Legal Guardianship and Kinship Guardianship Assistance

Rhode Island Department of Children, Youth and Families
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The Department of Children, Youth and Families utilizes a family driven and youth guided approach in developing an individualized, culturally sensitive family plan that addresses health, safety and well-being when making permanency decisions. Federal and state law and Department policy recognize legal guardianship as an important permanency option when family reunification, termination of parental rights or adoption does not meet the child's permanency needs.

Legal 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. Legal guardianship provides the child with a sense of belonging, and placement with members of the family support system maintains consistency in a child's life and helps decrease placement trauma.

Federal and state laws guide our practice in the area of legal guardianship. Legal 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 be given to relative caregivers. The following federal and state laws apply:

- The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law (P.L.) 110-351
- The Adoption and Safe Families Act of 1997 (P.L. 105-89)
- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)
- The Indian Child Welfare Act (P.L. 95-608)
- Rhode Island General Law (RIGL) 40-11-12
- RIGL 40-11-12.2
- RIGL 40-11-12.3
- RIGL 42-72-8

If the prospective legal guardian resides out-of-state, the caregiver is approved through the ICPC in conformance with DCYF Policy 700.0060, Interstate Compact on the Placement of Children (ICPC).

In the event 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 Department and the caregiver outlines the rights and responsibilities of the caregiver, the terms and the amount of the kinship guardianship assistance and any services for which the child is eligible following the establishment of legal guardianship. There is an annual review of the kinship 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 legal guardianship initiated by the Department for a child in the Department's care.
   1. The petition contains the written consent of the parent who previously had custody of the child, and the Department.
   2. The granting of legal guardianship terminates Department custody and the involvement of the Department with the child and the child's parents relating to the child.

B. Legal Guardians
   1. Legal guardians may be eligible to receive the federal Title IV-E Kinship 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 caregiver, 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 consecutive months in the home of the prospective legal 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 legal guardian and the legal guardian has a strong commitment to caring permanently for the child.
   4. A child who has attained 14 years of age has been consulted regarding the legal guardianship arrangement.
   5. Siblings
      a. The child and any sibling of the child may be placed in the same legal guardianship arrangement if the Department and the guardian 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 legal guardian.
      c. The sibling does not have to meet the eligibility criteria in C. 1-4 above to be eligible for kinship guardianship assistance payments and non-recurring expenses.

D. Eligibility for kinship guardianship assistance until age 21
   1. A child is generally eligible for kinship guardianship assistance until he or she reaches the age of 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 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 kinship guardianship assistance.

E. Kinship Guardianship Assistance

1. The Department 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. Assistance payments cannot 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 operate a Foster Care and Adoption Program under Title IV-E.
4. Child Care may be funded through DHS or DCYF until age six, in accordance with procedures outlined in DCYF Policy 700.0090, Adoption Subsidy, Procedure: Types of Adoption Assistance/Subsidy.

F. Kinship Guardianship Assistance Agreements

1. The Department negotiates and enters into a written, binding kinship guardianship assistance agreement with the prospective legal guardian.
2. The Department provides the prospective legal guardian with a copy of the agreement.
3. The kinship guardianship assistance agreement specifies at a minimum:
    a. The amount of, and manner in which, each kinship guardianship assistance payment is provided under the agreement, and the manner in which the payment may be adjusted periodically, in consultation with the legal guardian, based on the circumstances of the legal guardian and the needs of the child;
    b. The additional services and assistance that the child and legal guardian are eligible for under the agreement;
    c. The procedure by which the legal guardian may apply for additional services as needed;
    d. That for children eligible for Title IV-E, the state pays 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 $2000 and for all other children, the state pays 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 $400.
    e. That the agreement remains in effect without regard to the state residency of the legal guardian.

G. Service Plan

1. If the Department 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 legal guardian, the Department Service Plan permanency goal is changed to legal guardianship.
2. The Service Plan for a child who receives kinship guardian assistance payments includes a description of:

a. The steps that the Department 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 Department 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 Department to discuss with the child's parent(s) the kinship guardianship assistance arrangement, or the reasons why the efforts were not made.

H. The Department's foster care and adoption licensing process and standards are utilized to approve legal 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 legal guardian and any other adult living in the home before the legal guardian may receive kinship guardianship assistance payments.

I. Sharing Information with Legal Guardian
1. When a prospective legal guardian is identified for a child, the primary worker provides legal guardian with a full presentation of the child. The presentation process provides an opportunity for the Department to share with the legal 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 is shared.
2. The primary service worker presents the prospective legal guardian with a written report containing a summary of information that is available within the records of the Department. This report consists of the DCYF #054B, Legal Guardianship Disclosure of Information form and may include attached reports.

J. Requesting Legal Guardianship and Kinship Guardianship Assistance
1. The primary service worker and supervisor confer and agree that the child meets eligibility criteria.
2. The primary service worker and supervisor confer with Regional Director/division administrator to obtain approval to proceed with legal guardianship.
3. The primary service worker prepares a Summary of Facts to Support Request for Legal Guardianship.
4. If prospective legal guardian is requesting kinship guardianship assistance, the primary service worker completes the Guardianship Assistance Agreement (DCYF # 031) and submits to Permanency Subsidy Coordinator for review, negotiation with prospective legal guardian and approval.
5. Permanency Subsidy Coordinator returns the approved DCYF # 031 to worker.
6. The primary service worker reviews with prospective legal guardian who then 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 Department. This procedure must be completed before legal guardianship is awarded in Family Court.
9. When the guardianship petition is granted by the Family Court, the primary service 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 legal 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 Department.
10. The RICHIST case is assigned to the Permanency Subsidy Coordinator as secondary if there are other active children with the Department.
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 legal guardian is sent to the legal guardian annually by the Permanency Support Unit.

L. Modification and Revocation of Legal Guardianship
1. The court may revoke a legal guardianship if the court finds after hearing on a motion for revocation that continuation of the legal guardianship is not in the best interests of the child.
2. Notice of any hearing on such motion is provided by the moving party to the Department, the court appointed special advocate, the parent or legal guardian and any and all other interested parties.

M. Modification and Termination of Kinship Guardianship Assistance
1. The legal guardian must inform the Department of any circumstance that would make the legal guardian ineligible for kinship guardianship assistance payments or eligible for kinship guardianship assistance payments in a different amount.
2. The payment may be adjusted in consultation with the legal guardian, based on the circumstances of the legal guardian and the needs of the child.
3. Kinship guardianship assistance payments are terminated for any of the following reasons:
    a. Upon the request of the legal guardian.
    b. Child has attained the age of 18 or 21 if subsidy is so authorized.
    c. Legal guardian is no longer legally responsible for child.
    d. Department determines legal guardian is no longer providing support for child.
2. The Department's obligation to provide for state funded kinship 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 legal guardian disagrees with the amount determined to be appropriate and, if further negotiation is not an alternative, the prospective legal guardian may request a hearing in accordance with DCYF Policy 100.0055, Complaints and Hearings.