

# Legal Guardianship and Kinship Guardianship Assistance

Rhode Island Department of Children, Youth and Families

**Policy: 700.0245**

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The Department of Children, Youth and Families (DCYF) utilizes a family centered practice approach in developing an individualized culturally sensitive family plan that addresses the child's health, safety and well-being, which are the paramount concerns in making permanency decisions. Federal and state law and DCYF policy recognize guardianship as an important permanency option for when neither family reunification nor termination of parental rights and adoption best serve the child's permanency needs.

Guardianship provides the caregiver with the legal authority to make decisions on behalf of the child, the ability to care for the child without child welfare agency intervention, the opportunity to provide a safe and stable environment for the child without terminating parental rights and provides a permanency option for older children who do not want to be adopted. Guardianship provides the child with a sense of belonging, which is essential to the long-term well-being of that child.

The DCYF provides financial support to kinship guardian caregivers who require support and services for the children in their care. Any child who receives a kinship guardianship assistance payment is categorically eligible for Medical Assistance in the state where the child resides. Guardianship assistance allows caregivers to receive financial reimbursement and other support services to help with the additional expense of caring for a child. Generally, guardianship assistance will terminate when a child reaches the age of eighteen (18). If the child has a severe, pre-existing physical, mental or emotional disability or physical condition which is unlikely to change, the guardianship assistance may be provided until the child is twenty-one (21) years of age.

For the purposes of this policy, "kin" or "relative" means an individual who is related to the child by blood, marriage or adoption. In addition to relationships by blood, marriage or adoption, consideration may be given to placing a child with an individual, also considered to be "kin", who is part of the family support system such as a non-related godparent, caretaker, close family friend, neighbor, clergy or other adult who has a close and caring relationship with the child. Placement with members of the family support system holds many of the same benefits for the child as other kinship placements, particularly pertaining to the decrease in placement trauma and the maintenance of consistency in the child's life. Federal and state laws have been enacted to guide our practice in the area of kinship guardianship. Guardianship recognizes the tradition in many cultures of caring for related children without changing family relationships. Federal and state statutes and regulations provide that preference should be given to relative caregivers.

- The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law (P.L.) 110-351, authorizes the Guardianship Assistance Program (GAP), a new Title IV-E plan option for states and tribes to provide kinship guardianship assistance payments to relatives who assume legal guardianship of children for whom they have cared while foster parents. This Act also requires the state to make reasonable efforts to place siblings removed from their home in the same foster care, adoption or guardianship placement, or facilitate visitation or ongoing contacts with those that cannot be placed together, unless it is contrary to the safety or well-being of any of the siblings. P.L. 110-351 further requires the DCYF to negotiate in good faith with any Indian tribal organization that requests to develop an agreement with the state to administer a Title IV-E kinship guardianship, foster care or adoption assistance program for payments and resources for administration, training, and data collection.
- The Adoption and Safe Families Act of 1997 (P.L. 105-89) establishes a preference for the placement of a child with a fit and willing relative and allows states to practice concurrent planning through the identification of a permanent placement option for the child if reunification efforts are not successful. Legal guardianship is defined as "a judicially created relationship between a child and caregiver which is intended to be permanent and self-sustaining as evidenced by the transfer

to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making.”

- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) requires the state to give preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that child protection standards are met.
- The Indian Child Welfare Act (P.L. 95-608) expresses a strong preference for the placement of Indian children with kin and/or members of the tribe.
- Rhode Island General Law (RIGL) 40-11-12 allows the Family Court to appoint a guardian for a child if the child has been placed in the care, custody and control of DCYF.
- RIGL 40-11-12.2 recognizes guardianship as a permanency plan for a child in DCYF care.
- RIGL 40-11-12.3 allows the state to provide guardianship subsidy.
- RIGL 42-72-8 allows the DCYF to share confidential information with caretakers.

If the prospective guardian resides out-of-state, the caretaker must be approved through the ICPC in conformance with [DCYF Policy 700.0060, Interstate Compact on the Placement of Children \(ICPC\)](#).

In the event that it is determined that legal guardianship is in the best interest of a child who does not meet all criteria for the kinship guardianship assistance program, administrative approval to proceed with legal guardianship may be granted for good cause.

A written agreement between the DCYF and the caregiver outlines the rights and responsibilities of the caregiver, the terms and the amount of the guardianship assistance and any services for which the child is eligible following the legal establishment of guardianship. There is an annual review of the guardianship assistance.

#### **Related Procedure**

[Legal Guardianship and Kinship Guardianship Assistance](#)

#### **Related Policies**

[Adoption Subsidy](#)

[Clearance of Agency Activity](#)

[Complaints and Hearings](#)

[Criminal Records Checks](#)

[Interstate Compact on the Placement of Children \(ICPC\)](#)

[Kinship Care](#)

[Licensing of Foster Care Homes](#)

## Legal Guardianship and Kinship Guardianship Assistance

Procedure from Policy 700.0245: [Legal Guardianship and Kinship Guardianship Assistance](#)

- A. The Family Court may grant a petition for guardianship initiated by the Department of Children, Youth and Families (DCYF) for a child in the care of DCYF.
  - 1. The petition must contain the written consent of the parent(s) who previously had custody of the child and the DCYF.
  - 2. The granting of guardianship will terminate DCYF custody and the involvement of the DCYF with the child and the child's parents relating to the child.
  
- B. Kinship Guardians
  - 1. Kinship guardians may be eligible to receive the federal Title IV-E Guardianship Assistance for a child or may choose to receive financial and medical assistance for a child through receipt of Temporary Assistance for Needy Families (TANF - loco parentis) and included benefits through the Department of Human Services (DHS).
  - 2. For the purposes of this policy, "kin" or "relative," in accordance with [DCYF Policy 900.0025, Kinship Care](#), means an individual who is related to the child by blood, marriage or adoption or an individual who is part of the family support system such as a non-related godparent, present or former caretaker, close family friend, neighbor, clergy or other adult who has a close and caring relationship with the child.
  
- C. The child is eligible for Title IV-E kinship guardianship assistance if:
  - 1. The child has been removed from home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child and the child is eligible for Title IV-E foster care maintenance payments while residing for at least six (6) consecutive months in the home of the prospective relative guardian.
  - 2. Being returned home or adopted are not appropriate permanency options for the child.
  - 3. 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.
  - 4. A child who has attained fourteen (14) years of age has been consulted regarding the kinship guardianship arrangement.
  - 5. Siblings
    - a. The child and any sibling of the child may be placed in the same kinship guardianship arrangement if the DCYF and the relative agree on the appropriateness of the arrangement for the siblings.
    - b. Kinship guardianship assistance payments may be paid on behalf of each sibling placed with that guardian.
    - c. The sibling does not have to meet the eligibility criteria in C. 1-4 above to be eligible for guardianship assistance payments and non-recurring expenses.
  
- D. Eligibility for guardianship assistance until age twenty-one (21)
  - 1. A child is generally eligible for guardianship assistance until he or she reaches the age of eighteen (18).
  - 2. A child with a severe, pre-existing physical, emotional or mental disability or physical condition that is unlikely to change may be eligible until age twenty-one (21).
    - a. Worker must obtain documentation of severe physical, emotional or mental disability or physical condition.
    - b. Documentation must be submitted for administrative review and approval with the request for guardianship assistance.
  
- E. Guardianship Assistance
  - 1. The DCYF provides kinship guardianship assistance payments on behalf of children to grandparents and other kinship caregivers who assume legal guardianship of children they have cared for as foster parents and have committed to care for permanently.

2. The assistance payment shall not exceed the foster care maintenance payment that would have been paid on behalf of the child if the child remained in a foster family home.
3. Any child who receives a kinship guardianship assistance payment is categorically eligible for Medical Assistance in the state where the child resides. (For the purposes of Titles XIX and XX, any eligible child for whom there is a kinship guardianship assistance payment being made under section 473(d) is deemed to be a dependent child as defined in 406 of the Act and is deemed to be a recipient of AFDC under Part A of Title IV of the Act [as in effect 7/16/96] in the state in which such child resides). Although welfare reform legislation enacted in 1996 (Public Law 106-193) repealed the AFDC Program, its eligibility criteria continue to be used for determining children's eligibility under Title IV-E. The welfare reform legislation replaced AFDC with a block grant to States called Temporary Assistance to Needy Families (TANF) and requires participating States to certify that they will operate a Foster Care and Adoption Program under Title IV-E.
4. Child Care may be funded through DHS or DCYF until age six (6), in accordance with procedures outlined in [DCYF Policy 700.0090, Adoption Subsidy, Procedure: Types of Adoption Assistance/Subsidy](#).

F. Guardianship Assistance Agreements

1. The DCYF will negotiate and enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian.
2. The DCYF will provide the prospective relative guardian with a copy of the agreement.
3. The assistance agreement must specify at a minimum:
  - a. The amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement, and the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child;
  - b. The additional services and assistance that the child and relative guardian will be eligible for under the agreement;
  - c. The procedure by which the relative guardian may apply for additional services as needed;
  - d. That for children eligible for Title IV-E, the state will pay the total cost of non-recurring expenses associated with obtaining legal guardianship of the child, to the extent that the total cost does not exceed two thousand dollars (\$2000) and for all other children, the state will pay the total cost of non-recurring expenses associated with obtaining legal guardianship of the child, to the extent that the total cost does not exceed four hundred dollars (\$400).
  - e. That the agreement shall remain in effect without regard to the state residency of the relative guardian.

G. Service Plan

1. If the DCYF and the Family Court have determined that reunification and adoption are not viable permanency options and that it is in the best interest of the child to be placed with a kinship guardian, the DCYF Service Plan permanency goal is changed to guardianship.
2. The Service Plan for a child who will receive kinship guardian assistance payments will include a description of:
  - a. The steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted;
  - b. The reasons for any separation of siblings during placement;
  - c. The reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child's best interests;
  - d. The ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment;
  - e. The efforts the agency has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons; and

- f. The efforts made by the state agency to discuss with the child's parent or parents the kinship guardianship assistance arrangement, or the reasons why the efforts were not made.
- H. The DCYF's foster care and adoption licensing process and standards are utilized to approve guardianship homes. In accordance with [DCYF Policy 900.0040, Criminal Records Checks](#) and [DCYF Policy 700.0105, Clearance of Agency Activity](#), criminal records checks, including fingerprint-based checks of national crime information databases and child abuse and neglect registry checks are completed on any kinship guardian and any other adult living in the home before the relative guardian may receive kinship guardianship assistance payments.
- I. Sharing Information with Guardian
- 1. Caretakers have a right to receive personally identifiable health care information (PHI) about a child who is placed in their home as a matter of state and federal law.
  - 2. The DCYF provides to caretaker non-identifying health care information about the child's family, which is contained within DCYF files.
  - 3. When a prospective guardian is identified for a child, the primary worker provides guardian with a full presentation of the child. The presentation process provides an opportunity for the DCYF to share with the guardian relevant information about the child that is reasonably available regarding medical, psychological, educational or other services that have been provided to the child. Relevant non-identifying information concerning the medical, psychological and social history of the child's birth parents and siblings must also be shared.
- J. Requesting Guardianship and Kinship Guardianship Assistance
- 1. Primary service worker and supervisor confer and agree that the child meets eligibility criteria.
  - 2. Primary service worker and supervisor confer with Regional Director/division administrator to obtain approval to proceed with guardianship.
  - 3. Primary service worker prepares a Summary of Facts to Support Request for Guardianship.
  - 4. If prospective guardian is requesting guardianship assistance, worker completes the Guardianship Assistance Agreement (DCYF # 031) and submits to Permanency Subsidy Coordinator for review, negotiation with prospective guardian and approval.
  - 5. Permanency Subsidy Coordinator returns the approved DCYF # 031 to worker.
  - 6. Primary service worker reviews with prospective guardian and guardian signs the DCYF # 031.
  - 7. Worker submits DCYF # 031 and Summary of Facts to Support Request for Guardianship to supervisor and Regional Director/division administrator for approval.
  - 8. If request has been approved at these levels, worker schedules a legal consult and guardianship petition is prepared and signed. The Deputy Director or designee signs the petition for the DCYF. This procedure must be completed before guardianship is awarded in Family Court.
  - 9. When the guardianship petition is granted by the Family Court, worker does the following:
    - a. Includes copies of the DCYF # 031, Summary of Facts to Support Request for Guardianship and the guardianship Decree in the case record.
    - b. Provides a copy of the DCYF # 031 to the guardian.
    - c. Forwards the original DCYF # 031 and a copy of the Guardianship Decree to the Permanency Support Unit for establishment of the guardianship record.
    - d. Documents changes in RICHIST and the case is closed if there are no other children active with the DCYF.
  - 10. The RICHIST case is assigned to the Permanency Subsidy Coordinator as secondary if there are other active children with the DCYF.
  - 11. If the guardianship child is the only active participant, the case is assigned as primary to the Permanency Subsidy Coordinator.

- K. Recertification for the guardianship to confirm that there have been no changes in the family's situation and that the child is still residing with the guardian will be sent to the guardian annually by the Permanency Support Unit.
- L. Modification and Revocation of Legal Guardianship
1. The court may revoke a guardianship if the court finds after hearing on a motion for revocation that continuation of the guardianship is not in the best interests of the child.
  2. Notice of any hearing on such motion shall be provided by the moving party to the DCYF, the court appointed special advocate, the parent or guardian and any and all other interested parties.
- M. Modification and Termination of Kinship Guardianship Assistance
1. The guardian must inform the DCYF of any circumstance that would make the guardian ineligible for guardianship assistance payments or eligible for guardianship assistance payments in a different amount.
  2. The payment may be adjusted in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child.
  3. Guardianship assistance will be terminated for any of the following reasons:
    - a. Upon the request of the guardian.
    - b. Child has attained the age of eighteen (18) or twenty-one (21) if subsidy is so authorized.
    - c. Guardian is no longer legally responsible for child.
    - d. DCYF determines guardian is no longer providing support for child.
  2. The DCYF's obligation to provide for state funded guardianship assistance and/or services is subject to the appropriation of funds.
- N. If kinship guardianship assistance is denied in total or in part or if the prospective kinship guardian disagrees with the amount determined to be appropriate and, if further negotiation is not an alternative, the prospective kinship guardian may request a hearing in accordance with [DCYF Policy 100.0055, Complaints and Hearings](#).