



assistance program,” “legal custody,” “subsidized guardianship” and “voluntary placement agreement”) and renumbers existing ones as needed. The new definitions apply to the substantive additions in the following sections.

Section 40-10B-16 provides the following eligibility criteria for financial assistance:

1. The child must have been removed from their home as a result of a voluntary placement agreement between the child’s parents and CYFD or as a result of a judicial determination that the placement and care of the child be vested in CYFD.
2. A guardian has been appointed pursuant to the Kinship Guardianship Act.
3. The child is eligible for foster care maintenance payments.
4. The child has lived with the guardian for six consecutive months pursuant to a court order or voluntary placement agreement.
5. The child has a strong attachment to the guardian.
6. The guardian has a strong commitment to caring permanently for the child, documented via a meeting with the guardian discussing the guardian's long-term commitment;
7. If the child is fourteen years of age or older, the child has been consulted regarding the guardianship arrangement; and
8. The child is the subject of a fully executed guardianship assistance agreement approved by the department. Siblings of a child who meet these eligibility criteria are also eligible for financial subsidies.

Section 40-10B-17 provides prospective kinship guardian reimbursements up to two thousand dollars per child for expenses incurred in establishing a subsidized guardianship.

Section 40-10B-18 requires CYFD and the guardian to enter into a negotiated assistance agreement that specifies the following:

- amount of the guardianship assistance payments;
- additional services and assistance for which the child and kinship guardian will be eligible;
- how the kinship guardian may apply for and access additional services;
- the responsibility of the kinship guardian to report changes in the needs of the child or the circumstances of the kinship guardian that affect guardianship assistance payments;
- nonrecurring expenses associated with obtaining the subsidized guardianship;
- terms by which the guardianship assistance agreement may be terminated; and
- The ability of the department to recoup funds received due to improper payment.

Section 40-10B-19 requires that a successor guardian be named in the guardianship assistance agreement. This person does not have to be a relative of the child.

Section 40-10B-20 requires CYFD to discontinue guardianship assistance payments if the a child or guardian no longer meets the criteria to be eligible for guardianship assistance payments; the guardian has requested a termination of the guardianship assistance agreement; the guardianship has been terminated; the child reaches eighteen years of age or twenty-one years of age if eligible pursuant to the Fostering Connections Act; or the child is no longer receiving support from the kinship guardian. This section also provides that termination of a guardianship assistance agreement does not terminate the guardianship itself.

Section 40-10B-21 affords a child or guardian the right to appeal a CYFD decision on subsidized guardianships and requires CYFD to develop an appeal procedure. This section also states that parties may appeal decisions of the district court pursuant to the Kinship Guardianship Act as provided by law.

The bill amends Section 40-10B-8 regarding support payments. Currently, a district court may appoint a guardian of a child and order the parent, in light of their financial resources, to pay for the support and maintenance of the child. The amended language requires the court to consider the impact of these payments on the relationship between the parent and the child and on prospects for reunification.

### **FISCAL IMPLICATIONS**

The bill does not include an appropriation. Expenses associated with the expansion of the subsidized guardianships program are included in CYFD's operating budget, as set out in the General Appropriations Act of 2020. Any additional fiscal impact to CYFD will be absorbed by existing resources. CYFD anticipates significant costs savings, noting that currently, foster care cases are unnecessarily kept open when children could safely exit to guardianship.

### **SIGNIFICANT ISSUES**

New Mexico policy holds that children should be raised by their parents, or, in the event that parents find themselves unable to raise their child, the child should be raised by family members or kinship caregivers. This bill will significantly advance this policy.

Subsidized guardianship is a permanency option for children who have been in state custody, with a relative or non-relative providing care, for at least six months. The caregiver of the child must first obtain guardianship or legal custody and must demonstrate an established attachment and "strong commitment" to the child. If the court finds that guardianship is in the "best interest" of the child and grants it, the state no longer has custody.

After guardianship is granted, the state issues a monthly subsidy check to the guardian for the care of the eligible child. Financial assistance is critical to many families, since caregivers are often older, are raising the children unexpectedly, and often are on fixed incomes without a source of additional income to support the children's care.

CYFD reports that currently half of all kinship guardians in New Mexico are not eligible for financial support to offset the expenses associated with raising a child. This bill expands eligibility for subsidized guardianships so that more foster children can safely exit foster care to guardianship while still accessing supports from CYFD. CYFD highlighted, that the bill will also allow youth, who were formally involved with CYFD, to move directly to a subsidized guardianship, avoiding unnecessary and often harmful removal to foster care.

After youth exit to permanency, including guardianships, CYFD continues to check in with families to ensure that any subsidy continues to go toward the child's needs. This bill clarifies that CYFD can end a subsidy if the caregiver is no longer providing care to the child.

Subsidized guardianship programs are available in 35 states, and while they vary significantly, they all recognize that in certain family situations, guardianship or legal custody is the best

permanency option when children cannot return home or be adopted. Subsidized guardianships:

- Honor the wishes of many children who may not want to be adopted and/or break ties with their birth parents;
- Respect cultures in which adoption and termination of parental rights defy important societal norms of extended family and mutual interdependence;
- Limit state oversight and intervention in the lives of children for whom adoption and reunification with the birth parents have been ruled out, and minimize the state’s ongoing role in their lives;
- Give caregivers financial support and the necessary legal decision-making authority for children;
- Enable children and caregivers to maintain bonds with the birth parents who may have physical or mental disabilities that make them unable to care for children;
- Allow able birth parents to regain custody of children, provided the courts and/or child welfare system approve;
- Give the courts flexibility to limit or expand the legal guardians’ and parents’ authority as necessary to best serve the changing needs of the children and other family members;
- Reduce the use of long-term foster care by allowing children and youth— for whom reunification with birth parents or adoption have been ruled out — to achieve permanency in a safe and loving home;
- Reduce the overrepresentation of minority children in foster care and offer them an alternative that is more culturally acceptable;
- Make it possible for caregiving family members to keep the children they are raising out of the system;
- Provide another option in the continuum of permanency options available to family members, child welfare agencies, and court officials as they create permanency plans for children; and
- Allow family members to be part of the decision making process about what is in the best interest of the child.

More information about how children in guardianship placements with relatives fare better emotionally and physically than children who are placed in stranger foster care can be found [here](#).

## **PERFORMANCE IMPLICATIONS**

CYFD has performance measures concerning child safety, well-being, and permanency that could be positively impacted by this bill. Currently, CYFD’s permanency outcome numbers are impermissibly low, resulting in federal financial penalties. By advancing better permanency options for many children in CYFD care, the bill promises to lower permanency caseloads and result in increased efficiencies and lower costs for both CYFD and the courts.

## **ADMINISTRATIVE IMPLICATIONS**

CYFD stated that administrative impact associated with establishing policy and procedures will be absorbed by existing resources.

The Administrative Office of the Courts (AOC) noted if more relatives and fictive kin are willing to take on the care of children when financial assistance is available, the bill could result in an

increase in the number of kinship guardianship cases filed. However, they also noted that the bill could also decrease the number of abuse and neglect cases filed, as more children will be placed with prospective guardians versus in foster care placements.

The AOC also flagged that the bill may require additional judge time in guardianship cases where an award of financial assistance is considered. The bill requires courts to consider the impact of ordering financial assistance on the relationship of the parent and child and on the prospects of family reunification. This could be a potentially lengthy and in-depth inquiry that would require testimony from professionals working with the family, court-ordered evaluations, and significant hearing time.

AOC stated that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB146/SJCS conflicts with HB328.

## **TECHNICAL ISSUES**

The Office of the Attorney General and Administrative Office of the Courts identified a number of technical issues and concerns with the bill as drafted.

1. The new definition of guardianship assistance agreement appears to create a potential conflict in the Kinship Guardianship Act. Currently, a guardianship may be granted when a child has resided with the prospective guardian without the parent for a period of *ninety days* or more immediately prior to a guardianship petition being filed. NMSA 40-10B-8 (B)(3) (emphasis added). This bill does not make any changes to this provision of the Kinship Guardianship Act. Proposed language in new Section 40-10B-16 states that in order to be eligible for guardianship assistance payments the child must have lived with the prospective guardian for *six consecutive months* pursuant to a court order or voluntary placement agreement, (p. 7, ln. 16-19) (emphasis added). The proposed definition of a guardianship assistance agreement in this bill states that the agreement must be entered into “*prior* to the establishment of the guardianship by a court,” (p. 3, ln. 15-16) (emphasis added). It is not clear whether the agreement must be entered into after the six-month period has passed. Read together, all of these provisions create confusion about how long a prospective guardian must wait before they can seek guardianship of a child if they also want to obtain a subsidy. This language suggests that although the statute allows a prospective guardian to seek guardianship after a child has resided with them for ninety days, they may be ineligible to receive a subsidy if they do so, since they must wait six months before being eligible for a subsidy and must enter into the guardianship assistance agreement before the court orders a guardianship. This is confusing and may cause prospective guardians who would be otherwise eligible for subsidies to be ineligible because they were granted guardianship before they could enter into a guardianship assistance agreement. To avoid confusion, it might be helpful to provide that the guardianship assistance agreement can be entered into prior to the six-month time

period or allow the agreement to be entered into after the guardianship has been granted.

2. The appeals process is unclear. Section 10 instructs CYFD to set up an appeal procedure by which an aggrieved party could challenge the department's assistance decisions. This implies an administrative procedure within the department. Administrative decisions may be appealed to district court, but only if provided by law. *See* Rule 1-074(A) NMRA (clarifying that a right to appeal administrative decisions must come from statute). Section 10, however, does not expressly provide for that. Instead, subsection (B) states that an aggrieved party "may appeal a decision of the district court" as provided by law. This would skip a step; it assumes that a dispute could already end up at the district court without providing the mechanism to do so. Because of this, and because review of administrative decisions by the Court of Appeals are taken by certiorari and not appeal (*see* Rule 12-505 NRMA), it appears that there was a typographical error in subsection (B). If so, subsection (B) could instead read: "An aggrieved party may appeal a decision of the department to establish, deny, reduce or discontinue guardianship assistance payments to the district court in the manner provided by law."
3. The bill uses the term "eligible child" in several places. This term is not defined. It may be referring to the eligibility criteria under Section 5(B), but some of those criteria refer to guardian instead of the child. Because guardians receive assistance for "eligible children" and their siblings, this ambiguity could impair the effectiveness of the bill.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Caregivers who are caring for children placed in their care by CYFD and who seek kinship guardianships will not be able to receive financial assistance for these children.

CLB/sb/rl