

WSR 24-06-049
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed March 1, 2024, 1:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-092.

Title of Rule and Other Identifying Information: Guardianship assistance program (GAP) and extended guardianship assistance program (EGAP), chapter 110-85 WAC.

The department of children, youth, and families (DCYF) will be creating new GAP and EGAP chapter 110-85 WAC and other related rules related to the GAP and EGAP. New rules are needed to establish eligibility, application, and program standards consistent with the 42 U.S.C. 673 to ensure guardianship subsidy payments comply with the guidelines for expenditures for federal grant monies for relatives and state monies for other nonrelated guardians. These rules will clarify the application process, eligibility and program standards, and the process for adjudicating denied applications.

The following WAC in the new GAP and EGAP chapter will be created:

LEGAL BASIS, PURPOSE, AND DEFINITIONS: WAC 110-85-0010 Legal basis for the department's guardianship assistance program (GAP) and extended guardianship assistance program (EGAP), 110-85-0020 Purpose, and 110-85-0030 Definitions.

SUBSIDY AND ELIGIBILITY: WAC 110-85-0040 Subsidy that may be available to guardians through GAP and 110-85-0050 Eligibility criteria for GAP.

GAP APPLICATION AND AGREEMENT PROCESS: WAC 110-85-0060 Submitting the GAP application, 110-85-0070 GAP application process, 110-85-0080 GAP agreement purpose, 110-85-0090 GAP agreement requirements, 110-85-0100 Factors that determine the amount of the GAP cash payment, and 110-85-0110 Effective date of the GAP agreement.

NONRECURRING GUARDIANSHIP EXPENSES: WAC 110-85-0120 Reimbursement for nonrecurring guardianship expenses and 110-85-0130 Reimbursement process.

GAP AGREEMENT MODIFICATION, SUSPENSION, AND TERMINATION: WAC 110-85-0140 Modification of GAP agreement, 110-85-0150 Suspension of GAP agreement subsidy, 110-85-0160 Circumstances to terminate the GAP agreement, and 110-85-0170 Guardian's right to an administrative hearing.

SUBSIDY RELATED QUESTIONS: WAC 110-85-0180 GAP subsidies and other financial programs to meet the children's and youth's basic needs, 110-85-0190 Duty to inform the department of a family's change in circumstance, 110-85-0200 Guardianship family resides in or moves to another state, 110-85-0210 EGAP agreement and subsidy program, 110-85-0220 Transferring GAP subsidy to a subsequent successor guardian, 110-85-0230 GAP subsidies and residential treatment placement services, and 110-85-0240 GAP subsidy and out-of-home placement.

EXTENUATING CIRCUMSTANCES: 110-85-0250 Extenuating circumstances.

Hearing Location(s): On April 9, 2024, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email address or physical mailing address where DCYF will send its response. Comments received through and including April 9, 2024, will be considered.

Date of Intended Adoption: April 10, 2024.

Submit Written Comments to: Rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by April 9, 2024.

Assistance for Persons with Disabilities: Contact rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by April 2, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new rules will create and clarify the GAP application process, eligibility requirements, program standards, and the process for adjudicating denied applications. The new rules will also provide the eligibility criteria for the EGAP.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 74.13.062 and 13.36.090.

Statute Being Implemented: RCW 74.13.062 and 13.36.090.

Rule is necessary because of federal law, 42 U.S.C. 673.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Geene Delaplane, Olympia, Washington, 360-688-0391; Implementation and Enforcement: DCYF, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5) [(a)] (i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

March 1, 2024
Brenda Villareal
Rules Coordinator

OTS-5162.2

Chapter 110-85 WAC
GUARDIANSHIP ASSISTANCE PROGRAM (GAP) AND EXTENDED GUARDIANSHIP ASSISTANCE PROGRAM (EGAP)

LEGAL BASIS, PURPOSE, AND DEFINITIONSNEW SECTION

WAC 110-85-0010 Legal basis for the department's guardianship assistance program (GAP) and extended guardianship assistance program (EGAP). The legal basis for the department's GAP and EGAP are:

- (1) RCW 13.36.090;
- (2) RCW 74.13.031;
- (3) RCW 74.13.062;
- (4) 42 U.S.C. § 671-675;
- (5) 45 C.F.R. § 205.10;
- (6) 45 C.F.R. § 1355; and
- (7) 45 C.F.R. § 1356.

NEW SECTION

WAC 110-85-0020 Purpose. GAP was established as a subsidy to support the care of children or youth entering into a guardianship under chapter 13.36 RCW or RCW 11.130.215. GAP encourages guardianship for children or youth in the legal custody of public or tribal child welfare agencies for whom permanency would not be an option if support for the child or youth was not available.

NEW SECTION

WAC 110-85-0030 Definitions. The following definitions apply to this chapter:

"Applicant" means individuals or couples applying for GAP on behalf of a child or youth for whom the individual or couple plans to be guardians.

"Department" or **"DCYF"** means the department of children, youth, and families.

"Extended guardianship assistance program" or **"EGAP"** means the department's extended guardianship assistance program (EGAP), for eligible youth 18 through 20 years of age.

"Extenuating circumstances" means a finding by an administrative law judge or a review judge that one or more qualifying conditions or events occurred that erroneously prevented an otherwise eligible child or youth from receiving a GAP subsidy before the guardianship was established.

"GAP" means the department's guardianship assistance program (GAP), for eligible children and youth birth to their 18th birthday.

"Guardians" means the individuals or couples who have been appointed by a court as a legal guardian of the child or youth in a chapter 13.36 RCW or RCW 11.130.215 guardianship. The term includes a co-guardian, but does not include a guardian ad-litem.

"Guardianship" means a guardianship pursuant to chapter 13.36 RCW or a limited guardianship of a minor pursuant to chapter 11.130 RCW or equivalent laws of another state or a federally recognized Indian tribe.

"Guardianship assistance program agreement" or **"GAP agreement"** means a written contract between the guardian and the department that identifies the terms and conditions of the agreement and specific subsidy, per WAC 110-85-0040, available to the guardian.

"Guardianship assistance program cash payment" or **"GAP cash payment"** means the monthly cash payment paid by the department to the guardian on behalf of the child or youth pursuant to a guardianship assistance program agreement.

"Indian children" means any unmarried and unemancipated Indian person who is under age 18 and is, as determined by the Indian child's tribe or tribes, one of the following:

- (a) A member of an Indian tribe; or
- (b) Is eligible for membership in an Indian tribe.

"Medical services" means services covered by medicaid and administered by the state medical assistance administration.

"Negotiation" means the process when the department and the applicant attempt to reach an agreement on the terms of the GAP agreement.

"Nonrecurring guardianship expenses" means expenses directly related to the cost of establishing the chapter 13.36 or 11.130 RCW guardianship of a dependent child or youth.

"Relatives" means the same as defined in RCW 13.36.020(5), described in RCW 74.15.020(2) and 11.130.010(32), or caregivers of Indian children or youth who are defined by their tribal code or custom as relatives or extended family.

"Resident state" means the state in which the child or youth physically resides for purposes of their medicaid eligibility. In some cases, this may be different from the state of the guardian's legal residence.

"Subsidy" is a benefit given to an individual by DCYF including, but not limited to, cash payments and payment for services.

"Successor guardian" means an individual who has become the child's or youth's guardian due to the death or incapacity of the original guardian and was named in the GAP agreement.

"Title IV-E administering agency" means DCYF and federally recognized tribes with federally approved Title IV-E plans pursuant to section 471 of the Social Security Act or an approved operational agreement with DCYF.

SUBSIDY AND ELIGIBILITY

NEW SECTION

WAC 110-85-0040 Subsidy that may be available to guardians through GAP. GAP may provide guardians the following subsidy:

- (1) Reimbursement for nonrecurring guardianship finalization expenses;
- (2) Cash payments as negotiated by the guardian and the department;
- (3) Medical services through the medicaid program; and
- (4) Evidence based programs contracted by the department to help stabilize the child or youth in the guardianship home if the department determines the programs are pertinent to the needs of the child or youth and family.

NEW SECTION

WAC 110-85-0050 Eligibility criteria for GAP. (1) In order for children or youth to be eligible for GAP, they must be:

- (a) Under 18 years old when the department and the applicant sign the GAP agreement and the order establishing the guardianship is entered by the court;
 - (b) A dependent of a Title IV-E administering agency or federally recognized tribe located in Washington state; and
 - (c) Placed for at least six consecutive months with the prospective guardian who has been fully licensed and receiving foster care maintenance payments for at least six consecutive months.
- (2) The department must not use applicants' income as a basis to determine the children's or youth's eligibility for GAP. However, the department will consider the applicant's income and other financial circumstances when determining the amount of the GAP cash payments.

GAP APPLICATION AND AGREEMENT PROCESS

NEW SECTION

WAC 110-85-0060 Submitting the GAP application. Applicants must complete the GAP application and worksheet and submit the completed paperwork to the department prior to the finalization of the guardianship in court.

NEW SECTION

WAC 110-85-0070 GAP application process. The department will review applications and determine if the child or youth and applicant meet the eligibility requirements. If the eligibility requirements are met, the department must:

- (1) Provide the applicant with the application and worksheet used to negotiate the amount of GAP subsidy;

- (2) Verify the eligibility criteria in WAC 110-85-0050 continues to be met;
- (3) Negotiate the GAP cash payment amount with the applicant;
- (4) Complete the GAP agreement and request the applicant's signature on the agreement; and
- (5) Provide a copy of the signed agreement to the applicant.

NEW SECTION

WAC 110-85-0080 GAP agreement purpose. (1) The purpose of the GAP agreement is to define terms of financial and medical assistance provided to qualified applicants by DCYF on behalf of eligible children or youth.

(2) The GAP agreement is a binding agreement between guardians and the department that identifies the terms and conditions that DCYF and the guardian must follow.

NEW SECTION

WAC 110-85-0090 GAP agreement requirements. The GAP agreement must be signed by the applicant and the department before the court establishes the guardianship and must include the following:

(1) The amount of any GAP cash payment the department must make to the guardian on behalf of the child or youth;

(2) A statement that includes:

(a) The child or youth is eligible for medical services through medicaid;

(b) GAP subsidy will continue as long as the child or youth is eligible, regardless of where the guardianship family resides;

(c) A change in the guardianship family's circumstances or the child's or youth's needs may warrant further renegotiation and adjustment of the GAP cash payment as mutually agreed by the guardian and the department and the terms of the agreement may be modified under the requirements of WAC 110-85-0140;

(d) The basis for termination or suspension of subsidy under the agreement; and

(e) The name of a successor guardian in the event of the guardian's incapacity or death.

NEW SECTION

WAC 110-85-0100 Factors that determine the amount of the GAP cash payment. (1) The amount of the GAP cash payment is determined by negotiations between the applicant and the department based on the following factors:

(a) The child's or youth's needs and the applicant's circumstances. The agreed GAP cash payment and applicant's resources should combine to cover the child's or youth's current and anticipated ordinary and special needs projected over the period of the GAP agreement.

(b) The applicant's foster care maintenance payment level is based on the level they were receiving prior to the guardianship.

(c) The GAP monthly subsidy amount cannot exceed the following statutory caps for foster care maintenance payments for the child or youth if they had remained in foster care during the same period:

(i) Infants and children birth through age four may receive up to 80 percent of the foster care maintenance payment.

(ii) Children age five through nine may receive up to 90 percent of the foster care maintenance payment.

(iii) Children or youth age 10 to 18 may receive up to 95 percent of the foster care maintenance payment.

(d) The family circumstances including, but not limited to:

(i) Size, including the identified child or youth for whom the guardianship applies;

(ii) Normal living expenses;

(iii) Income;

(iv) Guardianship family's financial resources; and

(v) Additional miscellaneous expenses related to the child or youth.

(2) The department must not consider previously approved child care, medical related expenses, or exceptional costs when calculating the GAP subsidy amount.

(3) Under no circumstances may the amount of the GAP cash payment exceed the statutory cap for the maintenance payment, under RCW 74.13A.047. DCYF has adopted the percentage caps in adoption support under RCW 74.13A.047.

NEW SECTION

WAC 110-85-0110 Effective date of the GAP agreement. The GAP agreement must be signed prior to entry of the order establishing guardianship. The agreement takes effect on the date the court enters an order establishing the guardianship.

NONRECURRING GUARDIANSHIP EXPENSES

NEW SECTION

WAC 110-85-0120 Reimbursement for nonrecurring guardianship expenses. (1) The department will reimburse some or all of the guardian's nonrecurring guardianship expenses associated with establishing the guardianship and as specified in the agreement up to \$2,000 per child or youth.

(2) The department will reimburse for the following nonrecurring guardianship expenses:

(a) Court costs associated with establishing the guardianship;

(b) Attorney fees directly related to finalizing a guardianship;

(c) Costs associated with a home study; and

(d) Other costs directly related to establishing the guardianship of the child or youth.

(3) The department will not reimburse nonrecurring guardianship expenses that are reimbursable from other sources including, but not limited to, the guardian's employer.

NEW SECTION

WAC 110-85-0130 Reimbursement process. (1) Guardians requesting reimbursement must submit to the department a copy of the bills or receipts itemizing the expenses specified in the agreement for which they are seeking reimbursement.

(2) The department must reimburse documented actual costs up to the maximum amount specified in the agreement, which must not exceed \$2,000 per child or youth.

GAP AGREEMENT MODIFICATION, SUSPENSION, AND TERMINATION

NEW SECTION

WAC 110-85-0140 Modification of GAP agreement. (1) The terms of a GAP agreement may be modified only if both the guardian and the department agree to the modification. The department will consider a modification when:

(a) Requested by the guardian;

(b) Specific circumstances warrant renegotiation and adjustment of the GAP cash payment as determined by the department; or

(c) The child or youth is placed outside of the guardian's home and the guardian is not providing financial or other support for the care of the child or youth.

(2) Guardians may request a modification to the GAP agreement at any time.

(3) When guardians request to modify their GAP agreement's cash payment:

(a) Guardians must:

(i) Submit their request in writing to the regional GAP gatekeeper explaining how the child's or youth's needs or circumstances of the family have changed.

(ii) Provide supporting documentation upon the department's request.

(b) The regional GAP gatekeeper must initiate a review of the GAP agreement no later than 30 calendar days after receipt of the guardian's request for modification.

(c) Guardians and the department will renegotiate the GAP cash payment.

(4) If the guardians and the department agree to modify the GAP agreement:

(a) The regional GAP gatekeeper will use the date the department received the guardian's written request for the modification as the effective date on the modified GAP agreement.

(b) Guardians and the department must sign an amendment to the GAP agreement.

(5) If the guardians and department cannot reach an agreement on the modification, the department will deny the guardian's request for modification and provide them with written notice of the denial and their right to appeal the denial, per chapter 110-03 WAC.

NEW SECTION

WAC 110-85-0150 Suspension of GAP agreement subsidy. (1) The department may suspend a guardian's GAP agreement subsidy if:

(a) They cannot establish that the:

(i) Guardian is legally responsible for the support of the child or youth; or

(ii) Child or youth is receiving any support from the guardians.

(b) They have provided notice to the guardian of the department's determination under (a)(i) or (ii) of this subsection and of their intent to suspend the GAP subsidy payment in 30 calendar days and the guardian does not provide documentation within that time frame to refute the department's determination; and

(c) The guardian fails to provide satisfactory documentation that the guardian is legally responsible for the support of the child or youth or that they are providing support to the child or youth.

(2) If the guardian:

(a) Provides the department with satisfactory documentation of continued legal responsibility or financial support for the child or youth, the subsidy will not be suspended.

(b) Fails to provide the department satisfactory documentation, the department must send a notice stating the date the subsidy will be suspended. When this occurs, the guardian has a right to request an administrative hearing to challenge the suspension and the department must provide notice of that right, per chapter 110-03 WAC.

NEW SECTION

WAC 110-85-0160 Circumstances to terminate the GAP agreement.

The GAP agreement will be terminated if the terms of the GAP agreement are not met or any one of the following events occur:

(1) The youth reaches 18 years of age and the GAP agreement is not eligible to be extended under WAC 110-85-0210;

(2) The youth turns 21 years of age;

(3) The child or youth dies;

(4) The guardian of the child or youth dies or becomes incapacitated, unless a successor guardian has been named in:

(a) The GAP agreement and named successor guardian becomes the guardian; or

(b) An amended GAP agreement and the named successor guardian becomes the guardian;

(5) The child or youth is under 18 years old and the department determines the child or youth is no longer receiving any support from

the guardian or the guardian is no longer legally responsible for the child or youth; or

(6) Upon the request of the guardian.

NEW SECTION

WAC 110-85-0170 Guardian's right to an administrative hearing.

(1) Guardians have the right to an administrative hearing per chapter 110-03 WAC to contest the following department actions:

- (a) Failure to respond with reasonable promptness to a written application for modification or request for services;
- (b) Denial of a written request to modify the GAP cash payment or preauthorized services in the guardianship assistance agreement;
- (c) Delay of more than 30 calendar days when responding to a written request for modification of the GAP agreement;
- (d) Denial of a request for nonrecurring guardianship expenses;
- (e) Suspension of GAP subsidy; and
- (f) Termination of GAP subsidy.

(2) To request an administrative hearing, guardians must submit a request to the office of administrative hearings within 90 calendar days of receipt of any of the department's decisions listed in subsection (1) of this section.

(3) The office of administrative hearings must apply the rules in this chapter.

SUBSIDY RELATED QUESTIONS

NEW SECTION

WAC 110-85-0180 GAP subsidies and other financial programs to meet the children's and youth's basic needs. (1) Guardians may not receive foster care payments for a child or youth while receiving GAP cash payments for the same child or youth.

(2) If the guardian is receiving a GAP cash payment for a child or youth, they are not eligible for a nonneedy relative grant, in loco parentis, or legal guardian grant through the department of social and health services community services office.

(3) Guardians may not request GAP subsidies after finalizing the guardianship, unless an extenuating circumstance described in WAC 110-85-0250 exists.

NEW SECTION

WAC 110-85-0190 Duty to inform the department of a family's change in circumstance. (1) Guardians must inform the department's

regional GAP gatekeeper within 30 days of the change in circumstance that might affect the child's or youth's eligibility for GAP subsidy. Failure to report a change in circumstance may result in:

- (a) An overpayment;
- (b) Missed payment;
- (c) Lead to modification of their agreement; or
- (d) A suspension of their GAP subsidy.

(2) Changes in circumstance that must be reported include, but are not limited to:

- (a) Significant changes in the child's or youth's physical, mental, or behavioral condition;
- (b) The guardian's marital status;
- (c) The legal or physical custody of the child or youth;
- (d) The family's mailing address;
- (e) The child's or youth's enrollment in school; or
- (f) Changes to the youth's eligibility criteria for EGAP subsidy.

NEW SECTION

WAC 110-85-0200 Guardianship family resides in or moves to another state. If the guardianship family resides in or moves to another state, the GAP subsidy is affected as follows:

- (1) The Washington state department remains responsible for any GAP cash payments; and
- (2) Medical services:
 - (a) If the child or youth is eligible for Title IV-E medical services through the medicaid program, the state in which the guardian family resides is responsible for providing their medical benefits; and
 - (b) If the resident's state plan does not include the needed service that Washington state's medicaid plan includes, then it remains Washington state's responsibility to provide the needed service subject to Washington state's medicaid plan's limits and requirements.

NEW SECTION

WAC 110-85-0210 EGAP agreement and subsidy program. (1) The GAP agreement subsidy may be extended when the youth reaches 18 years of age and the following criteria is met:

- (a) The guardian contacts the regional GAP gatekeeper prior to the youth's 18th birthday:
 - (i) To request services continue; and
 - (ii) Provides documentation of their continued eligibility, per WAC 110-85-0050.
 - (b) They are enrolled in high school or in a high school equivalency program.
 - (c) They meet the eligibility criteria for the extended foster care program in RCW 74.13.031, except that the youth must not be dependent on their 18th birthday.
- (2) If subsection (1)(a), (b), and (c) of this section occurs:
 - (a) The department may enter into an EGAP agreement so long as the youth continues to meet at least one eligibility criteria and the guardian continues to provide ongoing support or the youth turns 21.

(b) Under no circumstances may the department continue the EGAP agreement beyond the youth's 21st birthday.

(c) The guardian will continue to receive the GAP cash payments.

(3) To transfer EGAP to a successor guardian, they must have been named as the successor guardian on the GAP agreement.

NEW SECTION

WAC 110-85-0220 Transferring GAP subsidy to a subsequent successor guardian. (1) In the event of the death or incapacity of the guardian, the GAP subsidy will transfer to the successor guardian named in the GAP agreement.

(2) The GAP agreement must be amended when the named successor guardian becomes the guardian.

(3) Before the GAP cash payment is transferred to the successor guardian:

(a) The successor guardian and all individuals aged 16 and older living in the successor guardian's home must pass the department's background check requirements.

(b) The successor guardian must establish guardianship of the child or youth.

(4) The successor guardian does not need to be a relative or have a foster care license to receive the GAP subsidy.

NEW SECTION

WAC 110-85-0230 GAP subsidies and residential treatment placement services. If a child or youth needs residential treatment, no additional GAP subsidies will be provided to pay for residential treatment placements.

NEW SECTION

WAC 110-85-0240 GAP subsidy and out-of-home placement. If children or youth are receiving GAP subsidy and are placed in out-of-home care, the department may:

(1) Continue the GAP subsidy during their out-of-home placement as long as the permanency plan is to return home.

(2) Terminate the GAP agreement, per WAC 110-85-0160, if the guardian is no longer legally responsible for the child or youth.

EXTENUATING CIRCUMSTANCES

NEW SECTION

WAC 110-85-0250 Extenuating circumstances. (1) If both the child or youth and guardian met eligibility requirements in WAC 110-85-0050 before the guardianship was established, but the guardian did not have a GAP agreement, the guardian may still obtain the subsidy if an administrative law judge makes a finding of extenuating circumstances through an administrative hearing, per chapter 110-03 WAC.

(2) If the guardians believe extenuating circumstances exist, the:

(a) Guardians must apply for GAP subsidy.

(b) Department will deny the application.

(c) Guardians may then request a review by an administrative law judge to determine if extenuating circumstances exist that authorized the guardian and the department to enter into a GAP agreement after the guardianship has been established.

(3) An administrative law judge may make a finding of extenuating circumstances if one or more of the following situations exist:

(a) The agency that placed the child or youth for guardianship was aware of relevant facts regarding the child or youth, the biological family, or child's or youth's background that were not presented to the guardian prior to the guardianship;

(b) The department gave erroneous advice or made an erroneous determination that a child or youth is ineligible for GAP; or

(c) The department failed to advise the guardian regarding the availability of GAP.

(4) If an administrative hearing results in the finding of extenuating circumstances, the effective date of a GAP agreement is the date the guardianship was established, unless the guardianship was established two or more years prior to the date of the order finding extenuating circumstances.

(5) Under no circumstances may the department back date a GAP agreement more than two years from the date of the order finding extenuating circumstances, which authorizes the department to enter a GAP agreement.