

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 14: Guardianship	Effective Date: January 1, 2015
	Section 2: Negotiations for Guardianship Assistance Program	Version: 3

STATEMENT OF PURPOSE

The Indiana Department of Child Services (DCS) will provide ongoing financial assistance through the Guardianship Assistance Program (GAP) for the benefit of eligible children. See policy [14.1 Guardianship Assistance Program \(GAP\)](#) for additional information. The goal of this program is to promote permanency for children who may otherwise have their permanency delayed. Eligibility for Medicaid and the reimbursement of appropriate Non-Recurring Expenses (NRE) are not negotiated. Some eligible children may receive periodic payment, as negotiated between the guardian and DCS.

DCS will work collaboratively with families to understand and determine the current and ongoing needs of the child placed with guardians, and the costs of those needs, in order to assist the family in incorporating the child into the family. This policy outlines how such levels of assistance should be negotiated to determine the periodic payment amounts for guardianship assistance applicants who are determined to be eligible for guardianship assistance after July 1, 2012.

Note: The negotiated amount cannot exceed the amount that would have been payable for the child if the child were in foster care.

Upon the approval of a [Final Guardianship Assistance Eligibility Determination](#) that a child is eligible for guardianship assistance, DCS will meet with the prospective guardian to discuss the procedure for completing the guardianship assistance agreement. In this meeting DCS will explain the steps and procedures needed for purposes of finalizing the agreement and guardianship of the child. DCS will provide a copy of the following documents:

1. The notice of [Final Guardianship Assistance Eligibility Determination](#);
2. A guardianship assistance agreement in the form currently approved by DCS;
3. The [Payment Request Information \(PRI\) Indiana Gap](#) form describing the information needed from the prospective guardian for consideration and discussion with DCS in negotiating and determining any periodic payment to be paid by DCS under the agreement; and
4. Other information prepared by DCS staff for consideration in determining the periodic payment amount.

Note: Other information will include, but will not be limited to, information about the availability of services after the guardianship is finalized and the ability of the prospective guardian to renegotiate certain terms of the agreement in the event the child or family's circumstances change.

Within 30 calendar days of receiving the [Final Guardianship Assistance Eligibility Determination](#) and accompanying documents, the prospective guardian will submit to the DCS Local Office

Director (LOD) all information and supporting documentation identified in the PRI, plus any additional information that the prospective guardian considers relevant to determining the periodic payment. The prospective guardian may request a reasonable extension of this deadline in order to gather and assemble information relevant to this submission. An extension requested by the guardian may be approved by the DCS LOD or designee.

The amount of the periodic payment to be included in the agreement will be determined by negotiation between the prospective guardian and DCS. Negotiations will occur through the DCS local office in the county where the child's CHINS or other juvenile court case is pending. In that negotiation, the DCS LOD, or designee, and DCS Staff Attorney will represent DCS. The prospective guardian may choose to be represented by an attorney or to participate directly in the negotiation without an attorney.

DCS will begin to negotiate the periodic payment based on an initial request submitted by the prospective guardian. If agreement is not reached concerning the periodic payment amount within seven (7) calendar days after DCS receives the PRI response, the negotiation will include the opportunity for at least one (1) face-to-face meeting between the parties. The DCS Staff Attorney and the attorney for the prospective guardian will be present at this meeting to discuss the information. The DCS LOD and the prospective guardian may also be present for the negotiations.

Negotiation of the periodic payment amount will occur and be completed within 45 calendar days after the date the DCS LOD receives the PRI response, unless an extension of the negotiation deadline has been approved by the DCS LOD or designee.

The following factors and information will be considered in negotiating the periodic payment amount:

1. The anticipated special needs of the child after the finalization of the guardianship;
2. The circumstances of the prospective guardian and his or her family, including the ability to provide for the child's current and anticipated future needs, to the same extent that the family currently provides or would be able to provide for the needs of other children in the family;
3. Resources available to the prospective guardian and his or her family to provide for the current and anticipated needs of the child, such as health care, services, public education, activities related to child development and transition to independent living, sources of income and availability of extended family and community resources;
4. The extent to which identified and anticipated needs of the child can be met through services covered by Medicaid or other resources;
5. The ability of the prospective guardian and his or her family to seek renegotiation of the periodic payment amount based on unanticipated changes in the child's needs or the family's circumstances, as provided in this policy; and
6. Any other specific facts pertaining to the child or prospective guardian that either DCS or the prospective guardian considers relevant to the goal of incorporating the child into the prospective guardian's family; and

Note: Any child eligible for a GAP payment is also eligible for payment of Nonrecurring Expenses associated with obtaining legal guardianship of the child. In order to be eligible for Medicaid, a IV-E GAP payment must be made. Children eligible for state-funded GAP will need a separate determination by the Division of Family Resources (DFR) to occur to evaluate the child's Medicaid eligibility.

If negotiation of the periodic payment amount has not resulted in an approved agreement within 45 calendar days of DCS' receipt of the completed PRI, or other approved deadline, DCS will send a Final Offer letter to the prospective guardian, or their attorney, stating the periodic payment amount that DCS agrees to pay. If the prospective guardian has not submitted to DCS the completed PRI form within 45 calendar days of the date that the PRI was provided to the guardian or any approved extension of time, the DCS Staff Attorney will send a \$1 Final Offer letter to the prospective guardian or their designated attorney. The Final Offer letter will include the [Request for Administrative Review Indiana GAP](#) and information about the availability of an administrative review process. A prospective guardian may sign a guardianship assistance agreement which includes the periodic payment amount identified in the Final Offer letter and pursue administrative review of the amount. See separate policy, [14.4 Administrative Review for Guardianship Assistance Program](#).

Except for determination of the periodic payment amount or the addition of a successor guardian, the provisions of the guardianship assistance agreement form approved by DCS cannot be altered or amended without the approval of both the DCS General Counsel and the DCS Deputy Director for Permanency and Practice Support, or their respective designees. Approval or disapproval of any requested content or format change in the agreement form is not subject to administrative review or administrative appeal.

The agreement must be signed by both DCS and the prospective guardian before entry of the order establishing legal guardianship. If the order establishing legal guardianship is entered before signature of the agreement by both DCS and the prospective guardian, the child is not generally eligible for guardianship assistance.

The DCS attorney shall ensure that the prospective guardian or his/her attorney receives a copy of the signed [Guardianship Assistance Agreement](#).

Code References

1. [IC 31-9-2-17.8\(1\)\(E\): Child Services](#)
2. [IC 29-3-8-9\(f\) Support obligation of guardian receiving GAP payments](#)
3. [IC 29-3-1-7.5 Incapacitated person](#)
4. [42USC 673\(d\)\(1\): Kinship guardianship assistance payment](#)

PROCEDURE

The Family Case Manager (FCM) will:

1. Meet with the prospective guardian within 15 calendar days after receipt of the [Final Guardianship Assistance Determination](#) for a child who is eligible and who could potentially receive periodic payments under a signed agreement;

Note: This meeting is required only if the child or guardian is eligible and will potentially receive periodic payments.

2. Provide the prospective guardian with a copy of the pertinent documents, including the PRI, and discuss the procedure for completing the agreement;
3. Inform prospective guardian of the option to add a successor guardian to the GAP agreement. See [Related Information](#) for more information about successor guardian.

Note: In the event that the successor guardian assumes responsibility for the child, he or she will need to complete background checks and be appointed by the court in the

guardianship proceeding, prior to receiving GAP assistance payments for the child.

4. Explain the other steps and procedures needed for purposes of finalizing the guardianship of the child, including the opportunity to negotiate the amount of the periodic payment. See separate policy [14.1 Guardianship Assistance Program \(GAP\)](#);
5. Provide information to the guardian about the availability of services that can be requested and provided by DCS;
6. Explain the ability of the prospective guardian to request a change in the periodic payment amount in the event of changed circumstances; and

Note: A GAP agreement can be amended to add a successor guardian.

7. Send a signed copy of the [Guardianship Assistance Agreement](#) and order establishing legal guardianship to the DCS CEU inbox, centralized.elgibility@dcs.in.gov.

The DCS LOD or designee will:

1. Approve or deny a written request to extend the deadline to submit the completed PRI made by the prospective guardian;
2. Approve or deny a written request to extend the negotiation deadline after receipt of the PRI;
3. Provide the DCS Staff Attorney with information necessary to negotiate the appropriate periodic payment amount; and

The DCS Staff Attorney or designee will:

1. Review information from the DCS LOD and the prospective guardian necessary to negotiate the appropriate periodic payment amount;
2. Meet with the prospective guardian or their attorney and negotiate the periodic payment amount for a guardianship assistance agreement;
3. Present the agreement for signatures of the prospective guardian and the DCS LOD or designee, when the negotiations result in agreement;
4. Provide the prospective guardian or his/her attorney with a copy of the signed [Guardianship Assistance Agreement](#).
5. Send a copy of the agreement to DCS CEU;
6. Prepare and send a Final Offer letter that includes information about the availability of administrative review (enclose the appropriate form with instructions concerning submission of the [Request for Administrative Review Indiana GAP](#)) to the prospective guardian or their designated attorney, when the negotiations do not result in agreement within 45 calendar days.

The DCS CEU will:

1. Send the notice of [Final Guardianship Assistance Eligibility Determination](#);
2. Send an agreement in a format currently approved by DCS to the prospective guardian;
3. Send any other information prepared by DCS to inform DCS staff and the prospective guardian concerning the determination and duration of periodic payments of assistance or subsidies;
4. Send the [Request for Administrative Review Indiana GAP](#) form, if applicable; and
5. Send the guardianship assistance agreement and PRI (if applicable) to the FCM.

PRACTICE GUIDANCE

N/A

FORMS AND TOOLS

1. [Final Guardianship Assistance Eligibility Determination](#) – Available via CEU
2. [Payment Request Information \(PRI\) Indiana GAP](#) – Available via CEU
3. [Request for Administrative Review Indiana GAP](#) – Available via CEU

RELATED INFORMATION

Periodic Payment

A monthly per diem amount to be specified in a written guardianship assistance agreement. In order to be eligible for Medicaid a IV-E GAP payment must be made. Children eligible for state-funded GAP will need a separate determination by the Division of Family Resources (DFR) to evaluate the child's Medicaid eligibility.

Final Offer Letter

The letter sent by the DCS Staff Attorney stating the final offer of DCS for the amount of the periodic payment under a guardianship assistance agreement. The letter will include information about the availability of an administrative review process and the appropriate form with instructions concerning submission of a request for administrative review of the proposed periodic payment amount.

Successor Guardian for the purpose of GAP

DCS shall make monthly assistance payments to a successor guardian on behalf of the child, if the successor guardian:

1. Is named in the guardianship assistance agreement (including any amendment to the agreement that was effective before the date of death or determination of incapacity [[IC 29-3-1-7.5](#)] of the original guardian);
2. Has completed all required background checks which includes Fingerprint-Based National Criminal History Check (Fingerprint-Based Check); Child Protective Service (CPS) History Check; Sex Offender Registry Check; and Local LEA Records Check;
3. Has been appointed by the court in the guardianship proceeding as the child's guardian; and
4. Complies with all statutory duties and responsibilities of the guardian and the guardianship assistance agreement as approved and signed by the department and the original guardian, or any new guardianship assistance agreement signed by the department and the successor guardian.

Note: The home of the successor guardian does not need to be licensed as a foster family home at the time of placement of the child in that home or receipt of guardianship assistance on behalf of the child