

Standard for Guardianship Assistance

PURPOSE

The purpose of this standard is to provide direction and guidance to the Child and Family Services (CFS) program regarding guardianship assistance. This standard is intended to achieve statewide consistency in the development and application of CFS core services and shall be implemented in the context of all applicable laws, rules and policies. The standard will also provide a measurement for program accountability.

INTRODUCTION

The Adoption and Safe Families Act of 1997 recognized legal guardianship as one of the options for permanency for children in foster care. Many families make this type of arrangement on their own. It is not uncommon for an aunt/uncle or grandmother/grandfather to approach the court about obtaining legal guardianship of a niece, nephew or grandchild. Legal guardianship does not require a termination of parental rights. The legal guardian is awarded legal custody of a child. Any time the legal guardian or the child's parent(s) wants to terminate the guardianship, they must file a petition and go before a court to have the legal relationship dissolved. Because it is mediated by court review, legal guardianship is considered a positive permanency option when adoption is not possible or practical.

With the Fostering Connections Act of 2008, federal title IV-E funds were made available to fund the care and maintenance by a relative legal guardian of a child who would otherwise remain in foster care. Once a child is discharged from foster care to the custody of a relative legal guardian, the guardian, under certain conditions, may be eligible for a maintenance payment to offset costs for providing a permanent home for the youth.

In addition to IV-E relative guardianship assistance, Idaho has a state-funded guardianship assistance program. This program was implemented in the mid 1990's. It is not restricted to relative guardian placements, but does require the parental rights of the child's parents have been terminated.

In this standard, federally funded title IV-E guardianship assistance will be clearly distinguished from state-funded guardianship assistance. The conditions and benefits of each will be detailed.

TERMS

Legal Guardianship

A judicially-created relationship, including one made by a tribal court, between a child and a relative or non-relative. The relationship is intended to be permanent and self-

sustaining as evidenced by the transfer to the guardian of the following parental rights with respect to the child:

- a. protection;
- b. education;
- c. care and control of the person;
- d. custody of the person; and
- e. decision making.

Relative

A person related to a child by blood, marriage or adoption. This includes a child's grandparent, great-grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling, and half-sibling.

Relative Guardian

A relative who is appointed a child's legal guardian including a guardianship established by a tribal court.

Sibling

A sibling is a person who shares the same biological or adoptive mother and/or father of the child. Siblings may be full-siblings or half-siblings. Siblings include those children who would be considered a sibling if not for a disruption in parental rights, such as a termination of parental rights (TPR) or death of a parent.

IMPLEMENTING THE STANDARD

Is Legal Guardianship an Appropriate Permanency Goal for a Youth?

When a young person is living with a relative or there are other compelling reasons not to terminate parental rights, legal guardianship can be a good permanent solution. Legal guardianship should be considered when:

- Efforts to reunify the youth with parents have been exhausted and it remains unsafe for the youth to return home.
- A more permanent option such as adoption is not feasible.
- A youth is not amenable to adoption.
- The youth is living with a relative who is interested in being a permanent resource for the youth.
- The youth and family do not agree with TPR and Adoption.

Guardianship and American Indian/Alaska Native Youth

Idaho Code and IDAPA rules require the termination of parental rights in order for a legal guardian to qualify for state-funded guardianship assistance. Title IV-E Relative Guardianship Assistance enables relatives to gain legal custody of children without TPR and receive the benefits of federally funded guardianship assistance. This practice is much more culturally consistent for American Indian/Alaska Native families.

Alternate Care Plan Amendments

A guardianship amendment to the Alternate Care Plan (ACP) must be completed for all youth being considered for state or federally funded Guardianship Assistance. The requirements specified in the ACP amendment must be met and documented in the Case Plan (part I Alternate Care Plan). A copy of the ACP amendment is attached to this standard.

Sibling Placement

The sibling of a youth eligible to receive IV-E guardianship assistance may also be eligible if placed in the same relative guardianship arrangement. The agency and the relative must agree on the appropriateness of the arrangement. The guardianship does not need to take effect at the same time for the youth and the sibling. The sibling may already be placed with the relative or follow the youth to the relative placement later, if that is determined to be the best permanency option. The family may receive federally-funded guardianship assistance on behalf of each sibling placed in the same home. It is important to weigh the benefits of a more permanent option for the younger sibling vs. the benefits of placement in the same home.

Successor Legal Guardians

A prospective relative legal guardian may identify a successor legal guardian in the child's IV-E funded Guardianship Assistance Agreement to be appointed guardian of the child should the original guardian die or become incapacitated and unable to care for the child. Successor legal guardians are not required to be relatives, but cannot be the child's birth parents. Successor legal guardians and all adults residing in their homes must pass a fingerprint based criminal history and child protection background check. A child for whom a successor legal guardian is identified will remain eligible for IV-E relative guardianship assistance benefits in the event of the death or incapacitation of the relative legal guardian. For the benefits to be paid, the successor legal guardian will need to assume guardianship of the child before negotiating a new Guardianship Assistance Agreement with CFS.

Guardianship Assistance Agreement

Child and Family Services will work with the prospective legal guardian to negotiate a Guardianship Assistance Agreement including a monthly cash subsidy payment, Medicaid and reimbursement of legal expenses related to the legal guardianship. Those youth receiving IV-E guardianship assistance must have a monthly cash subsidy payment of at least \$1.00 to receive Medicaid. The subsidy will remain in effect regardless of the state of residence of the legal guardian. Medicaid will also be provided in any state for those youth with a IV-E Guardianship Assistance Agreement. Legal guardians of youth receiving state-funded guardianship assistance will need to apply for medical assistance in accordance with the state guidelines of any other state of residence. The youth may or may not be eligible to continue to receive Medicaid. All youth eligible for federally-funded guardianship assistance qualify to receive Title XX Social Services as specified in the terms of the IV-E Guardianship Assistance Agreement.

Before a guardianship subsidy can be paid or post-guardianship Medicaid issued, related documentation must be completed. The child's legal status is to be updated and a copy of the court order finalizing legal guardianship must be added to iCARE under the child's person profile (Legal>Legal Status>Guardianship of Minors). A copy of the completed Guardianship Assistance Agreement must also be added to iCARE as a document under the child's eligibility screen. An iCARE service request must be made for the monthly subsidy (File>New>Guardianship Subsidy). Once the service request is approved by the personal responsible for approving subsidy requests in the region, the child welfare funding team will open the child for post-guardianship Medicaid.

Guardianship Assistance and Child Support

In cases where parental rights have NOT been terminated and there is a court-ordered child support obligation, the child support should go toward caring for the child. When the child is in foster care, that support is collected by the Department to offset the costs of foster care. In cases where parents are paying child support and a guardian is receiving a state or federal subsidy, the money will be collected by the Department to offset the general fund contribution to the guardianship assistance. However, if the child support exceeds the guardianship assistance payment, the child support can go to the legal guardian. CFS will negotiate the amount of the monthly guardianship subsidy in consideration of the family's receipt of the child support payment.

Guardianship Assistance and TAFI Relative Grants

Relatives do not need to have legal guardianship to care for a relative child and receive a TAFI relative grant. Regardless of the number of relative children cared for in the same household, the relative grant is limited to the amount provided for one child (approximately \$308 per month). For a child placed in foster care in a relative home a relative can choose between a TAFI relative grant and a foster care payment. Either option requires that the caretaker be licensed because the child is in the Department's legal custody. When there is a Guardianship Assistance Agreement in effect, the relative guardian may not also apply for or receive the TAFI relative grant. As with the child support discussion above, if the relative is receiving a TAFI grant, any child support obligation will be collected by the Department to offset the costs of the relative grant.

Termination of Guardianship Assistance Payments

As outlined in the written agreement, suspension/termination of the agreement will occur in the following circumstances:

- A. Upon the conclusion of the terms of the Agreement;
- B. Child reaches the age 18;
- C. Upon the child's death;
- D. Upon the death of the legal guardian(s) of the child (one in a single guardian family and both in a two guardian family);

- E. Cessation of legal responsibility of the legal guardian(s) for the child such as when the guardian(s) make an informed request to be removed as the legal guardian(s), the court removes the legal guardian(s), child marries or enlists in the military (prior to turning 18 years of age); and
- F. If the child no longer resides in the home of the legal guardian(s) and the Department determines that the child is no longer receiving financial support from the legal guardian(s).

Repayment

The legal guardian(s) is responsible for repayment of any funds provided on behalf of the child, which occur after the child's eligibility for guardianship assistance benefits has terminated according to one or more of the above provisions.

Notification of Changes in the Situation of the Legal Guardian(s)

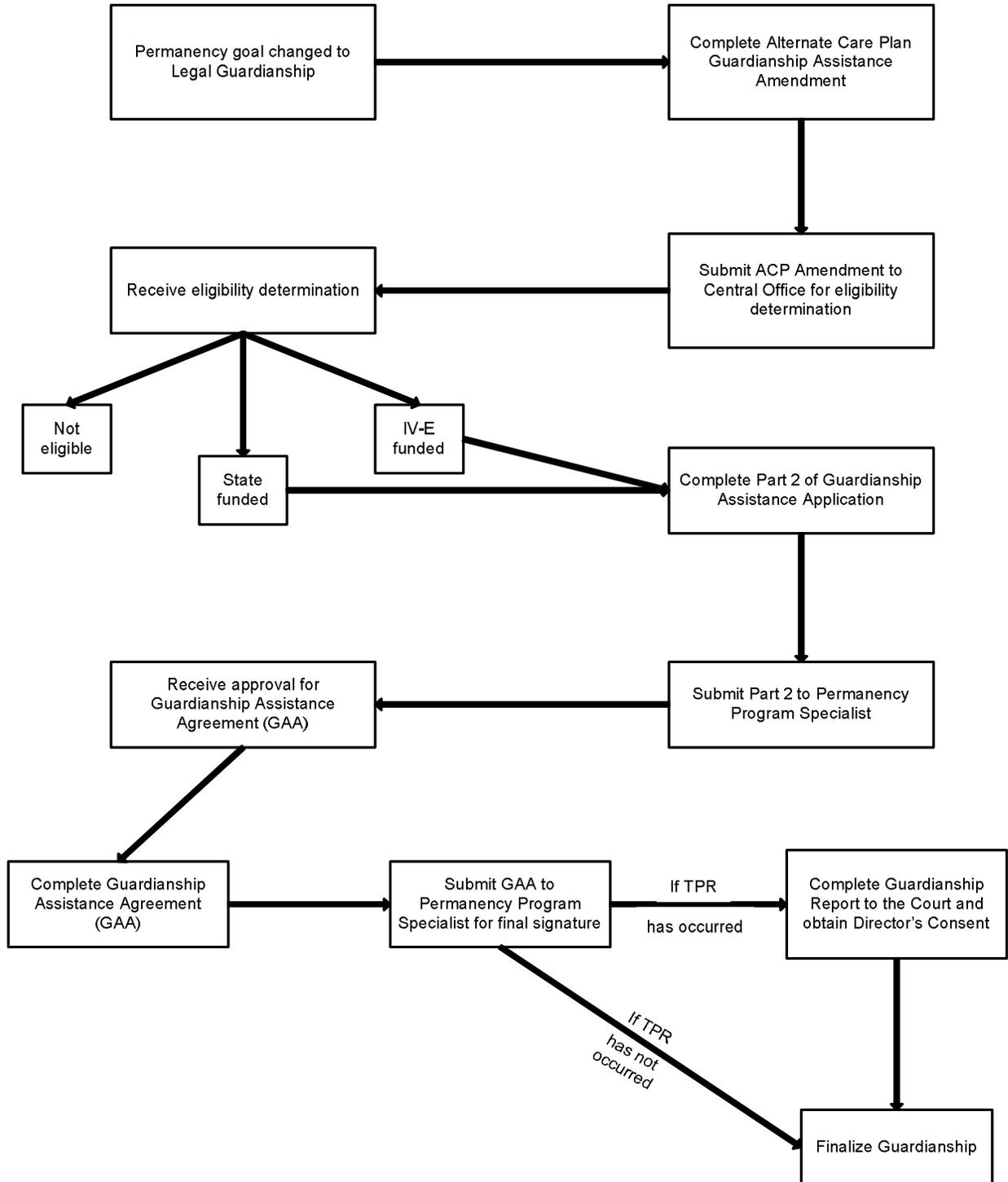
The written agreement requires the legal guardians to notify the Department when:

- (1) They are not longer legally responsible for the support of the child;
- (2) They have a change in address; and
- (3) There is a need to change the amount of the payment

Flowchart for processing Guardianship Assistance requests and approvals in detailed on the following page.

Any action taken not consistent with this standard must be pre-approved by the FACS Division Administrator or designee. The action, rationale and approval must be documented in the file.

Guardianship Assistance Flow Chart



Alternate Care Plan Addendum for Guardianship Assistance

Child's Name	
Child's DOB	
Date child placed with the prospective legal guardian	
Date of the most recent foster care license for the prospective legal guardian	

	Name	Date of Criminal History Clearance
Prospective Legal Guardian		
Other household adult #1		
Other household adult #2		

(1) Permanency Efforts.

- (a) Date legal guardianship was established as the child's permanency goal:

- (b) Describe the steps taken by the Department to determine that return home or adoption are not appropriate permanency plans for the child:

- (c) Describe the efforts taken by the Department to discuss adoption and adoption assistance benefits with the child's foster parent(s)/prospective legal guardian(s). When adoption is not chosen, describe the reason(s) why adoption is not an option:

(d) Describe the efforts made by the Department to discuss legal guardianship and guardianship assistance with the child's parent(s), or the reason efforts were not made:

(e) Permanent placement with the prospective legal guardian and receipt of guardianship assistance is in the child's best interest because:

(f) The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child as evidenced by:

(g) The child (if 14 years of age or older) has been consulted regarding the kinship guardianship arrangement.

No Yes N/A – not a kinship arrangement

(h) If parental rights have been terminated, mark each of the following efforts which have been made to place the child with an adoptive family:

- Relative Search
- Heart Gallery
- Counseling re: consent
- Northwest Adoption Exchange
- Wednesday's Child website/television
- Wendy's Wonderful Kids or other specialized recruitment
- AdoptUsKids
- Disrupted pre-adoptive placement
- Other (specify):

(2) Placement.

(a) The prospective legal guardian(s) is related to the child by blood, marriage or adoption as the following:

- Grandparent
- Sibling
- Aunt/Uncle
- Cousin
- None
- Other (specify):

(b) Identify all siblings placed in the same guardianship home as the child:

Full Name	Date of Birth	Receive Guardianship Assistance?
		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Pending
		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Pending
		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Pending
		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Pending

(c) State the reason(s) the child is not placed with all siblings (if applicable):

(3) Legal Status.

(a) Custody Status

Is the child in the legal custody of the Department?

- No
- Yes Date:

(b) Termination Status

Have the mother's parental rights been terminated?

No Yes Date:

Have the father's parental rights been terminated?

No Yes Date:

Is the child in the legal guardianship of the Department?

No Yes Date:

Social Worker

Date

Supervisor

Date

FOR CENTRAL OFFICE USE ONLY

Child meets the practice requirements for Title IV-E Guardianship Assistance as follows:

- Being returned home or adopted are not appropriate permanency options for the child.
- Child has been consulted regarding the relative legal guardianship arrangement.
- Child has demonstrated a strong attachment to the relative legal guardian who has a strong commitment to caring permanently for the child.

Child meets the legal and practice requirements for state-funded Guardianship Assistance as follows:

- Parental rights have been terminated.
- There is documentation of unsuccessful efforts to place the child for adoption.

OR

- Child does not meet practice requirements for Guardianship Assistance.**

Permanency Program Specialist (or alternate)

Date

Child meets the legal and financial requirements for Title IV-E Guardianship Assistance as follows:

- The child was at least fourteen (14) years of age during a consecutive six-month period of time while residing with the prospective relative guardian; **and**
- The child was removed from home pursuant to a voluntary placement agreement **or** as the result of a judicial determination that continuation in the home would be contrary to the welfare of the child; **and**
- During the consecutive six-month period of time that the child resided with the relative foster parent(s), the home was fully licensed **or** approved **and** the child was eligible for IV-E foster care benefits.

OR

- The child is the sibling of a child who is eligible for Title IV-E Guardianship Assistance and is living with or placed with the same relative under a legal guardianship arrangement.

Child meets the legal and financial requirements for State Funded Guardianship Assistance as follows:

- The child is not eligible for Title IV-E Guardianship Assistance

OR

- Child is not eligible for Guardianship Assistance.**

Child Welfare Funding Team

Date