

# **SUBSIDIZED GUARDIANSHIP/KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM**

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### **4.1 What does the new Kinship Guardianship Assistance Program do?**

Under the new Kinship Guardianship Assistance Program, states have the option to use federal Title IV-E funds for kinship guardianship payments for children who have a strong attachment to and are cared for by prospective relative guardians who are committed to caring for these children permanently when they leave foster care. To be eligible for the kinship guardianship assistance payment, children must be eligible for federal foster care maintenance payments while living in the home of a relative for at least six consecutive months in foster care. There must also have been a determination by the state agency that return home and adoption are not appropriate permanency options for the child. Children 14 and older must be consulted about the kinship guardianship arrangement. Siblings may be placed in the same home and receive support even if they do not meet other eligibility requirements. The kinship guardianship assistance payment rate must not exceed the foster care payment that would have been paid had the child remained in a foster family home. Children eligible for these payments are also automatically eligible for Medicaid, as are children in foster care and those who receive adoption assistance payments.

The act also clarifies that children who leave foster care at age 16 or older for kinship guardianship are eligible under the John H. Chafee Foster Care Independence Program independent living services for educational and training vouchers (ETVs). (§471(a)(28), §473(b)(3) & (d), §477(a)(7) & (i)(2); P.L. 110-351 §101)

#### **4.2 Will children in all states benefit from the program?**

All states will have the option to offer guardianship assistance payments to relatives with federal support. However, they are not required to do so. States must opt to participate in the federally supported Kinship Guardianship Assistance Program by amending their Title IV-E state plan indicating their intention to do so and then providing the state and/or local dollars necessary to draw down federal dollars for assistance. (See question 4.11.)

#### **4.3 Will American Indian children benefit from the program?**

Tribes or consortia of tribes who run their own foster care and adoption assistance programs and receive federal Title IV-E funds will have the option to offer kinship guardianship assistance in the same manner as states will. Tribes will be able to apply to run their own programs as of October 1, 2009. Tribes that have agreements with states to administer or co-administer Title IV-E programs will also have the ability to offer kinship guardianship if the state with which they have an agreement takes the kinship guardianship assistance option. The option will not be available to children whose care and placement are the responsibility of a tribe that does not administer a Title IV-E program directly or through a state-tribal agreement. (§479B; P.L. 110-351 §301(a); ACYF-CB-PI-08-007 p. 2)

#### **4.4 How many states already have similar programs?**

Currently, there are 37 states and the District of Columbia that already offer subsidized guardianship assistance in some form. The programs vary significantly in the children and grandparents and other relatives they serve, the nature of the assistance, the numbers of children they serve, and how they are funded. All of the programs currently operated by states share a goal with the new federal program: to promote lasting family relationships for children in an attempt to improve outcomes for them and to prevent them from lingering in foster care without permanent families.

#### **4.5 What flexibility do states have to limit or expand the group of children and caregivers eligible for kinship guardianship assistance?**

The Children's Bureau Program Instruction clarifies that once a state opts to provide kinship guardianship assistance payments, it is required to provide such assistance to all eligible children as defined under the act. For example, the act would not allow a state to say that children who had lived in foster care with prospective relative guardians for only three consecutive months, rather than six consecutive months, would be eligible for federal guardianship assistance.

However, a state could require that a child live with a prospective relative guardian for longer than six months. A state could not decide to give *federal* guardianship assistance payments to children who were in foster care but not eligible for federal foster care payments. While a state may provide state funded guardianship assistance payments to whichever children it chooses, to be eligible for federal assistance, the children and their caregivers must meet the requirements in the act. (§473(d)(1)(A); P.L. 110-351 §101(b); ACYF-CB-PI-08-007 p.2)

#### **4.6 How much will it cost my state to provide this assistance?**

The state will be required to fund the kinship guardianship assistance payment and the Medicaid these children are eligible for, at the same rate that is currently required for the child's foster care maintenance payment and Medicaid. However, there are possible savings associated with electing to provide kinship guardianship assistance as compared with continuing foster care. First, if the state has an existing kinship guardianship assistance program, the state may be able to obtain federal funds to cover some of the costs of the program that it is currently funding with state dollars. Second, if the state moves more children out of foster care and into permanent families, the state can avoid many of the administrative costs associated with keeping a child in foster care.

In thinking about cost savings, it is important to remember that the children who are eligible for this assistance under the new option are those for whom the state is already paying foster care maintenance payments. These are also children who would be likely to remain in foster care for long periods of time if they had not been placed permanently with relatives because the new program requires that reunification and adoption must have been determined inappropriate for these children. Thus, if the state does not provide kinship guardianship assistance for these children, the state is likely to continue to pay for foster care for them. In addition, if the state is able to move the child to a permanent home, the state may save the costs of providing ongoing casework and court oversight for the child. These savings can, in turn, be reinvested in other child welfare needs. The Congressional Budget Office estimates that the Kinship Guardianship Assistance Program will save the federal government \$791 million over 10 years. Since the federal dollars saved require a state or local match, there should be a corresponding savings of state or local dollars as well. Administrative savings are expected whether or not the child is eligible for federal assistance under Title IV-E. Even if the state pays for the kinship guardianship assistance payment with state funds, the administrative costs of providing foster care will be avoided if permanency is achieved for the child.

The latest results from Illinois' child welfare waiver demonstration program show that providing guardianship assistance is likely to mean that permanency is achieved more quickly for children.

The waiver evaluation shows that children who received subsidized guardianship assistance remained in foster care an average of 209 fewer days than children assigned to the comparison group who did not get the assistance. In Milwaukee, Wisconsin, children who received assistance remained in foster care 76 fewer days. The Milwaukee demonstration will not expire until September 30, 2010, so it is likely that the number of saved foster care days will increase. Since it cost Illinois approximately \$22 more per day in administrative expenses to retain a child in foster care compared to adoption and guardianship, the waiver yielded the state an average administrative savings of \$4,590 per child, dollars states could invest in other improvements for children in child welfare. As the demonstration in Wisconsin unfolds, similar administrative savings are expected.

Finally, for states that already have guardianship assistance programs funded through other sources, states should consider the new Title IV-E option for kinship guardianship assistance payments as a steady, dedicated, funding source upon which to rely for eligible children. State policy makers should consider the pros and cons of different funding sources for supporting kinship guardianship assistance payments. (§474(a)(5); P.L. 110-351 §101(c)(3))

#### **4.7 Will children who receive kinship guardianship assistance payments receive other protections afforded children under Title IV-E of the Social Security Act?**

Yes. All the Title IV-E state plan requirements that are not specifically limited to the Title IV-E Foster Care or Adoption Assistance Programs also apply to the Kinship Guardianship Assistance Program. These include but are not limited to the opportunity for fair hearings, confidentiality of information, program audits, and protections related to interstate placements, school attendance and sibling placement. (§471(a)(12), §475(1)(F), ACYF-CB-PI-08-007 p. 4)

#### **4.8 How does a grandparent or other relative obtain legal guardianship of the child?**

A relative must obtain guardianship of the child through the court system. Depending on which state the child resides in, the relative may obtain guardianship (which in some states is referred to as permanent custody with a relative) through the family court, juvenile court, probate court, tribal court or other trial court. Some states allow only one court, usually the probate court, to have jurisdiction over guardianship. In some states, a probate court may have jurisdiction of a child for guardianship and a family court may have jurisdiction of the child abuse or neglect proceeding. Usually, the prospective guardian must file a petition in the appropriate court identifying the child, the child's parents and siblings, the child's financial circumstances, and the reasons why a guardianship is needed. A notice of the court hearing is usually sent to the child's parents and may be sent to the child and/or child welfare agency as well. At the court hearing,

the judge decides whether the guardianship is appropriate. According to the Children's Bureau Program Instruction cited below, the kinship guardianship assistance agreement must be in place prior to the establishment of the legal guardianship in order for the guardian to receive kinship guardianship assistance payments on behalf of the child. (ACYF-CB-PI-08-007 p.3)

#### **4.9 What continued oversight or involvement of the child welfare agency will there be after the guardianship is finalized while the subsidy is provided?**

The extent of the continued oversight or involvement of the child welfare agency after the guardianship has been finalized will vary with state law and policy. In order to continue to receive assistance, some states may require proof that a child is still in the guardian's care every year, others may require an annual meeting with the guardian and the child at the agency, and still others may require nothing at all. However, under the new act, agencies must ensure that all children receiving federal assistance (kinship guardianship, adoption, or foster care) are enrolled and attending school. It is unclear exactly what will be required for an agency to demonstrate that they are meeting this requirement, but presumably this will require some agency oversight post-guardianship to ensure that the child is in school. ((§471 (a)(30); P.L. 110-351 §204(b))

## **Effective Date**

#### **4.10 When will the Kinship Guardianship Assistance Program take effect and when will funds be available?**

The ability to amend a state plan to include the Kinship Guardianship Assistance Program option was effective as of the date of enactment of the new law, October 7, 2008. However, the Children's Bureau Program Instruction cited below states that the state agency may implement and claim allowable guardianship assistance program costs beginning on the first day of the quarter in which an approvable Title IV-E plan amendment is submitted to the Administration of Children and Families to implement the guardianship assistance program. That means that the earliest a state could claim reimbursement would be January 1, 2009. Others have interpreted the act to allow states to submit claims for reimbursement on the first day of the quarter but to be reimbursed for payments to eligible children as of October 7, provided a state could have determined eligibility for children during the period October 7, 2008 to January 1, 2009. (P.L. 110-351 §601; ACYF-CB-PI-08-007 p. 6)

#### **4.11 What must a state do before it can take advantage of the Kinship Guardianship Assistance Program option?**

The Children's Bureau Program Instruction cited below states that in order to take advantage of the new assistance, a state must submit a revised Title IV-E plan pre-print amendment reflecting the Title IV-E statutory requirements for the Kinship Guardianship Assistance Program and including state policy references and statutory citations for each federal requirement. States must submit the Title IV-E plan pre-print to the appropriate Administration for Children and Families Regional Program Manager electronically or on compact disk. States without electronic signature capability may submit the appropriate pages with original signatures. States must submit copies of referenced materials to document compliance for any cited statute, regulation, policy, or procedure.

The new act does not require that states pass legislation to take advantage of the Kinship Guardianship Assistance Program, but some states may need to enact new legislation or amend existing laws. States that already have subsidized guardianship legislation on the books will have to review that legislation and amend it accordingly if it prohibits assistance to children eligible under the federal law. However, states will not have to amend their laws if they currently provide subsidized guardianships to a broader group of children. They will just have to limit their Title IV-E claims to those children eligible under the federal requirements and continue to use only state funds for the others.

Some states currently operate subsidized guardianship programs according to policy directives rather than statutes. In such states, federal funds for this purpose can be disbursed once their Title IV-E state plan is amended if agency policies are in place and no state legislation is necessary. (P.L. 110-351 §601(b); ACYF-CB-PI-08-007 p. 7)

#### **4.12 Does the guardianship assistance agreement have to be entered into after the effective date in order for a child to be eligible?**

The Children's Bureau Program Instruction cited below states that a state with an approved Title IV-E plan amendment may claim Title IV-E for only those children for whom the agency enters into a new kinship guardianship agreement and who exit foster care to a new guardianship arrangement on or after the first day of the quarter in which the approved Title IV-E plan amendment was submitted. This is a narrower interpretation than the new law on its face seems to require. The new law does not state that the guardianship agreement must be entered into after the effective date of the act. Others have interpreted the act to mean that a child already placed with a relative guardian from foster care could become eligible for federal assistance for guardianship payments made after the effective date of the act, but *only if* the agreement met *all*



of the requirements of the act and the child and caregiver were otherwise eligible for the federal assistance, not an easy thing to do after the fact. The child would have to have been Title IV-E eligible while in foster care with the prospective relative guardian for six consecutive months. Reunification and adoption would have to have been determined inappropriate before the kinship guardianship assistance agreement was entered into. It would also mean that the relative guardian has a written guardianship agreement with the state, which includes the components specified in federal law, and the state reimbursed the guardian for the non-recurring costs of establishing guardianship (up to \$2,000). (§473(d); P.L. 110-351 §101(a) & (b); ACYF-CB-PI-08-007 p. 7)

## **Child's Eligibility**

### **4.13 Which children are eligible to receive federal support for kinship guardianship assistance?**

Children in relative foster homes who have resided with their prospective relative guardian for at least six consecutive months while eligible for Title IV-E maintenance payments are eligible for kinship guardianship assistance. These children must also demonstrate a strong attachment to the prospective relative guardian. (See question 4.17). If a child is age 14 or older, that child must be consulted about the guardianship arrangement before it is finalized. Siblings of children eligible for kinship guardianship assistance are also eligible for kinship guardianship assistance if placed in the same guardianship arrangement even when they do not meet other eligibility requirements. (§473(d)(3); P.L. 110-351 §101 (b))

### **4.14 What does “eligible for Title IV-E foster care maintenance payments in the prospective relative guardian’s home” mean?**

In order to be eligible to receive kinship guardianship assistance, a child must be “*eligible for* Title IV-E foster care maintenance payments in the prospective relative guardian’s home.” This means that a child must meet all eligibility requirements for Title IV-E foster care, including the requirement that the child was removed from an AFDC-eligible home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child and placed in a licensed or approved home; however, the child does not have to actually be *receiving* those payments while in the relative guardian’s home. In this case, the distinction between being “eligible for” and “receiving” Title IV-E assistance may be a distinction with no real meaning. The act requires a child to be in foster

care for at least six consecutive months with the prospective relative guardian. It is likely therefore that foster care payments will be paid and, since the child is eligible for Title IV-E foster care, it is likely that the child will receive federally reimbursed payments. (§473(d)(3)(A)(i); P.L. 110-351 §101(b); ACYF-CB-PI-08-007 p. 2; ACYF-CB-PA-01-02)

**4.15 What are the roles of the agency and/or the court in determining that “being returned home or adopted are not appropriate permanency options for the child”?**

The act requires that in the child’s case plan there be a description of the steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted. Pre-existing law also requires that there be an external review of the child’s care by a court or administrative review board sometime during that six month period. During this review any discussion of permanency planning for the child should include the appropriateness of reunification and adoption. The child’s case plan developed by the agency, hopefully in consultation with the child’s parent or parents and, in guardianship cases, the child’s relative, must also describe the reasons why placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child’s best interest, the efforts made to discuss adoption with the child’s relative, and why adoption was not pursued, and the efforts made to discuss the kinship guardianship with the child’s parent or parents, or the reason why such efforts were not made. (§475(1)(F); P.L. 110-351 §101(c)(4))

**4.16 Must a child have special needs to be determined eligible for kinship guardianship assistance?**

No. A child is not required to have special needs in order to qualify for kinship guardianship assistance. (§473(d)(3); P.L. 110-351 §101(b))

**4.17 Who makes the determination that the child demonstrates a strong attachment to the prospective relative guardian?**

The state agency is required to make the determination that the child demonstrates a strong attachment to the prospective relative guardian. The state agency must document the ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment in the child’s case plan, which would include how the agency determined that the child demonstrates this strong attachment. Pre-existing law requires that there be an external review

of the child's care by a court or administrative review board sometime during that six-month period at which any permanency plan for the child should be discussed. As part of that discussion, the child's attachment to the relative should be considered. (§473(d)(3)(A)(iii) & §475(1)(F); P.L. 110-351 §101(b) & (c)(4))

#### **4.18 How are siblings treated under the Kinship Guardianship Assistance Program?**

The new act makes clear that siblings may benefit from kinship guardianship assistance even though they do not all meet the eligibility requirements, provided that one of the siblings does qualify. It also makes clear that each sibling is eligible for their own kinship guardianship assistance payment and that legal guardians must be reimbursed for non-recurring costs associated with obtaining guardianship up to \$2,000 for each child. The act goes further and requires that reasonable efforts be made to place siblings together in foster, kinship guardianship, and adoptive families as long as it is safe and is not contrary to the safety or well-being of any of the siblings. If placement together is not appropriate, the act further requires that efforts be made to keep siblings in contact with one another. Among the state subsidized guardianship programs already in existence, 13 states and the District of Columbia allow siblings of eligible children to be placed with relatives and benefit from the subsidized guardianship payments even if they do not meet other eligibility requirements such as age requirements, or requirements regarding the amount of time spent in state care. (§473(d)(3)(B); P.L. 110-351 §101(b); ACYF-CB-PI-08-007 p. 3-4).

#### **4.19 What does it mean that a child age 14 or older must be “consulted” about the kinship guardianship arrangement?**

The new law requires that a child age 14 or older must be consulted about the kinship guardianship arrangement, but it does not provide further detail on what this might entail or who must consult the child. In most cases the caseworker responsible for the child will be the one to consult with the child. As of October 2008, 31 states required that children be consulted when a guardianship subsidy is being considered. Many of these states (16) require that the child be a certain age, generally between the ages of 12 and 14, if he or she is to be consulted about the arrangement. A few go further and require that a child of a certain age must give their consent to the guardianship arrangement. The new law does not require a child's consent in order for the guardianship to proceed and assistance payments to be made. (§473(d)(3)(A)(iv); P.L. 110-351 §101(b))

#### **4.20 For how long will children be eligible for kinship guardianship assistance?**

Once a state opts to provide federally supported kinship guardianship assistance payments, states must continue to make children eligible for kinship guardianship assistance until the age of 18 unless the state determines that the relative guardian is no longer legally responsible for the support of the child or the child is no longer receiving any support from the legal guardian.

There are two circumstances in which children may be eligible for federally supported kinship guardianship beyond age 18.

- (1) If the state determines that the child has a mental or physical disability (the act still refers to it as a “handicap”), which warrants the continuation of assistance, the child may receive kinship guardianship assistance to age 21. (This is the same language that allows children with disabilities to receive adoption assistance payments to 21.)
  
- (2) If the state takes the option, children who attained the age of 16 before a kinship guardianship assistance agreement became effective may continue to receive kinship guardianship assistance payments to ages 19, 20, or 21. To be eligible for this extended assistance, the youth must be:
  - completing secondary education or a program leading to an equivalent credential;
  - enrolled in an institution that provides post-secondary or vocational education;
  - participating in a program or activity designed to promote, or remove barriers to, employment;
  - employed for at least 80 hours per month; or
  - if a child’s medical condition makes him or her incapable of engaging in any of these activities, updated information on his or her condition must be maintained in the child’s case plan.

The way the new act reads, and has been interpreted by the Children’s Bureau, neither of these opportunities to extend kinship guardianship assistance beyond age 18 take effect until October 1, 2010. The October 1, 2010 date also applies to the circumstances described in the first paragraph in which a state could stop providing assistance before age 18.

It was clear during discussions of the bill that the opportunity for a state to opt to extend care to ages 19, 20, 21 for eligible children exiting foster care to kinship guardianship (or to adoption assistance) would be delayed until October 1, 2010. However, it was not clear that implementation of the other provisions (extending guardianship for children with disabilities or suspending it if the guardians were no longer legally responsible for or supporting the child)

would be delayed, especially since similar provisions already apply to children who receive adoption assistance payments and Congress was trying to make kinship guardianship assistance similar to adoption assistance. (§473(a)(4), ACYF-CB-PI-08-007 p. 5)

**4.21 If the guardian caring for a child who is receiving kinship guardianship assistance payments later decides to adopt the child, will the child be eligible for federal adoption assistance payments?**

Yes, if the child would have met the eligibility criteria for adoption assistance at the time guardianship was initially given to the relative. Under the new law, a child maintains his or her eligibility for adoption assistance as if the kinship guardianship assistance agreement had never been entered. (§473(a)(2)(D); P.L. 110-351 §101(c))

## **Relative Guardian’s Eligibility**

**4.22 What are the requirements prospective relative guardians must meet?**

An eligible guardian must be a relative of the child who has a strong commitment to caring permanently for the child and has undergone criminal record checks and child abuse registry checks. The relative must also be licensed as a foster parent because the Administration for Children, Youth and Families currently requires the home to be licensed in order for the child to be eligible for Title IV-E foster care maintenance payments and, therefore, qualify for guardianship assistance. (§471(a)(20)(D), §473(d)(3)(A)(i) & (iii); P.L. 110-351 §101(b) & (c)(2)(A); ACYF-CB-PA-01-02)

**4.23 How is “relative” defined in the new law for the purposes of kinship guardianship assistance?**

The new law does not define the term “relative.” A number of states currently operating subsidized guardianship programs use the term “relative” but do not define it. Some others do not use the term at all but rather list those who would be eligible for the payments. Of the states that do use and define relative, several define the term as someone to whom the child is related by blood, marriage or adoption. In some other programs, relative is defined to also include a family friend, neighbor, godparent or teacher.

#### **4.24 What requirements must the prospective relative guardian meet in order for the child to receive kinship guardianship assistance while in his or her care?**

The prospective relative guardian who will be caring for the child must meet a number of requirements. Specifically, the relative must:

- Care for the child for at least six consecutive months in the relative's home as a foster parent;
- Assume legal guardianship of the child;
- Have a strong commitment to caring permanently for the child; and
- Undergo criminal record checks, including fingerprint-based checks of national crime information databases and child abuse registry checks. (Registry checks must also be done on any other adult living in the home.)

To make clear what assistance the child will be eligible for, the relative guardian must enter into a written binding kinship guardianship assistance agreement with the state and receive a copy of the agreement, and must be consulted whenever there is consideration being given to an adjustment to the amount of or manner in which the assistance is provided. The kinship guardianship assistance agreement must be in place before guardianship is established. (§471(a)(20)(D); 473(d); P.L. 110-351 §101 (b) & (c)(2)(A))

#### **4.25 Must the home be a licensed foster family home?**

The new law requires that the child be eligible for Title IV-E foster care maintenance payments in the relative's home for at least six consecutive months. The Administration for Children, Youth and Families currently requires the relative's home to be licensed in order for the child to be eligible for Title IV-E foster care maintenance payments and, therefore, qualify for guardianship assistance. (§473(d)(3)(A)(i); P.L. 110-351 §101(b); ACYF-CB-PA-01-02)

#### **4.26 Must the prospective relative guardian undergo a criminal record or child abuse registry check?**

The prospective relative guardian must undergo a criminal record check, including fingerprint-based checks of national crime information databases, and child abuse and neglect registry checks maintained by the state and any other state in which the relative has resided during the last five years. The Children's Bureau Program Instruction cited below clarifies that the state can consider this requirement met without conducting new background checks if the state has established an appropriate timeframe during which such background checks remain valid and

such timeframe has not expired for the relative foster parent who is now seeking to become a guardian. Other adults living in the home must also undergo the child abuse and neglect registry checks. (§471(a)(20)(D); P.L. 110-351 §101 (c)(2)(A); ACYF-CB-PI-08-007 p.3)

**4.27 Who makes the determination that the prospective relative guardian has a strong commitment to caring permanently for the child?**

The state agency is required to make the determination that the relative guardian has a strong commitment to caring permanently for the child. The state agency must document the ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment in the child's case plan. This documentation should include how the agency determined that the relative guardian has a strong commitment. Pre-existing law also requires that there be an external review of the child's care sometime during that six-month period at which a permanency plan for the child should be discussed. The guardian's commitment to the child should be considered as part of that discussion. (§473(d)(3)(A), §475(1)(F)(iv); P.L. 110-351 §101(b) & (c))

**4.28 How is the state obligated, if at all, to assist the prospective relative guardian with the cost of obtaining legal guardianship?**

The state must pay the nonrecurring costs associated with obtaining legal guardianship (e.g. legal and filing fees) up to \$2000. For relatives who obtain guardianship of more than one sibling, these costs must be paid for each sibling placed. Federal reimbursement is available for these costs. (§473(d)(1)(B)(iv) & (3)(B); P.L. 110-351 §101(b); ACYF-CB-PI-08-007 p. 4)

## **Kinship Guardianship Assistance**

**4.29 Is there any minimum or maximum amount that may be paid for a kinship guardianship assistance payment?**

There is no minimum amount specified in the new law. However, the new law does establish a maximum based on the foster care rate. The law prohibits the payment from exceeding the foster care maintenance payment that would have been paid on behalf of the child if the child had remained in a foster family home. (§473(d)(2); P.L. 110-351 §101(b))

#### **4.30 What recognition is there of the extra costs involved in caring for children with disabilities or other special needs?**

The act specifies that the amount of the foster payment for the child shall not exceed the foster care maintenance payment that would have been paid on behalf of the child if the child had remained in a foster family home. This clearly assumes that a child who would be eligible for special therapeutic payments if they were in foster care could get up to the same amount in the form of a kinship guardianship assistance payment, just as they could if they were receiving an adoption assistance payment. The act also provides that the amount of the payment may be adjusted periodically, in consultation with the relative guardians, based on the needs of the child as well as the circumstances of the relative. This raises an opportunity for the child's disabilities or other special needs to be highlighted in making a case for a higher payment. (§473(d)(1)(B) & (2); P.L. 110-351 §101(b))

#### **4.31 How long will a relative guardian be able to receive the kinship guardianship assistance payment?**

Once a state opts to provide federally supported kinship guardianship assistance payments, states must continue to make children eligible for kinship guardianship assistance until the age of 18 unless the state determines that the relative guardian is no longer legally responsible for the support of the child or the child is no longer receiving any support from the legal guardian.

There are two circumstances in which children may be eligible for federally supported kinship guardianship beyond age 18.

- (1) If the state determines that the child has a mental or physical disability (the act still refers to it as a "handicap"), which warrants the continuation of assistance, the child may receive kinship guardianship assistance to age 21. (This is the same language that allows children with disabilities to receive adoption assistance payments to 21.)
- (2) If the state takes the option, children who attained the age of 16 before a kinship guardianship assistance agreement became effective may continue to receive kinship guardianship assistance payments to ages 19, 20, or 21. To be eligible for this extended assistance, the youth must be:
  - completing secondary education or a program leading to an equivalent credential;
  - enrolled in an institution which provides post-secondary or vocational education;
  - participating in a program or activity designed to promote, or remove barriers to, employment;
  - employed for at least 80 hours per month; or



- if a child's medical condition makes him or her incapable of engaging in any of these activities, updated information on his or her condition must be maintained in the child's case plan.

The way the new act reads, and has been interpreted by the Children's Bureau, neither of these opportunities to extend kinship guardianship assistance beyond age 18 take effect until October 1, 2010. The October 1, 2010 date also applies to the circumstances described in the first paragraph in which a state could stop providing assistance before age 18.

It was clear during discussions of the bill that the opportunity for a state to opt to extend care to ages 19, 20, 21 for eligible children exiting foster care to kinship guardianship (or to adoption assistance) would be delayed until October 1, 2010. However, it was not clear that implementation of the other provisions (extending guardianship for children with disabilities or suspending it if the guardians were no longer legally responsible for or supporting the child) would be delayed, especially since similar provisions already apply to children who receive adoption assistance payments and Congress was trying to make kinship guardianship assistance similar to adoption assistance. (§473(a)(4), ACYF-CB-PI-08-007 p. 5)

**4.32 Will the relative guardian be able to continue to receive the kinship guardianship assistance payment on behalf of the child if she moves to a new state with the child?**

Yes. The new law requires that the kinship guardianship agreement shall remain in effect without regard to the state residency of the relative guardian. All terms of the agreement, including the payment agreed upon, will remain in effect if the guardian moves to a new state with the child. The state that entered the agreement will remain financially responsible for the terms of the agreement. Similarly the state which entered the agreement will continue to be responsible for providing Medicaid to children who receive the kinship guardian assistance payments. (§473(d)(1)(C); P.L. 110-351 §101(b))

**4.33 Besides the kinship guardianship assistance payment, will children in kinship guardianships also be eligible to receive Medicaid or other services?**

The new law makes children in kinship guardianships categorically eligible to receive Medicaid. Therefore, any child for whom Title IV-E kinship guardianship payments are being made will automatically be eligible to receive Medicaid. Children who leave foster care to kinship guardianship at the age of 16 or older will also be eligible for Chafee Program services and education and training vouchers (ETVs). Any additional services and assistance the child and

relative guardian may be eligible for, as well as the procedure by which the relative may apply for additional services as needed, must be specified in the kinship guardianship agreement. (See question 7.1 regarding the Chafee Program and ETVs). (§473(b)(3)(C), §477(a)(7) & (i)(2); P.L. 110-351 §101(e) & (f))

#### **4.34 What recourse is available for relatives who are denied kinship guardianship assistance?**

The child welfare agency must provide the opportunity for a fair hearing to any individual whose claim for kinship guardianship assistance is denied or is not acted upon with reasonable promptness. (§471(a)(12), ACYF-CB-PI-08-007 p. 4)

### **Children in Waiver States**

#### **4.35 What is meant by child welfare demonstration waiver states?**

Section 1130(a) of the Social Security Act allows for the Secretary of Health and Human Services to authorize states to conduct child welfare demonstration projects through the waiver of certain provisions of Titles IV-E or IV-B. States have used waivers to explore a range of innovative approaches to the delivery and financing of child welfare services, including subsidized guardianship programs. Eleven states have received waivers allowing them to use Title IV-E funds to provide subsidies to relatives who become legal guardians of children who would otherwise remain in foster care. Six states are currently receiving these waivers (IL, IA, MN, OR, TN, and WI).

#### **4.36 What special consideration in the act is given to children who are already eligible for federally subsidized guardianship in states with active child welfare waivers?**

All children who, as of September 30, 2008, were receiving assistance or services under the waiver demonstration project can continue to receive that same assistance and services when the waiver is terminated subject to the same terms and conditions that applied during the project. The state expenditures on behalf of these children will continue to be eligible for federal reimbursement under Title IV-E regardless of whether the state establishes a Kinship Guardianship Assistance Program. (§474(g); P.L. 110-351 §101(d); ACYF-CB-PI-08-007 p. 6)

**4.37 May children who received a subsidy payment, Medicaid, and other services under the waiver receive the same assistance and services they received under the waiver when they become eligible for Title IV-E assistance under the new law?**

Yes. The act allows a child who, as of September 30, 2008, was receiving assistance or services as part of a waiver demonstration project to be eligible for the *same* assistance and services under the *same* terms and conditions that applied under the demonstration project. (§474(g); P.L. 110-351 §101(d))

**4.38 Will states be able to continue operating their waivers?**

Though authority to authorize new Title IV-E waivers expired on March 31, 2006, six states (IL, IA, MN, OR, TN, and WI) have active Title IV-E waiver agreements that were approved prior to that date. The new law does not extend waiver authority but states that have current waivers may continue to operate them. (§474(g); P.L. 110-351 §101(d); ACYF-CB-PI-08-007 p. 6)