

Guardianship

By Mary Dyer, HHS Adoption Specialist

What is guardianship and how does it differ from adoption? This is a question often asked of me and our staff at HHS. The underlying question may be should I take guardianship of the child I have in my home as a foster child, or should I adopt that child. In answering these questions, I ask that you think of what is best for the child and especially not just in the next few years, but over time, as the child grows up.

Adoption is the legal relationship between a child and parent. The child is afforded the legal status in the family, can inherit from the parent, and receive survivor's benefits. The parent/child relationship continues into adulthood. The only it ends is by death, termination of parental rights of the adoptive parents or relinquishment of their rights.

As many of you already know, the child cannot be adopted unless he or she is free for adoption, which means that the legal parent, usually the birth/biological parents have relinquished their parental rights, the court has terminated their rights, or the parents is deceased. The exception to this is in the case of an unknown father. Nebraska law states that they should be identified and notified by legal means.

Guardianship is the appointment by the court of a person to care for the child and make decisions for them, including medical and financial. The guardian is not the legal parent, and is not financially responsible for the child. A guardian can consent to the marriage or adoption of the child. Guardians of state wards are usually former foster parents or relatives. The guardianship ends when the child is 19 years old or the death of either the guardian or the ward. A guardian can be appointed if the child is not free for adoption. In these cases, the parents are notified of the guardianship hearing and could object to the appointment of the guardian. The law states that the judge is to make a decision based on the best interests of the child. If a child is over the age of 14 years of age, he or she is asked to consent to the guardianship.

The policy of HHS is that guardianship may be appropriate to consider as a permanency plan for the child when the efforts to reunify the child with legal family has been exhausted or have been unsuccessful, and when there is no advantage to the child in pursuing termination of parental rights.

HHS believes that children younger than the age of 12 years should be adopted and should have legal parents. The exception to this may be in the case of relative placements or children under the age of 12 who are a part of a sibling group that includes children over the age of 12.

Consideration of the appropriateness of guardianship includes the relationship that the guardian and the child have, and whether they can function effectively without the involvement of HHS. HHS' custody of the child is usually terminated when the guardianship is ordered. Therefore, HHS has no more planning for the child. We want to assure that the plan of guardianship is the best for the child in his/her future. We also

consider why the goal is not adoption. We ask whether it is the wish of the child who is moving toward independence or has a strong tie to birth family. This is certainly more appropriate than the future guardians/foster parents not wanting to commit to be legal parents of the child.

Other factors that are considered when planning for the goal of guardianship are the continued relationship between the child and the guardian beyond the child's 19th birthday. Even though the official legal guardianship ends when the child turns 19 years old, we hope that the young adult will be considered a part of the guardian's family and be welcomed at family gatherings and holiday events. Everyone needs a family. Sometimes these young people need connections to family and those they consider to be family, such as former guardians, even more when they start to move out on their own than when they were in their teens.

Guardianship can be subsidized if the child is a former state ward and has special needs. It is not possible to go from subsidized guardianship to subsidized adoption without the child becoming a state ward again, as the child must be a state ward at the time of the adoption. The only exception to this is when the child is SSI eligible as determined by the Social Security Administration.

HHS has seen many disrupted guardians, which represent another loss for the child. We want to avoid that, which is why we do not consider recommending guardianship until the child has lived with the guardian for at least six months.