

## **POLICY VIII-L: SUBSIDIZED GUARDIANSHIP**

06/2015

### **OVERVIEW**

For children for whom a permanency goal of guardianship with a relative has been established, the Division offers a federal (title IV-E) Subsidized Guardianship Program to further promote permanency for those children (provided subsidized guardianship eligibility criteria are met). Any non-IV-E eligible child may enter into a subsidized guardianship supported by Arkansas State General Revenue if the Department determines that adequate funding is available and all other Subsidized Guardianship Program criteria are met. The monthly subsidized guardianship payment shall be used to help relative guardian(s) defray some costs of caring for the child's needs.

During permanency planning staffings guardianship should be explored as a potential permanency option. If it is determined at the permanency planning hearing that a guardianship arrangement with relatives is in the child's best interest and the child's permanency goal is changed to legal guardianship, the Division shall then determine if a specific guardianship arrangement may be supported by a subsidy through the Division's Subsidized Guardianship Program. Only relative guardians may apply for a guardianship subsidy. Relative is defined as a person within the fifth degree of kinship by virtue of blood or adoption (A.C.A. § 9-28-108). The fifth degree is calculated according to the child.

When it is in the best interest of each of the children, the Division shall attempt to place siblings together in the same guardianship arrangement. Siblings may be related by biological, marital, or legal ties. A child who meets the eligibility criteria for a subsidized guardianship will qualify his or her siblings for subsidized guardianship as well provided the siblings are placed in the same relative home. The child who qualifies for a guardianship subsidy does not necessarily have to be placed at the same time as his or her siblings in the relative home. The guardianships for each child in the same relative home do not need to be finalized in any particular sequence.

### **ELIGIBILITY CRITERIA FOR SUBSIDIZED GUARDIANSHIP**

A child is eligible for a subsidized guardianship in Arkansas if the Division determines that:

- A. The child has been removed from his or her home pursuant to a judicial determination that continuation in the home would be contrary to the welfare of the child and, as such, the child has been placed in DHS custody per judicial order;
- B. The child has resided for at least six consecutive months in the fully approved foster home of the prospective relative guardian(s) which is eligible to receive payments on behalf of the child (i.e., the prospective relative guardian's home is no longer a provisional foster home and has been serving as a fully approved foster home to the child seeking a legal guardianship arrangement for at least six consecutive months) (see POLICY VII: Development of Foster Homes). Any disruption in placement with the prospective relative guardian that is less than 14 days will not affect the six consecutive month qualifying period;
- C. Being returned home to the person from whom he or she was removed or being adopted are not appropriate permanency options for the child, the guardianship arrangement is in the child's best interest, and documentation supporting these determinations is provided;
- D. The child demonstrates a strong attachment to the prospective relative guardian(s) and the guardian(s) has a strong commitment to caring permanently for the child/youth;
- E. Each child is consulted regarding the guardianship arrangement; and,
- F. Youth 12 and older sign a consent to guardianship if he or she agrees to the guardianship arrangement, and it is agreed that procedures to finalize the guardianship should be initiated (unless the court determines it is in the minor's best interest to dispense with the minor's consent).

#### CASE PLAN REQUIREMENTS FOR SUBSIDIZED GUARDIANSHIP

If legal guardianship with a relative is the intended permanency goal for a child and the relative guardian(s) intend to apply for a guardianship subsidy, the child's case plan shall include a description of the ways in which the child meets the eligibility requirements for a subsidized guardianship arrangement to include:

- 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 and description of the efforts made to place currently separated siblings together, the efforts made to provide frequent visitation or other ongoing interaction between siblings; and efforts to reunify separated siblings;
- C. The reasons why a permanent placement with an appropriate and willing relative supported by a subsidized guardianship arrangement is in the child's best interest;
- D. The efforts that the Division 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;
- E. The efforts made by the Division to discuss with the child's parent(s) the guardianship arrangement; or the reasons why the efforts were not made;
- F. The process in place to allow for a successor guardian in the event that the relative guardian of the child dies or is no longer able to care for the child; and,
- G. Any appropriate transitional youth services for those youth who exit foster care and enter into a guardianship arrangement supported by a subsidy after the age of 16.

#### SUBSIDIZED GUARDIANSHIP PAYMENTS

The Division will provide subsidized guardianship payments on behalf of eligible children and their siblings (when placed in the same relative home) to approved relatives who assume legal guardianship of the youth for whom they have cared as fully approved foster parents. Subsidized guardianship payments cannot be made prior to the transfer of guardianship. The prospective relative guardians will receive foster care board payments until the transfer of guardianship occurs.

For an eligible child entering a subsidized guardianship arrangement prior to reaching the age of 16 (and their siblings placed in the same home prior to the age of 16), the subsidized guardianship payment will cease when the child reaches the age of 18.

Any eligible child in foster care entering a subsidized guardianship arrangement at the age of 16 or older (and his or her siblings in the same home at 16 or older) is eligible for subsidized guardianship until he or she reaches 21 years of age provided at least one of the following criteria are met:

- A. The child is completing secondary education or a program leading to an equivalent credential; or,
- B. The child is enrolled in an institution which provides post-secondary or vocational education; or,
- C. The child is participating in a program or activity designed to promote, or remove barriers to, employment; or,
- D. The child is employed for at least 80 hours per month; or,
- E. The child is incapable of doing any of the above described activities due to a medical condition.

In addition, guardianship subsidy payments may also continue for a child up to the age of 21 if the State determines that the child has a mental or physical handicap which warrants the continuation of assistance.

The Division will ensure that the relatives receiving a subsidized guardianship payment on behalf of a child past the age of 18 provide documentation annually that the child meets the employment or education requirements

listed above up to the age of 21. If a child is incapable of meeting the above referenced education or employment requirements due to a medical condition or has a mental or physical handicap(s), the reason for which the child is incapable of meeting the education or employment requirements must be documented by a medical professional and updated annually until the child reaches 21 years of age.

When siblings are placed together in a subsidized guardianship arrangement, the subsidized guardianship payments will be paid on behalf of each of the siblings. The sibling of a child eligible for subsidized guardianship does not need to meet any subsidized guardianship eligibility requirements him or herself.

When determining the amount of each subsidized guardianship payment the following shall be considered:

- A. The needs of the child as supported by accompanying documentation (the rate should not be linked to the means of the prospective relative guardians);
- B. The subsidized guardianship payment shall not exceed the foster care board payment that would have been paid on that child's behalf if he or she had remained in a foster family home. Any child receiving a subsidized guardianship payment may have his or her guardianship subsidy adjusted per Arkansas rate structure based on the child's age or the child's special needs. The subsidy shall not be greater than the amount which the child would have received had the child remained in a foster family home.
- C. The relative guardians may not draw both an SSI payment and a subsidized guardianship payment. The relatives shall determine which form of assistance best meets the needs of the child.
- D. The relative guardians may draw both a Title II SSA payment and a subsidized guardianship payment but the total amount of the combined payments may not exceed the child's foster care board payment.
- E. Any conserved funds in a child's trust account shall not affect a child's subsidized guardianship eligibility or payments. However, the DCFS Eligibility Unit shall close any trust account(s) when a child exits care. The administering agency of the trust account will redistribute the funds per its respective regulations after any board payments, contract reimbursements, and/or overpayments are deducted from the account balance prior to close out.

In addition to the monthly subsidized guardianship payments, approved relative guardian(s) of a child eligible for the Subsidized Guardianship Program will also receive funding for the total cost of non-recurring expenses related to obtaining legal guardianship up to \$2,000 per child. The majority of legal services should be provided by the DHS Office of Policy and Legal Services (OPLS) which would not incur legal fees upon the relative guardians.

The relative guardian(s) are required to inform the Division of circumstances that would make them ineligible for subsidized guardianship payments or eligible for payments in a different amount (e.g., if the child becomes eligible for and begins receiving SSA payments). The relative guardian(s) must also notify the Division of any change of address. Any subsidized guardianship payment will remain in effect without regard to the State of residence of the relative guardian(s).

#### MEDICAL COVERAGE FOR SUBSIDIZED GUARDIANSHIP ARRANGEMENTS

The Division will ensure health insurance coverage under Medicaid Title XIX for any IV-E eligible child (and their IV-E eligible siblings when placed in the same relative home) who receives a subsidized guardianship payment as the child must be eligible for and receiving IV-E guardianship subsidy payments in order to be categorically eligible for Medicaid. The subsidized guardianship agreement will indicate Medicaid coverage for IV-E eligible children.

A non-IV-E eligible child may qualify for certain Medicaid categories depending on the needs of the child. The relative guardian of a non-IV-E eligible child may apply for health insurance (e.g., AR Kids First) for the child through their local DHS county office. Coverage through the local DHS county office is not guaranteed and may only extend until the time the child reaches 19 years of age.

#### SUBSIDIZED GUARDIANSHIP PROGRAM DETERMINATION

The child's permanency planning staffing shall be the forum in which the determination regarding whether a guardianship arrangement is in the child's best interest (and his or her siblings if applicable).

If the child's permanency planning hearing results in a permanency goal of a legal guardianship with a specific relative, the Division shall then determine if the child (and his or her siblings if applicable) and prospective relative guardian(s) may qualify for a subsidized guardianship. If the child's FSW believes the child and relative guardians may qualify based on the subsidized guardianship eligibility and case plan criteria, he or she will make a referral to the DCFS Permanency Specialist or designee.

If the DCFS Permanency Specialist or designee agrees that the family is a candidate for subsidized guardianship, a family-centered subsidized guardianship determination meeting will be held. The purpose of the meeting is to explain the Subsidized Guardianship Program to the prospective relative guardian(s) and ensure that eligibility and case plan criteria for the program are met. The DCFS Permanency Specialist or designee will facilitate the family-centered subsidized guardianship determination meetings.

If it is determined that all Subsidized Guardianship Program eligibility and case plan criteria are satisfied, the decision shall be relayed to the Subsidized Guardianship Oversight Committee via the DCFS Permanency Specialist or designee. The Subsidized Guardianship Oversight Committee serves as an auditing entity to ensure all eligibility and case plan requirements have been met.

The Subsidized Guardianship Oversight Committee shall include, but is not limited to:

- A. DCFS Permanency Specialist or designee
- B. DCFS Foster Care Manager or designee
- C. DCFS Adoption Manager or designee
- D. DCFS Director or designee in cases involving special subsidy requests

If the Subsidized Guardianship Oversight Committee verifies that all Subsidized Guardianship Program eligibility and case plan criteria have been met, DHS may then petition the court for a guardianship hearing to finalize the guardianship and subsidized guardianship agreement.

#### SUBSIDIZED GUARDIANSHIP AGREEMENT

Once guardianship with a specific relative has been established as the child's permanency goal and then after the Division has determined that the guardianship may be supported by a guardianship subsidy, the family and the Division will finalize the subsidized guardianship agreement. A subsidized guardianship agreement, a written, binding agreement negotiated between the relative guardian(s), the Division and other relevant agencies, must be in place prior to the finalization of the legal guardianship supported by a subsidy. The prospective relative guardian(s) shall receive a copy of the agreement.

The subsidized guardianship agreement will specify:

- A. The amount of, and manner in which, each subsidized guardianship payment will be provided under the agreement (subsidized guardianship payment should not exceed the amount of the child's foster care board payment unless special circumstances related to the child's care warrant a special subsidy rate);
- B. That (and the manner in which) the payment may be adjusted periodically, in consultation with the relative guardian(s), based on the circumstances of the relative guardian and the needs of the child;
- C. The additional services and assistance that the child and relative guardian(s) will be eligible for under the agreement including Medicaid coverage that may be available through the DCFS Eligibility Unit or, in the case of non-IV-E children, through the local DHS county office;
- D. The procedure by which the relative guardian(s) may apply for additional services needed;
- E. That the Division will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child/youth up to \$2,000;

- F. That the child shall retain eligibility for federal adoption assistance payments under Title IV-E, provided he or she was eligible when the subsidized guardianship agreement was negotiated, if the guardian later decides to adopt the child;
- G. That the agreement will become effective upon the entering of a court order granting guardianship of the child to the guardian(s);
- H. That the agreement shall remain in effect without regard to State residency of the relative guardian;
- I. That the relative guardian(s) are required to respond to annual review requests from the Division;
- J. That OPLS will file an annual report with the court;
- K. A designated successor guardian, if desired, for the child in the event that the current relative guardian is no longer able to fulfill guardianship responsibilities. A successor guardian and all household members within that individual's home must clear any applicable Child Maltreatment Central Registry Checks, State Police Criminal Record Checks, and a Vehicle Safety Check before being identified as a potential successor guardian in the subsidized guardianship agreement. Subsidized guardianship assistance payments will continue to the successor guardian if the relative guardian dies or is incapacitated and a successor guardian was named in the subsidized guardianship agreement (or any amendments to the agreement) with the initial relative guardian.

Formatted: Underline

~~Identification of a successor guardian in the subsidized guardianship agreement will not guarantee an automatic transfer of guardianship in the event that the current relative guardian is no longer able to fulfill guardianship responsibilities. In order for the successor guardian to assume guardianship, he or she must follow all policies and procedures regarding subsidized guardianship arrangements. This includes becoming an approved DCFS foster home placement for the child (if appropriate at that point in time) prior to exploring legal guardianship supported by a guardianship subsidy as a permanency option. However, in addition, the child must also continue to meet all subsidized guardianship eligibility criteria in order to move forward with requesting a subsidized guardianship arrangement with the identified successor guardian.~~

#### ANNUAL PROGRESS REPORT and REVIEW of SUBSIDIZED GUARDIANSHIP AGREEMENT

An annual progress report and review of the subsidized guardianship agreement are required annually in order for the subsidized guardianship and subsidized guardianship payments of any amount or payment rate to continue. The progress report and review shall be conducted by the Division of Family Services (DCFS) Permanency Specialist or designee while the Office of Policy and Legal Services shall file the annual progress report with the court. An accounting of the guardianship subsidy is not required. Documentation of continued eligibility is required for the review. The subsidized guardianship payments granted at the time of review will reflect the child's current, documented level of need.

#### REVISION OR TERMINATION of SUBSIDIZED GUARDIANSHIP AGREEMENT

Revisions to the subsidized guardianship agreement and/or payments may be requested any time there is a significant change in the child's circumstance and the relative guardian can provide the required and/or requested documentation. To request a revision to the subsidized guardianship agreement and/or payments, the family shall contact the DCFS Permanency Specialist or designee.

The subsidized guardianship agreement and, consequently the subsidized guardianship payments, shall be revised or terminated as appropriate:

- A. If the child is absent from the relative guardian home for more than 14 days in a month (in such an event, the child will be eligible for only a portion of the month that he or she was in the relative guardian home) excluding when a child 18 or older lives in an approved independent living situation outside of the home (e.g., college dorm); or,
- B. When the terms of the subsidized guardianship agreement are fulfilled; or,

- C. If the child begins receiving SSI, SSA, or any other source of income excluding any income that the child may earn from his or her own employment (the relative guardian is responsible for notifying the Division if the child begins receiving other sources of income);
- D. If the child has attained the age of 18 for those who entered into the subsidized guardianship arrangement prior to the age of 16; or,
- E. If the child has attained the age of 21 for those who entered into the subsidized guardianship arrangement at the age of 16 or older; or,
- F. If the child who has an extended subsidy (i.e., up to age 21) does not meet the education or employment conditions outlined above in the Subsidized Guardianship Payments section; or,
- G. If the child who has extended subsidy (i.e., up to age 21) is no longer determined to have a mental or physical handicap which warrants the continuation of assistance; or,
- H. If the child who has an extended subsidy (i.e., up to the age of 21), upon reaching the age of 18 years or older requests the guardianship be terminated; or,
- I. If the child becomes an emancipated minor; or,
- J. If the child marries; or,
- K. If the child enlists in the military; or,
- L. If the relative guardian(s) are no longer legally or financially responsible for the support of the child; or,
- M. If the guardian(s) die; or,
- N. If the guardianship is vacated; or,
- O. If the child dies.

Subsidized guardianship payments may continue to be paid on behalf of the child if the child moves out of the relative guardian's home or otherwise lives independently of the guardian(s) as long as the guardian(s) continue to provide support to the child.

If a child whose relatives are receiving subsidized guardianship payments on his or her behalf re-enters DHS custody, the subsidized guardianship agreement will be terminated until such time that the child is reunified with the relative guardian(s), or, in certain cases until such time that a legal guardianship with the successor guardian is determined to be in the child's best interest, it is determined that the child and successor guardian qualify for a subsidized guardianship, and a new subsidized guardianship agreement with the successor guardian is finalized. A successor guardian is not entitled to any payments that would have been made to the initial guardian during the time a child spends in DHS custody. The successor guardian may only receive subsidized guardianship payments once the court has formally appointed the successor guardian as the child's legal guardian and the subsidized guardianship agreement is in effect.

#### APPEALS

Relative guardian(s) may appeal the Division's decision to deny, terminate, or modify their child's subsidized guardianship agreement and/or payments in accordance with the rules and procedures of the State's fair hearing and appeal process per DHS Policy 1098. The relative guardian(s) must appeal an adverse decision within thirty (30) calendar days of written notice of the adverse action. Subsidized guardianship payments will be suspended pending the determination of all appeals. Families receiving a favorable ruling in their hearing may be entitled to assistance (back payment) that had been suspended.

The child would only be eligible for title IV-E subsidized guardianship if all eligibility criteria had been met prior to the finalization of the guardianship (including executing a subsidized guardianship agreement). Therefore, even if the Office of Hearings and Appeals orders DCFS to provide subsidized guardianship payments and services for the child, the State shall not claim FFP under title IV-E if a subsidized guardianship agreement was not in place prior to the guardianship.

## PROCEDURE VIII-L8: Placement with Successor Guardian

~~0614~~/2015<sup>1</sup>

If a child whose relatives are receiving a guardianship subsidy on his or her behalf re-enters DHS custody, the Area Director or designee will:

- A. Notify the DCFS Permanency Specialist that the child has re-entered care.
- B. Consult with the DCFS Permanency Specialist or designee and appropriate FSW supervisor as to whether:
  - 1) It is appropriate for the child to work toward reunification with the initial relative guardians; or,
  - 2) If guardianship with the successor guardian is in the child's best interest and, if so, if the identified successor guardian and child meet requirements the eligibility criteria for the Subsidized Guardianship Program; or,
  - 3) If another permanency option is more appropriate.
- C. If a subsidized guardianship arrangement with the successor guardian is determined to be appropriate, assign the appropriate Resource Worker to open the successor guardian's home as a provisional foster home per Policy VII: Development of Foster Homes.
- D. If the successor guardian is determined not to be an appropriate placement at that point in time, have the assigned FSW find an appropriate approved or licensed placement for the child per A.C.A. § 9-28-402.

The Resource Worker will:

- A. If notified by the Area Director or designee, open the successor guardian's home as a provisional foster home per Policy VII: Development of Foster Homes.
- B. Collaborate with the FSW to evaluate:
  - 1) How the other children and adults in the home will affect the successful development of the child; and,
  - 2) How the child will impact the other members of the home.
- C. Support the relative throughout the process of becoming a provisional and regular DCFS foster home.
- D. If and when legal guardianship is granted to the successor guardian, end date the Foster Family Service on the Provider Service Tab selecting the appropriate Reason for End Date in CHRIS noting in the comment box on the Provider Services Tab that home was closed due to the parent(s) assuming legal guardianship of the child supported by a guardianship subsidy.

The FSW Supervisor will:

- A. Consult with the FSW, Area Director, and DCFS Permanency Specialist as to whether a subsidized guardianship arrangement with the initial relative guardians (i.e., reunification) or with the successor guardian is in the child's best interest or if another permanency option is more appropriate.
- B. Conference with the FSW on decisions regarding the child.

The FSW will:

- A. Consult with the FSW Supervisor, Area Director and DCFS Permanency Specialist as to whether a subsidized guardianship arrangement with the initial relative guardians (i.e., reunification) or the successor guardian is in the child's best interest or if another permanency option is more appropriate.
- B. If appropriate, request that the OPLS attorney petition the court for a permanency planning hearing to review the child's case plan goal of legal guardianship supported by a guardianship subsidy with the successor guardian.
- C. Follow Procedure VIII-L5: Subsidized Guardianship Agreement Finalization and Procedure VIII-L6: Guardianship Hearing for Subsidized Guardianship.

I

The DCFS Permanency Specialist or designee will:

- A. Consult with the FSW, FSW Supervisor, and Area Director as to whether a subsidized guardianship arrangement with the initial relative guardians (i.e., reunification) or the successor guardian is in the child's best interest or if another permanency option is more appropriate.
- B. Follow Procedure VIII-L5: Subsidized Guardianship Agreement Finalization, Procedure VIII-L6: Guardianship Hearing for Subsidized Guardianship and VIII-L7: Annual Subsidized Guardianship Program Review as appropriate.

MARKKUP