written
10 agreement between either the protective services division or
11 juvenile justice division of the department or Indian tribe
12 that has entered into a joint powers agreement and the
13 parents or guardians of a child, which agreement shall not
14 exceed one hundred eighty days unless there has been a
15 judicial determination that such placement is in the best
16 interests of the child, in which case the agreement may be
17 extended for an additional one hundred eighty days, that
18 specifies at least the following:

19 (1) whether the parent or guardian agrees to
20 give legal custody of the child to the department;

21 (2) the rights and obligations of the
22 parents or guardians, the child and the department, including
23 that the parent or guardian has the right to revoke or
24 terminate the placement agreement and grant of legal custody
25 to the department at any time; and

1 (3) such other criteria as set forth by rule
2 promulgated by the department as necessary to comply with
3 state and federal law."

4 SECTION 3. Section 40-10B-8 NMSA 1978 (being Laws 2001,
5 Chapter 167, Section 8, as amended) is amended to read:

6 "40-10B-8. HEARING--ELEMENTS OF PROOF--BURDEN OF
7 PROOF--JUDGMENT--CHILD SUPPORT.--

8 A. Upon hearing, if the court finds that a
9 qualified person seeks appointment, the venue is proper, the
10 required notices have been given, the requirements of
11 Subsection B of this section have been proved and the best
12 interests of the minor will be served by the requested
13 appointment, it shall make the appointment. In other cases,
14 the court may dismiss the proceedings or make any other
15 disposition of the matter that will serve the best interests
16 of the minor.

17 B. A guardian may be appointed pursuant to the
18 Kinship Guardianship Act only if:

19 (1) a parent of the child is living and has
20 consented in writing to the appointment of a guardian and the
21 consent has not been withdrawn;

22 (2) a parent of the child is living but all
23 parental rights in regard to the child have been terminated
24 or suspended by prior court order; or

25 (3) the child has resided with the

1 petitioner without the parent for a period of ninety days or
2 more immediately preceding the date the petition is filed and
3 a parent having legal custody of the child is currently
4 unwilling or unable to provide adequate care, maintenance and
5 supervision for the child or there are extraordinary
6 circumstances; and

7 (4) no guardian of the child is currently
8 appointed pursuant to a provision of the Uniform Probate
9 Code.

10 C. The burden of proof shall be by clear and
11 convincing evidence.

12 D. As part of a judgment entered pursuant to the
13 Kinship Guardianship Act, the court may order a parent to pay
14 the reasonable costs of support and maintenance of the child
15 that the parent is financially able to pay. The court shall
16 consider the potential impact of financial payments pursuant
17 to this subsection on the relationship of the parent and
18 child and on the prospects of family reunification. The
19 court may use the child support guidelines set forth in
20 Section 40-4-11.1 NMSA 1978 to calculate a reasonable
21 payment.

22 E. The court may order visitation between a parent
23 and child to maintain or rebuild a parent-child relationship
24 if the visitation is in the best interests of the child."

25 SECTION 4. A new section of the Kinship Guardianship

1 Act, Section 40-10B-16 NMSA 1978, is enacted to read:

2 "40-10B-16. FINANCIAL SUBSIDIES--ELIGIBILITY.--

3 A. Guardianships granted pursuant to the Kinship
4 Guardianship Act may be eligible for financial assistance
5 through the guardianship assistance program.

6 B. In order to be eligible for guardianship
7 assistance payments, the following conditions must be
8 satisfied:

9 (1) the child must have been removed from
10 the child's home:

11 (a) pursuant to a voluntary placement
12 agreement; or

13 (b) as a result of a judicial
14 determination that the placement and care of the child should
15 be vested in the department;

16 (2) a guardian for the child has been
17 appointed pursuant to the Kinship Guardianship Act or the
18 Children's Code;

19 (3) the child must be eligible for foster
20 care maintenance payments while in the home of the
21 prospective kinship guardian;

22 (4) the child must have lived with the
23 prospective kinship guardian for at least six consecutive
24 months pursuant to a court order or a voluntary placement
25 agreement;

1 (5) the child has a strong attachment to the
2 kinship guardian;

3 (6) the kinship guardian has a strong
4 commitment to caring permanently for the child, documented
5 via a meeting with the guardian discussing the guardian's
6 long-term commitment;

7 (7) if the child is fourteen years of age or
8 older, the child has been consulted regarding the
9 guardianship arrangement; and

10 (8) the child is the subject of a fully
11 executed guardianship assistance agreement approved by the
12 department; or

13 (9) the child is a sibling of a child who
14 meets the eligibility criteria set forth in Paragraphs (1)
15 through (8) of this subsection."

16 SECTION 5. A new section of the Kinship Guardianship
17 Act, Section 40-10B-17 NMSA 1978, is enacted to read:

18 "40-10B-17. FINANCIAL SUBSIDIES--NONRECURRING
19 EXPENSES.--Nonrecurring expenses incurred by a prospective
20 kinship guardian associated with establishing a subsidized
21 guardianship may be reimbursed in an amount not to exceed two
22 thousand dollars (\$2,000) per child for an eligible child and
23 also for any of an eligible child's siblings."

24 SECTION 6. A new section of the Kinship Guardianship
25 Act, Section 40-10B-18 NMSA 1978, is enacted to read:

1 "40-10B-18. GUARDIANSHIP ASSISTANCE AGREEMENTS.--

2 A. In order for a kinship guardian to receive
3 subsidized guardianship payments pursuant to the Kinship
4 Guardianship Act, the department shall negotiate and enter
5 into a written guardianship assistance agreement with the
6 kinship guardian of an eligible child. The agreement shall
7 specify the following:

8 (1) the amount of and manner in which
9 guardianship assistance payments will be provided;

10 (2) additional services and assistance for
11 which the child and kinship guardian will be eligible;

12 (3) a procedure by which the kinship
13 guardian may apply for additional services;

14 (4) the responsibility of the kinship
15 guardian to report changes in the needs of the child or the
16 circumstances of the kinship guardian that affect
17 guardianship assistance payments;

18 (5) reasonable and verified nonrecurring
19 expenses associated with obtaining a subsidized guardianship
20 pursuant to the provisions of Section 40-10B-17 NMSA 1978;
21 and

22 (6) terms by which the guardianship
23 assistance agreement may be terminated and the ability of the
24 department to recoup funds received due to improper payment.

25 B. A copy of the fully executed guardianship

1 assistance agreement shall be given to the kinship guardian
2 and to the department."

3 SECTION 7. A new section of the Kinship Guardianship
4 Act, Section 40-10B-19 NMSA 1978, is enacted to read:

5 "40-10B-19. SUCCESSOR GUARDIANS.--

6 A. A successor guardian shall be named in the
7 guardianship assistance agreement and amendments thereto who
8 shall be considered to serve as guardian in the event the
9 kinship guardian dies or is incapacitated.

10 B. The department may pay the cost, not to exceed
11 two thousand dollars (\$2,000), of nonrecurring expenses
12 associated with the successor guardian obtaining a subsidized
13 guardianship of the child.

14 C. The department shall promulgate rules setting
15 forth requirements for a successor guardian to receive
16 guardianship assistance payments.

17 D. The successor guardian does not need to be a
18 relative and does not need to be licensed as a foster parent
19 to receive guardianship assistance payments."

20 SECTION 8. A new section of the Kinship Guardianship
21 Act, Section 40-10B-20 NMSA 1978, is enacted to read:

22 "40-10B-20. DISCONTINUANCE OF GUARDIANSHIP ASSISTANCE
23 PAYMENTS.--

24 A. The department shall immediately discontinue
25 guardianship assistance payments when the department is

1 advised or determines:

2 (1) a child or kinship guardian no longer
3 meets the criteria to be eligible for guardianship assistance
4 payments;

5 (2) the kinship guardian has requested a
6 termination of the guardianship assistance agreement;

7 (3) the guardianship has been terminated;

8 (4) the child reaches eighteen years of age
9 or twenty-one years of age if eligible pursuant to the
10 Fostering Connections Act; or

11 (5) the child is no longer receiving support
12 from the kinship guardian.

13 B. The department shall notify the kinship
14 guardian of a discontinuation of guardianship assistance
15 payments and the reasons for discontinuation.

16 C. The discontinuance of guardianship assistance
17 payments does not terminate a guardianship that has been
18 established by a court."

19 SECTION 9. A new section of the Kinship Guardianship
20 Act, Section 40-10B-21 NMSA 1978, is enacted to read:

21 "40-10B-21. APPEAL OF DECISIONS.--A child or kinship
22 guardian may appeal a decision made by the department
23 pursuant to the Kinship Guardianship Act related to a
24 subsidized guardianship. The department shall develop an
25 appeal procedure whereby a child or kinship guardian may

1 contest a decision by the department to establish, deny,
2 reduce or discontinue guardianship assistance payments."

3 SECTION 10. REPEAL.--Section 40-10B-2 NMSA 1978 (being
4 Laws 2001, Chapter 167, Section 2) is repealed.=====

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