

**Child and Family Services Policy Manual:
Title IV-E Guardianship Assistance Program-
Subsidized Guardianship**

**Title IV-E
Guardianship
Subsidy**

The Department has the authority to provide financial assistance and Medicaid to eligible children for whom guardianship is established under Mont. Code Ann. 41-3-444. The Title IV-E Guardianship Assistance Program, (Title IV-E subsidized guardianship), is intended for children who are eligible to receive Title IV-E foster care maintenance payments while residing with a family that meets the kinship definition. The prospective guardian must meet youth foster care licensing requirements. For information about State-funded guardianship subsidy, see Policy Section 407-3. <https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-3.pdf>

Purpose

The Department of Public Health and Human Services, Child and Family Services Division, is committed to permanency for all children.

Guardianship will be the preferable permanent placement option for some children, but should only be utilized when reunification and adoption have been ruled out. Guardianship is a permanency option for children for whom a permanency team has made the determination that guardianship is the most appropriate permanent placement option.

Establishment of guardianship creates a legal relationship between the child and the guardian(s) which can only be terminated by the court.

Definitions

A **child or youth (minor)** is any person under 18 years of age. Mont. Code Ann. 41-1-101.

A **legal guardian** is a person who has qualified as a caretaker of a child/youth in the custody of the Department or tribe and has been appointed guardian by the court.

A **legal guardianship** is a judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control of the child, custody of the child, and decision making.

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A **kinship guardian** is:

- a member of the child's extended family;
- a member of the child's or family's tribe; (**documentation of tribal membership or affiliation**)
- the child's godparents;
- the child's stepparents; or
- a person to whom the child, child's parents and family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the agency's involvement with the child or family. Also known as "fictive kin".

NOTE: *Documentation demonstrating that the prospective guardian meets the "fictive kin" definition must be maintained in the child's case file. Documentation may include but is not limited to the child's and/or birth parent(s)' statement ascribing a family relationship and significant emotional tie that existed prior to the agency's involvement.*

A **Non-kinship guardian** is:

- a person to whom the child or child's family **did not have** a significant emotional tie **that existed prior** to the agency's involvement with the child or family. (i.e. foster parent).

NOTE: A non-kinship guardian is not eligible for Title IV-E guardianship subsidy regardless of the child's eligibility.

**Legal Requirements
for Guardianship**

Guardianships must meet the general legal requirements outlined in Policy Section 302-4 and 407-2.

<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/302-4.pdf>
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-2.pdf>

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The following eligibility requirements must also exist before the Department will consent to a guardianship **and** can consider a **Federal Title IV-E guardianship subsidy**:

- if adoption is in the child's best interests, no appropriate adoptive family has been located despite a diligent search
- foster care payments are being made on the child's behalf;
- the prospective guardianship family is a licensed foster/kinship family that **meets the definition of kinship guardian** and has been approved by the Department to become the legal custodian of the child; and
- the child has resided with the prospective kinship guardian(s) for a minimum of six **consecutive** months while eligible to receive IV-E foster care maintenance payments;
- the child has been consulted regarding the guardianship, if the child is 12 years and older.

Educational Requirement

As a condition of receiving a Title IV-E guardianship subsidy, the guardian(s) must have the child enrolled in school or in an authorized independent study program, or the child must be home schooled consistent with the law of the State or other jurisdictions in which the school, program, or home is located during the entire time the legal guardianship is in place. If the child does not remain enrolled in school or in an authorized independent living study program, or the child is not home schooled consistent with the law of the State or other jurisdictions, the guardians will not be eligible to continue to receive the subsidy; however, the guardianship will remain in place.

Selection of Placement

Priority to Extended Family

If the child meets the definition of an **abandoned child**, the court may give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts and uncles. Placement with the extended family member must be determined to be in the best interests of the child.

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If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint based on a finding by the court that the extended family member is qualified to care for the child and which of the interested extended family members can best meet the child's needs. <https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/304-2.pdf>
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/402-4.pdf>
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/802-4.pdf>

**Completing the
Title IV-E
Guardianship**

General Steps for completing a guardianship are outlined in Policy Section 407-2. The following are additional guidelines for guardianships in which subsidy is being considered.
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-2.pdf>

**Permanency Team
Staffing**

A Permanency Team will determine if Guardianship is the most appropriate plan for the child and the necessary actions that must be taken prior to filing a petition for guardianship with the court. Participants in the staffing must include the child's Child Protection Specialist, Child Protection Specialist Supervisor, Family Resource Specialist or Family Resource Specialist Supervisor and Permanency Planning Specialist. See Policy 407-2 for Permanency Team Staffing requirements related to Guardianships. See Policy Section 409-2 for general information on Permanency staffings.
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-2.pdf>
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/409-2.pdf>

**Guardianship
Assessment
Required**

In accordance with ARM 37.50.1101, the prospective guardian(s) must meet the youth foster home licensing requirements. A Guardianship Assessment is conducted by the Family Resource Specialist or assigned worker. It involves a written assessment of the prospective guardian and the guardian's home environment in regards to the needs of the specific child for which they wish to provide a permanent home.

In order to complete the written assessment, an updated home visit is required with the prospective guardian focusing on his/her understanding of the rights and responsibilities of a guardianship, the child's needs, the prospective guardian's ability to meet those needs and their willingness to make a permanent commitment.

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The family may also need to complete an updated fingerprint based criminal and CPS check specifically for the guardianship. See Policy Section 802-6 and 802-3 for Guardianship Assessment guidelines and criminal background check procedures. <https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/802-6.pdf>
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/802-3.pdf>

If the guardianship for children for whom a guardianship assessment was completed is not established within one year of the approval of the guardianship assessment, a reassessment must be completed. An annual name-based check will also need to be completed in accordance with Policy Sections 802-3 and 802-6. <https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/802-3.pdf>
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/802-6.pdf>

**CAPS Entry
For Guardianship
Assessment**

The completed guardianship home assessment and recommendation must be entered in CAPS (FALD screen) as a licensed “approved” facility using this code:

GKS Guardian Kinship

Note: If the assessment is completed by a tribe and entered into CAPS, this code is used:

TGK Tribal Guardian Kinship

The FSPL codes are not automatic; thus the Administrative Support Supervisor in each region should be contacted to enter in the following service codes for this provider.

PGUAR (primary child)

PGUAS (sibling, if applicable)

**CFS-132 Title IV-E
Guardianship
Program Eligibility
Determination**

The **CFS-132** needs to be completed in all guardianship for which subsidy may be requested. This form helps justify the eligibility for subsidy and document that the criteria has been met. Field staff determine the eligibility and will check off the eligibility on page 2 of this document. Once completed, this document should be scanned into DOCGEN.

<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/cfs-132.doc>

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*Determining the
Eligibility for Subsidy*

The **Title IV-E Guardianship Assistance Program** requires that the child be eligible for Title IV-E foster care maintenance payments and the placement be with a family that meets the definition of Kin and meets the additional eligibility requirements detailed in this policy section. The child's Title IV-E eligibility (foster care maintenance payment) may be determined by reviewing the **IVEL** screen. The following information may be entered:

Review of IVEL screen

APPROVED: indicates that the child is receiving Title IV-E foster care maintenance payments

DENIED: indicates that the child is not eligible to receive Title IV-E foster care maintenance payments and is not eligible for Title IV-E Guardianship assistance.

SUSPENDED: indicates that the child has the potential of eligibility for Title IV-E but that information or documentation has not been received by the IV-E Unit to determine or redetermine eligibility. (In these cases, please contact the IV-E Unit in Central Office to determine deficiency).

Sibling Eligibility

Placement of siblings together is required unless there are documented reasons why placement together would be contrary to the safety or well-being of any of the siblings. The Title IV-E Guardianship Assistance Program allows non IV-E eligible (foster care maintenance) siblings of a Title IV-E eligible child, who are placed in the same prospective kinship guardian's home, to receive Title IV-E Guardianship subsidy based on the "primary" child's eligibility.

***What if the Child is
Eligible for Title IV-E
Foster Care
Maintenance
Payments but the
Provider does not
meet the Definition of
KIN***

In rare circumstances a child may be receiving Title IV-E foster care maintenance but the provider may not meet the definition of **KIN** making them ineligible for Title IV-E Guardianship Assistance. In this case, the only option is requesting approval for General Fund Guardianship subsidy for this child. Written approval must be obtained by the Regional Administrator and the Division Administrator. See Policy Section 407-3 for protocol. <https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-3.pdf>

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Subsidy Negotiation

*Guardian Subsidy
Agreement CFS-131*

Upon completion of the Permanency staffing, CFS-132 Title IV-E Guardianship Assistance Program Determination, CFS-157a Case plan, and approved Guardianship Assessment, the Permanency Planning Specialist or designee will contact the prospective guardian to review and negotiate the terms of the guardianship subsidy. The terms negotiated in a Title IV-E subsidized guardianship include a monthly cash amount, nonrecurring costs, (if applicable) and Medicaid coverage. **All relevant parties must sign the CFS-131 Subsidized Guardianship Agreement prior to the finalization of the Guardianship.**

<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/CFS-131SubsidizedGuardianshipAgreement.doc>

<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/cfs-132.doc>

<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/cfs-157aguardianshipcaseplanningattachment.doc>

<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/CFS-133%20Agreement%20on%20Guardianship%20Placement.doc>

Cash Assistance

Subsidy amount shall be negotiated for **an amount greater than \$0** and not to exceed \$10 less than the monthly foster care maintenance payment that the child is receiving at the time of his foster care placement.

NOTE: Guardianship subsidies are required to be assigned a cash amount in order to be eligible to receive Medicaid through our program.

*Title IV-E Non-
recurring Guardianship
Expenses*

Non-recurring guardianship expenses are permitted for Title IV-E Guardianship Subsidies only. Non-recurring costs may occur on rare occasions. They are defined as those costs that may be reimbursed for non-recurring guardianship expenses for the actual costs incurred by guardian associated with obtaining legal guardianship. These expenses are reasonable and necessary guardianship fees, attorney fees and other expenses directly related to the legal guardianship of the child. These expenses must not have been incurred in violation of state and federal law or have been reimbursed from other sources of funds.

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Other expenses directly related to the legal guardianship of the child means the costs incurred by or on behalf of the guardian for the written assessment, including health and psychological examination or consultation, transportation and reasonable costs of lodging and food for the child and/or guardian when necessary to complete the placement or guardianship process.

Maximum \$2000

Guardians may be reimbursed for non-recurring guardianship expenses for actual costs incurred by the guardians up to \$2000 per child.

*Approval Process
For Non-recurring
costs*

The request for payment of non-recurring expenses is negotiated and approved initially on the CFS-131. The agreement must indicate the nature and amount of the non-recurring expenses to be paid. The family should be advised that they will **need to submit receipts of the actual cost** of the reimbursement. The request for payment and receipts are submitted to the Permanency Planning Specialist or his/her designee.

*CAPS Entry
For Non-recurring
Costs*

The appropriate service codes shall be entered on **FSPL by the Administrative Support Supervisor** for non-recurring costs.

The Permanency Planning Specialist or designee will submit documents to his/her Regional Administrative Support Supervisor to enter into CAPS for final payment. The codes for Non-recurring costs are as follows:

<i>Guardianship legal costs:</i>	<i>SGAAF(eligible child)</i>
	<i>SGASF (sibling)</i>
<i>Guardianship home study</i>	<i>SGAAS (eligible child)</i>
	<i>SGASS-(sibling)</i>
<i>Guardianship travel</i>	<i>SGATR (eligible child)</i>
	<i>SGATS (sibling)</i>

NOTE: Children receiving General Fund subsidy are not eligible for non-recurring guardianship expenses. This is specific to Title IV-E Guardianship subsidy eligibility

SSI and Subsidy

If the child is receiving SSI benefits, this factors into the negotiation process. The child remains entitled to SSI and the

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family is required to apply as payee for the child.

SSA does not factor the guardian(s) income into the SSI eligibility. The child's income is factored in. SSI will be decreased by at least 1/3 of its total as an (in kind) room and board.

When negotiating the subsidy, the SSI amount will need to be factored in. The Division may negotiate a subsidy amount to make up the difference of what would be considered a subsidy.

Subsidy and Medicaid Children receiving Title IV-E Guardianship Subsidies are eligible for Medicaid. Opening the Medicaid is now automated via Central Office. A guardianship subsidy needs to be assigned a **cash** amount in order for the child to be eligible for Medicaid through the guardianship program.

Availability of Other Services Title IV-E Guardian Assistance Program requires the Department to make available post guardianship resources and information to the guardians upon finalization. The CFS-131 Subsidized Guardianship Agreement has incorporated this provision under General Provisions as part of the Subsidy Agreement.
<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/CFS-131SubsidizedGuardianshipAgreement.doc>

Subsidy Renegotiation The subsidy amount may be adjusted periodically, in consultation with the guardian, based on the circumstances of the guardian and needs of the child. A new CFS-131 Subsidized Guardianship Agreement will need to be completed and signed by the guardian(s) and the Department designee

Continuation of Eligibility for Title IV-E Guardianship Assistance Payments if Guardian Dies or Becomes Incapacitated The eligibility for guardianship assistance payments will continue in the event the guardian relative dies or is incapacitated and a successor legal guardian is named in the agreement (or any amendments to the agreement). Continuation of the eligibility for the guardianship assistance payment makes the child eligible to continue to receive Medicaid.
NOTE: In the event the successor guardian is the child's birth parent who has relinquished parental rights or had parental rights terminated, the guardianship assistance payment will not continue. The guardianship assistance Medicaid will also be terminated.

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Subsidy Denial

In cases where a prospective guardian whose claim for subsidy is denied, the prospective guardians are given an opportunity for a fair hearing.

DOCGEN Entry

Throughout the process and upon finalization of the Guardianship, the following documents need to be scanned into DOCGEN:

- Guardianship Decree
- Completed CFS-132 Title IV-E Guardianship Assistance Program Eligibility Determination
- Completed and signed CFS-131 Subsidized Guardianship Agreement
- Birth Certificate if this has not already been scanned in

The Title IV-E Unit should be notified that these documents have been scanned into DOCGEN. They will enter the correct funding source for the subsidy on CELL.

Case Transfer to Administrative Support Supervisor

Upon the receipt of the Guardianship Decree the case in CAPS should be transferred to the Regional Administrative Support Supervisor. The Child Protection Specialist should make sure that the Administrative Support Supervisor has all the necessary information for CAPS entry. If necessary, the Administrative Support Supervisor can share the case with CPS to allow the worker to complete any case management

Steps to CAPS Entry

The following screens shall be entered and completed upon finalization by the Administrative Support Supervisor

- **FALL** – check this screen to make sure that an approved guardianship license has been entered
- **FSPL--** review this screen to make sure PGUAR/PGUAS has been added
- **CRTL --** a disposition code of **GSP** (guardianship-youth) should be entered.
- **RELL--** Guardians should now be added and entered in on

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this screen as **LGD** (legal guardians)

- **CPHL** -close foster care using exit reason of **POG**
-type **GARD** and **F11** on **CPHL**.
-complete **GARD** screen
- **SERP**- close all open foster care services including the removal service.
-**PGUAR** for primary child
-**PGUAS** siblings (if applicable)

NOTE: In subsidy cases the IARD screen needs to remain open (no closure review) in order for the system to trigger the subsidy payment.

**Case Record
After Finalization**

The child's case file remains with field staff. Subsidy payments (PAYA) are approved by the Administrative Support Supervisor.

References

Mont. Code Ann. § 41-3-444
Indian Child Welfare Act, 25 U.S.C. 1901 et seq.
Fostering Connections to Success and Increasing Adoptions Act of 2008
Preventing Sex Trafficking and Strengthening Families Act

**New 10/12
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