

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**Policy Guide 2018.03**

**SECTION 302.410 SUBSIDIZED GUARDIANSHIP PROGRAM (KinGAP)**

**DATE:** January 29, 2018

**TO:** All DCFS and Private Agency Permanency Workers and Supervisors,  
Adoption Coordinators and Adoption Staff

**FROM:** Beverly J. Walker, Acting Director

**EFFECTIVE:** Immediately

**I. PURPOSE**

Effective immediately, this Policy Guide rescinds and replaces Policy Guide 2017.12 which, in addition to the changes outlined below, changed the age of eligibility of Subsidized Guardianship children for employment related day care services from up to three years of age to up to age six. Section IV(e)(6) of this Policy Guide reverts the eligibility age for employment related day care services back to up to three years of age. DCFS has proposed amendments and revisions to **Rules and Procedures 302.410, Subsidized Guardianship Program (KinGAP)**. In the interim, this Policy Guide will serve as procedures necessary for implementation.

Section IV (c), Eligibility Criteria was updated to include children who are 12 years of age and older and their younger siblings placed in the same home may now be eligible for the State Funded Option of Subsidized Guardianship

Additional changes were made in section IV (f) which outlines notification requirements to the Department by the subsidized guardian for children who were 16 years of age and older and the guardianship was awarded after July 1<sup>st</sup>, 2017.

Section IV (i), Termination of Payments includes the conditions under which the Subsidized Guardianship may continue until the child's 21<sup>st</sup> birthday, for children who were 16 years of age and older and the guardianship was awarded after July 1<sup>st</sup>, 2017.

**II. PRIMARY USERS**

The primary users of this Policy Guide are POS and DCFS permanency workers and supervisors, DCFS and POS adoption workers, coordinators, their supervisors and managers.



### **III. SPECIAL INSTRUCTIONS REGARDING SUCCESSORS OF GUARDIANSHIP**

Prior to the completion of the subsidized guardianship agreement, the DCFS adoption worker or POS adoption/permanency worker must have a meeting (in person preferred) with the prospective guardian, identified successor of guardianship, and the prospective guardianship youth in care (if appropriate) to explain the successor of guardianship role and to confirm the acceptance of that role. Information on how to contact the Post Adoption unit must be provided and a copy of the Post Adoption and Guardianship services booklet must be provided to the identified successor of guardianship during the meeting if in person or by mail if meeting was by phone. Upon assuming care of the child, the successor guardian(s) shall contact the Department to inform the Department of changes to the child's living situation, to request a home study, background checks and to initiate the application process for a subsidy.

### **IV. SECTION 302.410 SUBSIDIZED GUARDIANSHIP PROGRAM (KinGAP)**

#### **a) General Provisions**

The subsidized guardianship program (KinGAP) implements provisions of 42 USC 673 that allow the State to enter into guardianship agreements to provide assistance payments to grandparents and other relatives who have assumed the legal guardianship of children for whom they have cared as a licensed foster parent and for whom they have committed to care on a permanent basis. The program offers a subsidized private guardianship arrangement for children for whom the permanency goals of return home and adoption have been ruled out. Guardianship is governed by the Illinois Probate Act [755 ILCS 5] and the Illinois Juvenile Court Act [705 ILCS 405]. A licensed relative foster parent caring for a child determined to be eligible for the subsidized guardianship program shall be made aware of the availability of subsidized guardianship and the types of assistance available. The subsidized guardianship agreement must be signed prior to the transfer of guardianship.

The State funded option of subsidized guardianship provides subsidized guardianship for children for whom the Department has placement and care responsibility and who meet the special needs criteria as defined in section 302.310 (b)(2) of this part, but are not eligible for Title IV-E KinGAP as well as for children who age out of eligibility for Title IV-E KinGAP and continue in school up to the earliest of their nineteenth birthday or graduation from high school, or age 21 when the child meets specific requirements as outlined in this Part.

#### **b) The Subsidized Guardianship Agreement**

##### **1) General Provisions**

The type, amount and duration of subsidized guardianship shall be agreed to in writing by the Department and the subsidized guardian prior to the transfer of guardianship and shall be set forth in the subsidized guardianship agreement, which shall be binding on the parties to the agreement. It shall also be stipulated that the agreement shall remain in effect regardless of the state where the subsidized guardian resides currently or in the future and shall

contain provisions for the protection of the interests of the child in cases where the subsidized guardian and child move to another state while the agreement is in effect. The amounts of ongoing subsidized guardianship payments are subject to change based on changes in state or federal law regarding adoption assistance payments. Subsidized guardians may refuse any or all payments offered by the Department. The child for whom guardianship is transferred and for whom the guardian is receiving a subsidy shall receive only those services and/or payments specified in the subsidized guardianship agreement. The child may require services in the future that are not currently being provided for pre-existing physical, emotional or mental health needs or risk factors. Any pre-existing conditions must be described in the subsidized guardianship agreement to be eligible for assistance through the Subsidized Guardianship Program at a future date. Assistance cannot be granted for pre-existing conditions if the conditions are not listed in the subsidized guardianship agreement in accordance to sub-section (e)(4) of this section or cannot be documented as a pre-existing condition that was unknown at the time of the agreement by a medical provider. The subsidized guardianship agreement must be signed, and a copy of the signed agreement must be provided to the prospective guardian, prior to the transfer of guardianship.

2) Successor of guardianship

The subsidized guardianship agreement may not be transferred by the guardian(s) to any other party. However, in the event of the death or incapacity of the guardian(s), the child remains eligible for assistance if the guardian(s) has designated a successor guardian(s) in the agreement (or any amendment to the agreement). Upon assuming care of the child, the successor guardian(s) shall contact the Department to inform the Department of changes to the child's living situation, to request a home study, background checks and to initiate the application process for a subsidy.

**c) Eligibility Criteria**

1) Eligibility for Subsidized Guardianship under KinGAP

A) For a child to qualify for subsidized guardianship under KinGAP, the following criteria must be met:

- i) the child must have been removed from his or her 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 and the best interest of the child; and

- ii) the child must be eligible for foster care maintenance payments while residing for at least 6 consecutive months in the home of a licensed prospective relative guardian immediately prior to the establishment of the guardianship; and
  - iii) the prospective relative guardian must have been a licensed foster parent for at least the consecutive 6 month period that the child has been in his/her home immediately prior to the establishment of the guardianship; and
  - iv) return home or adoption are not appropriate permanency options for the child; and
  - v) 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; and
  - vi) a child who has attained 14 years of age, the child has been consulted and the child has agreed to the guardianship arrangement.
- B) A sibling of an eligible child, who is placed with the same relative as the eligible child under a kinship guardianship agreement, when DCFS and the relative guardian agree that the placement is appropriate, also qualifies for subsidized guardianship under KinGAP.

2) Eligibility for the State Funded Option of Subsidized Guardianship

- A) The child does not qualify for subsidized guardianship under KinGAP; and
- B) the child is 12 years of age or older; and
- C) the child has lived with an unlicensed relative caregiver or licensed non-relative for at least the 6 consecutive month period prior to the establishment of the guardianship and meets the following:
  - i) the child received foster care maintenance payments while residing for at least 6 consecutive months in the unlicensed home of relative or licensed non-relative home immediately prior to establishing guardianship; and
  - ii) the prospective non-relative guardian has been a licensed foster parent for at least the consecutive 6 month period immediately prior to the establishment of the guardianship; and

- iii) return home or adoption are not appropriate permanency options for the child; and
  - iv) the child demonstrates a strong attachment to the prospective guardian and the prospective guardian has a strong commitment to caring permanently for the child; and
  - v) the child has been consulted and has agreed to the guardianship arrangement.
- D) A younger sibling of a child eligible for the State funded option of subsidized guardianship who is placed with the same unlicensed relative or licensed non-relative as the eligible child, when DCFS and the unlicensed relative or licensed non-relative guardian agree that the placement is appropriate, also qualifies for the State funded option of subsidized guardianship.

**d) Determination Whether Subsidized Guardianship under the KinGAP Program is in the Best Interests of the Child**

- 1) Prior to approving a subsidized guardianship arrangement for a child, the Department shall determine whether subsidized guardianship is in the best interests of the child. In making this determination, the Department shall consider all relevant factors, including but not limited to:
  - A) the wishes of the child's prospective subsidized guardian and the guardian's demonstrated ability to provide care that meets the special needs of the child, if any;
  - B) the wishes of the child under the age of 14 or the consent of the child, if over age 14;
  - C) the interaction and interrelationship between the child and the prospective subsidized guardian;
  - D) the child's adjustment to the present home, school and community;
  - E) the child's need for stability and continuity of relationship with the prospective subsidized guardian; and
  - F) the mental and physical health of all individuals involved.
- 2) The Department shall ensure that the subsidized guardianship arrangement is safe and suitable placement by means of a safety checks, which shall include a CANTS/SACWIS and LEADS check in accordance to Part 385, Background Checks.

**e) Types of Assistance**

A child meeting the eligibility criteria for subsidized guardianship is entitled to the following types of assistance:

1) Non-recurring Expenses

Payment for non-recurring expenses associated with obtaining legal guardianship for the child subject to the maximum of up to \$2000 per child.

2) Ongoing Monthly Payments

A) An ongoing monthly payment to be determined through the discussion and negotiation process between the prospective guardian and the Department based on the needs of the child and the circumstances of the family. This payment should combine with the guardian's resources to cover the ordinary and special needs of the child. This payment shall not exceed the amount the child receives in his or her current foster family home upon transfer of guardianship. The ongoing monthly payment shall only be issued to one custodial caregiver identified as payee in the assistance agreement, and this person shall be the designated authority for the purpose of service provision. In the event that there is a change in the custodial status of the child, the Department shall be notified. If a change in payee is necessary, notification shall be sent to the Department in writing with the supporting legal documentation attached. The ongoing monthly payment may be adjusted for any benefits the child will continue to receive, such as Social Security, Veteran's benefits, railroad retirement or black lung benefits. Supplemental Security Income (SSI) benefits shall not be considered in determining the ongoing monthly payment amount. When the child is SSI-eligible following the transfer of guardianship, the guardian shall tell the Social Security Administration the amount of the ongoing monthly payment that they are receiving. The Social Security Administration may reduce the SSI payment dollar for dollar as the receipt of SSI is based on income.

B) Eligibility for a subsidy under the subsidized guardianship program shall be determined regardless of the financial circumstances of the prospective subsidized guardian. The types and amounts of assistance under each subsidized guardianship agreement shall be determined by the Department in the same manner as described for adoption assistance in Section 302.310(c).

3) A Medicaid card.

4) Needs Not Payable through Other Sources

A child meeting the eligibility criteria for subsidized guardianship entitled to the types of assistance outlined in subsections (e)(1), (2) and (3) may also apply for the following types of assistance:

- A) Physical, emotional and mental health needs not payable through insurance or public resources (e.g., other State or community funded programs) that are associated with, or result from, a condition whose onset has been established as occurring prior to the transfer of guardianship. Payment shall not be made until the Department has been notified in writing that the services will begin and has approved the requested services, and a contract (when applicable) has been executed. The Department's reimbursement shall be limited to what is usual, customary and reasonable based on Medicaid-eligible service rates in the community as determined by the Department.
- B) The Department will not pay for physical, emotional, medical, mental health or psychological services or treatment for a pre-existing condition or risk factors unless the pre-existing condition, service or risk factor is included in the subsidized guardianship agreement or can be documented as a pre-existing condition that was unknown at the time of the agreement by a medical provider.

5) Therapeutic Day Care

Therapeutic day care is available only for children who are determined to have a disability that requires special education services through an Individualized Education Plan (IEP), an Individual Family Service Plan (IFSP), or a 504 Educational Special Needs Plan and is not fundable through another source. Specific therapeutic interventions must be provided as an integral part of the day care programming. Payment for therapeutic day care shall not be made until the Department has been notified in writing that requested services have been approved, when services will begin, and a contract has been executed (when applicable).

6) Employment Related Day Care

Payment for day care for children under the age of three years may be made if the guardian is employed or in a training program that will lead to employment. Payment for day care services shall end on the child's third birthday. This day care payment cannot be used in addition to therapeutic day care.

7) College Scholarships and the Education and Training Voucher Program

Children who are receiving subsidized guardianship assistance may apply for a 4-year college scholarship awarded by the Department on a competitive basis. A limited number of scholarships are awarded by the Department each

year to high school or high school equivalent graduates. Youth who enter into subsidized guardianship from foster care after attaining age 16 are eligible to enter the Education and Training Voucher (ETV) Program.

**f) Responsibilities of the Subsidized Guardian**

Subsidized guardians are responsible for the following:

- 1) ensuring that parents have the opportunity to visit their children in accordance with the provisions/orders of the court; and
- 2) notifying the Department no later than 30 days after any one of the following occurrences:
  - A) the child is no longer the legal responsibility of the guardian;
  - B) the guardian no longer financially supports the child;
  - C) the child graduates from high school or equivalent;
  - D) there is a change of residential address or mailing address of the guardian or the child;
  - E) the child dies;
  - F) the child becomes an emancipated minor;
  - G) the child marries;
  - H) the child enlists in the military;
  - I) the mental or physical incapacity of the guardian prevents the guardian from discharging the responsibilities necessary to protect and care for the child;
  - J) the custodial status of the child changes; or
  - K) the guardianship is vacated;
  - L) the subsidized guardians are also required to notify the Department no later than 30 days after the child completes their secondary education or a program leading to an equivalent credential if the guardianship was awarded before July 1, 2017, or the child was younger than 16 years of age when guardianship was awarded on or after July 1, 2017;
  - M) On or after July 1, 2017, if the child was 16 years of age or older when guardianship was awarded, and the child reaches the age of 18, the subsidized guardian is also required to notify the Department no later than 30 days of the child's participation in any of the following:
    - i) is completing secondary education or a program leading to an equivalent credential;



- ii) is enrolled in an institution which provides post-secondary education or a vocational program;
- iii) is participating in a training program or activity designed to promote, or remove barriers, to employment;
- iv) is employed at least 80 hours per month; or
- v) is incapable of doing any of the above due to a medical condition.

**g) Department Responsibilities**

- 1) The Department shall ensure that members of sibling groups are placed together, unless there is an explicit determination that they should not be placed together for the reasons described in 89 Ill. Adm. Code 301 (Placement and Visitation Services).
- 2) The Department shall explain in the child's service plan the following:
  - 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 the separation of any and all siblings during placement;
  - C) the reasons why a permanent placement with a fit and willing relative through a subsidized guardianship assistance arrangement is in the child's best interests;
  - D) the ways in which the child meets the eligibility requirements for a subsidized guardianship assistance payment;
  - E) the efforts the agency has made to discuss adoption with 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 not to pursue; and
  - F) the efforts made by the Department to discuss with the child's parent or parents the subsidized guardianship assistance arrangement, or the reasons why the efforts were not made.
- 3) The Department shall offer short-term support services for foster care and relative home providers prior to and during subsidized guardianship. Services will include preliminary screening, assessment, assistance in applying for subsidized guardianship, and payment of one time only court costs and legal fees, if required.

- 4) The Department shall ensure that an orientation is provided to the caregiver's family to ensure that all family members understand the benefits and responsibilities of all the participants in the subsidized guardianship arrangement.
- 5) The Department shall ensure that each guardian has access to post-guardianship staff who will respond to requests for information and assistance.
- 6) The Department shall ensure that all guardians are aware of their right to appeal service decisions with which they may disagree under 89 Ill. Adm. Code 337 (Service Appeal Process) as summarized in subsection (j) below.
- 7) The Department shall accept custody of the child in accordance with the Abused and Neglected Child Reporting Act [325 ILCS 5] if the guardian does not care for the child to the extent the child's health or well-being is endangered.

**h) Periodic Reviews**

The Department shall mail annually a **CFS 1800-Q, Adoption Assistance/Subsidized Guardianship Medicaid Information** form, and the **Annual Notification Letter** to the guardian(s), which will facilitate the adoptive guardian's communication with the Department.

**i) Termination of Payments**

Payments for subsidized guardianship assistance shall terminate when the Department has determined that any one of the following has occurred:

- 1) when the terms of the subsidized guardianship agreement are fulfilled;
- 2) the guardian has requested that the payment permanently stop;
- 3) the guardian is no longer financially supporting the child;
- 4) the child becomes an emancipated minor;
- 5) the child marries;
- 6) the child enlists in the military;
- 7) If the guardianship was finalized before July 1, 2017, or the child was under the age of 16 when the guardianship was finalized on or after July 1, 2017, assistance will terminate when:
  - A) the child reaches age 18;

- B) a child 18 years of age graduates from high school or equivalent or reaches age 19, whichever occurs first; or
  - C) a child who has a physical, mental or emotional disability associated with a condition or risk factor that existed prior to the finalization of the guardianship and that was documented prior to the youth's 18th birthday reaches age 21.
- 8) For children who were 16 years of age or older when the guardianship was awarded on or after July 1, 2017, the subsidy terminates at age 21. Between the ages of 18 and 21, the subsidy payments may stop and start based on the child's compliance with, and the guardian's confirmation of the requirements listed below (failure of the guardian to provide annual written confirmation will cause the subsidy payment to stop):
- A) the child is completing secondary education or a program leading to an equivalent credential;
  - B) the child is enrolled in an institution which provides post-secondary education or a vocational program;
  - C) the child is participating in a training program or activity designed to promote, or remove barriers to employment;
  - D) the child is employed at least 80 hours per month; or
  - E) the child is incapable of doing any of the above due to a medical condition.

If the child later meets one of the requirements listed (A-E) above, the payment may be restarted following notification of the Department.

- 9) the guardian dies;
- 10) the guardianship is vacated; or
- 11) the child dies.

**j) Appeal of Department Decisions**

Guardians may appeal the following Department decisions in accordance with 89 Ill. Adm. Code 337, Service Appeal Process:

- 1) The Department failed to advise the potential guardian about the availability of a subsidy to children under the care of the Department;

- 2) The potential guardians disagree with the Department's determination that a child is ineligible for subsidized guardianship;
- 3) The Department's denial of Title IV-E subsidized guardianship eligibility to a child for whom it does not have placement and care responsibility;
- 4) Inaction on the part of the Department on a Title IV-E subsidized guardianship eligibility determination request;
- 5) Subsidized guardianship or a specific component of the subsidized guardianship was denied;
- 6) Relevant facts regarding the child were known by the Department and were not presented to the guardian prior to the transfer of guardianship;
- 7) The Department denies the guardian's request to modify the subsidized guardianship agreement; or
- 8) A subsidized guardianship agreement has been amended, suspended or terminated without the concurrence of the guardian.

## **V. REVISED FORMS**

The following form has been revised and may be found on the "T" drive and D-net as usual;

- CFS 1800-B-G, Subsidized Guardianship Application;
- CFS 1800-C-G, Subsidized Guardianship Agreement; and
- CFS 1800-T-G, Subsidized Guardianship Case Record Checklist.

## **VI. QUESTIONS**

Questions regarding this Policy Guide may be directed to the Office of Child and Family Policy at 217-524-1983 or e-mail to OCFP on Outlook. Persons and agencies not on Outlook can e-mail questions to [cfpolicy@idcfs.state.il.us](mailto:cfpolicy@idcfs.state.il.us).

## **VII. FILING INSTRUCTIONS**

Please remove Policy Guide 2017.12 found immediately following Rule Section 302.410 and replace with this Policy Guide. Please remove Policy Guide 2017.12 found immediately following Procedures 302.405 and replace with this Policy Guide.