

Adoption and Guardianship



Dear Parents:

There is no greater gift than to receive a child into your family. All children need a family that nourishes and loves them forever. At the Division of Family and Youth Services, we are making this a reality for many children. A basic assumption underlying all of what we do everyday is making sure all children have the right and need to a family environment that will be permanent.

One of the division's primary outcomes is to achieve permanency for children. Permanency can mean returning to their home with the necessary protections and treatment in place. However, for some children, returning home is not an option, usually for a variety of reasons. This is when adoption or guardianship becomes an important permanent option for children who have been in state custody.



This guidebook is about choosing adoption or guardianship for a child in state custody. If you find yourself wondering whether or not to adopt a child or become a guardian for a child, this guidebook is for you. We realize that families considering such a long-term commitment need to have information and answers to their questions.

This guidebook will provide you with basic information on adoption and guardianship, the process for both options, a comparison of adoption and guardianship, and information about how the adoption and guardianship subsidy program works.

A unique feature of adoption is its long-term, permanent nature. This is quite different from the short-term focus on most foster-care. Guardianship is also a permanent, long-term commitment to a child, but it is different than adoption. You will learn about those differences in this guidebook.

I am deeply thankful for the inspiration and support from staff who made this publication possible. I am also deeply grateful for your family's consideration of becoming a permanent family for a child who today lives in a temporary situation.

Together we can create optimal circumstances for children to reach permanency successfully. Thank you.

Theresa Tanoury
Director

This is an informational booklet about adoptions and guardianships completed through the Alaska Department of Health and Social Services, Division of Family and Youth Services. Hopefully, this booklet will guide and assist birth parents, foster parents and relatives in making the best permanent plan for children who cannot return to their birth parents.

Who are the children?

They are children who are in the foster care system. The foster care system serves children who have suffered abuse or neglect. In FY 2000, over 11,600 children were reported as victims of abuse or neglect. Many of these children were sexually abused, emotionally mistreated, or medically neglected. As of January 2001, there were approximately 2,000 children in foster care.

Not all children in the foster care system end up in adoption or guardianship. Many of them return to their birth parents. For those children who cannot return, adoption and guardianship are viable long-term, permanent options.

When children in the foster care system are ultimately placed for adoption or guardianship, their birth parents' rights have been severed by the Courts.

Clearly, while each child adopted from the foster care system is different, and presents a unique set of needs, there are experiences common to foster care children. Experiences such as domestic violence and substance abuse, while distinct onto themselves, frequently occur with child abuse and neglect. The available data about the experiences of foster care children, including the extent and nature of the abuse and neglect they have suffered, is important in understanding the on-going needs of these children.



Adoption

What is adoption?

Adoption means a lifelong commitment to a child. Adoption is the creation of a new and legally binding parent and child relationship. A court proceeding initiated by the prospective adoptive family asks the court to finalize the adoption.



An approved home study must be completed on the adoptive family and filed with the court. If DFYS has permanent custody of the child, DFYS must consent to the adoption. When the adoption is finalized, DFYS supervision ends, and foster care payments cease. Financial assistance in the form of an adoption subsidy may continue (see subsidy discussion beginning on page 3).

Adoptive parents assume all rights and responsibilities for the child, including the right to consent to major medical treatment and to marriage. They can claim the child as a dependent for income tax purposes, and the child can inherit from them. The birth parents do not have visitation rights, although the adoptive family and the birth family may voluntarily agree to some degree of contact and communication.

When is adoption appropriate?

For children who cannot return to their birth parents, adoption should always be explored. Adoption offers greater legal and emotional security for children than do guardianships (which are discussed beginning on page 6.)

Prospective adoptive parents should understand how crucial it is for children to have families who will make long-term commitments and be there for them into adulthood. Adoptive parents should also recognize that a child's need to stay connected to the birth family might be met through an open adoption.

If prospective adoptive parents are concerned about how they can meet a child's special needs, the DFYS social worker can discuss financial help available through a state subsidy program. DFYS is responsible for ensuring that families have accurate information regarding adoption and guardianship so they may make informed decisions.

Guardianship

What is Guardianship?

Guardianship is a legally binding, permanent supervisory relationship between an adult (or adults) and a child. A guardian may be a relative or may be unrelated to the child, and the parental rights of the child's parents may or may not have been terminated.

A positive guardianship study must be completed, and a child must reside with the guardian family for at least six months, before a court hearing can be scheduled. The DFYS Director or Designee must review permanent guardianship plans for children under 10 years of age.

When a guardian is appointed, DFYS supervision ends, and foster care payments cease. Financial assistance in the form of a guardianship subsidy may continue (see guardianship subsidy discussion on page 8).

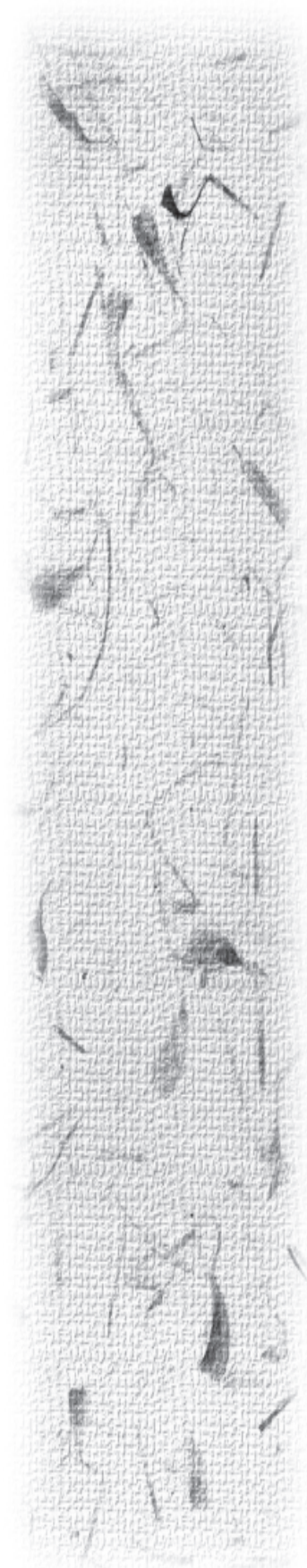
The guardianship order that is issued by the Superior Court specifies the guardian's rights and responsibilities which include responsibility for the physical care and control of the child, the determination of where and with whom the child will live, the right and duty to protect, train, and discipline the child, and the responsibility of providing the child with food, shelter, education, and medical care.



Visitation between the child and the birth parents may occur, depending on what is agreed to with all parties. In guardianships where birth parents' rights have not been terminated, the birth parents can petition the court to modify the guardianship order. DFYS and the guardian can also petition for modification. This could occur throughout the life of the guardianship.

What are adoption and guardianship subsidies?

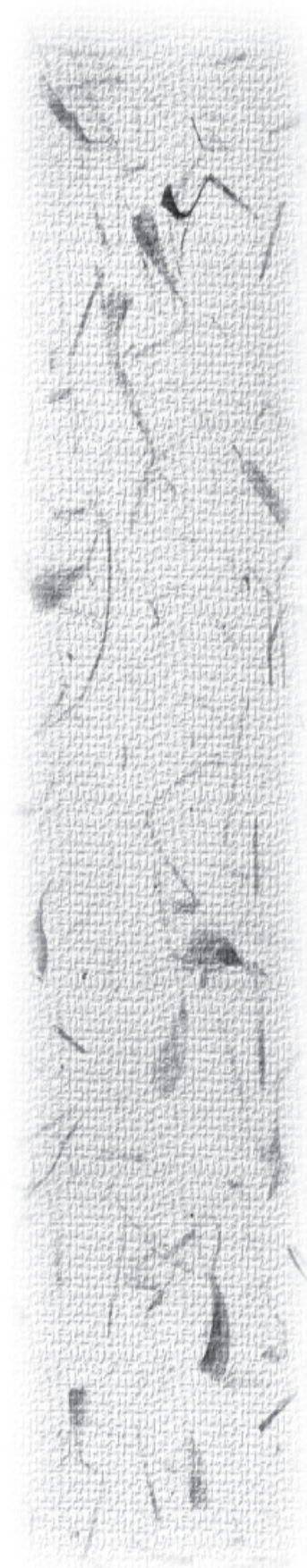
- Subsidies are financial assistance to families who need assistance in order to make a long term commitment to a child with special needs.
- **Special needs, which must be documented by a professional, are defined in law to mean: “physical or mental disability, emotional disturbance, recognized high risk of physical or mental disease, membership in a sibling group, racial or ethnic factors, or any combination thereof.”**
- Prospective adoptive parents and guardians must be evaluated through an adoptive home study or a guardianship study. Then, a DFYS Permanency Planning Conference team determines if eligibility criteria for a subsidy has been met.
- Families must apply and be approved for a subsidy before an adoption or a guardianship is finalized.
- Subsidy agreements are developed jointly with the prospective adoptive parents or guardians and DFYS, and must be based on the needs of the child. They are binding contracts that DFYS cannot modify unless the family agrees or the terms of the agreement are violated.
- The amount of the subsidy cannot exceed the existing amount for foster care.
- A reimbursement of no more than \$2,000 is available to adoptive parents after the adoption is final. This special reimbursement is for “nonrecurring” adoption related expenses, such as attorney fees. (Nonrecurring expenses are paid only after the adoption is final.)
- Medicaid health coverage can be included in the adoption subsidy (after consideration of adoptive parents’ health insurance resources). In a Guardianship, the guardians can apply for Medicaid on behalf of the child once the guardianship is finalized.
- Subsidy agreements are reviewed annually, and can be renegotiated as the needs of the child or family change.

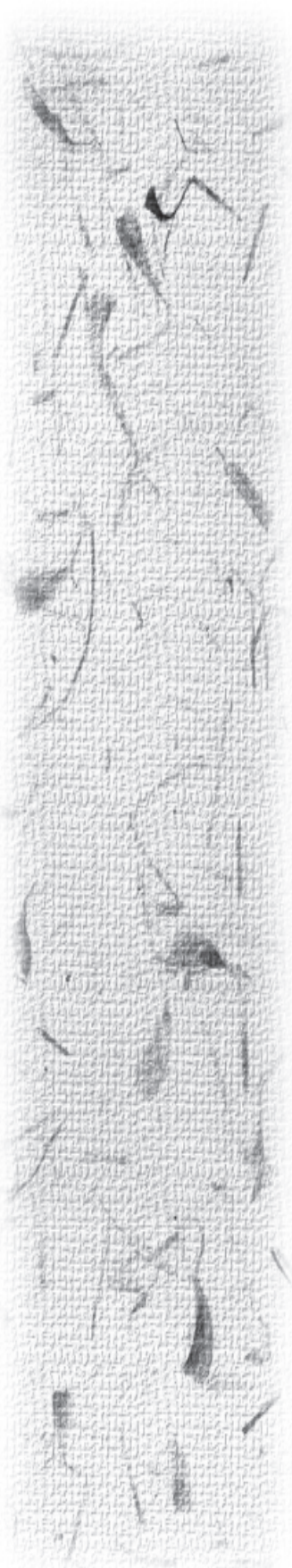


What are the differences between adoption and guardianship?

	Adoption	Guardianship
Legal Status	<p>Birth parent's rights are voluntarily relinquished or involuntarily terminated.</p> <p>The adoptive parent is given all the rights and responsibilities that once belonged to the birth parent.</p> <p>Adoption is a permanent, lifelong, legal relationship.</p>	<p>Birth parent/s' rights may or may not be voluntarily relinquished or involuntarily terminated.</p> <p>Guardian is given legal responsibility for the child and assumes the rights of care, custody, and supervision of the child.</p> <p>When married, either one or both spouses may be named guardian.</p> <p>The birth parent retains "residual rights" when parental rights have not been relinquished or terminated. These rights include: visitation, choice of religion and the right to claim the body of a deceased child.</p> <p>The court makes all decisions regarding the transfer of guardianship, but the birth parent/s can request that guardianship be taken away from the caregiver and that the child be returned to their care if parental rights have not been terminated.</p>
Decision Making	<p>All decisions are made by the adoptive parent.</p>	<p>Major decisions regarding school, medical treatment and consent for most other major life decisions are made by the guardian.</p> <p>Birth parent/s retain important rights, e.g., choice of religion and visitation when parental rights have not been relinquished or terminated.</p>

	Adoption	Guardianship
Child's Legal Name	The adoptive parent determines the child's legal name.	Usually the child retains his/her own legal last name.
Inheritance	An adopted child has all of the same rights as birth children when the adoptive parent does not have a will. Otherwise, inheritance rights are established through a valid will as they are for birth children.	The child has no rights of inheritance from the guardian unless the child has been included in the guardian's will.
Consent of the Child	A child who is 10 years of age or older must consent to his/her own adoption, unless the court in the best interest of the minor dispenses with minor's consent.	A child who is 10 years of age or older must consent to his/her own guardianship.
Death of Adoptive Parent/ Guardian or Termination of Adoption/ Guardianship	A child adopted with adoption assistance remains eligible for adoption assistance when he/ she is orphaned due to the death of his/her adoptive parent/s or when a court terminates the adoptive parent/s' parental rights. He or she can continue to receive adoption assistance if adopted by someone else.	A Guardianship subsidy ends due to the death or incapacitation of his/ her guardian/s. The child needs to re-enter state's custody to be eligible for further guardianship subsidy. *DFYS must be notified of the above.
Returning a Child to DFYS	An adoptive child would have to be found by the court to be abused, neglected or dependent in order to have DFYS again assume legal responsibility for the child.	Both adoption and guardianship are evidence of strong commitments to children. The commitment entered into by adopting a child is one that lasts for a lifetime. Although guardianship legally ends when the child reaches adulthood, most legal guardians enter into this commitment intending it to be a lifetime relationship. Thus, adoption and guardianship are commitments to be taken seriously by caregivers.





Adoption

Guardianship

Financial Assistance

The adoptive parent/s, whether receiving a subsidy or not, are financially responsible for the support of the child. Financial assistance is available for the adoption of many Department children. The adoption subsidy lasts until the child is 18.

A guardian, whether receiving a subsidy or not, is responsible financially for the child. Financial assistance is available for eligible children. The guardian is responsible for financially supporting the child until DFYS stops the subsidy payment and the court vacates guardianship (whichever event happens last). If the birth parent/s' rights have not been terminated they can be held responsible to contribute to the financial support of the child. Guardianship subsidy lasts until the child is 18.

Relationship with the Birth Parent/s

The adoptive parent has the right to determine if the child will have any relationship with the birth parents.

If the birth parent/s' rights have not been terminated, they have the right to visit the child unless a court orders no visits. The guardian will have input into how the visits are structured, but can not prevent visits from occurring. If the guardian and the parent/s can not work out visitation scheduling one of the parties may wish to seek court involvement. Birth parent/s also have the right to petition the court to have the child returned to them.

**For more information on adoption or Guardianship,
please call the Regional Adoption Specialist in your area.**

Northern Region	(907) 451-2650
Anchorage Region	(907) 269-3900
South Central	(907) 486-6174
Southeast Region	(907) 465-3235

If you cannot reach the Regional Adoption Specialist you may call the DFYS Adoption Unit at either (907) 465-3631 or (907) 465-3286

In addition, you may access the Alaska Adoption Exchange (AAE) by calling (800) 704-9133. You can also access the AAE on the internet at www.akae.org.

