

 INDIANA DEPARTMENT OF CHILD SERVICES	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 14: Guardianship	Effective Date: July 1, 2012
	Section 1: Guardianship	Version: 3

POLICY

The Indiana Department of Child Services (DCS) will offer guardianship as a permanency option, if it is in the best interest of the child and if other permanency goals (e.g., reunification, adoption, another planned permanent living arrangement, placement with a fit and willing relative) are not feasible.

[NEW] NOTE: This policy section applies to children under DCS care and supervision whose [Application for Guardianship Assistance](#) was received by DCS prior to July 1, 2012.

Code References

1. [465 IAC 2-8-1 to 465 IAC 2-8-12: Assisted Guardianship](#)
2. [IC-29-3-1-6: Definition of a Guardian](#)
3. [IC 29-3-2-1\(b\): Jurisdiction of Probate Court in Guardianships](#)
4. [IC 29-3-2-1\(c\): Jurisdiction of Juvenile Court in Certain Guardianships](#)
5. [IC 31-30-1-1: Exclusive Original Jurisdiction of Juvenile Court in Guardianship of CHINS](#)

PROCEDURE

The Family Case Manager (FCM) will:

1. Convene a Child and Family Team (CFT) Meeting or Case Plan Conference to review and discuss guardianship as a permanency goal for the child. The discussion should include information regarding the guardianship process as well as any provisions needed for assistance and supports to the family and the child to help ensure the child's safety and permanence in the home;
2. Get court approval of guardianship as the permanency option if the CFT determines this is the best permanency option for the child;
3. Conduct criminal background checks for the proposed guardians. See separate policy [8.6 Conducting Background Checks for Unlicensed Placements](#);
4. Ensure that a petition for guardianship is filed for each child for whom a guardianship is being sought; and
5. Notify the parents (if their whereabouts are known), the proposed guardians, the minor if he or she is at least 14 years of age by the date, and time of the guardianship hearing.

PRACTICE GUIDANCE

N/A

FORMS AND TOOLS

1. [Notice of Guardianship Hearing](#)
2. [Assisted Guardianship Application](#)
3. [Assisted Guardianship Agreement](#)
4. [Notification of Termination of Assisted Guardianship \(90 day letter\)](#)
5. [Notification of Termination of Assisted Guardianship \(30 day letter\)](#)
6. [Application for Continuation of Assisted Guardianship](#)
7. [Consent Form](#)

RELATED INFORMATION

Assisted Guardianship (AG) is a limited TANF funded program. This program is meant to help families where it has been determined that Guardianship is the best permanency plan for a child or sibling group and due to significant financial need, assistance is required for the child's permanency and well-being. Due to limited funding, the child may be put on a waiting list until an AG slot is available.

FCM's will:

1. Contact the Guardianship Specialist in the Central Eligibility Unit (317-234-5778 or centralized.eligibility@dcs.in.gov) to obtain the Assisted Guardianship Application
2. Complete the Assisted Guardianship Application with the proposed guardian
3. Submit the Assisted Guardianship Application and other appropriate documents to the Guardianship Specialist with the proposed final hearing date for the guardianship hearing.
4. Complete the Assisted Guardianship Agreement if the Guardianship Specialist approves the child for the program.
5. Send the Assisted Guardianship Agreement for signatures by the guardians and the DCS local office director prior to the finalization of the guardianship.
6. Notify the Guardianship Specialist when the guardianship order is issued by the court;
7. Place the original Assisted Guardianship Agreement in the child's foster care file, provide a copy to the guardian and send a copy to the Guardianship Specialist along with a copy of the guardianship order.
8. Open an Assisted Guardianship case in ICWIS (will require entry of the social security number for each guardian) effective as of the date the final guardianship order is entered by the court;
9. Close the foster care case in ICWIS as of the same date that the Assisted Guardianship case is opened in ICWIS;

10. Update any address changes in ICWIS if notified by the guardian and notify the Resource Unit so they can send a new vendor information form to update KidTraks;
11. Notify the Guardianship Specialist if there are any changes in the guardianship order or if the AG child ever re-enters foster care, so that they can suspend or terminate the monthly assisted guardianship payment in KidTraks and ICWIS; and
12. Investigate the current situation of the youth and the guardian if requested by the Guardianship Specialist.

Guardianship Specialist with the Central Eligibility Unit will:

1. Determine if the child is eligible for guardianship assistance from the Assisted Guardianship Application submitted by the FCM.
2. Monitor and manage an Assisted Guardianship List to track the number of slots with available funding;
3. Place AG eligible youth on the Assisted Guardianship List for approximately 90 days;
4. Upon notification of finalization of guardianship, validate that:
 - a. the AG case has been opened in ICWIS effective the finalization date of the guardianship,
 - b. the Guardian(s) SSN's have been entered in ICWIS,
 - c. the foster care case is closed in ICWIS effective the finalization date of the guardianship,
 - d. a copy of the final guardianship order is in the CEU eligibility file; and
 - e. a copy of the signed AG agreement is in the CEU eligibility file;
5. Develop, monitor, and manage an Assisted Guardianship Waiting List (a list of finalized guardianships with assistance (AG) but a slot with funding is not available).
6. Place eligible youth on the Assisted Guardianship Waiting List if there are no slots with funding available.
7. Notify the FCM when an additional slot with funding becomes available
8. Input the payment information into KidTraks, begin the AG payment effective the finalization date, and immediately resolve any KidTraks voucher errors;
9. Set the end date of the AG payment in KidTraks the day before the youth's 18th birthday;
10. Transfer the AG case to themselves once the local office has notified that guardianship has been finalized, AG case opened and the foster care case closed;
11. Update address changes in AG in ICWIS and send a [Vendor Information form \(SF5 3788\)](#) to the Guardian when notified of such;
12. Complete the annual re-determination processes for the AG program;
13. Send suspension and termination notifications to the AG Guardian based on any violations of the terms of the Assisted Guardianship Agreement;
14. Send a Notification of Termination of Assisted Guardianship payments to the AG Guardian at their last known address, by certified mail, approximately 90 days

prior to the termination and again 30 days prior to the date the youth will reach age 18;

15. If the guardian provides proof that the youth continues to be a full time student, extend the AG payments to the day prior to the youth's 19th birthday or the date the youth graduates, whichever is earlier;
16. End AG payments in KidTraks and Close the AG case in ICWIS, using the same date, once all payments have ceased regardless of the reason.

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 14: Guardianship	Effective Date: July 1, 2012
	Section 2: Guardianship Assistance Program (GAP)	Version: 1

POLICY [NEW]

The Indiana Department of Child Services (DCS) will offer the Guardianship Assistance Program (GAP) as a permanency option, if it is in the best interest of the child and reunification or adoption are not feasible.

Children who are wards of DCS or Juvenile Delinquency/Juvenile Status (JDJS) and meet all of the following criteria will be eligible for GAP:

1. The child is age 13 or older;
2. The child has been placed in a licensed relative placement for at least six (6) consecutive months immediately prior to, and including, the month of the GAP application; and
3. The child has a permanency plan for legal guardianship that is approved by the juvenile court.

Note: Exceptions may be made for a sibling group if at least one (1) eligible child in the sibling group is 13 years of age or older and the siblings are being placed together in the same home and the Executive Manager of Field Operations provides approval. (See Related Information).

Any child eligible for a GAP payment is also eligible for payment of Nonrecurring Expenses associated with obtaining legal guardianship of the child. Children eligible for IV-E GAP are eligible for Medicaid. 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.

Note: Eligible children who are wards of DCS or JDJS and are placed out of state with relatives are also eligible for IV-E GAP.

DCS will assure GAP is discussed with all children age 13 and older who are under DCS care and supervision and have a permanency plan of legal guardianship. See separate policy [5.8 Developing the Case Plan](#).

DCS will assure that any child whose guardianship is finalized on or after his or her 16th birthday is notified of the availability of Chafee Independent Living (IL) Services. Any interested child will be referred for IL services. See separate policies, [11.1 Independent Living Services](#) and [11.2 Eligibility for Chafee Independent Living Services](#).

All applications for GAP must be submitted to the DCS Central Eligibility Unit (CEU) for an eligibility determination. Prior to the entry of the order establishing legal guardianship, the GAP

agreement must be signed by all required parties in order for the child to be eligible for GAP payments.

Note: The GAP application must be initiated in the DCS local office where the wardship or JD/JS was established.

GAP Payments *shall* be suspended or terminated based on the date the guardian no longer legally or financially supports the child.

Code Reference

1. [IC 29-3-2-1\(b\) in Guardianships: Jurisdiction of Probate Court](#)
2. [IC 29-3-2-1\(c\) in Certain Guardianships: Jurisdiction of Juvenile Court](#)
3. [IC 31-30-1-1 Exclusive Original Jurisdiction](#)
4. [IC 31-9-2-17.8\(1\)\(E\) Authorization for GAP as component of “child services”](#)
5. [IC 29-3-8-9\(f\) Guardian obligation to support child who is GAP beneficiary](#)
6. [42 U.S.C. 673\(d\) GAP eligibility and other conditions for payment under Title IV-E](#)

PROCEDURE

The Family Case Manager (FCM) will:

1. Convene a Child and Family Team (CFT) Meeting or Case Plan Conference to review and discuss legal guardianship as a permanency goal for the child. The discussion should include:
 - a. The application process for participation in GAP,
 - b. The provisions necessary for assistance and support to the child and family, and/or
 - c. The possibility of a sibling group being placed together, if applicable.
2. Ensure that the required documentation is included and the [Explanation of Indiana GAP Program and Background Information](#) form and the [Indiana GAP Program Application](#) are signed all required parties;
3. Change the [Case Plan \(SF 2956 DCS 0046\)](#) goal to legal guardianship and ensure all GAP requirements are completed on the case plan;
4. Obtain Executive Manager of Field Operations approval for exceptions to program eligibility, if applicable. (See Related Information);
5. Get court approval of legal guardianship as the permanency plan if the CFT determines this is the best permanency option for the child;
6. Verify the relative caregiver has a valid foster care license. See separate policy, [12.13 Licensing Recommendation and Approval Process](#);
7. Submit the GAP application with supporting documentation to DCS CEU, including:
 - a. The current Foster Care License,
 - b. The required background checks (including the prospective relative guardian’s household members at the time of the GAP application) from the licensing file, including:
 - 1) Child Protection Services (CPS) for all individuals ages 14 and older;
 - 2) Sexual Offender Registry for all individuals ages 14 and older; and
 - 3) Finger-print based national criminal history check results (I.e. Qualified letter) for all individuals ages 18 and older.

- c. A letter or statement from a licensed physician, psychiatrist, psychologist, or FCM detailing the child's mental, emotional, medical, or physical disabilities (including those that are capable of being inherited) for Medicaid.
8. Verify that the guardian is not disqualified for placement of a child, based on the background check results. See Policy, [12.30 Evaluation of Background Checks for Foster Family Home Licensing](#).
9. Obtain a copy of the petition for each child whom legal guardianship is being sought;
10. Meet with prospective guardian to discuss the final GAP determination, proposed GAP agreement, [Payment Request Information \(PRI\) Indiana GAP \(SF 55040\)](#) form and the [Request for Administrative Hearing/ Indiana GAP \(SF 55041\)](#) (if applicable);
11. Provide the DCS Local Office Attorney with the Final Guardianship Eligibility Determination, the unfinalized legal guardianship agreement, the GAP PRI completed and signed by the guardian(s) and any information that may assist him or her in negotiating the GAP periodic payment (See separate policy, [14.5 Negotiations for Guardianship Assistance Program](#));
12. Return the signed legal guardianship assistance agreement and court order establishing legal guardianship to the DCS CEU for processing (centralized.eligibility@dcs.in.gov), if the prospective guardian agrees to the amount of the periodic payment;

Note: If the prospective guardian disagrees with the Final Guardianship Eligibility Determination or the amount of the proposed legal guardianship agreement, the prospective guardian may submit a [Request for Administrative Hearing/ Indiana GAP \(SF 55041\)](#) within 30 days of the date of the Final Guardianship Eligibility Determination or receipt of the DCS Final Offer letter concerning the periodic payment amount; and

13. Notify any child who entered GAP on or after his or her 16th birthday about the availability of Chafee Independent Living (IL) Services and refer interested youth for IL services. See separate policies [11.1 Independent Living Services](#) and [11.2 Eligibility for Chafee Independent Living Services](#).

The Supervisor will:

1. Review the file to ensure that the required documentation is included and the [Explanation of Indiana GAP Program and Background Information](#) form and the [Indiana GAP Program Application](#) are signed;
2. Ensure that the FCM has received required paperwork from the prospective guardian(s) and submitted to the DCS CEU;
3. Ensure that the Local Office Attorney has received the completed PRI form and any related documentation; and
4. Ensure that the GAP agreement is signed by all parties prior to the entry of order establishing legal guardianship.

The DCS Local Office Attorney will:

1. Contact the prospective guardian(s) or their attorney, to negotiate the periodic payment amount and obtain signatures on the legal guardianship agreement;
2. Work with the FCM to obtain any information needed for the legal guardianship;
3. Meet with the prospective guardian and/or their attorney to review the Final Guardianship Eligibility Determination and negotiate the periodic payment amount; and

4. Ensure that the assisted guardianship agreement is signed by all parties prior to the legal guardianship being finalized.

The DCS CEU will:

1. Make the eligibility determination once the GAP application is completed;

Note: Medicaid eligibility determinations for state-funded GAP will be submitted to the Medicaid Eligibility Unit (MEU).

2. Review the case once the signed Guardianship agreement and court order establishing legal guardianship is received to ensure the agreement was signed by all parties on or prior to the date of the legal guardianship order and that the negotiated amount does not exceed what the child would have received in foster care.

PRACTICE GUIDANCE

N/A

FORMS AND TOOLS

1. [GAP Application](#) – Available via CEU
2. [Case Plan](#) – Available in the Indiana Child Welfare Information System
3. [Payment Request Information \(PRI\) Indiana GAP \(SF 55040\)](#)
4. [Request for Administrative Hearing/ Indiana GAP \(SF 55041\)](#)
5. [Final Guardianship Eligibility Determination](#) – Available via CEU
6. [Explanation of Indiana GAP Program and Background Information](#)

RELATED INFORMATION

For the purpose of GAP the definition of a Relative consist of the following:

1. Grandparents;
2. Great grandparents;
3. Aunts;
4. Great aunts;
5. Uncles;
6. Great uncles;
7. Cousins;

Note: The individuals must be first or second cousins.

8. Adult siblings; and
9. Step parents.

Note: Any of the above relationships to the child may be by blood or by marriage.

Exceptions to GAP Eligibility Requirements

Executive Managers may consider approving a child for GAP who does not meet the eligibility requirements if the child is a member of a sibling group in which at least one (1) child in the sibling group is 13 years of age or older, and the child is placed with the sibling group in the same home.

Temporary Guardianships

Temporary guardianship should not be sought in these cases. If a temporary guardianship is granted, the relatives are not eligible for foster care payments or GAP payments.

Licensing Requirements

The relative caregiver's valid foster care license, including required background checks, may suffice for GAP background check requirements.

Definition of Financial Support for the Purposes Guardianship

If a guardian is no longer providing any form of financial support to or for the child, guardianship assistance benefits may be terminated. DCS may determine that if the guardian is maintaining regular visitation with the child and is making reasonable efforts to ensure the child can return home, and if one (1) of the following are met, the guardian should be considered as providing financial support to the child:

1. The guardian is making regular payments, or otherwise providing support for the child for:
 - a. Family therapy,
 - b. Tuition,
 - c. Clothing,
 - d. Maintenance of special equipment in the home, or
 - e. Services for the child's special needs, such as occupational, physical, or speech therapy;
2. The guardian is providing support for the child while the child is in out-of-home care, in the form of regular monetary payments of not less than \$100.00 per month or provision of materials, supplies or services having an equivalent monetary value; or
3. The guardian is paying child support pursuant to a court order.

Processing Medicaid Eligibility

All cases regarding eligible children who are Indiana residents and will be placed with his/her guardian in Indiana will be processed by MEU for Medicaid eligibility. All cases that involves eligible children who are Indiana residents being placed outside of Indiana will be processed by CEU for Medicaid eligibility.

Residency

The child's residency is determined by his/her place of residence prior to being placed under DCS care and supervision.

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 14: Out-of-Home Services	Effective Date: July 1, 2012
	Section 3: Administrative Appeals for Guardianship Assistance	Version: 1

POLICY

[NEW]

The Indiana Department of Child Services (DCS) will process requests for an administrative appeal hearing received from a prospective guardian or guardian concerning an administrative review decision made by DCS under policy [14.4 Administrative Review for Guardianship Assistance](#).

DCS will send notice of the administrative review decision to the guardian or prospective guardian, along with instructions and [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#) form. If the guardian or prospective guardian is dissatisfied with the results of the administrative review, he or she may submit the [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#) form to the DCS Hearings and Appeals unit within 30 calendar days after service of the [Notice of Final Administrative Review](#) decision, as provided in policy [14.4 Administrative Review for Guardianship Assistance](#).

A request for administrative hearing must be based on the same issues, facts, and documentation that were presented in the request for administrative review. The administrative hearing will not consider any issues or facts that were not presented in the administrative review request submitted by the guardian.

In any administrative hearing conducted regarding eligibility for GAP, the prospective guardian shall have the burden to prove that the child meets all applicable eligibility requirements. See policy [14.2 Guardianship Assistance Program \(GAP\)](#).

In any administrative hearing conducted regarding a periodic payment amount, the guardian or prospective guardian shall have the burden to prove one (1) or more of the following:

1. In conducting negotiations with the prospective guardian or their Attorney, DCS did not substantially follow the procedures specified in policy [14.5 Negotiations for Guardianship Assistance](#), or any other applicable policy, procedure, rule, or statute relating to determination of guardianship assistance periodic payments;
2. DCS did not consider relevant information or documentation that the prospective guardian or guardian submitted in the [Payment Request Information \(PRI\) \(SF55040\)](#) form, in conducting the negotiation or submitting its Final Offer letter based on the factors and information outlined in DCS policy [14.5 Negotiations for Guardianship Assistance](#); or
3. The periodic payment that DCS agreed to pay as stated in the Final Offer letter is clearly unreasonable and not supported by substantial and relevant evidence presented by the prospective guardian or guardian, or otherwise considered by DCS.

Prospective guardians may utilize the administrative procedures for review and hearing before obtaining an order establishing guardianship of the child. Both the prospective guardian and DCS must sign an agreement before entry of an order establishing guardianship.

The guardian may elect to sign the agreement for the amount of the periodic payment offered in the DCS Final Offer letter and reserve the right to pursue the administrative review and hearing process, in accordance with DCS policy [14.4 Administrative Review for Guardianship Assistance Program \(GAP\)](#). If a guardian with a current agreement pursues the administrative review and hearing process, any change in the periodic payment that is subsequently approved or ordered in an administrative hearing decision will be retroactive to the date of order finalizing guardianship of the child.

When an administrative hearing concerns the periodic payment amount for a current agreement and the guardian did not pursue the administrative review and hearing process within 30 calendar days of the DCS Final Offer letter, the hearing request will be considered a request for a modification of the current agreement. For hearings involving a request for modification of an existing agreement to increase the periodic payment amount, the guardian must prove the following two (2) factors:

1. In conducting negotiations with the prospective guardian or their Attorney, DCS did not substantially follow the procedures specified in policy [14.5 Negotiations for Guardianship Assistance](#), or any other applicable policy, procedure, rule, or statute relating to determination of guardianship assistance periodic payments; OR
2. DCS did not consider relevant information or documentation that the prospective guardian or guardian submitted in the Payment Request Information (PRI) form, in conducting the negotiation or submitting its Final Offer letter based on the factors and information outlined in DCS policy [14.5 Negotiations for Guardianship Assistance](#); AND
3. A change of circumstances concerning the child or family occurred after the original agreement, or most recent amendment was signed that was not known or anticipated at the time the agreement or most recent amendment was signed and that justifies an increase in the periodic payment; AND
4. The guardian has not submitted any other written request for modification of the agreement to increase the periodic payment amount, within 12 months of the request for modification which is the subject of the administrative hearing request.

If a hearing on a modification request does not include an issue concerning the periodic payment amount, the guardian has the burden to prove that a change of circumstances occurred after signature of the original agreement, or any subsequent modification or amendment of the agreement, that supports the requested modification.

In any administrative hearing regarding termination of the guardianship assistance agreement or administrative suspension of periodic payments under an agreement before the child reaches 18 years of age, the guardian shall have the burden of proving that the termination or administrative suspension does not comply with DCS policy or any applicable procedure, rule, or statute.

An administrative hearing requested and granted under this policy will be scheduled and held within 90 calendar days after receipt of the hearing request by Hearings and Appeals, unless the assigned Administrative Law Judge (ALJ) continues the hearing date by agreement of the parties or upon motion for good cause. All administrative hearings will be heard at a hearing site in Indianapolis, Indiana, unless all parties and the ALJ agree to hold a hearing at another location, for convenience of the parties and witnesses. The parties will be notified by Hearings and Appeals as to the specific time, date and place for each hearing. The hearing will be conducted under applicable rules and policies of DCS pertaining to administrative hearings.

A written administrative hearing decision will be issued and mailed to the parties within 90 calendar days of completion of the hearing, unless additional time is requested and approved by all parties and the ALJ, as stated in the hearing record. However, a decision issued more than 90 calendar days after completion of the hearing will not be void or voidable on the ground of untimeliness.

If an administrative hearing decision involves periodic payment amount and concludes that the guardian met the burden of proof that the amount approved by DCS should be changed, the ALJ will not determine the proper amount of a periodic payment. If the administrative review decision is not affirmed, the ALJ will send the case back to DCS for further consideration based on the findings and conclusions stated in the decision. If subsequent negotiations do not result in agreement concerning the periodic payment amount, a second administrative appeal hearing will not be provided to re-argue the same disputed issues. In that event the administrative review determination concerning the post-remand Final Offer letter will be the final agency action of DCS.

Note: Any approved change in the periodic payment shall be documented by an amendment to the agreement that states the effective date for the change. If the appeal concerns the periodic payment amount stated in the guardianship assistance agreement that was signed before entry of the order establishing guardianship, the effective date will be retroactive to the date of the guardianship was finalized.

If the administrative review decision is upheld, the amount of the periodic payment, as stated in the signed original agreement, or currently effective amendment, will remain in effect unless or until the periodic payment is changed in accordance with the modification procedures in policy [14.6 Modification of a Guardianship Assistance Agreement](#). DCS will not consider the failure of the guardian to obtain a requested periodic payment amount to be a ground for terminating the guardianship of the child.

An administrative hearing decision issued by the assigned ALJ is the final agency action of DCS.

The final DCS agency action, after exhaustion of available administrative review and appeal procedures, is subject to judicial review under the applicable provisions of IC 4-21.5-5.

An administrative hearing will not be provided for the following decisions:

1. Approval or disapproval of any requested change in the language or format of the agreement form that DCS submitted for completion and signature; or
2. Any other decision or determination of DCS relating to administration of the Guardianship Assistance Program under this policy that is not described in this policy.

Code References

1. [IC 4-21.5-5 Judicial Review](#)
2. [45 C.F.R. 1355.30 Referenced Rules for Title IV-E](#)
3. [45 C.F.R. 205.10 Title IV-E Fair Hearings](#)
4. [42 U.S.C. 673\(d\) Kinship guardianship Assistance Program](#)
5. [IC 29-3-8-9\(f\) Guardian support obligation for assisted guardianship](#)
6. [IC 29-3-12-6\(b\) Continuation of assisted guardianship after age 18](#)
7. [IC 31-9-2-17.8 \(1\)\(E\) Guardianship assistance included in child services](#)

PROCEDURE

DCS Local Office Director (LOD) or designee will provide technical assistance, including testimony, to support the position of DCS for administrative hearings concerning original periodic payment amount or modifications of periodic payment amounts based on change of circumstances.

DCS CEU will provide assistance, including testimony, to support the position of DCS for administrative hearings concerning eligibility, continuation of guardianship assistance beyond the child's 18th birthday, termination of guardianship assistance agreements, administrative suspension of guardianship assistance payments, or decisions concerning modification requests other than changes in periodic payment amounts.

DCS Permanency and Practice Support will provide assistance, including testimony, to support the position of DCS for administrative hearings concerning the result of administrative reviews under policy [14.4 Administrative Review for Guardianship Assistance](#).

DCS will be represented in administrative appeal hearings by a DCS Central Office Attorney. A DCS Local Office Attorney who was involved in negotiation and determination of periodic payment amount or modification that is the subject of an administrative appeal hearing will assist the DCS Central Office Attorney, as requested, in presenting the DCS position at the hearing. Following an ALJ decision to uphold, reverse or remand the administrative review decision, DCS Counsel will notify DCS staff as to appropriate procedures to comply with the decision.

PRACTICE GUIDANCE

N/A

FORMS AND TOOLS

1. [Final Guardianship Assistance Program Eligibility Determination](#) – Available via CEU
2. [Payment Request Information \(PRI\) Indiana GAP \(SF 55040\)](#)
3. [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#)

RELATED INFORMATION

N/A

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 14: Guardianship	Effective Date: July 1, 2012
	Section 4: Administrative Review for Guardianship Assistance Program	Version: 1

POLICY

[NEW]

General Conditions

The Indiana Department of Child Services (DCS) will process a request for administrative review when a prospective guardian disagrees with a decision made by DCS under policy sections [14.5 Negotiations for Guardianship Assistance](#), [14.6 Modification of a Guardianship Assistance Agreement](#), and [14.2 Guardianship Assistance Program \(GAP\)](#). DCS will also process a request for administrative review of a decision concerning the amount payable for nonrecurring guardianship expenses (NRE).

A prospective guardian must submit a written [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) within 30 calendar days of service of notice by mail or hand delivery of any of the following decisions:

1. Final guardianship assistance program determination denying eligibility;
2. The DCS periodic payment Final Offer letter;
3. Determination of the amount allowed and payable for NRE;
4. Determination of a request for modification of the payment provisions of a guardianship assistance agreement, if the DCS local office and guardian have not reached agreement on the modification request;
5. Denial of a request for continuation of a guardianship assistance agreement after the child becomes age 18; or
6. Termination or administrative suspension of payments under a guardianship assistance agreement for any reason other than the age of the child, death of the child or guardian, or termination of the guardianship.

The [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) must be submitted to the DCS Permanency and Practice Support Division, in the manner specified in the request form. The Permanency and Practice Support Division will conduct the administrative review based on the reasons stated in the request, the documentation included to support the request, and any documentation submitted by DCS staff. Any person who was involved in making the decision or determination that is the subject of the administrative review request will not participate in the administrative review.

Eligibility Determinations

DCS will process a [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) from a prospective guardian who has an application pending for guardianship assistance concerning a determination made by DCS under policy sections [14.2 Guardianship Assistance Program \(GAP\)](#), [14.6 Modification of a Guardianship Assistance Agreement](#), or [14.5 Negotiations for Guardianship Assistance](#).

To overturn a DCS determination denying eligibility, the guardian must establish that the determination was contrary to applicable federal or state law, rule, or policy as applied to the facts.

Initial Periodic Payment Amount

Following a final determination approving eligibility for the guardianship assistance program, DCS will provide the determination, proposed agreement, and a Payment Request Information form (PRI) to the prospective guardian or the attorney who represents the prospective guardian.

If negotiation of the periodic payment has not resulted in an approved agreement, DCS will send a Final Offer letter to the prospective guardian or the guardian's attorney, stating the amount that DCS agrees to pay as the periodic payment for the agreement. The letter will include information about the availability of an administrative review process and the [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) form. See separate policy [14.5 Negotiations for Guardianship Assistance](#).

An eligible prospective guardian who has not agreed with DCS concerning the amount of the periodic payment, and has received a Final Offer letter stating the amount that DCS has agreed to pay, may do any of the following:

1. Accept the amount stated in the Final Offer letter by signing and returning to DCS the guardianship agreement that includes that amount.
2. Sign the GAP agreement with a condition added or attached to the agreement stating the prospective guardian's disagreement with the periodic payment amount, and return the signed GAP agreement to DCS with a completed Request for Administrative Review form.
3. Submit to DCS a completed Request for Administrative Review form without an accompanying signed Gap agreement.

If the prospective guardian signs and returns the completed GAP agreement, as provided in option (1) or (2) above, DCS will begin payment of the amount as stated in the agreement, effective on the date of entry of the order establishing guardianship of the child. If the amount of the periodic payment is subsequently changed as a result of the administrative review or an administrative hearing (see separate policy [14.3 Administrative Appeals for Guardianship Assistance](#)), the final approved payment amount will be implemented by an amended GAP agreement, effective retroactive to the date of the order establishing guardianship.

A prospective guardian who does not elect to sign the agreement may utilize the administrative review procedure provided in this policy. That process, and any available administrative hearing under policy [14.3 Administrative Appeals for Guardianship Assistance](#), should be exhausted before an order establishing guardianship of the child is entered. The guardianship assistance agreement between DCS and the guardian must be signed by both the guardian and DCS on or before the date that the court enters the order establishing guardianship of the child. If the order establishing guardianship of the child is entered before both DCS and the prospective guardian have signed the guardianship assistance agreement, the child will not be eligible for any guardianship assistance.

Note: If the guardianship assistance agreement is not signed prior to the order establishing guardianship, the child may not be eligible for Medicaid.

The [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) must be submitted to DCS Permanency and Practice Support. The request must be in the format specified in the [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) form. The prospective guardian must state the reason(s) for requesting a review and should include documentation to support the basis for the request. DCS Permanency and Practice Support will conduct the administrative review based on the request submitted by the prospective guardian, the documentation included to support the request and any documentation submitted by DCS staff. The administrative review will not include any person who was involved in the original order finalizing guardianship or the negotiation that resulted in the DCS Final Offer letter.

To overturn a DCS determination concerning the periodic payment in an administrative review, a prospective guardian must show one (1) or more of the following:

1. DCS did not substantially follow the procedures specified in this policy or any other applicable policy, rule, or statute relating to the determination of guardianship assistance periodic payments;
2. DCS did not consider relevant information or documentation that the prospective guardian submitted in the PRI in conducting the negotiation or submitting its Final Offer letter based on the factors and information outlined in DCS policy [14.5 Negotiations for Guardianship Assistance](#), in conducting the negotiation or submitting its Final Offer letter; or
3. The periodic payment that DCS agreed to pay as stated in the Final Offer letter is clearly unreasonable and not supported by substantial and relevant evidence presented by the prospective guardian or otherwise considered by DCS.

DCS will begin payment based on the signed agreement, effective upon entry of order establishing guardianship. A change in the periodic payment may only be made through the administrative review process or in accordance with the modification procedures in policies [14.6 Modification of an Guardianship Assistance Agreement](#) and [14.5 Negotiations for Guardianship Assistance](#). DCS will not consider the failure of the guardian to obtain from DCS the requested periodic payment amount as grounds for revoking or setting aside their guardianship of the child.

Modification of Periodic Payment Amount

After a guardianship assistance agreement and an order establishing guardianship of the child has been entered, the guardian may request a modification of the periodic payment amount or term stated in an existing agreement under policy [14.6 Modification of an Guardianship Assistance Agreement](#).

If the decision by the DCS local office is unsatisfactory to the guardian, a [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) must be submitted to DCS Permanency and Practice Support within the time and in the manner specified in this policy.

To justify the increase of a periodic payment, the guardian must show that a change of circumstances concerning the child or family occurred after the original agreement was signed, and that those circumstances were not known or anticipated at the time the agreement was signed.

Note: A request for modification may not be submitted more frequently than once in a consecutive 12 month period. See separate policy, [14.6 Modification of a Guardianship Assistance Agreement](#).

Termination or Suspension before the child turns 18 years of age

If DCS determines that a guardianship assistance agreement should be terminated or periodic payments under the agreement should be administratively suspended, DCS may terminate the agreement. In that event, DCS will send the guardian a [Notice of Termination of Guardianship Assistance Agreement](#), or administratively suspend payments by sending the guardian a [Notice of Administrative Suspension of Guardianship Assistance Periodic Payments](#).

If the guardian is receiving a periodic payment and the child has been removed from the home of the guardian pursuant to a court order, DCS may administratively suspend payments effective during the time the child is in the out-of-home placement. In that event, DCS will send the guardian a [Notice of Suspension of Guardianship Assistance Periodic Payments](#). If DCS determines that the child is not returning to the home of the guardian prior to the agreement terminating, DCS will send a [Notice of Termination of Guardianship Assistance Agreement](#).

If the decision of DCS CEU concerning termination or administrative suspension of assistance under this section is unsatisfactory to the guardian and is subject to administrative review under the General Conditions section of this policy, a [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) must be submitted to DCS Permanency and Practice Support.

For DCS to alter its decision at the administrative review concerning the administrative suspension or termination of the agreement, a guardian must show that the determination of DCS was based on a material error of fact or was contrary to applicable law or DCS policy.

Continuation after the child turns 18 years of age

DCS CEU will process all continuation request applications.

Note: For GAP the only allowable continuations are for those children that finalized the guardianship on or after the child's 16th birthday and meet the school, work, training, or disability requirements outlined in federal law.

If the decision of DCS CEU concerning continuation of the agreement after the child turns 18 years of age is unsatisfactory to the guardian, a [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) must be submitted to the DCS Permanency and Practice Support.

For DCS to alter its decision at the administrative review concerning an [Application for Continuation of Guardianship Assistance Agreement Beyond Age Eighteen](#), the guardian must show, that at least one (1) of the following factors applies:

1. The DCS CEU failed to consider relevant documentation submitted with the application;
or
2. The DCS decision was contrary to currently applicable law or DCS policy.

Administrative Review Decision

Administrative review will be completed within 60 calendar days of DCS Permanency and Practice Support's receipt of the request. DCS will send notice of the administrative review decision to the prospective guardian, the guardian, or attorney for the guardian or prospective guardian, with instructions and any appropriate forms so that a [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) may be pursued. Any review decisions regarding periodic payment amounts will be approved by both the DCS Deputy Director of Permanency and Practice Support and the DCS General Counsel or designee.

If the prospective guardian or guardian is dissatisfied with the results of the administrative review, the individual may submit a written [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) to the DCS Hearings and Appeals unit. The [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) form must be filed with DCS Hearings and Appeals unit within 30 calendar days of service by mail or hand delivery to the prospective guardian or guardian of the written notice of final administrative review decision. See separate policy [14.3 Administrative Appeals for Guardianship Assistance Program Guardianship](#).

An administrative review will not be provided concerning:

1. Disapproval of any requested change in the language or format of the agreement form that DCS submitted for completion and signature; or
2. Any other decision or determination of DCS relating to administration of the guardianship program under this policy that is not described in this policy.

Code References

1. [42 USC 673\(d\) Kinship guardianship assistance payments](#)
2. [IC 31-9-2-17.8\(1\)\(E\) Authorization for guardianship assistance program](#)
3. [IC 29-3-12-6\(b\) Continuation of assisted guardianship after age 18](#)
4. [IC 29-3-8-9\(f\) Support obligation of guardian receiving GAP payments](#)

PROCEDURE

The DCS LOD will:

1. Request the most recent PRI (if applicable), and supporting documentation that was submitted by the prospective guardian or guardian; and
2. Send a copy of the [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) to DCS CEU for issues involving eligibility, continuation, or termination.

The DCS Deputy Director of Permanency and Practice Support, or designee will:

1. Determine if requests were made in a timely manner. If not, the request will be denied;
2. Appoint a qualified person in Permanency and Practice Support division who has no previous knowledge or involvement in the case to conduct the administrative review;
3. Review and approve the completed administrative review decision within 60 calendar days of the receipt of the review request. The review will be based on documentation submitted by the DCS LOD, DCS CEU and the information submitted by the prospective guardian or the guardian; and
4. Send a copy of the administrative review decision letter to the DCS LOD, DCS CEU and the prospective guardian or guardian.
5. Send written notification to the prospective guardian, the guardian, or their attorney of the administrative review, once approval has been obtained.

Note: The written notification will include instructions concerning the administrative appeal process and include a [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#) form, if applicable.

DCS CEU will send a revised agreement for signature by the parties, if applicable.

PRACTICE GUIDANCE

N/A

FORMS AND TOOLS

1. [Final Guardianship Assistance Eligibility Determination](#) – Available via CEU
2. [Notice of the Termination of Guardianship Assistance Agreement](#)- Available via CEU
3. [Notice of Suspension of Guardianship Assistance Periodic Payments](#) – Available via CEU
4. [Request for Administrative Hearing/Indiana Guardianship Assistance Program \(GAP\) \(SF55041\)](#)

RELATED INFORMATION

N/A

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 14: Guardianship	Effective Date: July 1, 2012
	Section 5: Negotiations for Guardianship Assistance Program (GAP)	Version: 1

POLICY	[NEW]
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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 separate policy, [14.X Guardianship Assistance Program](#). 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 a 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.

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 \(PRI\) \(SF 55040\)](#) 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 that may be requested and provided by DCS 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 Local Office 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 Local Office 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.

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 Local Office Attorney will send a \$0 Final Offer letter to the prospective guardian or their designated attorney. The Final Offer letter will include the [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#) 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](#).

Except for determination of the periodic payment amount, and completion of any other specific information relating to the child or family, the provisions of the guardianship assistance agreement form approved by DCS cannot be altered or amended. Any change of a specified term or condition must be approved by both the DCS Deputy Director for Permanency and Practice Support and the DCS General Counsel, 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 a 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.

Code References

1. [42 USC 673\(d\)\(1\): Kinship guardianship assistance payments](#)
2. [IC 31-9-2-17.8\(1\)\(E\): Authorization for guardianship assistance program](#)
3. [IC 29-3-8-9\(f\): Support obligation of guardian receiving GAP payments](#)

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. 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 [14.2 Guardianship Assistance Program \(GAP\)](#);
4. Provide information to the guardian about the availability of services that can be requested and provided by DCS;
5. Explain the ability of the prospective guardian to request a change in the periodic payment amount in the event of changed circumstances; and
6. Send the signed guardianship assistance agreement and order establishing legal guardianship to the DCS CEU inbox, centralized.elgibility@dcx.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 Local Office Attorney with information necessary to negotiate the appropriate periodic payment amount; and
4. Sign the completed guardianship assistance agreement on behalf of DCS.

The DCS Local Office 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. Send the original agreement to DCS CEU;
5. 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 Hearing/Indiana GAP \(SF 55041\)](#) 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 the form 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 Hearing/Indiana GAP \(SF 55041\)](#) 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](#) – Available via CEU
3. [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#)

RELATED INFORMATION

Periodic Payment

A monthly per diem amount to be specified in a written guardianship assistance agreement.

Final Offer Letter

The letter sent by the DCS Local Office 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.

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 14: Guardianship	Effective Date: July 1, 2012
	Section 6: Modification of a Guardianship Assistance Agreement	Version: 1

POLICY

[NEW]

The Indiana Department of Child Services (DCS) will process a request for modification of a current guardianship assistance agreement providing ongoing financial assistance through the Guardianship Assistance Program (GAP).

Guardians who have signed an agreement and are receiving periodic payments may, during the term of the agreement, submit a request to change the periodic payment amount.

The request must be submitted to the DCS local office that handled the Child In Need of Services (CHINS) case or Juvenile Delinquency (JD) case at the time the guardianship was finalized. The request must include the information and documentation required, or that the guardian would consider relevant for an initial [Payment Request Information \(PRI\) Indiana GAP \(SF 55040\)](#) response. The request shall also include a detailed explanation of the change in circumstances of the child or guardian that was not known or anticipated at the time the current periodic payment was negotiated or most recent amendment to the agreement was determined. A request for modification may not be submitted more frequently than once in a consecutive 12 month period.

In considering a request for a change in the periodic payment amount, DCS may request from the guardian, or any other source, additional information that is determined to be relevant. Any information that DCS receives from a source other than the guardian will be shared with the guardian. The information will be subject to redaction of personally identifiable information that DCS determines should be kept confidential for protection of the persons involved. Within 45 calendar days of the date that DCS receives the requested information, DCS will decide whether to grant or deny the request to modify the agreement and will advise the guardian by letter of its decision.

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

If the DCS decision regarding a change to the periodic payment amount is not acceptable to the guardian, the right to request administrative review of the decision may be available. See separate policy [14.4 Administrative Review for GAP Assistance](#).

DCS may approve a temporary change in the periodic payment. The expiration date of the temporary change may be extended or renewed if the guardian submits a modification request and DCS determines that the circumstances on which the approved change was based continue to exist. All changes must be reflected in a written amendment to the agreement.

If the child is placed outside the home of the guardian and the guardian is not financially responsible for the placement (e.g. Juvenile Detention, foster care, etc), DCS may request the

guardian renegotiate the periodic payment amount for the duration of the out-of-home placement. Any change in the periodic payment amount will only be made by a written amendment to the agreement signed by DCS and the guardian.

Note: If DCS determines that the guardian is not providing financial support to or for the benefit of the child, or the guardian is no longer legally responsible for the support of the child, DCS may administratively suspend the periodic payments for the duration of the out-of-home placement or terminate the guardianship assistance agreement.

Code References

1. [42 USC 673\(d\)\(1\): GAP eligibility and other conditions for payment under Title IV-E](#)
2. [42 USC 673\(d\)\(2\) GAP eligibility and other conditions for payment under Title IV-E](#)

PROCEDURE

The Family Case Manager (FCM) will:

1. Notify the DCS Local Office Attorney when a child receiving guardianship assistance has been removed from the home;
2. Gather information including a detailed explanation of the change in circumstances if the guardian requests a modification. The detailed explanation should include circumstances related to the child or guardian that was not known or anticipated at the time the current periodic payment was negotiated and provide documentation to the DCS Local Office Director (LOD); and
3. Coordinate with the DCS CEU staff and other entities in obtaining and providing to the DCS Local Office Attorney documents such as the guardianship assistance agreement, previous modifications, the order establishing legal guardianship, and information on subsequent removals and out-of-home placements.

The DCS LOD or designee will:

1. Obtain a copy of the original agreement from the guardian, DCS CEU, or the DCS local office file when a request for modification of an existing guardianship assistance agreement is received;
2. Gather information from relevant sources, including the guardian, within 30 calendar days of the request to appropriately consider the request for a modification of the agreement; and complete the following steps:
 - a. Decide whether or not a prior request for modification has been received from the guardian within the previous 12 months. If so, deny the request for modification and include the [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#) form with the denial,
 - b. Decide whether or not a change in circumstances exists that was not known or anticipated at the time the periodic payment was negotiated. If not, deny the request for modification and include the [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#) form with the denial, or
 - c. If no request was received within the previous 12 months and the request documents a change in circumstances warranting review of the current periodic payment amount, submit the documentation and information to the DCS Local Office Attorney to negotiate any appropriate change in the periodic payment.

The DCS Local Office Attorney will:

1. Contact the guardian or their attorney and negotiate any appropriate change in the

periodic payment amount with regard to the modification request that has been received. This should occur within 45 calendar days of receipt of the currently effective guardianship assistance agreement, the modification request, any additional information requested, and any other relevant information received from the DCS LOD or designee;

2. Contact the guardian and request that they renegotiate the periodic payment for the duration of the out-of-home placement.

Note: Any change in the periodic payment amount will be reflected in an amendment to the agreement that must be signed by both the guardian and the DCS CEU.

3. Prepare an amendment reflecting the revised terms if an agreement is reached;
4. Obtain the signature on the amendment by the guardian and the DCS LOD, or designee, and return the signed amendment to DCS CEU for processing;
5. Send a notice to the guardian stating that there is no agreement to the modification requested and include the [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#) form if no agreement can be reached within 45 calendar days of the receipt of the documents and information described above, or an approved extension of time; and
6. Request an appropriate child support order under [IC 31-40-1-5](#) if the child is in an out-of-home placement for which DCS is making payment, and no agreement has been reached with the guardian regarding an amendment to the periodic payment amount.

The DCS CEU will:

1. Terminate a guardianship assistance agreement, or administratively suspend periodic payments under a guardianship assistance agreement, if it is determined that the guardian is not legally responsible or is not providing current support for the child;
2. Provide a copy to the appropriate DCS local office of the original guardianship assistance agreement and any amendments, when a guardian or DCS is requesting a modification; and
3. Process amendments of guardianship assistance agreements.

PRACTICE GUIDANCE

Financial Support to or for the Benefit of the Child

If DCS determines that the guardian is not providing financial support to or for the benefit of the child, or the guardian is no longer legally responsible for the support of the child, DCS may administratively suspend the periodic payments for the duration of the out-of-home placement or terminate the guardianship assistance agreement. This determination will be made on a case-by-case basis.

FORMS AND TOOLS

1. [Guardianship Assistance Agreement](#) – Available via CEU
2. [Payment Request Information \(PRI\) Indiana GAP \(SF 55040\)](#)
3. [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#)
4. [Amendment to Guardianship Agreement](#) – Available via CEU
5. [Guardianship Program Status Report](#) – Available via CEU

6. [Notice of Administrative Suspension of Guardianship Assistance Periodic Payments](#) – Available via CEU

RELATED INFORMATION

Definition of Financial Support for the Purposes of Guardianship Assistance

If a guardian is no longer providing a form of financial support to or for the child, guardianship assistance benefits may be terminated or administratively suspended. DCS may determine that if the guardian is maintaining regular visitation with the child and is cooperating with the child's case plan to return home while the child is in out of home care, and if one (1) of the following are met, the guardian should be considered as providing financial support to the child:

1. The guardian is making regular payments, or otherwise providing support for the child, for:
 - a. Family therapy,
 - b. Tuition,
 - c. Clothing,
 - d. Maintenance of special equipment in the home, or
 - e. Services for the child's special needs, such as occupational, physical, or speech therapy;
2. The guardian is providing support for the child while the child is in out of home care, in the form of regular monetary payments of not less than \$100.00 per month or provision of materials, supplies or services having an equivalent monetary value; or
3. The guardian is paying child support pursuant to a court order.