



GUARDIAN ASSISTANCE PROGRAM (GAP)



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WHY IT MATTERS

One of the most pressing goals of public child welfare services is to ensure that children rapidly and safely achieve permanency. For many children, reunification with parents is the primary goal. However, when reunification is unsafe or not in the child's best interest, adoption or legal guardianship with a caring adult are the primary alternatives. Relative care has become a preferred option for many child welfare systems when children cannot safely remain with their parents and are placed in foster care. When compared with children in non-relative care, children in relative care experience greater stability as shown by fewer placement and school changes, and more positive feelings about their placement.¹

Data indicates that approximately 45 percent of children in out-of-home care have case plan goals other than reunification. The goals include adoption (26 percent), guardianship (3 percent), and living with other

relatives (3 percent).² State courts determine the scope of a guardian's rights and responsibilities. Definitions of guardianship and the terms of guardianship orders and agreements vary from State to State, but all States grant guardians care, custody, and control of the child and they are responsible for providing the child with a safe and stable home, food, clothing, and basic health care.

Federal adoption assistance support has been available to all States since 1980; however, federal guardianship assistance was only made available to all States under Title IV-E of the *Social Security Act in 2008*, with the passage of the *Fostering Connections to Success and Increasing Adoptions Act*.³ Among other things, the Act established the Title IV-E *Guardianship Assistance Program (GAP)*, which allows federal funds to be used to support State subsidies for eligible children and relative guardians who are committed to caring

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permanently for these children. As of this writing, 33 States, the District of Columbia and six tribes have implemented GAP.⁴ The *Fostering Connections Act* gives States the option to use Title IV-E funds for guardianship assistance if the following requirements are met:

- The guardian is a relative of the child (although the law does not define “relative”).
- The guardian has a strong commitment to caring permanently for the child, is a licensed foster parent, and has cared for the child in a licensed foster care home for at least six consecutive months.⁵
- The child meets eligibility requirements for receipt of Title IV-E foster care maintenance payments.⁶
- If the child is 14 years of age or older, he or she must be consulted about the guardianship.
- Neither reunification nor adoption are appropriate permanency options for the child.
- The State agrees to match federal funds with State dollars at the Medicaid matching rate.⁷

If States are not willing or able to meet these requirements or choose not to operate a Title IV-E GAP program, they may fund a relative guardianship assistance program with their own funds. The *Fostering Connections Act* allows States to pay relative guardians up to the same rate as the State’s monthly foster care subsidy, but not more than this. While the federal guardianship statute sets out a basic framework for Title IV-E GAP, including eligibility requirements, States retain discretion to shape and develop their programs in unique ways including how they define “eligible” relatives, what supports they will provide beyond the monthly subsidy and what the birth parent responsibilities will be.

THE DIFFERENCE BETWEEN GUARDIANSHIP AND ADOPTION

Unlike adoption, guardianship does not require termination or relinquishment of parental rights. In many States, birth parents may retain certain rights and responsibilities, such as the right to consent to adoption of the child, major medical treatment, and enlistment in the armed forces; and they often remain responsible for paying child support. As part of the guardianship agreement, courts can allow birth parents to maintain contact with their child including regular visitation. Birth parents may also retain the right to petition the court to revoke or modify a guardianship upon a showing of changed circumstances and that changing the guardianship is in the child’s best interest. Guardianship may also be the right choice in cases in which reunification is not possible or in the child’s best interest, and there are no grounds for termination of parental rights.

ADVOCATES IN ACTION

GAP is the first time that federal dollars were made available exclusively for supporting children exiting foster care to permanent homes with relative guardians.⁸

ACTIONS

- **Learn if your State has been given final approval for GAP amendments.** If so, inquire as to how they are being implemented and how it has changed (or not changed) permanency outcomes for children and youth in foster care. If your State is not participating in GAP, find out if there are future plans in place to use GAP.
- **Educate CASA volunteers, judges, parents, guardians, child welfare staff, practitioners and leaders on the benefits of guardianship,** such as the fact that termination of parental rights (TPR) is not required, birth parents can remain engaged in the child's life, etc. Helping others understand the value of guardianship as a permanency option which considers guardian families' unique needs, and how best to meet those needs.
- **Review the literature on the benefits of guardianship.** Guardianship is often considered a more fragile permanency option than adoption or family reunification. Having supporting data on the benefits of guardianship will help build a case as to why it may, depending on the individual situation, be a viable alternative to adoption.
- **Understand the differences between legal guardianship, adoption, and foster care and how your State defines each in terms of service provision and support.** Help family members including relatives and fictive kin understand these differences and the possible benefits and drawbacks to each.
- **If guardianship is a viable option, help older youth understand what their rights are in terms of expressing their feelings and desires.** Just as family members and professionals need to know the differences between legal guardianship, adoption and foster care, older youth (14 years and older are required to be informed) need to be educated on these differences so they can express their opinions on the matter.
- **Pay special attention to the option of legal guardianship for American Indian and Alaska Native (AI/AN) children and families.** When AI/AN children are placed with families that do not share their culture or heritage, there is likely a loss of familial, tribal, and cultural connections. In the event that reunification will not be possible, legal guardianship can help retain familial and cultural ties, important components to well-being.

- **Make relative search, engagement, and education of guardianship status and benefits a priority.** Continually identify and engage relatives and fictive kin who may serve as guardians.
- **Make licensing relative caregivers a priority** and examine State barriers to licensure to determine if licensure can be simplified and streamlined for relative caregivers.
- **Consider guardianship for youth who are older than 18.** Permanency at any age can lessen child trauma and family conflict.⁹ Relative guardianship can fill the need for permanency when neither reunification nor adoption are appropriate, or the young person has aged out of foster care.

CHECK TO SEE IF YOUR STATE OR TRIBE HAS BEEN GIVEN FINAL APPROVAL FOR THE GAP AMENDMENTS:

As of August 2017, 43 Title IV-E Agencies have submitted Title IV-E plan amendments to enable them to make claims for federal support of eligible guardianship assistance.

- **35 States and the District of Columbia** have been given final approval of those GAP amendments (Alabama, Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, Nevada, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, and Washington, West Virginia and Wisconsin).
- **8 Tribes or Tribal Consortia** have been given final approval of the GAP amendment (Confederated Salish and Kootenai Tribe, Eastern Band of Cherokee Indians, the Keweenaw Bay Indian Community, Navajo Nation, Pascua Yaqui Tribe, Port Gamble S'Klallam Tribe, the South Puget Intertribal Planning Agency, and Tolowa Dee-ni' Nation of Smith River, California (formerly Smith River Rancheria).

SELECTED RESOURCES

Name	Description
<p><u>Casey Family Programs, Guardianship Assistance Policy and Implementation: A National Analysis of Federal and State Policies and Programs</u>¹⁰</p>	<p>In this report, federal Title IV-E GAP, and State guardianship assistance statutes and administrative codes were reviewed in the summer of 2016. A survey of State experts in guardianship, or child welfare administrators in the States without a guardianship program currently in place, was also conducted. The report, developed in collaboration with the <i>Chapin Hall Center for Children</i>, was guided by a desire to clearly understand how States are, or are not, supporting guardianship placements in the law and in practice.</p>
<p><u>Child Welfare Information Gateway, Kinship Guardianship as a Permanency Option</u>¹¹</p>	<p>This publication reviews State laws and policies that allow a family member or other person with close ties to a child who has been placed in out-of-home care to become that child's permanent guardian.</p>
<p><u>Grandfamilies, The Title IV-E Guardianship Assistance Program (GAP): An Update on Implementation and Moving GAP Forward</u>¹²</p>	<p>This document provides a list of the benefits of guardianship as a permanency option when reunification isn't possible for children and youth in foster care. It also provides a map of the United States identifying the States that are using Title IV-E GAP.</p>

ENDNOTES

- 1 Generations United. (n.d.) Children thrive in grandfamilies. Washington, DC: Author. Retrieved from <http://grandfamilies.org/Portals/0/16-Children-Thrive-in-Grandfamilies.pdf>
- 2 U.S Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, *The AFCARS Report, 2016*. <http://222.acf.hhs.gov/cb>
- 3 <https://www.acf.hhs.gov/cb/resource/implementation-of-the-fostering-connections#gap>
- 4 Thirty-three States have been given final approval for GAP amendments, including: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, and Wisconsin. New Mexico has also been given approval for GAP amendments and is currently working to implement GAP.
- 5 Licensure of foster parents is an administrative decision made by child welfare agency personnel. States have discretion when determining whether a guardian should be licensed or whether there are acceptable waivers to licensing requirements. Retrieved from http://grandfamilies.org/Portals/0/documents/KinshipCare%20Judges-1Pager_Final.pdf
- 6 The Title IV-E Guardianship Assistance Program (GAP) is a formula grant that helps States, Indian Tribes, Tribal Organizations and Tribal Consortia (hereafter “Tribes”) who opt to provide guardianship assistance payments for the care of children by relatives who have assumed legal guardianship of eligible children for whom they previously cared as foster parents. Retrieved from: <https://www.acf.hhs.gov/cb/resource/implementation-of-the-fostering-connections#gap>
- 7 Public Law 110-351, Sec. 101(b)(3)(A)(iii)
- 8 <http://www.childrendefense.org/library/data/making-it-work-using-the.pdf>
- 9 See Issue Brief on “Permanency roundtables: Helping older youth achieve permanency.”
- 10 https://caseyfamilypro-wpengine.netdna-ssl.com/media/Guardianship-Assistance-Policy-and-Implementation_Technical-Report.pdf
- 11 <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/kinshipguardianship/>
- 12 <http://www.grandfamilies.org/Portals/0/Title%20IV-E%20GAP%20Update.pdf>