

# Sample State Legislation Needed to Implement the Federal Kinship Guardianship Assistance Option Under Title IV-E of the Social Security Act<sup>1</sup>



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This sample legislation outlines the components that are required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 in order for a state or tribe to operate a federally supported kinship guardianship assistance program under Section 101 of that law. The italicized language is not clearly required under federal law or guidance but it is important in order to ensure that children fully benefit from the provisions. The sample legislation is a tool that policymakers, administrators and advocates can use as they develop and advocate for their states to take the option to operate a federally supported kinship guardianship program. It can be used as the basis for new legislation or as a tool to compare current statute or pending legislation with the federal requirements.

For additional information on these and other kinship requirements of the new law see: New Help for Children Raised by Grandparents and Other Relatives: Questions and Answers about the Fostering Connections to Success and Increasing Adoptions Act at [www.childrensdefense.org/FCSIAAGuide](http://www.childrensdefense.org/FCSIAAGuide).

## **Child's Eligibility**

A child is eligible to receive guardianship assistance if the agency determines that all of the following apply:

- (a) The child has been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that allowing the child to remain in the home would be contrary to the child's welfare;
- (b) **OPTION 1:** The child is eligible for federal foster care maintenance payments under Title IV-E of the Social Security Act while residing in the home of the prospective relative guardian for at least six consecutive months;  
*OPTION 2: The child has resided in the home of the prospective guardian for at least six consecutive months<sup>2</sup>*
- (c) Being returned home or adopted are not appropriate permanency options for the child;
- (d) The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child; and
- (e) If the child is age 14 or older, he or she has been consulted regarding the guardianship arrangement.

Eligibility may not be limited due to the age of a child under 18 years old or to a child's special needs.

Even if siblings do not meet the eligibility requirements for kinship guardianship assistance payments listed above, siblings of an eligible child may be placed in the same relative guardianship arrangement if the department and the relative agree on the appropriateness of the arrangement for the sibling. Federally supported guardianship assistance payments may be made on behalf of each sibling so placed.

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<sup>1</sup> The requirements are based on the federal law and existing guidance as of November 19, 2009.

<sup>2</sup> The Fostering Connections to Success and Increasing Adoptions Act requires a child to be eligible under Title IV-E in order to receive federal reimbursement for kinship guardianship assistance. Option 1 would require this for a child to be eligible under the state program as well. However, in states that plan to make all children eligible for guardianship assistance (and pay for the non IV-E children with state dollars), option 2 would accomplish that.

### **Guardian's Eligibility**

A guardian who meets all of the following criteria may receive guardianship assistance on behalf of an eligible child:

- (a) The guardian is the eligible child's relative;<sup>3</sup>
- (b) The guardian is a licensed foster parent and approved for guardianship assistance by the department after the guardian has undergone fingerprint-based criminal record checks and child abuse and neglect registry checks and all adults in the guardian's home have undergone child abuse and neglect registry checks;
- (c) The eligible child has resided with the prospective relative guardian in the prospective guardian's residence for at least six months;
- (d) The guardian has a strong commitment to caring permanently for the child; and
- (e) The guardian has obtained legal guardianship of the child after the guardianship assistance agreement has been negotiated and finalized with the department.

### **Guardianship Assistance Agreement Requirements**

The child welfare agency must negotiate and enter into a written, binding guardianship assistance agreement with the prospective relative guardian and must provide a copy of the agreement to the prospective relative guardian prior to guardianship being awarded.

The guardianship agreement must specify:

- (a) The amount of the guardianship assistance to be provided under the agreement for each eligible child and the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child;
  - (i) The guardianship assistance payment must not exceed the foster care maintenance payment that would have been paid on that child's behalf if he or she had remained in a foster family home.
  - (ii) *Adjustments must be made to the payment rate to accommodate a child's special needs.*
- (b) The additional services and assistance that the child and relative guardian will be eligible for under the agreement;
- (c) The procedure by which the relative guardian may apply for additional services as needed *and a description of those services*;
- (d) The department will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2,000;
- (e) The guardianship assistance agreement shall remain in effect without regard to state residency of the relative guardian; and
- (f) The child retains eligibility for federal adoption assistance if the guardian later decides to adopt the child.

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<sup>3</sup> The law does not define relative or require the state to define relative. If a state chooses to define relative, it could define relative as a person related by blood, marriage or adoption or a godparent or family friend with whom the child has a close relationship.

## **Case Plan Requirements**

For a child whose permanency plan is placement with a relative and receipt of guardianship assistance payments, the department must include a description of all of the following in the child's case plan:

- (a) The steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted;
- (b) The reasons for any separation of siblings during placement;
- (c) The reasons why a permanent placement with a fit and willing relative through a guardianship assistance arrangement is in the child's best interests;
- (d) The ways in which the child meets the eligibility requirements for a guardianship assistance payment;
- (e) The efforts the agency has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefore;
- (f) *The efforts the agency has made to discuss the importance of selecting a successor guardian; and*
- (g) The efforts made by the agency to discuss with the child's parent or parents the guardianship assistance arrangement, or the reasons why efforts were not made *and documentation of the reasons therefore.*

## **Court Jurisdiction**

*NOTE: An issue not addressed in this sample legislation is court jurisdiction. It will be important to consider the role of the state court in developing legislation to ensure the court process facilitates permanency decisions for children and awarding guardianships that will be beneficial for the children. To that end, the following should be considered:*

- *The court making the permanency decision for the child should review the case plan requirements listed above and make a written finding on the adequacy of the child's case plan and adherence of that plan to the case plan requirements.*
- *Whenever possible, the same court making permanency decisions for the child should have jurisdiction to grant the legal guardianship and review petitions to change the legal guardianship.*
- *If the permanency court does not have jurisdiction to also consider the petition for legal guardianship, the permanency court's finding on the adequacy of the plan should be provided to the judge presiding over the petition for legal guardianship.*
- *States should grant the court jurisdiction to review the agency's determinations and/or the guardianship assistance agreement by requiring the agency to include a description of their determinations and/or the agreement in the petition for guardianship.*
- *Language should be included in a court order granting a petition for guardianship that (1) describes the procedures for modifying the guardianship arrangement, (2) specifies plans for visitation between the child and parent/s, (3) specifies plans for visitation between the child and any siblings not living with the child, and (4) the name of the successor guardian or a statement that no successor has been determined.*

This document was prepared in collaboration with the American Bar Association Center on Children and the Law, ChildFocus, Children and Family Research Center - School of Social Work at University of Illinois at Urbana-Champaign, CLASP, Generations United, and the National Center for State Courts.