


Policy Number:	SSA/CW #22-12
Policy Title:	Guardianship Assistance Program
Release Date:	December 9, 2022
Effective Date:	December 9, 2022
Approved By:	Denise Conway, LCSW-C Executive Director  Social Services Administration
Revision Date(s):	N/A
Supersedes:	SSA Policy Directive #13-25, #15-25, #15-3
Originating Office:	Tanisha Sanders, PhD Director of Permanency Social Services Administration
Required Actions:	Implementation of the Guardianship Assistance Program consistent with current law on Kinship Care Providers
Key Words:	Guardianship, GAP, Guardianship Assistance, Kinship Care Providers, Successor Guardians
Related Federal Law	Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351), Preventing Sex Trafficking and Strengthening Families Act (Public Law 113-183)
Related State Laws	Md. Code Ann., Fam. Law §§ 5-501, 5-326(a)(10), 5-525; Cts. & Jud. Pro. § 3-819.2.
COMAR	COMAR 07.02.29
Title IV-E State Plan Referenced?	Yes

PURPOSE

The purpose of this Guardianship Assistance Program (GAP) policy is to set out the GAP eligibility criteria for caregivers who are seeking to become the legal guardian of a child who is in the custody of a local department of social services (LDSS). It also provides direction for services to be offered using a family centered practice model with the intent to keep the child safe, affirm family strengths and support and enhance the permanent stability of the child within his or her family setting. **GAP provides legal stability for children who are unable to return home to their biological parents and where adoption has been ruled out as an option.** GAP allows relatives and non-relatives to take full legal responsibility for foster children without terminating parental rights.

RELATED LAWS AND REGULATIONS

The Social Services Administration (SSA) is directed by law to have a program for out-of-home placement for children who cannot safely remain in their homes. Md. Code Ann., Fam. Law § 5-525. Maryland has operated a State-funded kinship guardianship program since 1997. Courts are authorized to grant guardianship to a relative or non-relative and terminate the LDSS's involvement. State regulations, COMAR 07.02.29, address the particulars of the assistance, including eligibility, continued eligibility, reconsideration of eligibility, and grounds for terminating assistance.

On October 7, 2008, President Bush signed the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. Law No. 110-351). Section 101, codified at 42 U.S.C. § 673(d) allows States to provide kinship guardianship assistance payments under the Title IV-E program. On September 29, 2014, Congress passed the Preventing Sex Trafficking and Strengthening Families Act (Pub. Law No. 113-183). Section 207, codified at 42 U.S.C. § 673(d)(3). It requires states to incorporate a successor guardian provision into their GAP.

DEFINITIONS

Child: means an individual under the age of 18 or between 18 and 21 if a court has retained jurisdiction over the child and the child meets the eligibility requirements for a GAP under this policy.

Guardianship: means physical and legal custody granted by a court, which includes legal authority and responsibility for a child, to an individual to provide for the child's needs.

Guardianship Assistance Program (GAP): a program whereby the State, under qualifying circumstances, contributes financial assistance and medical assistance to help in the care of a child.

Intermediate Foster Care (Above Board) Rate: the payment rate above the regular rate paid to a foster family home for a child requiring extra care and supervision because of special physical, emotional or behavioral needs, as defined in COMAR 07.02.11.

Regular Care Rate: the rate paid for all children in foster care who require routine care and supervision.

Relative Caregiver: an adult who is related by blood, marriage, or adoption, who is a godparent, or who has a strong kinship bond to a child who is in the care, custody, or guardianship of a LDSS; and who has been designated as a temporary 24-hour caregiver to that child.

Relative Guardian: a relative caregiver whom the court has designated as legal guardian.

Successor Guardian: an adult person identified by the relative guardian and approved by the LDSS who will assume care of a child who receives a GAP payment due to the death or incapacitation of a relative guardian.

SCOPE

This policy applies to those situations where neither parental reunification nor adoption best serves the permanency needs of a child. When a child cannot be reunited with parents, and adoption of the child is not possible or in the best interest of the child, the next priority for permanency is Placement with a Relative Caregiver for the purpose of Custody and Guardianship. Legal custody and guardianship mean that an adult, other than a legal parent of a child, is legally responsible for the child and a court has rescinded the order committing the child to a local department of social services.

The GAP allows relative guardians to assume a complete parental role while receiving subsidy payments, thus minimizing State intervention. By subsidizing guardianships, SSA can accomplish the goals of legal permanency and family responsibility for children in the custody of the State of Maryland.

PROCEDURES AND TIMEFRAMES

Guardianship Assistance Eligibility Requirements:

General Eligibility Criteria:

1. The child has been removed from the child's home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.
2. Neither reunification with a parent or legal guardian nor adoption are appropriate permanency options for the child.
3. The child demonstrates a strong attachment to the relative caregiver and the relative caregiver has a strong commitment to care permanently for the child.
4. If the child is school age, the child must be a full-time elementary or secondary school student, or be incapable of attending school due to a documented medical condition.
5. With respect to a child aged 14 or older, the child has been consulted regarding the guardianship arrangement.
6. The child is not 21 years of age, or older.

7. Sibling groups may be eligible in the same guardianship arrangement if the LDSS and the relative caregiver agree on the appropriateness of the arrangement for the siblings and at least 1 of the siblings meets the eligibility criteria. Guardianship assistance may be paid on behalf of each sibling placed in the guardianship of the relative caregiver.
8. The monthly assistance amount shall be negotiated based upon the child's specific needs but may not exceed the foster care board rate that would have been paid on behalf of the child if the child had remained in a foster family home. Treatment foster care rates do not apply to guardianship assistance payments; only regular or intermediate foster care board rates apply.
9. The Guardianship Assistance Program subsidy may not extend beyond the child's 21st birthday.

IV-E Guardianship Assistance Eligibility Criteria:

1. The General Eligibility Criteria above are met.
2. The child was eligible for Title IV-E foster care maintenance payments for the last 6 consecutive months, during which the child resided in the home of the relative caregiver with no breaks in placement.
3. The relative caregiver's home was approved (not provisionally) as a foster family home or restricted foster home for the prior 6 consecutive months during which the child resided with the relative caregiver. The foster home approval process included child protective services and the fingerprint-based national criminal history background clearances for all household members aged 18 and over.
4. The relative caregivers must have sufficient income and financial stability to provide reasonable living conditions for their own family group without depending upon the guardianship assistance for their own support.
5. If at least one member of a sibling group placed in the same guardianship arrangement meets criteria #1 and #2, then all the siblings are IV-E eligible for guardianship assistance.
6. If a child is the subject to a current guardianship assistance agreement under Title IV-E (section 473 of the Social Security Act), the GAP payment may be extended up to the child's 21st birthday if the child was at least 16-years-old before the guardianship assistance agreement became effective and the agreement was still in effect at the child's 18th birthday and continuously thereafter, **if** the child is:
 - a. Completing secondary education or a program leading to an equivalent credential;
 - b. Enrolled in an institution which provides post-secondary or vocational education;
 - c. Participating in a program or activity designed to promote, or remove barriers to employment;
 - d. Employed for at least 80 hours per month; or
 - e. Incapable of doing any of the above-described activities due to a documented medical condition.
7. IV-E guardianship assistance may be extended up to age 21 if the LDSS determines that a child has a mental or physical disability warranting continuation of assistance.
8. Relative guardians must keep the LDSS informed of any circumstance that would make them ineligible for GAP or eligible for a different payment amount.

State Assistance Eligibility Criteria: Applies to all IV-E ineligible children, plus IV-E eligible children who are placed in formal kinship care (relative caregivers who are not approved as resource or foster parents).

1. The General Eligibility Criteria above are met.
2. The LDSS shall complete a home study for custody and guardianship (Form DHR/SSA 2005). The home study shall include child protective services background checks and fingerprint based national criminal background checks for all persons in the home over 18 years of age. The LDSS may not make custody and guardianship recommendations to a court until all aspects of the home study and background checks have been completed.
3. The relative caregivers shall sign a release of information and an affidavit for physical and mental health history (Form DHR/SSA 2006). The physical and mental health history assesses the relative caregivers' appropriateness to be a permanent resource for the child. The relative caregivers shall be informed that the affidavit is for home study use only. Psychotherapy notes are excluded from consideration.
4. The relative caregivers shall have some means of financial support independent of the GAP subsidy (employment, Temporary Cash Assistance, social security, survivor's benefits, TDAP etc.). If the relative caregivers are receiving a TCA child-only grant, the local department may not use that grant in computing income because that grant will end with the establishment of the GAP.
5. Refusal by the relative caregivers or any adult member of the household to consent to child protective services background checks, national criminal background checks, or the release of health care information in the prescribed time frame shall be considered grounds for denial of the subsidy request. The LDSS may not pay guardianship assistance on behalf of an eligible child prior to the conclusion of a national criminal background check, which will include fingerprinting every adult living in the home of the relative caregivers.
6. The state guardianship assistance may be extended up to the child's 21st birthday, if the LDSS has determined that the child has a mental or physical disability warranting continuation of assistance; or the child at age 18 and continuously thereafter, is:
 - a. Completing secondary education or a program leading to an equivalent credential.
 - b. Enrolled in an institution which provides post-secondary or vocational education.
 - c. Participating in a program or activity designed to promote or remove barriers to employment;
 - d. Employed for at least 80 hours per month; or
 - e. Incapable of doing any of the above-described activities due to a documented medical condition.
7. If a IV-E eligible child becomes ineligible for the IV-E guardianship assistance subsidy, the local department may determine whether the child is eligible for State guardianship assistance.

Initiating GAP:

1. Using an intended action notice (DHR/SSA1068-A, 1068-B), the LDSS shall notify the child's birth parents of a plan to transfer legal guardianship to the relative caregiver. The letter accompanying the notice or the notice shall advise the parents that parental rights are not terminated and that parents or any other party in the case may petition the court to review the custody and guardianship order at any time.
2. The LDSS shall provide relative caregivers with a GAP application and receive the completed application.
3. A foster parent for a private Child Placement Agency must comply with this policy and any related regulations to become a relative guardian for a child committed to the State.
4. The LDSS shall negotiate the assistance amount based on the needs of the child but the assistance may not exceed the foster care board rate to which the child was eligible at the time of guardianship transfer.
5. The LDSS shall ensure that:
 - a. All monies received on behalf of the child, e.g., social security disability or survivor's benefits, are considered resources when negotiating the assistance.
 - b. If the child is eligible for SSI, the relative caregiver(s) has applied to become the child's representative payee and has disclosed the assistance payment as income to the Social Security Administration at the time of application.
6. The LDSS shall consider child support in negotiating the assistance, offsetting the amount of the child support order against the amount of the assistance payment.
 - a. If parents are not currently paying support required by court order, the relative caregivers may be entitled to arrearages. The LDSS must advise the relative caregivers to apply to be the payee for child support.
7. The LDSS shall enter into a written binding guardianship assistance agreement with the relative caregivers, signed by the LDSS and the relative caregivers, which will remain in effect without regard to the state residency of the relative caregivers, specifying:
 - a. The amount of and manner in which the monthly assistance payment will be provided;
 - b. That the assistance payment shall be paid monthly as a per diem rate and will fluctuate month to month;
 - c. The additional services and assistance that the child and relative caregiver to which they will be eligible for under the agreement;
 - d. The procedure by which the relative caregiver may apply for additional services as needed;
 - e. That payment for the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child cannot exceed \$2,000, which that LDSS will pay on behalf of a IV-E eligible child only using fiscal code 2111; and
 - f. The manner in which the payment may be adjusted periodically in consultation with the relative guardians based on the relative guardians' circumstances and the child's needs. Any adjustment must be approved by SSA.

8. The LDSS shall provide the relative caregivers with a copy of the signed GAP agreement.
9. The LDSS and the relative caregivers shall sign the GAP agreement prior to the court decree granting custody & guardianship to the relative caregivers.
10. The effective date of the assistance payment shall be the date the court awards custody and guardianship to the relative caregivers.
11. The assistance payment is not transferable to another caregiver who is not a party to the guardianship assistance agreement or specifically in the court order unless the relative guardians have taken the necessary steps to name a successor guardian.
12. If the relative caregivers are receiving TCA on behalf of the child at the time the court awards custody and guardianship to the relative caregivers, the child's LDSS caseworker shall send an alert to FIA to end the TCA payment to coincide with the date the assistance payments start.
13. The LDSS shall provide the opportunity for a fair hearing if it denies the application for GAP or reduces, suspends, or terminates assistance.

Case Plan Requirements:

At the time of changing the permanency plan to "Placement with a Relative Caregiver for Custody and Guardianship," the caseworker shall document in the Case Plan:

1. The reasons that continued placement is necessary including the steps the LDSS has taken to determine it is not appropriate for the child to be returned home or adopted;
2. The reasons for any separation of siblings during placement, as well as efforts for frequent visitation or other ongoing interaction between siblings;
3. The reasons why a permanent placement with a fit and willing relative caregiver through a guardianship assistance arrangement is in the child's best interest;
4. The ways in which the child meets the eligibility requirements for a guardianship assistance payment;
5. The efforts made by the LDSS to discuss adoption with the proposed relative guardians as a more permanent option and why the proposed relative guardians chose not to pursue adoption;
6. Efforts made by the LDSS to discuss with the child's parents the guardianship assistance arrangement, or reasons why these efforts were not made; and
7. If the child is 14 years of age or older, documentation that the child has been consulted regarding the guardianship arrangement.

Assistance Payments:

Monthly Guardianship Assistance Payment:

1. Shall be negotiated based upon the child's specific needs;
2. May be adjusted periodically, in consultation with the relative guardians based on the circumstances of the relative guardians and the needs of the child;
3. May only be adjusted if approved by the SSA;
4. Payments cannot exceed 100% of the regular foster care board rate which would have been paid on behalf of the child if the child had remained in a foster family home; and

If the LDSS determines that the child is eligible for the intermediate foster care board rate and has the appropriate documentation, a request must be made to SSA to review for approval.

IV-E Nonrecurring Expenses Payment:

A nonrecurring expenses payment is available for IV-E eligible children only. Reimbursement for expenses associated with obtaining legal guardianship of the child are available up to a maximum of \$2,000:

1. All requests for nonrecurring expenses shall be approved by SSA prior to signing the agreement and granting of guardianship; and
2. The **paid in full receipt** from the attorney must be received after the guardianship hearing to qualify for the reimbursement.

Medical Assistance:

The child who is eligible for the IV-E guardianship assistance is categorically eligible for the federal Medicaid program available in the state of residence if the child is receiving IV-E guardianship assistance on an ongoing basis of at least \$1.00 per month. The child who is receiving State of Maryland guardianship assistance and who resides with the relative guardian in Maryland shall be eligible for Maryland's medical assistance for a period of 1 year and be evaluated annually thereafter for continued Maryland medical assistance. A child who resides with the relative guardian in a state other than Maryland shall apply for medical assistance in the state of residence. A guardianship assistance payment of at least \$1.00 must be awarded for the child to receive Medicaid/Maryland Medical Assistance under GAP.

Suspension of Guardianship Assistance

Guardianship assistance payments may be suspended for any of the following:

1. The LDSS cannot establish that the relative guardians are legally responsible for the child;
2. The LDSS cannot establish that the relative guardians are providing financial support for the child;
3. The child is placed in foster care or another out-of-home setting with a plan of return home to the relative guardians; or
4. The relative guardians notify the LDSS that the child temporarily lives outside the home and the relative guardian(s) are no longer assuming responsibility for the child.

The LDSS shall provide thirty (30) days written notification to the relative guardians via letter of intended action prior to suspending assistance.

Termination of Guardianship Assistance

Guardianship Assistance may be terminated upon the occurrence of any of the following:

1. The child reaches the age of 18 and does not meet the eligibility criteria for continuing assistance up to age 21;

2. The child who was eligible under the extended age provisions reaches the age of 21; or has not reached age 21, but is no longer meeting one of the eligibility criteria for extending assistance to age 21;
3. The LDSS determines the relative guardians are not legally responsible for the child;
4. The LDSS determines the relative guardians are not providing any financial support for the child;
5. The child re-enters out-of-home placement;
6. The relative guardian or child die;
7. The relative guardians request termination of the assistance;
8. The child becomes an emancipated minor;
9. The child marries;
10. The child attains age 21;
11. The child enlists in the military; or
12. Assistance has been suspended for at least 60 days.

Yearly Application Requirements:

The LDSS shall complete an annual reconsideration to ensure that the relative guardians and the child continue to be eligible for guardianship assistance. The relative guardians shall be required to provide documentation or other evidence establishing the continued eligibility of the relative guardians and the child.

The LDSS shall provide written notice to the relative guardians 60 days prior to the due date of the required annual reconsideration, which shall include a copy of the current guardianship assistance agreement and a list of the information and documentation required to be provided by the relative guardians for reconsideration of the guardianship assistance.

Successor Guardianship:

For the child to remain eligible for the GAP upon the death or incapacitation of the relative guardians, the relative guardian must have named a successor guardian.

1. The relative guardians may request that the LDSS amend the Guardianship Assistance Agreement to add, remove, or replace a successor guardian.
2. Any request to name a new successor guardian must be made prior to the death or incapacitation of the relative guardians.
3. Prior to the proposed successor guardian signing a Successor Guardianship Assistance Agreement, the LDSS must complete child protective services history clearances and fingerprint-based national criminal background checks on the successor guardian and all adult members (18 years and older) of the successor guardian's household. IV-E federal funding cannot be utilized for payment until the clearances and fingerprints are completed.
4. State funds may be used until clearances and fingerprints are completed.
5. A home study **is not** required for a successor guardian; however, the court **may** order a home study for the guardianship.
6. The LDSS may approve a successor guardian who is not a blood relative of the child.

7. The successor guardian may begin to receive the guardianship assistance payment upon signing the Successor Guardianship Assistance Agreement following the death or incapacitation of the relative guardian.
8. Within 90 days of receiving the guardianship assistance payment, the LDSS shall ensure that the successor guardian submits documentation to the LDSS that a court has awarded custody and guardianship of the child to the successor guardian or that the successor guardian has filed a petition for custody and guardianship of the child.
9. Upon receipt of the court decree granting custody and guardianship to the successor guardian, the relative guardian shall provide the LDSS with a copy. If the LDSS does not receive the documentation, the guardianship assistance payment shall be terminated.
10. The successor guardian must comply with the annual reapplication requirements.

RIGHT TO APPEAL

The LDSS, in accordance with COMAR 07.01.04, shall provide the opportunity for a fair hearing if the guardianship assistance is denied, suspended, reduced, or terminated for reasons other than (1) the child reaching age 21; (2) the child's death; or (3) the death of relative guardians who are parties to both the assistance agreement and the custody and guardianship court decree. Relative guardians have the right to be represented by legal counsel at their own expenses in any appeal proceeding.

ALIGNMENT WITH PRACTICE MODEL & DESIRED OUTCOME

The GAP supports the goals of the Practice Model to reduce the need for out-of-home placements and for timely and lasting permanency through guardianship. It values collaboration with the relative caregiver and guardianship family and empowers them to provide for the needs of their growing family. Guardianship assistance is intended to help relative caregivers and guardians care for the child who has been placed in their home by an LDSS, to provide a permanent, safe, nurturing environment for a child that supports a familial cultural background.

DOCUMENTATION

Guardianship Assistance Record:

The LDSS shall maintain the GAP record in the official electronic system of record. Documents pertaining to the GAP assistance should be scanned into the electronic record and stored in the file cabinet under the perspective "Person" tab. The LDSS shall maintain records to include the following documents:

1. Signed copy of the guardianship assistance application.
2. Signed copy of the guardianship assistance agreement (and subsequent reapplications).
3. Copy of the Guardianship Decree.
4. Copy of the child's birth certificate.
5. Copy of the child's social security card.

6. Documentation of school enrollment, disability preventing enrollment; or immunization record.
7. Documentation of the 18-21 requirement being met (if applicable); and
8. Justification and documentation of intermediate care rate requirements.

FORMS-The following forms can be found on the [SSA Policies Google drive](#).

Guardianship Home Study Form
Authorization for Medical Information Release
Guardianship Application
Guardianship Agreement
Guardianship Reapplication Agreement
Successor Guardian Agreement
Successor Guardian Addendum