


**Department of Human Resources
Social Services Administration
311 West Saratoga Street
Baltimore, Maryland 21201**

DATE: April 15, 2011

POLICY #: SSA#11-21

TO: Local Department of Social Services Directors,
Assistant Directors, and Out of Home Placement
Supervisors, Social Services Finance Officers

FROM: Carnitra White, Executive Director
Social Services Administration 

Peggy Hughes, Deputy Director
Budget and Finance

RE: **Guardianship Assistance Program**

PROGRAM AFFECTED: Out of Home Placement Services

ORGINATION OFFICE: Out of Home Placement

BACKGROUND: Maryland has operated a state funded kinship guardianship program since 1997. On October 7, 2008, President Bush signed the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) into law. One of the provisions of the law creates an option to provide kinship guardianship assistance payments under the IV-E program; among many other provisions. The following policy directive details the specific eligibility requirements for Federal Financial Participation (FFP) in Maryland's Guardianship Assistance Program, including procedures for documenting the case in MD CHESSIE and re-determination requirements.

This policy replaces and supersedes all prior memos and policy directives issued in relation to Kinship Guardianship Subsidy, including Circular Letter SSA #01-2.

ACTION REQUIRED OF: All Child Welfare Services Staff

REQUIRED ACTION: Implementation of the Guardianship Assistance Program

ACTION DUE DATE: October 1, 2008

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PURPOSE:

This Policy Directive sets forth the eligibility criteria for caregivers who are seeking to become the legal guardian for a child who is in the custody of the local department of social services. It also provides direction for services to be offered in a family centered practice model with the intent to keep the child safe, affirm family strengths and support and enhance the permanent stability of the child within his or her family setting. Guardianship assistance provides legal stability for children who are unable to return home to their biological parents and where adoption has been ruled out as an option. Guardianship assistance allows relative caregivers to take full legal responsibility for children without terminating parental rights.

GOALS:

- To encourage relative caregivers to become legal guardians of children who have been placed in their home by a local department of social services by removing financial barriers.
- To provide a permanent, safe, nurturing environment for the child that supports a familial cultural background.

GUARDIANSHIP ASSISTANCE PROGRAM

The Department of Human Resources/Social Services Administration (DHR/SSA) supports permanency for children and recognizes that sometimes neither parental reunification nor adoption best serve the permanency needs of a child. When a child cannot be reunited with parents and adoption of the child is not possible or not in the best interest of the child, the next priority for permanency is legal custody and guardianship to a relative guardian. Legal custody and guardianship means that an adult, other than a legal parent of the child, is legally responsible for the child and the local department's commitment order is rescinded.

Receiving legal custody and guardianship of a child may be a financial hardship for many relative guardians. The Guardianship Assistance Program will allow relative guardians to assume a complete parental role while receiving subsidy payments, thus minimizing State intervention. By subsidizing guardianships, DHR/SSA believes it can accomplish the goals of legal permanency and family responsibility for children in the custody of the State.

DEFINITIONS:

Child means an individual who has not attained 18 years of age; or an individual with respect to whom a guardian assistance agreement is in effect under the Social Security Act section 473(d) if the individual had attained age 16 before the guardianship assistance agreement became effective and who meets any of the following conditions: the child is completing secondary education or a program leading to an equivalent credential; the child is enrolled in an institution which provides post-secondary or vocational education; the child is participating in a program or activity designed to promote, or remove barriers to employment; the child is employed for at least 80 hours per month; or the child is incapable of doing any of the above described activities due to a medical condition.

Guardianship means that a court has assigned physical and legal custody that includes legal authority, and responsibility for a child, to an individual to provide for the child's needs. It is a judicially created relationship between the child and relative guardian intended to be permanent and self-sustaining as evidenced by the transfer to the caregiver 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.

Relative Caregiver means an adult who is related by blood, marriage or adoption, godparent, or strong kinship bond to a child who is in the care, custody, or guardianship of a local department and who has been designated by the local department as a temporary 24-hour caregiver of that child.

Kinship Parent means an adult who is related by blood, marriage or adoption to a child who is in the care, custody, or guardianship of a local department and who has been designated by the local department as a temporary 24-hour caregiver of that child.

Relative Guardian means an adult related by blood, marriage or adoption, godparent, or strong kinship bond to a child for whom they have been designated by the Court as the guardian.

Subsidized Guardianship means the State is contributing financial assistance (a subsidy), and Medical Assistance to help in the care of the child.

GUARDIANSHIP ASSISTANCE ELIGIBILITY REQUIREMENTS:**A. General Eligibility Criteria:**

1. The child has been removed from his/her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child;
2. The child is eligible for foster care maintenance payments and has been residing with the relative caregiver for six consecutive months;
3. It has been established that return home or adoption are not appropriate permanency options for the child;
4. The child demonstrates a strong attachment to the relative caregiver and the relative caregiver has a strong commitment to caring permanently for the child;
5. The child is a full-time elementary or secondary school student, or is incapable of attending school due to a documented medical condition;

6. With respect to a child age 14 or older, the child has been consulted regarding the guardianship arrangement.
7. The relative caregiver shall have some means of financial support independent of the Guardianship Assistance Program for the child (employment, Temporary Cash Assistance, social security, survivor's benefits, TDAP etc.) If the relative caregiver is receiving a TCA Child-only grant, it may not be used in computing income as this grant will end with the establishment of a subsidy.
8. Sibling groups may be eligible in the same guardianship arrangement if the State agency and the relative caregiver agree on the appropriateness of the arrangement for the siblings and at least one of the children meets the eligibility criteria.
9. Guardianship assistance may be paid on behalf of each sibling placed in the guardianship of the provider.
10. The monthly assistance payment amount shall be negotiated based upon the child's specific needs, but may not exceed 100% of the foster care board rate which would have been paid on behalf of the child if the child had remained in a foster family home.
11. The Guardianship Assistance Program may not extend beyond the child's 21st birthday.

B. IV-E Eligibility Criteria:

1. The child was eligible for Title IV-E foster care maintenance payments for a six consecutive month period during which the child resided in the home of the relative caregiver; AND
2. The relative caregiver home was approved (not provisional) as a foster family home and/or restricted foster home for six consecutive months during which the child resided with the relative caregiver.
3. If at least one member of a sibling group placed in the same guardianship arrangement meets criteria #1 and #2, then all the siblings are IV-E eligible for guardianship assistance.
4. The Guardianship Assistance Program may be extended up to the child's 21st birthday with respect to whom a guardianship assistance agreement is in effect under the Social Security Act section 473(d) if the individual had attained age 16 before the guardianship assistance agreement became effective and at the age of 18, and continuously thereafter, the individual is:
 - a. Completing secondary education or a program leading to an equivalent;
 - b. Enrolled in an institution which provides post-secondary education or vocational education;
 - c. Participating in a program or activity designed to promote, or remove barriers to employment;
 - d. Employed for at least 80 hours per month; or
 - e. Incapable of doing any of the above described activities due to a documented medical condition.

In addition, Guardianship Assistance may be extended up to age 21; if the Department determines that a child has a mental or physical disability warranting continuation of assistance.

- C. State Eligibility Criteria: Applies to all IV-E ineligible children, plus IV-E eligible children who are placed in Formal Kinship Care (not approved as foster parents)
1. The local department shall complete the Home Study for Custody and Guardianship (DHR/SSA 2005). This home study shall include child protective services history and finger print based national criminal background checks for all persons in the home over 18 years of age. Local departments may not make custody and guardianship recommendations to the court until all aspects of the home study have been completed.
 2. The relative caregiver shall sign a release of information and an affidavit for physical and mental health history (DHR/SSA 2006). The physical & mental health history assesses the proposed guardian's appropriateness to be a permanent resource for the child. The relative caregiver shall be informed that the affidavit is for home study use only. Psychotherapy notes are excluded from consideration.
 3. Refusal by the relative caregiver or any adult member of the household to consent to child protective services history, criminal background checks or release of health care information in the prescribed timeframe shall be considered grounds for denial of the subsidy request. No State guardianship assistance payment shall be made on behalf of an eligible child prior to conducting criminal record checks, including fingerprint-based checks of national crime information databases, on any relative caregiver or any other adult living in the home of a relative caregiver.
 4. The State guardianship assistance may be extended up to the child's 21st birthday, if:
The Department has determined that the child has a mental or physical disability warranting continuation of assistance; or
The child at age 18, and continuously thereafter, is:
 - a. Completing secondary education or a program leading to an equivalent;
 - b. Enrolled in an institution which provides post-secondary education or vocational education;
 - c. Participating in a program or activity designed to promote, or remove barriers to employment;
 - d. Employed for at least 80 hours per month; or
 - e. Incapable of doing any of the above described activities due to a documented medical condition.

GUARDIANSHIP ASSISTANCE PROGRAM REQUIREMENTS

- A. The local department shall notify the birth parents by an Intended Action Notice (DHR/SSA 1068) of the plan to transfer legal guardianship to the relative caregiver. The letter shall contain information that parental rights are not terminated and that parents or any other party in the case may petition the court to review the custody and guardianship order at any time in the future.
- B. The relative caregiver shall submit an application for the Guardianship Assistance Program.
- C. The assistance amount shall be negotiated based upon the needs of the child, but may not exceed the foster care board rate the child was eligible to receive at the time of guardianship transfer.
 1. Any monies received on behalf of the child such as child support or social security disability or survivor's benefits shall be offset against the negotiated rate. The

- relative caregiver shall apply to become the payee for child support and social security benefits.
2. If the child is eligible for SSI, the relative caregiver shall apply to become the child's representative payee. The assistance payment shall be disclosed as income to the Social Security Administration at the time of application.
- D. The agency shall negotiate and enter into a written, binding guardianship assistance agreement with the relative caregiver, which shall specify:
1. The amount of and manner in which the monthly assistance payment will be provided. The assistance payment shall be paid monthly as a per diem rate and will fluctuate month to month.
 2. The additional services and assistance that the child and relative caregiver will be eligible for under the agreement, if any;
 3. The procedure by which the relative caregiver may apply for additional services as needed;
 4. That payment for the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, not to exceed \$2000, this shall be paid with state funds for ineligible child and with IV-E funds for IV-E eligible child; and
 5. That the agreement shall remain in effect without regard to the State residency of the relative guardian.
 6. 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.
- E. The local department shall provide the relative guardian with a copy of the signed assistance agreement.
- F. The Guardianship Assistance Agreement shall be signed prior to the guardianship order. The effective date of the assistance payment will be the date the court awards custody and guardianship to the relative guardian.
- G. **The assistance payment is not transferable to another caregiver not party to the guardianship assistance agreement and court order.** If the child is no longer living with the relative guardian, the payment shall be immediately suspended. The assistance payment will be terminated if the child is not returned to the physical custody of the guardian within sixty (60) days.
- H. If the relative caregiver is receiving TCA on behalf of the child at the time custody and guardianship is awarded, the child's caseworker shall send an alert to FIA to end the TCA payment to coincide with the date the assistance payments commence.
- I. The local department shall provide the opportunity for a fair hearing to any individual whose claim for the Guardianship Assistance Program is denied.

Case Plan Requirements:

At the time of changing the permanency plan to relative custody/guardianship, the caseworker shall document on Case Plan 3 (Reasons that continued placement is necessary) the following information:

- A. The steps the local department has taken to determine it is not appropriate for the child to be returned home or adopted;
- B. The reasons for any separation of siblings during placement, as well as efforts for frequent visitation or other ongoing interaction between siblings;
- C. The reasons why a permanent placement with a fit and willing relative through a

- guardianship assistance arrangement is in the child's best interests;
- D. The ways in which the child meets the eligibility requirements for a guardianship assistance payment;
 - E. The efforts made by the State agency to discuss adoption with the proposed relative guardians as a more permanent option, and why the proposed relative guardian chose not to pursue adoption;
 - F. Efforts made by the State agency to discuss with the child's parents the guardianship assistance arrangement, or reasons why these efforts were not made; and
 - G. If the child is 14 years of age or older, documentation that the child has been consulted regarding the guardianship arrangement.

ASSISTANCE PAYMENT ENTITLEMENTS:

- A. Monthly Guardianship Assistance Payment
 - 1. Shall be negotiated based upon the child's specific needs, and
 - 2. The manner in which the payment may be adjusted periodically, in consultation with the relative caregiver, based on the circumstances of the relative caregiver and the needs of the child, and
 - 3. Cannot exceed 100% of the foster care board rate which would have been paid on behalf of the child if the child had remained in a foster family home.
- B. Nonrecurring expenses associated with obtaining legal guardianship up to a maximum of \$2000. Nonrecurring expenses include: legal fees or one time expenditures made necessary by the transfer of guardianship. All requests for nonrecurring expenses shall be approved by SSA prior to signing the agreement and transferring guardianship.
- C. Medical Assistance

Yearly Reapplication Requirements:

- A. The local department shall complete an annual reconsideration ensuring that the child continues to meet the eligibility requirements in order to continue eligibility for the assistance. The following documentation is required on an annual basis:
 - 1. Written statement that the child resides with the identified relative guardian;
 - 2. Proof that the child is a full-time elementary or secondary school student, or is incapable of attending school due to a documented medical condition. 44 USC 671(a)(30). Proof may include a copy of the report card or third party documentation;
 - 3. If Child is not school age, a copy of the child's immunization record documenting regular health care.
- B. The local department shall provide 60 days written notice to the relative guardian(s) prior to the due date of the required annual reconsideration. The local department shall include the annual application form along with the written notice.
- C. The local department shall provide 30 days written notice via an intended action letter to the relative guardian(s) prior to any planned reduction or end of the guardianship assistance payment.
- D. If the child is no longer living with the relative guardian(s), the payment will be immediately suspended. The payment will be terminated if the child is not returned to the custody of the relative guardian within sixty (60) days.
- E. In order to continue a guardianship assistance after age 18 up to age 21, documentation shall be provided PRIOR to the child attaining the age of 18 that the child is:

1. Enrolled in an educational or vocational training program subsequent to his/her 18th birthday; OR
 2. Participating in a program or activity that promotes or removes barriers to employment; OR
 3. Employed 80 hours per month; OR
 4. Determined incapable of any of the above due to a documented medical condition
- F. If the child was receiving the guardianship assistance under IV-E eligibility, the assistance payment shall revert to State Funded as of the child's 18th birthday if the child was not 16 years old at the time of the Guardianship Assistance Agreement.
- G. If the child was age 16 or older when the guardianship agreement was initiated, the child remains IV-E Eligible for guardianship payments up to the 21st birthday (effective 10/1/2010).

GUARDIANSHIP ASSISTANCE RECORD

The local department shall maintain the official record in MD CHESSIE. Specific instructions may be found on SSANet under MD CHESSIE - Subsidized Guardianship Tip Sheet #007. Documents pertaining to the assistance should be scanned into MD CHESSIE and stored in the file cabinet. If scanning is not feasible, the local department shall maintain a paper record, which includes the following documents:

1. Signed copy of the guardianship assistance application;
2. Signed copy of guardianship assistance agreement (and subsequent reapplications);
3. Copy of the Guardianship Decree;
4. Copy of the child's birth certificate;
5. Copy of the child's social security card; and
6. Documentation of school enrollment, disability preventing enrollment; or immunization record.