

# CHART

# Adoption and Guardianship for Children in Kinship Foster Care: Comparison Chart for Nevada

This chart is designed to help kinship foster parents compare adoption and guardianship as two options that they and the children in their care can pursue to exit foster care and create permanent families in Nevada.

While this chart is directed at kinship foster parents, it is also intended as a tool to help child welfare and other case workers assist kinship foster parents. Birth parents and older children may also find it helpful to review as part of their decision-making.

Generations United created this chart in collaboration with the Nevada Department of Health and Human Services, Division of Child and Family Services, Family Program Office. It is developed from Generations United's National Comparison Chart and accompanying Brief on Adoption and Guardianship for Children in Kinship Foster Care, which are available at [www.grandfamilies.org](http://www.grandfamilies.org). The content on this chart should not be considered legal advice, but rather general information to help guide your decision. Anyone considering adoption or guardianship should consult with a local legal professional.



## RIGHTS AND RESPONSIBILITIES

### ADOPTION

### GUARDIANSHIP

***What are my legal rights and responsibilities for the child?***

Adoptive parents become the parents in the eyes of the law forever. They have all rights and responsibilities for the child.

Guardians have sole decision making for caring for a child until the child reaches adulthood or the guardianship ends.

***What are the birth parents' rights and responsibilities for the child?***

The birth parents' rights are forever terminated.

Birth parents keep the rights to visit the child and to consent to adoption. The birth parents may have the right to access the child's medical, mental health, and education records and must be informed about any emergencies and major medical incidents.

Birth parents have an obligation to financially support the child if ordered by the court to pay child support.

***What authority to adoptive parents and guardians have to access services for the child?***

Adoptive parents have the same access to services for the child as any birth parent.

Guardians may access services for the child based upon specific program requirements.



# RIGHTS AND RESPONSIBILITIES

## ADOPTION

## GUARDIANSHIP

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|--|--|--|
| <b><i>Can the child visit their birth parents?</i></b>                             | Adoptive parents have the right to determine whether the child visits their birth parents. The adoptive parents may have an agreement in place as part of the adoption, and they should follow that. If not followed, the adoption cannot be invalidated but the birth parents may request a hearing in court to enforce the agreement.  | The birth parents typically keep their right to visit the child. The court awarding guardianship often sets up terms for that visitation in the court order, which must be followed. Guardians may have to supervise those visits.   |
| <b><i>Can the adoptive parents or guardians change the child's legal name?</i></b> | Adoptive parents can, but are not required to, change the child's legal name. They can change the child's last name as part of the adoption process.   | Guardians cannot change the child's legal name as part of the guardianship process.  |
| <b><i>Is the child welfare agency still involved?</i></b>                          | Once the adoption finalizes, the child welfare agency will no longer be involved.<br><br>If the child receives adoption assistance, the adoptive parents will need to complete a short annual regarding the subsidy to maintain the assistance.  | Once the guardianship finalizes, the child welfare agency will no longer be involved.<br><br>If the child receives the Kinship Guardianship Assistance Program (KinGAP) assistance, the guardians will need to complete a short annual form regarding the subsidy to maintain the assistance.  |
| <b><i>Will the court continue to be involved?</i></b>                              | Once the adoption is finalized, court involvement ends and the adoptive parents are now the legal parents.   | Guardians are required to complete an annual report. If not submitted, the court may terminate the guardianship.   |
| <b><i>Can the birth parents come back to claim the child?</i></b>                  | Birth parents cannot come back and claim the child. Their rights and responsibilities are terminated.  | Birth parents can seek to have the child returned to them through a court hearing. They must show the judge that something has changed with them, the child, or the caregiver and that the return is in the best interest of the child.  |
| <b><i>Can the child end up back in foster care?</i></b>                            | The child welfare agency can remove the child from the adoptive parents in the event of abuse or neglect. If the adoptive parents determine they are no longer able to care for the child, they may voluntarily surrender the child to the child welfare agency. That action may result in abuse and neglect charges against the adoptive parents. If considering such a serious step, adoptive parents should consult with professionals in their area. | The child welfare agency can remove the child from guardians in the event of abuse or neglect. If the guardians determine they are no longer able to care for the child, they may voluntarily surrender the child to the child welfare agency. That action may result in abuse and neglect charges against the guardians. If considering such a serious step, guardians should consult with professionals in their area. |
| <b><i>When does the legal relationship end?</i></b>                                | Adoption does not end – the child is permanently part of the family.   | Guardianship ends when the child reaches adulthood, which is age 18 in Nevada with few exceptions. Court approval is required to terminate a guardianship.<br><br>Guardianship may continue through graduation of high school or age 19 (whichever occurs first), if the child and guardians consent and petition the court before the child's 18th birthday.  |

# FINANCIAL AND LEGAL ASSISTANCE

## ADOPTION

## GUARDIANSHIP

***Is there financial assistance to help meet the needs of the child?***

All states have adoption assistance for relatives and non-relatives adopting children with “special needs” from foster care. “Special needs” is defined broadly and 90 percent of all children adopted from foster care are eligible for adoption assistance. Nevada has federally funded and state-funded adoption assistance. More information can be found at <https://dcfs.nv.gov/Programs/CWS/Adoption/Guide/SubsidizedAdoptionSpecialNeeds/>.

Nevada has federally funded and state-funded guardianship assistance. Requirements and/or eligibility for KinGAP must be determined prior to the finalization of the guardianship. More information is available at [1010 Kinship Guardian Assistance Program \(KinGAP\)\(nv.gov\)](https://dcfs.nv.gov/KinshipGuardianAssistanceProgram).

Financial assistance is only available for guardianships that meet KinGAP requirements.

***How much is this assistance?***

Under both Nevada federally funded and state-funded adoption assistance programs, the assistance amount cannot be more than the child received while in foster care.

Nevada has post-adoption supports available through the child welfare agency. See [Guide to Adoption in Nevada - Post Adoption \(nv.gov\)](https://dcfs.nv.gov/Adoption/PostAdoption) for more information.

The KinGAP assistance amount cannot be more than the child received while in foster care.

Nevada has post-guardianship supports available through FosterKinship and the Nevada Kinship Navigator Program. See [Kinship Navigator Program - Foster Kinship](https://dcfs.nv.gov/KinshipNavigator) for more information.

***How long does this assistance last?***

In Nevada, adoption assistance payments last while the adoptive parents remain legally responsible for the child or until age 18 even if the child is still enrolled in high school.

In Nevada, KinGAP assistance payments last until age 18, provided the guardianship meets the requirements. The KinGAP assistance agreement can continue, upon request to the court, until the child graduates high school or turns 19.

***Will I be reimbursed for my expenses to obtain the permanency option?***

If adopting an eligible child with “special needs” from foster care under the federally- or state-funded adoption assistance program, Nevada may reimburse the adoptive parents or directly pay them up to \$500 in nonrecurring expenses spent in getting the adoption. These expenses include legal fees, court filing fees, and/or travel costs.

If assuming guardianship of a child exiting foster care, Nevada may reimburse guardians up to \$2000 in nonrecurring expenses spent finalizing the guardianship. These expenses include legal fees, court filing fees, and /or travel costs.

## PUBLIC BENEFITS

### ADOPTION

### GUARDIANSHIP

***Is the child eligible for free school meals?***

Children adopted from foster care during the school year will remain eligible for free school meals for the remainder of the school year.

After that, the adoptive parents' income is used to determine if the child is eligible.

Children who exit foster care to guardianship during the school year will remain eligible for free school meals for the remainder of the school year.

After that, the guardians' income is used to determine if the child is eligible.

***Is the child eligible for SNAP, which used to be known as food stamps?***

Adoptive parents' income is used to determine the household's eligibility for SNAP. The adoptive child is now part of the household. Any adoption assistance counts as income for purposes of SNAP eligibility.

Guardians decide whether to include the child in the household for purposes of determining SNAP eligibility. If the child is included, KinGAP assistance payments count as income for purposes of determining SNAP eligibility. If the child is not included in the household for SNAP eligibility, the KinGAP assistance payments will not count as income, but the child will not receive SNAP.

***Can the child receive welfare benefits under Temporary Assistance for Needy Families (TANF)?***

The child's adoption assistance will be counted as income and that alone will likely disqualify the child from a TANF child-only grant. Furthermore, TANF child-only grants are only available to children living with parents in a few limited situations – they are mostly for children living with non-parents.

Whether to include the child (and the child's income) in a TANF family-grant will depend on whether that will help the family financially or not.

The child's KinGAP assistance will be counted as income and will likely disqualify the child from a TANF child-only grant.

Children in guardianships who do not receive KinGAP assistance may qualify for a TANF child-only grant.

Whether to include the child (and the child's income) in a TANF family-grant will depend on whether that will help the family financially or not.

***Will the child be able to get disability or survivor Social Security benefits based on the adoptive parents or guardians' work records?***

The child may be able to get Social Security benefits based on the adoptive parents work records if: (1) the child is not receiving Social Security benefits from the birth parents, (2) the adoption was finalized by the time of the adoptive parent's death or disability, and (3) when that death or disability occurs, the child's birth parents were not living in the same household and contributing regularly to the support of the child.

It is only possible for the child to qualify for Social Security benefits based on the guardians' work records if the child is their grandchild. There are a number of other eligibility requirements, including that the birth parents must generally be deceased or disabled. See [www.ssa.gov/people/kids/](http://www.ssa.gov/people/kids/)

The child remains eligible to receive any Social Security benefits based on the birth parents' work records.

## HEALTH INSURANCE

### ADOPTION

### GUARDIANSHIP

***Can the child be included on the private health insurance of the adoptive parents or guardians?***

An adoptive child can be put on their adoptive parents' private health insurance just like a birth child.

Some private policies allow for the child to be included on a guardian's private health insurance, but not all. The guardian should check with their insurance carrier.

***Can the child receive Medicaid?***

Nevada provides Fee for Service Medicaid if requested by the adoptive parent(s) for the child adopted from foster care during the subsidy negotiation.

As part of the KinGAP agreement, Nevada provides Fee for Service Medicaid if requested by the guardian during the federally-funded guardianship subsidy negotiation and the guardian applies for the coverage on behalf of the child.

Nevada only Medicaid can be provided if negotiated with state-funded adoption assistance.

Nevada only Medicaid can be provided if negotiated with state-funded guardianship assistance.

## FEDERAL AND STATE TAX CREDITS

### ADOPTION

### GUARDIANSHIP

***Is there a special tax credit that can help?***

There is a federal adoption tax credit, which adoptive parents can claim for up to \$14,890 per child adopted in 2022 (the rate typically increases each year). The adoptive parents may be eligible for the maximum amount of credit regardless of whether they had any qualifying expenses. For more information on this tax credit, visit [www.irs.gov/taxtopics/tc607.html](http://www.irs.gov/taxtopics/tc607.html) and [www.nacac.org/category/adoption-tax-credit/](http://www.nacac.org/category/adoption-tax-credit/)

There is no federal guardianship tax credit.

***Are there any other tax credits?***

There are other tax credits that adoptive parents may be able to claim, including the Earned Income Tax Credit, child tax credit, additional child tax credit, and the child and dependent care tax credit. For information, see the IRS website at [www.irs.gov](http://www.irs.gov) or the brief that accompanies this chart.

There are other tax credits that guardians may be able to claim, including the Earned Income Tax Credit, child tax credit, additional child tax credit, and the child and dependent care tax credit. For information, see the IRS website at [www.irs.gov](http://www.irs.gov) or the brief that accompanies this chart.

***Are these tax credits considered "income" for purposes of determining eligibility for public benefits?***

Tax credits do not count as income. This is true even if the adoptive parents owe no taxes and receive a refund check.

Tax credits do not count as income. This is true even if the guardians owe no taxes and receive a refund check.

***(Consult with a tax professional as needed.)***

## CAREGIVER SUCCESSOR PLANNING AND

### ADOPTION

### GUARDIANSHIP

***How can the adoptive parents or guardians plan for the child's continued care in the event of their death?***

Like any parent, adoptive parents can name a guardian in their will to take over the rights and responsibilities for that child after their death. That person will need court approval to become the child's guardian.

If the guardian wishes to adopt the child and the child was receiving adoption assistance, the new adoptive parent may be able to receive those payments.

Guardians may name a successor guardian prior to their death or incapacity. That person may be able to step in the guardian's shoes pending court approval after the guardian's death or incapacity and may continue to receive the monthly guardianship assistance.

Guardians must contact their child welfare agency to inquire about continued benefits.

***Can the child inherit from the adoptive parents or guardians?***

As an adopted child, the child will automatically inherit from the adoptive parents even without a will.

The child will not automatically inherit from the birth parents. However, they can share their estate through a legal document known as a will or trust.

The child cannot automatically inherit from their guardians, but guardians can create a will or trust and share their estate that way.

The child continues to be able to automatically inherit from birth parents.

***Will the child be able to get the adoptive parents or guardians' pension or military benefits when they die?***

The child will be able to receive their adoptive parents' pension and military benefits the same as a birth child.

The child will no longer be able to automatically receive pension or military benefits from birth parents. A birth parent may need to name the child as a beneficiary to pass on benefits.

The child will typically not be automatically able to get the guardians' pension or military benefits as they usually only pass down to a birth or adoptive child.

## COLLEGE AND INDEPENDENT LIVING

### ADOPTION

### GUARDIANSHIP

***What type of independent living or education vouchers are available for an older child?***

If adopted before age 16, the child is not eligible for independent living services through the Nevada tuition waiver or education and training vouchers (ETV).

If the child was adopted after age 16, the child will remain eligible and can apply for this support at or after age 18.

If the child exited foster care to a guardianship before age 16, the child is not eligible for independent living services through the Nevada tuition waiver or ETV.

If the child exited foster care to a guardianship after age 16, the child will remain eligible and can apply for this support at or after age 18.

***How is the adoptive parents or guardians income used to determine the child's eligibility for financial aid for college?***

Adoptive parents' income is considered when determining financial aid as part of the Free Application for Federal Student Aid (FAFSA). However, the child's past foster care status may be considered when determining aid.

If the child was adopted at age 13 or older, the child is considered "independent" and the adoptive parents income is not part of the FAFSA consideration.

Guardians' income is not considered in determining financial aid. A child in a guardianship is typically considered "independent" and the child's past foster care status may be considered when determining aid.

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## Generations United’s National Center on Grandfamilies

For over twenty years, **Generations United’s National Center on Grandfamilies** has been a leading voice for families headed by grandparents, other relatives, and close family friends. Through the Center, Generations United leads an advisory group of organizations, caregivers and youth that sets the national agenda to advance public will in support of these families. Center staff conduct federal advocacy, release an annual State of Grandfamilies Report, and train grandfamilies to advocate for themselves. The Center raises awareness about the strengths and needs of the families through media outreach, weekly communications, and awareness-raising events. It offers a broad range of guides, fact sheets and tools for grandfamilies, which cover issues from education and health care access to financial and legal supports. Those resources can be found at [www.gu.org](http://www.gu.org) and [www.grandfamilies.org](http://www.grandfamilies.org).

## Nevada Department of Health and Human Services, Division of Child and Family Services, Family Program Office

Nevada’s child protective/welfare system ostensibly functions as three regional services areas: the Rural Region operates as a state supervised and state (DCFS) administered delivery system, and the Northern and Southern Regions operate as state supervised – county administered (WCHSA and CCDFS) child welfare delivery systems. Nevada’s Child Welfare Agencies provide a continuum of services. The foundation for services is case planning and the assessment and comprehensive case management services that support the child, the parents, and the caregivers. The continuum includes emergency shelter care, foster family care (including relative placements), group home care, therapeutic foster care, respite care, residential treatment care both in and out-of-state, and independent living services. For more information, visit <https://dcfs.nv.gov/>.





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