



## INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY

### Chapter 14: Guardianship and Adoption

#### Section 01: Guardianship Assistance Program (GAP)

**Effective Date:** July 1, 2023

**Version:** 6

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### POLICY OVERVIEW

*This policy does not apply to temporary guardianships. Relatives are ineligible for foster care payments or Guardianship Assistance Program (GAP) payments if temporary guardianship is granted.*

The Indiana Guardianship Assistance Program (GAP), which includes federal Title IV-E and state-funded guardianship assistance, is available to eligible children to assist guardians with the obligation to meet the children's needs. The goal of this program is to promote permanency in an efficient and expeditious way for children who may otherwise have their permanency delayed.

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### PROCEDURE

The Indiana Department of Child Services (DCS) will provide GAP to eligible relatives of an eligible child for whom the permanency option of guardianship is in the child's best interest and reunification and adoption are not feasible.

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

#### **Guardianship Assistance Program (GAP) Eligibility**

All applications for GAP must be submitted to the DCS Central Eligibility Unit (CEU) for eligibility determination at [Centralized.eligibility@dcs.in.gov](mailto:Centralized.eligibility@dcs.in.gov). To be eligible for Title IV-E GAP a child must also be eligible for Title IV-E maintenance payments.

**The Guardianship Assistance Agreement must be signed by all required parties for the child to be eligible for GAP payments, prior to the entry of the order establishing legal guardianship.**

Children who are wards of DCS or Juvenile Delinquency/Juvenile Status (JD/JS) and meet all the following criteria are eligible for GAP (see the CEU Eligibility Binder):

1. The child is 13 years of age or older and has been consulted;

**Exception:** In some circumstances, a child under 13 years of age may be eligible for GAP if:

- a. The child is a sibling:
  - i. Who is placed in the same home as an eligible child; and

- ii. DCS and the guardian agree on the appropriateness of the guardianship arrangement for the child; or
- b. The child has a medical condition or physical, mental, or emotional disability as determined by a physician or psychiatrist licensed to practice in Indiana or another state, and the condition/disability is approved through the Severe Impairment Determination process.

The DCS Regional Manager (RM) must approve the GAP application submission for any child under 13 years of age. The DCS CEU will determine the final eligibility based on the RM approval and all other eligibility criteria listed in this policy.

2. The child has been placed in the licensed relative placement for at least six (6) consecutive months;

**Note:** The child must demonstrate a strong attachment to the relative and the relative must be licensed as a foster family home (FFH) for at least six (6) consecutive months while the child is placed in the relative's care to be eligible for GAP. If the individual is a resource parent with whom the child currently resides, the child must have resided in the home for a minimum of 12 months. Eligible children who are wards of DCS or JD/JS and are placed out-of-state with relatives are also eligible for GAP.

3. The child has an approved permanency plan of legal guardianship indicating that neither reunification nor adoption are viable options; and
4. The child is a citizen or qualified alien.

### **Nonrecurring Expenses (NRE) and Medicaid Eligibility**

Any child eligible for a GAP payment is also eligible to receive reimbursement of Nonrecurring Expenses (NRE) associated with obtaining legal guardianship of the child. A Title IV-E GAP payment must be made to be eligible for Medicaid.

**Note:** Any child eligible for State-Funded GAP will need a separate Medicaid eligibility determination by the Division of Family Resources (DFR) to receive Medicaid (see Practice Guidance for additional information).

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 (see policy 5.07 Child and Family Team Meetings). 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.

**Note:** All children 13 years of age and older, under DCS care and supervision, must be consulted regarding the permanency option of legal guardianship. See policy 5.08 Developing the Case Plan/Prevention Plan.

2. Request court approval of legal guardianship as the permanency plan if the CFT determines legal guardianship is the best permanency option for the child (see policy 6.10 Permanency Plan);

3. Change the Case Plan/Prevention Plan goal to legal guardianship once the court orders legal guardianship as the permanency plan, and ensure all GAP requirements are completed on the Case Plan/Prevention Plan;
4. Obtain RM approval for any exceptions to GAP eligibility, if applicable;
5. If the child is placed with a resource parent who is interested in being the guardian, seek a court order approving a permanency plan of guardianship with the resource parent;
6. Ensure the following forms are signed by all required parties:
  - a. The Explanation of Indiana Guardianship Assistance Program and Background Information, and
  - b. The Indiana Guardianship Assistance Program (GAP) Application;
7. Verify the child has been placed with a licensed relative caregiver for six (6) consecutive months. If the individual is a resource parent with whom the child currently resides, the child must have resided in the home for a minimum of 12 months. See policy 12.13 Licensing Recommendation and Approval Process;
8. Verify the guardian is not disqualified for placement of a child based on the background check results. See policy 13.10 Evaluation of Background Checks for Foster Family Home Licensing;
9. Submit the GAP Application with supporting documentation to the DCS CEU for eligibility determination (see CEU Eligibility Binder). The following must be included:
  - a. The current FFH License, and
  - b. The required background check results (including the prospective relative guardian's household members at the time of the GAP Application) from the licensing file, which include the:
    - i. Child Protection Services (CPS) History Check for all individuals six (6) years of age and older in every state in which the subject of the check has resided within the last five (5) years;
    - ii. National Sexual Offender Registry (SOR) Check for all individuals 14 years of age and older; and
    - iii. Fingerprint-Based National Criminal History Check (i.e., qualified letter) for all individuals 18 years of age and older.
  - c. A letter or statement from a licensed physician or psychiatrist detailing the child's mental, emotional, medical, or physical disabilities is required if the child was approved by the RM as an exception to the age requirement based on the child's disability, if applicable, and
  - d. Completed and signed CEU Guardianship Assistance Eligibility Checklist.

**Note:** The GAP Application must be initiated in the DCS local office where the wardship or JD/JS was established. The Application and all supporting documentation must be received for the DCS CEU to review a child's eligibility for GAP benefits.

10. Obtain a copy of the petition for each child for whom legal guardianship is being sought;
11. Meet with the prospective guardian to discuss the following:
  - a. The Final Guardianship Program Eligibility Determination form,
  - b. The proposed Guardianship Assistance Agreement, and
  - c. The Request for Administrative Review Indiana GAP form (if applicable).
12. Inform the prospective guardian of the option to add a successor guardian to the proposed Guardianship Assistance Agreement (see Practice Guidance).

**Note:** In the event the successor guardian assumes responsibility for the child, the successor guardian will need to complete background checks and be appointed by the court in the guardianship proceeding, prior to receiving GAP payments for the child.

13. Provide the following to the DCS Central Office Attorney:
  - a. The Final Guardianship Program Eligibility Determination,
  - b. The unsigned Guardianship Assistance Agreement, and
  - c. Any information that may assist the DCS Central Office Attorney in negotiating the GAP payment. See policy 14.02 Negotiations for Guardianship Assistance Program.

**Note:** Prior to the entry of the order establishing legal guardianship, the Guardianship Assistance Agreement must be signed by all required parties for the child to be eligible for GAP payments.

14. Ensure the Guardianship Assistance Agreement is signed by all parties prior to the guardianship finalization;
15. Return the signed Guardianship Assistance Agreement and court order establishing legal guardianship to the DCS CEU for processing; and

**Note:** The prospective guardian may submit a Request for Administrative Review Indiana GAP form within 30 calendar days of the date of the Final Guardianship Program Eligibility Determination or receipt of the DCS Final Offer letter concerning the periodic payment amount if the prospective guardian disagrees with the Final Guardianship Program Eligibility Determination or the amount of the proposed legal guardianship agreement. The Guardianship Assistance Agreement must be signed prior to finalization, even if the prospective guardian has requested an administrative review of the periodic payment amount. See policy 14.08 Negotiations for Adoption Assistance.

16. Notify any youth who entered GAP on or after the youth's 16<sup>th</sup> birthday about the availability of Older Youth Services (OYS) and refer interested youth for OYS. See policies 11.01 Older Youth Services (OYS) and 11.02 Eligibility for Older Youth Services (OYS).

The FCM Supervisor will:

1. Review the case file to ensure the required supporting documentation is included with the GAP Application and the following is signed by all required parties:
  - a. The Explanation of Indiana GAP Program and Background Information form, and
  - b. The GAP Application form.
2. Ensure that the FCM has received the required paperwork from the prospective guardian and submitted it to the DCS CEU; and
3. Ensure all parties sign the Guardianship Assistance Agreement prior to the entry of the court order establishing legal guardianship.

The DCS Central Office Attorney will:

1. Contact the prospective guardian or the prospective guardian's attorney and offer 50 percent of the correct Foster Care Maintenance Payment (FCMP) for the child and obtain signatures on the Guardianship Assistance Agreement, if the offer is accepted;
2. Negotiate the periodic payment amount and obtain signatures on the Guardianship Assistance Agreement, if this amount is not accepted;

3. Ensure the negotiated and agreed-upon amount does not exceed what the child would have received in foster care;
4. Work with the FCM to obtain any information needed for the legal guardianship; and
5. Ensure all required parties sign the Guardianship Assistance Agreement prior to the legal guardianship being finalized in court.

The RM will determine whether to approve the submission of the GAP Application for a child if:

1. The child is a member of a sibling group in which at least one (1) child in the sibling group is an eligible child; or
2. The child is under 13 years of age with a medical condition or physical, mental, or emotional disability as determined by a physician or psychiatrist licensed to practice in Indiana or another state.

**Note:** The RM will only approve the submission of the GAP Application. The DCS CEU will determine the final eligibility for GAP.

The DCS CEU will:

1. Review the completed CEU Guardianship Assistance Eligibility Checklist and supporting documentation submitted by the FCM;
2. Return the GAP Application and supporting documentation to the FCM, if all the information on the CEU Guardianship Assistance Eligibility Checklist was not provided;
3. Review the child's eligibility for GAP benefits upon receipt of a completed GAP Application;

**Note:** The DCS CEU is not responsible for Medicaid eligibility determinations for State-Funded GAP.

4. Use the Severe Impairment Determination process to determine eligibility (if applicable);
5. Provide the Final Guardianship Program Eligibility Determination form to the FCM for review with the prospective guardian; and
6. Review the case file once the signed Guardianship Assistance Agreement and court order establishing legal guardianship is received to ensure:
  - a. All required parties signed the agreement on or prior to the date of the legal guardianship order, and
  - b. The negotiated amount does not exceed what the child would have received in foster care.

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## RELEVANT INFORMATION

### Definitions

#### Legal Guardianship

Legal Guardianship is the transfer of parental responsibility and legal authority for a minor child to an adult caregiver who intends to provide permanent care for the child. Guardianship may be established with or without Termination of Parental Rights (TPR).

#### Relative

A relative is defined in IC 31-9-2-107(c) as any of the following in relation to a child:

1. A parent;
2. A grandparent;
3. A brother;

4. A sister;
5. A stepparent;
6. A stepgrandparent;
7. A stepbrother;
8. A stepsister;
9. A first cousin;
10. An uncle;
11. An aunt;
12. Any other individual with whom a child has an established and significant relationship.

#### Other Relative

An individual who is not related by blood, marriage or adoption (as indicated in #12 of the definition of relative) may be considered a relative for purposes of placement and the Guardianship Assistance Program (GAP) when the individual has an established and significant relationship with the child.

The relationship with the child will be other relative and must meet the following three (3) criteria:

1. Have the characteristics of a family relationship. The relationship should have the same characteristics or be similar to the relationship that the child has with an individual related by blood, marriage, or adoption;
2. Be verified through the following:
  - a. Interviews,
  - b. Attested by the Statement of Attestation Regarding Relationship form, or
  - c. Oral designation of the child or of another person, including other relatives related to the child by blood, marriage, or adoption; and
3. Be described by the child, if age appropriate, as someone with whom the child has developed a significant emotional relationship (this may include a resource parent).

**Note:** If the individual is a resource parent with whom the child currently resides, the child must have resided in the home for a minimum of 12 months. The resource parent will be designated as “other relative” through approval by local office Management upon determination that guardianship is in the best interest of the child.

Credible evidence showing that the individual performs or has performed a substantial role in the upbringing or material support of the child should be documented in the case management system. If the individual is a resource parent, DCS must seek a court order acknowledging the foster parent as a relative following the court’s approval of the permanency plan change to guardianship, if it is determined that a child is eligible for GAP.

**Note:** Placement with a suitable and willing relative related by blood, marriage, or adoption must be ruled out before considering any other out-of-home placement, with the first consideration being given to a suitable and willing noncustodial parent.

#### **Forms and Tools**

- Case Plan/Prevention Plan – Available in the case management system
- [Central Eligibility Unit \(CEU\) Eligibility Binder](#)
- CEU Email - [Centralized.eligibility@dcs.in.gov](mailto:Centralized.eligibility@dcs.in.gov)
- [CEU Guardianship Assistance Eligibility Checklist](#)

- [Explanation of Indiana Guardianship Assistance Program and Background Information \(SF 55157\)](#)
- Final Guardianship Program Eligibility Determination (SF 55155) – Available via CEU
- [Indiana Guardianship Assistance Program \(GAP\) Application \(SF 55129\)](#)
- Medicaid Enrollment Unit (MEU) Email - [MedicaidUnit@dcs.in.gov](mailto:MedicaidUnit@dcs.in.gov)
- [Request for Administrative Review Indiana GAP \(SF 55147\)](#)
- Severe Impairment Determination Process - Available via CEU
- [Statement of Attestation Regarding Relationship \(SF 52727\)](#)
- State Guardianship Assistance Agreement (SF 55231) - Available via CEU
- Title IV-E Guardianship Assistance Agreement (SF 55229) - Available via CEU

### Related Policies

- [5.07 Child and Family Team Meetings](#)
- [5.08 Developing the Case Plan/Prevention Plan](#)
- [6.10 Permanency Plan](#)
- [11.01 Older Youth Services](#)
- [11.02 Eligibility for Older Youth Services](#)
- [12.13 Licensing Recommendation and Approval Process](#)
- [13.10 Evaluation of Background Checks for Foster Family Home Licensing](#)
- [14.02 Negotiations for Guardianship Assistance Program](#)

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### LEGAL REFERENCES

- [IC 29-3-1-7.5: “Incapacitated person”](#)
- [IC 29-3-2-1: Application of article; jurisdiction of courts](#)
- [IC 29-3-8-9\(f\): Guardian obligation to support child who is GAP beneficiary](#)
- [IC 31-30-1-1: Exclusive original jurisdiction](#)
- [IC 31-9-2-17.8: “Child services”](#)
- [IC 31-9-2-107\(c\): “Relative”](#)
- [42 USC. 673\(d\): Kinship guardianship assistance payments for children](#)
- [465 IAC 4-2: Title IV-E Guardianship Assistance Program and State Guardianship Assistance Program](#)

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## PRACTICE GUIDANCE- DCS POLICY 14.01

*Practice Guidance is designed to assist DCS staff with thoughtful and practical direction on how to effectively integrate tools and social work practice into daily case management in an effort to achieve positive family and child outcomes. Practice Guidance is separate from Policy.*

### **Licensing Requirements for the Indiana Guardianship Assistance Program (GAP)**

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

### **Processing Medicaid Enrollment for Children Eligible for State-Funded GAP**

Any child eligible for State-Funded GAP will need a separate Medicaid eligibility determination by DFR to receive Medicaid. The prospective guardian should contact their local DFR office to apply for Medicaid for the child.

### **Processing Medicaid Enrollment for Children Eligible for Title IV-E GAP**

All cases regarding children eligible for Title IV-E GAP who are Indiana residents and will be placed with the child's guardian in Indiana will be processed by Medicaid Enrollment Unit (MEU) for Medicaid enrollment. All cases that involve eligible children who are Indiana residents being placed outside of Indiana will be processed by CEU for Medicaid enrollment. A Title IV-E GAP payment must be made on behalf of the child to be eligible for Medicaid.

### **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 include the following:
  - a. Child Protection Service (CPS) History Check,
  - b. National Sex Offender Registry (SOR) Check, and
  - c. Fingerprint-Based National Criminal History Check (Fingerprint-Based 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 DCS and the original guardian, or any new guardianship assistance agreement signed by the DCS 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.

### **Temporary Guardianships**

If temporary guardianship is granted, the relatives are not eligible for foster care payments or GAP payments.

### **Termination of Guardianship Assistance**

If a guardian is no longer providing any form of financial support to or for the child, guardianship assistance benefits should be terminated. DCS may determine the guardian should be considered as providing financial support to the child if:

1. The guardian is maintaining regular visitation with the child and is making reasonable efforts to ensure the child may return home; and
2. One (1) of the following are met:
  - a. The guardian is making regular payments or otherwise providing support for the child for:
    - i. Family therapy,
    - ii. Tuition,
    - iii. Clothing,
    - iv. Maintenance of special equipment in the home, or
    - v. Services for the child's special needs, such as occupational, physical, or speech therapy.
  - b. 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
  - c. The guardian is paying child support pursuant to a court order.

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