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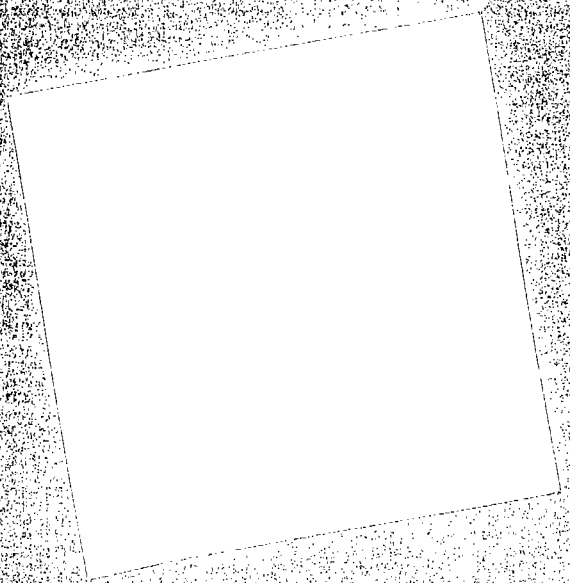

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SUBSIDIZED LEGAL GUARDIANSHIP

A PERMANENCY PLANNING OPTION STUDY FOR CHILDREN PLACED IN KINSHIP CARE

PRINCIPAL INVESTIGATORS:

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This report was the first step in a project undertaken by A Second Chance, Inc., a private, not-for-profit, kinship care agency, located in Pittsburgh, Pennsylvania. A Second Chance embraces the importance of kin as caregivers for children in out-of-home placement. The agency strives to meet the needs of its kinship clients, and has embarked on a project to explore new ways of bringing permanence to children and families languishing in the child welfare system.

Subsidized legal guardianship is one of the innovative ideas being used by child-care providers across the country. We discovered many individuals in our research who have dedicated themselves to the effective use of subsidized guardianship in their communities.

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TABLE OF CONTENTS

Executive Summary

According to the Child Welfare League of America, reports of child abuse and neglect across the United States have increased by over 100% in the past ten years.[1]

During this same time, it has been reported that while the number of children entering out-of-home care has increased, the number of available traditional foster care providers has decreased. Because of this, on a national level, child welfare agencies have found themselves relying on what was once an "informal" child care arrangement by families (Kinship Care) to meet their ongoing placement needs.

In fact, it is estimated that one-half of the children in out-of-home care reside in kinship care placements, as states have utilized placement with relatives to address the needs of foster children. As the number of children entering care increases, so does the number of children who remain in long-term foster care.

Many of these children in both kin and non-kin placements have no hope of obtaining a permanent home and will remain in care until they reach the age of majority. With the large number of children growing out of the system without permanent homes, it is increasingly important that new and creative alternatives be examined to address the needs of this population of children.

Child welfare agencies across the country historically have relied on reunification and adoption as the means of achieving permanency planning. However, problems of poverty, teenage pregnancy and parental drug use have impeded efforts towards reunification. At the same time, due to the use of kinship placements, adoptions are generally not deemed appropriate within this population, due to the pre-existing family relationship. For these children, where reunification and adoption are not possible, permanency, as it has been traditionally defined, cannot occur.

This project explores the use of Subsidized Legal Guardianship as a new permanency planning option for children in foster care, particularly its application for children in kinship care. It examines how ten states with reported programs of Subsidized Legal Guardianship operate and achieve permanency through this option.

This report analyzes the strengths and limitations of each state's program.

Ten states - Alaska, California, Hawaii, Illinois, Massachusetts, Nebraska, New Mexico, South Dakota and Washington-have been studied by the authors. Agencies in each state were contacted and/or visited in person. Public administrators and non-profit human service agencies were interviewed, and information pertaining to laws, policies and procedures was collected.

These profiles are intended to offer valuable information to other states considering the use of Subsidized Legal Guardianship as a permanency planning option. It is important to note that continuing remarks should be made about this project. Subsidized Legal Guardianship, like all elements of the child welfare system, is an ever-changing concept. Our research was conducted during the first six months of 1996; each respective program or its components may have changed since that time. For example, just as this report was about to be published, the State of Delaware received approval from the U.S. Department of Health and Human Services for the use of Title IV-E funds for subsidized guardianship as a result of that state's submission of a welfare reform demonstration project. At present, Illinois is awaiting a decision concerning their proposed waiver project for the use of IV-E funding in legal guardianship cases. This approval could drastically alter the way Illinois deals with guardianship as a permanency planning option.

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[1] *Kinship Care: A Natural Bridge,* Child Welfare League of America, Washington, DC (1994), Chapter 1.

THE RESEARCH/DATA COLLECTION

The first step in our research was to identify states with Subsidized Legal Guardianship programs. It had been reported by various sources that there were ten such states. Policymakers, administrators, managers and caseworkers in each state were identified and contacted by telephone to obtain basic information about their state's program.

Public Agency Personnel:

- *Policymakers* - state executives, policymakers and other groups who have consistently assisted in the development of policies.
- *Administrators* - persons charged with the implementation and/or interpretation of policies to be carried out by others.
- *Managers* - persons responsible for program operations, fiscal control, supervision in regional offices and county departments.
- *Permanency Planning Teams* - persons responsible for assisting and supervising casework staff with making permanency planning recommendations for children in care.
- *Caseworkers* - persons responsible for assessing the appropriateness of placements, preparing case plans and working with children and families towards permanency planning.
- *Management Information System Specialists* - persons in charge of tracking clients and information pertinent to statistical findings.

Private Agency Personnel:

- *Executive Directors* - persons in charge of creating internal policies, decision-making and the execution of policies.
- *Program Directors* - persons responsible for carrying out the objectives of the programs and the supervision of staff.
- *Supervising/Casework Staff* - persons responsible for the day-to-day work with children and families.

The information collected by these sources included: legislation, policy directives, handbooks, research reports, regulations, and internal program outlines and policy recommendations. Information was gathered prior to, during, and after our on-site visits.

On-site visits were made to six of the ten states after our collection of preliminary data:
California; Hawaii; Massachusetts; Colorado; Illinois; Nebraska.

Telephone contacts were made with the remaining states.

Information was sought in four basic areas:

1. Eligibility for the program;
2. Policies and procedures;
3. Amount and sources of the subsidy; and
4. Statistics on the program.

1. *Eligibility for the Program* - The researchers sought to examine the criteria for the program and to determine under what circumstances one would be referred for Subsidized Legal Guardianship.
2. *Policies and Procedures* - The "nuts and bolts" of the area's programs were explored in order to examine the policies and procedures outlined (i.e. the "how to").
3. *Amount and Sources of the Subsidy* - Here we examined how the subsidy amount was determined and compared it to the foster care rates. We also analyzed the criteria which establishes subsidy eligibility.
4. *Statistics on the Program* - Information was gathered to determine how many children from each respective state were enrolled in Subsidized Legal Guardianship programs and compared such data to children with other permanency goals. Also, the financial cost and cost-savings associated with Subsidized Legal Guardianship program were investigated.

STATE-BY-STATE PROGRAM PROFILES

We set forth below our research from each of the ten states reported to have programs of Subsidized Legal Guardianship. We learned through our data collection that only six had legal guardianship program fully subsidized by the state (Alaska, Hawaii, Massachusetts, Nebraska, South Dakota and Washington). The other four remaining states either had programs which were either not state-subsidized, not truly guardianship programs, or actually had no such programs.

ALASKA

Alaska operates a state-administered child welfare system through its Department of Health and Human Services. There are three regional offices located throughout the state.

Legal guardianship is considered a possible permanent plan once both reunification and adoption have been ruled out.

1. Eligibility:

- A child must be in the custody of the department.
- A child must be considered "hard-to-place" or having special needs (such children have been defined as being minors who will not likely be adopted because of physical or mental disability; emotional disturbance; possession of a high risk of physical or mental disease; their age; membership in a sibling group; racial or ethnic factors; or any combination of these conditions).
- Guardianship is generally limited to children over the age of ten. However, consideration for a child under ten can occur if : (1) the child is part of a sibling group where at least one sibling is over age ten and the goal for the children is to remain together; (2) the child is seriously disabled; or (3) when there are compelling cultural reasons which make guardianship the preferred choice over other permanency options.

2. Policies and Procedures:

- A permanency planning team must first change the case goal to guardianship. It is at this time that the issue of subsidy is addressed.
- A guardianship homestudy is prepared by the Caseworker of Record.

- A petition is filed by a lawyer from the Attorney General's office who represents the guardianship family through the time of their appointment.
- Once a Court Order is signed, Division of Family Youth Services (DFYS) closes case.
- The subsidy application is renewed annually.

3. Amount and Source of the Subsidy:

- The amount of the subsidy varies in each placement according to the needs of the child and the circumstances of the guardian(s). However, the amount of the subsidy cannot be greater than the foster care amount previously paid to the family.
- The subsidy does not carry any Medicaid benefits, even if the child was previously IV-E eligible. Special consideration is given to children who qualify for Social Security benefits based on handicaps and the income of the guardian(s).
- Modifications can be made to reflect any additional needs of the child or changes in the guardian's circumstances over time. The subsidy will cease when there is a change in placement; when the child reaches the age of 18; or when the guardian(s) fails to submit an annual subsidy agreement form.

4. Statistics:

	1994	1995
Children in Kinship Care	401	349
Other Foster Care	848	845
Adoption	480	568
Subsidized Legal Guardianship	127	160

* Alaska has experienced over a 99% increase in the number of reported cases of maltreatment to children between 1989 and 1995 (7,876 cases reported in 1989; 15,706 in 1995).

HAWAII

Hawaii has a state-administered system of child welfare services, which operates through its Department of Human Services. The state has developed various permanency planning options in addition to the more traditional ones used in other states. They include:

1. Long-term foster care;
2. Legal guardianship (both subsidized and non-subsidized);
3. Adoption;
4. "Permanent Custodians" (PC) which has characteristics of foster care, adoption and guardianship.

1. Eligibility:

This state is very concerned with insuring that all parties understand that the assumption of guardianship is intended to be the permanent plan for the child, rather than a temporary one which birth parents can revoke if and when they are able.

Therefore, a permanency planning hearing must be held at which time permanent custody is awarded, typically, to the Department. This hearing also serves as the termination of parental rights proceeding.

Once parental rights have been terminated a guardian can be named if :

- A child has been in the system for eighteen months before being considered for guardianship.
- Reunification and adoption have been ruled out as permanency options.
- No age limit exists for the child to be considered.

2. *Policies and Procedures:*

- After eighteen months in out-of-home care, there must be a goal change to guardianship.
- An award of permanent custody to the Department is ordered and parental rights are terminated.
- Generally, the permanent planning hearing and the guardianship proceeding are consolidated into one proceeding.
- The guardian completes an application for financial assistance on behalf of the child. This information is submitted prior to the guardianship hearing.
- Annual recertification is mandatory.
- The case is closed to the system.
- The guardians are allowed to move out of the state with the child and still receive assistance from the state, as well as medical care.

3. *Amount and Sources of the Subsidy:*

The assistance provided to guardians is fully financed by the state, or by private foundations in some cases. No federal dollars are used.

The amount of assistance is automatically set at the foster care board rate. Additional funds are also available for special circumstances, such as clothing needs, transportation costs to school or medical facilitates, and medical care, when other resources are unavailable.

The guardian must agree to report any changes which affect the placement, such as the child is no longer residing with them, or a change of address. Payments can continue until the child reaches eighteen years of age unless the child is still in high school or attending an accredited college. If enrolled full-time in college, benefits can continue until age twenty-two.

4. *Statistics:*

Hawaii's Department of Human Services currently has some 2,100 children in its care. Almost half (48%) are in Kinship placement, as evidenced by these numbers:

Foster Care	1,470
Permanent Assistance (PC and Guardianship)	200
Adoption (Federally-subsidized)	200
Adoption (State-subsidized)	200
Higher Education Support	30
TOTAL	2,100

It is estimated that approximately 6% of the total state budget is spent on permanent assistance to adoptive parents, PC's and legal guardians.

MASSACHUSETTS

The Department of Social Services for Massachusetts administers the child welfare services for the state. The Department operates with one central, four regional and twenty-four area offices. Massachusetts has had a program of state-subsidized Legal Guardianship for over ten years.

The Subsidized Legal Guardianship program has the support both of Department caseworkers, who appreciate the need for another permanency planning option, and caregivers (particularly relative caregivers), who are unable or unwilling to adopt the children in their care for economic, cultural or physical reasons.

Guardianship is considered only after reunification and adoption have been ruled out.

1. Eligibility:

- The supervisor and caseworker determine that the permanency planning goal for the child is not reunification nor can adoption be achieved.
- The child must have been in placement in the proposed guardian's home for one year.
- The child must be at least twelve years old, unless he/she is part of a sibling group, or if guardianship has been determined to be the permanency option in the best interest of that child.
- Parental consent is attempted; however, if not obtained, the guardianship can proceed.

2. Policies and Procedures:

- Once the caseworker has determined the eligibility of the placement, he/she requests a clinical and legal conference to review the appropriateness of guardianship as the plan for the child.

- If the conference(s) results in a recommendation for guardianship, a Guardianship Referral Form, an application for Subsidized Guardianship, the Guardianship Plan and a certified copy of the child's birth certificate will be prepared.

- The Department attorney prepares the guardianship petition and represents both the guardians and the Department in Probate Court for the guardianship hearing. Following the approval of the guardianship, visits with the birth parents must be arranged by the guardians. The placement is reviewed by the caseworker six weeks after the award of guardianship to determine its stability.

- After this, the caseworker formally terminates Department involvement, except for an annual renewal of the subsidizing agreement.

3. Amount and Sources of Subsidy:

Massachusetts pays the same amount of support to guardians as it does to foster parents. This subsidy is entirely funded by the state, with no federal reimbursement. Annual renewal of the subsidy is required. This consists of the completion of the Department's subsidy re-application by the guardian, which is mailed to them by the Department.

The subsidy is terminated if the guardianship is terminated, if the child is no longer in the guardianship home, or if the guardians fail to submit the annual subsidy re-application.

4. Statistics:

It is estimated that Massachusetts' Subsidy Department, which manages the subsidy payments to adoptive parents and legal guardians, provides support to over 7,500 children.

Subsidized Guardianship	1,500
Subsidized Adoption	6,000
TOTAL	7,500

Note: Definitive statistics on the percentage of the cases which were kinship placements have not been tracked, but it is estimated by the state that kinship placements account for about one-half of its adoption cases, and at least one-fourth of its guardianship cases.

NEBRASKA

As a state-administered system, Nebraska has been subsidizing guardianship placements since the early 1980's. The state's policies reflects its desire to insure that the financial barriers and/or costs associated with a child's needs do not prevent the appointment of a guardian as the preferred permanency alternative to long-term foster care.

Legal guardianship is considered a long-term, legal commitment between a child and the guardian family, an arrangement which also allows for contact between the child in care and his/her biological family. Legal guardianship becomes the alternative for a child after other permanency options have been ruled out, or if this option is deemed to be in the child's best interests.

1. *Eligibility:*

- The child has a positive relationship with the guardian.
- The child has experienced at least six months of successful living in the prospective guardian's home.
- Reunification and adoption have been ruled out.
- The child is be age twelve or older, unless he/she is part of a sibling group to be placed together, or has sufficient attachment to the proposed guardian, who is unable or unwilling to adopt the child.
- The guardians are be willing and able to support the child financially, or if necessary, a guardianship subsidy is pursued by the caseworker.

Prospective guardians are chosen in the following order of preference:

1. A relative of a child;
2. The child's foster parent;
3. Another party with whom the child has an existing relationship;
4. A new foster parent committed to the guardianship plan.

The child's consent is required if he/she is over the age of fourteen. If the child is under fourteen, their consent is sought, and any objections are discussed with the child, guardian ad litem, and the prospective guardian. Parental consent is also sought in every case, but the Department can proceed without it, if this is arrangement is believed to be in the best interests of the child.

2. *Policies and Procedures:*

A caseworker considering legal guardianship for a child will hold a case conference with their immediate supervisor and often a permanency planning reviewer.

If guardianship is determined to be in the best interest of the child, the caseworker proceeds with the goal plan.

A subsidy agreement is negotiated prior to the guardianship hearing. Following the signing of this agreement, the caseworker prepares a Guardianship Packet for the Court. The Guardianship Packet is sent to the prospective guardian's attorney, who proceeds to prepare and present the guardianship petition to the Probate Court.

3. *Amount and Source of the Subsidy:*

The state requires guardians to utilize all resources, benefits and programs available to them to care for the child, including private medical insurance, child support, and Aid the Families for Dependent Children (AFDC) (if a relative), before using the guardianship subsidy.

The subsidy is 100% state-funded, and the monthly maintenance rate cannot be higher than the foster care rate. The amount of maintenance support, as with foster care support, is determined by the level of need of the child, which varies according to his/her age.

The subsidy will continue until the family no longer needs the assistance; the child reaches the age of majority (which is 19 in Nebraska); or the guardianship or care for the child ceases.

4. *Statistics*

Nebraska's Department of Social Service currently has approximately 4,200 children in its custody, most of whom have the goal of reunification. Recent statistics indicate that approximately two-hundred and ninety-one children are placed in the homes of guardians receiving state subsidy. This number has grown 411% since 1990. It is believed that about ten-twenty guardianships disrupt each year. These children return to DSS custody and a new placement is sought.

An additional 1,034 children are in adoptive homes which receive State and Federal adoption subsidies.

SOUTH DAKOTA

South Dakota's Department of Social Services operates the state-administered program of child protective services. The state's population is low, compared to other states surveyed. Native American children from nine reservations across the state represent the majority of the children in care.

1. *Eligibility:*

   - The child must be over the age of six, and must have been in the state's care for at least six months.
   - The goals of reunification and adoption must have been explored and determined to be unattainable or otherwise not in the best interests of the child.
   - Parental consent is not required.

2. *Policies and Procedures:*

   If it is determined that the child is eligible for guardianship and that it is in that child's best interest, the Department will proceed with the guardianship in State Court.

   Once the guardianship is awarded, the Department discontinues all services, except for the subsidy.

3. *Amount and Sources of the Subsidy:*

   The amount of the guardianship subsidy is determined according to the child's needs and the financial resources of the guardianship family.

   The income of the guardianship family is compared to the statewide median-income level each year. The amount awarded to the guardianship cannot exceed the foster care rate.

   The state fully funds the subsidy and does not receive any federal government reimbursement.

4. *Statistics:*

   South Dakota's population of approximately 700,000 is somewhat smaller than other states included in this study. The small number of children serviced by the state therefore reflects the overall size of the population.

Children in Foster Care	560
Kinship Care (AFDC paid)	230
Children Subsidized Legal Guardianship	40-45

* Approximately 60% of the children in care are Native Americans.

WASHINGTON

The state of Washington has a state-administered system and operates its Children, Youth and Family Services Department in regional offices across the state.

A permanent plan must be developed no later than 60 days from the commencement of custody by the Department and its goals should be attained within 15 months from placement. Although the Department identifies guardianship as a permanent plan option, it recognizes that this alternative is not as permanent as reunification or adoption.

The Washington Appeals Court has stated that, "the intent of guardianship is to give the parent(s) [the] opportunity to take those steps necessary to resume custody of [the] child in [the] foreseeable future, and guardianship is only [a] temporary situation." In re A.V.D. 62 Wash. App. 562, 815 P.2d 277 (1991). Nevertheless, guardianship plays an important role in Washington under certain circumstances, and the state does offer support for placements which meet the requirements of its Dependency Guardianship program.

1. *Eligibility:*

- A child must be in the custody of the Department for at least six months before guardianship will be established.
- Reunification attempts/services must be documented by the Department.
- It must be shown by the Department that guardianship is in the best interests of the child.
- There is no age limit for the child to be considered for guardianship.
- Parental consent is not required.
- Relatives are given preference as guardians over non-relatives.
- All potential guardians must be approved through a background check, criminal history check and homestudy.

2. *Policies and Procedures:*

The laws of Washington stress the importance of permanency planning in caring for dependent children. A permanency plan must be developed for each child within 60 days of removal, and must be pursued until the goal is achieved, which should be done within 15 months of placement, or when the child's dependency status ends.

The Department is ordered by the court to implement the permanent plan for a child within the above-mentioned time frame, and this plan is reviewed every twelve months until the goal is achieved or the dependency ceases.

The guardian receives statutory rights to protect, discipline and educate the child, and consent to necessary medical and dental care. Visitations with birth parents must be arranged by the guardians.

An annual review of the placement is made by the Department to determine the continued eligibility of the guardians and the propriety of the financial support provided by the state.

3. *Amount and Sources of the Subsidy:*

All Dependency Guardians receive financial support equal to the state's foster care rate, as well as medical assistance for the child. The subsidy amount is reduced by any other income/benefits that the child received (i.e. Social Security, etc.). Washington fully supports its guardianship program.

4. ***Statistics:***

Children in Guardianship Program	**1,600**
Total Children in Care (FC Adoption, Guardianship)	**10,000**
% of Total Children in Kinship Care	**50% of total population**

ATYPICAL

GUARDIANSHIP PROGRAMS

The following states were reported to have Subsidized Legal Guardianship programs, however, our research has determined these programs were either not state-subsidized, not truly guardianships or had no guardianship programs in existence.

CALIFORNIA

California has a county-administered system of child welfare services. As a result, policies and procedures vary sometimes greatly, across the state. Interviews were conducted with representatives from Los Angeles County and Orange County. These two counties, although contiguous geographically, illustrate the diversity in policy on the issues of Subsidized Legal Guardianship and Kinship care in this state.

A. Los Angeles County:

Los Angeles County has the largest population of children in care in California, and the second largest population in the country, approximately 65,000.

The county has shifted its focus of permanency planning from the traditional options of adoption, guardianship and long-term foster care, to reunification. In fact, the county believes it offers the most comprehensive family preservation and reunification services in the country.

If reunification cannot be achieved, then adoption is the next popular permanency planning option. Guardianships are temporary arrangements according to administrators in Los Angeles County, and therefore, is not favored.

B. Orange County:

Just outside of Los Angeles County, and with a much smaller caseload (3,200 children in care, in contrast to L.A. County's 65,000), Orange County offers a form of Subsidized Legal Guardianship, but it is only available to non-relative caregivers.

Cases are classed as either Family Reunification or Permanent Placements. Permanent Placement cases include the categories of long-term foster care; guardianship with continued dependency (GWCD); Guardianship with terminated dependency (GWTD); or as cases with the current goals of guardianship or adoption.

Guardianship with continued dependency (GWCD) cases are those in which custodial and authoritative rights are given to the guardians, but the custody of the child remains with the county. Federal IV-E reimbursement is available to the county since the child is still considered a dependent of the State and County.

Somewhat similar, and much more widely used, is guardianship with terminated dependency. These guardians received the authority to make educational, medical and other such decision for the child, as with GWCD.

Orange County does not have any age limitations on the children who can become wards under GWTD. The only criteria for consideration specified in the statute is that the child be in care for at least twelve months, during which time reunification efforts have been proven to be unsuccessful; and that adoption has also been ruled out as a possible plan for the child.

Essentially, the courts in Orange County and other California counties are choosing to delegate some of the decision-making authority to relatives, which would otherwise be done by their caseworkers.

COLORADO

Colorado has a county-administered system of child welfare. Interviews were held with representatives of Denver County's Department of Social Services, the largest of the county departments.

Currently, the state has two types of guardianship arrangements; traditional guardianship and foster care with guardianships. Both types are considered as options only after it has been determined that the child cannot return home or be adopted. Termination of parental rights is not required for the guardianship to be explored.

Traditional Guardianship:

- County assists guardian with obtaining full guardianship.
- Support payments to the caregiver are discontinued.

Foster Care Guardianship:

- The county department retains legal custody and authority for the placement.
- County involvement continues.
- Six months review continue in Court, however, monthly casework visits cease.
- Foster Care Board payments continue and the state obtains Federal IV-E reimbursement.

Foster care with guardianship is similar in many aspects to the Orange County, California programs, entitled guardianship with continued or terminated dependency. However, one significant difference is that Colorado does allow, and actually encourages, relatives, to assume the guardianship. They can still receive the foster care board rate in doing so. Orange County only allows this benefit for non-relatives.

ILLINOIS

The State of Illinois operates a state-administered child welfare system through its Department of Children and Family Services. The state is faced with one of the largest and fastest growing populations of children in care in the country. The active caseload has more than doubled since 1990, increasing from approximately 21,000 in 1990 to 50,000 in 1996. In its largest county, Cook County, some 32,000 children are in care and 26,000 are with relatives, according to one administrator interviewed.

With the "front door" to their system wide open, Illinois began to search for new ways to find permanent homes for the children in care and to close some of these cases.

SUCCESSOR GUARDIANSHIP

This option, still contained within the regulations of the state, was the likely reason Illinois was reported to be a state with programs of subsidized legal guardianship. However, Successor Guardianship has not been used because of the lack of availability of federal reimbursement for the program.

1. *Eligibility:*

- Child must be 14 years or older.
- Child must have lived with the prospective guardian at least one year immediately prior to the guardianship petition.
- Child must have been in the Department of Children and Family Services custody for at least one year.
- The child cannot have any medical, transportation or personal expenses which would create a financial burden for the guardian.
- Reunification and adoption must be ruled out as options.
- Parental Consent is sought, but not a requirement.

2. *Policies and Procedures:*

The DCFS initiates Juvenile Court proceedings to transfer guardianship and assumes all costs related to the proceedings. If financial assistance is needed, DCFS will determine if the family meets the criteria for subsidy as set forth in the regulations.

3. *Amount and Source of the Subsidy:*

The regulations state that a subsidy request will be evaluated according to several facts including:

- The wishes of the child and guardian;
- The interaction between them;
- The child's adjustment to the placement and community;
- The mental and physical health of all individuals involved; and whether the guardian is financially supporting of the child.
- A subsidy can be awarded up to $1 less than the foster care rate.

4. *Statistics:*

As mentioned earlier, this option is not widely used due to reimbursement issues. Because of this, it has been reported that approximately twenty children across the state are in this program.

Efforts to Seek Federal Support: the IV-E Waiver Request [2]

The Illinois DCFS has repeatedly sought to convince the Federal government of the desirability of recognizing guardianship as a viable permanency outcome and granting it subsidized status, as with adoption. In July, 1995, responding to the U.S. Department of Health and Human Services' invitation for Child Welfare Demonstrations Pursuant to Section 1130 of the Social Security Act, Titles IV-E and IV-B, Illinois submitted a proposal to allow for the use of Federal IV-E funds to subsidize legal guardianship.

The proposal would make a subsidy available only to relative caregivers. The child would have to have been in the care of the DCFS for at least two years and in the home of the relative for at least one year. Reunification must not be likely within one year from the time of consideration for

[2] *Illinois Title IV-E Waiver Request,* Illinois Dept. of Children and Family Services, Jess McDonald, Director (July 1995).

guardianship. Adoption must also be found to have been sought and deemed unattainable. Consent of the child would be required for children over the age of twelve.

The DCFS would conduct a preliminary screening of the case to determine eligibility; conduct a home study; assist in applying for the guardianship; and pay the legal fees involved in the proceedings. Other characteristics of successor guardianship mentioned earlier would also apply. Post-placement services would be available as with the state's Adoption Assistance Program, including crisis intervention services.

Most importantly, the waiver request not only projects cost neutrality from closing these cases to the system., but a major savings through the reduction of administrative and program costs. In fact, the proposal estimates an accumulated savings of over $22,000,000 over a five-year period.

From a policy standpoint, Illinois voices its position that guardianship, though not as permanent an option as adoption, is only an inferior form of permanency if there is a realistic prospect that the children could be adopted. Otherwise, the alternative is long-term foster care, which is the least permanent option available and also the most costly one for the system.

As of August 1, 1996, the U.S. Department of Health and Human Services had not yet acted upon the Illinois Waiver Proposal, one of many proposals for waiver demonstration projects submitted.

ANOTHER OPTION: DELEGATED RELATIVE AUTHORITY

While trying to persuade the federal government of the benefits of subsidized legal guardianship, Illinois instituted another permanency planning option, Delegated Relative Authority (DRA).

Under this program, DCFS delegates much of its decision-making authority and physical custody of the child to the relative caregiver, but retains legal custody of the child.

The DCFS is able to reduce its services in these cases and is able to maintain its Title IV-E participation.

1. *Eligibility:*

- Child must have been a ward of the Department.
- Child must have resided with caregiver one year prior to the establishment of DRA.
- The child cannot have any extraordinary medical, mental health, or educational needs for which state support services would be required.
- Reunification and adoption must be ruled out.

2. *Policies and Procedures*

- The DCFS caseworker must complete a Caregiver Assessment Summary which evaluates the appropriateness of the child and caregiver for DRA.

- Once the case is transferred to DRA, the same DCFS or private agency caseworker will provide follow-up monitoring. In-home reviews are done on a semi-annual, rather than monthly, basis.

Savings & Admin + Program Costs

- The DCFS formally grants authority to the caregivers to take the child out of the state up to 30 days without informing the Department; to obtain ordinary and routine medical and dental care for the child; to enroll the child in school or obtain educational services; to sign general consent and waiver of liability forms for the child's participation in school field trips; and to manage any funds provided for services for the children.

- The relative must be licensed as a foster care provider or approved as a relative caregiver with or without waiver of standard.

3. *Amount and Source of the Subsidy:*

Under DRA, the caregiver would receive the same amount as the foster care rate. Federal IV-E reimbursement is applicable under this arrangement.

4. *Statistics on Children in the Program:*

There are currently 469 children in DRA throughout the State of Illinois.

NEW MEXICO

New Mexico has a state-administered child welfare system which operates through its Department of Children, Youth and Family Social Services Division.

The administrators interviewed in New Mexico said that they did not have a program of subsidized legal guardianship, despite the fact that the state had been identified as one of ten states which did so. In fact, New Mexico law does have provisions in its Adoption Code to extend an adoption subsidy to placements with permanent guardians. However, the state's Department of Children, Youth and Family Social Services Division does not invoke this option for permanent guardians. They rather prefer to pursue adoption in all cases in which reunification is not possible.

When a child is placed in a foster home, the placement is for an initial period not to exceed two years. Hearings are held every six months, thereafter, to determine whether the placement should continue. Relatives are the first placement preference for a child entering care. During the initial removal, the child's wishes and those of the birth parents are also taken into consideration. Additionally, the child's attachment to the prospective caregiver and the community, the mental and physical health of the individuals involved, and the availability of needed services are assessed at this juncture.

In New Mexico, any adult can petition the Court to be appointed as the child's guardian, including relatives and foster parents. Agencies and institutions cannot be considered. To be eligible for permanent guardianship, the child must have been adjudicated dependent; the Department must have made reasonable but unsuccessful efforts to reunify the child with his or her parents and adoption is not likely, or is not in the best interests of the child. Children of any age may be considered for guardianship care.

A subsidy agreement must be entered into before the decree of adoption or guardianship is rendered by the Court. The amount of the subsidy is based on the needs of the child and is re-evaluated annually. The Department is given authority to develop regulations for the administration of subsidized adoptions and guardianships. As previously indicated, however, the Department does not currently have any recognized program of subsidized guardianship.

One administrator interviewed indicated that there are presently about seven children placed in "long-term foster care," which is the identified permanent plan for these children. The foster families receive the foster care rate of support and have relaxed levels of Department supervision, due to the recognized abilities of the caregivers to meet the ongoing needs of the children.

ANALYSIS OF THE STATE PROGRAMS

An analysis of the programs of the ten guardianship states reveal many similarities in the way Subsidized Legal Guardianship is used. We attribute this similarity to the common philosophy held by the administrators who create the policies governing the programs.

One of their common principles is that guardianship is intended to serve as the permanent plan only when efforts at reunification and adoption have failed and it is likely that the child will remain in long-term foster care.

All of the states require that reasonable efforts to reunify the child with his/her birth parents be made, and that thereafter, reasonable efforts should be made to have the child adopted. To accomplish this goal, the states require that the child be in foster care for a period of time before becoming eligible for guardianship (the length of time varying from state to state, from six to eighteen months).

Additionally, several of the states have minimum age requirements for the children to be considered for guardianship, since younger children are more likely to be adopted than older ones. Minimum age requirements range from age six to age fourteen. Exceptions are made for younger children who are part of a sibling group to be placed together, or who have special needs, or when the prospective guardian is a relative.

Another common trait among the state programs studied was the desire to make the guardianship placement as permanent as possible. It is recognized that guardianship is not as "permanent" as adoption, since the birth parents retain their parental rights, and thus can challenge the guardianship at any time. The states also hope to avoid disruptions in the guardianship placement, due to any lack of attachment between the child and the guardian, or the guardian's inability to effectively supervise the child or meet his/her needs.

Therefore, extensive efforts are put forth by the states to decide whether guardianship is indeed appropriate. Additionally, agency staff meet with the child, the birth parents, and the prospective guardians to be sure that all parties understand the guardianship process, and its goals.

It is noteworthy that though guardianships can be pursued in all of the states without parental consent, such consent is nonetheless sought. It is believed that parental consent provides a more stable placement and allows the guardianship process to proceed more expeditiously.

Likewise, the consent of the child is required in several of the states, if the child is over a certain age. This consent is believed to reflect the child's attachment to the guardian, an important element in avoiding future disruptions. Also, most of the states encourage visitation rights for the birth parents.

One important difference in the states' programs is the court in which the guardianship is presented and ordered. In Alaska and South Dakota, guardianships are presented in the State Court of general jurisdiction; Juvenile Courts have jurisdiction in California, Hawaii,

Illinois, New Mexico and Washington; while Probate Courts hear cases in Massachusetts and Nebraska. The overwhelming view of administrators in all of the states is that the Juvenile Court, which has adjudicated the case since the child entered the dependency system, is the most appropriate Court to decide the guardianship issue.

Moreover, the procedure followed to secure the guardianship is similar in all of the states. The initial recommendation for guardianship is made by a caseworker. Thereafter, a review of the recommendation is made by various personnel of the child welfare agency and the parties to the case.

Next, contact is made with the birth parents (if possible), the prospective guardian, and the child, to inform them of the guardianship process and to seek their consent to this arrangement. Afterwards, the final decision to pursue the guardianship is made by the social service agency staff, and the guardianship petition is then prepared and presented to the Court.

If the guardianship is to be subsidized, every state requires that an application for subsidy be made prior to the guardianship hearing. Once the Court awards guardianship, all of the states close the case to the system, and all service and intervention ceases.

However, this guardianship subsidy is not automatic in any of the states. A determination of the need for the subsidy to support the placement must first be made. Once this basic determination is made, the states vary in establishing the amount to be paid.

Some states set the level of support at the current foster care rate. Reductions are then made for any unearned income of the child through other government benefits (such as Social Security or child support). In other states, the amount of the subsidy is determined by conducting an analysis of the needs of the child, including board payments, medical costs, legal costs incurred in the assumption of guardianship, and after-placement services. The available resources of the guardian are then assessed to determine the extent to which the guardian can meet these needs.

In most cases, the amount of the subsidy is the same as, or very close to, the foster care rate. In one state, South Dakota, the income of the guardianship family is taken into account when setting the amount of the subsidy. If the family's income is less than 60% of the state's median income level, the support will be the foster care rate. If the income exceeds 60%, the amount of the subsidy is reduced.

In each state studied, the subsidy agreements require annual re-application or re-certification in order to renew receipt of this support; continued qualification for the subsidy must be demonstrated. By the terms of the agreements in every state, the subsidy is discontinued if the guardianship terminates for any reason, or if the child is no longer being cared for in the home of the guardian.

Statistics gathered show that compared to the total number of children in care, the number of children placed in subsidized legal guardianship programs in these states is relatively low. This is due primarily to the fact that the states do not receive Federal reimbursement for the subsidies paid to the guardians. However, under the demonstration project in Illinois' IV-E Waiver Proposal, pending before the U.S. Department of Health and Human Services, Illinois would receive such Federal reimbursement. This state projects that if this proposal was implemented, some 5,700 children would be placed in subsidized legal guardianships by the end of two years.

The states reported the following current, approximate numbers of open cases in their subsidized guardianship programs: Alaska - 160; California - 300; Hawaii - 100; Illinois - 20; Massachusetts - 1,500; Nebraska - 291; South Dakota - 40; and Washington - 1,600.

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States presently possessing successful subsidized legal guardianship and others considering implementation of such programs, realize the numerous benefits of subsidized legal guardianship as a permanency planning option. These benefits include the following:

- Children in guardianships experience a more stable and permanent placement than those in foster care.
- Many caregivers, particularly kinship caregivers, do not require the services and intervention of social service agencies they must receive while acting as foster parents. However, many need the level of financial support paid to foster parents. Subsidized Legal Guardianship meets the needs of these caregivers. Also, in some circumstances, adoption is not the best option for the caregiver or the child.
- Subsidized legal guardianship allows state agencies to close cases which do not require their services, saving millions of dollars each year in administrative costs.

Several criticisms of the subsidized legal guardianship option have limited its potentially widespread use. It has been argued that:

- Subsidizing guardianships will increase the cost of child welfare services to states.
- Guardianship is not really a permanent plan, since it can be challenged at any time and is easily disrupted; thus in some cases, children return to the system.
- Subsidizing legal guardianships, especially kinship guardianships, discourages birth parents from seeking to remedy the problems which initially caused the removal of the children.
- Subsidized legal guardianships will be abused by birth parents and kinship caregivers to obtain greater financial support than that offered through public assistance (AFDC), while avoiding the intervention and regulations of child welfare agencies.

States with successful subsidized legal guardianship programs expressed how their programs effectively dealt with such criticisms.

Some states feel subsidized legal guardianship will increase the costs of providing child welfare services, especially those with no federal reimbursement. However, others believe the benefit of administrative cost savings far outweighs the burden due to the lack of federal reimbursement moneys from cases closed through guardianship.

Another concern is that if children are placed in subsidized legal guardianship at a relatively young age, they will likely stay in that placement, and thus the amounts spent on the related subsidy will continue to rise. Yet, administrators in states with successful guardianship programs believe emphasis on this concern overlooks the fact that guardianship should only be sought when reunification and adoption are not viable option. This would leave long-term foster care as the only other permanency option in states without subsidized guardianship.

Hence, these children would remain in foster care just as long as they would if subsidized guardianship were accepted. Further, the foster care program costs the state more than the subsidized guardianship program due to the administrative and judicial review expenses associated with foster care.

Interestingly, all of the states interviewed agreed that guardianship is not as "permanent" an option as adoption. In fact, several of the states are not presently pursuing subsidized guardianship because of this permanency issue. However, other states, such as Massachusetts, Illinois and Colorado, recognize that adoptions often cannot be pursued.

This is true due to the unwillingness of some relative caregivers to agree to adoption; or, if termination of parental rights is not an act in the best interests of the child, due to a strong bond still existing between the birth parents and the child. Also, in states with Native American children in care, adoption is not a culturally acceptable alternative.

Good casework practices can also help to avoid future placement disruptions. The identification of special physical, mental, emotional, educational or other such needs of the child, for which state services would be required, should disqualify the case from consideration for guardianship. An exception would be if the guardians agrees to, and is able to meet such needs, by themselves. In fact, some statutes mandate that such an assessment be performed.

Another fear came to light as we posed the following scenario to the administrators:

> A parent, perhaps a very young one who is addicted to drugs, feels that she have less of an incentive to be rehabilitated and try to regain custody of her child who is in a kinship placement than they would if their child were not in such a placement. This is true, since their child is safe and being cared for by a trusted relative. The chances of a lack of action by the birth parent is even greater when the caregiving relative is receiving more financial support than the birth parent herself could provide to her child through employment or public assistance.

In response, the administrators pointed out that it is the children who are the primary focus of the system. Thus, if the parent is unable to safely care for the child, the social service agency does not have a choice; they must step in and care for the child.

More importantly, they noted, none of the states reported any documented cases of this type. In addition, none of the administrators knew of any research which indicated that such feelings or practices by birth parents are pervasive in the child welfare system. Unfortunately, as one administrator pointed out, it is not typically the comfort of knowing that their children are taken care of which prevents most birth parents, especially those drug-addicted, from rehabilitating themselves and regaining custody of their children.

A final concern we presented to the administrators was whether subsidized legal guardianships are abused by birth parents and kinship caregivers. Specifically, do they garner greater financial support through guardianship than what is available to them from public assistance, while avoiding the intervention of the child welfare agency?

One representative in Massachusetts stated that this opposition was voiced by his legislature, where the guardianship subsidy was actually viewed as a welfare subsidy for many participants. The thought is that birth parents will consent to the assumption of guardianship by the grandparents or other relatives, in order to receive the greater guardianship board rate than the birth parents could receive for the child from welfare.

Thus, without agency supervision, the birth parents could regain physical custody of and raise child, and receive the benefit of the higher support payment. Administrators in Massachusetts acknowledge that this may happen in some cases, but doubt that this practice is widespread.

Finally, all of the states require that the child be adjudicated dependent and that the potential guardians be foster parents for a period of time. This means that foster parents (kin and non-kin)

cannot secure guardianship without first receiving family preservation and reunification services; undergoing foster care training and certification; and serving as a foster parent for a period of time. This provides ample opportunity for the social service agency to assess the family's caretaking ability, as well as to re-evaluate the need for the child to remain in the system.

In summary, the states with active subsidized legal guardianship programs, i.e. Alaska, Massachusetts, Nebraska and Washington, reported success in providing stability and permanence for children through guardianship, having limited alternative permanency options available to them. They have also realized significant cost reductions from closing cases in the form of administrative savings.

Additionally, subsidized legal guardianship is viewed by administrators in these states as a program which meets the needs of kinship caregivers, who are often able to provide the care for the children without government intervention, but require financial assistance in order to do so.

Four of the states studied, California, Hawaii, New Mexico and Illinois, have subsidized guardianship programs on the books, but do not widely use them. The first three states cite the lack of true permanence through guardianship as the main reason for not pursuing this option; instead, they prefer to seek adoption. Illinois cites the lack of Federal reimbursement moneys as the largest impediment to their making use of subsidized legal guardianship.

However, as more and more states experience increasing caseloads in foster care and an increase in the use of relative caregivers, subsidized legal guardianship will be examined more closely. It is likely that more pressure will be placed on the Federal government to participate in the support of guardianship programs, just as they do with foster care and adoption. Such participation would likely increase the use of subsidized legal guardianships across the country.

CHAPTER 1

THE CHALLENGES OF PERMANENCY PLANNING AND THE USE OF SUBSIDIZED LEGAL GUARDIANSHIP AS AN OPTION IN THE BATTLE

All across the country, child welfare agencies are facing a crisis in the foster care system. Caseloads have been exploding in recent years, while the number of potential caregivers has decreased. The problems of poverty, teenage pregnancy and drug use have thrown the "front door" to the system wide open; the existing number of out-of-home providers has not kept up with the resulting increases. The "back door" to the system, i.e., permanency planning, has not been opened as wide, due to a number of practical, economic and cultural reasons. Too many children are staying in foster care for too long. Many states are feeling the pinch of the administrative costs related to providing support to the caregiving families.

As a result of the expanding number of children being placed outside of their homes, state and county agencies have begun tapping into a source of caregivers which informally had been operating to some degree all along: relatives and other "kin." This has increased the number of available homes in which to place children, simultaneously the trauma of separation for the children and preserving their cultural, religious and community ties. It has also demonstrated, in many cases, that less administrative intervention is needed in kinship placements. However, it appears that children placed in such foster homes tend to remain in care longer than children placed in traditional foster homes. Therefore, more viable, timely and effective permanency planning options need to be developed to meet the needs of today's child welfare providers.

The traditional permanency options available for children in out-of-home placement have been: 1) reunification with their birth family; 2) adoption; 3) long-term foster care; and 4) assumption of legal guardianship by the caregiver, either subsidized or non-subsidized.

Reunification is always the first goal, and the most desirable, if attainable. Unfortunately, in today's world of child abandonment and parental drug use, reunification often cannot occur.

Adoption is usually the next alternative to be explored. Next to reunification it is the most permanent option for the child. Also, the Federal government provides a subsidy to states for eligible families, making adoption economically feasible. It also allows state and county agencies to remove these cases from their burgeoning caseloads, saving millions in administrative costs.

However, adoption is not always the answer for older children and children placed with relatives. Relatives are sometimes unwilling to adopt the children in their care because of the necessary legal process of terminating the parental rights of the birth parent or parents, who are also related to the caregiver. Many feel that the natural parents may someday be able to resume custody of the child and want to allow them to try to do so. Additionally, many of the relative caregivers are grandparents who, because of their age, are reluctant to adopt the child. Some states are using variations of traditional adoption to address these problems. For instance, "open adoption" and "kinship adoption" allow for the continued involvement of the birth parents according to an agreement between the adoptive and birth parents. Termination or permanent relinquishment of custodial rights of the birth parents would take place, but visitation and other parental rights could be maintained. These options continue to evolve as states grapple with the resources available to them through Aid to Families with Dependent Children (AFDC)[3], Title IV-E funding[4] and the Federal adoption subsidy[5] in funding this option.

When reunification and adoption have been explored and appear to be unavailable, long-term foster care can become the choice by default. However, this option requires the most administrative intervention (e.g., open cases, monthly visits by caseworkers, court reviews) and with it, the highest expense in the form of administrative costs and support payments.

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[3] Title IV-A, Social Security Act, 42 USCA Sec. 601-617.
[4] Title IV-E, Social Security Act, 42 USCA Sec. 670-679a.
[5] Adoption Assistance & Child Welfare Act, PL 96-272, 42 USCA Sec. 6608. 620-628, 671-676.

In addition, foster parents are not permitted to make decisions regarding the child's education, medical treatment, or even travel, without the consent of the state or county child welfare agency. Worst of all, the children in long-term foster care have the least level of permanence or sense of belonging.

The final traditional option has been the assumption of legal guardianship by the caregiver. This option is not truly a "permanent" one, since the birth parents can always challenge the guardianship and maintain their other parental rights. However, it is far more "permanent" than long-term foster care in that the caregivers make a legal commitment to care for the child and can make educational, medical and other decisions on behalf of the child. The state or county agency can then close these cases and eliminate the administrative costs associated with them, saving millions of dollars.

The caregivers have the knowledge that the birth family's parental rights have not been terminated an important factor to relatives deciding whether to assume guardianship. At the same time, the child has the security of knowing where he or she will be raised, in the event that his or her their birth parents are unable to regain custody of him/her.

One problem with legal guardianship has been that it is not financially supported by the federal government. No federal funding is available, nor is there any such subsidy as that associated with adoption. As a result, most states discontinue all support payments to the caregivers once guardianship is assumed. However, if the child is otherwise eligible, caregiver could receive AFDC payments, but this amount is usually far less than the amounts they are paid for being foster parents (In Pennsylvania, it is about half as much.) Many caregivers are simply unable to assume guardianship due to this lack of financial support.

Several states have made the decision to utilize some of the administrative cost savings associated with removing the cases from their system to subsidize the guardianships. Many others are considering the idea, and some have even contacted or requested financial assistance from the federal government through a waiver of Title IV-E funding. (At the time of this printing, Illinois is awaiting

the decision of the U.S. Department of Health and Human Services on their IV-E waiver proposal, submitted in 1995; Delaware received approval of their waiver proposal in August, 1996.)

The ten states reported to administer subsidized legal guardianship programs[6] are:

Alaska	Massachusetts
California	Nebraska
Colorado	New Mexico
Hawaii	South Dakota
Illinois	Washington

This publication explores these ten programs. Each state was contacted and/or visited in person. Public administrators and private non-profit human service agencies were interviewed and information was collected pertaining to laws, policies and procedures. These profiles are intended to offer valuable information to other states considering the use of subsidized legal guardianship as a new permanency planning option to address the ongoing problem of children languishing in the foster care system.

CAUTIONARY REMARKS

Subsidized legal guardianship, like all elements of the child welfare system, is a dynamic and ever-changing concept. Our research was conducted during the first six months of 1996, and so the programs or their components may have changed since the time of our research. For example, at this time, Illinois is awaiting a decision by the U.S. Department of Health and Human Services concerning their waiver proposal to allow the use of IV-E funding for subsidized legal guardianship. This approval could drastically alter the way Illinois deals with guardianship as a permanency planning tool. As pointed out, Delaware has received approval of a IV-E waiver proposal, based on the subsidized guardianship programs of Nebraska and Massachusetts, and will begin implementation later in 1996. A summary of Delaware's Assisted Guardianship Program appears as Appendix D.

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[6] *Children's Voice*, Child Welfare League of America, Summer 1995 Edition, page 9; *State Practices in Using Relatives for Foster Care*, U.S. Dept. of Health and Human Services, Office of the Inspector General (July 1992); and *Reinventing Guardianship*, Meryl Schwartz, Vera Institute of Justice (June 1993), page 42.

CHAPTER 2

THE RESEARCH

The first step in our research process was to identify states who had subsidized legal guardianship programs. It had been reported in various publications that there were at least ten such states (Alaska, California, Colorado, Hawaii, Illinois, Massachusetts, Nebraska, New Mexico, South Dakota and Washington).[7]

Next, we obtained the names of administrators in each of these states and contacted them by telephone to obtain basic information about their respective programs. These individuals were extremely helpful in providing background information, legislation, policies, statistics, documents and references.

After collecting preliminary data, we decided to conduct on-site interviews in six of the states: California, Colorado, Hawaii, Illinois, Massachusetts, and Nebraska. These states were chosen based on the initial information received which indicated that these states either had well-established programs of subsidized legal guardianship or were facing a crisis in foster care and considering implementing such a project. A Research Vehicle was prepared to facilitate the on-site interviews and appears as Appendix A of this report.

The states were visited and additional data collected. In addition to the initial administrators contacted, we also interviewed other administrators of foster care, adoption and guardianship departments, caseworkers and their supervisors, private provider agency personnel, legal representatives and legislators.

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[7] *Children's Voice*, Child Welfare League of America, Summer 1995 Edition, page 9; *State Practices in Using Relatives for Foster Care*, U.S. Dept. of Health and Human Services, Office of the Inspector General (July 1992); and *Reinventing Guardianship*, Meryl Schwartz, Vera Institute of Justice (June 1993), page 42.

Pertinent statutes and regulations collected for the states studied appear as Appendix B of this report.

Information was sought in four basic areas:

1. Eligibility for the program;
2. Policies and procedures;
3. Amount and sources of the subsidy; and
4. Statistics on the program.

1. Eligibility for the Program. This area is concerned with how children get into the program. Questions asked include how old the child had to be; whether he had to be in the custody of the state; the length of time required in their placement with the prospective guardian; whether reunification and adoption must be determined to be impossible; whether the prospective guardian has to be certified or licensed as a foster parent; whether consent of the parents and/or the child was necessary; and whether the prospective guardian was required or allowed to be a relative.

2. Policies and Procedures. The "nuts and bolts" of program implementation were explored in this area. We obtained information on how the goal of guardianship is to be determined; what clinical and legal conferences are held; the legal process that is followed and who pays for it; the form and nature of the written agreement between the state, the guardian, and if necessary, the birth parents; the follow-up services available to the guardian and the child; the involvement of the state in periodic reviews; how the state deals with challenges to the guardianship by the birth parents; and how they handle possible abuse of the system by some of the guardians or birth families.

3. Amount and Sources of the Subsidy. Here we examined how the amount of the subsidy is determined and identified the sources of those funds. We asked whether the amount was based on financial need of the guardian and/or the special needs of the child; whether it varied from placement to placement or was it the same in all cases; how it compared with the foster care rate being paid in

the state and the amount received by adoptive parents from the state and the federal government; whether the guardians have to requalify for the subsidy periodically; and how guardians are disqualified from receiving these funds.

4. Statistics on the Program. Figures were sought on the total number of children in placement and then were broken down into those with goals of foster care, adoption and guardianship; the number of children in subsidized guardianship placements; the number of kinship placements as a percentage of the whole; and the costs and/or cost savings of the subsidized legal guardianship. We found that many of the states had not been tracking kinship placements separately from non-kinship placements in the past, but were beginning to do so.

We also analyzed trends to determine if the total number of children in care and the costs of maintaining the system were increasing, decreasing or stabilizing. Other information was sought, such as the number of years the subsidized guardianship program had been in existence and whether the services were administered by the state or by the counties.

CHAPTER 3

STATE BY STATE PROGRAM PROFILES

In this chapter, we set forth our research of each of the ten states having, or reported to have, programs of subsidized legal guardianship. While we will occasionally point out some similarities and differences between the elements of the states' programs in this chapter, the next chapter will present a comprehensive summary and comparative chart of all of the states studied.

We learned that of the ten states reported to have subsidized guardianship programs, only six had fully state-subsidized legal guardianship programs in active use (Alaska, Hawaii, Massachusetts, Nebraska, South Dakota and Washington). As a result, the profiles of these states will be presented first, in the format of the research areas outlined in Chapter 2. The other four either states have programs which are not fully state-subsidized or not truly guardianship in the traditional sense of the word, or else have no active program of subsidized legal guardianship. These states will be discussed separately.

Alaska[8]

Alaska provides its foster care services through its Division of Family and Youth Services (DFYS), which is a division of the Department of Health and Social Services. The system is state-administered through three regional offices. Alaska encourages family preservation through a number of support programs, and seeks to place children who must be removed from their homes with relatives before placing the child in a licensed foster care home. Once in foster care, the state will attempt to return the child to its birth family, if possible, but will move to have the child adopted or placed in guardianship if reunification is unlikely.

The state considers guardianship as a permanent plan, not a temporary arrangement pending changes in parental behavior. Contact with birth parents in guardianship cases is encouraged unless it would seriously interfere with the permanence of the placement.

Eligibility

DYFS will make subsidy payments only to guardians of children who were in the custody of DYFS at the time the guardianship plan was formulated. The children must be considered "hard to place," or as having "special needs." Such children have been defined as being minors who are not likely to be adopted by reason of physical or mental disability; emotional disturbance; possession of a high risk of physical or mental disease; their age; membership in a sibling group; racial or ethnic factors; or any combination of these conditions.

Adoption is generally the preferred alternative choice in Alaska because the state feels it offers a higher degree of permanency for the child. As a result, the goal of guardianship is usually limited to children over the age of ten, if one of the following criteria is met (in order of preference): 1) the child is not free for adoption, but desires a guardianship plan and the birth parents agree; 2)

[8] The information presented for Alaska's program of subsidized legal guardianship was obtained from Alaska's statutes and regulations, AS 13.26.030 et. seq.; 7 AAC 53.200 et. seq.; Alaska Dept. of Health and Social Services, Div. of Family and Youth Services regulations, Chapter 3, Section 3.26; and also from telephone interviews with DFYS representatives.

the child is free for adoption, but does not want to be adopted or adoption does not appear to be feasible, or guardianship is preferred over adoption due to compelling cultural or other reasons as set forth in the statute; or 3) the child is not free for adoption, but consents to the guardianship; and although the birth parents do not consent, they are not likely to interfere with the plan based on previous case history. Note that in all cases for children over ten, the child's agreement is required.

For children under the age of ten, guardianship will only be considered if one of the following criteria is met: 1) the child is part of a sibling group where one or more of the children is over age ten and the goal is for the sibling group to remain together; 2) the child is seriously disabled; 3) the child has developed an attachment to the current caretaker who is willing to become the guardian; or 4) there are compelling cultural or other reasons (such as the child being Native American) which make guardianship the preferred choice over adoption, including placement with close relatives. The primary factor to be considered for children under ten is whether the guardianship reasonably will assure permanence for the child.

No minimum time of DYFS custody is required for a child to be eligible for to a guardianship arrangement. However, in all cases, the child must have been in the care of the prospective guardian for at least six months, in order to assess the child's adjustment and attachment to the foster family.

In any case, the prospective guardians must agree to assume guardianship and provide a stable home for the child until he/she reaches the age of eighteen. They must also sign a written Subsidized Guardianship Agreement and agree to make annual reports to the court, as well as DYFS, in a yearly renewal of the Subsidy Agreement. The prospective guardians also must consent to, and receive a favorable recommendation in, a guardianship home study.

Policies and Procedures

The first step toward establishing a guardianship is the recommendation by a Permanency Planning Staffing Team at the Regional DYFS Office for guardianship as the permanent plan for the child made. The PPST also recommends whether a subsidy is to be provided to the family. If the

child for whom the guardianship is being analyzed is under age ten, approval for the guardianship is required from the Adoption Coordinator in the Central DYFS Office.

Eligibility is then determined according to the criteria previously mentioned. Discussions are then held with the child, the prospective guardians and the birth parents, to secure the necessary agreements to the proposed plan. A guardianship study, which follows the same format as an adoptive parent study, is conducted on the proposed guardians.

Next, a lawyer from the Alaska Attorney General's office prepares the guardianship petition and other required documentation, and represents the prospective guardians through appointment. It is explained to the prospective guardians that any subsequent court action will require them to obtain a private attorney.

Finally, the amount of the subsidy is determined and the Subsidized Guardianship Agreement is signed by the guardians and DYFS. The Regional and Central Office Adoption Coordinators approve all documents, and the file is held until the Court Order is signed. Once the file is received by DYFS, the caseworker closes the family to the system. The Guardianship Agreements are then renewed annually by the guardian through the Adoption Coordinator in the Central Office.

Alaska recognizes that since parental rights are not terminated, the parents can later seek to have the guardianship set aside. Therefore, consultation is made with birth parents, the Attorney General's Office and the proposed guardians, to seek either the parents' approval of the plan or their agreement not to interfere with the arrangement. Contested guardianships will still be considered, but only after consultation with the Attorney General's Office and the Permanency Planning Staffing Team.

Amount and Sources of the Subsidy

The amount of the subsidy varies in each placement according to the needs of the child and the circumstances of the guardians. The only controlling characteristic is that the amount of the

subsidy cannot be greater than the amount which would be paid for the child if he/she was in foster care. The payments made to the guardians come entirely from state funds.

The subsidy does not carry any Medicaid benefits, even if the child was previously IV-E eligible. The only way a child can continue to receive Medicaid benefits is if he/she qualifies for Social Security benefits based on a handicap or the income of the guardian. The guardian is advised to place the child on the guardian's private medical insurance, if any, and include the amount of the insurance premium into the calculation of the subsidy amount for which they apply.

Guardians are also advised that future counseling and other services may be needed to care for the child. The projected cost of these services should also be contemplated in the negotiation of the guardianship subsidy.

The subsidy can be modified to reflect the needs of the child or the circumstances of the guardian. Also, the subsidy will cease if it is determined that the guardian terminates the agreement; the child is no longer in the care of the guardian; the child reaches the age of eighteen or dies before reaching eighteen; or the guardians fail to submit an annual review of their need for the subsidy to continue.

Statistics[9]

Alaska experienced over a 99% increase in the number of reported cases of harm to children between 1989 and 1995 (7,876 cases reported in 1989, 15,706 in 1995). DYFS provided family services to 2,731 families in 1995, a slight decrease over 1994. Out-of-home placements increased from 926 in 1994 to 1,118 in 1995. Reunifications are thought to be declining, due to substance abuse by parents and the increasing severity in the maltreatment being reported.

For children placed who were returned home, reached the age of eighteen, or were placed in adoptive or guardianship homes in 1995, the average length of time in out-of-home care was 9.4

[9] Statistics cited were reported in *Fiscal Years 1994 and 1995, Annual Report,* State of Alaska, Dept. of Health and Social Services, Div. of Family and Youth Services (March 1996).

months, a decrease from 10.7 months in 1994. Representatives credit the aggressive closing of cases through permanency planning.

Hence, the number of children in foster care is decreasing while the number in adoptive homes or guardianship is increasing, as evidenced by the following statistics:

	1994	1995
Kinship Foster Care	401	349
Other Foster Care	848	845
Adoption	480	568
Subsidized Guardianship	127	160

Alaska has recognized that subsidy costs continue to increase. Nonetheless, it is their expressed preference to provide assistance to children placed in permanent homes, rather than to retain legal custody and continue to pay the higher financial and emotional costs of foster care.

Hawaii

Hawaii has a state-administered system of child welfare services which operates through its Department of Human Services. The state has developed alternative permanency options in addition to the more traditional ones used in other states. Along with long-term foster care, legal guardianship (both subsidized and nonsubsidized), and adoption, the state also uses a legal status known as "Permanent Custodians" (PC), which possesses characteristics of foster care, adoption, and guardianship.[10]

In PC cases, a person and/or an entity is named as the Permanent Custodian of the child. The state can be named as the sole PC, or as a co-PC with a caretaker individual or private provider agency. This arrangement allows the state to retain its IV-E eligibility. The PC has much of the same legal authority for the child as that of a guardian. The are no monthly visits by a caseworker, but annual reviews are required.

If the state is named as the sole PC, the Department still delegates much of the day-to-day decision-making authority to the caretaker. The caretaker, however, cannot make major medical decisions or move the child out of the state. In addition, the Department could revoke the caretaker's physical custody and assign it to another caretaker (if the Department felt it was in the child's best interests) more easily than if the caretaker was the sole or the co-PC.

Even if the caretaker is the sole PC, the state financially supports the placement. The only difference is that Hawaii would not be able to receive Federal IV-E reimbursement. The amount of state assistance for a PC placement cannot be more than the foster care rate, and in many cases, actually is the same. The amount is determined by taking the foster care rate and deducting any other income, benefits or support received by the child from any other sources.

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[10] Permanent custodian regulations are found in Title 17, Hawaii Administrative Rules, Subtitle 6, Chapter 945, Section 17.945.10 et. seq.

Hawaii also has several private foundation agencies, such as the Casey Family Program and the Queen Lili'uokalani Children's Center, which become PC's for children and provide support for the foster families, often without state or federal reimbursement. It is not unusual for an abused or neglected child to never enter the state system at all, but rather to get support and services from these private agencies. In fact, such agencies are believed to serve over 800 children each year, while the state serves approximately 2,100. As PC's, these agencies seek appropriate caregivers to become "foster parents" of the agency, or to assist the caregiver in assuming legal guardianship of the child.

Hawaii has been providing assistance to guardians since 1990.[11] Close to half of these cases involve relative guardians.

Eligibility

This state is very concerned with ensuring that all parties understand that the assumption of guardianship is intended to be the permanent plan for the child, rather than a temporary one which birth parents can revoke if and when they are able. Therefore, the statute provides that before such guardianship is approved, a permanent plan hearing must be held to award permanent custody to the appropriate party, typically the Department.

This meeting serves to terminate parental rights and requires an in-depth assessment by the parties and the court as to whether guardianship is actually preferable to adoption or permanent custody. If it determined that the proposed guardian would require the assistance of the Department or the court in order to care for the child, the guardianship will not be ordered.

Ordering permanent custody prior to the assumption of guardianship also means that if the guardianship ever ceases because of voluntary termination by the guardians or other circumstances, the child comes back to the permanent custodian, usually the Department, rather than returning to his/her birth parents.

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[11] Information set forth regarding Hawaii's program of subsidized legal guardianship and statistics was taken from the Hawaii Child Protective Act, HRS 587-27 and 587-73; Hawaii Administrative Rules, Title 17, Subtitle 6, Chapter 835, Section 17-835-1 et. seq. and Chapter 945, Section 17-945-10 et. seq.; and from interviews with Hawaii DHS administrators and service personnel, and representatives of the Hawaii Attorney General's Office.

Additionally, the child must be in the system for eighteen months before being considered for guardianship. During that time, the goal for that child is reunification. In some circumstances, such as when reunification is obviously impossible, a permanent plan hearing may be held earlier than eighteen months; if permanent custody is ordered at that time, adoption will be pursued. In any case, if reunification is unlikely within a reasonable period of time, not to exceed three years, and adoption is determined to be impossible, guardianship then will be explored.

No age limit is set forth in the statute for a child to be considered for guardianship. Foster care certification is not required for guardians, but in almost all cases, these caregivers were already serving as the child's foster parent for a period and had been certified to do so.

Policies and Procedures

After the child has been in placement outside the home for eighteen months, the case plan is reviewed and the goal may be changed to guardianship. As stated, consent of the birth parents is sought, but is not necessary. A permanent plan hearing is held at which time the court awards permanent custody, usually to the Department, and parental rights are terminated. In many cases, the birth parents are involved with the foster care placement and agree to the permanent plan and the assumption of guardianship. The permanent plan hearing and the guardianship proceedings are then consolidated into one proceeding.

Also, the prospective legal guardian completes an application for financial assistance on behalf of the child. This application must be made prior to the award of guardianship. A written permanency assistance agreement must be entered into with the Department prior to, or at the time of, the final decree awarding guardianship. Annual recertification is mandatory, but can be as simple as the guardians sending a written statement to the Department certifying that the child is still in their care and that the family continues to require financial assistance.

All services of the Department are terminated upon the order of guardianship, except for the financial assistance and annual recertification (which is done by assistants, not caseworkers)

unless the child comes back into the system due to the termination of the guardianship. The guardians are allowed to move out of state with the child and still receive assistance from the state.

Amount and Sources of the Subsidy

The assistance provided to guardians in Hawaii is fully financed by the state, or by private foundations in some cases. No federal dollars are used. In 1991, the state began to seek IV-E funds in all eligible cases, due to the large increase in costs for PC, guardianship and foster care cases.

Prior to this, the state had been providing all of the assistance itself. Since 1991, the Department, after receiving its funding from the General Fund of the state, applied for the IV-E reimbursement. The IV-E money has been going back to the state, but the Department is currently attempting to retain the funds, or at least part of them, to provide support and other services for the children in care.

The amount of assistance is automatically set at the foster care board rate, and additional funds are also available for special circumstances, such as clothing needs, transportation costs to school or medical facilities, and medical care when other resources are unavailable.

Any amounts received by the child from another source, e.g., child support from a parent or Social Security income, are either deducted from the board payment, or must be sent to the Department as reimbursement. In addition, part of any income earned by the child shall be paid directly to the guardian and deducted from the board payment.

The guardian must agree to report any changes which affect the placement, such as the child's residence elsewhere or a change of address. Failure to report any such changes will be investigated as suspected fraud.

Payments can continue until the child reaches eighteen, unless the child is still in high school or attending an accredited college. If the child is still in high school at age eighteen, benefits can continue if the child will complete high school in the current or following school year. If enrolled full-time in college, benefits can continue until age twenty-two.

Finally, the Department will terminate assistance if the guardianship terminates, the child reaches majority, the child no longer needs the assistance because of their earned or unearned income, the guardians no longer desire to receive the assistance, or the child achieves independent living and is self-supportive.

Statistics

Hawaii's Department of Human Services currently has some 2,100 children in its care. Almost half (48%) are in kinship placements, as evidenced by these numbers:

Foster Care	1,470
Permanent Assistance (PC and Guardianship)	200
Adoption - Federally subs.	200
Adoption - State subs.	200
Higher Education support	30
Total	2,100

It is estimated that approximately 6% of the total state budget is spent on Permanent Assistance to adoptive parents, PC's and legal guardians.

The state has experienced a significant number of children re-entering the system who had been in guardianship placements, particularly in the adolescent years. This occurs with approximately twenty-five to thirty children each year. Some administrators believe that the services the Department could provide if they were to remain the PC would benefit the placement and possibly avoid re-entries. When a child re-enters the system from a guardianship placement, the Department goes to court to re-establish their permanent custody.

For these reasons, the Department is favoring the use of PC's over guardianships in cases in which reunification and adoption are not plausible.

The sole exception to this rule lies in the case of relative caregivers, for whom guardianship may still be appropriate. The administrators we interviewed believe that children who maintain their biological relationships tend to adjust better emotionally, and relative caregivers are more likely to maintain those relationships.

Massachusetts[12]

The Department of Social Services for Massachusetts administers the child welfare services for the state. One of the oldest child service provider agencies in the country, the Department operates with one central, four regional and twenty-four area offices. Massachusetts has had a program of state-subsidized legal guardianship for over ten years, and has long recognized the importance of kinship care and its unique permanency planning position in the lives of the children in the system.

In fact, as one administrator reported, when it is necessary to remove a child from his/her home, the goal after reunification would be to find a permanent kinship placement. In all cases, a permanent plan is to be made for a child within eighteen months after placement.

The subsidized legal guardianship program has the popular support both of Department caseworkers, who recognize the need for another permanency planning tool, and of caretakers, (particularly relatives) who are unable or unwilling to adopt the children in their care for economic, cultural or physical reasons. In the state's written policies, guardianship should be considered as the preferred permanent plan after the primary options of reunification and adoption have been ruled out.

Eligibility

The state caseworker, in consultation with his/her supervisor, first determines whether the placement in question meets the state's published policy criteria for guardianship. This criteria includes the determination that the child cannot return home or be adopted, or that the latter is not the best permanent plan for the child.

In addition, the child must have been in placement in the proposed guardian's home for one year, although exceptions are allowed (e.g., if the child had been in residential care if authorized by a Regional Director.) The state also requires that the child must be at least twelve years old, unless

[12] Information on the subsidized legal guardianship program of Massachusetts was taken from Chapter 201 of the Mass. General Laws, Section 2; Dept. of Social Services regulations, 110 CMR 7.300 to 7.303; policies and forms of the Dept. of Social Services; and interviews with department administrators and casework supervisors.

he/she is part of a sibling group, or if guardianship has been determined to be the permanency option in the best interest of that child. The administrators explained that guardianships are often pursued for children under twelve on the basis of these exceptions.

The child (if over the age of twelve) and the potential guardian(s) must consent to the guardianship. The consent of the natural parents is also sought, but the guardianship may still proceed without the consent, if they cannot be located or it is determined that they will not actively contest the guardianship, even though they refuse to affirmatively sign the consent.

The prior policy in Massachusetts had been that no contested guardianship would be sponsored, because it was felt it lacked sufficient "permanence." This policy has been modified to include cases such as those enumerated above, where the likelihood of contest is small or the Department believes that guardianship is the best plan for the child in spite of the parent's opposition.

All potential guardians must submit to a foster care homestudy or reevaluation.

Policies and Procedures

Once the caseworker has determined the eligibility of the placement based on the above criteria, that caseworker requests a Clinical and Legal Conference to review the appropriateness of guardianship as the plan for the child. The caseworker, supervisor, area manager, state permanency planning coordinator and Department attorney will convene to review the case.

All case information will be examined, including the history of the natural family's fitness; their contact with the child during the out-of-home placement; the availability of relatives as a permanent family resource; the siblings of the child and the efforts made to keep them together; any anticipated legal opposition from the parents; and the likelihood of success of the petition.

If the conference(s) result in a recommendation for guardianship, a Guardianship Packet is prepared. This consists of a Guardianship Referral form, application for Subsidized Guardianship, the Guardianship Plan and a certified copy of the child's birth certificate.

The Guardianship Plan is prepared by the Area Director and includes information on the history of the child's case while in the Department's care; his/her current custody status; a description of the prospective guardian and the child, including any special needs; and a statement as to why the goal of guardianship is the most appropriate plan for the child. The Department attorney prepares the guardianship petition and represents the guardian and the Department in Probate Court for the guardianship hearing.

If the court approves the guardianship, the Department so notifies the birth parents and informs them that any future visitation must be arranged through the new guardian. The caseworker also refers the case to the Subsidy Administrator. The placement is reviewed by the caseworker six weeks after the award of guardianship to determine stability.

After this review, the caseworker formally terminates Department involvement, except for annual renewal of the subsidy agreement. Post-placement services, such as family support groups, are available only upon request through the area offices. This represents one gap in services which administrators would like to have addressed by policymakers.

Amount and Sources of the Subsidy

Massachusetts pays the same amount of support to guardians as it does to foster parents. It is entirely funded by the state, with no federal reimbursement. The only exception occurs when the child is receiving support from any other state or federal agency, in which case
the guardianship subsidy shall only be allotted to the extent necessary to raise the total support received from all sources to equal the foster care rate. Medicaid benefits are also provided.

Annual renewal of the subsidy is required. This consists of the completion by the guardian of a Subsidy Reapplication, which is mailed to them by the Department. It requires certification that the child is still in their care inside their home, and asks the guardian to indicate whether the subsidy is requested to be continued, and whether a clothing allowance and/or Medicaid is also needed.

Department personnel are not required physically to verify the information on the Reapplication, but can recoup payments made to guardians who no longer care for the children, if it

comes to the attention of the Department. It is possible for the Department to cross-check information with area offices to ensure the same child is not receiving a board payment through more than one caregiver.

The subsidy is terminated if the guardianship is terminated, if the child is no longer in the guardianship home, or if the guardian fails to submit the annual subsidy reapplication.

Statistics

It is estimated that Massachusetts' Subsidy Department, which manages the subsidy payments to adoptive parents and legal guardians, provides support to over 7,500 children. Approximately 1,500 of these children are in guardianship homes, and the number is growing, especially in kinship cases. Definitive statistics on the percentage of the cases which were kinship placements have not been tracked, but it is estimated that kinship placements account for about one-half of the adoption cases and at least one-fourth of the guardianship cases in Massachusetts.

The administrators we interviewed acknowledged the increasing cost of providing support to guardians without the federal reimbursement moneys which are available for foster care and adoptive placements. However, they also acknowledge that the state saves millions of dollars in administrative and program costs when cases are moved from foster care to guardianship (one administrator felt the savings could be as much as $10,000 per year per child).

Nebraska[13]

With its state-administered system, Nebraska has been subsidizing guardianship placements since the early 1980's. The state's policies set forth the desire to ensure that the financial barriers and costs associated with a child's needs do not prevent the appointment of a guardian as the preferred alternative to long-term foster care. In addition, the Juvenile Code and the Department of Social Services' policies recognize the importance of relatives as caregivers.

Legal guardianship, which allows for contact between the child in care and his/her biological family is considered a long-term legal commitment between a child and the guardian family. It is thought to be the appropriate option in cases when the child has a strong, positive attachment to his/her natural parents who are not, however, able to be full-time parents; when the child has a strong attachment to a relative who is willing to make a long-term commitment to the child but does not wish to adopt; or when the child selects the permanency option of independent living rather than adoption or guardianship.

Eligibility

The Department will support a legal guardianship using guidelines established in the state's written policies. These policies include a determination that the child has had a positive relationship with the prospective guardian and has experienced at least six months of successful living in the prospective guardian's home.

It also should be determined that the child cannot return home, despite reasonable opportunities provided to the birth parents to correct the family conditions which led to the child's removal and subsequent placement. It must be unreasonable (for a reason particular to the case) to pursue adoption, despite reasonable efforts to secure an adoptive parent and/or voluntary or involuntary termination of parental rights. The prospective guardian and the child should be able to function effectively without Department supervision.

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[13] Information presented for Nebraska's subsidized legal guardianship program was obtained from Nebraska Revised Statues, Sections 30-605 to 30-2616; Section 43-533; Section 43-1301 to 43-1318; Nebraska Dept. of Social Services Manual, 390 NAC 6-004 and 6-005; DSS policies, forms and guidebooks; and interviews with DSS personnel.

Additionally, the child should be age twelve or older, unless he/she is part of a sibling group to be placed together, or has sufficient attachment to the proposed guardian who is unable or unwilling to adopt the child. One administrator indicated that younger children are usually not considered for guardianship unless they are part of a sibling group or the proposed guardian is a relative.

Finally, the prospective guardian should be willing and able to support the child financially or a guardianship subsidy should be pursued by the caseworker. If the guardian wishes to receive the subsidy, the child must be considered a ward of the Department. In addition, to be placed together the child should be diagnosed with a behavioral, physical or mental disability, and/or be a member of a sibling group of at least three.

Prospective guardians are chosen from the following categories in order of preference:

1. Relative of the child;
2. Child's foster parent;
3. Another party with whom the child has an existing relationship;
4. New foster parent committed to the guardianship plan.

The child's consent is required if the child is over the age of fourteen. If the child is under fourteen, consent is sought from and objections explored with the child, the guardian ad litem and the prospective guardian. The caseworker makes the final recommendation for placement, which should be in the child's best interests.

Parental consent is also sought in every case, but the Department can proceed without it if this is believed to be in the best interests of the child. Parental objections should be addressed by the caseworker or the Court at the guardianship hearing. Many times, the parents consent to the guardianship, and their consent and nomination of the guardian are attached to the guardianship petition.

The guardians will have undergone a homestudy and certification if they have been serving as the child's foster parent. Relatives do not have to be certified, but do undergo an approval check, including police clearances, and a "child-specific" home study.

Policies and Procedures

A caseworker considering legal guardianship for a child will hold a case conference with their supervisor and specialized adoption staff, and possibly a permanency plan reviewer and/or the guardian ad litem. A examination of the child's and provider's eligibility, needs and wishes will be made, in order to determine whether guardianship is in that child's best interests.

If it is, an explanation of the legal process and the rights and responsibilities of legal guardianship is made to the child, the proposed guardian and the natural parents. Consent from all parties is sought at this point.

Also, the caseworker and prospective guardian determine whether a subsidy is needed to support the placement. The family's eligibility for other programs of support, such as AFDC for relatives, should be explored. If a guardianship subsidy is needed, a subsidy application is filled out prior to gaining court approval for the guardianship as a subsidy cannot be approved after the guardianship hearing.

Next, the caseworker prepares a Guardianship Packet for the court. This consists of a cover letter to the attorney who will represent the guardian in the petition to the court; the Court Order indicating the Department's custody of the child, certified copies of the child's birth certificate; the parent's death certificate, the termination of parental rights order or voluntary relinquishment of parental rights, if applicable; and a Guardianship Summary of the case.

The Guardianship Packet is sent to the attorney of the prospective guardian. Chosen by the guardian, this attorney may be referred to him/her by the Department. Payment of legal expenses are included in the subsidy agreement as a one-time cost. The attorney proceeds to prepare and present the guardianship petition to the Probate Court. The caseworker should attend the hearing and testify, if necessary, in support of the guardianship.

After the court awards guardianship, the caseworker closes the case. The only subsequent Department involvement is an annual review of the subsidy arrangement.

Amount and Sources of the Subsidy

The policy of Nebraska requires guardians who are relatives to use all available resources, benefits and programs, including private medical insurance, child support and AFDC, before using the guardianship subsidy. The subsidy is 100% state funded, and consists of one or more of the following:

1. Monthly maintenance;
2. Child care expenses;
3. Medical Assistance;
4. Transportation to medical treatment; and/or
5. Legal costs to obtain guardianship.

In some cases, only one or two of these items are needed by the guardians, e.g., legal fees only, or maintenance and medical assistance only.

The amount of monthly maintenance shall not be higher than the foster care rate. The maintenance support, as with foster care support, is determined based on the level of need of the child and varies according to their age. The guardians and the caseworker negotiate the amount the family will receive, which is part of the Subsidy Agreement and is to be reviewed annually. Deductions are made in the maintenance payments for any other income due to the child or family from Social Security benefits, child support or AFDC.

The subsidy will continue until the family no longer needs the assistance; the child reaches the age of majority, which is nineteen in Nebraska; or the guardianship or care for the child ceases.

Statistics

Nebraska's DSS currently has approximately 4,200 children in its custody, most with the goal of reunification. As of November, 1995, 118 of the cases had the goal of guardianship; 254 had

the goal of non-relative adoption; 91 had the goal of relative adoption; and in 190 cases, long-term foster care was the plan.

Recent statistics indicate approximately 291 children are placed in the homes of guardians receiving state subsidy. This number has grown 411% since 1990.

It is believed that about 10-20 guardianships disrupt each year. These children return to DSS custody and a new placement is sought.

An additional 1,034 children are in adoptive homes which receive state and federal adoption subsidy. Currently, 78 children are in the care of adoptive parents for whom final adoption proceedings are pending.

South Dakota[14]

South Dakota has a state-administered program of child protective services, operated by the Department of Social Services. The state's population is low compared to other states surveyed, and Native American children from nine reservations across the state represent the majority of the children in care. The cultural aspects of the Native American presence contribute to the child welfare policies.

For example, as one administrator explained, the Native American culture has no such concept as adoption, and the term "kin" refers to the whole community or tribe in which the child was born. The concept of legal guardianship is understandable and more "palatable" than adoption, but still is not readily accepted. For these reasons, the majority of the children being supported in out-of-home placement are in foster care, many placed with relatives.

When a child must be removed from his/her home, the state attempts first to place that child with a relative. For the most part, the relatives are not licensed and receive only AFDC support.

The subsidized legal guardianship program in South Dakota operates on policies and practices dating back to the 1970's. There are no regulations or statutes in place for this arrangement.

Eligibility

In order for a child to be considered for subsidized guardianship, that child must be over the age of six and must have been in the state's care for at least six months. The goals of reunification and adoption must also be explored and determined to be unattainable or otherwise not in the best interests of the child. Parental consent is not required.

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[14] Information presented for South Dakota was obtained from telephone interviews with a representative of the Office of Child Protection Services, South Dakota Dept. of Social Services; and *State Practices in Using Relatives for Foster Care*, U.S. Dept. of Health and Human Services, Office of the Inspector General (July 1992); and *Reinventing Guardianship*, Meryl Schwartz, Vera Institute of Justice (June 1993).

If the guardian has been a foster parent, he/she would have been certified at that time. Very few relative caregivers are certified, and as a result, receive only AFDC support.

Policies and Procedures

If it is determined that the child is eligible for guardianship and that it is in that child's best interests, the Department will proceed with the guardianship procedure in state court. If needed, a subsidy agreement is negotiated and entered into by the proposed guardians and the Department.

Once guardianship is awarded by the court, the Department terminates the case and discontinues all services to the family, except for the subsidy and annual review of the subsidy contract.

Amount and Sources of the Subsidy

The amount of the guardianship subsidy is determined by the child's needs and the financial resources of the guardianship family. Medical coverage from the state for the children is not available in guardianship cases, although the state may reimburse the guardian for the medical costs and private insurance they receive.

The income of the guardianship family is compared to the statewide median income each year. If the family income exceeds 60% of the statewide median income, the amount of support is reduced. If the income is less than 60%, the support will be equal to the foster care rate. Children who are receiving Social Security benefits are not eligible for the subsidy.

The state fully funds the subsidy and does not receive any federal reimbursement.

Statistics

As stated, South Dakota's population is somewhat lower than other states included in this study. The population of the state is approximately 700,000. The number of children in paid foster care is 560. Approximately 230 children are known to be in care with relatives who are not licensed and receive only AFDC support. It is estimated that 40-45 children are in state-supported guardianship. Of the children in care across the state, 60% are Native American.

Washington[15]

The State of Washington operates its Children, Youth and Family Services Department in regional offices across the state. The Department recognizes the importance of relatives as caregivers in the lives of children who have been adjudicated dependent. Relative placement is the first option to be considered when a child has to be removed from his or her home. The Department will also attempt to place the child as close as possible to his/her home, preferably in the same neighborhood, if it is in the best interests of the child.

A permanent plan must be developed no later than 60 days from the commencement of custody by the Department. Permanent goals should be attained within 15 months from placement.

Although the Department identifies guardianship as a permanent plan option, it is recognized that this is not as permanent as reunification or adoption. These other options are preferred over guardianship, and should be pursued until it is determined that they cannot be reasonably attained or that termination of parental rights is not in the best interests of the child.

In one case, a Washington appeals court stated that "the intent of guardianship is to give parent(s) [the] opportunity to take those steps necessary to resume custody of [the] child in [the] foreseeable future, and guardianship is only [a] temporary situation."[16] Nevertheless, guardianship plays an important role in Washington under certain circumstances, and the state does offer support for placements which meet the requirements of its Dependency Guardianship program.

The state also has a non-relative guardianship program. In this program, the guardians do not have to be licensed and may/can receive only AFDC support.

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[15] Information presented was obtained from Washington's Juvenile Court Act, Sections 13.34-130 to 13.34-260; Juvenile Court Rules 3.1 to 3.11; and telephone interviews with representatives of Washington's Dept. of Children and Family Services.

[16] In re. A.V.D., 62 Wash.App. 562, 815 P.2d 277 (1991).

Eligibility

A child must be in the custody of the Department for at least six months before guardianship will be established. The Department must document that services were offered or provided to the biological parents to remedy the causes for removal, and that despite these services, it is unlikely that the child can return home in the near future. Also, it must be shown that guardianship rather than termination of parental rights or continuation of the dependency of the child is in the best interest of the family.

There is no age limitation for children being considered for guardianship in the Washington law. Administrators had been alarmed at one point that Dependency Guardianship seemed to be on the rise for younger children. It was felt that greater efforts should be made to seek adoption for these children. However, with the significant number of Native American children in care, adoption is often not possible due to cultural considerations.

Parental consent to the guardianship is not required, but the court will consider the preference of the parents in appointing a guardian. Relatives are also given preference as guardians over non-relatives. All potential guardians must be approved through a background check, criminal history check and home study.

Policies and Procedures

The laws of Washington stress the importance of permanency planning in the care of dependent children. A permanency plan must be developed for each child in care within 60 days of removal, and must be pursued until the goal is achieved or the dependency is dismissed. Goals should be achieved within 15 months of placement.

For children age ten or under, a permanency planning hearing is held when the child has been in placement for nine months without an adoption decree or guardianship order. For children over ten, a hearing is held after 15 months. At this court hearing, the Department must show the permanent plan for the child demonstrate whether it has been achieved and recommend whether the

current placement should continue. The court will then order the Department's permanent plan to be implemented or modify it as it deems necessary. Hearings will continue to be held every 12 months until the goal is achieved or the dependency is dismissed.

Any party to a dependency proceeding, including the supervising agency, may file a guardianship petition in Juvenile Court. This is usually done by the Department on behalf of the caregiver. If a guardianship petition is not filed by the Department, the Department then has the right to intervene in the proceedings.

The guardian receives statutory rights to protect, discipline and educate the child and consents to provide/fund necessary medical and dental care. The court order of guardianship shall also specify an appropriate frequency of visitation between the parent and the child and the need for follow-up services by the Department. The guardians cannot consent to the adoption of the child in their care.

Any party may request the court to modify or terminate the guardianship. It must be shown that there has been a substantial change in circumstances subsequent to the guardianship and that it is in the best interests of the child to modify or terminate the placement.

An annual review of the placement is made by the Department to determine the continued eligibility of the guardians and appropriateness of financial support provided by the state.

Amount and Sources of the Subsidy

In Washington, all Dependency Guardians receive financial support equal to the state's foster care rate, as well as medical assistance for the child. The amount is reduced only if the child receives benefits from other government sources, such as Social Security benefits, or child support from parents. No federal reimbursement is received.

Statistics

Washington currently has some 10,000 children in formal out-of-home care. It is estimated that about half of these cases are relative placements.

Approximately 1,600 children are in care through the Dependency Guardianship Program. This is the largest number of children in subsidized legal guardianship placements in the country, and the number continues to grow.

With this large number of guardianships, the state experiences a significant amount of children returning to their custody each year from failed guardianships. Although it is believed that some rate of disruption is unavoidable, DCFS administrators still see Dependency Guardianship as the preferred alternative to long-term foster care. As stated, adoption is often not an option due to a significant number of Native American children in care. There are 26 tribal organizations in Washington, and in this culture, termination of parental rights is not recognized.

California[17]

California has a county-administered system of child welfare services. As a result, policies and procedures sometimes vary sometimes greatly across the state. We interviewed representatives from Los Angeles County and Orange County. These two counties, although contiguous geographically, illustrate the diversity in policy on the issues of subsidized legal guardianship and kinship care in the state.

A. Los Angeles County[18]

With some 65,000 children in out-of-home placements Los Angeles County has the largest population of children in care in California, and the second largest population in the country. Over half of these children have been placed with relatives.

The county is making a concentrated effort to focus their permanency planning on adoption and reunification, rather than guardianship or long-term foster care. Every effort is made to reunify the child with his or her birth family. In fact, the county believes it offers the most comprehensive family preservation and reunification services in the country.

However, if reunification is not possible, all efforts are made to have the child adopted. This is the case even if the child has "bonded" with a foster parent who is unwilling to adopt. The county feels that the continuation of a temporary placement is not a situation in the best interests of a child. Such a placement could be easily disrupted and disruption would prove even more damaging than the child from the foster home and placing him/her with permanent adoptive parents. Guardianship is not a favored permanent plan in Los Angeles County for the identical reasons.

The only exception to this rule (that adoption should be sought in all cases when reunification is not possible) is when a relative caregiver is available to become a child's legal guardian. The county recognizes that although the assumption of guardianship by a relative is not as

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[17] General provisions for California's relative placement policy and guardianship procedures are contained in the California Welfare and Institutions Code, particularly Sections 281.5, 300, 361, 396, 16000 to 16002, and 16500 to 16521.

[18] Information on the policies of Los Angeles County was obtained through interviews with DCFS personnel and written policy directives.

guardian. The county recognizes that although the assumption of guardianship by a relative is not as "permanent" a plan as adoption, relatives do offer a form of psychological and social permanency that non-relatives cannot offer.

In all cases of a child being removed from his/her home, relative placement is the first preference. Relative caregivers do not need to be certified as a foster family to provide foster care for their kin. However, routine background checks and a home study are conducted as part of the determination of whether the placement is in the best interests of the child.

Despite this favorable view of relatives as foster parents and guardians, the county does not offer a subsidy to relative guardians. One source, apparently reading between the lines of this paradox, stated that the lack of federal and state funding was probably the main reason for this deficiency.

Although the county will aid in the assumption of the guardianship, the case will be closed afterwards and the family will have to support the child on their own or, if eligible, with AFDC dollars. (Since no state or county subsidy is available for guardianship, we did not follow our usual format of researching subsidized legal guardianship in this case.)

On a positive note, the county is progressive with its view of adoption. It considers relative, or "open," adoptions as well as traditional adoption. It also recently embarked on a collaborative Permanency Planning Initiative with the Youth Law Center and the state to reduce the number of children in long-term foster care through reunification and adoption efforts. Legal guardianship is not a primary goal of the project; however, the importance of relative care as a permanence option is recognized.

B. Orange County[19]

Just outside of Los Angeles County, and with a much smaller caseload (3,200 children in care in contrast to L.A. County's 65,000), Orange County offers a vastly different view of

[19] Information for Orange County was derived from interviews with county Social Service Agency personnel and from departmental procedures and forms.

guardianship. The county does offer a form of subsidized legal guardianship, but it is only available to non-relative caregivers.

Reunification is the goal for the first twelve months of the out-of-home placement. Cases are classed either as Family Reunification or Permanent Placements. Permanent Placement cases include the categories of long-term foster care; guardianship with continued dependency (GWCD); guardianship with terminated dependency (GWTD); and cases with the current goals of guardianship or adoption. Approximately 1,400 of the 3,200 children in care are Reunification cases; 1,800 are Permanent Placements.

Guardianship with continued dependency cases are those in which custodial and authoritative rights are given to the guardians, but the custody of the child with the county and the dependency of the child are not terminated. Supervision by the county continues as though the child was still in foster care, and so does financial support at the foster care rate.

Federal IV-E reimbursement is available to the county since the child is still considered a dependent of the state and county. This option is limited, however, to cases in which the caregiver needs the involvement of the county due to the special needs of the child.

Somewhat similar, and much more widely used, is guardianship with terminated dependency. Guardians receive the authority to provide educational, ordinary medical and other decision-making for the child, as with GWCD. The dependency of the child on the state is terminated, but the county's supervision continues and the juvenile court retains jurisdiction over some guardianship issues. For example, the court can order birth parents visitation rights and the guardian cannot move the child out of state without court approval. Essentially, Orange County and other California counties are choosing to delegate some of the decision-making authority to relatives which would otherwise reside in caseworkers.

Additionally, six-month reviews of the placement and adherence to a county case plan are required. Non-relative guardians will continue to receive support at the foster care rate, in addition to after-placement support services. Relative guardians may only receive AFDC support, which is

significantly less than foster care support, and cannot receive after-placement support services. The discrepancy between the foster care rate and the AFDC rate thus makes the assumption of guardianship by relatives in many cases impractical, if not impossible.

Orange County does not have any age limitations on the children who can become wards under GWTD. The only criteria for consideration specified in the statute is that the child be in care for at least twelve months, during which time reunification efforts have proven to be unsuccessful and adoption has been ruled out as a possible plan for the child.

Orange County, like L.A. County, does not require relative caregivers to be licensed. If the relatives are not licensed foster care homes, however, the state may lose its ability to receive IV-E reimbursement and would not want to make up the difference themselves. They believe that relatives offer significant emotional and psychological advantages over non-relatives, and often do not require or seek involvement of the county in the care of their children.

Colorado[20]

Like California, Colorado has a county-administered system of child welfare. We interviewed representatives of Denver County's Department of Social Services, the largest of the county departments, and learned that Colorado was embarking on a study to examine the feasibility of adopting a legal guardianship program fully subsidized by the state. They were surprised to learn that their state had been identified as having a subsidized legal guardianship program.

Currently, the state has two types of guardianship arrangements: traditional guardianship and foster care with guardianship. Both types are considered as options only after it has been determined that the child cannot return home or be adopted. Termination of parental rights is not required for guardianship to be explored.

In the traditional guardianship arrangement, the county department assists the caregiver in gaining full legal guardianship through the court and discontinues its legal involvement with the child. Support payments to the caregiver also stop once guardianship is assumed.

With foster care as with guardianship, the county department retains legal custody and authority for the placement. The guardianship petition states that the continued involvement, services and support of the county are necessary to preserve the placement. Monthly caseworker visits no longer occur; however, six month reviews continue through a court-sanctioned foster care review system. Foster care board payments also continue and the state obtains federal IV-E reimbursement, since they retain legal custody of the child.

Foster care with guardianship in Denver, Colorado is similar in many aspects to the program of guardianship with continued or terminated dependency in Orange County, California. One significant difference, however, is that Colorado allows, and actually encourages relatives to assume guardianship. Relatives can still receive the foster care board rate in doing so. Orange County only allows this benefit to non-relatives.

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[20] Information presented for Colorado's practices was obtained from Colorado Department of Human Services forms and manuals; interviews with state Division of Child Welfare Services personnel; and interviews with Denver County Dept. of Social Services representatives.

Foster care with guardianship has not been widely used in Denver County to this point. Some judicial opposition has been encountered, and in many cases, the arrangement has been used when the child has special needs, so that county services and intervention can remain, an option deemed to be in the best interests of the child.

Administrators and others working on a state-subsidized legal guardianship proposal recognize that state would, at the present time, lose Federal IV-E reimbursement if cases were transferred from long-term foster care or foster care with guardianship to fully state-subsidized legal guardianship. However, they believe that the state would still recognize an overall savings through administrative cost reductions from closing these cases through guardianship. In addition, they believe that a guardianship arrangement is more beneficial to the well-being of the child than long-term foster care.

The state and counties have also recognized the importance of relatives as caregivers. For instance, kinship care regulations have been adopted. One result of a settlement agreement, reached between the state and the plaintiffs in a class action suit arising out of a task force investigation by the American Civil Liberties Union and the Colorado Lawyers Committee, is that each county will institute a kinship care unit.[21] These units will provide family preservation services to birth families, enable the family to make voluntary arrangements for temporary custody or guardianship by relatives, and provide support and permanency planning services to relative caregivers.

The preferred permanent plan options for kinship providers is adoption or guardianship. Relatives do not have to be licensed if the child is already IV-E eligible, or if the relatives meet the foster care certification criteria with minor allowable deviations (e.g., number of beds in the home.) At the time of our research, definitive statistics on the use of kinship care were not available. The state has begun to keep track of kinship care placements separately from other placements.

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[21] Civil Action 94-M-1417, U.S. District Court for the District of Colorado (1994).

Illinois[22]

The State of Illinois is faced with one of the largest and fastest-growing populations of children in care in the country. A state-administered system, the active caseload has more than doubled since 1990, increasing from approximately 21,000 in 1990 to 50,000 in 1996. In Cook County, which encompasses the Chicago area, some 32,000 children are in care while 26,000 are with relatives, according to one administrator interviewed.

Societal and economic pressures, such as teenage pregnancy, widespread drug-use among parents, and poverty have contributed to the number of abused and neglected children who have been removed from their homes. The number of traditional caregivers could not keep pace with the numbers of dependent children. Therefore, relative caregivers became a source of placement opportunity, and new and unique concepts of permanency planning had to be developed to meet the needs of this group of caregivers.

At the same time, cases arising in the wake of the famous Youakim v. Miller decision in 1979 (which held that relative caregivers should receive the same level of foster care support as non-relative caregivers) and Illinois' subsequent response to it, brought thousands of relative caregivers into the system who had been previously caring for children in informal arrangements while receiving no financial support from the state. In addition, Illinois did not require relative caregivers to be certified as foster care providers. As a result, Illinois could not receive Federal IV-E reimbursement on these cases.

With the "front door" to their system wide open, Illinois began to search for new ways to find permanent homes for the children in care and to close some of these cases. The circumstances of the placements in many instances, such as drug dependency of the birth parent(s) and child abandonment, made reunification an unrealistic possibility.

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[22] General information concerning Illinois' child welfare system, its programs and statistics was obtained from the Illinois Administrative Code, Title 89, Sections 302 and 305; *Illinois Title IV-E Waiver Request,* Illinois Dept. of Children and Family Services (July 1995); and interviews with DCFS representatives and agents.

Illinois also found that adoption was not an acceptable alternative for many kinship caregivers due to familial and cultural reasons. Many are reluctant to participate in a process which would terminate their relative's parental rights. Others want to encourage their relative to correct his/her problems and regain custody, and do not want to preclude him/her from doing so.

Successor Guardianship[23]

The first alternative option proposed in Illinois was Successor Guardianship. (This option, still contained technically within regulations of the state, was likely the reason Illinois was cited as one of the states with a program of subsidized legal guardianship.) However, Successor Guardianship has not been used because of the lack of availability of federal reimbursement for the program.

Consequently, Illinois does not offer successor guardians a subsidy, and most caregivers cannot afford to support the children without one. Statewide, it was estimated that less than 20 children are placed with successor guardians.

Eligibility

The regulations state that a child is eligible for successor guardianship only if he/she is over 14; consents to the guardianship; has lived in the prospective guardian's home for at least one year immediately prior to the guardianship petition; has been in the custody of the Department of Children and Family Services (DCFS) for at least one year; and has no medical, transportation or personal expenses which would create a financial burden for the successor guardian.

In addition, reunification and adoption must be ruled out as options. Parental consent is sought, but is not a requirement if the DCFS has good cause to proceed without it and provides notice to the natural parents.

Policies and Procedures

The DCFS initiates juvenile court proceedings to transfer guardianship and assumes all costs related to the proceedings. DCFS also explains the legal duties and responsibilities of

[23] Illinois Administrative Code, Title 89, Section 302.400.

guardianship to the successor guardian, assists in planning visitation by the natural parents, and offers post-placement services for up to three months after the award of guardianship. If financial assistance is needed, the DCFS will determine if the family meets the criteria for subsidy as set forth in the regulations.

The successor guardians must give the parents an opportunity to visit the children and inform DCFS if any material changes occur which affect the guardianship. They must also file an updated case plan to the juvenile court every six months.

Amount and Source of the Subsidy

The regulations state that a subsidy request will be evaluated according to several factors, including: the wishes of the child and the guardian; the interaction and relationship between them; the child's adjustment to the placement and community; the child's need for stability and continuity of relationship with the guardian; the mental and physical health of all individuals involved; and whether the guardian is financially supporting the child. If these criteria are met, a subsidy can be awarded up to one dollar less than the foster care rate. The family's gross income will be reviewed in the determination of this subsidy.

As stated, because of the lack of federal reimbursement, the Illinois DCFS has been unable to subsidize successor guardianship, and this option, for all intents and purposes, does not exist in Illinois at the present time.

Efforts to Seek Federal Support: the IV-E Waiver Request[24]

The Illinois DCFS has repeatedly sought to convince the Federal government of the desirability of recognizing guardianship as a viable permanency outcome and granting it subsidized status, as with adoption. In July, 1995, responding to the U.S. Department of Health and Human Services' invitation for Child Welfare Demonstrations Programs (pursuant to Section 1130 of the

[24] *Illinois Title IV-E Waiver Request,* Illinois Dept. of Children and Family Services, Jess McDonald, Director (July 1995).

Social Security Act, Titles IV-E and IV-B), Illinois submitted a proposal to allow for the use of Federal IV-E funds to subsidize legal guardianship.

The proposal would make a subsidy available only to relative caregivers who assume legal guardianship. The child would have to have been in the care of the DCFS for at least two years and in the home of the relative for at least one year. Reunification must not be likely within one year from the time of consideration for guardianship. Adoption must also be found to have been sought and deemed unattainable. Consent of the child would be required for children over the age of twelve.

The DCFS would conduct a preliminary screening of the case to determine eligibility; conduct a home study; assist in applying for the guardianship; and pay the legal fees involved in the proceedings. Other characteristics of successor guardianship mentioned earlier would also apply. Post-placement services would be available as with the state's Adoption Assistance Program, including crisis intervention services.

Most importantly, the waiver request not only projects cost neutrality from closing these cases to the system., but a major savings through the reduction of administrative and program costs. In fact, the proposal estimates an accumulated savings of over $22,000,000 over a five-year period.

From a policy standpoint, Illinois voices its position that guardianship, though not as permanent an option as adoption, is only an inferior form of permanency if there is a realistic prospect that the children could be adopted. Otherwise, the alternative is long-term foster care, which is the least permanent option available and also the most costly one for the system.

As of July 1, 1996, the U.S. Department of Health and Human Services had not yet acted upon the Illinois Waiver Proposal, one of many proposals for waiver demonstration projects submitted.

Another Option: Delegated Relative Authority[25]

While trying to convince the Federal government of the benefits of subsidized legal guardianship, Illinois instituted another permanency planning option, Delegated Relative Authority (DRA). Under this program, the DCFS, as the legal guardian for the child, officially delegates and physical custody of the child much of its decision-making authority to the relative caregiver, but retains legal custody of the child, who remains a dependent of the state. The state has recognized that many relative caregivers do not require the level of services and intervention provided in traditional foster care cases.

The DCFS is able to reduce its services in these cases down to the minimum level consistent with the achievement of Title IV-E participation. Caseloads could be as much as eighty to one because no monthly visits would be conducted. Administrative case reviews would be completed every six months. The Department's overhead costs could be reduced by an estimated 80%.

In addition, administrative overhead costs paid to private provider agencies (who provide casework services for some 60% of all cases in Cook County) are cut by 67% for DRA cases. The state continues to receive full IV-E maintenance and Medicaid reimbursement under DRA, and the caregivers continue to receive the foster care board rate and medical coverage for the children.

To be eligible for DRA, a child must be a ward of the Department; must have been in the care and the home of the relative caregiver for a minimum of one year prior to the establishment of DRA; and must have no extraordinary medical, mental health, or educational needs for which state support services would be required. Reunification with biological parents must be unlikely within one year, and adoption, private guardianship, and successor guardianship must be ruled out as viable options.

The caseworker must complete a caregiver assessment which evaluates the appropriateness of the child and the caregiver for DRA. Contact is made with the child's school and medical providers to examine the child's needs and the caregiver's abilities and cooperation in

[25] Illinois Administrative Code, title 89, Section 305.40.

meeting those needs. Also, the caregiver is given extensive information on all of the permanent options available to them before determining that DRA is the most appropriate. It is the recommendation of the caseworker and their supervisor, based on their overall assessment, to place the child into DRA.

Once the case is transferred to DRA, the same DCFS or private agency caseworker will provide follow-up monitoring. In-home reviews are done semi-annually, rather than monthly. A determination is made at this time whether the caregiver is complying with the terms of the DRA placement and whether DRA should continue.

The DCFS formally grants authority to the caregivers to take the child out of the state for up to thirty days without informing the Department; to obtain ordinary and routine medical and dental care for the child; enroll the child in school or obtain educational services; to sign general consent and waiver of liability forms for the child's participation in school field trips; and to manage any funds provide for services for the children.

The caregiver receives a Delegated Relative Authorization Card, signed by the DCFS, which sets forth the authority granted. This card can be presented by the caregiver to other professionals when services are needed for the child.

The relative caregiver must be licensed as a foster care provider or approved as a relative caregiver, with or without a waiver of standards. The licensing status of the caregiver determines the amount of support they will receive. If licensed, they will receive the foster care board rate; if unlicensed, they will receive the standard of needs rate.

The DRA placement will continue unless terminated by: a change in the permanent plan; the child manifesting some extraordinary medical, mental health or educational needs that require continuous case management services; the caregiver's expression that they no longer desire to continue the placement; or the caregiver's failure to meet the requirements of the plan.

Since its inception on January 1, 1995, DRA was slowly integrated for use with eligible families within the DCFS system. Although initially ambivalent, DCFS direct services staff and

private provider agencies began to expand the use of DRA. Approximately 500 children were in DRA placements as of March 1, 1996. This number is not expected to increase in the near future, while the subsidized legal guardianship waiver proposal is being considered by the Federal government.

The future of the DRA program will be determined after the decision on the approval of the subsidized guardianship proposal. If approval is given, many of the cases which qualify for DRA may be placed in subsidized legal guardianship as the more permanent option. However, it is still believed that DRA will have application, since the guardianship demonstration project limits the number of families which may participate. If approval is not given, those families which were to be included in the demonstration project would be considered for DRA.

New Mexico[26]

The administrators interviewed in New Mexico reported that their state does not have a program of subsidized legal guardianship, despite the fact that the state had been identified as one of ten states which did so. New Mexico law does in fact have provisions in its adoption code to extend an adoption subsidy to placements with permanent guardians. However, the state's Department of Children, Youth and Families Social Services Division does not currently use this option for permanent guardians. Rather, they prefer to pursue adoptions in all cases in which reunification is not possible. Many times, in cases involving kinship foster parents, "open adoptions" are performed.

New Mexico has a number of Native American placements, and the child welfare laws reflect the unique cultural needs of this population. The preferential placement policies of the Indian Child Welfare Act, as well as the preferences of the child's Indian tribe, are required to be incorporated into every Native American child's dispositional placement plan.

The state has a Family in Need of Services Act which provides extensive services to families at risk of having a child involuntarily removed. The Act also provides services to the birth family and the child after the child is removed and placed in foster care.

When a child is placed in a foster home, the placement is for an initial period not to exceed two years. Thereafter, hearings are held every six months to determine whether to continue the placement.

Relatives are the first placement preference for a child entering care. The child's wishes and those of the parents are also taken into consideration. An assessment is made regarding the child's attachment to the prospective caregiver and the community, the mental and physical health of the individuals involved and the availability of needed services. Relatives must be licensed as foster parents to receive support.

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[26] Information presented for New Mexico's child welfare programs was obtained from the state's Children's Code, Sections 32A-3B-1 to 32A-3B-21; Sections 32A-4-1 to 32A-4-30; Sections 32A-4-31 to 32A-4-32 (permanent guardianships); 32A-5-43 to 32A-5-45 (subsidized adoptions); and telephone interviews with state DCYF representatives.

Permanent Guardianship

In New Mexico, any adult can petition the children's court to be appointed as guardian, including relatives and foster parents. Agencies and institutions cannot be considered. To be eligible for permanent guardianship, the child must have been adjudicated dependent; the Department must have made reasonable but unsuccessful efforts to reunify the child with his or her parents; and adoption is unlikely or not in the best interests of the child. The child does not have to have attained a certain age to be considered.

The law provides that the establishment of permanent guardianship vests in the guardian all rights and responsibilities of a parent, other than those of a natural or adoptive parent. The court may incorporate provisions in the guardianship order for visitation with the natural parents, siblings or other relatives of the child. The guardianship code further recognizes the right of parents and the child to seek revocation of the guardianship order upon a significant change in the circumstances of the parents or guardian.

Interestingly, the portion of the New Mexico statute pertaining to guardianship does not contain language concerning the availability of a subsidy for permanent guardianship placements. However, in the portion pertaining to adoption, the provision for subsidies to adoptive parents also applies to permanent guardians. Specifically, a subsidy is available for those adoptive and guardianship placements in which the child is "difficult to place," defined as a child who is physically or mentally handicapped or emotionally disturbed or who is in special circumstances by virtue of age, sibling relationship or racial background.[27]

A subsidy agreement must be entered into before the decree of adoption or guardianship. The amount of the subsidy is based on the needs of the child and is evaluated annually. The Department is given authority to develop regulations for the administration of subsidized adoptions and guardianships. As indicated, however, the Department does not currently subsidize guardianship.

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[27] New Mexico Children's Code, Section 32A-5-45.

One administrator indicated that there are presently about seven children in "long-term foster care," which is the identified permanent plan for these children. The foster families receive the foster care level of support and have relaxed levels of Department supervision due to recognized abilities of the caregivers to meet the ongoing needs of the children. These placements are still technically foster care placements, though, and no court orders are made regarding parental or custodial authority of the caregivers.

Additionally, there are approximately 1,600 children in DSS custody with the goal of adoption or reunification; 200 in group homes; 200 in independent living arrangements (mostly students over the age of 16); and about 1,400 in adoptive homes which receive state and federal subsidy.

CHAPTER 4

ANALYSIS OF THE STATE PROGRAMS

The programs of the ten states profiled in the previous chapter share many similarities in the way they use subsidized legal guardianship. We attribute these similarities to the common philosophies expressed by the administrators who created the policies that govern the programs. (A summary of the primary characteristics of the states studied appears as Appendix C to this report.)

Eligibility Characteristics

One of the common views expressed is that guardianship is intended to serve as the permanent plan only when efforts at reunification and adoption have failed and it is likely that the child will otherwise remain in long-term foster care. Consequently, all the states initially require that reasonable efforts be made to attempt reunification first. Thereafter, reasonable efforts should be made to have the child adopted.

To allow sufficient opportunity to pursue reunification and adoption, most states require that the child be in care for a period of time before becoming eligible for guardianship. During this time, efforts at both reunification and adoption are made.

The length of time the child should be in care, prior to guardianship being pursued, varies from state to state. To be precise, Alaska, Nebraska, South Dakota and Washington require six months; California, Illinois and Massachusetts mandate one year; and eighteen months is the requisite in Hawaii. While New Mexico does not include a minimum time period in their statute, in practice, guardianships are not pursued unless the child has been in care for eighteen months.

Additionally, several of the states have minimum age requirements for children to be considered for guardianship. This is due to the fact that younger children are more likely to be

adopted than older ones, and adoption is the preferred permanent placement option over guardianship. The minimum age requirement for children in South Dakota is six; in Massachusetts and Nebraska, it is 12; and in Illinois, the minimum age is 14. Massachusetts and Nebraska do make exceptions for younger children who are part of a sibling group to be placed together, or who have special needs, or when the prospective guardian is a relative. Alaska's program favors children over the age of ten.

The remaining states have no minimum age requirement, but recognize the fact that adoptions are more likely for younger children. Therefore, they typically pursue guardianships for older children, unless there are younger children to be placed as part of a sibling group, or the guardianship is otherwise in the best interests of the child (because of attachment to their guardian, or the impracticality of reunification or adoption).

Another common thread among the state programs studied was the desire to make the guardianship placement as permanent as possible. Therefore, the states make extensive efforts to decide whether guardianship is the most appropriate permanency alternative prior to its implementation. Meetings with the child, the birth parents and the prospective guardians are an important part of this planning in order to be sure that all parties fully understand the process and its goals.

The administrators and policymakers we interviewed recognized that guardianship is not as "permanent" as adoption. This is true, since the birth parents can challenge the guardianship at any time upon showing that their circumstances have changed so that they can resume custody. The states, however, all hope to avoid disruption in the guardianship placement due to a lack of attachment between the child and the guardian, or the inability of the guardian to effectively supervise the child or meet their needs. Further manifestation of the desire for stability is that, while guardianships can be pursued in all of the states without parental consent, it is nonetheless sought. Such consent facilitates a more stable placement and allows the guardianship action to proceed more expeditiously.

In fact, in Hawaii, guardianships will not be pursued unless sufficient evidence exists for obtaining a termination of parental rights, or the parents consent to the same as well as to the establishment of the guardianship. If the guardianship is subsequently disrupted, legal custody of the child reverts to the state rather than to the natural parents.

The consent of the child is required in several states, if the child is over a certain age. In Alaska, the child must consent if over the age of ten; in Massachusetts, the age is twelve; and in Nebraska, New Mexico and Illinois, the age is fourteen. The child's consent is believed to reflect his/her attachment to the guardian, an important element in avoiding future disruptions.

Moreover, most of the states encourage the visitation rights of the natural parents. The laws of California, Illinois, New Mexico and Washington provide that visitation rights should be part of the guardianship order, if it is in the child's best interests. In Massachusetts, parents are informed that once guardianship is assumed, their visitation rights will be at the guardian's discretion. This state will intervene in the visitation issue only if such a request is made by the parents or guardians.

Finally, two of the states, Alaska and Nebraska, have the requirement that children must meet the definition of "hard to place" before being considered for a subsidized legal guardianship placement. The definition "hard to place" is similar to the definition utilized in cases of subsidized adoption, i.e., that the children are part of a sibling group, have severe mental or physical handicaps, or are part of a minority group.

Policy and Procedural Characteristics

One important difference in the state programs is the court in which the guardianship request is presented and ordered. In Alaska and South Dakota, guardianships are presented in State Courts of general jurisdiction. Juvenile Courts have jurisdiction in California, Hawaii, Illinois, New Mexico and Washington, while Probate Courts hear such cases in Massachusetts and Nebraska.

Interestingly, the overwhelming view of the administrators interviewed in all of the states is that the Juvenile Court, as overseer of the case since the child's entrance into the system, is the

most appropriate court to make the guardianship decision. Those in Nebraska reported that unnecessary delays and resistance to the establishment of guardianships have been encountered in Probate Court. Contrary to this, in the states in which Juvenile Court has jurisdiction, the guardianship petition can be presented at the dependency review hearings, thus expediting the process.

All of the states possess a similar procedure for securing the guardianships. The initial recommendation for guardianship is made by a caseworker after an assessment has been made of the eligibility criteria set forth in each state's policy. Thereafter, a review of this recommendation is made by various supervisors and administrators of the child welfare agency, as well as the parties to the case.

Most of the states include the participation of the following individuals in this review process: the caseworker and their supervisor; a permanency planning or adoption specialist; an attorney of the social service agency assigned to the case; and a guardian ad litem for the child. Contact is made with the birth parents (if possible), the prospective guardian, and the child, to inform them of the guardianship process and other options available to them, and to seek their consent to the guardianship.

Afterwards, in all states, the final decision to pursue the guardianship is made by the social service agency staff; then, the guardianship petition is prepared and presented by the attorney to the court. However, a difference previously pointed out is that in Hawaii, parental rights are terminated, if not consented to, before the guardianship can proceed. Permanent custody is then transferred from the natural parents to a permanent custodian, usually the child welfare agency.

If the guardianship is to be subsidized, every state requires that an application be made prior to the guardianship hearing. In all states except California, a written subsidy agreement between the state and the guardian must also be signed before the guardianship hearing.

Once the court awards guardianship, most of the states close the case to the system and all services and intervention immediately cease. One exception to this lies in the state of Massachusetts,

where services are provided for three months after the guardianship decree is signed, in order to determine the stability of the placement. Services are available after this time upon request only. Another exception exists in some California counties, which continue support services and six-month case reviews, including home visits to the guardians, but only if the guardians are not relatives of the child are receiving a guardianship subsidy from the state.

Each state requires the guardians to submit a report or recertification of their guardianship status at least annually, in order to continue to receive the subsidy. However, in California, since the families continue to receive services and six-month reviews, annual recertification is not required.

Subsidy Characteristics

A subsidy is not automatically granted in any of the states. A determination of the need for the subsidy must initially be made in every state by the caseworker. He or she explores the needs of the child; the available sources of support for the child from other government benefits or child support from the natural parents; and any resources of the guardian, such as health benefits.

Once the basic determination is made that a subsidy is needed to support the guardianship placement, the states vary in setting the amount to be paid. However, in practice, most families will receive the full foster care rate, or close to it, as the amount of their subsidy.

Some states, such as Massachusetts, California, Hawaii, and Washington, set the starting level of support at the current foster care rate, but then make reductions for any unearned income of the child through other government benefits or other sources, (e.g. Social Security benefits or child support payments.) Hawaii has a provision which reduces the amount of the subsidy by a percentage of the income the child earns through employment. California only subsidizes non-relative guardianships at the foster care rate. Relatives there can only receive AFDC relative payments, if eligible.

Illinois' current successor guardianship program sets the amount of support at $1.00 less than the foster care board rate, and reduces this amount by other available support for the child. In Alaska, New Mexico and Nebraska, the amount of the subsidy is determined by conducting an analysis of the child's needs, including board payments, medical costs, legal costs incurred in the assumption of guardianship, and after-placement services.

The available resources of the guardian are then assessed in these states, in order to determine the extent to which the guardian can meet the needs of the child on his/her own. Adjustments are also made for unearned income of the child, such as government benefits or child support from parents. In most cases, these calculations will still lead to a sum similar or equal to the foster care rate.

In South Dakota, the income of the guardianship family is taken into account when setting the subsidy rate. If the guardian's family income is less than 60% of the state's median income level, the support will be the foster care rate. If the income exceeds 60%, the amount of the subsidy is reduced. Additionally, children who are receiving Social Security benefits are not eligible for the subsidy.

Under the subsidy agreements in every state studied, annual reapplication or recertification is required for continuation of these moneys. In Nebraska, New Mexico, and South Dakota, the amount of the subsidy is also evaluated and recalculated each year.

By agreement in all states, the subsidy will be discontinued if the guardianship terminates for any reason or the child is no longer being cared for in the guardian's home. In most states, the guardianship terminates when the child reaches the age of majority (age 18 in all states except Nebraska, in which the age is 19).

In Hawaii, the subsidy can continue past 18 if the child is still in high school and will graduate in the current or next school year. The subsidy is also available there for children who are enrolled full-time in college, until they reach the age of 22.

Statistical Review

The number of children placed in subsidized legal guardianship programs in the states studied is relatively low when compared to the total number of children in care. This is primarily due to the fact that states do not receive federal reimbursement for the subsidies paid to guardians.

This characteristic is most evident in Illinois, where despite approximately 50,000 children in care, only about 20 are in their successor guardianship program, due to the lack of federal reimbursement. However, under the demonstration project in Illinois' IV-E Waiver Proposal pending before the U.S. Department of Health and Human Resources, Illinois projects some 5,700 children to be placed in subsidized legal guardianships by the end of two years, for which Illinois would receive Federal IV-E reimbursement.

Other states reported the following approximated numbers of open subsidized guardianships cases: Alaska, 160; California, 300; Hawaii, 100; Massachusetts, 1,500; Nebraska, 291; South Dakota, 40; and Washington, 1,600.

Realizing the Benefits of Subsidized Legal Guardianship

States with successful programs of subsidized legal guardianship, and others considering the implementation of such programs, realize the numerous benefits of this permanency planning option, which include the following:

* Children in guardianships experience more stable and permanent placements than children in foster care.

* Many caregivers, particularly kinship caregivers, do not require the services and intervention of the social service agencies which are part of foster care placements; yet adoption may not be the best option for the child or the caregiver. The guardianship arrangement meets the needs of this population.

* Subsidized legal guardianship allows state agencies to close cases which do not require their services, saving millions of dollars each year in administrative costs.

To elaborate, administrators reported that children placed in guardianships experienced a greater sense of stability and security than children in foster care placements. This is especially true with older children, who were part of the process of establishing the guardianship. In addition, caretakers exhibited greater commitment and responsibility after entering into guardianship agreements. Representatives in Massachusetts and Nebraska, two states which have been subsidizing guardianships for over a decade, expressed the opinion that in many cases, the foster parent is capable of providing care and making decisions for the child without the need of services and intervention. This is often the case for relative caregivers, with whom the children typically bond more easily. Additionally, these caregivers are not always willing or able to adopt the children because of practical or cultural reasons. For example, kinship foster parents are often reluctant to adopt the children in their care because of the necessity of terminating the rights of the natural parent, a relative of the caregiver. In states such as New Mexico, Washington, and South Dakota, there are large numbers of Native American children in the system. Adoption is not an accepted practice in the Native American culture. Therefore, when caregivers are able to provide care without departmental intervention but cannot adopt the child, the permanency option of guardianship becomes the most viable one. However, many caregivers are unable to assume guardianship without the financial support they receive as foster parents. In states without a program of subsidized legal guardianship, children in such placements usually will remain in foster care.

States which are considering implementing programs of subsidized legal guardianship, i.e., Illinois and Colorado, have recognized the reality of the need to use relatives as caregivers and the reduced likelihood that these caregivers will adopt the children in their care.

Representatives noted that the number of children entering the system because of abuse and neglect far outnumber the available traditional foster and adoptive homes. They also stated that today's relative caregivers need new and innovative permanency options, like subsidized legal guardianship, so that their needs can be met. A Colorado administrator expressed the view that too

often, fiscal policy dictates what social programs can be used, rather than the need for social programs dictating fiscal policy.

Administrators in all of the states with subsidized guardianship programs relayed resulting cost savings in the form of reduced administrative and program costs. This was accomplished through closing these cases as foster care placements.

Overall cost savings are realized in states such as Massachusetts and Nebraska, even though they receive no federal reimbursement. In fact, a representative in Massachusetts believed that as much as $10,000 per year per case was saved in administrative cost reductions (in transferring the case from foster care to guardianship). Similarly, a representative in Illinois estimated savings of $6,000 per year per case.

Most of the dollars saved come from the reduction of casework. In addition, resources are saved by the elimination of judicial reviews, which must occur in foster care cases. Decreasing the number of foster care cases will also result in saving money paid to private agencies who provide services to foster families.

Illinois administrators believe that the Federal reimbursement suggested in the IV-E Waiver Demonstration Project would result not only in cost neutrality to the State and Federal systems, but an actual savings over the cost of maintaining the children in foster care.

How States Respond to Criticisms of Subsidized Legal Guardianship

Several criticisms of subsidized legal guardianship have limited its widespread use. Critics have argued that:

* Subsidizing guardianships will increase the cost of child welfare services to states.

* Guardianship is not really a permanent plan, since it can be challenged at any time by birth parents and is easily disrupted, resulting in the return of children to the system.

* Subsidizing legal guardianships, especially in kinship cases, discourages birth parents from seeking to remedy the problems which caused the initial removal of their children.

* Subsidized legal guardianships will be abused by birth parents and kinship caregivers to obtain greater financial support than that offered by public assistance, while avoiding the intervention and regulations of child welfare agencies.

However, states with successful subsidized legal guardianship programs related how their programs effectively deal with the above criticisms.

** Concern: Does subsidized legal guardianship increase the cost of providing child welfare services to the state?*

As outlined in the previous section, some states fear that subsidized legal guardianship will increase the costs of providing child welfare services, especially if no federal reimbursement can be obtained. Others believe the administrative cost savings more than make up for the lack of such reimbursement. Another concern is that if children are placed in subsidized legal guardianship homes at a relatively young age, they will likely stay in that placement and support payments would continue for a long time. Therefore, the amount expended by these states on guardianship subsidy payments would continue to rise.

When presented with the above viewpoint, administrators in states with successful subsidized guardianship programs point out that such fears overlook an important fact. That is, guardianship should only be sought when reunification and adoption are not viable options, which leaves long-term foster care as the only other option in states without subsidized guardianship.

They brought to our attention that these children would remain in long-term foster care for the same length of time as they would remain in subsidized guardianship. Foster care costs to the state are higher than those related to subsidized guardianship, due to the administrative and judicial review costs associated with foster care which do not apply in guardianship.

** Concern: Guardianship is not really a permanent plan since it can be challenged at any time and is easily disrupted, resulting in the return of children to the system.*

All of the states interviewed agree that guardianship is not as "permanent" an option as adoption. In fact, the states of California, Hawaii and New Mexico are not presently pursuing

subsidized guardianships with much frequency because of this factor. However, other states, such as Massachusetts, Illinois and Colorado, recognize that adoptions often cannot be utilized because of the unwillingness of relative caregivers to agree to adoption. In states with Native American children in care, adoption is not a culturally accepted alternative.

They also recognize that the termination of parental rights is not always in the best interest of the child when there is still a strong bond between the parents and the child. In such cases, guardianship is more permanent than the next alternative, foster care.

Further, all of the states with subsidized guardianship programs require a case review to determine the appropriateness of guardianship. It is during this time that the intent of guardianship to be a permanent plan is stressed to the parties. Then, agreements and consents are signed which reflect this fact.

In Hawaii, the social service agency puts forth an extraordinary effort to ensure that the parties appreciate the permanence sought by the establishment of guardianship. Termination of the parental rights is sought, and permanent custody is awarded to a another party or the agency, prior to guardianship being established.

Good casework can also help to avoid future disruptions of guardianships. The identification of special physical, mental, emotional, educational or other needs of the child, for which state services would be needed, should typically disqualify the case from consideration for guardianship. An exception would be if the guardian agrees to, and is able to, meet such needs by themselves. An examination of this factor is required by the statutes of Hawaii and Nebraska.

** Concern: Subsidizing legal guardianships, especially kinship ones, discourages birth parents from seeking to remedy the problems which caused the initial removal of their child.*

When this concern was presented to the administrators in each of the states, many of them told us they had heard this concern before. The scenario feared is that a parent, perhaps a very young one who addicted to drugs, will have less of an incentive to rehabilitate herself if she knows that her child is safe and being cared for by a trusted relative. This would be especially true, it is

believed, when the relative would be receiving greater financial support through guardianship than the parent could provide through employment or public assistance.

In response, the administrators pointed out that it is the children who are the main focus of the system. Therefore, if the parent is unable to safely care for the child, the social service agency does not have a choice: they must remove and care for the child. At the same time, the system should attempt to provide services to the birth parent to help him/her rehabilitate. Again, with good casework, if the social service agency becomes aware that the birth parent is capable of caring for the child, reunification should be able to occur.

More importantly, none of the states reported any documented cases of this type. In addition, none of the administrators knew of any research which indicated that this practice is pervasive in the system. Unfortunately, as one pointed out, it is usually not the comfort of knowing that their children are taken care of which prevents most birth parents, especially drug-addicted ones, from regaining custody of their children.

** Concern: Subsidized legal guardianships will be abused by birth parents and kinship caregivers to obtain greater financial support than they can get from public assistance, while avoiding the intervention and regulations of child welfare agencies.*

The administrators interviewed were also familiar with the above concern. One representative from Massachusetts stated that this opposition was voiced in the state legislature based on the view that the guardianship subsidy served as a welfare subsidy for many participants. Critics argue that birth parents and relatives would conspire to the consent of the assumption of guardianship by the relative, in order for the latter to receive the greater guardianship board rate than the parent could receive for the child on welfare. Then, without agency supervision, the birth parent could regain physical custody, raise the child, and receive the benefit of the higher support payment.

While administrators in Massachusetts acknowledge that this may happen in some cases in their system, they doubt that it is a widespread practice. Currently, the state requires that an annual

recertification application be made, in which the guardian must sign and swear to their continued care of the child. The department also has the ability to cross-check other state computer systems to determine if benefits are being paid for the same child by different agencies or branches. However, they believe that efforts could be made to step up the verification of the guardianship conditions.

All of the other states with subsidized guardianship also require an annual renewal application for the subsidy, which call for certification by the guardians of their continued qualification to receive the guardianship subsidy.

In addition, all of the states require that the child must be adjudicated dependent and be in foster care for a period of time, prior to the assumption of guardianship. The length of time ranges from six to eighteen months. This means that family preservation and reunification efforts are made, the relative caregiver must undergo foster care training and certification, and actually serve as a foster parent for a period of time before guardianship can be considered. This process provides ample opportunity for the social service agency to assess the family, as well as the need to have the child enter the system in the first place. It also discourages those who might be looking for a "quick buck."

Conclusion

The states with active subsidized legal guardianship programs, i.e., Alaska, Massachusetts, Nebraska and Washington, reported success in providing both stability and permanence for children who had limited alternative permanency options. They have also realized significant cost reductions in the form of administrative savings from closing cases. Subsidized legal guardianship is viewed by administrators as the permanency option which best meets the needs of kinship caregivers, who are often able to provide care for the children without government supervision, but who require financial assistance in order to do so.

Four of the states studied, California, Hawaii, New Mexico and Illinois, have subsidized guardianship programs on the books, but do not widely use them. The first three states cite the lack of true permanence in guardianship as the main reason for not widely pursuing this option. Instead,

they prefer to seek adoptive homes for the children in their care. Illinois cites the lack of a federal reimbursement as the biggest impediment to using subsidizing guardianship.

As more and more states experience increasing foster care caseloads and a growing use of relative caregivers, subsidized legal guardianship will be examined more closely. It is likely then that more pressure will be placed on the Federal government to participate in the financial support of guardianships as they already do with foster care and adoption. Such participation would likely increase the use of guardianships across the country.

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APPENDICES

APPENDIX A

RESEARCH VEHICLE

BACKGROUND INFORMATION

- *How old is your agency?*
- *What law governs your agency?*
- *How many children do you have in care to date (Foster Care)*
- *How many children are in formal Kinship Care/Informal Kinship Care?*
- *Reunification statistic % of children returning (Avg. of children returning to Birth Parents)*
- *Percentage of children adopt each year*
- *Percentage of children placed in Legal Guardianship*
- *Percentage of children in long-term Foster Care?*
- *Agency mission philosophy, level of support, Kinship family and other*
- *Programs offered to families and children*
- *Relationships with external systems (e.g. Mental health, Dept. of Public Assistance)*
- *Organizational Structure/Whether State or County Administered System*
- *How does your system work?*
- *Operating Budget, Sources of Revenue (Explain State & County)*
- *Written materials - please provide*

- *Programs offered to children and families?*

- *Relationships with external systems (e.g. Mental health, Dept. of Public Assistance)*

- *Organizational Structure/Whether State or County Administered System?*

- *How does your system work?*

- *Operating Budget, Sources of Revenue (Explain State & County)*

- *Written materials - please provide*

OBJEC TIVES

Subsidized Legal Guardianship study related to Kinship Study Care has research five (5) objectives:

Objective 1: ***To examine the various ways Subsidized Legal Guardianship policies. are used with Kinship Care families.***

Objective 2: ***To explore Legislation/ Regulations under consideration for subsidized Legal Guardianship.***

Objective 3: ***To analyze the role of Subsidized Legal Guardianship as a Permanency Planning option and its impact on Kinship Triad (Child, birth family, and foster family).***

Objective 4: ***To explore the impact of Subsidized Legal Guardianship on the Child Welfare System.***

Objective 5: ***To formulate recommendations and policy options for child welfare agencies exploring Permanency Planning options for children placed in Kinship Care.***

OBJECTIVE 1

To examine the various way subsidized Legal Guardianship are used relative to Kinship Care families.

Questions:
How does the program work?

a. *What are the laws and regulations that allows for Subsidized Legal Guardianship in your state?*

b. *How long has your program been in existence?*

c. *How many children have had the permanency option of Legal Guardianship?*

d. *How is Legal Guardianship selected as the plan for the child?*

e. *How long and under what circumstances is the child required to be in foster care before eligible?*

f. Does a family need to be certified in your state as a foster parent?

**Does a family have to go through a certification/approval process to be considered for Legal Guardianship?*

g. What is your responsibility to the child family once in the system and Subsidized Legal Guardianship becomes the goal?

** The sources of the funds used for compensation?*

** Whether the state has realized cost savings with the program, if so, at what percentage?*

** The interest of the involvement required of the state and counties qualifications, risk assessment and periodic reviews?*

** Public and legislative reaction and opinion on the creation and maintenance of the program*

* *Is the subsidy tied to the needs of the family (i.e. does the family have to demonstrate a need for financial assistance?)*

h. How does your program address abuse of the system by families (relatives/birth families getting together to get higher payments)?

OBJECTIVE 2

To explore Legislation/Regulations under consideration-for Subsidized Legal Guardianship.

Questions:

- *Do you know if any laws or organizations that are currently addressing the Kinship Care issues?*

- *If so, what is your state's involvement?*

- *Do your state representative sit on any policy, planning and development committee on Kinship Care issues?*

- *Future plans for policy development?*

OBJECTIVE 3

To analyze the role of Subsidized Legal Guardianship as a permanency planning option and its impact on the Kinship Triad.

Questions:

- *How has Subsidized Legal Guardianship been accepted by both the agency and its participants?*

- *What are the numbers related to families who have selected this option rather then adoption /reunification-How many were Kinship family - number of children represented?*

- *What impact has this had on the child (Attachment disorder, behavior disorder, siblings relationship)?*

  * *How does it compare to those children placed in traditional care?*

  * *How does it compare to those children placed in birth family care?*

  * *How does it compare to those children placed in Kinship foster family?*

- *How long does a child remain in the system before Subsidized Legal Guardianship becomes the permanency plan option?*

- *What involvement does the Kinship Care family have with the child system once the Subsidized Legal Guardianship has been completed. (i.e. Is the review process mandated/?*

- *What level of support does the child welfare system or its provider community offer to the Kinship family?*

- *How many children who had the planning option of Subsidized Legal Guardianship have re-entered the system?*

OBJECTIVE 4

To explore the impact of Subsidized Legal Guardianship on the Child Welfare System.

Questions:

What has this done to your agency?

What effect has Subsidized Legal Guardianship had on the director and staff?

What staff patterns have you had to incorporate to meet the needs of the Kinship Care population?

What staff patterns have you had to incorporate to meet the needs of the Kinship Care budget?

What staff patterns have you had to incorporate to meet the needs of the Kinship Care court system?

What staff patterns have you had to incorporate to meet the needs of the Kinship Care Community Based Resources (Private providers)?

Does the organization cultural within the agency support the Kinship Care System? If no, why? If yes, how?

RECOMMENDATIONS

To formulate recommendations for child welfare agencies exploring Permanency Planning options for children placed in Kinship Care.

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Does the external organization cultural associated with the agency support Kinship Care? If no, why? If yes, how?

APPENDIX B

STATE STATUTES AND REGULATIONS

vacation outside this state with a foster child will continue to receive "Alaska" rates set under 7 AAC 53.030 — 7 AAC 53.060, as appropriate, for up to 30 days.

(b) The standard rate to be paid to a foster parent residing in another state and caring for a child in Alaska's custody is the foster care rate established by the city, county, or state in which the foster parent resides, depending on which government unit supervises the foster care placement. The division will, in its discretion, authorize specialized care and payment of ongoing direct costs.

(c) The out-of-state rate under (b) of this section applies 30 days after a family is residing in another state. The division will not pay the "Alaska" rate, under (a) of this section, for more than 60 days after the date of departure from the Alaska residence. (Eff. 11/23/78, Register 68; am 7/1/90, Register 114; am 11/16/94, Register 132)

Authority: AS 47.10.230

Editor's note: The substance of 7 AAC 53.120 was formerly contained in 7 AAC 50.800.

7 AAC 53.130. RATE REDUCTION. Repealed. (Eff. 11/23/78, Register 68; am 7/1/90, Register 114; repealed 11/16/94, Register 132)

Editor's note: Effective in Register 132, the substance of 7 AAC 53.130 was moved to 7 AAC 53.030(e).

7 AAC 53.140. DEFINITIONS. In 7 AAC 53.010— 7 AAC 53.140,

(1) "child's placement plan" means a plan developed to ensure appropriate goals and objectives for a child placed in foster care, including identification of the person responsible for implementing provisions of the plan; however, a placement plan is not a full case plan for a family with a child in foster care;

(2) "department" means the Alaska Department of Health and Social Services;

(3) "division" means the division of family and youth services of the Alaska Department of Health and Social Services;

(4) "foster care" means care and services provided to a child in a foster home licensed under 7 AAC 50.005 — 7 AAC 50.990;

(5) "foster parent" means an individual providing care in a licensed foster home for children who are in the custody of the department and who are placed by the division;

(6) "placed" means put in a foster home under authority of the department;

(7) "representative of the division" means a social worker, social services associate, probation officer, or other staff member of the division with authority to authorize purchase of foster care;

ARTICLE 2. SUBSIDIZED ADOPTION AND SUBSIDIZED GUARDIANSHIP PAYMENTS.

7 AAC 53.200. PURPOSE. The purpose of subsidized adoption and guardianship is to facilitate the placement of a child with special needs, who is hard to place and in the custody of the department, by providing a negotiated amount of financial assistance to an adoptive parent or guardian for meeting the child's special needs. (Eff. 7/1/90, Register 114; am 11/16/94, Register 132)

Authority: AS 13.26.062 AS 25.23.190 AS 25.23.230 AS 47.10.230

7 AAC 53.210. PROCEDURE. (a) The division will make the determination that a child has special needs and is hard to place.

(b) An adoptive parent or guardian applicant shall

(1) apply to adopt or become a guardian to a child with special needs; and

(2) cooperate with the division's evaluation in determining if the applicant meets accepted standards as an adoptive parent or guardian by means of a home study.

(c) Upon accepting a child with special needs into the person's home for adoption or guardianship, the adoptive parent or guardian shall

(1) enter into a subsidized adoption or guardianship agreement with the division; and

(2) annually apply for subsidy reevaluation. (Eff. 7/1/90, Register 114; am 11/16/94, Register 132)

Authority: AS 13.26.062 AS 25.23.200 AS 25.23.220 AS 25.23.230

7 AAC 53.220. ADOPTION AND GUARDIANSHIP SUBSIDY PAYMENT. (a) The division will provide subsidized adoption and guardianship payments subject to available funding. The amount of the payment will be determined through an agreement between an adoptive parent or guardian and the division, taking into account the circumstances of the parent or guardian and the needs of the child. The amount may be readjusted periodically to fit the changing needs of the child and the circumstances of the parent or guardian. However, in no case may the amount of the payment exceed the foster care payment which would have been paid during the period of the child were in a foster home. For an adoptive parent or guardian who lives or moves out of state, 7 AAC 53.120(b) and (c) will apply.

(b) The division will pay the negotiated monthly rate at the beginning of the month for which payment is intended.

(c) The division will pay on a scheduled payment basis according to the subsidy agreement. (Eff. 7/1/90, Register 114; am 11/16/94, Register 132)

Authority: AS 13.26.062 AS 25.23.220 AS 25.23.230
AS 25.23.210

7 AAC 53.230. UNEARNED INCOME OF AN ADOPTIVE OR A GUARDIANSHIP CHILD. The division will arrange for the unearned income of children in department custody that was formerly received by the division and applied to the cost of foster care to be sent directly to the adoptive parent or guardian upon finalization of the adoption or guardianship. The division will consider this income when it determines the subsidy rate under 7 AAC 53.220. (Eff. 7/1/90, Register 114; am 11/16/94, Register 132)

Authority: AS 13.26.062 AS 25.23.230

7 AAC 53.240. MEDICAL EXPENSES. If applicable, the division will assist the adoptive parent or guardian in applying for Medicaid benefits for the child. If a child is not Medicaid eligible, and medical costs are a factor in the individual's ability to adopt or become a guardian, the division will consider the medical need when it determines the subsidy rate under 7 AAC 53.220. (Eff. 7/1/90, Register 114; am 11/16/94, Register 132)

Authority: AS 13.26.062 AS 25.23.230

7 AAC 53.250. DEFINITIONS. In 7 AAC 53.200 — 7 AAC 53.250

(1) "adoptive parent," and "adoptive parent applicant," means

(A) an individual, including a foster/adopt individual, who has applied to adopt a child with special needs, where the child's birth parents' rights have been relinquished or terminated and the child is in the custody of the department;

(B) an individual, including a foster/adopt individual, who has applied to adopt a child with special needs who is in the custody of the department, where adoption is the plan, but the child's birth parents' rights have not yet been relinquished or terminated and the individual is aware of the legal risk that the adoption might not be finalized; or

(C) an individual who has adopted a child with special needs and who is receiving subsidized adoption payments;

(2) "child with special needs" and "child with special needs who is hard to place" mean the same as "hard to place child" as defined in AS 25.23.240;

(3) "department" means the Alaska Department of Health and Social Services;

(4) "division" means the division of family and youth services of the Alaska Department of Health and Social Services;

(5) "foster/adopt individual" means a foster parent who is interested in adopting a child and who is currently providing care in a licensed foster home for children in custody of the department.

(6) "guardian" and "guardian applicant" means an individual who has qualified as, or has applied to be, a guardian of a minor under court appointment, but excludes an individual who is a guardian ad litem. (Eff. 7/1/90, Register 114; am 11/16/94, Register 132)

Authority: AS 13.26.062 AS 25.23.230

3.26 SUBSIDIZED GUARDIANSHIP

AUTHORITY: AS 25.23.200, AS 25.23.220, AS 25.23.240(7); AS 47.10.230(d)

POLICY: The Division may make subsidy payments to guardians of children who are in DFYS custody at the time the guardianship plan is made, if guardianship is the permanent plan for the child, the subsidy is recommended by the Permanency Planning Staffing Team, the child meets the criteria established, and the family has an approved guardianship study.

a. Criteria For Children

1. Children must be considered hard to place under the state's definition in order to be considered for subsidized guardianship. A hard to place (special needs) child is defined as a minor who is not likely to be adopted by reason of physical or mental disability, emotional disturbance, recognized high risk of physical or mental disease, age, membership in a sibling group, racial or ethnic factors, or any combination of these conditions.

2. Since adoption generally offers a higher degree of permanency for the child, adoption is generally the preferred choice for children under the age of ten. Therefore, the child must also meet one of the following criteria to be eligible:

   A. For children over the age of ten, in order of preference, which is based on the highest degree of permanence for the child:

      1. The child is not legally free for adoption, but desires a guardianship plan and the birth parents agree and/or prefer guardianship; or

      2. The child is legally free for adoption but does not want to be adopted or adoption does not appear to be feasible; or guardianship is preferred over adoption due to compelling cultural or other reasons (see Section 3.26 (a)(2), (B)(3);

or

3. The child is not legally free for adoption and agrees to guardianship, and the birth parents, although they will not agree, are not likely to interfere with the guardianship plan (as based on previous experience with them.)

B. Children under the age of ten will only be considered for subsidized guardianship if:

1. The child is part of a sibling group where one or more children is over the age of ten and the plan is for the sibling group to remain together under the guardianship of the proposed guardian; or

2. The child is seriously disabled, has developed an attachment to the current caretaker, and the caretaker is willing to become the guardian; or

3. There are compelling cultural or other reasons which make guardianship the preferred choice over adoption. Cultural reasons could include, for example, the Native American child who is placed with a close relative of his birth parents. Often the relative is very willing to provide a permanent home, but because Native culture traditionally did not require termination of parental rights and because proceeding with termination would cause a deterioration in the relationships, the relative family as well as the birth parent prefers guardianship as the permanent plan. The case must be evaluated by the principle of assuring permanence from the child's perspective.

All subsidized guardianships of children under the age of ten must be approved by the RSSM after the Permanency Planning Staffing Team has made the recommendation. The primary factor to be considered is whether the plan will reasonably assure permanence for the child.

c. Guardianship must be the Permanent Plan for the child, not a temporary arrangement pending changes in parental behavior. However, open contact with birth parents in guardianship arrangements is encouraged in all cases except where birth parents would seriously interfere with the permanence of the placement.

b. Requirements for Families

In order to become guardians, families must:

1. have cared for the child a minimum of six months, or have previously cared for the child at least six months, in order to assess adjustment and attachment in the family; and

2. agree to assume guardianship and provide a stable home for the child until he/she reaches age 18; and

3. receive an approved guardianship study; and

4. sign the Subsidized Guardianship Agreement; and

5. agree to make yearly reports to the court as well as to the Division at the time of the yearly renewal of their Subsidy Agreement.

c. Legal Issues

When parental rights have not been terminated, it is necessary to exercise caution and implement the plan only after careful consultation with parents, AGs, and the proposed guardians to assure that either the natural parent agrees with the plan or will not interfere with the permanence of the arrangement. Contested guardianships should only be entered into after careful consultation with AG and Permanency Planning Staffing Team. The worker should include in the guardianship petition the request to transfer residual parental right, if any, to the guardian. The worker should also ensure that the order provides for notice to DFYS in the event that the parent seeks to have the

guardianship set aside.

d. Medical Insurance

Subsidized guardianship is entirely state funded. Consequently it does not carry any Medicaid benefits for the child, even if the child was previously IVE eligible. The only way a child can continue to receive Medicaid under subsidized guardianship is if he qualifies for SSI based on both his handicap and the income of the guardians. Consequently, guardians should be advised to contact their insurance provider to see if a ward will be covered under their current plan. If not covered, or requiring an additional fee, that cost should be considered in determining the subsidized guardianship payment.

e. Disruption of Placement

The possibility of disrupted guardianships exists. Birth parents may challenge the guardianship legally, after it is awarded by the court. This risk needs to be clear to the guardians, although the birth parents would have to obtain the services of an attorney and file action in the court. A Guardian ad Litem would be appointed, but the guardians would have to hire their own attorney. If guardians want to end their guardianship, the Division would only become involved as in any other intake. Guardians should understand that future counselling or other services may be needed, and these services should be anticipated in negotiating the amount of the guardianship subsidy.

PROCEDURES:

a. Recommendation to and approval by the Permanency Planning Staffing Team of guardianship as the goal, and a subsidy is recommended. If the child is under ten, contact Central Office (Adoption Coordinator) for review of and approval of the plan.

b. Complete discussions with the child, the proposed guardians, and the birth parents to ensure agreement with the plan.

c. Complete the guardianship study on the proposed guardians. The study follows the format outlined in adoptive studies, section 36.6.

d. Coordinate with the AG to file guardianship petition in the court system, and completion of any required documentation by the court. In some cases guardianship may be stipulated by all parties. Be sure guardians understand their legal obligations as guardians, as well as the fact that after the guardianship is awarded and DFYS custody ends, the AG can no longer represent the case. Any subsequent court actions would require the guardians to obtain their own attorney. If time constraints prevent the AG from taking action, proposed guardians may obtain their own attorney and file the court action.

e. Submit to the Regional Adoption Specialist, the Nomination for Adoption or Guardianship Subsidy (06-9726), Ethnic Documentation (06-9736), and the signed Subsidized Guardianship Agreement (06-9738) for each child. The amount of subsidy recommended should be negotiated with the proposed guardians, based on the needs of the child. (See section 3.30 Subsidized Adoption).In no case shall it exceed the current foster care rate for that child. ICWA documentation, according to the adoption preferences stated in ICWA and including evidence of the tribe's knowledge of the child's placement with the family, should be submitted at this time. (ICWA Documentation (06-9737) with attachments.)

f. The Regional Adoption Specialist will review, approve and submit the subsidy paperwork to the RSSM for approval, then to the Adoption Coordinator in Central Office.

g. The Adoption Coordinator in Central Office will review the forms for completeness and final approval. Workers will be sent a notice of clearance so they can proceed with the guardianship in court. The worker and the AG can document to the court that the Division agrees to drop custody if the guardianship is awarded. It is not legally necessary to have Division consent, but if difficulties arise contact the Adoption Coordinator for assistance.

h. The subsidy file will be held until the court order of guardianship is submitted to Central Office. Guardianship subsidy payments will be initiated the month following the receipt of the guardianship order in Central Office.

i. Guardianship Agreements are renewed annually by the guardian(s) and the Division, through the Adoption Coordinator in Central Office.

j. The worker will close the case when the court has ordered transfer of custody from the Division to the guardian(s) and the guardianship order has been sent to Central Office.

§587-73 **Permanent plan hearing.** [*Amendment effective January 1, 1993*] (a) At the permanent plan hearing, the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25, including, but not limited to, the report or reports submitted pursuant to section 587-40, and determine whether there exists clear and convincing evidence that:

(1) The child's legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 are not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan.

(2) It is not reasonably foreseeable that the child's legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 will become willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time which shall not exceed three years from the date upon which the child was first placed under foster custody by the court.

(3) The proposed permanent plan will assist in achieving the goal which is in the best interests of the child, provided that the court shall presume that:

(A) It is in the best interests of a child to be promptly and permanently placed with responsible and competent substitute parents and families in safe and secure homes; and

(B) The presumption increases in importance proportionate to the youth of the child upon the date that the child was first placed under foster custody by the court; and

(4) If the child has reached the age of fourteen, the child is supportive of the permanent plan.

(b) If the court determines that the criteria set forth in subsection (a) are established by clear and convincing evidence, the court shall order:

(1) That the existing service plan be terminated and that the prior award of foster custody be revoked;

(2) That permanent custody be awarded to an appropriate authorized agency;

(3) That an appropriate permanent plan be implemented concerning the child whereby the child will:

(A) Be adopted pursuant to chapter 578, provided that the court shall presume that it is in the best interests of the child to be adopted, unless the child is or will be in the home of family or a person who has become as family and who for good cause is unwilling or unable to adopt the child but is committed to and is capable of being the child's guardian or permanent custodian;

(B) Be placed under guardianship pursuant to chapter 560; or

(C) Remain in permanent custody until the child is subsequently adopted, placed under a guardianship, or reaches the age of majority, and that such status shall not be subject to modification or revocation except upon a showing of extraordinary circumstances to the court;

(4) That such further orders as the court deems to be in the best interests of the child, including, but not limited to, restricting or excluding unnecessary parties from participating in adoption or other subsequent proceedings, be entered; and

(5) Until adoption or guardianship is ordered, that each case be set for a permanent plan review hearing not later than one year after the date that a permanent plan is ordered by the court, or sooner if required by federal law, and thereafter, that subsequent permanent plan review hearings be set not later than each year, or sooner if required by federal law; provided that at each permanent plan review hearing, the court shall review the existing permanent plan and enter such further orders as are deemed to be in the best interests of the child.

(c) If the court determines that the criteria set forth in subsection (a) are not established by clear and convincing evidence, the court shall order that:

(1) The permanent plan hearing be continued for a reasonable period of time not to exceed six months from the date of the continuance or the case be set for a review hearing within six months;

(2) The existing service plan be revised as the court, upon such hearing as the court deems to be appropriate and after ensuring that the requirement of section 587-71(b) is satisfied, determines to be in the best interests of the child, provided that a copy of the revised service plan shall be incorporated as part of the order;

(3) The authorized agency submit a written report pursuant to section 587-40; and

(4) Such further orders as the court deems to be in the best interests of the child be entered.

(d) At the continued permanent plan hearing, the court shall proceed pursuant to subsections (a), (b), and (c) until such date as the court determines that:

(1) There is sufficient evidence to proceed pursuant to subsection (b); or

(2) The child's family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, upon which determination the court may

(A) Revoke the prior award of foster custody to the authorized agency and return the child to the family home;

(B) Terminate jurisdiction;

(C) Award family supervision to an authorized agency;

(D) Order such revisions to the existing service plan as the court, upon such hearing as the court deems to be appropriate and after ensuring that the requirement of section 587-71(h) is satisfied, determines to be in the best interests of the child, provided that a copy of the revised service plan shall be incorporated as part of the order;

(E) Set the case for a review hearing within six months; and

(F) Enter such further orders as the court deems to be in the best interests of the child.

(c) The court shall order a permanent plan for the child within three years of the date upon which the child was first placed under foster custody by the court, if the child's family is not willing and able to provide the child with a safe family home, even with the assistance of a service plan. [L 1986, c 316, §30; am L 1992, c 190, §26]

CASE NOTES

An award of permanent custody under this chapter involves essentially the same criteria and material elements as a termination of parental rights under §571-61(b)(1)(E); that is why §571-61(b)(1)(E) authorizes the termination of parental rights in most cases where the criteria for this section relating to an award of permanent custody have been satisfied. In re Male Child, 8 Haw. App. 66, 793 P.2d 669, cert. denied, 71 Haw. 668, 833 P.2d 900 (1990).

The only difference between the criteria for the award of permanent custody and the criteria for the termination of parental rights is that subsection (a) of this section authorizes the award of permanent custody when the child's family is either unwilling or unable to provide the child with a safe family home, whereas §571-61(b)(1)(E) authorizes the termination of parental rights when the parent is unable to provide the care necessary for the well-being of the child. In re Male Child, 8 Haw. App. 66, 793 P.2d 669, cert. denied, 71 Haw. 668, 833 P.2d 900 (1990).

Foreseeable future. -- As a matter of statutory interpretation, the phrase "foreseeable future" in §571-61(b)(1)(E) has a meaning consistent with paragraph (a)(2) and subsection (c) of this section. "Foreseeable future" in §571-61(b)(1)(E) means three years from the filing date of the petition for termination of parental rights. In re Male Child, 8 Haw. App. 66, 793 P.2d 669, cert. denied, 71 Haw. 668, 833 P.2d 900 (1990).

Cited: In re Doe, 7 Haw. 547, 784 P.2d 873 (1989).

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HAWAII

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6 FAMILY AND ADULT SERVICES DIVISION

CHAPTER 835

PERMANENCY ASSISTANCE

§17-835-1 Goals. Permanency assistance provided under this chapter shall be directed at meeting the following goals:

(1) Securing placement with a specified permanent custodian or legal guardian for the child who is unable or unwilling to be adopted;

(2) Achieving and maintaining self-sufficiency of children, including the reduction or

prevention of dependency;
(3) Preventing or reducing inappropriate institutional care of children. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14; SLH 1989, Act 316)

§17-835-2 Definitions. As used in this chapter:

"Caretaker" means any adult who provides care to or oversees the care of children.

"Child" means any person under eighteen years of age who is residing with legal guardians or permanent custodians as a result of a court order issued at the time the department had placement responsibility; or, upon attaining age eighteen years while residing with his or her legal guardians or permanent custodians needs continued care to complete high school education or equivalent within six months or within the following school year with a goal towards independent living; or, is twenty-one years old or younger and attending an accredited institution of higher education in the State on a full-time basis.

"Department" means the department of human services.

"Institution of higher education" means any institution normally requiring a high school diploma or equivalency certificate for enrollment, including but not limited to college, universities, and vocational or technical schools.

"Legal guardian" means any adult who has assumed legal guardianship of a child as the result of a judicial determination under HRS chapter 560, made at the time the department had placement responsibility of the child.

"Permanency assistance" means the provision of a permanency assistance subsidy, medical benefits, and/or other special circumstance requirements to facilitate the permanent placement of children under the department's placement responsibility.

"Permanency assistance agreement" means a written agreement between the legal guardians or permanent custodians and the department specifying conditions for the provision of permanency assistance.

"Permanency assistance subsidy" means the provision of a grant or monetary assistance for the maintenance needs of children previously under the department's placement responsibility in order to facilitate their permanent placement with legal

guardians or permanent custodians.

"Permanent custodian" means any adult who has assumed permanent custody of a child as the result of a judicial determination under HRS chapter 587, made at the time the department had placement responsibility of the child.

"Placement responsibility" means the authority of the department to determine the placement and care of a child for whom the department has foster custody/legal custody or permanent custody.

"Special circumstance requirements" means the cost of clothing and other necessary expenses as specified in section 17-835-3. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14; SLH 1989, Act 316)

§17-835-3 Scope of program. Permanency assistance shall include:

(1) A qualified permanency assistance subsidy or monetary grant to meet the child's basic maintenance needs at the established foster board rate specified in chapter 17-828;

(2) Special circumstance requirements as follows when the need is established by the child's department worker:

(A) Clothing:

(i) Necessary for maintenance; and

(ii) Needed for special circumstances or special events;

(B) The actual cost of necessary school bus fare or private automobile mileage at established state mileage allowance for the months school is in session for a child who is attending school where free school transportation is not available;

(C) The actual cost of local bus fare, private automobile mileage at established state mileage allowance, or taxi fare when other resources are not available to obtain medical care including physical examinations, psychiatric and psychological therapy;

(D) Minimum rates for transportation and other costs to allow the child to accompany his or her legal guardians/ permanent custodians to their new state of residence; or

(E) Special services costs for children

meeting the eligibility requirements of chapter 17-917, Hawaii Administrative Rules; and

(3) Qualified medical care benefits under the title XIX or State's medicaid program for children certified for permanency assistance when other medical care resources are not available. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14; SLH 1989, Act 316)

§17-835-4 Geographic area of service. Permanency assistance shall be available to eligible children meeting the requirements of section 17-835-10. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14; SLH 1989, Act 316)

§17-835-5 Confidentiality. The provisions of chapter 17-601, Hawaii Administrative Rules, shall apply to families and children served under this chapter. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §§346-14; 346-10)

§17-835-6 Appeals and hearings. The provisions of chapter 17-602, Hawaii Administrative Rules, shall apply to families and children served under this chapter. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §§346-12, 346-14)

§17-835-7 Reporting changes. (a) Legal guardians/permanent custodians shall be responsible to report to the department in writing within fifteen days of occurrence:

(1) If they are no longer supporting the child or the child is no longer residing with them;
(2) If the child is receiving or is eligible to receive income from a source other than the Department;
(3) If they are no longer the legal guardians or permanent custodians of the child;
(4) Any changes of address including:
    (A) Place of residence; and
    (B) Mailing address;
(5) Other circumstances which may affect eligibility for continued permanency

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assistance.

(b) Failure to report information as specified in section 17-835-7(a), which may affect eligibility for permanency assistance shall be investigated by the department as suspected fraud.

(c) In situations where fraud is suspected, the provisions of chapter 17-604, Hawaii Administrative Rules, shall be applicable. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §§346-14, 346-44)

§17-835-8 Overpayments and recoupment. (a) An overpayment shall occur when legal guardians or permanent custodians receive permanency assistance to which they are not entitled.

(b) Overpayments shall be collected from the legal guardians or permanent custodians in the following manner:

(1) As a refund from the currently available permanency assistance payment at a rate of ten per cent of the monthly permanency assistance payment for legal guardians or permanent custodians who continue to be eligible to receive permanency assistance;

(2) Recovered for the department by the investigations office for individuals who are no longer eligible to receive permanency assistance.

(c) Overpayments that meet the definition of fraud as defined in chapter 17-604, Hawaii Administrative Rules, shall be referred to the investigations office. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §§346-14, 346-44)

§17-835-9 Application for permanency assistance. (a) An application for permanency assistance may be submitted by the prospective legal guardians or permanent custodians on behalf of a child under the department's placement responsibility who is receiving case management services under chapters 17-806, 17-913 or 17-920.1.

(b) The initial request (application) for permanency assistance cannot be made after guardianship or permanent custody has been awarded except when the application for permanency assistance was made on or prior to September 15, 1990 for cases specified in section 17-835-22.

(c) The application shall be in writing on a form prescribed by the department. The form shall be dated and signed under penalty of perjury and shall include all information needed by the department to establish eligibility for permanency assistance. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14; SLH 1989, Act 316)

§17-835-10 Eligibility requirements. (a) In order to be eligible for permanency assistance, the following conditions shall be met:

(1) The child shall have been determined by the department social worker to be unable to be reunified with his or her parent or parents or to be placed for adoption;

(2) The caretakers shall have assumed sole legal guardianship or permanent custody of the child as the result of a judicial determination made at the time the department had placement responsibility of the child and provided case management services under chapters 17-806, 17-913 or 17-920.1;

(3) The child shall not be eligible for room and board payments under chapters 17-828, 17-923 or 17-943;

(4) The department shall be relieved of placement responsibilty; and

(5) The child's income shall not exceed the maximum permanency assistance subsidy and special circumstance requirements allowable.

(b) An eligible child shall continue to be eligible for permanency assistance subsidy after reaching the age of majority and the permanency assistance subsidy for that person shall continue to be paid to the person's legal guardians or permanent custodians, provided that:

(1) The person is twenty-one years old or younger; and

(2) The person is attending an accredited institution of higher education in the State on a full-time basis.

The permanency assistance subsidy may be applied to costs incurred in undertaking full-time studies at an institution of higher education.

(c) The prospective legal guardians/permanent custodians or legal guardians/permanent custodians shall enter into a permanency assistance agreement with

the department. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14; SLH 1989, Act 316)

§17-835-11 Family responsibility for payment. (a) The child's legally responsible parents shall be required to contribute to the cost of their child's placement with the legal guardians or permanent custodians in accordance with the requirements of section 17-828-7.

(b) Contributions from the legally responsible parent shall be made to the department as refund for the cost of the permanency assistance. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-37.1)

§17-835-12 Income of the child. The resources of the child shall be considered when determining the amount of permanency assistance payments. The income to be considered shall include, but is not limited to the following:

(1) Unearned income such as SSI benefits, retirement survivor's and disability insurance (RSDI) benefit payments, trust fund accounts, and military personnel's or veterans' dependency benefits; and

(2) Earned net income from full or part-time employment for children meeting the eligibility requirements of section 17-835-10 shall be applied as follows:

(A) Thirty percent (30%) from full-time employment of which twenty percent (20%) shall be applied to room and board and ten percent (10%) to meet clothing needs.

(B) Fifteen percent (15%) from the net monthly income of $100 or more from part-time employment shall be applied to room and board.

The child shall make payment directly to the legal guardians or permanent custodians. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §§346-14; 346-37.1)

§17-835-13 Application disposition. (a) The disposition of the application for permanency assistance shall be made within thirty calendar days

from the date of receipt of the application.

(b) The department shall notify applicants about their eligibility for permanency assistance within fifteen calendar days after the department makes a decision.

(c) The applicant shall be sent a written notice that contains a statement of the action taken, the reasons for the action, the specific rules supporting the action, and of the right to appeal the department's decision through established appeals and hearing procedures. [Eff 8/25/90] (Auth: HRS §§346-12, 346-14) (Imp: HRS §346-14)

§17-835-14 Permanency assistance agreement. (a) A written permanency assistance agreement between the department and the prospective legal guardians/permanent custodians or legal guardians/permanent custodians shall be in effect for any child for whom permanency assistance payments are made.

(b) The agreement shall be signed prior to or at the time of the final decree awarding legal guardianship or permanent custody to the caretakers except when the agreement was signed on or prior to September 15, 1990 for cases specified in section 17-835-22.

(c) A copy of the signed agreement shall be given to each party.

(d) The terms of the agreement shall remain in effect regardless of the state in which the legal guardians or permanent custodians live at any time. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14; SLH 1989, Act 316)

§17-835-15 Determination of permanency assistance. (a) The amount of the permanency assistance subsidy shall not exceed the department foster family board rate specified in chapter 17-828.

(b) The amount of other special circumstance requirements shall be provided in accordance with section 17-835-3.

(c) The earned/unearned income of the child or children shall be subtracted from what would be the permanency assistance amount.

(d) The amount of payment may be based on the receiving state's board rate when a child moves out of state with legal guardians or permanent custodians.

UNOFFICIAL

(e) Exceptions to the computed permanency placement subsidy:
(1) The permanency placement subsidy grant shall not be less than $5 per month.
(2) A lesser amount than the computed maintenance payment can be agreed upon by the department and the legal guardians/permanent custodians if the legal guardians/permanent custodians indicate a lesser amount is adequate for the child's care. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14; SLH 1989, Act 316)

§17-835-16 Method of payment. (a) The department or its representative shall authorize permanency assistance when the child and family meet the eligibility requirements specified in section 17-835-10.

(b) Payments for permanency assistance subsidy shall be made on a monthly basis following the month of care and issued only to the legal guardians or permanent custodians.

(c) Payments for special circumstance requirements shall be issued when the child meets the eligibility requirements of section 17-917-3. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14; SLH 1989, Act 316)

§17-835-17 Initiation of permanency assistance. Permanency assistance shall be initiated not earlier than:
(1) The date of the court order awarding legal guardianship or permanent custody to the child's caretaker; and
(2) The date of the signing of the permanency assistance agreement except when the agreement for permanency assistance was made on or prior to September 15, 1990 for cases specified in section 17-835-22. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-835-18 Duration of permanency assistance. Permanency assistance may continue only until:

(1) The child reaches age eighteen years;
(2) Upon attaining age eighteen, the child residing with legal guardians or permanent custodians is able to complete high school education or equivalent within six months upon attaining age eighteen or within the following school year; or
(3) The child reaches age twenty-two if the child had been attending an accredited institution of higher education in the State on a full-time basis. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14; SLH 1989, Act 316)

§17-835-19 Recertification of permanency assistance agreement. There shall be annual recertification of the permanency assistance agreement in order to determine the child's and family's continued eligibility for the permanency assistance. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-835-20 Notice for recertification. (a) The department shall mail a written notice of the need for recertification to the legal guardians or permanent custodians at least sixty days prior to the anniversary date of the permanency assistance agreement.

(b) A written second notice to the legal guardians or permanent custodians shall be mailed at least thirty days prior to the anniversary date of the permanency assistance agreement specifying that failure to recertify the child's and family's continued eligibility for the permanency assistance shall result in termination of the permanency assistance. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-835-21 Permanency assistance outside the State. (a) Permanency assistance payments shall continue if the legal guardians or permanent custodians and child move out of the State while the permanency assistance agreement is in effect and the child continues to meet the eligibility requirements of §17-835-10.

(b) The terms of the agreement shall remain in effect regardless of the state in which the legal guardians or permanent custodians live at any given

time.

(c) The State shall continue to retain responsibility for medical care under title XIX or the State's medicaid program. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14; SLH 1989, Act 316)

§17-835-22 Special conditions for permanency assistance for legal guardianship or permanent custody awarded through July 31, 1990. The application and the permanency assistance agreement shall be made and entered into no later than September 15, 1990 for:

(1) Cases in which legal guardianship or permanent custody was awarded the child's caretaker on or after July 1, 1989 through July 31, 1990; or

(2) Cases in which legal guardianship or permanent custody was awarded the child's caretaker prior to July 1, 1989 and the department continues to provide room and board payments under chapter 17-828. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-835-23 Termination of permanency assistance. The department shall terminate payment to the legal guardians or permanent custodians under any one of the following circumstances:

(1) The child has reached the age of majority;

(2) The child is no longer receiving any support from the legal guardians or permanent custodians;

(3) The legal guardians or permanent custodians are no longer legally responsible for the support of the child;

(4) The child's need for permanency assistance no longer exists;

(5) The legal guardians or permanent custodians are able to assume full financial responsibility and no longer wish to continue the permanency assistance;

(6) The child goes into an adoptive home;

(7) The child has achieved independent living and is self-supporting;

(8) The child enters a state institution for mental retardation or mental illness;

(9) The child is placed in a correctional

facility;

(10) The child is placed in an extended medical facility;

(11) The child no longer meets the eligibility requirements of section 17-835-10; or

(12) The permanency assistance agreement is not current and valid. [Eff 8/25/90] (Auth: HRS §346-14) (Imp: HRS §346-14)

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SUBCHAPTER 2

SERVICE PROVISION

§17-945-10 Scope of services. (a) Based upon an assessment of the family, the department shall provide a range of available and appropriate services to eligible children and their families. Subject to the eligibility provisions for the specific service, the department may provide services identified in chapters 17-804 through 17-840, and chapters 17-912 through 17-950, as well as attempt to secure, by referral, available and appropriate services from other agencies and individuals in the community. Where necessary to ensure the family's understanding of any aspect of the department's involvement with the child and the child's family, the branch shall secure the services of an interpreter.

(b) The department shall offer all available and appropriate services to families with children at risk of placement into substitute care in order to maintain the family unit. When it is not possible to maintain the child safely at home, the department shall assume placement responsibility of the child pursuant to appropriate statute or through written voluntary consent of the parent(s) or legal guardian(s) in order to effect temporary placement of the child into substitute care.

(c) In effecting placement of the child, the department shall:

(1) Effect placement only via the written voluntary consent of the parent(s) or legal guardian(s), by court order, or by assuming temporary foster custody of the child through the transfer of protective custody from the police and proceeding pursuant to section 587-24, HRS;

(2) Make every reasonable effort to place the child into the most appropriate family-like setting available which is able to meet the needs of the child;

(3) Make every reasonable effort to place the child in close proximity to home;

(4) Attempt, where appropriate, to place siblings together;

(5) Consider and, when appropriate, effect placement with relatives before placement into licensed substitute care facilities is

considered;

(6) Make reasonable efforts to reunite the child with family at the earliest possible time;

(7) Enter into or revise a case plan with the family identifying tasks to be accomplished toward achieving an identified permanency goal.

(d) Based upon its assessment and in accord with the goal to be achieved as set out in the case plan, the department will offer and provide available and appropriate services to the family, substitute caretakers, and the child. The services may be provided directly by department staff, through purchase of service contractors, or by other individuals and agencies through referral by the department.

(e) Unless the situation requires the immediate change in the placement of the child, the department shall inform the parent(s) or legal guardian(s) of any planned change and reason for the change in the child's placement at least two weeks in advance of the change. Where necessary to ensure the family's understanding, the branch shall secure services of an interpreter.

(1) Notification shall be in writing or, if provided verbally, shall be confirmed in writing.

(2) When the situation necessitates immediate change in the placement of the child, the parent(s) or legal guardian(s) shall be informed verbally within three working days, confirmed by written notice, or by written notice sent within three working days of the change in placement.

(3) Should the parent(s) or legal guardian(s) not agree with the proposed or actual change in placement, if the case is known to court, they shall be referred to their attorney or, if they do not want an attorney, they shall be advised as to their alternative of a hearing in family court. Where appropriate in a voluntary placement, the department shall petition the court for jurisdiction.

(f) Unless the situation necessitates immediate change in the visitation schedule set up for the child and parent(s) or legal guardian(s), the department shall inform the parent(s) or legal guardian(s) of any planned change at least two weeks in advance of the change. Where necessary to ensure the family's understanding, the branch shall secure the services of

an interpreter.

(1) Notification shall be in writing or, if provided verbally, shall be confirmed in writing.

(2) When the situation necessitates immediate change in the schedule, the parent(s) or legal guardian(s) shall be informed verbally within three working days, confirmed by written notice, or by written notice sent within three working days of the change in visitation.

(3) Should the parent(s) or legal guardian(s) not agree with the proposed or actual change in visitation, if the case is known to court, they shall be referred to their attorney and, if they do not want an attorney, they shall be advised as to their alternative of a hearing in family court. Where appropriate in a voluntary placement situation, the department shall petition the court for jurisdiction.

(g) When reunification is clearly and convincingly established as not being able to be accomplished in the reasonably foreseeable future, permanent separation and placement of the child into another permanent family shall be pursued. The department shall consider:

(1) Placement into an adoptive home with relatives, foster parents(s), legal guardian(s), permanent custodian(s) or other appropriate individuals;

(2) Permanent placement with other specified individuals as permanent custodians or legal guardians when continued care by that individual is in the child's best interest but that individual is not willing or able to adopt the child;

(3) Permanent custody to the department with permanent long-term substitute care placement with a specified individual when continued care by that individual is in the child's best interest but an award of legal responsibility to that individual would jeopardize the placement.

(h) Effective April, 1988, the department shall assure that the situation of every child under its placement responsibility for six months or more is reviewed through six month periodic reviews as set out

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in section 17-945-12 and by dispositional reviews as set out in section 17-945-13. The reviews shall continue to be held at intervals no greater than six months for as long as placement responsibility is held by the department. [Eff 3/21/88] (Auth: HRS 346-14) (Imp: 42 U.S.C. 627)

§17-945-11 Case plan. (a) The department shall develop or revise an existing case plan with the family within sixty days of the date of original placement.

(b) The case plan shall:

(1) Describe the type of home or facility in which the child is placed;

(2) Discuss the appropriateness of the placement;

(3) Reflect placement in the least restrictive, most family-like setting appropriate to the needs of the child;

(4) Reflect placement in close proximity to home;

(5) Reflect efforts made to prevent the placement and, if placement is made, also reflect efforts to reunify the family;

(6) Reflect services provided to the parent(s), legal guardian(s), child, substitute caretaker to improve conditions in the home, facilitate return of the child to the home, or to establish a permanent placement;

(7) Document how the needs of the child in care are being addressed;

(8) Reflect the appropriateness of the services being provided under the plan;

(9) Reflect a likely date by which the goal of the plan is expected to be achieved;

(10) Where appropriate, for a youth sixteen years of age or older, contain a description of the programs and services which will help the youth prepare for transition from substitute care to independent living;

(11) Following the first and all subsequent reviews, reflect documentation of the orders of the court or the recommendations of the administrative review panel and contain a discussion of how the orders or recommendations are to be met; and

(12) Include the health and education records of the child including:

(A) The names and addresses of the child's health and educational providers;

(B) The child's grade level performance;
(C) The child's school record;
(D) Assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
(E) A record of the child's immunizations;
(F) The child's known medical problems and medications; and
(G) Any other relevant health and education information concerning the child determined to be appropriate by the department of human services.

(c) The department shall offer and provide services according to the case plan and shall monitor and assess the family's compliance with the plan and progress in making the home safe.

(d) The department shall review the case plan with the family including but not limited to the parent(s) or legal guardian(s) and the child, depending on the age and understanding of the child, at least once every three months to assure their understanding of the department's assessment of the progress being made under the plan and, if appropriate, the case plan shall be revised and updated.

(e) The case plan shall be submitted for review at the time of the periodic and dispositional reviews.

(f) The department shall provide a copy of each case plan to each of the parties to the case plan at least once every six months. Health and educational information shall be provided to the substitute care provider at the time of placement and at the time of any change. [Eff 03/21/88; am 10/05/91] (Auth: HRS 346-14) (Imp: 42 U.S.C. 675)

§17-945-12 Periodic reviews. (a) Effective April, 1988, the status of each child in substitute care under the placement responsibility of the department shall be reviewed by the court or by an administrative review panel at intervals no greater than six months. The reviews shall be held within six months of the date of original placement and at least every six months thereafter.

(b) If a periodic review is due but, in the assessment of the department, a dispositional hearing is more appropriate, a dispositional hearing shall be requested in its place. The dispositional hearing

shall take the place of the periodic review in this instance.

(c) For children adjudicated under chapter 587 or chapter 571, HRS, the department shall request that the court review the status of the case to determine whether the child is receiving appropriate services and attention, that case plans are being properly managed, and that activities are directed toward a permanent placement for the child. Procedural safeguards relating to notice, participation of the parties and appeal shall be provided according to the rules of the court. The court shall be requested to:

(1) Determine the continued need for and appropriateness of the placement;

(2) Determine the extent to which each party has complied with the case plan and the progress which the family has made in making their home safe;

(3) Determine the extent of progress toward resolving the problems which caused the placement and necessitate continued placement;

(4) Project a likely date for return of the child home, or to be placed for adoption or legal guardianship or other permanent out of home placement of the child.

(d) The department shall request that the periodic reviews required by Pub. L. 96-272 be held at the same hearing as that scheduled for the chapter 587 or chapter 571, HRS, matters.

(e) The status of each child in substitute care under the placement responsibility of the department who is not under the jurisdiction of the court shall be reviewed by an internal administrative review panel. At least one member of the panel shall not be directly involved in the provision of services, including case management services, to the child and family.

(1) The administrative reviews shall be held at intervals no greater than six months from the date the department assumes placement responsibility and at least every six months thereafter unless the child falls under the provisions of chapter 587, HRS, which requires a satisfactorily completed service plan by twelve months. In this instance, only one internal administrative review will be held and a petition shall be filed with the family court pursuant to chapter 587-21

(2), HRS.
Exception: If the court hearing cannot be held within six months of the last review, the department shall hold a second administrative review within the required time period.

(2) The administrative review panel shall review the status of the child in care to determine whether the child and the child's family are receiving appropriate services and attention, that case plans are being properly managed, and that activities are directed toward a permanent placement for the child.

(3) The review panel shall:
  (A) Determine the continued need for and appropriateness of the child's placement;
  (B) Determine the extent to which each party has complied with the case plan and the progress the family has made in making their home safe;
  (C) Determine the extent of progress toward resolving problems that caused the placement and necessitate continued placement;
  (D) Project a likely date by which the child may be returned home, placed for adoption, legal guardianship or permanent custody with a specified person, or be placed in long term substitute care.

(4) The administrative review shall be open to the participation of the parent(s), legal guardian(s) and family.

(5) At least two weeks prior to the administrative review, written notice of the review stating date, time, purpose and location of the review shall be provided to:
  (A) Biological and legal parent(s), legal guardian(s), where appropriate;
  (B) Substitute caretakers;
  (C) Other members of the review panel;
  (D) Appropriate others such as a guardian ad litem.

  The child and department staff may be informed verbally.

(6) Any party noticed to attend the review may bring a representative of choice to the

review and shall be informed of this right prior to the review.

(7) Written consent of the parent(s) or legal guardian(s) must be secured for participation of any non-departmental individuals in the review process unless permitted under chapters 17-601 or 17-920.1.

(8) The chairperson of the administrative review shall complete the administrative review panel report in sufficient detail to assure that all areas were discussed and appropriate recommendations made. The parent(s), legal guardian(s), child, if appropriate, guardian ad litem, if appointed, the social worker and the chairperson shall sign the report indicating agreement or disagreement with the report. Other members shall sign the report indicating their participation in and attendance at the conference. A copy of the report shall be given to the parent(s), legal guardian(s), and guardian ad litem, if appointed.

(9) If the child falls under chapter 587, HRS, and out of home placement is to continue for another six months or if the recommendation is to revise the case plan and the parent(s) and social worker do not agree, the department shall submit a petition to bring the child under the jurisdiction of the court, pursuant to chapter 587, HRS.

(f) Children in pre-adoptive or adoptive homes or in court ordered or sanctioned substitute care with a specified family shall be referred for continuing periodic reviews beginning no more than six months after their last dispositional review. [Eff 3/21/88; am 6/12/90] (Auth: HRS 346-14) (Imp: 42 U.S.C. 627)

§17-945-13 Dispositional hearings. (a) Effective April, 1988, the department shall request that the court or court appointed body review the situation of each child who has been in substitute care for eighteen months or longer under the placement responsibility of the department. The reviews must be held within eighteen months of the date of original placement and at least every eighteen months thereafter for as long as the child remains in substitute care under the placement responsibility of the department.

(b) The department shall request that the court review the status of the case to determine whether the child is receiving appropriate services and attention, that case plans are being properly managed, and that activities are directed toward a permanent placement for the child. Procedural safeguards relating to notice, participation of the parties and appeal shall be provided according to the rules of the court. The court shall be requested to:

(1) Determine the continued need for and appropriateness of the placement;

(2) Determine the extent to which each party has complied with the case plan and the progress that the family has made in making the home safe;

(3) Determine the extent of progress toward resolving the problems that caused the placement and necessitate continued placement;

(4) Project a likely date for return of the child home, or to be placed for adoption or legal guardianship or other permanent placement; and

(5) Determine whether the child should be returned to the parent(s), should be continued in substitute care for a specified period, should be placed for adoption or legal guardianship with a specified individual, or should be continued in substitute care on a permanent or long-term basis.

The department shall request that the dispositional hearings required by Pub. L. 96-272 be held at the same hearing as that scheduled for the chapter 587 or chapter 571, HRS, matters. In the event the child is not under the jurisdiction of the court, the department shall submit appropriate documents requesting a separate hearing covering the requirements of Pub. L. 96-272.

(c) Further dispositional hearings shall not be required for children in pre-adoptive or adoptive homes unless:

(1) The child is removed from the home, or

(2) The adoption is not finalized within a year.

Should either event occur, the department shall request that the court resume dispositional hearings. Periodic reviews shall continue while the child is in the pre-adoptive or adoptive home.

(d) Further dispositional hearings shall not be required for children in court ordered or sanctioned substitute care with a specified family unless the caretaker changes or the child is removed from the home. Periodic reviews shall continue if the department continues to have placement responsibility while the child is in placement with the specified family. [Eff 3/21/88] (Auth: HRS 346-14) (Imp: 42 U.S.C. 627)

§17-945-14 Termination of service. Services under this chapter shall be terminated when:

(1) The child is returned permanently to family;
(2) Adoption of the child is finalized;
(3) The child is placed with a legal guardian or permanent custodian and the department is relieved of placement responsibility. [Eff 3/21/88] (Auth: HRS 346-14) (Imp: 42 U.S.C. 627)

7.215: continued

(3) Review. The decision of the Department to recommend or not recommend an open adoption plan for a child is not a decision subject to review via the fair hearing process.

Commentary

Parents, both biological and adoptive, should be aware that the terms and conditions of an open adoption agreement, after the adoption has taken place, are not under the control of the Department, and any subsequent disagreements must be resolved by the parties themselves. It takes maturity and commitment by both parties to carry out an open adoption successfully. Thus, open adoption needs to be a mutually consensual plan. Likewise, because social workers and lawyers must be careful that open adoption is not used as a vehicle in coercing an adoption surrender, nor as a quick solution to a problem case, and because open adoption must always be in the child's best interests, in every case where open adoption is proposed by the Department, the court where the legalization is to occur will be apprised of the terms of the proposed open adoption agreement.

(110 CMR 7.216 through 7.299: Reserved)

GUARDIANSHIP

7.300: Policy

The Department is committed to establishing permanent placements for all children in its care and custody. Pursuant to this commitment, the Department may sponsor a guardianship for selected children. The children selected will be those who are not likely to return to their parents and who, for whatever reason, are not candidates for adoption.

7.301: Selecting Children To Be Considered For Department Sponsored Guardianship

The Department shall consider sponsoring a guardianship for a child in its care or custody if the child meets all the following criteria:

(1) The child will not be able to return to his/her biological parents. This determination is made by the Department based upon the history of the case and the clinical judgment of Department social work staff.

(2) In the judgment of the Department, there is no reasonable likelihood that the child will be adopted. This determination may be made by the Department when, for example, the child is unwilling to be adopted, or when in the clinicial judgment of the Department social work staff adoption would not be in the child's best interests.

(3) The child has resided with the potential guardians for at least one (1) year. This requirement may be waived if waiver is determined by the Department to be in the best interests of the child.

(4) The child is at least twelve (12) years old. This requirement may be waived if waiver is determined by the Department to be in the best interests of the child (for example, to keep sibling groups together).

7.302: Implementation of Guardianship

The Department shall proceed to implement the guardianships it sponsors as follows:

(1) The Department determines that the child meets the criteria set forth above.

(2) The child's assigned social worker meets with the child and potential guardian. The guardianship plan is presented to them at this time for their consideration and approval.

(3) If guardianship is acceptable to the child and potential guardian, the social worker will make reasonable and diligent efforts to contact the child's parents. If the parents are contacted, they will be informed of the proposed guardianship proceeding, of their right to contest the guardianship proceeding, and of their right, if indigent, to court-appointed counsel. The parents' consent will then be sought.

(4) An employee of the legal staff of the Department will prepare the appropriate court papers. If the parents of the child have consented, their consent shall be noted upon the court papers by obtaining their signature. If the parents of the child have not consented to the guardianship in writing, they will be given notice as required by law.

(5) An employee of the legal staff of the Department will initiate and prosecute all court proceedings necessary to finalize the guardianship. The guardianship plan will be presented to the court for review as part of the proceeding, and said plan shall address the appropriateness of the proposed placement and the suitability of the proposed guardians.

7.303: Guardianship Subsidy

(1) If a child is placed under guardianship through this regulation, and the child does not receive support payments from any other state or federal agency, then the child shall be eligible for continued support payments and/or medical assistance from the Department, to the same extent as if the child had remained in foster care.

(2) If a child is placed under guardianship through this regulation, and the child is receiving support payments from any other state or federal agency, then the child will be eligible for support payments and/or medical assistance from the Department, only to the extent that it would raise the total support from all sources to the amount the child would be receiving if he/she had remained in foster care.

(110 CMR 7.304 through 7.399: Reserved)

SPECIAL EDUCATION SERVICES ("766")

7.400: Provision of Education Services to Children in Department Care or Custody

All handicapped children in the Department's care or custody are entitled to a free appropriate education. Whenever special education is necessary for children in its care or custody, the Department will pursue special education services, through the local public schools.

7.401: Special Education Definitions

As used in this chapter only the following terms shall have the following meanings:

(1) Child. Any person aged 3 through 21 who has not obtained a high school diploma or its equivalent.

(2) Child in Need of Special Education. Any child aged 3 through 21

6-003.05H DELETIONS OR TERMINATIONS IN SUBSIDY

The regulations for deletion or termination of the subsidy are the same for private agency wards and Department wards except the private agency wards aren't eligible for a state subsidy between ages 18 and 19 as are Department wards. See 390 NAC 6-003.03F7, Deletions or Terminations in Subsidy for the regulations.

6-003.05I RETENTION OF RECORDS

Closed records are retained by the Department for four years.

6-004 LEGAL GUARDIANSHIP

When all efforts to reunify the child with his/her family have been exhausted and have been unsuccessful, and when there is no advantage to the child in pursuing termination of parental rights, legal guardianship may be appropriate to consider as a permanency plan for a child.

The Department will support a legal guardianship using the following as guidelines:

1. The child has a relationship with a prospective guardian and has lived successfully for a minimum of six months in the home of the guardian, or

   The worker has determined that the child will develop a relationship with a relative or foster parent who is committed to the guardianship plan.

2. The child can't return home despite reasonable opportunities provided to the parents to correct the family conditions leading to the child's placement.

3. It is unreasonable to pursue adoption because:

   a. Efforts to secure a voluntary relinquishment of parental rights and termination of parental rights by the court have been unsuccessful;
   b. It has been determined that adoption isn't in the child's best interest; or
   c. Parental rights have been terminated but exhaustive efforts haven't been able to secure an adoptive placement.

4. The prospective guardian and the child can function effectively without Department supervision.

5. The guardian is able and willing to support the child financially, or satisfactory financial arrangements can be made. If a guardian will need ongoing financial assistance to care for a child, eligibility for a guardianship subsidy will be pursued by the worker.

6. The child is age 12 or older, is part of a sibling group or is attached to the proposed guardian and adoption isn't feasible.

6-004.01 SELECTION OF A GUARDIAN

The Department will use the following priorities in selecting a potential guardian:

1. Relative of the child.
2. Foster parent or another person with whom the child has an existing relationship.
3. New foster parent who is committed to the guardianship plan.

The child's wishes will be taken into consideration in any decision regarding a potential guardian.

6-004.02 CONSENT TO GUARDIANSHIP

The child, the prospective guardian, the child's guardian ad litem and the birth parents, if their parental rights are intact, will be consulted for consent to the guardianship. If parents object but the Department feels guardianship is in the child's and family's best interest, the worker should try to address the parent's objections or ask the court to address them at the guardianship hearing.

If a child under age 13 has objections to the guardianship, these will be explored with the child and the guardian ad litem; and a determination of the best interests of the child will be made. If a child age 14 or older objects to the guardianship, the guardianship won't be pursued.

The Department will send written notice of the plan for guardianship to these parties: the court, county attorney, guardian ad litem, parent's attorney and parents, if parental rights are intact.

To assure stability and continuity to the child, the worker will assist all parties involved to develop a written plan for visitation with any siblings, parents (if appropriate), and other relatives or important persons in the child's life.

6-004.03 FINALIZING GUARDIANSHIP

When guardianship is determined to be the plan of choice for a child, and the child has resided with the prospective guardian for a minimum of six months, the worker will advise the prospective guardian to retain legal counsel and file a petition in the county court of the county of his/her residence. The worker will appear in court to testify in support of the petition.

Upon approval of the court of the guardianship, the worker will close the case. Once the court order establishes guardianship, the Department no longer has any authority or responsibility for the child except as might exist due to a subsidized guardianship.

6-005 SUBSIDIZED GUARDIANSHIP

The subsidized guardianship program provides continued financial assistance to a child after a legal guardian has been appointed and Department's custody has been terminated. The program is designed to ensure that financial barriers or costs associated with a child's needs don't prevent the appointment of a guardian for a child as a preferred alternative to long-term foster care. The appointed guardian will use all available resources, benefits and programs, including but not limited to private insurance coverage, care or services available through the education system.

6-005.01 LEGAL BASIS

State funds may be used for subsidized guardianship payments on behalf of a child who was a ward of the Department, as provided in Nebraska Section 43-284.02, Reissue Revised Statutes of Nebraska, 1943.

6-005.02 CHILD'S ELIGIBILITY

A child is eligible for the subsidized guardianship program if she/he is a ward of the Department and meets the criteria for subsidized guardianship as follows:

1. Documented behavioral, emotional, physical or mental disability;
2. Membership in a sibling group of three or more to be placed together;
3. The child has a strong attachment to the potential guardian; or
4. The child is age 12 or older or, if under 12, is part of a sibling group or is attached to the proposed guardian and can't be freed for adoption; and

A child's eligibility ends upon the child's 19th birthday, when the child becomes self-supporting or when the guardianship order is terminated.

6-005.03 TYPES OF SUBSIDY

Subsidized guardianship may include one or more of the following:

1. Maintenance: This includes monthly payments to the guardian to assist in meeting the child's day-to-day needs. The amount may not be greater than what would be paid for the child in foster care.
2. Medical/Surgical: This may include the following:
   a. Payments to a medical practitioner for medical or surgical care. Payment will be made by Medicaid or at the Nebraska Medicaid rate.
   b. Payments for residential psychiatric care. (See Residential Psychiatric Care in this Section.)

NOTE: Payment for care for a pre-existing medical condition will be paid from non-Medicaid funds only if the care isn't covered under the Medicaid program or no provider is available in the community. If a Medicaid provider is available but a family chooses not to use him/her, payment won't be made under state subsidy.

3. Other Costs Incidental to the Care of the Child: This includes payment for a specific service or item related to special needs of the child, including, but not limited to -
   a. Legal fees to obtain the guardianship, not to exceed the usual and customary rate for such services within the community; and
   b. Expenses for transportation, lodging, and meals for the child and one adult to enable the child to receive medical care. Amounts paid will be no more than those paid for foster care.

6-005.04 DETERMINING THE GUARDIAN'S NEED FOR SUBSIDY

Based on the child's current and future needs, one or more of the subsidy types may be used. A determination of these needs and the guardian's ability to meet these needs without assistance will be considered through the following:

1. Other programs and benefits to meet the child's needs.
2. Amount: If maintenance or other costs incidental to care of the child are being considered:
   (a) The amount must be no more than payment would be if the child had remained in the Department's care; and
   (b) Explore other maintenance payments or financial resources. The worker will explain that any maintenance payments will be deducted from the agreed-to maintenance under subsidy.
3. Duration: The anticipated time the child is expected to need assistance.

6-005.05 AGREEMENT PRIOR TO GUARDIANSHIP ORDER

The agreement for subsidy will be completed and approved before the order establishing guardianship is issued. The agreement will include the type, amount and duration of the subsidy. Subsidy payments begin after the guardian has been appointed by the court. (See Guardianship Guidebook for process and forms.)

6-005.06 RESIDENTIAL PSYCHIATRIC CARE

The purpose of residential or inpatient psychiatric care is to provide treatment when the child can't benefit from less restrictive care.

6-005.06A RESTRICTIONS

If the facility and service are covered by Nebraska Medicaid, the care will be covered only by Medicaid using Medicaid procedures. If the facility or service is not covered by Nebraska Medicaid, the following requirements apply:

To be covered under subsidized guardianship, inpatient or residential care must be:

1. Provided in a facility licensed or approved by the appropriate agency for therapeutic or psychiatric care; and
2. Psychiatric or mental health treatment.

Residential or inpatient psychiatric care may be provided under subsidized guardianship for a maximum of two years.

There is a separate process for coverage of out-of-state residential treatment.

(See Guardianship Guidebook for process.)

The Department will approve payment for residential or inpatient psychiatric care only if:

1. Care is anticipated to result in progress that will enable the child to return to the guardian or community;
2. Less restrictive or acute care alternatives or treatments aren't appropriate or available, or have refused to accept the child;
3. The child can't obtain appropriate care in the guardian's home or community;
4. The child's guardian will continue to remain involved with the child in planning for and making possible the return home;
5. This type of placement is in the child's best interests;
6. Other resources, including those of the child's parent(s), benefits, or programs aren't available to cover the care; and
7. Approval for the placement is given by a local team including adoption staff and Central Office, before the residential placement.

6-005.06B ADJUSTMENT IN MAINTENANCE

When the child is approved for residential psychiatric treatment, the worker and the guardian will determine what, if any, maintenance the guardian will provide for the child. The maintenance payment will be reduced as appropriate.

6-005.06C REVIEW OF RESIDENTIAL OR INPATIENT PLACEMENT

While the child is in residential care or inpatient treatment , the worker will request progress reports from the facility every three months. These reports must include:

1. Progress toward treatment goal;
2. Continuing need for treatment;
3. Prognosis and estimated length of time treatment will be needed; and
4. The guardian's involvement in treatment or planning for return home.

The Peer Review Organization (PRO) will be reviewing the treatment for medical necessity on a regular basis. If the PRO determines that the client doesn't need that level of care, they will deny continued stay and notify the protective service worker.

6-005.06D PAYMENT TERMINATION

The Department will no longer provide payment if:

- Reasonable progress isn't occurring, and it is determined that treatment at that facility is no longer appropriate;
- Treatment is no longer needed;
- The plan isn't to return the child to guardian's home;
- The guardian is no longer involved with the child or participating in treatment; or
- Reports providing the above information are not provided to the Department.

At least 30 days before payment termination, a written notice will be sent to the guardian giving the date on which payment will cease.

Note: If the guardian has ceased his/her involvement with the child, the worker will consider whether a child protective services referral is appropriate.

6-005.07 ANNUAL REVIEW

The guardianship subsidy will be reviewed every 12 months to determine the level of continued need and continuing eligibility.

6-005.08 RIGHT TO APPEAL

The guardian has the right to a fair hearing if the Department denies the application for subsidy or reduces or terminates the agreement.

6-005.09 TERMINATION OF GUARDIANSHIP PAYMENT

A subsidy can be terminated, a service deleted, or a maintenance payment decreased because of the following factors:

1. The terms of the agreement have terminated;
2. The Department determines the guardian isn't legally responsible for the support of the child or if the child isn't receiving any support from the parent;
3. The child's 10th birthday;
4. The guardian fails or refuses to be legally responsible for the support of the child or to use the maintenance payment to meet the child's needs;
5. The child is no longer residing with the guardian unless the child has been placed out of the home and the guardian is cooperating in the child's return home (the payment may be decreased);
6. The guardian requests termination of the subsidy;
7. A change in regulations or law makes the child no longer eligible for a subsidy;
8. The guardian refuses to cooperate in the process of reviewing the agreement;
9. The child no longer needs the medical care, special services or respite or child care payment that were specified in the subsidy agreement; or
10. The child dies.

(Source: Amended at 19 Ill. Reg. 9485, effective July 1, 1995)

Section 302.340 Emergency Caretaker Services

Emergency caretaker services are provided when the parents or caregivers are absent from the home and there would be no risk if the child remains in the home with adequate supervision. The intent of this service is to maintain the child in familiar surroundings and reduce inappropriate out-of-home placement. The Department may provide an emergency caretaker for up to 12 hours without taking temporary custody of the child.

(Source: Amended at 19 Ill. Reg. 9485, effective July 1, 1995)

Section 302.350 Family Planning Services

Family planning services are provided to enable the client to determine the number of children or the spacing of children through the postponement or prevention of conception. Family planning services include the provision of information concerning medical care and contraceptives and when other resources are unavailable, payment for services. Clients have the right to accept or reject family planning services. Family planning services are available to Department clients who are old enough to have children regardless of sex, marital status, parenthood, or the religious affiliation or personal belief of any Department or child welfare agency employee. A minor of child bearing age is entitled to family planning services without parental consent.

Section 302.360 Health Care Services

Health care services are provided to children for whom the Department has legal responsibility who are receiving placement services. Usually children in placement have been determined to be eligible for Medical Assistance provided through the Illinois Department of Public Aid. The Department of Children and Family Services shall pay for the medical care of children in placement for whom it is legally responsible and who are not eligible for the Medical Assistance program and who do not have resources to pay for medical care.

Section 302.370 Homemaker Services

Homemaker services are provided primarily as an in-home, protective service to maintain and strengthen the ability of the parent(s) or relative caregiver to provide adequate child care and to improve their parenting skills. Additionally, homemaker services may be provided to ease the reunification of families, or to assist foster parents during times of family crisis as well as during pre-planned relief time. Service activities may include teaching and provision of home management, including meal planning and preparation, budgeting, shopping and child care; health care; teaching parenting skills; observation of family interaction; and assessment of client's needs.

(Source: Amended at 19 Ill. Reg. 9485, effective July 1, 1995)

Section 302.380 Information and Referral Services

When it is determined that a child or family requesting Department services or receiving Department services can benefit from referral to another community or governmental resource, the Department will provide information concerning the resource or make a referral to the resource.

Section 302.390 Placement Services (Repealed)

(Source: Repealed at 19 Ill. Reg. 9485, effective July 1, 1995)

Section 302.400 Successor Guardianship

a) When Successor Guardianship is Appropriate
Successor guardianship is a program available for only those children who meet the following criteria.
1) The child must be at least 14 years of age and must consent to the successor guardianship arrangement.
2) The child must have resided with the prospective successor guardian for at least one year immediately prior to establishing the successor guardianship.
3) The child must have been under Department guardianship for at least one year immediately prior to establishing the successor guardianship.
4) The child must not have medical, transportation, or personal expenses (e.g. expenses related to skills, interests, or hobbies) which would create a financial burden on the successor guardian.

5) The permanency goals of return home and adoption must have been ruled out for this child and the permanency goal of permanent family placement must be selected.

6) The parents must consent to the successor guardianship arrangement or the Department may proceed, for good cause, to seek a successor guardianship without parental consent provided that the parents are given notice of the guardianship petition hearing in accordance with Section 704-4 of the Juvenile Court Act (Ill. Rev. Stat. 1983, ch. 37, par. 704-4). Good cause includes, but is not limited to:
   A) Parental incarceration expected to last more than 180 days,
   B) Parental illness, mental or physical incapacity, or addiction which is chronic and serious to the extent judgment is impaired,
   C) Parental desertion, abandonment, or whereabouts unknown.

b) Responsibilities of the Successor Guardian
   1) Successor guardians assume all the duty and authority conferred upon such persons in Section 1-11 of Juvenile Court Act (Ill. Rev. Stat., 1983, ch. 37, par 701-11). Successor guardians are responsible for making the major decisions in children's lives for whom they are guardian, but the Department shall provide consultation, including legal and medical consultation, upon request from the successor guardian. No fees shall be charged for the consultation.
   2) Successor guardians are responsible for ensuring that parents have theIopportunity to visit their children in accordance with the provisions/orders of the court.
   3) Successor guardians are responsible for providing the Juvenile Court with updated case plans for the child once every six months.
   4) Successor guardians are responsible for informing the Department when:
      A) there have been significant changes in their circumstances or the child's circumstances which affect their ability to care for the child, such as substantial changes in income or expenses, changes in the composition of the household, or major health problems,
      B) they are receiving income for the child including, but not limited to Social Security benefits, Supplemental Security Income (SSI), Black Lung benefits, and child support,
      C) they stop supporting or caring for the child, or
      D) the child runs away for longer than 72 hours.
   5) Successor guardians are responsible for requesting Department services if they are needed after guardianship has been transferred and post-transfer services have been provided.

c) Responsibilities of Department
   1) The Department shall initiate Juvenile Court proceedings to transfer guardianship and shall assume responsibility for costs related to these proceedings.
   2) The Department shall fully explain the duties and responsibilities of successor guardians and shall provide written guidelines for making complex legal or medical decisions. The successor guardian's compliance with the guidelines is not required.
   3) The Department shall, upon request of the successor guardian, provide consultation on major decisions free of charge.
   4) The Department shall assist the successor guardian in planning times and places for visitation, but is not responsible for arranging or supervising parental visitation.
   5) The Department shall offer post-transfer of guardianship services, such as counseling or homemaker services, for up to three months after guardianship has been transferred. No fees shall be charged for these services.
   6) The Department shall accept custody of the child in accordance with the Abused and Neglected Child Reporting Act (Ill. Rev. Stat. 1983, ch. 23, pars. 2051 et seq.) if the successor guardian does not care for him or her to the extent the child's health or well-being is endangered.
   7) The Department shall provide financial assistance for these children when their successor guardians request it and they meet eligibility1requirements in Section 302.400 (d), Subsidy for Successor Guardianship.

d) Subsidy for Successor Guardianship
   1) Successor guardians may apply for financial assistance toward the care of the children for whom they assume guardianship.
   2) The Department shall consider all relevant factors in determining whether initial or ongoing subsidized successor guardianship is in the best interests of the child including, but not limited to:
      A) the wishes of the child's successor guardian;
      B) the wishes of the child;
      C) the interaction and interrelationship of the child with the successor 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 successor guardian;
      F) the mental and physical health of all individuals involved; and
      G) whether the successor guardian is financially supporting the child.
   3) Ongoing monthly payments are available and are not to exceed $1.00 less than the Department's regular foster care payment rate. Regular monthly income from another source for the child shall be deducted from the

maximum amount paid by the Department. The Department shall give the successor guardian written notice of any decrease in the amount of financial assistance at least 10 days prior to the effective date of the decrease.

4) Financial assistance is available after considering the relevant factors in (d) (2) above until the child attains 18 years of age except that financial assistance may continue until the child attains 21 years of age if the child has a severe emotional disturbance, a physical disability, a social adjustment problem, or the child needs to complete an educational or vocational training program and, in the Department's judgement, it is in the child's best interests to remain in subsidized successor guardianship.

5) The Department and the successor guardian shall agree to the amount and duration of the financial assistance in writing. The amount of the financial assistance shall be reviewed at least annually. In determining the amount of financial assistance, several factors are reviewed including, but not limited to:
   A) the age of the child; and
   B) current family size; and
   C) the needs of the child; and
   D) the family's gross income.

6) The Department shall not provide medical assistance to children in the successor guardianship program when payment of medical costs is available through the Department of Public Aid, insurance benefits, or other public programs.

(Source: Added at 10 Ill. Reg. 5557, effective April 15, 1986)

Section 305.40 Types of Permanency Goals and Alternative Permanency Options

a) The Department shall consider the recommendations of the purchase of service providers, if any, and shall select permanency goals or alternative permanency options for the children and families it serves in order to guide service planning and achieve permanent homes for children. The Department shall ensure that services provided to children and families move them toward the permanency goals or alternative permanency options. The permanency goals are:
   1) Remaining at Home;
   2) Returning Home;
   3) Adoption;
   4) Permanent Family Placement
      A) with an unrelated foster family;
      B) with relatives;
   5) Independence;
   6) Long Term Care in a Residential Facility; and
   7) Substitute Care Pending Court Decision Regarding Termination of Parental Rights.

b) When selecting a permanency goal, the Department shall use the criteria in this Section.
   1) Remaining at Home
      Remaining home with their parents or private guardian is the preferred goal when the child's safety and well-being are not clearly endangered if allowed to remain at home. This permanency goal is consistent with the Department's service goal of family preservation. It emphasizes the importance of keeping families together and also stresses that the family is primarily responsible for caring for the child. In addition, this permanency goal is usually the least disruptive to family life.
   2) Returning Home
      A) Returning children to their parent(s)' or private guardian(s)' homes is the preferred goal for children who have been placed in substitute care away from their parents. This permanency goal is consistent with the Department's service goal of family reunification. It reinforces the family's responsibility to care for their children and maintain the family relationship. Furthermore, this permanency goal is usually the least traumatic alternative for both the families and children.
      B) Returning home should be established as the permanency goal:
         i) when the parents appear to have the capability to attain the minimum parenting standards with the aid of family reunification services; and
         ii) when the parents are cooperative with the Department and its purchase of service providers, if any, and want to resolve the problems
      C) Returning home should be continued as the permanency goal as long as the parents are substantially complying with the requirements of the service plan and are progressing satisfactorily toward the permanency goal.
   3) Adoption
      Adoption is the preferred permanency goal when parental rights have been terminated on a child. This permanency goal is to be established only:
      A) after both parents have signed adoptive surrenders; or
      B) after a court has terminated the parental rights of both parents and has designated the Department as guardian with the power to consent to the child's adoption; or
      C) after one parent has signed an adoptive surrender and parental rights have been terminated on the remaining parent through court action; or
      D) when one parent has signed an adoptive surrender and the identity and/or the whereabouts of the remaining parent is unknown, and the Department expects the parental rights of the remaining parent to be terminated through court action; and
      E) the child, if 14 years of age or over, consents to the adoption.
   4) Permanent Family Placement
      A) Although a permanent family placement is more desirable than a series of short-term placements, it is not a preferred permanency goal for the child. Without the legal safeguards offered by a permanent legal guardian, a permanent family placement may fail to provide the child with a sense of belonging and permanency. A permanent family placement is the permanency goal only:
         i) when to return the child home is not consistent with ensuring the child's safety and well-being; and
         ii) when the child, if 14 years of age or older, clearly does not want to be adopted or the child, if under age 14, has been provided counseling to help him accept another family, but continues to be unable to accept another family; or
         iii) the child is otherwise deemed unadoptable.
      B) The Department shall strive to assure continuity of care, a sense of permanency, and emotional support for the child by establishing the child's permanent caregiver as the legal guardian of the child. However, taking legal guardianship is not required for the placement to be considered permanent.
      C) When weighing the advantages of a permanent family placement with relatives against the advantages of a

permanent family placement with an unrelated foster family, the quality of the relationship between the relatives, the child, the child's parents, and the child's foster parents, if any, shall be a factor. In addition, other factors shall be the likelihood of establishing a permanent legal relationship between the child and the relative as compared to the likelihood of establishing a permanent legal relationship between the child and the unrelated foster parents.

5) Independence
Independence may be a goal for adolescents 16 years of age or older who have demonstrated the ability to care for themselves, who do not wish to be adopted, who are becoming economically self-sufficient, or who are establishing a family of their own. When the child becomes 18, the child must cooperate according to his service plan. If the child 18 years of age or over does not cooperate, the Department may seek to terminate services and seek to end its legal relationship with the child.

6) Long-Term Care in a Residential Facility
A) A very small percentage of children served by the Department are determined severely physically, mentally, or emotionally handicapped by a physician, psychiatrist, or other professional qualified by education or experience to make this judgment. These children require long term care, usually in an intermediate or skilled nursing facility, or in a child care institution. They are expected to continue to need this care in the foreseeable future. For these children, long-term care in a residential facility is the permanency goal.
B) These severely physically, mentally, or emotionally handicapped children who require long-term care should not be confused with children who are in group homes or institutions in order to receive intensive, short-term treatment directed toward correcting problems which significantly interfere with life outside the institution. Long-term care in a residential facility is not an appropriate permanency goal for children who are receiving short-term, intensive services in a group home or institution.

7) Substitute Care Pending Court Decision Regarding Termination of Parental Rights
A) Substitute care pending court decision regarding termination of parental rights is the preferred permanency goal when a decision has been made to pursue termination of parental rights. This goal is to be established only when:
i) Efforts to reunite the child and biological or legal family have been unsuccessful as documented in the case record; or
ii) The evaluations of at least two professionals must find the parent(s) have a chronic incapacity which will not respond to rehabilitation and which makes it clearly improbable that the parents will attain minimum parenting standards. These professionals must be qualified by their education or experience in the fields of psychiatry, psychology, social work, developmental disabilities, chemical dependency, or other specialized areas of knowledge relevant to the pending issue. These evaluations shall weigh whether the parents can attain the minimum parenting standards (established by the Department) after considering the public, private and extended family resources which can assist the parents with caring for the children; and
iii) The child, if 14 years of age or older, is in agreement with the plan to pursue termination of parental rights; and
iv) Department legal staff determine if there is sufficient evidence to pursue termination of parental rights in accordance with Section 1(D) of the Adoption Act 750 ILCS 50/1(D).
B) This goal shall continue as the permanency goal until such time as the court has granted or denied termination of parental rights, or until such time as a degree of progress is noted in the parent(s) situation which would require an evaluation of, and possible change in the established permanency goal pursuant to Sections 305.50 and 305.60.
C) If the court grants termination of parental rights, this goal shall be changed to adoption. If the termination of parental rights petition is denied, another permanency goal shall be selected.

c) Permanency Options
In addition to the permanency goals identified in subsection (b) above, the Department also recognizes delegated relative authority as an alternative permanency option which does not provide the legal status of a permanency goal, but does allow the child to be placed in a stable, continuous living arrangement. When delegated relative authority is selected as a

permanency option, the relative caregiver shall continue to receive payments for the care of the child which shall be based on the relative caregiver's licensing status. Administrative case reviews shall continue to be conducted at least every six months, permanency review hearings shall continue to be held as required by law, and parent/child visits shall continue, as appropriate. The Department retains guardianship of the child and the authority to make all major medical consents and other major decisions which affect the related children's lives and health.

d) Delegated relative authority may be selected as a permanency option for the following types of cases:

1) the children have been living with a relative caregiver who has been licensed under 89 Ill. Adm. Code 402, Licensing Standards for Foster Family Homes, or who continues to meet the conditions for placement prescribed in 89 Ill. Adm. Code 301, Placement and Visitation Services, Section 301.80 Relative Home Placement, and the children have remained with the relative caregiver for a minimum of one year immediately prior to establishing delegated relative authority;

2) the children are in the guardianship of the Department immediately prior to establishing delegated relative authority;

3) the children do not have extraordinary medical, mental health, or educational needs which require additional casework services;

4) the relative caregivers have demonstrated the willingness and ability to protect the children from persons who may harm them;

5) the relative caregivers have demonstrated the willingness and ability to appropriately control and supervise visits and contacts between the children and their biological or legal parents, in accordance with the service plan developed by the Department;

6) the relative caregivers have a safe and stable home environment which poses no danger to the related children;

7) the Department has documented that reunification with the biological or legal parents within a one year period is highly unlikely for reasons such as:

A) long-term parental incarceration; or

B) chronic and serious mental illness; or

C) serious physical or mental incapacity; or

D) addiction to drugs or alcohol which is not responding successfully to treatment, or

E) other significant barriers to returning the children home within one year;

8) adoption (unless adoption by the relative caregiver is pending) or private guardianship as a permanency goal has been determined to be not in the best interests of the related children; or

9) other circumstances as the Department may determine to be appropriate.

(Source. Amended at 19 Ill. Reg. 10487, effective July 1, 1995)

Section 305.50 Service Plan

a) Purpose of the Service Plan

The service plan is a written plan which is established between the Department, the purchase of service providers, and, if possible, the child and family served. Service plans approved by the Department are required regardless of whether the child and family are served directly by the Department or through purchase of service providers. The initial service plan shall be completed within 30 days of case opening and at least once every six months thereafter. The service plan shall be changed and updated as the child and family's situation changes and shall be reviewed regularly as specified in Section 305.6.

b) Contents of the Service Plan

Service plans shall contain the following information:

1) the names of the children for whom the Department is legally responsible or to whom the Department is providing services;

2) the problems that threaten family stability or could lead to placement of the children away from the family home or have resulted in placement of the children away from the family home and an identification of any problems that are causing continued placement of the children away from the home;

3) what outcomes would be considered a resolution to these problems;

4) the services to be provided to the parents, the children while in care and the foster parents (if necessary when children are placed in foster care), that may best resolve these problems;

5) a description of a child's physical, developmental, educational or mental disability and any non-educational specialized services the child is receiving or should receive for each disability. If an Individual Treatment Plan (ITP) or Rehabilitative Services Plan exists for a child, it shall be included in the record;

6) a description of the educational program/services the child is receiving or needs to receive (including information regarding Early Intervention, Headstart, or Pre-Kindergarten services for preschool children). If an Individualized Education Plan (IEP) or an Individualized Family Service Plan (IFSP) exists for a child, the IEP or IFSP shall be included in the record;

7) who will provide the services, how often they will be provided, and an explanation of why these services will meet the needs of the child;

8) if children are placed out of the parents' home, the reasons for the out of home placement and an explanation of why that placement setting was chosen;

9) the permanency goal for each child;

10) the responsibilities of the family and the child (when appropriate) in fulfilling the service plan;

11) the responsibilities of the Department and purchase of service providers, if any, in fulfilling the service plan;

12) when children and families are separated, the parent-child visitation plan, if visitation is not prohibited by court order. This plan shall include the time and place of visits, the frequency of visits, the length of visits, and who shall be present at the visits;

13) the timeframes for achieving the permanency goal and the objectives to resolve identified

problems and the specification of any consequences to the child and family if the time frames are not met.

14) a statement that the parents or children may disagree with the service plan and that they may have their disagreement recorded; and

15) an explanation of how parents or children may request an appeal and fair hearing.

c) Copies of the Service Plan

Copies of the service plan shall be distributed in accordance with the Department's rules on confidentiality (89 Ill. Adm. Code 431, Confidentiality of Personal Information of Persons Served by the Department) to:

1) the parents (unless parental rights have been terminated or the Department has filed a petition seeking the termination of parental rights);

2) the putative father, if he is participating in planning for the child;

3) the purchase of service providers, including the foster parents or relative home caretakers. Foster parents or relative home caretakers will receive copies of the child's portion of the service plan and will receive other portions of the plan when they have successfully completed training prescribed by the Department. Such training will consist of topics related to the service planning and review process, including an overview of the participants, positive communication, especially in confrontational situations, confidentiality requirements and limitations, preparation for visits and reunification;

4) the child invited to the case review;

5) appropriate Department staff;

6) the guardian ad litem and legal represenative of the child; and

7) the Juvenile Court when the court has jurisdiction. The initial service plan must be submitted to the court within 30 days after a child's placement.

d) Revising the Service Plan

The service plan shall be revised:

1) if the current permanency goal is no longer appropriate;

2) if the current service plan does not address the child's needs;

3) within six months of establishing the original service plan;

4) at least every six months thereafter.

(Source: Amended at 16 Ill. Rev. 16552, effective October 19, 1992)

Section 305.60 Case Review System

a) The Case Review System

1) The Department has a case review system for all the children and families it serves. This case review system has two components: the administrative case review and the regular six month case review. Administrative case reviews are conducted for children living in foster family homes, relative homes, group homes, child care institutions, or detention, correctional, mental or physical health related facilities. In addition, the Department may elect to conduct administrative case reviews on other groups of children as fiscal and staffing resources permit.

2) Regular six month case reviews are conducted for all other children and families served by the Department.

b) Frequency of Case Reviews

The first administrative case review shall be conducted within 45 days from the day the child entered substitute care. All subsequent case reviews, whether an administrative case review or a regular six month review, are conducted on every case at least once each six months unless a dispositional hearing conducted by a court or a court approved panel was held the month prior to a scheduled case review. In this instance, the dispositional hearing shall replace the case review.

c) Purpose of Case Reviews

Case reviews are conducted in order to:

1) decide whether the Department's continuing intervention is necessary;

2) decide whether services, including placement services, are necessary and appropriate;

3) identify services needed but which are not being provided to the child or family;

4) assess the disability status of a child to determine the need for and/or appropriateness of specialized services;

5) review the appropriateness of the child's educational placement and update the child's educational progress;

6) decide whether the Department, the service providers, the family, the substitute care provider, if any, and the child are complying with the service plan and, if they are not complying, whether changes in the service plan are needed;

7) decide whether there is progress to resolve the child and family's problems and whether the progress is satisfactory;

8) decide whether the projected month for achieving the permanency goal should be changed;

9) review and change the permanency goal (if appropriate);

10) review and finalize the service plan for the next six month period; and

11) provide the opportunity for parents and the children (if participating in the planning) to understand and discuss the plan and know what is expected of them.

d) Administrative Case Reviews

Administrative case reviews shall:

1) be convened by a staff member from the Department's Division of Administrative Case Review;

2) include the worker and/or supervisor from the Department and/or the substitute care provider agency which has case responsibility for both the children and the family;

3) be open to the participation of the children's parents and their representatives. However, if parents are known to be violent and potentially dangerous to other participants in the review, they will be excluded. If the Department has filed a petition seeking the termination of parental rights, these parents will not be invited to the review;

4) be open to the participation of children 7 years of age or older who are determined able to participate without excessive harm when

considering their age, maturity, circumstances, and understanding;

5) be open to the participation of the foster parents in the child's section of the review. Foster parents may be able to participate in other segments of the review if they have successfully completed training on the case review system and such participation is not prohibited by the confidentiality provisions of 89 Ill. Adm. Code 431, Confidentiality of Personal Information of Persons Served by the Department, and when such participation would promote achievement of the purpose of the review;

6) be open to the participation of the guardian ad litem and legal representative of the child for the child's section of the review. The guardian ad litem and legal representative may participate in other segments of the review in accordance with the confidentiality provisions of 89 Ill. Adm Code 431, Confidentiality of Personal Information of Persons Served by the Department;

7) be conducted in the office serving the parent's county of residence, if known and within the State of Illinois, unless the parent agrees to travel to another office; and

8) focus on whether children should be returned to their parents' homes or whether another permanent home should be sought.

e) Notice of Administrative Case Reviews
With the exception of 45 day initial reviews for which notices will be given in the most expeditious manner possible, written notice of the date, time, place and purpose of the administrative case review shall be given at least 14 days prior to the scheduled review to the following:

1) the parents. The notice shall also inform them of their rights to bring a representative with them to the review;

2) the child, if participating in the review. The child's participation shall depend on the child's maturity and ability to contribute and benefit from participation;

3) the child's foster parents or relative caretaker;

4) the purchase of service provider agency (if applicable); and

5) the child's legal representative.

f) Within seven days after the completion of the administrative case review, the Department will provide written reports on the results of the administrative case review. A copy of the current service plan and the written report shall be sent to the following:

1) the child, if invited to the administrative case review;

2) the parents; and

3) subject to the confidentiality provisions of 89 Ill. Adm. Code 431, Confidentiality of Personal Information of Persons Served by the Department, the guardian ad litem and legal representative for the child and any other person who attended the administrative case review.

g) Regular Case Reviews
Regular case reviews are conducted by the worker responsible for the case. The parents and/or the child (if participating in the review) are expected to be present before a case review is conducted. A service plan shall be completed during the case review.

(Source: Amended at 16 Ill. Reg. 16552, effective October 19, 1992)

Section 305.70 Roles and Responsibilities of the Administrative Case Reviewer

a) The administrative case reviewer has the responsibility and authority to manage the case review process, which includes:

1) excluding or limiting participation, as needed, to those with a right to share in the process, or excluding or limiting participation of any individual where necessary to promote the achievement of the purposes of the review;

2) convening and conducting a review in such a way as to encourage discussion and participation while respecting the rights of all participants;

3) maintaining the focus of the group on the service plan with good time management; and

4) advising clients and other participants of their rights and providing an explanation of the purposes of case planning and the review process.

b) The administrative case reviewer shall ensure that the review is congruent with Department rules and procedures and good child welfare practice and in compliance with 42 U.S.C. 675 and any consent decree affecting Department practice. This responsibility includes:

1) ensuring that the purposes of the administrative case review are carried out;

2) determining that the goal and the evaluation of progress are consistent with the facts of the case as presented at the administrative case review, that the outcomes, tasks and time frames are appropriate for the goal, and amending or changing the case plan accordingly; and

3) Convening administrative case reviews sooner than the regularly scheduled six month case reviews when the facts of the case indicate the need for a review.

(Source: Added at 16 Ill. Reg. 16552, effective October 19, 1992)

Section 305.80 Decision Review

a) When a service provider, including foster parents or relative caretakers, or the child's caseworker with supervisory approval, disagrees with any portion of the service plan, including any amendments made by the administrative case reviewer, the provider will be entitled to a review of the issue.

b) Requests for a review shall be directed, within 5 working days after the administrative case review, to the Administrator of the Administrative Hearings Unit.

c) A decision review conference shall be held within 10 working days after the receipt of the request. A final decision will be made by the person appointed by the Director of the Department or designee, within 10 working days after the conference.

d) Except when an issue affects compliance with a court order or the residual rights of parents, implementation will be stayed until the decision review conference is

held. The residual rights of parents as defined is Section 1-3 of the Juvenile Court Act of 1987 705 ILCS 405/1-3 include the rights to visitation, to consent to adoption and to determine the minor's religious affiliation.

e) If changes to the service plan are required by the decision review, copies of the changes will be sent to all those who are entitled to a copy of the service plan with a notice of the specific changes made, the reason for the changes and a statement of the right to appeal any such changes.

f) When children and/or parents disagree with any portion of the service plan, they may request a hearing in accordance with 89 Ill. Adm. Code 337, Service Appeal Process.

(Source: Amended at 19 Ill. Reg. 7171, effective June 1, 1995)

Section 305.90 Parent-Child Visitation

a) The Department recognizes that there is a strong correlation between regular parental visits and contacts with a child and the child's discharge from placement services. Therefore, when a child is in placement and the permanency goal is return home, parent-child visits, telephone calls at reasonable hours, and mail are encouraged unless they have been prohibited by court order. The responsible agency shall arrange for parent-child visits and shall advise parents that repeated failure to visit according to the visiting plan shall be considered a demonstration of a lack of parental concern for the child and may result in the Department seeking a termination of parental rights.

b) When the permanency goal is return home, a visiting plan shall:
   1) be established before placement or within 3 working days after placement out-of-home unless the placement was an emergency;
   2) be established within 10 working days after an emergency placement;
   3) specify that visits are to begin immediately;
   4) specify that parents shall be expected to visit weekly unless there is documentation to the contrary in the case/record;
   5) increase in length unless specific harm to the child is caused by the visits;
   6) specify visiting in the home of the child's parents, if consistent with the safety and well-being of the child. When visits in the home of the child's parents are not consistent with the child's safety and well-being, visits shall be in the most homelike setting possible. Office visits are acceptable if structure is necessary to evaluate or protect the child; and
   7) specify the responsibilities of the Department, the purchase of service providers, the parents, and the child in regard to visitation.

Section 305.100 Evaluating Whether Children in Placement Should Be Returned Home

a) When deciding whether children in placement should be returned home to their parent's care, the Department shall consider whether the parents show an interest in the children's well-being. The Department shall consider the following as demonstrations of a lack of interest in the children's well-being and as good reasons to continue in placement. When parents:
   1) continually miss visits with children; or
   2) continually upset children during visitation by verbal abuse, eliciting guilt, or by making unrealistic promises; or
   3) continually miss appointments with Department staff; or
   4) continually miss appointments with service providers; or
   5) fail to respond to the services offered; or
   6) fail to respond to instruction and assistance provided by a homemaker; or
   7) fail to remedy housing or housekeeping standards that are a threat to health or safety or to seek suggested economic resources when lack of resources is a major barrier; or
   8) otherwise fail to attain the minimum parenting standards as defined in Section 305.2 or as determined by the Juvenile Court.

b) The Department shall not be persuaded to return children home if parental concern for the child is shown only by:
   1) occasional sporadic visits and contacts;
   2) elaborate or expensive gifts on holidays or birthdays; or
   3) statements of concern for the children which are not supported by actions consistent with their safety and well-being or by preparations for their return home.

Section 305.110 Termination of Parental Rights

Some families are unable to achieve minimum parenting standards, despite comprehensive services and support from the Department. The Department shall seek the filing of a petition in court by the local State's Attorney for termination of parental rights, providing a child 14 years of age or older consents to adoption or a child, if under age 14 is able to accept another permanent family, when one of the grounds for termination of parental rights appears to exist, as specified in paragraph 1501(D) of the Adoption Act (Ill. Rev. Stat., 1991, ch. 40, par. 1501 et seq.). The final decision as to the actual filing and prosecution of a termination of parental rights case rests solely with the local State's Attorney.

(Source: Amended at 16 Ill. Reg. 16552, effective October 19, 1992)

Section 305.120 Planning for the Termination of Services

a) Planning for the termination of services is an integral part of all service planning. From its earliest contacts with children and families, the Department shall focus on when and how services to the children and families shall end. In addition, when the Department is legally responsible for a child, the Department shall also focus on when and how the child shall be discharged from the Department's custody or guardianship.

b) If the child will be returned home from substitute care, the Department shall provide follow-up services for at least 90 days. These services shall consist of regularly scheduled telephone contacts, home visits, and family adjustment counseling if needed.

c) If the child will not be returned home from substitute care or the child will not be released from the Department's guardianship, but the permanency goal has been achieved and the child's situation is stable, Department intervention shall be reduced to the minimum possible. In addition, children in substitute care will continue to be subject to case reviews in accordance with Department policy

(Source: Amended at 16 Ill. Reg. 16552, effective October 19, 1992)

Section 305.130 The Department's Role in the Juvenile Court

a) The Department as an Advocate
   1) The Department shall promote a partnership between the Juvenile Court and the Department. Since the Department is primarily responsible for providing public child welfare services to children and families, it shall make the Juvenile Court aware of the mission of public child welfare services. Furthermore, the Department shall advise the Juvenile Court of the Department's planning for the children and families it serves and of their progress toward those goals.
   2) When in the Juvenile Court, the Department shall act as an advocate for children for whom the Department is legally responsible and their families and shall advise the Juvenile Court to keep families together in all instances when it is consistent with the children's safety and well-being. In those instances when children must be removed from their parent's care, the Department shall advise the Juvenile Court to reunite children for whom the Department is legally responsible with their families as soon as returning home is consistent with their safety and well-being. Finally, when it is clear to the Department that the child's parents are unwilling or unable to attain the minimum parenting standards, the Department shall urge the Juvenile Court that a new, permanent, home for these children is needed as soon as they are ready to accept another home because of the urgency of the situation from the child's perspective.

b) Juvenile Court Reviews
When the Department has court ordered legal responsibility for a child, the Department shall request Juvenile Court hearings when:
   1) returning a physically abused or neglected child to the parent's home;
   2) required by the Juvenile Court Act;
   3) required by the Adoption Assistance and Child Welfare Act of 1980; and
   4) for an Indian child, required by the Indian Child Welfare Act as explained in Part 307, Indian Child Welfare Services.

(Source: Amended at 16 Ill. Reg. 16552, effective October 19, 1992)

Section 305.140 Compliance With the Client Service Planning Requirements

a) The Department shall develop a monitoring and reporting mechanism to evaluate the extent of compliance with its client service planning requirements. At the minimum, the Department shall monitor:
   1) the permanency goal for each child;
   2) the planned date of achievement of the permanency goal;
   3) the extent of progress toward the permanency goal; and
   4) the actual date the permanency goal was achieved.

b) These reports shall also be used to measure the effectiveness of child welfare services in the different subdivisions of Illinois and to plan statewide and local service initiatives.

Lack of notice of issue of continuation of parental rights violates mother's due process rights. — Since the issue of termination of parental rights was not raised in the pleadings, nor properly tried and was mentioned for the first time after closing arguments, when counsel for the father made an oral motion that the parental rights of the mother be terminated, the procedural due process rights of the mother were violated as she was never given notice that the continuation of her parental rights was at issue, she did not have a full opportunity to prepare her case and, consequently, she was not given a full and fair hearing. Thatcher v. Arnall, 94 N.M. 306, 610 P.2d 193 (1980) (decided prior to 1993 revision).

Sufficiency of notice. — Although the summons served upon a father in a termination of parental rights action did not meet the requirements in the statute, there was no showing that the father was prejudiced by the various errors in the notice. Ronald A. v. State ex rel. Human Servs. Dep't, 110 N.M. 454, 794 P.2d 371 (Ct. App. 1990) (decided prior to 1993 revision).

Prior proceeding concerned with the fact of neglect is not a jurisdictional bar to a later, separate termination proceeding. State ex rel. Human Servs. Dep't v. Levario, 98 N.M. 442, 649 P.2d 510 (Ct. App. 1982) (decided prior to 1993 revision).

Since neglect proceedings do not result in final judgment on merits, the department is not barred under the "judgments" rule from later bringing termination proceedings. State ex rel. Human Servs. Dep't v. Levario, 98 N.M. 442, 649 P.2d 510 (Ct. App. 1982) (decided prior to 1993 revision).

Verification of pleadings. — Although the human services department failed to obtain the court's permission prior to filing its amended petitions to terminate parental rights, the court granted permission to file the final amended petition and verification prior to the commencement of trial. Allowance of this amendment rectified any insufficiency in the earlier pleadings not being verified. The court, therefore, was not deprived of subject matter jurisdiction. Laurie R. v. New Mexico Human Servs. Dep't, 107 N.M. 529, 760 P.2d 1295 (Ct. App. 1988) (decided prior to 1993 revision).

Authority of court after mother's consent declared invalid. — Since the mother's consent to adoption has been declared invalid in keeping with the best interests of the child, the trial court retains the power to determine custody in the absence of a legally valid consent, and it is within the authority of the trial court to continue the child in the custody of the couple seeking to adopt her. Although they lacked standing to petition the court for adoption, they were not left without remedy, since they did have standing to seek relief. In re Samantha D., 106 N.M. 184, 740 P.2d 1168 (Ct. App. 1987) (decided prior to 1993 revision).

Right to competent counsel. — The right of a parent to counsel includes the right to competent counsel. In a trial the judge has an obligation to facilitate the resolution of the issue of whether that parent has received effective assistance of counsel by holding an evidentiary hearing if he or she expresses concerns that merit such a hearing. In re James W.H., 115 N.M. 256, 849 P.2d 1079 (Ct. App. 1993) (decided prior to 1993 revision).

The Rules of Civil Procedure apply in all proceedings to terminate parental rights. State ex rel. Children, Youth & Families Dep't In re T.C., 118 N.M. 352, 881 P.2d 712 (Ct. App. 1994).

Summary judgment may be used to terminate parental rights where there are no issues of fact underlying the basis or termination. State ex rel. Children, Youth & Families Dep't In re T.C., 118 N.M. 352, 881 P.2d 712 (Ct. App. 1994).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Admissibility at criminal prosecution of expert testimony on battering parent syndrome, 43 A.L.R.4th 1203.

32A-4-30. Attorneys' fees.

The court may order the department to pay attorneys' fees for the child's guardian ad litem if:

A. the child is in the custody of the department;

B. the child's guardian ad litem:

(1) requests in writing that the department move for the termination of parental rights;

(2) gives the department written notice that if the department does not move for termination of parental rights, the guardian ad litem intends to move for the termination of parental rights and seek an award of attorneys' fees;

(3) successfully moves for the termination of parental rights; and

(4) applies to the court for an award of attorneys' fees; and

C. the department refuses to litigate the motion for the termination of parental rights or fails to act in a timely manner.

History: 1978 Comp., § 32A-4-30, enacted by Laws 1993, ch. 77, § 124.

32A-4-31. Permanent guardianship of a child.

A. In proceedings for permanent guardianship, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child. Permanent guardianship vests in the guardian all rights and responsibilities of a parent, other than

those rights and responsibilities of the natural or adoptive parent, if any, set forth in the decree of permanent guardianship.

B. Any adult, including a relative or foster parent, may be considered as a permanent guardian, provided that the department grants consent to the guardianship if the child is in the department's custody. An agency or institution may not be a permanent guardian. The court shall appoint a person nominated by the child, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the child.

C. The court may establish a permanent guardianship between a child and the guardian when the prospective guardianship is in the child's best interest and when:

(1) the child has been adjudicated as an abused or neglected child;

(2) the department has made reasonable efforts to reunite the parent and child and further efforts by the department would be unproductive;

(3) reunification of the parent and child is not in the child's best interests because the parent continues to be unwilling or unable to properly care for the child; and

(4) the likelihood of the child being adopted is remote or it is established that termination of parental rights is not in the child's best interest.

History: 1978 Comp., § 32A-4-31, enacted by Laws 1993, ch. 77, § 125.

Compiler's notes. — This section is substantively similar to former 32-1-58 NMSA 1978.

32A-4-32. Permanent guardianship; procedure.

A. A motion for permanent guardianship may be filed by any party.

B. Any application for permanent guardianship shall be signed and verified by the petitioner, filed with the court and set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the facts and circumstances supporting the ground for permanent guardianship;

(3) the name and address of the prospective guardian and a statement that the person agrees to accept the duties and responsibilities of guardianship;

(4) the basis for the court's jurisdiction;

(5) the relationship of the child to the petitioner and the prospective guardian; and

(6) whether the child is subject to the federal Indian Child Welfare Act of 1978 and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the petitioner to notify the parents' tribe and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the tribes shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. If the petition is not filed by the prospective guardian, the petition shall be verified by the prospective guardian.

D. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on any parent who has not previously been made a party to the proceeding, the parents of the child, foster parents with whom the child is residing, foster parents with whom the child has resided for six months, the child's custodian, the department, any person appointed to represent any party, including the child's guardian ad litem, and any other person the court orders provided with notice. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of process in a civil action in this state. The notice shall state specifically that the person served must file a written response to the application within twenty days if the person intends to contest the guardianship.

E. When the child is an Indian child, subject to the federal Indian Child Welfare Act of 1978, notice shall also be served upon the Indian tribes of the child's parents and upon any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6).

F. The grounds for permanent guardianship shall be proved by clear and convincing evidence. The grounds for permanent guardianship must be proved beyond a reasonable doubt and meet the requirements of 25 U.S.C. Section 1912(f) in any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978.

G. A judgment of the court vesting permanent guardianship with an individual divests the biological or adoptive parent of legal custody or guardianship of the child, but is not a termination of the parent's rights. A child's inheritance rights from and through the child's biological or adoptive parents are not affected by this proceeding.

H. Upon a finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings or other relatives of the child and any other provision necessary to rehabilitate the child or provide for the child's continuing safety and well being.

I. The court shall retain jurisdiction to enforce its judgment of permanent guardianship.

J. Any party to the abuse or neglect proceeding, the child or a parent of the child may make a motion for revocation of the order granting guardianship when there is a significant change of circumstances including:

(1) the child's parent is able and willing to properly care for the child; or

(2) the child's guardian is unable to properly care for the child.

K. The court shall appoint a guardian ad litem for the child in all proceedings for the revocation of permanent guardianship.

L. The court may revoke the order granting guardianship when a change of circumstances has been proven by clear and convincing evidence and it is in the child's best interests to revoke the order granting guardianship.

History: 1978 Comp., § 32A-4-32, enacted by Laws 1993, ch. 77, § 126.

Compiler's notes. — This section is substantively similar to former 32-1-59 NMSA 1978.

Indian Child Welfare Act. — The federal Indian Child Welfare Act of 1978 is codified at 25 U.S.C. § 1901 et seq.

32A-4-33. Confidentiality; records; penalty.

A. All records concerning a party to a neglect or abuse proceeding, including social records, diagnostic evaluation, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse, or medical reports, that are in the possession of the court or the department as the result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of or incident to a neglect or abuse proceeding shall be confidential and closed to the public.

B. The records described in Subsection A of this section shall be open to inspection only by:

(1) court personnel;

(2) court appointed special advocates;

(3) the child's guardian ad litem;

(4) department personnel;

(5) any local substitute care review board or any agency contracted to implement local substitute care review boards;

(6) law enforcement officials, except when use immunity is granted pursuant to Section 32-4-11 [32A-4-11] NMSA 1978;

(7) district attorneys, except when use immunity is granted pursuant to Section 32-4-11 [32A-4-11] NMSA 1978;

(8) any state government social services agency in any state;

(9) those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;

(10) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent and the records concern the social, medical, psychological or educational needs of the child;

B. Subsidy payments may include payments to vendors for medical and surgical expenses and payments to the adoptive parents or permanent guardians for maintenance and other costs incidental to the adoption, care, training and education of the child. The payments in any category of assistance shall not exceed the cost of providing the assistance in foster care and shall not be made after the child reaches eighteen years of age.

C. A written agreement between the adoptive family or permanent guardians and the social services division shall precede the decree of adoption or permanent guardianship. The agreement shall incorporate the terms and conditions of the subsidy plan based on the individual needs of the child within the permanent family. In cases of subsidies that continue for more than one year, there shall be an annual redetermination of the need for a subsidy. The social services division shall develop an appeal procedure whereby a permanent family may contest a division determination to deny, reduce or terminate a subsidy.

History: 1978 Comp., § 32A-5-45, enacted by Laws 1993, ch. 77, § 172.

Compiler's notes. — This section is substantively similar to former 40-7-65 NMSA 1978.

I recognize that unauthorized release of information is a violation of the Adoption Act [this article] and subjects me to penalties pursuant to the provisions of Section 32A-5-42 NMSA 1978 and may subject me to being found in contempt of court with penalties, dismissal by the court and civil liability."

History: 1978 Comp., § 32A-5-41, enacted by Laws 1993, ch. 77, § 168; 1995, ch. 206, § 44.

The 1995 amendment, effective July 1, 1995, substituted "32A-5-40" for "32-5-40" in Subsections D, E, F, and G, substituted "32A-5-42" for "32-5-42" in Subsection J, and made minor stylistic changes throughout the section.

32A-5-42. Penalties.

A. Any person other than an agency who, in the regular course of business, selects an adoptive family for a prospective adoptee or arranges for the selection is guilty of a misdemeanor and subject to imprisonment in the county jail for a definite term of less than one year or to the payment of a fine of not more than one thousand dollars ($1,000), or to both, the penalties to be in the discretion of the judge, for each occurrence; provided, that the exchange of information between persons regarding the existence of a potential adoptee or potential adoptive family shall not be a violation of this section.

B. Any person who violates any provision of the Adoption Act [this article] is guilty of a misdemeanor and subject to imprisonment in the county jail for a definite term of less than one year or to the payment of a fine of not more than one thousand dollars ($1,000), or both, the penalties to be in the discretion of the judge, for each occurrence.

History: 1978 Comp., § 32A-5-42, enacted by Laws 1993, ch. 77, § 169.

Compiler's notes. — This section is substantively similar to former 40-7-61 NMSA 1978.

32A-5-43. Purpose of subsidized adoptions.

It is the purpose of Sections 32-5-43 [32A-5-43] through 32-5-45 [32A-5-45] NMSA 1978 to encourage and promote the placement of children who are difficult to place in permanent homes through a subsidized program within the social services division of the department.

History: 1978 Comp., § 32A-5-43, enacted by Laws 1993, ch. 77, § 170.

Compiler's notes. — This section is substantively similar to former 40-7-63 NMSA 1978.

32A-5-44. Eligibility for subsidized adoptions.

A. The social services division of the department may make payments to adoptive parents or to medical vendors on behalf of a child placed for adoption by the division or by a child placement agency licensed by the division when the division determines that:

(1) the child is difficult to place; and

(2) the adoptive family is capable of providing the permanent family relationship needed by the child in all respects, except that the needs of the child are beyond the economic resources and ability of the family.

B. As used in Sections 32-5-43 [32A-5-43] through 32-5-45 [32A-5-45] NMSA 1978, a "difficult to place child" means a child who is physically or mentally handicapped or emotionally disturbed or who is in special circumstances by virtue of age, sibling relationship or racial background.

History: 1978 Comp., § 32A-5-44, enacted by Laws 1993, ch. 77, § 171.

Compiler's notes. — This section is substantively similar to former 40-7-64 NMSA 1978.

32A-5-45. Administration of subsidized adoptions.

A. The social services division of the department shall promulgate all necessary regulations for the administration of the program of subsidized adoptions or placement with permanent guardians.

APPENDIX C

COMPARISON CHART OF STATE PROGRAMS

OF SUBSIDIZED LEGAL GUARDIANSHIP

STATE SUBSIDIZED LEGAL GUARDIANSHIP PROGRAMS *

	AL	CA	HI	IL **	MA	NE	NM	SD	WA
ADMINISTRATION	STATE	COUNTY	STATE	STATE	STATE	STATE	STATE	STATE	STATE
Eligibility									
Required to be in Custody of State?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Minimum Time in placement	6 months	1 year	18 mos.	1 year	1 year	6 mos.	none	6 mos.	6 mos.
Minimum Age of Child	None but prefer over 10	None	None	14	12, unless part of sibling group or in best interest of child	12, unless part of sibling group or a relative	None	6	None
Parental Consent Required?	No	No	No	No	No	No	No	No	No
Child's Consent Required?	Yes, if over 10	No	No	Yes, if over 14	Yes, if over 12	Yes, if over 14	Yes, if over 14	No	No
Relatives Eligible for Subsidy?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Certification Required?	No	Yes, unless relative	No	Yes, unless relative	Yes	Yes, unless relative	No	No	Yes
Other criteria	Child "hard to place"; reunif. and adoption not likely or not in best interest of child	Reunif. and adoption not possible	Parental rights terminated or parents consent; reunif. and adoption possible; no special needs which would req. Dept. services	Reunif. and adoption not possible	Reunif. and adoption not possible or not in best interest of child	Child "hard to place"; reunif. and adoption not possible; no Dept. service needed	Reasonable efforts to reunify have failed; child unlikely to be adopted or not in best interest of child	Best interests of child to be placed in guardianship	Reunif. not possible; adoption not in best interest of child

	AL	CA	HI	IL **	MA	NE	NM	SD	WA
Policy & Procedures								STATE	STATE
Authority for Program	Statute	Regulations	Statute	Regulation	Regulations	Statute	Statute	Policy	Statute
Court Jurisdiction	State	Juvenile	Juvenile	Juvenile	Probate	Probate	Juvenile	State	Juvenile
Follow-up Services	None	Yes, for non-relatives	None	Provided for 3 months after order ; upon request thereafter	Upon Request	None	None	None	None
Follow-up Reviews	Annual report from guardian	Six-month agency visits and re-cert	Annual re-cert	Annual re-cert	Annual re-cert	Annual re-cert	Annual re-cert	Annual re-cert	Annual re-cert
Visitation Rights of Birth Parents	Encouraged	Included in guard. order if in best interest of child	None required	Yes, if court ordered	Discretion of guardian	None required	May be included in guard. order	None required	Included in guard. order if in best interest of child
Subsidy									
Determination of amount	Not more than F.C. rate; needs of child; resources of guardian; unearned income child	Non-relatives F.C. rate if receive supv.; relatives AFDC - rates.	F.C. rate, less earned & unearned income of child	$1.00 less than F.C. rate less income of child	F.C. rate less other government benefits	Not more than F.C. rate; needs of child; resources of guardian; unearned income of child	Not more than F.C. rate; needs of child	F.c. rate or reduced rate based on income of guardianship family	F.C. rate less other unearned income of child
Written Agreement	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Requalification	Annual	6 mos.	Annual	Annual	Annual	Amount calculated annually	Amount calculated annually	Amount calculated annually	Annual
Disqualification	Guardianship terminates; failure to submit annual report	Child no longer in care of guardian	Age 18 or complete high school; Age 22 if in college; guardianship terminates	Age 18 of guardianship terminates	Child no longer in home of guardian; guard term; failure to renew subs agree	Family no longer needs assistance; Age 19; guardianship terminates	Guardianship or care of child terminates	Guardianship or care of child terminates	Guardianship or care of child terminates
Statistics									
Crn in program	160	300	100	20	1,500	291	0	40	1,600
Total Crn in Care (FC, Adpt Guards.)	1700	75,000	2,100	50,000	7,500	5,500	3,500	800	10,000
% of Total Crn in Kinship Care	33%	50%	50%	55%	50%	33%	33%	40%	50%

* Colorado was reported to have a Subsidized Guardianship program. However, their program is Foster Care with Guardianship, which is not actual guardianship since the state retains legal custody and the case remains open as a foster care case.

* Illinois has prepared a Title IV-E Waiver Project of Subsidized Guardianship with different characteristics than those shown here for the current program of Successor Guardianship.

APPENDIX D

ASSISTED GUARDIANSHIP PROGRAM OF THE STATE OF DELAWARE PURSUANT TO TITLE IV-E WAIVER PROPOSAL[28]

[28] Information was obtained from telephone interviews with a state administrator; the *Child Welfare Waiver Demonstration Prooposal* submitted by the Delaware Division of Family Services; Division policies and procedures; and Delaware statute Title 31, Section 304, as amended by the Delaware state legislature on April 23, 1996.

In August, 1996, the State of Delaware received approval of a Child Welfare Title IV-E Waiver Demonstration Project from the U.S. Department of Health and Human Services. With this approval, Delaware's Division of Family Services will provide continued financial support to foster parents who assume guardianship of the children in their care. The Waiver Demonstration Program will allow the state to use Title IV-E funds for up to ten such cases each year for the next three years, although another ten cases will be subsidized at the same level using exclusively state funds. The state will monitor the costs of providing assistance in all cases, and will specifically examine the administrative and program cost savings to the state realized by closing the cases as foster care placements.

In drafting their Assisted Guardianship program, Delaware administrators reviewed the subsidized guardianship programs of other states, such as Massachusetts and Nebraska, and adopted many similar provisions. The state legislature also adopted a revision to a state statute which authorizes the Division of Family Services to continue financial support at the foster care level for caregivers who assume legal guardianship of the foster children in their care.

Like other states studied, Delaware recognizes that family preservation, reunification and above all, the safety of the children, should be the main goals of their program. However, they also recognize that permanence is very important for the children in care, and that sometimes, reunification, adoption and termination of parental rights simply do not serve the best permanency needs of those children. Therefore, in these cases, the state's next priority for permanency is legal guardianship.

To be eligible for the Delaware's Assisted Guardianship program, it is necessary that: the child cannot return home; it is unreasonable to pursue adoption; the child has a stable and positive relationship with the prospective guardian, having lived successfully for a minimum of one year in their home; the prospective guardian is an approved relative or non-relative foster care provider; the child is at least age 12, unless he or she has special needs or is part of a sibling group to be placed together; and all parties agree that the child and prospective guardian can maintain a stable relationship without state supervision.

The state caseworker and supervisor make the original determination of the eligibility and appropriateness of guardianship, and present their recommendation to a TPR/Adoption committee for review. If the TPR/Adoption committee agrees, the caseworker discusses the policies and procedures with the prospective guardian, and then with the child. Written consent of the prospective guardian and the child, if over the age of 12, are necessary. Consent of the birth parents is sought, but the guardianship petition can proceed without parental consent. The guardianship petition is prepared by the caseworker, and sent to the Attorney General's office for filing in the state's Family Court.

If financial assistance is needed by the prospective guardian, an Application for Assisted Guardianship is made and a written Agreement for Assisted Guardianship is entered into by the state

and the guardian. After the guardianship is awarded, the Adoption Manager assumes responsibility for the payment of the subsidy. An Assisted Guardianship Reapplication is sent by the Adoption Manager to the guardian six months after the award, and annually thereafter. If the family still qualifies for support, the guardian must sign a new Agreement of Assisted Guardianship to continue to receive the subsidy.

The cases are closed as foster care placements, and all Division supervision and court reviews cease. However, if a Termination of Parental Rights has been obtained prior to the assumption of guardianship, the case will remain open and the caseworker will continue to submit six-month TPR court reports in accordance with Delaware law.

Delaware provides financial support to qualifying guardians at the foster care rate. The state seeks to have the guardian secure private medical insurance for the child, if possible, of will attempt to provide Medicaid benefits. As stated, under the Title IV-E Waiver Proposal, the state is authorized to obtain IV-E reimbursement for up to ten families per year for the first three years of the program. Other Assisted Guardianship placements would be fully subsidized by the state. Deductions in the amount of the subsidy are made if the child receives other government benefits, such as Social Security or Veteran's benefits, or child support from his or her parents.

The state has seen a rise in the number of children entering the foster care system in recent years. There were 638 children in care in the state in 1992; by 1996, this number had risen to an estimated 835 children. Parental substance abuse is a factor in more than 50% of the children coming into care, and the Division of Family Services is contracting with substance abuse treatment agencies to provide counseling services to some 180 families per year. As stated, it is the intention of the state to provide a subsidy to 20 guardianship placements each year for the next three years, half of which will be eligible for Title IV-E reimbursement.