

# Using Subsidized Guardianship to Improve Outcomes for Children

## *Key Questions to Consider*



**Cornerstone Consulting Group** is a national consulting firm that specializes in human services and community development issues. The National Collaboration to Promote Permanency through Subsidized Guardianship is Cornerstone's multi-year initiative designed to provide technical assistance and educational materials to federal, state and local audiences interested in finding a safe, permanent and loving home for abused and neglected children. For more information, see Cornerstone's Web site at [www.cornerstone.to](http://www.cornerstone.to) or e-mail Jennifer Miller at [jmiller@cornerstone.to](mailto:jmiller@cornerstone.to).

The mission of the **Children's Defense Fund (CDF)** is to *Leave No Child Behind*<sup>®</sup> and to ensure every child a *Healthy Start*, a *Head Start*, a *Fair Start*, a *Safe Start*, and a *Moral Start* in life and successful passage to adulthood with the help of caring families and communities. CDF provides information about subsidized guardianship and other policies and programs to support children living in kinship care families, and other child welfare concerns. For more information about the Movement to Leave No Child Behind<sup>®</sup>, the Act to Leave No Child Behind, and other initiatives, see CDF's Web site at [www.childrensdefense.org](http://www.childrensdefense.org) or contact Rutledge Hutson at [rhutson@childrensdefense.org](mailto:rhutson@childrensdefense.org).

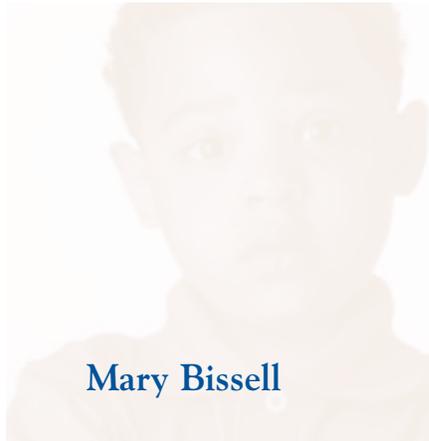
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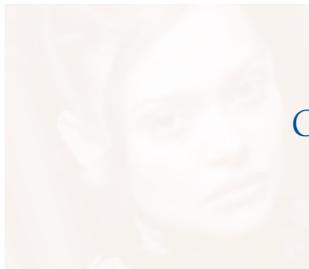
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As states explore new ways to secure loving, permanent families for abused and neglected children who cannot return home safely, there is growing consensus that the time has come for subsidized

guardianship. Thirty-four states and the District of Columbia have already established subsidized guardianship programs as a permanency option for children who exit the child welfare system into the legal guardianship of relatives and other qualified caregivers.

### **Subsidized Guardianship Helps Children Achieve Permanence with Family**

On the most fundamental level, subsidized guardianship arrangements work because they successfully build on the inherent strengths of families, primarily kinship caregivers, who are able to provide children with a vital sense of connection and belonging. Subsidized guardianship allows children to maintain their family and community roots when they can no longer live with their parents and adoption is not an appropriate option for the children. The ongoing financial support from subsidized guardianship helps eligible children remain with kin who would not otherwise be able to support them over the long term.

### **Key Questions: Building on What We Know**

If children are to realize the full benefits of subsidized guardianship, these programs must be implemented wisely. A variety of fundamental questions should be considered when weighing the pros and cons of subsidized guardianship, working to expand it, and determining how to ensure that it will truly benefit children. This volume begins with an overview, which helps to answer the larger question: What is subsidized guardianship? The issue briefs that follow, many by guest authors, raise ten key questions about subsidized guardianship. In answering the questions, the authors explore many useful lessons that have been learned as states have implemented subsidized guardianship programs across the country. The questions explored include:

- How Permanent is Subsidized Guardianship?
- How Do We Choose Among Permanency Options?
- How Do We Educate the Child Welfare Community about Subsidized Guardianship as a Permanency Option?
- How Do We Support Children and Families to Sustain Subsidized Guardianship Arrangements?
- How Can Subsidized Guardianship Contribute to Permanency for Older Youth?
- How Does Subsidized Guardianship Fit into a Larger Kinship Care Framework?
- How Does Subsidized Guardianship Respect Culture?
- What Have We Learned from Evaluations about Subsidized Guardianship?
- What Are the Cost Considerations for Subsidized Guardianship?
- The Role of Advocacy: How Do We Build Support for Subsidized Guardianship?

## The Role of the Courts and State Legislatures

In addition to the issue briefs, two checklists provide guidance to court personnel and state legislatures as they consider ways to strengthen subsidized guardianship as a permanency option. These checklists can be a starting point for the courts and legislatures as they consider their role in ensuring appropriate use of subsidized guardianship for children and the relatives raising them.

## Desired Outcomes for Implementing Subsidized Guardianship

As state subsidized guardianship programs become more established and federal funding alternatives are explored to help them reach more children, these issue briefs should help policy makers, administrators, child welfare workers, judges, attorneys and guardians ad litem, family members, and other advocates to better understand the complexities and benefits of this vital permanency option.

At the same time, however, it is important to constantly examine the impact that subsidized guardianship is having on the larger child welfare system and the ultimate outcomes for children and families. Some of these potential impacts are described below. These desired outcomes (and others that states may consider as they develop their own subsidized guardianship programs) can help to ensure that planning and implementation stay on track. They also provide a helpful yardstick for monitoring progress of reform efforts over time.

### 1. Reducing the use of long-term foster care.

- Subsidized guardianship will reduce the over-reliance on long-term foster care by allowing

children who cannot be reunified or adopted to achieve permanency in a safe and loving home.

### 2. Creating permanency for youth.

- Subsidized guardianship will respond to the desires of young people who cannot return to their birth parents, are in a safe and loving environment with a relative or other caregiver, and truly do not want to be adopted.

### 3. Responding to the unique needs of kinship caregivers.

- Subsidized guardianship allows kinship caregivers who are caring for children an option for permanently caring for children when return home and adoption are not possible. This is particularly important when termination of parental rights is not in the best interests of the child.

### 4. Reducing overrepresentation of minority children in foster care.

- Subsidized guardianship can help respond to the unique needs and interests of minority children who are overrepresented in foster care – particularly the African American and Native American communities, when return home and adoption are not options.

### 5. Providing choices and opportunities for families.

- Subsidized guardianship provides families with choices about permanency options and allows them to be engaged in decision making about the choices that are in the best interests of children. It also encourages agencies to promote other practice models that engage families, including concurrent planning, family team decision making, and family group conferencing.

## Question and Answers About Subsidized Guardianship

### What is subsidized guardianship?

Subsidized guardianship provides a permanent family for eligible children who are leaving the state child welfare system and for whom return home and adoption are not appropriate options or for children who are at risk of being placed in foster care.

Subsidized guardianship makes it possible for these children to live permanently in the care of a legal guardian who has agreed to provide a safe and loving home for them and who receives ongoing payments to help provide for the needs of the child. In many cases, the child's guardian is a relative or a close family friend (sometimes called a "kinship caregiver") who already has a bond with the child.

### Do all states have subsidized guardianship?

Most do. The Children's Defense Fund conducted a national survey of state guardianship laws and found that as of 2003, 34 states and the District of Columbia had subsidized guardianship programs. New Jersey, Missouri, and Montana each had two separate subsidized guardianship programs that serve different groups of children.<sup>1</sup> Due to the current fiscal crises in the states, however, it is possible that some state subsidized guardianship programs have been cut back or eliminated.

### Is subsidized guardianship different in each state?

Yes, state subsidized guardianship options vary greatly. They have different names, different eligibility guidelines for children and caregivers, and offer different

subsidy amounts for participating children. They also have different funding sources and serve varying numbers of children. Delaware's Assisted Guardianship, for example, serves approximately 48 children. Illinois's Subsidized Guardianship Program serves approximately 6,909 children. California's Kin-GAP Program, the nation's largest, serves more than 9,000 children.

### Are subsidized guardianship programs new?

Yes. While extended family and friends have been stepping in to raise children for generations, subsidized guardianship programs designed to increase the financial stability and well-being of the children in these arrangements are relatively new. Massachusetts established the first subsidized guardianship program in 1983. Two other states pioneered subsidized guardianship programs in the 1980s: South Dakota in 1985 and Nebraska in 1986.

In the early 1980s, the crack cocaine epidemic resulted in a record number of children coming under the supervision of state child welfare agencies. While qualified relatives were often willing to raise these children, many were unable to make ends meet without financial help to support the children and without services to address their special needs. At the same time, state child welfare agencies began to acknowledge the emotional and cultural benefits of permanent placements with kin for children who could not return safely to their parents and for whom adoption was not an appropriate option. Similar to adoption assistance programs, subsidized guardianship programs helped states to secure and maintain permanent placements for children who would otherwise remain in long-term foster care.

In 1997, the federal Adoption and Safe Families Act (ASFA) called for more timely decisions about permanence for children in state custody and formally recognized legal guardianship as an appropriate permanency option for waiting children.<sup>2</sup> As a result, most states have developed their subsidized guardianship programs in the last several years.

### **Is subsidized guardianship a new type of guardianship or custody law?**

No. Each state already has its own set of guardianship or custody laws.<sup>3</sup> These laws allow a relative caregiver or other qualified third party to ask the court for formal legal authority over a child. Once the court approves a legal guardian, the responsible adult has the right to make important decisions for the child as well as the duty to provide for the child's basic needs and general welfare until he or she becomes an adult or guardianship is no longer needed. In many states, these laws are under the jurisdiction of the probate court, which is different from the juvenile or family court that hears abuse and neglect and dependency cases. Subsidized guardianship refers to state-authorized programs that provide financial support to children whose caregivers obtain legal guardianship or custody through these already existing state laws.

### **How does subsidized guardianship help children?**

Subsidized guardianship helps to ensure permanent families for children who cannot live safely with their birth parents or for whom adoption is not an appropriate option. Most of the children in these placements have been in the child welfare system. The subsidized guardianship programs help caregivers, often relatives, to provide the children they are raising with permanent homes—a safe, family alternative to long-term foster care. The assistance and security provided by subsidized guardianship programs can also

help prevent children from entering foster care in the first place. Most important, subsidized guardianship allows children to maintain important family connections and a sense of belonging by keeping them with family members, friends, and other caring adults they already know and love.

### **Why is subsidized guardianship particularly important for children raised by relatives?**

Almost all state subsidized guardianship programs include children who are being raised by relative caregivers. Although some kinship caregivers choose to adopt the children under their care, others feel that legal guardianship is a more appropriate permanency option in a family situation for one or more of the following reasons:

- **Maintains family bonds with the birth parents:** Kinship caregivers, often grandparents and other relatives with strong emotional ties to the children's birth parents, may not feel it would be in the child's best interest to terminate parental rights as required by adoption. In some cases, the birth parents may have a physical or mental disability that prevents them from caring safely for the child. In others, relatives may feel that the child's parents will overcome their problems and be able to safely resume custody of the child in the future with proper court approval.
- **Honors the wishes of older children:** Many older children do not want to cut off ties with their parents even when they wish to remain permanently in the home of a caring relative.
- **Respects the cultural norms of extended family:** In many cultures, the process of terminating parental rights defies important societal norms of extended family and mutual interdependence.

- **Provides the court flexibility to address the child's needs:** Some legal analysts argue that, unlike adoption, legal guardianship allows judges to limit or expand the legal guardian's and parents' authority as necessary to best serve the changing needs of individual children, their caregivers, and birth parents.
- **Limits state intervention in the lives of families:** Many families are ready to care permanently for children who cannot return to their birth parents but want to minimize the state's ongoing role in their lives. When they cannot adopt, subsidized guardianship programs allow them to make important decisions on behalf of the child with often only limited child welfare agency approval and oversight.

### **Once guardianship is transferred, do the child's parents still have legal rights and responsibilities?**

Yes. Even when the care and control of a child is transferred to the guardian, the birth parents still have certain rights and responsibilities that vary from state to state. Generally, they include the right to safe visitation with the child, the right to consent to the child's adoption, and the responsibility to pay child support.

### **Have any states changed their guardianship laws or passed new ones to better accommodate subsidized guardianship as a permanency option?**

Yes. Several states have changed their laws to make guardianship statutes more responsive to the unique needs of abused or neglected children and more consistent with statutes governing permanency decisions in the states. North Carolina, for example, has made it more difficult to rescind guardianship once it is established. Idaho and Connecticut have amended

their laws to require the dissemination of information about guardianship assistance to all prospective guardians.

### **Is legal guardianship a safe and permanent option for children in the child welfare system?**

Yes. As with any permanency option, successful subsidized guardianship requires that the court, the child welfare agency, and the adults involved work together to ensure that the permanent home being arranged for each individual child is appropriate. The safety of the child must be paramount, and steps must be taken to ensure permanence and minimize disruptions. Other permanency options, such as safe return to the birth family or adoption, should be seriously considered before subsidized guardianship is selected, in order to rule out other possible placement alternatives and to minimize the possibility of later disruption of the guardian arrangement. The thorough preparation of all parties before guardianship is established and the provision of needed assistance and supports to the child and the caregiver after the arrangement is finalized will help to ensure the child's safety and permanence.

### **What protections are in place to help ensure that a subsidized legal guardianship arrangement is best for the child?**

State subsidized guardianship programs provide some or all of the following types of protections to ensure a safe and permanent family for the child:

- **Thorough assessment of relevant permanency options:** All states require a trained child welfare caseworker to determine whether subsidized guardianship is the best option for the child. Several explicitly require that the child welfare agency determines that the arrangement be in "the best interest of the child." The majority of

states also require that the supervising agency consider the possibility of safe reunification with the birth parents or adoption before subsidized guardianship is chosen as a viable permanency option.

- **Training:** To ensure appropriate use of subsidized guardianship programs, several states require special training for caseworkers to ensure that they understand all the permanency options and can discuss these options with the children, as appropriate, and with the birth parents and prospective guardians. Some states also offer this training to court personnel and attorneys.
- **Consultation with prospective guardian, birth parents, and child:** Most states require that the prospective guardian, the child's birth parents, and the child be informed about existing permanency options and, in particular, the implications of legal guardianship. Some states require that the birth parents and/or the child formally consent to the guardianship arrangement to reduce the likelihood that the arrangement will be contested in the future. Others require the state agency to consult the child about his or her preferences.
- **Court approval of the legal guardianship arrangement:** In all states, the courts must decide that placement with the guardian is in the child's best interest. It is also up to the court to consider the safety of any subsequent modification to the legal guardianship arrangement.
- **Home studies and criminal background checks:** All states require criminal background checks of foster parents, including those who are related to the child. Some also require criminal background checks of the prospective guardians who have not previously cared for the child. Others conduct home studies of prospective guardians to ensure that they are able and willing to provide a safe home environment.
- **Supportive services and assistance:** Most states provide health insurance coverage for the children in state subsidized guardianship programs through Medicaid, State Children's Health Insurance Programs, or other means. Some states also cover the cost of one-time expenses associated with obtaining guardianship or provide ongoing child care or respite services. These supportive services help to increase the stability and safety of subsidized guardianship placements.
- **Periodic agency review:** Almost all states require that the child welfare agency conduct a periodic review of the subsidized guardianship arrangement to confirm that: (1) the child is still living with the guardian; (2) the child's and/or guardian's financial situation has not changed; and (3) the family is receiving the services and support it needs to continue successfully with permanent guardianship.
- **Periodic court review:** Independent from the administrative duties of state subsidized guardianship programs, many state guardianship laws require the court to conduct a periodic review of the legal arrangement to monitor the child's and family's well-being.

### **How do subsidized guardianship payments compare to foster care and adoption assistance payments?**

Guardianship subsidy levels vary greatly from state to state. In many states, the monthly payment for guardianship is equal to the payment for foster care. This amount may be more or less than the adoption

assistance payment, depending on the state's payment structure. As with adoption assistance, some states increase the level of the subsidized guardianship payment to address a child's special needs. There are some states in which subsidized guardianship payments are lower than foster care and adoption assistance payments. In others, they may be the same as the payment rate for Temporary Assistance for Needy Families (TANF) "child-only" grants, especially if the guardianship subsidy is financed by TANF funds. In others, the subsidy rate is higher than TANF but lower than the foster care payment.

### **Can legal guardianships be terminated?**

Yes. A child's parent may petition the court to modify the guardianship. The guardian may also petition the court to terminate or vacate the guardianship order. In either case, however, a court must review the petition and decide whether it is appropriate to modify or terminate the guardianship. There may also be situations where the court agrees with the parties that it is in the child's best interest to return to his or her parent's care. As with adoption, adequate preparation of all parties in advance and the provision of necessary services and supports can significantly reduce the risk of harmful disruptions.

### **Can a legal guardian later decide to adopt the child?**

Yes. A child's guardian may petition the court to adopt a child after legal guardianship is approved. However, the birth parents' rights still must be terminated, voluntarily or involuntarily, before the adoption can be finalized. Several states help with the legal fees needed for the adoption. Many also offer ongoing adoption assistance payments for a child once the adoption is finalized if the child has a disability or other special needs.

### **What happens if the child's guardian dies?**

When a child's guardian dies, other legal arrangements must be made. A few states require prospective guardians to designate a co-guardian or standby guardian for the child, particularly when the guardian is older or ill. This requirement is designed to help ease the emotional and financial transition for the child in the event the guardian dies.

### **Can the state child welfare agency terminate a child's subsidized guardianship payments?**

Yes. Most states automatically terminate a child's subsidized guardianship payments when he or she turns 18. Some states continue these payments until age 21 if the child is still in school or has a disability. Generally, agencies may also discontinue a guardianship subsidy at any point for one of the following reasons:

- A court dissolves or modifies the guardianship arrangement
- The child dies or no longer resides with the current guardian
- The guardian or child does not comply with program requirements

Terminating the subsidy payment does not automatically result in the termination of the guardianship. Only a court may officially dissolve or modify a legal guardianship arrangement.

### **Which children are eligible for subsidized guardianship?**

Each state's subsidized guardianship program has different eligibility requirements for children. Like adoption assistance programs, most state subsidized guardianship programs are designed for children in

the child welfare system who are difficult to place in permanent homes. The most common eligibility requirements include the following.

- **Consideration of reunification and adoption:** Most state subsidized guardianship programs require that reunification with the birth parents and adoption be examined carefully as permanency options for the child before guardianship is considered.
- **Age:** In approximately half of the states, subsidized guardianship programs have minimum age requirements, ranging from two to 14 years, for children to participate. Almost all programs allow eligible children to participate until age 18.
- **State custody:** In most states, children must be in the custody of the state child welfare agency, often for a certain period of time, before becoming eligible for the subsidized guardianship program. This is a safeguard to ensure that reunification with birth parents and adoption have been adequately considered. Some states require the child to be in state care for up to a year before a subsidized guardianship arrangement is approved. Others do not mandate a specific time period. A few states offer subsidized guardianship programs for children living informally with relatives outside of the child welfare system. These programs are intended to prevent children from unnecessarily entering foster care.
- **Special needs:** A few states limit participation in subsidized guardianship programs to children with “special needs.” As with adoption assistance payments, subsidized guardianship programs define a child with special needs differently in each state. These children may include those who are difficult to place because of physical or emotional disabilities, race or ethnic background, age, or because they are members of a sibling group.

- **Income eligibility:** A few states require that a child’s income and assets be considered in order to qualify for a subsidized guardianship program. In some states that fund their subsidized guardianship programs through a Title IV-E Waiver, children must have been eligible to receive Title IV-E benefits while under the supervision of the child welfare system in order to enter into a subsidized guardianship arrangement. Often, a child’s income and resources are also considered in determining the amount of the payment.
- **Relationship to the caregiver:** In the majority of states, subsidized guardianship programs are open to eligible children living with all types of caregivers who have chosen to care for them permanently. These include relatives, family friends, foster parents, or other qualified adults. Some states limit eligibility to children who are living with kin, often defined as relatives and non-related individuals with a close family-like bond to the child. More restrictive subsidized guardianship programs limit eligibility only to blood relatives within a specified degree of relationship, including grandparents, great-grandparents, step-parents, siblings, step-siblings, half-siblings, cousins, aunts and uncles, and great aunts and great uncles. A few state subsidized guardianship programs limit their enrollment only to eligible children being raised by their grandparents. One state program is limited to children being raised by non-relatives.

### **Are there any exceptions to the eligibility requirements for children who participate in state subsidized guardianship?**

Yes. Most of the states that have age and other eligibility requirements for children who participate

in subsidized guardianship programs allow one or several of the following exceptions:

- **Member of a sibling group:** An exception is often made for children who do not meet the minimum age or other eligibility requirements but who have a sibling who does. This provision is designed to keep siblings together. Arrangements for subsidy payments for sibling groups vary from state to state.
- **Full-time students:** An exception is often made for children who are 18 and over but are enrolled full-time in a high school, college, or vocational training program. This exception usually allows subsidized guardianship payments to continue until the child is 21, as long as the child remains enrolled in a qualified educational program.
- **Children with disabilities:** An exception is often made for children with physical or emotional disabilities and other special needs. This exception usually allows subsidized guardianship payments to continue until the child is 21.

### What are the types of eligibility requirements for caregivers in subsidized guardianship?

Eligibility requirements for caregivers also vary from state to state. The following are some examples:

- **Legal guardianship:** Most state subsidized guardianship programs require the child's permanent caregiver to obtain legal guardianship or custody of the child from an authorized court. Two states, however, will allow the child to begin receiving subsidized guardianship payments before the court finalizes the guardianship or custody arrangement.
- **Attachment to the child:** Many states explicitly require that the child have an established

attachment to the guardian and that the prospective guardian evidence a "strong commitment" to the child. More specifically, 24 state subsidized guardianship programs require that a child live in a prospective guardian's care before qualifying for the subsidized guardianship program. The required time period varies from one month to a year; most states require at least six months.

### How does the guardianship subsidy affect the child and guardian's eligibility for other benefit programs?

It depends. Some states count the guardianship subsidy as part of the child's income in determining a child's eligibility for other benefit programs such as Medicaid, child care, or Supplemental Security Income (SSI). Others provide Medicaid, child care, and other services as part of the subsidized guardianship program.

Since guardianship subsidies are intended for the child, they generally will not affect the guardian's ability to receive ongoing benefits from adult programs such as Social Security, Medicare, or Veteran's Benefits.

### How do states fund subsidized guardianship?

Each state funds its subsidized guardianship program differently. Generally, however, funding sources include the following:

- **Federal IV-E Waivers:** Seven states (Delaware, Illinois, Maryland, Montana, New Mexico, North Carolina, and Oregon) have permission from the federal government to operate subsidized guardianship programs as demonstration projects. The federal government has granted these states a special exemption to use federal foster care funds under Title IV-E of the Social Security Act to pay for these programs. Although initial evaluations

of these state guardianship programs have been positive, this funding option is not yet available to all states.

- **Temporary Assistance for Needy Families (TANF) Funding:** Several states use money from their TANF block grant to pay for subsidized guardianship programs. As the economy worsens and new demands are placed on TANF funding, its continued availability for subsidized guardianship is uncertain.
- **Other Sources of Federal Funds:** A few states use other federal funding sources that have broad purposes, such as the Social Services Block Grant Program (also called “SSBG” or “Title XX”), which is designed to support children, persons with disabilities, and the elderly.
- **State and Local Funds:** Some states use state funds or a combination of state and county funds to support their subsidized guardianship programs. Using state funds provides state child welfare agencies the most flexibility in determining who its subsidized guardianship programs will serve, but shrinking state resources have made it even more challenging to maintain appropriate state and local funding levels.

### **Are there proposals for new funding sources for subsidized guardianship?**

Yes. As states increasingly recognize the vital role that relative caregivers and others are playing for children inside and outside of the child welfare system, many national organizations have joined the states in support of subsidized guardianship programs that strengthen permanent and self-sustaining relationships for children.

National organizations such as the American Public Human Services Association, National Governors Association, National Conference of State Legislatures, Children’s Defense Fund, Child Welfare League of America, Generations United, and others support various proposals that would allow states to use federal funds to establish or to expand subsidized guardianship programs.

The Dodd-Miller Comprehensive Act to Leave No Child Behind, the Child Protective Services Improvement Act in the House of Representatives, and the Kinship Caregiver Support Act in the Senate, each includes a proposal for a Kinship Guardianship Assistance Program (K-GAP) that would allow all states to use federal Title IV-E foster care funding to establish or expand a subsidized guardianship program for children who can safely exit the foster care system into the legal guardianship of qualified relatives. The bipartisan Pew Commission on Children in Foster Care also recommended that federal Title IV-E funds be used for subsidized guardianship programs in its 2004 report, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care*.

### **Where can my state find more information about how to start a new subsidized guardianship option or improve its existing one?**

The issues briefs in this series are intended to help public officials, staff, and advocates in states and communities to establish or improve subsidized guardianship policies and programs. They address a range of considerations relative to implementation of these programs. Cornerstone Consulting also has established the National Collaboration on Permanency through Subsidized Guardianship with support from the Annie E. Casey and David and

Lucile Packard Foundations. This collaboration is designed to provide information and technical assistance to states that want to establish a subsidized guardianship program or improve upon existing programs. For more information, see Cornerstone's Web site at [www.cornerstone.to](http://www.cornerstone.to) or contact Jennifer Miller at [jmiller@cornerstone.to](mailto:jmiller@cornerstone.to).

The Children's Defense Fund (CDF) also provides information about subsidized guardianship and other policies and programs to support children living in kinship care families. For more information about the Act to Leave No Child Behind, the Movement to Leave No Child Behind®, and other initiatives, see CDF's Web site at [www.childrensdefense.org](http://www.childrensdefense.org) or contact Rutledge Hutson at [rhutson@childrensdefense.org](mailto:rhutson@childrensdefense.org).

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## Endnotes

1. For a full description of various state programs, see Children's Defense Fund and Cornerstone Consulting Group, *Expanding Permanency Options for Children: A Guide to Subsidized Guardianship Programs*, Washington, DC: Authors, January 2003.
2. ASFA specifically defined "legal guardianship" as a "judicially created relationship between child and caregiver 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 person, custody of the person, decision making" (42 U.S.C. 675). In response to ASFA, most states also have changed their child welfare laws to add legal guardianship or custody as an appropriate permanency option.
3. Each state transfers legal authority to third party caregivers in a different way. In some states, guardianship is granted through the state's probate or juvenile court (or, in some cases, is available in both). Some states transfer legal custody of a child through a family or domestic relations court. In this publication, the term "guardianship" is used to refer to guardianship and custody, depending on what kind of arrangement is available in each state.



### How Permanent Is It?

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#### Introduction

For the first time in federal law, the Adoption and Safe Families Act (ASFA) of 1997 expressly recognized legal guardianship as a “permanent and self-sustaining” option for children in the child welfare system.<sup>1</sup> Since ASFA’s passage, an increasing number of states have established or expanded subsidized guardianship programs as a promising permanency option for children who exit the child welfare system into the legal guardianship of related – and in some states, unrelated – caregivers.<sup>2</sup>

In evaluating the permanence of this placement option, one fundamental question is frequently raised:

*As compared to family reunification and adoption, how permanent is subsidized guardianship for the child – both from a legal and a psychological standpoint?*

This issue brief will explore the basic legal and practical arguments for and against subsidized guardianship as an effective permanency option for children. In particular, it will focus on whether or not state guardianship laws need to be changed to increase the permanence of subsidized guardianship. The brief will also look at what is known about the psychological impact of subsidized guardianship on children and their caregivers and how perceptions of subsidized guardianship compare to perceptions of more traditional permanency options.

### The Legal Permanence of Subsidized Guardianship

Critics of subsidized guardianship argue that legal guardianship (also referred to as “legal custody” in some states) is not as permanent as adoption. Legally speaking, this statement is true. While adoption terminates all the legal rights of the child’s birth parents, legal guardianship leaves the birth parents with certain “residual” rights and responsibilities, such as the right to visitation with the child and the responsibility to pay child support.

Others argue that legal guardianship, which doesn’t require the termination of parental rights, makes it easier for the child’s caregiver to disavow legal responsibility for the child in the future by dissolving the guardianship arrangement, especially as the child experiences the challenge of adolescence. In other words, they charge that caregivers can walk away from guardianship more easily than they can from adoption. The concern that birth parents will petition the court to re-gain custody of their children in legal guardianship cases has also surfaced in many states that have made subsidized guardianship a permanency option.

It is true that legal guardianship preserves the right of birth parents to petition the court to regain custody and control of the child if circumstances change in the future and they are able to prove their fitness. This possibility raises special concerns when a child has been removed from a birth parent’s care due to abuse or neglect, raising the following frequently-asked question:

*What happens if a birth parent who has previously abused or neglected a child petitions the court to modify a guardianship arrangement?*

Most state guardianship laws currently require that birth parents seeking to modify a guardianship arrangement prove their fitness in addition to demonstrating changed circumstances that would warrant a modification of custody. Some states with subsidized guardianship programs are beginning to explore ways to change their laws to minimize the risk that abusive or neglectful parents might regain inappropriate control over their children after legal guardianship has been awarded to someone else.

North Carolina, for example, has amended its laws to prohibit birth parents from regaining legal control of a child in a subsidized guardianship arrangement, unless they can prove the child's current guardian(s) unfit.<sup>3</sup> Similarly, the District of Columbia's statute requires parents to demonstrate that any modification or termination of the guardianship order would be in the best interests of the child and that there has been a "substantial and material" change in the child's circumstances since the child entered guardianship. Because constitutional law clearly supports birth parents' rights to raise their children unless they are unfit to do so, it is not yet clear whether the effort to shift the burden of "fitness" from guardian to parent can withstand legal challenges in the future.

Legal advocates are considering other ways to strengthen current state guardianship laws to enhance permanency in subsidized guardianship arrangements. One suggestion that has not yet been put into practice would require that, as a condition of receiving a guardianship subsidy, a child's guardian must inform the state child welfare agency of any proposed modification to the guardianship arrangement. This would give the child welfare agency the opportunity to re-open an investigation of the case to assess the child's safety and, if appropriate, move to intervene in the guardianship challenge by the birth parents. Another suggestion would amend state guardianship

laws to give the state child welfare agency automatic standing to intervene in any modification to the guardianship arrangement that could result in the birth parents' resumption of custody. A third alternative would restrict subsidized guardianship as a permanency option based on the degree of the child's maltreatment; that is, subsidized guardianship might be an available option in cases of less severe neglect, but not in a case where a child was sexually abused.

Most states with subsidized guardianship programs have also instituted complementary administrative and program requirements designed specifically to promote permanence and limit future dissolutions of subsidized guardianship arrangements. Sixteen states, for example, require the state agency to try to obtain the birth parents' consent to the guardianship arrangement in order to ensure that the birth parents think positively about the option, reducing future legal challenges. In addition, most state subsidized guardianship programs require that the child live with the prospective guardian for a period of time before becoming eligible for the subsidized guardianship option, a measure designed to test the caregiver's underlying commitment to the child. As with adoptions, subsidized guardianships are more likely to be permanent and safe if all the parties are thoroughly prepared in advance and comprehensive assistance and support are provided to the child and the caregiver after the guardianship is finalized.<sup>4</sup>

While some of these proposed changes may help to increase the longevity of subsidized guardianship arrangements from both legal and administrative standpoints, available research suggests that additional modifications to increase the permanency of guardianship may be unnecessary in practice. Preliminary data from the nation's two largest programs, the Illinois Subsidized Guardianship Waiver Demonstration and the California Kin-GAP program,

for example, suggest that subsidized guardianship arrangements have extremely low dissolution rates. Of the 6,071 children who exited foster care into the Kin-GAP program between January 2000 and July 2001, only 55 (0.8%) re-entered foster care.<sup>5</sup> Similarly in Illinois, of the 6,820 children who entered into subsidized guardianship arrangements between April 1997 and February 2002, only 237 (3.5%) are no longer living in the home of the original guardian. Of those children, only 39 returned to live with their birth parents.<sup>6</sup> While additional longitudinal research is certainly needed, the relatively low dissolution rates in Illinois and California suggest that, at a minimum, subsidized guardianship should not be dismissed out-of-hand as a viable permanency option. Instead, the policy framework should focus on strengthening the provision of adequate pre- and post-permanency supports to minimize disruptions to permanence for the children.

More research is also needed about how subsidized guardianship dissolutions compare with the disruption and dissolution rates of children who are returned home or are adopted and subsequently re-enter foster care. Unfortunately, these comparisons do not seem to have been explored in states with established subsidized guardianship programs. Further, studies that have examined rates of foster care re-entry after a child returns home or is adopted from care rarely assess whether the family received adequate post-permanency services. Accurate comparisons of permanency outcomes for children among reunification, adoption and subsidized guardianship placement options must address the adequacy of the post-permanency services provided.

Proponents of subsidized guardianship point out that too much attention to the legal differences between adoption and legal guardianship obscures the flexibility both arrangements give caregivers in the real world. Once a legal relationship is established, whether

through adoption or guardianship, the child's caregiver has a tremendous amount of discretion in determining the birth parents' ongoing involvement in a child's life. In practice, an adoptive parent, for example, could allow a child to visit with a birth parent just as a guardian could successfully thwart a child's regular visitation with a birth parent. Especially in those states that have passed open adoption laws, the distinction between adoption and legal guardianship may depend more on family dynamics and the discretion of the kinship caregiver than on the legal label given to the family arrangement.

### **Should subsidized guardianship be available if parental rights have already been terminated?**

By definition, when a child exits the child welfare system into a subsidized guardianship arrangement, the child's parents retain certain residual rights and responsibilities related to the child's care and control. As subsidized guardianship becomes increasingly available, however, a common question is whether this permanency option should be used in situations where parental rights have already been terminated and the child has become a "legal orphan."

The rationale for allowing subsidized guardianship placements in such cases is no different from the rationale in cases where a parent retains residual rights: the child has been in the relative's care and adoption has been ruled out as a viable permanency option.

Because most state subsidized guardianship programs have only served a small number of children, few state agencies report that they have encountered this situation. Illinois' Subsidized Guardianship Waiver Demonstration, one of the country's largest programs, has authorized subsidized guardianship agreements in

several cases where parental rights have already been terminated. The agency reports that while residual decision-making authority is not legally conferred upon the guardian, the guardian ends up making decisions as a practical matter. If the subsidized guardianship arrangement is disrupted, the state reassumes custody of the child as it would in any other case.

In addition, while most states' subsidized guardianship statutes do not specifically address the termination of parental rights (TPR), several state TPR statutes mention legal guardianship as a possible next step following the termination of parental rights. In North Carolina, for example, the TPR statute specifically contemplates that a child may be placed "in the custody of the petitioner or some other suitable person" subsequent to the termination order.<sup>7</sup>

### **Perceptions of the Psychological Permanence of Subsidized Guardianship**

In addition to the implications for legal permanence, some critics argue that adoption gives children and their caregivers a greater sense of security and belonging than legal guardianship. This assertion raises the following question:

*Do children and their guardians perceive legal guardianship to be as permanent as adoption?*

Not surprisingly, the answer to this question depends on how "permanency" is defined. As traditionally rooted in the psychology of bonding and attachment, "permanency" has been defined as a lifelong relationship that arises out of feelings of belonging. In more recent years, however, legal advocates define "permanency" as a lifelong commitment that is legally recognized or enforceable.<sup>8</sup> Initial research in Illinois suggests that most caregivers and children participating

in the state's subsidized guardianship program define permanence as a feeling of belonging rather than a legal arrangement. Specifically, the study found that most guardians who entered into subsidized guardianship arrangements expect the children they are raising to live with them until they become adults.

Children in subsidized guardianship arrangements also reported high rates of stability and permanence. Ninety-two percent of the children interviewed as part of the Illinois study felt their home was stable and that they were part of a family all or most of the time (a rate identical to a comparable group of children in adoptive placements). In fact, the study found that the kinship bond, not the legal designation, tended to be the strongest predictor of relationship stability. Caregivers were often unaware of the legal differences between legal guardianship and adoption.<sup>9</sup> Instead, they were more focused on the fact that they had agreed to take on permanent responsibility for the child. The Illinois study is reinforced by more general studies on children raised by kin that suggest that children are less concerned about their legal relationship with their kinship caregivers than knowing where they will live and who will be raising them in the future.<sup>10</sup> The psychological permanence of subsidized guardianship is also reinforced in the kinship care context by the child's understanding of and connection with his or her family roots.

### **Conclusion**

Research into the legal and psychological aspects of subsidized guardianship suggests that while there are legal differences between subsidized guardianship and adoption in terms of permanence there are fewer practical differences. From a legal perspective, guardianship is not as binding as adoption. Practically speaking, however, both adoptive parents and legal guardians have tremendous control over a child's life,

including the ability to influence the extent of the child's relationship with the birth parents. Moreover, data from the largest subsidized guardianship programs, in Illinois and California, suggest that few birth parents or guardians attempt to modify existing guardianship arrangements. From a psychological perspective, the first comprehensive study on subsidized guardianship and permanence suggests that children and caregivers perceive little difference between adoption and guardianship.

## Next Steps

### 1. Provide comprehensive guardianship services.

Train caseworkers, attorneys and judges to adequately prepare all parties for subsidized guardianships and expand post-guardianship services. As with adoption, a child's chances for safety and permanence through subsidized guardianship are increased by thorough advanced preparation of all the parties, including birth parents, caregivers, and children, and comprehensive assistance and support to the child and the caregiver after the guardianship is finalized.

### 2. Minimize guardianship dissolutions.

In addition to increasing the understanding of and obtaining the consent of the birth parents, state agencies should explore administrative measures to minimize future legal challenges to subsidized guardianship arrangements.

### 3. Study and promote the permanence of guardianship.

Encourage state agencies and university research programs to collect additional data and monitor ongoing studies and reports on the permanence of subsidized guardianship arrangements. State agencies should collect ongoing data on subsidized guardianships. This data should be aggregated nationally to answer questions such as: How many post-

guardianship challenges have there been? Who has initiated them? Do children and caregivers perceive subsidized guardianship to be as permanent as adoption? How do subsidized guardianship dissolution rates compare with the dissolution rates of adoptions and reunifications? More research also is needed on the permanency implications of existing state subsidized guardianship programs in comparison with other permanency outcomes.

At the same time, building on such data and research, legal experts in guardianship and adoption practice and other practitioners and stakeholders, including caregivers and youths, should work together to consider whether and how current state laws should be amended to make subsidized guardianship programs more permanent for children leaving the child welfare system.

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## Endnotes

1. ASFA specifically defines "legal guardianship" as a "judicially created relationship between child and caregiver 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 person, custody of the person, decision making." (42 U.S.C. 675).
2. Currently, 34 states and the District of Columbia have subsidized guardianship programs, although some of these programs have been cut substantially due to state fiscal crises. See, Children's Defense Fund and Cornerstone Consulting Group, *Expanding Permanency Options for Children: A Guide to Subsidized Guardianship Programs*, Washington, DC: Authors, January 2003.
3. Specifically, North Carolina prohibits a court from terminating the guardianship unless the relationship between the guardian and the child is no longer in the child's best interests, the guardian is unfit, the guardian has neglected his or her duties, or the guardian is unwilling or unable to continue assuming guardian duties (N.C. Gen. Stats Sec. 7B-600).
4. Children's Defense Fund and Cornerstone Consulting Group, *Expanding Permanency Options for Children*.

5. California Department of Social Services, Report to the Legislature on the Kinship Guardianship Assistance Payment (KIN-GAP) Program, 2002.
6. Mark Testa, Leslie Cohen, and Grace Smith, Illinois Subsidized Guardianship Waiver Demonstration: Final Evaluation Report, Illinois Department of Child and Family Services, Revised July 2003.
7. N.C. Gen. Stats Sec. 7B-1112.
8. Mark Testa and Ronna Cook, "Subsidized Guardianship: An Experiment in Family Permanence," paper prepared for the Joint Center for Poverty Research Conference: Child Welfare Services Research and its Policy Implications, Washington, DC, March 20-21, 2003.
9. *Ibid.* It should be noted that some caregivers and children interviewed as part of the study used the terms "guardianship" and "adoption" interchangeably.
10. See, for example, Lisa Olewine, University of New Mexico Journal of Law, [http://lawschool.unm.edu/\\_jd/honors\\_awards/olewinelisa.pdf](http://lawschool.unm.edu/_jd/honors_awards/olewinelisa.pdf).

## How Do We Choose Among Permanency Options? The Adoption Rule Out and Lessons from Illinois

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### Introduction

Of the 34 states and the District of Columbia with subsidized guardianship programs, approximately 30 require that return home and adoption be ruled out in order for guardianship to be considered as a permanency plan. While these rule-out provisions generally focus on both return home and adoption, this issue brief will focus only on the “adoption rule out.”

The rule-out requirement reflects the general preference in the U.S. for adoption as the preferred permanency option when reunification is not possible. Although many states have embraced subsidized guardianship as a viable permanency option, the adoption rule-out provision is a sign that adoption is still considered preferable because it is viewed as lasting longer and being more legally binding than guardianship.

Although the adoption rule out makes sense as a way to ensure that caregivers have fully considered their right to adopt, its application in reality raises questions about the extent to which families are being given real choices about permanency options. It also leads to concerns about who is truly making decisions about the permanent status of children and whether these decisions are taking into account the unique circumstances of each child and family.

This issue brief discusses the dilemmas created by the concepts of “lasting” and “binding” in child welfare today as they affect the implementation of an adoption rule-out provision.<sup>1</sup> It further discusses Illinois’ experience with adoption rule out, the challenges it has created for the Illinois Subsidized Guardianship Program, and some ways to overcome these challenges in the future.

### Lasting vs. Binding: A Child Welfare Paradox

Since its beginning in the early 1970s, the permanency planning movement in child welfare has promoted the concept of permanency in child placement as “lasting.” In keeping with this philosophy, the goal of permanence was to find a home that was intended to last indefinitely for a child in foster care. The nature of the legal relationship was of secondary importance.

Recently, however, some legal advocates have advanced the idea that placement must also be legally “binding” to truly qualify as permanence.<sup>2</sup> Although legal guardianship and permanency options other than adoption were recognized as valid under the 1997 Adoption and Safe Families Act (ASFA), some believe that ASFA elevates adoption as a permanency goal above all others because it is less easily vacated by the caregiver and less vulnerable to legal challenge by birth parents whose parental rights have been terminated.

One recent example of the promotion of adoption as the pre-eminent permanency goal is found in the “Adoptions and Permanency Guidelines” of the National Council of Juvenile and Family Court Judges:

When reunification is not appropriate, the next preferred option is adoption by a family with whom the child has a positive existing relationship, such as a relative, foster parent, or adoptive family of a sibling. The next preferred option is adoption by a family recruited for the child. A court shall consider permanent custody or permanent guardianship as a permanent plan only when adoption has been ruled out or under exceptional circumstances. In order to meet the definition of permanency, custody or guardianship must provide certain legally secure components.<sup>3</sup>

Although current policy, including unequal financial incentives, encourages the perception of the pre-eminence of adoption, federal law does not explicitly support the preference for adoption over other permanent alternatives. To advance the case that permanence must be legally binding to be truly lasting is to ignore circumstances where an option such as guardianship may better serve the interests of the child and caregiver. Guardianship allows for the continued involvement of birth parents in the lives of their children because the parents retain parental rights and often visitation rights as well. This continued involvement is not, by default, a negative outcome. On the contrary, it may help to lessen the trauma of separation, identity conflicts, and sense of loss that often accompany an adoption placement.<sup>4</sup>

Despite such claims, there has been a “rebuttable presumption” that a child should be adopted. As a matter of law, this means that one must prove to the court that adoption is not appropriate for a child and must defend any decision to pursue another permanency goal. The need to prove that adoption is not the best alternative for a child has given rise to two issues: 1) how much preference should be given to adoption; and 2) who should make the determina-

tion about which permanency option is most appropriate for a child and family.

## **Illinois’ Adoption Rule Out**

In Illinois, the trend toward a rebuttable presumption for adoption was evident during negotiations for the state’s Subsidized Guardianship Waiver Demonstration. During these negotiations, the United States Department of Health and Human Services (HHS) raised the concern that the simpler legal process involved in establishing guardianship might undercut efforts at reunification with birth parents as well as adoption by kin and foster parents. As a result, the terms and conditions for the waiver demonstration required that the permanency goals of reunification and adoption be ruled out in order for a family to qualify for subsidized guardianship; in other words, the program is only available to children after efforts to achieve permanency goals through adoption and return home have failed.<sup>5</sup>

This approach was codified in the Illinois Juvenile Court Act. The Act clearly creates a hierarchy of permanency goals: 1) return home; 2) adoption; 3) guardianship; 4) independence, etc. As the act is written, each goal must be ruled out before the next goal can be considered. Because policymakers and practitioners have generally come to accept the idea that adoption is superior to guardianship whenever it is possible and appropriate, the rule-out requirement was accepted with little opposition.

As the subsidized guardianship program was implemented, many questions began to arise in Illinois as to how much preference should really be given to adoption over guardianship and whether the family, agency, or court should have the greater say in making the final choice. Although the rule-out provision was

not considered controversial initially, during the second and third years of the Illinois waiver demonstration the issue of whether rule out should be a family decision or an agency and court decision became a matter of serious contention.

The debate in Illinois reflects the larger national debate around competing definitions of permanency. On the one hand, the original meaning is rooted in the psychology of bonding and attachment that defines permanency as “lasting,” a lifelong relationship that arises out of feelings of belonging among persons.<sup>6</sup> On the other hand, the alternative meaning is rooted in law that defines permanency as “binding,” a lifelong commitment that is legally enforceable.<sup>7</sup>

As reported by Testa and Cook, this debate in Illinois split child welfare staff and court personnel into two factions:

On one side emerged the so-called “adoption hawks,” who advocated a strict interpretation that adoption needed to be ruled out independently of the desires of the family. Some even went so far as to argue that children should be removed from stable kinship placements if an alternative foster home could be found that was willing to adopt. On the other side stood the “guardianship doves,” who advocated a looser interpretation that family solidarity should take precedence over legal status. They argued that kin should be informed of their permanency options and permitted to choose how best to lend legal permanency to their existing family relations.<sup>8</sup>

In the field, there was confusion about who ultimately is responsible for rule out and what constitutes a valid rule out. Discussions with caseworkers and administrative staff revealed that caseworkers often

manipulate family choices by withholding information about the full range of permanency alternatives. Most families only learn about one permanency option (either adoption or guardianship), and the option presented is usually the one that the caseworker has determined in advance to be most appropriate for the family. When asked about this practice, caseworkers who refrained from full disclosure ardently contend that the rule-out requirement in the Juvenile Court Act requires that each goal be presented in a sequential fashion and that they cannot discuss guardianship until they are absolutely confident the family will not accept adoption.

The debate between adoption hawks and guardianship doves was not limited to casework staff and families. The debate extended into the courtrooms and was complicated by the ambiguity of the rule-out criteria. Some rule-out criteria left little room for interpretation. Subsidized guardianship was only available, for instance, in cases in which:

- There were no grounds for termination of parental rights
- The child has been listed with the adoption listing service for a year and has had no activity and
- A child 14 years of age or older refused to consent to the adoption.

Other less clear-cut rule-out criteria, however, such as the caregiver was not comfortable altering existing family relationships, fueled the ongoing debate and resulted in delays in the achievement of permanency for many children. At the center of the dispute was the Cook County Juvenile Court, where child welfare caseworkers complained that judicial hearing officers and judges were putting obstacles in the path of obtaining subsidized guardianship. Hearing officers, in turn, accused caseworkers of coaching kin in how to circumvent adoption rule-out provisions. Some officers

of the court felt that preserving family relations was too flimsy a justification and blocked efforts to achieve permanency through guardianship. They felt that adoption was still possible, if not with the current family then with other families, including non-relatives, who should be approached about their interest in adoption.

It became quite clear that the ambiguity of the rule-out criteria fueled the philosophical debate and affected permanency discussions and decision making, both in the field and in the courtroom. Critics argued that the court's failure to consider the opinions of families did not comply with the legal standards. These standards required that such factors as the wishes of the child and "preferences of the persons available to care for the child" be taken into consideration when a best interest determination is required.<sup>9</sup>

### **Best Practice: The Value of Full Disclosure**

The implementation and interpretation of the rule-out criteria and their impact on the achievement of permanence continues to be controversial. Fortunately, the experimental evaluation of the Illinois waiver demonstration has allowed Illinois to develop a base of evidence from which best practices can be formulated.

To accomplish rule out, best practice recommends full disclosure of all the potential options when discussing permanence with a family. This allows both the caregiver and other child and family team members to make a fully informed decision about the option that best meets their needs. The consultation with the family should continue in the court as supported by the definition of the child's "best

interests," which include the "preferences of the person available to care for the child." This approach not only fosters the right of self-determination for families, but also allows agency staff to engage in concurrent planning for the child. Contrary to the opinion of many caseworkers in Illinois, the practice of full disclosure does not come into conflict with the rule-out requirement in the Juvenile Court Act. In fact, the discussions about permanency options will ultimately fully inform the attorney's argument that the rule-out requirement has been met.

Evidence further suggests that there is little advantage in delaying completion of guardianship in hopes of encouraging kin to adopt or of finding an alternative adoptive home.<sup>10</sup> Most relatives are choosing adoption on their own at a ratio of 3:1. The minority of families who select guardianship have largely done so for family reasons and look virtually identical to those who choose adoption on all four qualities of permanence.

### **Evaluation Evidence**

The results of the Illinois waiver evaluation demonstrate that subsidized guardianship can provide a permanency alternative that is as stable as adoption. These results provide further evidence that the adoption rule out should not be applied so stringently that families are denied information about all permanency options available to them until the final hour of the permanency decision-making process. They also demonstrate that subsidized guardianship can be valued as highly as adoption as a permanency option for some children. Specific evaluation findings reinforce this outcome:<sup>11</sup>

**First, children in guardianship do not differ from children who have been adopted when compared with the four qualities of permanence.**

Waiver researchers evaluated subsidized guardianship with respect to its validity as a permanent option using the following four qualities of permanency: 1) intent; 2) continuity and commitment; 3) sense of belonging; and 4) respected social status.<sup>12</sup>

Research in the demonstration sites as of June 2000<sup>13</sup> showed that 86.6 percent of children who are in the subsidized guardianship program intend on staying with their caregiver. This is true for 85.4 percent of children who have been adopted. With respect to continuity, 98.9 percent of children in guardianship are still living with the caregiver with whom they resided at the time of assignment. This is true for 98.5 percent of children who were adopted. Of children whom the caregiver intends to adopt or take guardianship of, 90.7 percent are living with the same caregiver with whom they resided at the time of assignment. This is in contrast to only 65.3 percent of children who remain in the home of a caregiver who is undecided or is not willing to assume permanency.

Subsidized guardianship received high marks when it came to evaluating a child's sense of belonging. When children were asked if they feel they are a part of the family, 92 percent of the children in subsidized guardianship placements said that they felt like part of the family all of the time compared with 86.7 percent of children who had been adopted.

**Second, children in guardianship homes are at no greater risk of harm than children who are adopted.**

Even though the availability of subsidized guardianship is shown to boost legal permanence and to result in no less stability than other permanency options, the concern still remained that children in guardianship might be at greater risk of harm because of the withdrawal of administrative oversight and casework services and the greater potential access of abusive

and neglectful parents to the guardian's home. To evaluate this possibility, children were tracked for reports and indicated findings of abuse and neglect through the Illinois Department of Child and Family Services Child and Neglect Tracking System (CANTS).

For age-eligible children ever assigned to the IV-E waiver demonstration prior to January 1999, the overall proportion of children who had a subsequent substantiated report of abuse and neglect was 6.1 percent in the cost neutrality group (those who were eligible for reunification and subsidized adoption only) and 4.7 percent in the demonstration group (those who were eligible for reunification, subsidized adoption and subsidized guardianship). Contrary to earlier concerns, there were fewer findings of abuse and neglect in the demonstration group than in the cost neutrality group. In fact, subsequent analysis indicated abuse and neglect was lowest among children eventually discharged to private guardians (3.0 percent), slightly higher for adopted children (3.9 percent), more than twice as high for children who aged out or remained in foster care (7.7 percent), and still higher for children reunified with their birth parents (8.8 percent). The small difference between children discharged to private guardians and children who are adopted is not statistically significant.

## Next Steps

Research from Illinois demonstrates that there is little advantage in applying stringent rule-out criteria in approving kinship homes for subsidized guardianship. Families are in the best position to assess whether adoption or guardianship fits their cultural norms of family belonging, respects their sense of social identity, and gives legal authority to their existing family relationships. Given the research findings, greater preference should be given to the desires of families

than to stringent rule-out criteria, which categorically value adoption over subsidized guardianship and preclude the possibility of concurrent presentation of the options. Rule out may be important to ensure that adoption has been carefully considered and rejected for valid reasons, but the procedure should be flexible enough to ensure that families are educated about all options at every step in the process. Some recommendations for increasing the potential of guardianship as a permanency option and for enhancing the skill of child welfare workers at presenting all permanency options include:

### **1. Train all stakeholders in permanency decisions.**

States and localities should adopt training approaches that reinforce subsidized guardianship as one option along the continuum of permanency choices. Training can help workers, judges, attorneys, and families understand the differences between guardianship and adoption and address myths about guardianship. For more information on training models, see the issue brief on Training.

### **2. Develop legislative strategies.**

Strong statutory language can help states implement guardianship in a way that places equal value on adoption and subsidized guardianship and maximizes the potential for permanency decisions to be made with families. Consider statutory language to: (1) make guardianship one option along a continuum of options, rather than as part of a hierarchy; (2) make it more difficult to vacate guardianship, thereby augmenting the perception of guardianship as “binding”; (3) define rule-out language to allow for the concurrent discussion of adoption and guardianship as permanent options; and (4) require training of all stakeholders involved in permanency decision making.

### **3. Educate the public.**

Educate legislators, administrators, and the public on the benefit for children and families and the positive fiscal impact of moving children for whom adoption is not an option out of the child welfare system through guardianship. Help stakeholders to understand that without subsidized guardianship, many children will remain in long-term foster care until they age-out without being adopted.

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### **Endnotes**

1. See Mark Testa, “Subsidized Guardianship: Testing An Idea Whose Time Has Finally Come,” *Social Work Research*, Vol. 26, No. 3 (2002): 145-158.
2. See Mark Testa, “When Children Cannot Return Home: Adoption and Guardianship,” *The Future of Children*, Issue 30, *Safe and Stable Homes for Foster Children*, Vol. 13, No. 2 (2004).
3. National Council of Juvenile and Family Court Judges, “Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases,” Fall 2000.
4. See B.R. Leashore, “Demystifying Legal Guardianship: An Unexplored Option for Dependent Children,” *Journal of Family Law*, Vol. 23 (1984-5): 391-400.
5. DHHS Children’s Bureau Waiver Authority, “Waiver Terms and Conditions, Illinois’ Child Welfare Waiver Demonstration Project” 1997.
6. A. Emlen, et al., *Overcoming Barriers to Planning for Children in Foster Care*. Department of Health Education and Welfare., Publication No. 78-30138 (OHDS). Washington, D.C.: U.S. Government Printing Office., 1978.
7. Marianne Takas and Rebecca Hegar, “The Case for Kinship Adoption Laws. In Hegar and Scannapieco (Eds.) *Kinship Foster Care: Policy, Practice and Research*, pp. 54-67. New York: Oxford University Press, 1999.

8. Mark Testa and Ronna Cook, "The Comparative Safety, Attachment, and Well-Being of Children in Kinship, Adoptions, Guardian and Foster Homes," presented at APPAM, November 3, 2001.
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## **How Do We Prepare the Child Welfare Community for Use of Guardianship as a Permanency Option? A Comprehensive Approach to Training**

**Jennifer Miller**

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### **Introduction**

Subsidized guardianship is an important permanency option for children who cannot be reunified with their parents and for whom adoption is not an option. In many state and local jurisdictions, subsidized guardianship allows caregivers to receive financial reimbursement to help with the additional expense of caring for a child. Some other benefits of guardianship include providing caregivers with the legal authority to make decisions on behalf of the child, the ability to care for the child without child welfare agency intervention, the opportunity to provide a safe and stable environment for the child without terminating parental rights, and the ability to honor the wishes of older children who might not want to be adopted. Perhaps most importantly, guardianship provides the child with a sense of belonging, heritage and roots, which are essential to his or her long-term well-being.

Despite the benefits of legal guardianship, many people are unaware of the opportunities it presents to provide a permanent home for children in foster care. In many cases, caregivers are unaware of the option of legal guardianship or do not understand how it compares to other permanency options. In some cases, caseworkers, attorneys, and/or judges are not educated about subsidized guardianship, or they

view it as a lesser form of permanency than adoption. For these reasons, they fail to inform caregivers about this option. In other cases, guardianship is misrepresented to birth parents as a “last chance effort” to retain parental rights, even when it may not be the most appropriate option. In all cases, there is a critical need for more information about the benefits and drawbacks of guardianship, when it is an appropriate permanency option, how it compares to other forms of permanency, and what its implications are for ensuring child safety and well-being. This issue brief discusses the importance of training in preparing the child welfare community to use guardianship.

### **Solid Training Can Contribute to Better Permanency Outcomes**

Training the child welfare workforce and other partners about subsidized guardianship presents many opportunities. Perhaps the largest benefit is that it allows a child welfare agency to articulate its overall permanency framework and to explain how subsidized guardianship fits into this framework and related timelines for achieving permanency.

Training on guardianship should be more than an exercise in teaching caseworkers, judges, and attorneys how to fill out the necessary forms and properly code the cases in the computer. Rather, it should provide an opportunity to emphasize the importance of promoting permanency goals for children who cannot live with their birth parents, crafting a goal to meet the unique needs of each child and family, and working together with birth families, foster families, kinship caregivers, youth, agency caseworkers, private providers, judges, and attorneys to make the best possible permanency decision for each child.

Yet, there are many challenges to training such a wide array of partners about the appropriate use of subsidized guardianship. These challenges include:

- Philosophical differences among partners about the merits of guardianship as a permanency option
- Disagreement or lack of understanding about the importance of family roots to a child's long-term development
- Difficulty of coordinating training for a wide range of partners
- Competing training agendas and the difficulty of finding time for professional development
- Lack of resources to develop effective training materials, hire trainers/facilitators, and free up time for staff to attend training workshops
- Lack of consensus about the role of families, caregivers, and youth in the decision-making process.

## **The Philadelphia Approach**

In Philadelphia, the introduction of Subsidized Permanent Legal Custodianship (SPLC) into the permanency framework provided a unique opportunity for the Department of Human Services (DHS). SPLC was the result of significant advocacy efforts among kinship caregivers and community organizations to address the unique needs of children in kinship care. It gave counties the option to promote permanent legal custodianship. Philadelphia seized the opportunity to make a subsidy available to permanent legal custodians in 2003 as part of its Partners in Permanency Initiative. To prepare for the initiative, DHS developed a workgroup consisting of members from the agency's law, policy, planning, and operations departments to discuss various aspects of SPLC, work through barriers to implementation, and begin educating a wide variety of partners about the potential benefits of SPLC for a large number of children living in foster care.

From the beginning, the leadership at DHS had been committed to communicating that SPLC was a valued part of the permanency continuum. SPLC training provided the opportunity to convey the importance of several additional goals for children in the system: timely decisions about where children will live on a permanent basis, decisions made in partnership with families and other community partners, and communication of options to families as early in the process as possible. This last goal is particularly important to ensure that families have enough time to understand the implications of their decisions. Through the training, DHS also wanted to ensure that DHS staff and staff at partner organizations had an opportunity to confront their biases about the appropriateness of subsidized guardianship as a permanency option.

In Spring 2003, DHS contracted with Sue Badeau, a consultant on adoption and subsidized guardianship training, to develop the SPLC curriculum. Drawing on materials from other state subsidized guardianship programs, particularly Illinois, materials were developed to support the training and the process of making decisions about the appropriateness of SPLC for children.<sup>1</sup>

The training, conducted throughout the summer of 2003, had several objectives. Some were specific to SPLC, while others were meant to encourage participants to think about permanence more generally. These learning objectives were as follows:

- Define permanence as it pertains to children and youth in foster care
- Assess whether a "permanency orientation" has been incorporated into the practices of the agency and individual staff
- Identify critical stages of child and youth development that affect the need for timely permanence and the ability of children and youth to think, communicate, and make

- decisions about permanence in their lives
- Utilize respectful and effective approaches to communicating with foster families, birth families, kin, adoptive families and youth about permanence, including respectful listening, engagement and follow-up
- Understand the importance of language and word choice in discussing permanence with youth
- Understand and be able to describe a broad spectrum of permanency options for young people, not limited to “adoption or nothing”
- Develop child- or youth-specific permanency plans in collaboration with the families and youth themselves
- Understand what Subsidized Permanent Legal Custodianship (SPLC) is, and how and when it should be considered as a permanency option
- Understand the roles and responsibilities of all parties in moving toward an SPLC permanency plan
- Understand the steps involved in initiating and completing an SPLC permanency plan with a young person and his or her family members.

In addition to the training curriculum, DHS produced a training video entitled “Partners in Permanency,” which follows the experience of one family from the moment the children enter care until a permanency decision is made.<sup>2</sup> The video shows several vignettes at different points along the permanency decision-making process. These include three family team meetings that bring together all the critical partners in the family’s life. The video is intended to support the initial training on SPLC and to reaffirm the goals of timely, collaborative, and well-informed permanency decisions. The video can also be used by a variety of agencies for diverse audiences to reinforce the initial SPLC training and to stimulate dialogue about more general permanency issues.

A comparison chart of permanency options provided during the training is designed to be used regularly by every caseworker talking to families about permanency options. Based on a similar document used in Illinois, the chart provides clear and factual guidance on the difference between SPLC and adoption from a legal, financial, and emotional standpoint.

At the heart of the initial and ongoing training is the notion that families must have real choices about permanency options and that, in order to have choices, they must understand all options available to them. This can only happen if workers, attorneys, and judges are educated about the differences among these options and are willing to work with families to make decisions that respect the unique needs of each child, caregiver, and parent.

## Lessons Learned

Some of the early lessons from Philadelphia’s experience are instructive to other local and state agencies considering training on subsidized guardianship. First, training should provide adequate guidance for supervisors who help workers through the steps of securing a subsidized guardianship arrangement. The initial round of training in Philadelphia did not provide enough guidance for supervisors about their role in the permanency decision-making process. As a result, supervisors did not have the specific skills and information needed to help workers through the first round of SPLC arrangements.

Second, training should make use of already existing networks, such as provider agencies and independent living networks, to deliver training to a very diverse group of stakeholders. DHS was committed to providing training opportunities to a large number and wide array of people; it also had to provide the opportunity

for participants to voice their concerns in a safe environment. By attending training forums, DHS leadership was able to listen and communicate with partner organizations and refine SPLC implementation in response to stakeholder concerns.

Third, the training must provide an opportunity for participants to work through difficult implementation issues and cannot just summarize SPLC policies and procedures. Training must clearly spell out how SPLC fits in the permanency continuum. For example, what does it mean when the law requires rule out of reunification and adoption before consideration of SPLC. The training must specify what constitutes sufficient reunification efforts and the circumstances under which adoption can be eliminated as a permanency option. Sorting through these issues is complex and requires skillful social work; training on subsidized guardianship can provide an opportunity to reinforce these skills.

Finally, SPLC training should be an ongoing process that is continually reinforced through a variety of forums and dialogues over time. The need for continuing dialogue about permanency decision making required DHS to do away with traditional ideas about the delivery of training on a one-time basis.

The first round of training provided the permanency framework, guidance on including families and children in the decision-making process, and the basic “nuts and bolts” of implementation. For frontline workers and supervisors, however, this was not enough to guide the complicated process of evaluating and implementing SPLC as an emerging permanency option. The details of ruling out reunification and adoption, determining the amount of the subsidies, assessing the family profile, and initiating the SPLC process for children who had been in placement for years, required more training. Because of the need for

additional training, the permanency decision-making video, with the breadth of ideas it presents, is a valuable addition to the SPLC training curriculum.

It is still too early to tell what impact the training will have on the knowledge and skills of caseworkers and other partners in their efforts to help families make the most appropriate decisions about permanency options, including SPLC. However, Philadelphia’s training strategy is an emerging model for going beyond the traditional “how-to-fill-out-the-form” approach to training.

## **Next Steps**

Subsidized guardianship is increasingly being recognized as a valuable option for children who cannot live with their birth parents. Yet in order to make good and lasting decisions, the families, the child welfare workforce, and other partners must have a full understanding of what guardianship is, how it compares to adoption, and what the future will look like if the family assumes legal custody of the child in their care. Well-designed training can help all parties participating in permanency decisions understand this option and its appropriateness and full implications for children and families.

The following steps will help ensure that state and local agencies starting or expanding guardianship programs maximize their potential to educate the entire child welfare community about subsidized guardianship:

### **1. Develop an agency-wide framework for subsidized guardianship.**

- Highlight the importance of family, heritage, and community to a child’s long-term well-being
- Clearly articulate the agency’s philosophy

about when subsidized guardianship is appropriate as a permanency option and how it compares to other forms of permanency

- Articulate the importance of educating families about their options and ensuring that they have a full voice in the decision-making process
- Review agency policies, procedures and guidelines to ensure that guardianship is regularly introduced in the list of permanency options.

- Review mandatory or core training for workers, foster parents, judges, attorneys, and others to ensure that subsidized guardianship is covered
- Integrate content about subsidized guardianship into training on family team meetings or other processes intended to give families a voice in decision making about permanency options.

## 2. Develop educational and training materials for a full range of players in the child welfare community.

- Involve as many people in training opportunities as possible, including families, foster parents, kinship caregivers, workers, judges, attorneys, youth, and providers
- Develop a comparison chart that clearly delineates the differences and similarities between adoption and subsidized guardianship
- Develop a fact sheet that addresses some of the most commonly asked questions about subsidized guardianship
- Ensure that all materials are easily accessible and culturally and linguistically relevant
- Sponsor initial training that focuses on the nuts and bolts of guardianship, as well as ongoing educational forums to provide participants with an opportunity to voice questions and concerns, discuss values, and share best practices regarding permanency decision making
- Use family team meetings or mediation as a forum to educate families as early as possible about their options.

## 3. Integrate education and training about subsidized guardianship into other permanency efforts.

- Review existing curricula for opportunities to integrate subsidized guardianship and promote understanding about its place in the permanency continuum

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### Endnotes

1. A copy of Philadelphia's training curriculum is available from June Cairns, Director of Staff Development, Department of Human Resources, at (215) 683-6040 or June.Cairns@phila.gov.
2. A copy is available from Jennifer Miller at Cornerstone Consulting Group, (401) 884-1546 or jmiller@cornerstone.to.



### How Do We Support Children and Families to Sustain Subsidized Guardianship Arrangements?

Jennifer Miller

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#### Introduction

For many years, child welfare practitioners, administrators, and advocates have recognized the critical need for services and supports to help families stay together after permanency has been achieved. These services include respite care, counseling, support groups, information and education, educational assistance, medical and mental health services, child care, and advocacy. The provision of these services helps keep families together and results in ongoing monitoring and contact to ensure that families get what they need.

Funds available through the Promoting Safe and Stable Families Program may be used to support services designed to help families stay together after a permanent placement is made through reunification or adoption. Many states have used this and other sources of funding to add post placement services to the continuum of child welfare services, particularly post adoption services to help families sustain permanency.

Services to sustain other permanency arrangements, such as reunification, guardianship, and kinship care, however, have been less prominent in this continuum. This issue brief discusses the reasons that post adoption services have become better acknowledged, the challenges to providing post permanency services in addition to those following adoption, and suggestions to help state and local agencies enhance post placement services for all permanency options.

### Why Post Adoption Services?

The focus on post adoption services has been particularly prominent for a number of reasons.

- **Recognition of the ongoing special needs of children:** As the availability of adoption assistance has led to the adoption of more children with special needs, there has been increased attention to their need for post permanency supports over time. Families have had a particular need for help connecting with adequate resources and specialized treatment for children not eligible for Medicaid and for services not available through Medicaid.
- **Increase in the number of adoptions:** As a result of the Adoption and Safe Families Act (ASFA) and its emphasis on the timely adoption of children in foster care, the number of finalized adoptions has increased considerably in the past five years. The emphasis on post adoption services stems from a desire to ensure that these adoptions endure and result in safe and lasting family relationships for children.
- **Impact of adoption on the family system:** Over the past decade, understanding of the impact of adoption on children and families at different stages of their development has increased. The availability of post adoption services throughout these different stages – not just at the point of finalization – is intended to help families deal with the impact of adoption until the child reaches adulthood.
- **Increased resources for post adoption services:** In addition to some federal funds for post adoption services, private funders are providing technical assistance, funding, networking opportunities, and information about best practices for those interested in post adoption services. Several states have implemented innovative approaches to post adoption services and are sharing their experiences with their colleagues.

## Opportunities and Challenges for a Post Permanency Framework

The idea of post adoption services for adoptive families is not new and has rapidly become an accepted addition to the array of child welfare services. There is much less awareness, however, of the importance of services for other permanent living arrangements, such as kinship care, guardianship, and reunification, or of the extent to which such services should be part of the continuum of publicly available post permanency services and supports.

As summarized by Freundlich and Wright in *Post-Permanency Services*<sup>1</sup>, “[c]ompared to the focus on adoption and the post permanency needs of adoptive families, far less attention has been given to the outcomes associated with permanent placements with kin and kinship families.” Freundlich and Wright point out that while the needs of kinship families may be similar to the needs of unrelated adoptive families, important differences may exist that should be further studied. Given the lack of attention to the post permanency needs of kin caregivers in general, including kin adoptive families, it stands to reason that the special post permanency needs of guardian families have also received little attention.

Broadening the definition of post adoption services to post permanency services that include kinship guardian families,<sup>2</sup> presents many opportunities to improve permanency outcomes. Kin caregivers who assume responsibility for the upbringing of a relative’s children face many obstacles. Some of these are similar to those of unrelated adoptive families. These include the need for specialized mental health and educational services for children, respite, assistance in the task of bringing a new family member into the existing family system, and training to advocate for children who may have special physical, mental

health, educational, and social needs.

Kinship families in guardianship arrangements, however, may have additional needs that adoptive families do not have. These include managing the unique dynamic of being cared for by a relative, the impact of the permanency arrangement on relationships with the birth parents and other family members, and the unique legal distinctions between adoption, guardianship, and other arrangements for children and their caregivers. In addition, kin may be more reluctant to seek help from formal institutions than adoptive families, given their relative unfamiliarity with how these organizations work. Relatives may be more comfortable with informal supports provided by community networks, support groups, and other non-institutional sources.

Despite the recognition that relatives and the children in their care might need post permanency supports to maintain a safe and stable placement, there are many challenges to providing kinship families, including those in subsidized guardianship, post permanency services. These include:

- The philosophical belief that relatives have an obligation to care for children without government support
- The assumption that relatives caring for children do not want government intrusion into their lives
- Preconceptions and stigmas about the relatives of the child, i.e. “the apple does not fall far from the tree,” and ambivalence about the appropriateness of placement with relatives
- Lack of resources to bear the financial costs of supporting families once a permanent placement has been made
- Lack of understanding about the unique needs of children who have been in the custody of the

state and how those change over the course of their development

- Lack of understanding about the services and supports that meet the unique needs of relative caregivers, including managing visitation, dealing with the impact of drugs and domestic violence, and legal issues
- Lack of familiarity in formal systems with the importance of informal and natural helping systems, particularly those that respond to the unique cultural issues among relative caregivers
- Reluctance among kin caregivers to admit that they are facing difficulty in raising their children.

When creating post permanency supports for children and caregivers in kinship guardianship arrangements, there is also another, unique challenge to overcome. Some perceive guardianship arrangements to be less permanent than adoption, and they may find it difficult to take guardian families as seriously as families that adopt the children in their care. This is a challenge that must be overcome to ensure that guardianship arrangements are as safe, stable, and permanent as possible. (See *Establishing Permanence*, pp. 13-18).

## Next Steps

Given the increased interest in guardianship as a permanency option for children, there is a critical need to ensure that guardianship families have access to the network of post permanency services and supports that are available to adoptive families and that these supports are increased where necessary. Children in guardianship situations are likely to face many of the same challenges as adopted children. It is also likely that the cost to society of supporting these families will be less than the cost of not providing them with the help they need to ensure that their children successfully reach adulthood and become

self-sufficient. Although there are movements in the direction of providing post permanency services to guardianship families, much more can be done to create consensus about the need and to build on already existing efforts. Some next steps might include:

### 1. Provide opportunities for agencies to assess how well they support families once a permanent placement has been made.

Many child welfare agencies are in the process of broadening their definition of permanency to include subsidized guardianship. In doing so, they are concerned with the question of how to ensure that families get the help they need once the agency is no longer involved in their lives. Providing agencies with the resources and a framework through which to make decisions about how to provide this support is a critical next step in many jurisdictions. A framework for having these discussions has already been developed by Madelyn Freundlich and Lois Wright<sup>3</sup> and may provide a useful starting point for many agencies. This framework addresses many components of a post permanency system, including law, policy, programs, services, system of care, and environmental context.

### 2. Include children placed permanently with guardian caregivers in efforts to promote the expansion of post permanency services.

Ensuring that guardians and the children for whom they are caring are eligible for post permanency services and supports will be important as states enhance subsidized guardianship as a permanency option. This may include amending existing legislation and/or funding sources for both subsidized guardianship and post adoption services to clarify that certain post permanency services and supports are available for children placed with guardians. The process and outcomes will be strengthened by including both caregivers and youth.

### 3. Ensure that post permanency supports respond to the unique needs and cultures of relative caregivers.

The following steps will help ensure that post permanency supports are responsive to the unique needs of relative caregivers who become guardians.

- **Listen to the voice of relative caregivers:** Involvement of relative caregivers in the development of programs and policies is critical and will help ensure that services and supports are responsive to their unique needs and culture. Efforts to facilitate advocacy among relative caregivers should also be supported.
- **Develop training materials:** Training can help professionals, including foster care workers, post adoption staff, and staff at community-based organizations recognize and meet the needs of relative caregivers.
- **Foster the development of informal networks:** As has been learned in efforts to provide post adoption services, some of the most useful ways to support children and families after finalization is to help them gain access to networks of families who are in the same situation and share their cultural identity. Informal support groups, faith-based organizations, and community-based organizations can provide a venue for people to share experiences, get advice, and educate each other about a range of issues with which they may be unfamiliar. Community-based organizations may also be in the best position to help relative caregivers deal with some of challenges they face such as drugs, domestic violence, and community violence.

### 4. Explore how various funding streams could better support the needs of children living with guardians.

Some agencies, such as the El Paso County, Colorado Department of Human Services, have been creative in using TANF funding to support relatives caring for children. More work can be done to explore how

TANF, Medicaid (EPSDT and Targeted Case Management) and the Title XX Social Services Block Grant can be used to support children living with guardians. A combination of resources should be dedicated from both formal and informal networks of services and supports.

### 5. Expand research and evaluation on permanent guardianship.

Evaluations of subsidized guardianship programs may provide useful information about what leads to successful permanent guardianship placements and what contributes to guardianship disruptions and dissolutions. The latter in particular may help administrators and program developers better understand what needs to be in place to prevent dissolution and disruption.

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#### Endnotes

1. Madelyn Freundlich and Lois Wright, *Post-Permanency Services*, Seattle: Casey Family Services, 2003. The report may be downloaded from <http://www.casey.org/Resources/Publications/PostPermanency.htm>.
2. Challenges and opportunities, as well as recommendations, presented in this paper are geared toward kinship caregivers who assume guardianship of children in state custody. Although we are naturally concerned with services and supports for relatives across the continuum of care, we have limited this discussion to the focus of these issue briefs: permanency through subsidized guardianship arrangements.
3. See Freundlich and Wright, *Post-Permanency Services*, p. 158.

### How Can Subsidized Guardianship Contribute to Permanency for Older Youth?

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#### Introduction

The Adoption and Safe Families Act (ASFA) emphasizes the role of the child welfare system in facilitating safety, permanency, and well-being for children in foster care. The goal of permanency has had a significant impact on the ways that child welfare services are designed and delivered. Shortened timelines for achieving permanency, increased efforts to find and support adoptive families, and the explicit recognition of subsidized guardianship as a permanency option are some of the ways in which federal policies support states in achieving this goal.

One complex and challenging issue related to permanency in the context of ASFA is meeting the needs of adolescents and young adults served by the child welfare system. Policies and programs designed to support permanency efforts for younger children have often proved ineffective and even irrelevant to the needs of teens, especially those youth preparing for the transition to adulthood. Significant progress was made with the enactment of the Foster Care Independence Act of 1999, which established the John H. Chafee Foster Care Independence Program and expanded independent living and other services to older foster youth. Much more needs to be done, however, to ensure that independent living services are also available to youth who achieve permanency through subsidized guardianship and adoption.

This issue brief explores why both permanency – through adoption and subsidized guardianship – and independent living services are critical components of the transition to adulthood for foster youth. It outlines some of the challenges to an emphasis on both permanency and independent living. Lastly, it examines disincentives to permanency for young people in subsidized guardianship programs and some possible steps to remove these disincentives in the future.

#### Permanency and Independent Living: Not an Either/Or Proposition

Each year, over 20,000 young people in foster care “age out” and must leave the child welfare system. Without the resources and support offered by a family, these young people often face many challenges to their safety and well-being. As with all adolescents, young people leaving foster care, regardless of their age, want the safety and security of a loving and nurturing home. Many child welfare agencies are working harder than ever to secure permanency for adolescents in care, so that they will have a family and social network of support as they transition to adulthood.

In addition to permanency within a family context, young people need competence in independent living, the skills and capacity to become fully functioning adults. Independent living programs include training for young people in such skills as money management, job readiness, nutrition, and community resources. They also help young people access education and training programs and provide them with support for housing and medical needs. In addition, such programs offer foster and adoptive parents and guardians the training they need to nurture independent living skills in the young people in their care.

In order to help young people in foster care strengthen connections, as well as build skills and competencies, services and support must be provided in ways that promote reliance on self and the community, including families. The experience of foster care can contribute to feelings of dependence and disempowerment for youth, who are often excluded from decision making in case management and court processes and may have experienced numerous disruptions in placements. Older youth in particular, who may have spent many years in foster care, need extra help to make permanent connections and move toward self-sufficiency. This includes involving them in decisions that affect their lives, providing them with life management skills to succeed in school, the workplace, and family life, and helping them make permanent connections in the community.

Yet too often, child welfare practitioners treat the goals of a permanent family and independent living as mutually exclusive. When the goal for young people is permanency with a family, they are often not considered appropriate candidates for independent living services. Conversely, when youth participate in independent living programs, it is often assumed that they will not achieve permanency in a family. Permanency services and independent living services are both essential to the future and well being of every youth in care. Involving young people in decisions about how to achieve both is also a critical step toward helping them build the skills to direct their future.

### **What are the Challenges to Achieving Permanency and Independent Living Skills?**

The Foster Care Independence Act of 1999, which expanded the scope and diversity of services that could be funded through independent living programs,

recognizes that both skills development and permanency in family relationships are important priorities for young people. In reality, however, policy and funding directions do not support these dual goals. Most young people are funneled in one direction or the other, rather than benefiting from help in both areas. For the most part, a successful outcome for a child or youth in foster care is permanency through reunification, adoption, and in some states, subsidized guardianship. When these efforts fail, as they often do for older youth, young people are prepared for life on their own through independent living services and programs.

While the 1999 act has fallen short of its goals, it has sparked valuable discussion and collaboration among advocates of independent living, foster care, adoption, and other permanency options.<sup>1</sup> These discussions have helped the child welfare field conceptualize a more comprehensive approach to securing better outcomes for youth in care.

Some challenges to focusing on permanency and independent living services at the same time are:

- **Inadequate resources for independent living programs:** Despite the recognition of the importance of independent living programs, they currently are funded at a rate that allows for a total expenditure of less than \$1,000.00 per year per eligible youth. As a result, child welfare agencies provide an insufficient level of services to all youth or serve only a small percentage of eligible young people.
- **Disincentives to achieve permanency:** When young people are adopted or enter subsidized guardianship arrangements, they may become ineligible for federal independent living programs and some state-funded programs, such as tuition waivers and extensions of board payments for those in training and education programs.

There also may be confusion about the impact of the subsidy on eligibility for Pell grants. The loss of these benefits or lack of understanding about eligibility rules can often work against efforts to achieve permanency.

- **Lack of services after leaving care:** While independent living services are available for young people until age 21, there are little or no services for young adults who have aged out of the system after age 21. Services needed include mental health treatment, medical care, employment services, housing assistance and the like.
- **Biases that older youth can't achieve permanency:** Some workers, foster parents, and judges are skeptical that older youth in care can be adopted or achieve permanency through guardianship. Too often, professionals believe that these young people are too old to consider finding a family and should focus on achieving independence. They underestimate the importance of permanent connections for these youths.

Without having both the support of a family and the extensive life-skills preparation needed to make the transition to adulthood, foster youth are more likely to become homeless, remain unemployed, fail to graduate from high school or attend college, and become involved in the criminal justice system than their non-foster care peers.<sup>2</sup> Despite their tremendous potential, as well as their natural resilience and the strengths they have developed through adverse experiences, the majority of young people leaving care are not achieving basic self-sufficiency as young adults. In order to create an environment that will prevent such tragic outcomes and enable foster youth to achieve their academic, vocational, and personal potential, we must change how we think about, and how we implement, the full range of foster care, permanency, and aftercare services for them.

## How Subsidized Guardianship and Independent Living Services Can Help Young People Make the Transition to Adulthood

In many ways, subsidized guardianship offers a valuable route to permanency for older youth who may be unwilling to be adopted or who are committed to maintaining ties to birth family. Because they are at a time in their foster care experience when they will soon have total responsibility for themselves, older teens may find the flexibility offered by guardianship, as well as the likelihood that the guardian will be a relative, a more acceptable permanency option. For caregivers, subsidized guardianship with supportive services may increase the capacity of the family to take on the responsibility of a new teenage family member, while minimizing disruptions in their own family's life.

The Foster Care Independence Act clearly states that independent living services, while directed toward adolescents who are likely to remain in the system until they reach adulthood, should be provided to young people at "various ages and stages" of achieving independence or permanence. Within some federal and state programs, independent living supports that are available to teens who age out of the system are also available to youth who are adopted.<sup>3</sup> The new federal Chafee Education and Training Voucher Program, for example, specifically makes youth who were adopted from foster care at or after age 16 eligible for its assistance. Unfortunately, the program is not available to those who achieve permanency through guardianship.

Clearly, families that choose to maintain permanent family relationships with teens through guardianship arrangements also need such benefits. Such assistance

would provide increased support for a young person to achieve educational and vocational goals, while ameliorating the economic burden placed on the guardian, who has not had time to save for college or other transitional expenses for the youth. Particularly in the case of the many elderly caregivers who have taken on the challenge of raising young relatives, such support may be especially important. In some cases, the youth may play an important economic role in the family and need to become self-supporting very quickly.

Families headed by grandparents or other relatives also need various types of ongoing support to help young people in their care prepare for adulthood. In addition to economic support and independent living services, they may need help addressing the emotional needs of the youth, often exacerbated by abuse, neglect, and possibly estrangement from the birth parents. Child welfare practitioners must increase efforts to build the capacity of caregivers to more purposefully facilitate the acquisition of skills and competencies in foster children and youth.

Parenting of children in most families includes a long developmental approach to acquisition of independent living skills. From feeding and dressing themselves to driving a car and filling out a job application, parents teach their children critical skills throughout childhood and well into adulthood. Foster, kinship, adoptive, and guardianship families should be supported to teach these same skills and to help children of all ages achieve developmental milestones that will contribute to adult competencies.

## Next Steps

Subsidized guardianship may offer older youth who cannot live with their parents the permanent connections they need while also recognizing their emerging independence. The following steps will help ensure that young people in guardianship arrangements have a permanent home and family connections and the lifelong skills needed for independence and successful transition to adulthood:

### 1. Articulate goals and outcomes for older youth in foster care.

Legislation, agency policies, and administrative guidance can all reinforce the dual goals of family connections and skills development for young people in foster care. There must be a consistent message throughout the system that adolescents can achieve permanency through subsidized guardianship and adoption and, at the same time, can attain the skills and education needed to transition to adulthood. In order to realize better outcomes for young people, the entire system must first articulate these two goals and then align policies and funding to support them.

### 2. Make independent living services and supports available to all adolescents who achieve permanency through guardianship or adoption.

Independent living services are critical for the transition to adulthood: adolescents who achieve permanency through subsidized guardianship or adoption, as well as those who transition to adulthood directly from foster care, should have full eligibility for all independent living services and supports.

States starting new subsidized guardianship programs or enhancing existing options must ensure that youth in guardianship arrangements are eligible for independent living services and supports. This will require significant advocacy at the state and federal levels

and recognition that permanent connections and life-long skills are both important to the outcomes of safety, permanency, and well-being. At a minimum, the following changes in existing programs are needed:

- **Pell grants:** Currently, children who are in foster care and are wards of the state are considered independent students for purposes of eligibility for Pell grants. If they are adopted, however, their eligibility becomes dependent on their adoptive parents' income, as long as the adoptive parents claim them as a dependent for tax purposes. If the youth leaves foster care to live with a legal guardians, he or she should continue to be eligible for Pell grants as an independent student. However, the application of this policy is not clear or consistent. Eligibility for Pell grants should be clarified in order to eliminate any disincentives to permanence for children in foster care.
- **Education and training vouchers:** The Foster Care Independence Act allows Education and Training Vouchers (up to \$5,000 per year) to be available to young people who leave foster care at age 18 or those who are adopted from foster care after age 16. Youth may receive vouchers up to age 23, as long as they are enrolled in a post secondary education or training program. These vouchers should also be made available to youth who achieve permanency through subsidized guardianship.
- **Tuition waivers:** Approximately 17 states have tuition waiver programs that allow students to attend publicly-funded institutions of higher education by "waiving" tuition and fees under certain criteria. Waivers allow foster youth to attend college for a significantly reduced rate. While state programs vary significantly, more work must be done in most states to ensure that waivers are available not only to foster youth, but also to youth who are adopted or achieve permanency through subsidized guardianship.

### 3. Train and educate caregivers, workers, judges, service providers and legislators to reinforce the need for independent living training for all young people leaving foster care.

Caregivers, service providers, and other community members must consciously and conscientiously support the acquisition of these skills, connections, and competencies for foster children from birth through adulthood. In particular, foster parents, kinship caregivers, guardians, and adoptive parents should receive training and support to help children and youth acquire needed skills and competencies. Policy makers and legislators must also be educated to consider the needs of these youth in making funding decisions regarding independent living, transition, and aftercare programs.

### 4. Include young people extensively in individual case planning, program planning, and policy development.

When young people are removed from the process of making decisions about their future, their feelings of isolation, dependency, and powerlessness are often reinforced. In contrast, engaging foster youth in decision making creates an environment in which they are more likely to be motivated to develop needed competencies – and in which they are also more likely to succeed in developing, or maintaining and strengthening, critical family ties. Involving young people in program and policy development can also help agencies and organizations learn more about their needs and the strategies that will engage them in the process.

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#### Endnotes

1. The National Resource Center for Youth Services ([www.nrcys.ou.edu](http://www.nrcys.ou.edu)), the Stuart Foundation ([www.stuartfoundation.org](http://www.stuartfoundation.org)), and Casey Family Programs

([www.casey.org](http://www.casey.org)) are examples of organizations that have facilitated discussions and promoted collaborative approaches to meeting the permanency and independent living needs of older youth in foster care.

2. Ronna Cook, E. Fleishman, & V. Grimes, A National Evaluation of Title IV-E Foster Care Independent Living Programs for Youth, Phase 2. (Final Report for Contract No. 105-87-1608). Rockville, MD: Westat, Inc., 1991. See also, Mark E. Courtney, et al., Foster Youth Transitions to Adulthood: Outcomes 12 to 18 Months after Leaving Out-of-Home Care. Madison, WI: Institute for Research on Poverty, 1998.

3. Maryland, Texas, Oklahoma, and Florida are examples of states where the tuition waiver extends to adopted youth. More information on educational supports and other transition services can be found at [www.nrcys.ou.edu/yd](http://www.nrcys.ou.edu/yd).

### How Does Subsidized Guardianship Fit Into a Larger Kinship Care Framework?

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#### Introduction

Subsidized guardianship programs vary considerably among the states – from program eligibility guidelines and payment levels to funding sources. Child welfare agency decisions about the use of subsidized guardianship as a permanency option for children are influenced by a number of important factors, especially the state's existing policies and practices on how and when to place abused or neglected children with relatives. Where children end up on the continuum of placement options – from “informal” placements outside the child welfare system to “formal” kinship care under state supervision – affects the services available to children and caregivers, the legal permanency options available, and the appropriateness of subsidized guardianship as an option for kinship care families.

Before establishing or expanding a subsidized guardianship program, state child welfare agencies must explore how their prevailing placement practices will affect the implementation of this permanency option. Understanding what services, supports, and legal relationships are already available to relatives and what additional resources relatives will need to adequately care for the children they are raising is essential. So is effective communication with kinship care families. States must provide families with information about the legal and

financial status of their relationship to the child and the state, as well as the consequences of adoption, subsidized guardianship, and other permanency options.

This issue brief will describe different kinship care placement practices in the states and their implications for subsidized guardianship. It will examine financial assistance, availability of support services, reunification efforts, post-permanency services, rights and responsibilities of parents and caregivers, and the ongoing role of the agency with the kinship care families. More specifically, it will look at how these considerations have affected the development of subsidized guardianship on the state level and recommend specific strategies to ensure that subsidized guardianship is carefully considered as one of several permanency options and program supports for kinship care families.

#### What is “Formal” Kinship Care?

There has always been confusion and controversy about the definitions of the terms “formal” and “informal” kinship care. In the real world, kinship care placements encompass not just these specifically-defined categories, but a broad continuum of arrangements in between. For the purposes of this issue brief, however, it helps to define the opposite ends of the continuum.

Formal kinship care describes a situation in which relatives are caring for an abused or neglected child who has been brought into state custody. In these cases, placement with the relatives usually takes place immediately following an investigation of abuse or neglect, or soon after the child has been temporarily placed in an unrelated foster home.

Like all children in foster care, children in formal kinship care have the right to a permanency plan and timely reunification with their birth parents, if appropriate. As wards of the state, they are eligible to access the range of services available to all foster children, including health and mental health care and other supports specified by the court or provided by the agency. These vary greatly among states and communities. The services may include child care, transportation assistance, supervised parental visitation, tuition assistance, and independent living services. The children's birth parents should receive reunification services while the agency provides ongoing supervision and case planning for the children. Agency monitoring and court oversight are also required.

In most cases, formal kinship caregivers must undergo the same training and approval processes and comply with the same licensing requirements as unrelated foster parents. They have the same rights and limitations in day-to-day decisions regarding the care of the child, who remains in the legal custody of the state. As licensed foster parents, formal kinship caregivers generally receive a foster care subsidy to care for the child. If the child cannot be reunified with his or her parents, relative foster parents may be eligible to adopt the child and, in the case of children with special needs, qualify for adoption assistance. In some states, relatives who have been formally licensed as foster parents and choose not to adopt may also be eligible to become the child's permanent legal guardian and to participate in subsidized guardianship programs.

When out-of-home placements are being considered for abused and neglected children, some state child welfare agencies favor formal kinship care. They may believe that the abused and neglected children are safest when they are brought into state custody before

key decisions are made regarding their care. Bringing the child into state custody also helps the agencies ensure that all children and families receive appropriate reunification efforts in accordance with federal and state laws.

While children in formal kinship care are often provided with more generous supports and resources than children in informal kinship care, formal kinship care is not appropriate for all families. Some relatives, for example, may be concerned about the destructive impact of state intervention on the child and other family members, such as the stress of removal, uncertainty about future placement, limited ability to make day-to-day decisions about the child's care, ongoing home visits by caseworkers, and court oversight. The requirements and demands of formal kinship care may compound the family's distrust of the child welfare agency and its ability to determine what is best for the child in the larger family context. Licensing and training requirements may also be barriers for relatives who may not be able to comply with strict licensing requirements.

### **What is "Informal" Kinship Care?**

In this issue brief, informal kinship care describes a situation in which relatives are caring for a child outside of the supervision of the formal child welfare system. It refers to children who are being raised by relatives without any child welfare intervention and children who have had initial contact with state child protection workers but have been diverted from state custody before a child welfare case is formally opened. These diversions can take place through a decision by family members, an informal agreement between a caseworker and a family, or pursuant to a court order directly placing a child with and/or transferring the child's legal custody to family members.

In informal kinship care arrangements, relatives are not licensed to care for the children. As a result, the supportive services that they receive vary greatly and often depend on the caregivers' knowledge of community resources and their skill in accessing assistance. While families may be eligible for limited assistance through such public programs as Temporary Assistance for Needy Families, financial support is considerably less than they would receive if the children were in foster care.

In addition to lower payments, children and families in informal care arrangements also receive fewer publicly funded services and supports than their formal kinship care counterparts. There is rarely easy access to child care assistance, transportation subsidies, specialized mental health treatment, assistance interacting with the birth parents, or other supports available to licensed foster families. In most cases, the caregiver's ability to make decisions regarding the child's daily care is determined by an implicit agreement with the parents or the child welfare agency, rather than formal consideration of rights and responsibilities and legal agreements. Because the birth parents usually retain legal custody, they can resume care of the child at any time.

There is little or no ongoing agency supervision of children and their caregivers. The child welfare agency is not required to develop a permanency plan for the child or to engage in reunification efforts on behalf of the family. If relatives in an informal kinship care arrangement decide to adopt a child with special needs, they usually are not eligible to receive adoption assistance. In terms of subsidized guardianship programs, only six states make these programs available to children in the care of relatives outside the child welfare system.

Many state child welfare agencies encourage the use of informal kinship care placements because they provide a safe, consistent home-like setting for children with minimal state intrusion. States that rely on informal arrangements contend that formal out-of-home placements are often unnecessary to protect children effectively and may undermine existing family relationships. The financial costs to the state are few if any; instead, they fall to the family.

While informal kinship caregivers rarely receive the same level of financial assistance, services, and monitoring as formal kinship caregivers, some relatives prefer to care for children without ongoing and sometimes onerous agency and court involvement in their lives. In addition, caregivers often are unaware of the long-term implications of caring for the child outside the formal foster care system, such as the inability to later qualify for adoption assistance or subsidized guardianship, the recognition that caring for the child may not be a temporary situation, and the difficulty of maintaining boundaries with birth parents.

### **Considerations in Assessing Kinship Care Placements**

The clear distinction made here between formal and informal kinship care is not as obvious in practice. Most states use a variety of different placement options with kin based on the risk to the child, the needs and capacities of individual families, and the capacities of individual child welfare agencies. Some states, for example, may divert the majority of children into informal kinship care arrangements while determining that other families need formal licensing and ongoing state supervision. Placement practices also may vary considerably within a state, depending upon the leanings of a county child welfare agency or a local court or upon public trust and understanding

of the child welfare system. While some state policies and practices clearly support one placement preference over another, the placement of an individual child may be based more on the judgment of an individual caseworker or judge, including any biases he or she may have.

Ideally, however, where children end up on the continuum of kinship care placements should be based on the risks, needs, and capacities of each individual child and family. Consideration of each family's unique circumstances should be discussed when abused or neglected children are first removed from their birth parents and placed with extended family members. Upon initial contact with the agency, relative caregivers should receive clear and accurate information about their options with regard to the children, both financial and legal. The family should also be made a part of the agency's decision-making process, including determinations about:

- **Availability of resources:** What kind of financial support does the caregiver currently receive and what additional resources are needed to ensure the child's safety and well-being?
- **Likelihood of reunification:** What are the chances that the child can be reunited safely with the birth parent(s)? What roles should the agency and the caregiver play in supporting reunification?
- **Relationship with birth parents:** How well do the child's caregivers relate to the birth parents, manage parental visitation, and ensure the child's safety?
- **Level of agency involvement:** What kind of services and ongoing monitoring do caregivers need from the agency to ensure the child's safety and well-being?
- **Post permanency supports:** What type of ongoing support will be needed if the relative agrees to care for the child permanently through adoption or guardianship?

## **Formal and Informal Kinship Care and Subsidized Guardianship**

Most states use subsidized guardianship programs as a permanency option for children who have been placed in formal kinship care arrangements with relatives who are willing to care for them on a permanent basis but are unable to do so without ongoing financial support. Most states with subsidized guardianship programs, including the largest programs in Illinois and California, have effectively reduced the number of children in long-term foster care with relatives for whom adoption has been ruled out as an appropriate permanency option. Subsidized guardianship for children who have not been in the formal custody of the child welfare system is less common, although an increasing number of states are exploring the possibility of expanding financial assistance to informal kinship care families.

In addition to subsidized guardianship programs and other permanency options, states are experimenting with new ways to prevent children being raised by grandparents and other relatives from being channeled unnecessarily into the child welfare system. For example, two states, Ohio and New Jersey, have established kinship navigator programs. These statewide hotlines are designed to connect kinship care families with child care, health care, transportation, and local social service agencies so they can more easily access the services they need before a family crisis occurs. Navigator programs can be used in tandem with subsidized guardianship programs and other supports to meet the needs of kinship care families at all points of the kinship care continuum.

## Should Subsidized Guardianship be Available Only to Kin?

In deciding how to structure their subsidized guardianship programs, many states may want to consider whether or not the programs should be available to children being raised only by kin or also by unrelated individuals with whom they have a close relationship, such as unrelated foster parents. Currently, 24 states make their subsidized guardianship programs available to kin and non-kin alike. These states contend that there are several situations in which non-relatives might want to consider guardianship over adoption, including when:

- The young person does not want to be adopted
- The child's parent is mentally or physically disabled and cannot safely care for the child but wants to maintain the relationship
- The child has a longstanding, close emotional bond with the caregiver
- The cultural traditions of the caregiver and/or child oppose the termination of parental rights
- The caregiver is not related to the parent, but has a close relationship with the family and does not want to terminate parental rights
- The child's cultural traditions encompass a broader group of individuals as kin, such as godparents and clan or tribal members.

States establishing or expanding a subsidized guardianship program may consider broader, more inclusive eligibility guidelines to include non-relatives. This will provide the agency with the flexibility to respond to the unique circumstances of each child's situation.

## Next Steps

Decisions about kinship care placement practices should be based on the combined input of agency caseworkers, kinship caregivers, young people, birth parents, judges, guardians ad litem and attorneys. Whether children are placed in formal or informal kinship care settings, they should all receive appropriate financial, legal, health, and social supports to ensure their safety and well-being. The following strategies are designed to help states analyze and improve existing kinship care policies to support and expand subsidized guardianship programs and other appropriate services for kinship care families:

### 1. Assess existing kinship placement policies and practices.

State and local agencies should thoroughly examine their current kinship care placement practices by asking the following types of questions. If the answers are not available, agencies may want to develop strategies for collecting them.

- Are the majority of children brought into formal kinship care or diverted from formal placements?
- Who makes decisions about how children are placed?
- How are these placement decisions made?
- What placement options are considered in each case? What factors, including safety factors, are routinely considered in determining the most appropriate placement?
- How are families included in the decision-making process? How does the agency ensure that families understand the financial and legal implications of the options available to them?
- What services and supports are available to kinship caregivers and children at all points on the continuum?

- To what extent has the agency sought feedback from kinship caregivers and youth about their needs, experiences, understanding about the options available to them, and recommendations for improvements?
- What are the prevailing cultural assumptions about kinship care and what are the implications for agency policies and practices?
- What are the financial costs and implications of different placement options?
- What results do children in different types of placements experience? What is the role of research and evaluation in helping determine the best possible options for children and families in kinship care?

## **2. Institute family team meetings to give families a voice in decisions regarding the child welfare process.**

Many agencies have found that family team meetings held when a child first comes to the attention of the child welfare system are an effective way to identify potential kinship caregivers and give families more participation in decisions regarding the kind of placement that is most appropriate for the child.

Family team meetings, sometimes called family group conferences or team decision making, give families at all stages of involvement with the child welfare system an opportunity to participate in the agency's decision-making process. They allow caseworkers to speak with birth parents, kinship caregivers, and others involved with the family about legal options, available services, and the next steps in the child welfare process. Family team meetings also provide an opportunity to educate families about the availability of subsidized guardianship programs and to compare subsidized guardianship, adoption, and other permanency options.

## **3. Explore subsidized guardianship in conjunction with other comprehensive kinship care supports.**

Once states have carefully evaluated their existing practices for placing children with relatives, they should analyze what other policies, programs, and resources are needed to ensure that families at all points of the kinship care continuum can access appropriate supports, including subsidized guardianship, kinship navigator programs, and other services.

## How Does Subsidized Guardianship Respect Culture? Perspectives on African American, Native American, and Latino Experiences

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### Introduction

In many cultures, members of the extended family have a strong role in child rearing – a role viewed as essential to each child’s development and sense of self. The child’s identity may be defined by connections to relatives, godparents and other family friends, clan, and tribe. It is common practice for members of the kinship network to be an active, continuous, and permanent part of the child’s life. It is also a time-honored custom for kin to care for children either temporarily or permanently when their birth parents cannot.

Many kin formally adopt children who can no longer live with their birth parents. However, a large number of relatives are reluctant to terminate parental rights, a prerequisite for the legal adoption of the child. Some view the disruption of relationships caused by termination of parental rights and the adversarial nature of the termination process as harmful to the child and to the family and community as a whole. For others, the idea of terminating parental rights is abhorrent and an affront to deeply

held cultural beliefs about individual, family, and cultural identity. Subsidized guardianship allows kin to care for children whose parents cannot, while honoring and preserving the children’s fundamental identity through ties to their broader family and culture. It may also be an appropriate permanency option for a growing number of immigrant children whose cultures deeply value the strong role of kin in child rearing. One out of five children in the United States is the child of an immigrant, and the cultures immigrants represent enrich our nation as a whole.

In addition to providing a permanency option that is respectful of traditional cultures, subsidized guardianship can help address a serious child welfare problem – the disproportionate representation of children of color in out-of-home placements. Good social work practice obviously requires that a child’s culture be taken into account whenever decisions are made about the services and assistance that are most appropriate for the child. However, given the large number of children of color in the child welfare system, special efforts can and must be made to increase attention to cultural concerns and to ensure that appropriate consideration is given to the needs of minority children who are at disproportionate risk of placement. This issue brief, therefore, focuses on the implications of subsidized guardianship for three groups of children and describes special steps that can be taken on their behalf; these groups are African-American and Native American children – both of whom are dramatically over-represented in foster care – and Latino children. The recommendations made for using subsidized guardianship in ways that respond to our nation’s diverse cultural traditions have relevance for cultural groups in addition to those specifically considered. By respecting and learning from varied child rearing traditions, our

nation has an opportunity to assimilate positive practices, including shared responsibility for nurturing all our children and each individual child.

### **Cultural Issues in Child Welfare Policy**

Even child welfare policies and practices that recognize the overall importance of family to the well-being of children often lack clarity about the role of kin. Facing a shortage of people willing to provide foster care, child welfare systems have come to rely on relatives to care for children. At the same time, policymakers and practitioners struggle to develop a clear, consistent approach that honors cultural traditions, safety considerations, and the need of children for permanent families.

Most kinship care is an informal arrangement among family members. As many as four of every five kinship care placements occur informally, without official involvement or sanction. Other kinship care arrangements begin with child welfare involvement, but result in kin stepping forward before the child enters state custody. It is estimated that in 1998 child welfare agencies helped arrange informal kinship care for 13 percent of the 2.1 million children in relative care. Another 200,000 children (9.5 percent of children living with kin) were part of the formal foster care system, meaning that relatives became licensed foster parents. For families involved in the child welfare system, the system can be complex, and decision making about where children are placed can seem arbitrary. Given that kinship care can take many forms, each arrangement has different implications for the family and their ability to ensure safety and stability for the child.

Many cultural groups criticize what they see as the “one-size-fits-all” approach of the Adoption and Safe

Families Act (ASFA), which they see as favoring adoption over other permanency options. Some report that while ASFA speeds a child’s movement through the system, child welfare agencies often fail to address the issues that bring large numbers of minority children into care and fail to consider and promote culturally appropriate interventions that could support birth families. Further, the priority given short deadlines for permanency may lead agencies to make inadequate efforts to find and assess kin and others who share the child’s culture.

Some argue that the Multi-Ethnic Placement Act (MEPA) also fails to promote cultural traditions. MEPA requires diligent efforts by states to recruit foster and adoptive parents who reflect the racial and ethnic diversity of children in care who need placement. However, it lacks the penalties and incentives that many believe are necessary to ensure that states develop appropriate options for minority children. Further, some jurisdictions have interpreted MEPA to disallow any consideration of culture or ethnicity in assessing the best interest of the child in making placement decisions. Contrary to best practice, such an interpretation negates legitimate attempts to understand and address cultural issues that affect a child’s sense of permanency and belonging.

Lack of cultural understanding contributes to high placement rates for children of color and children of minority cultures. Professionals often lack knowledge of child rearing practices and other customs that may be common among immigrants and other families, and they make decisions based on false assumptions. The lack of education about cultural norms extends throughout the child welfare decision-making process, including the initial risk assessment, placement decisions, and consideration of permanency options. The emphasis on adoption in child welfare policy

and practice is particularly difficult for communities for whom adoption, with the accompanying termination of parental rights, is not culturally sanctioned. Furthermore, bias and discrimination do exist among workers and judges. Experiences with institutional discrimination or simply a few biased individuals in decision-making positions taint the perception of parents and entire communities.

The harm that results from the disproportionate representation of children of color within the child welfare system goes beyond individual children and parents. It can be argued that the practice also damages communities and cultures with high placement rates. Healthy connections among community members, cultural continuity, and a strong sense of personal and community identity – all of which contribute to economic and political strength – are jeopardized.

Guardianship is a permanency option that honors cultural, familial, and individual identities. It allows child welfare systems to provide legal recognition to relative caregivers and grant them the rights and responsibilities needed to make day-to-day child rearing decisions. Subsidized guardianship goes further by providing financial assistance to promote stable relationships that contribute to the development of a positive sense of self. While it maintains the goal of putting child safety first, subsidized guardianship gives agencies another tool for addressing the disproportionate representation of minority children in state custody, eliminating unnecessary governmental presence in the lives of many children and families, and providing caregivers with the legal standing, financial support and other resources they need to provide a child a safe and permanent home.

## **Subsidized Guardianship for African American Children**

During the 1980s, African American children began entering out-of-home care in record numbers. By 2000, they represented 40 percent of the foster care population even though they accounted for only 15 percent of children in the general population. African American children are more likely to be removed from their homes than white children, to remain in foster care longer, and to move more frequently from one placement to another. They are less likely to be returned home or adopted. Their disproportionate representation among children in foster care is especially apparent in large cities. For example, 78 percent of children in out-of-home placements in Milwaukee County are African-American, and black children in New York City are ten times as likely to be in state custody as white children.

Kinship care in African American communities is not a new phenomenon. The value placed on extended family and “taking care of one’s own” draws on deeply rooted traditions of kinship networks in African cultures and in African American communities. Historically, aunts, uncles and grandparents stepped in without ceremony, but as a natural reaction, when a parent could not be there because of work, illness or death. In modern days, relatives have responded to the threats that drug and alcohol use, poverty, and violence pose for contemporary African American children. These children – totaling 43 percent of children in the care of relatives – are more likely than any other group to live in formal or informal kinship care arrangements.

Like other kinship caregivers, the majority of relatives caring for African American children are females in economically marginal households. A subsidy to

capable relatives who make a legal commitment to provide a permanent home is a viable way of preventing the need to place children with strangers. Financial assistance helps to ensure that the guardian is able to provide safe housing and meet the child's basic needs. Health care coverage helps to ensure that the child's physical and mental health needs are met. In addition, the rights that evolve from legal guardianship allow caregivers to make day-to-day decisions that promote the child's best interests without the involvement of the child welfare agency. Helping relatives obtain the emotional and social support they need to care for children can also promote their own health and well-being and increase their ability to provide nurturing homes.

### **Subsidized Guardianship for Native American Children**

With more than 560 federally recognized tribes, Native Americans are enormously varied in culture, history, and present-day circumstances. However, within all Native American tribal cultures, the very definition of a child as a human being includes the context of the birth family – the relationships with the family members, clans and tribes of the child's mother and father. Historically, tribes recognized children as part of the entire fabric of the group, belonging to the entire tribal community – not just to their biological parents. Every tribal member had obligations to all children and to each child. While not all Native Americans participate in traditional culture as they did historically, tribal beliefs and practices remain a strong reference point for belonging and can be a valuable resource even for those who are disengaged.

While tribes have always had ways of providing for children when birth parents were temporarily or permanently unable to care for them, termination of

parental rights is for most tribes an unthinkable act. In fact, no tribe is known to have an equivalent practice. Instead, all tribes have traditions of “customary adoption” – recognized practices that give a child a permanent parent-child relationship with someone other than the birth parents without severing the child's kinship with the birth parents.

Tribal governments exercising their sovereign nation status and authority are working to take control of decision making for their own children, including alternative permanency options that fit their own cultures. Many tribes are interested in developing legal recognition and formal procedures for customary adoption to allow the formal modification of parental rights and the transfer of most child rearing rights and responsibilities without ending the relationship between the child and birth parents. Tribal court proceedings incorporate tribal laws that honor customary child-rearing practices such as guardianship arrangements.

However, Indian children can come under tribal, state or federal jurisdiction depending upon where they live and the type of abuse or neglect reported and substantiated. Indian children living outside tribal lands are generally not under tribal jurisdiction. The Indian Child Welfare Act of 1978 applies to Native American children and families under state or federal court jurisdiction. It was passed in response to the alarmingly high number of Native American children who were being removed from their tribal families and communities and placed in non-Indian homes, most often with no notice to or involvement of the tribal government or extended family. Decades of this practice and federal policies that supported it resulted in generations of Indian people with little connection to or understanding of their culture. The continued existence of many tribes was seriously threatened. The Indian Child Welfare Act seeks to

keep American Indian children with American Indian families by establishing a clear order of preference for placement: 1) extended family; 2) another tribal member; and 3) another Indian family not of the child's tribe.

Although jurisdiction off tribal lands usually rests with the state, tribes may intervene in individual cases and actively participate in decision making based on provisions of the Indian Child Welfare Act and any agreements that the tribe and a state may have. A parent may also petition a state court for transfer of jurisdiction to tribal court under the Indian Child Welfare Act. Transfer may or may not be granted according to the parents' wishes and other specific circumstances.

Subsidized guardianship provides permanence without termination of parental rights and can help to maintain both kinship ties and tribal identity. It is a permanency option that fits with both Native American cultural practices and federal child welfare policy. State-tribal agreements and coordinated practices can help to ensure that subsidized guardianship is considered as an option for every Indian child who cannot remain in parental custody.

### **Subsidized Guardianship for Latino Children**

Clearly, the number and proportion of Latino children in the general population, in foster care, and in kinship care are increasing rapidly. According to the 2000 census, Latino children total 12.7 million, the second largest group of children in the nation, and are expected to increase by 30 percent by 2005. The best counts available indicate that the percentage of Latino children in foster care almost doubled from eight percent in 1990 to 15 percent in 1999. Latino children are more than twice as likely to be in foster

care than to be adopted – the reverse of white children. Seventeen percent of children in kinship care are Latino.

The diversity of the Latino population contributes to the complexity of cultural issues and considerations, and immigration is a critical factor. Some of the differences within the Latino population include country of origin, legal status, reason for migration, time in the United States, density of settlement and community size, and rate of acculturation. Puerto Ricans are United States citizens; Cubans have refugee status; and El Salvadorians have Temporary Protective Status. Variation is huge even among people from one place. For example, Latinos from Mexico include families who lived in the Southwest before the United States became a nation and new immigrants in the Midwest and East. Despite these differences, Latino groups share many cultural traditions, linguistic bonds, and stress factors.

Family is a powerful cultural organizing principle for all Latino groups. Of all cultural groups in the United States, Hispanics have the highest rate of two-parent families. Families often sustain complex, bi-national, and extra-household networks of support that transcend geographical boundaries and may facilitate the process of immigration and accommodation. Godparents and other non-biological kin are among those that family members rely on for financial assistance and social support—extending to shared child rearing and informal adoptions.

Linguistic barriers, including a shortage of bilingual workers, hinder the ability of Latino and other families with Limited English Proficiency (LEP) to successfully navigate the child welfare system. Guaranteed under Title VI of the Civil Rights Act, appropriate treatment and meaningful access to

services for children and families with LEP are civil rights, not just matters of cultural competency. Language barriers exist in programs intended to prevent child maltreatment, and they are present from the first contact with the formal child welfare system. Coupled with the time limit imposed by ASFA on reunification decisions, lack of linguistically appropriate resources often presents insurmountable hurdles to family stability and child well-being. Language barriers and outright discrimination contribute to the likelihood that Latino and other children of families with LEP will be treated inappropriately and limit understanding of subsidized guardianship and other permanency options. In addition, distrust of government agencies, due to experiences with authoritarian governments in their countries of origin as well as immigration rules, may make Latino and other immigrant families appear uncooperative to child welfare providers. Subsidized guardianship with family as a permanency option helps address many of the challenges facing Latino children and families in child welfare.

## **Next Steps**

Subsidized guardianship is a meaningful permanency option for many cultural groups. In keeping with rich customary practices for rearing children when biological parents cannot, subsidized guardianship provides members of the child's kinship network the legal status and assistance to provide a safe, permanent family. Some steps for ensuring that subsidized guardianship supports strong families in a culturally diverse nation include:

- 1. Include youth, extended families, leaders, and organizations from a range of cultural traditions in planning and implementation of subsidized guardianship at the federal, state, and local levels.**

As subsidized guardianship is developed, the voices of children and their caregivers need to be heard, including extended family and close members of familial groups, clans, and tribes. Relevant cultural issues need to be identified and explored in every aspect of research, practice and policy development. Cultural groups can provide technical assistance to child welfare agencies regarding customary practices, and child welfare agencies can educate community-based organizations regarding the public service system. These and other steps will help to ensure that the customs of all children and families are considered and that permanency options are respectful of their differences.

The child's extended family and close members of familial groups, clans, and tribes should be included at every step, when considering service options and making decisions regarding placement. To ensure that due consideration is given to cultural traditions, case-workers must identify and reach out to individuals with whom the child has close personal and cultural bonds and engage them immediately. As child welfare staff and the courts develop family team meetings and other group or team decision-making approaches, they need to look beyond the immediate family to identify and engage a broader circle of supportive people who share the child's culture. This should be standard practice for all children.

- 2. Review laws, policies, practices and state-tribal agreements to ensure consideration of cultural customs that are in the child's best interests at every point in permanency planning and decision making.**

To ensure that permanency options and planning are in the child's best interests, subsidized guardianship must be developed within a larger legal, policy, and service framework that honors the cultural identity of each child and family and, in particular, the unique

political status of Native American children. This framework must recognize the value that many cultures place on the development of the child within the circle of relationships with kin and non-kin. Some strategies to consider are:

- **Allow non-biologically related members of the child's kinship network to be appointed as guardians:** Broadening eligibility for subsidized guardianship to include individuals who are not biological kin, but with whom the child has close personal and cultural connections, increases opportunities for godparents and others with culturally significant relationships to accept legal responsibilities and provide assistance in child rearing.
- **Consider customary adoption and other traditional practices when identifying permanency options for individual children:** It is critical to recognize that the child's fundamental identity and ultimate well-being may hinge on his or her development within the cultural traditions of birth. Practices such as customary adoption help keep children safe, while also helping them retain relationships with the culture of their birth parents.
- **Encourage community-based organizations, service providers, and other systems to provide culturally appropriate services and resources for children and their guardians:** Child welfare agencies can increase the stability and safety of subsidized guardianship by promoting culturally responsive services and supports. Providing funding for organizations that are responsive to diverse cultures and holding them accountable for providing culturally appropriate services can also help.

### 3. Support culturally sensitive child welfare practice and policies.

At the same time that child welfare agencies need to develop practices and policies to support subsidized guardianship as a permanency option that builds on kinship networks and cultural traditions, they must

also take broader steps to incorporate culturally meaningful practice into all aspects of work with children and families, including the following:

- **Increase the cultural representation, knowledge, and skills of the child welfare workforce:** By recruiting, hiring, and training adequate numbers of court and child welfare agency staff who represent the cultural backgrounds and speak the languages of the children and families they serve, public and private child welfare agencies can build stronger cultural connections.
- **Ensure appropriate treatment and meaningful access to information and services for children and families with Limited English Proficiency (LEP):** Bi-lingual staff, interpreters (other than the children or family members themselves), linguistically appropriate materials, and other resources must be routine practice.
- **Develop accountability for culturally appropriate responses:** Frontline caseworkers are the face of the child welfare system, and a single worker can make a real difference in the lives of many children. Training and other staff development efforts are key steps to ensure culturally appropriate responses. In addition, clear policies and procedures are needed that identify discriminatory actions and provide remedies.
- **Support community efforts to develop grassroots, multicultural resources and voices for children and families:** In addition to promoting formal service systems that are culturally appropriate, child welfare advocates need to help minority communities develop their own resources to build communities where children and families can thrive.
- **Address the over-representation of children of color within the child welfare system:** Ultimately, strategies must be developed to reduce the disproportionately large number of

children of minority cultures who are at risk and in placement. These include identifying the factors that place these children at greater risk of placement, providing adequate resources to reduce risks, and developing the understanding, skills, and other capacities in child welfare staff to honor cultural traditions while ensuring that children have safe, permanent homes.

- **Develop a research agenda to explore the implications and outcomes of child welfare policies and practices for children and families from a range of cultural backgrounds:** The effect of various placement policies, including ASFA timeframes, the Multi-Ethnic Placement Act, preference for termination of parental rights, adoption rule-out requirements, and lack of prevention resources, must be better understood in order to affect the disproportionate representation of children of color in the child welfare system.

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## What Have We Learned from Evaluations about Subsidized Guardianship?

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### Introduction

The 1980 Adoption Assistance and Child Welfare Act was largely designed to prevent children from languishing in long-term foster care without permanent homes. The act required public child welfare agencies to pursue legal permanence for children entering out-of-home care through family reunification, legal guardianship, and adoption. Even though legal guardianship was explicitly mentioned as a viable permanency option, implementation of the act moved child welfare decision making toward two poles: family reunification and adoption.<sup>1</sup> Despite its inclusion in child welfare legislation and its potential as an alternative to long-term foster care when adoption is not possible, subsidized guardianship has, until recently, remained a little-used permanency option.

The rapid increase in the use of kinship care as an out-of-home placement resource in the 1980s and 1990s and the implementation of federal waivers to test innovative child welfare practices have reintroduced subsidized legal guardianship as a viable permanency option.

This issue brief discusses findings from some initial evaluations of state subsidized guardianship programs and offers recommendations for next steps in light of these findings.

## Initial Evaluations Show Positive Results for Children

Initial results emerging from the first large-scale evaluations of subsidized guardianship programs suggest that subsidized guardianship is a viable permanency option with positive results for children leaving the child welfare system. This conclusion is based on evaluation results from Illinois, California, Maryland, and Oregon, which are summarized below.

### Illinois' Title IV-E Waiver Demonstration Evaluation

The most comprehensive and rigorous of the Federal Title IV-E Child Welfare Waiver Demonstration evaluations was conducted in Illinois and included both related and non-related caregivers. Beginning in 1997, Illinois children who had been in state custody for at least two years and had been living with their current caregiver for at least one year were randomly assigned to either an experimental or control group. The children assigned to the experimental group were eligible for reunification, subsidized adoption, and subsidized guardianship, while the children assigned to the control group were eligible for reunification and subsidized adoption only.<sup>2</sup> The study also included an observational group made up of children who were not randomly assigned to either the experimental or control group, but who were offered subsidized guardianship in addition to the other options in order to study its effects under non-experimental conditions.

The experimental group showed a “net permanency gain” of 6.1 percent. In other words, more children were permanently placed with the combined options of adoption, reunification, and subsidized guardianship than with the options of adoption and reunification

without subsidized guardianship. The rates of permanency in the observational group, which was given the subsidized guardianship option, were even higher. Mark Testa, the author of the study, reports that this was probably due to an underutilization of subsidized guardianship in the experimental group as a result of an ongoing philosophical debate over the permanency of subsidized guardianship. Overall, Testa found that the availability of subsidized guardianship substantially increased the rate at which children exited from foster care to legally permanent homes. As of March 31, 2002, 25.7% of children in the control group had aged out or still remained in long-term foster care compared to 19.7% in the experimental group. Thus it can be concluded that the Illinois subsidized guardianship waiver demonstration did result in fewer children remaining in long-term foster care with ongoing administrative oversight.

Positive outcomes were also found in terms of children's sense of well-being. A related survey of a sub-sample of children from the Illinois study compared their sense of safety, attachment, and well-being with their current caregiver for both families in subsidized guardianship placements and those in subsidized adoption placements.<sup>3</sup> The study found few differences in children's perception of their safety and well-being. It did find, however, that children in adoptive homes expressed greater fear of biological parents and wanted to see them less often than children in guardianship homes. In addition, relatives were consistently more likely to make a permanency commitment to the children under their care than non-relatives.

### **California Prior to Kin-GAP**

California has a significant history of exploring legal guardianship as a permanency option for children in the child welfare system. Brian Simmons studied the use of guardianship for all children entering foster

care in California between 1988 and 1990 (nearly 76,000 children), following them for four years. He found that, while legal guardianships were established in about five percent of cases, children were less likely to leave foster care supervised by child welfare if it meant that foster care payments would be discontinued.<sup>4</sup> This finding confirms that financial considerations are important to decisions about whether or not guardianship is a desired permanency option.

### **Lessons from California's Kinship Guardianship Assistance Payment Program (Kin-GAP)**

Although originally approved for a subsidized guardianship Title IV-E Waiver Demonstration, California decided to establish its own state- and TANF-funded subsidized guardianship program, the Kinship Guardianship Assistance Payment Program (Kin-GAP), a state-wide subsidized guardianship program available to all qualified kinship caregivers.

Kin-GAP offers a monthly payment equal to the basic foster care rate to those qualified relatives who become legal guardians of dependent children who exit the foster care system without further child welfare agency or dependency court supervision. The payments continue until the child becomes an adult at age 18 (or 19 if he or she has not yet graduated from high school and plans to do so). In order to be eligible for the program, the child must have resided with the relative caregiver for 12 consecutive months. In addition, the child's caseworker must determine that he or she no longer needs ongoing supervision. Further, both adoption and reunification must be ruled out as permanency options before the child can become eligible for Kin-GAP.

The Children's Services Data Archive at the University of California, Berkeley, Center for Social Services Research, one of the most highly developed

longitudinal child welfare databases in the country, conducted a statewide analysis of the Kin-GAP initiative without an experimental design. In this study, children who received Kin-GAP were not compared to a group of children who did not receive the intervention; rather, all children who exited foster care into Kin-GAP were tracked to determine whether they were subsequently maltreated and/or re-entered foster care.

Between January 2000 and February 2002, more than 8,000 children went from foster care to Kin-GAP. Subsequent maltreatment was identified in only 173 of these cases, and only 85 children later re-entered care, indicating high levels of safety and permanence. Further analysis of reentries revealed that only 30 percent of the children who returned to care returned due to maltreatment. The rest returned to care largely as a result of child behavior problems, the death or illness of the caregiver, the initiation of formal reunification procedures, or the need for specialized service. In addition, analysis of subsequent maltreatment found that children in subsidized guardianship placements who had experienced a group home placement before they left foster care were more likely to return to care than those who had not been in group homes. In other words, children with a history of behavioral problems were less likely to remain with the same caregiver. It should be noted, however, that even these children were not at all likely to be maltreated or return to care.

A separate analysis of placement stability was also done. It compared children who were eligible for Kin-GAP on January 1, 2000 (because they had resided with the same kinship caregiver for at least one year) but were not in the program, with children in Kin-Gap. The more than 5,000 children in this sample who went from care to Kin-GAP were far less

likely than the more than 19,000 children in the comparison group to have a subsequent change in placement.

In general, the results of the Kin-GAP study point to the continued stability of subsidized legal guardianship placements without continued child welfare supervision. The study may also indicate that social workers appear to be able to make fairly good decisions about which children should exit care and the stability of the prospective kinship care home.

### **Maryland's Title IV-E Waiver Demonstration Evaluation**

The evaluation of Maryland's subsidized guardianship waiver demonstration focused on determining whether offering a guardianship subsidy for relatives would increase the number of children who went from the foster care system into permanent placements. Maryland has a two-tiered system of relative foster care. Relatives who are licensed foster parents receive a foster care board rate (\$600 per month for each child). Relatives who are not licensed receive the TANF basic child-only benefit (\$188 per month for the first child and incrementally smaller increases for each additional child). In the demonstration project, families were randomly assigned to either the experimental group, in which relatives who assumed guardianship received a \$300 subsidy, or the control group, in which no guardianship subsidy was offered. Assignment took place without regard to whether the relative was providing care in the licensed or unlicensed program.

The evaluation found that families receiving the lower TANF child-only benefit were more likely to assume guardianship if offered the opportunity. Families already receiving the higher foster care board rate were not likely to assume guardianship, suggesting

that the financial consequences of guardianship are highly significant in the decisions families make regarding the placement of children.

### **Oregon's Title IV-E Waiver Demonstration Evaluation**

Oregon's evaluation examined the Guardianship Assistance Program established under the state's Federal Title IV-E Child Welfare Waiver Demonstration Program. The evaluation used a quasi-experimental design to evaluate placement stability. The treatment group was comprised of the 133 children who went from foster care into subsidized legal guardianship between July 1999 and December 2001. The control group was comprised of children from a comparison county that did not offer subsidized legal guardianship and included the 36 children who went from foster care to legal permanence (including long-term foster or relative care, legal guardianship, and adoption) during the same period. The study also included surveys of caregiver and caseworker experiences with the guardianship process.

Though limited by design issues, sample size, and length of follow-up, findings one year after the guardianships were established showed that both groups had similar rates of placement stability. Interviews with a sample of 47 caregivers and their caseworkers about the guardianship process revealed several trends that may be of interest to other subsidized guardianship evaluations across the country. Caregivers reported a fairly high proportion of children (17 percent) with specialized care needs (e.g., ADHD, Fetal Alcohol Syndrome, depression, learning disabilities) entering into subsidized guardianship arrangements, indicating a need for ongoing services for these children to prevent subsequent disruption of their placement.

The evaluation also found that in addition to financial assistance, especially among caregivers of children with special needs, caregivers' reasons for establishing guardianship often included the desire to safeguard the possibility that the child's parents might resume care of the children in the future. Caregivers also generally reported that leaving the formal child welfare system was a relief because they no longer had to deal with its numerous bureaucratic challenges.

### **Promising Direction for the Future**

These evaluations of subsidized legal guardianship show that such programs hold great promise. Illinois and California have safely moved large numbers of children from kinship foster care into legally permanent homes through subsidized guardianship. This has been achieved quickly and with little or no increased harm to children, as indicated by low rates of subsequent maltreatment and re-entry in the child welfare system in both these states. Maryland's study illustrates, however, the importance of subsidizing legal guardianship at the same assistance level as foster care if it is to be considered by caregivers as a viable permanency option.

The California and Oregon studies also indicate that subsidized legal guardians may need services similar to those provided to adoptive parents in order to increase the stability of guardianship placements when children have behavioral and other challenges; have a history of group care; and need specialized services.

### **Next Steps**

#### **1. Communicate results of already completed evaluations to a broader audience.**

Existing evaluations are fairly recent, and the results are just beginning to be shared with child welfare researchers and policy makers. In order to expand

subsidized guardianship opportunities, these findings must also be communicated to a broader audience of caregivers, legislators, state and local administrators, the media, and the public. User-friendly materials that summarize current evaluations and compare findings across states would also be helpful.

## 2. Invest in additional research about subsidized guardianship as a strategy at the front- and back-ends of the system.

To strengthen the case for investments in subsidized guardianship at the local, state, and federal levels, continuing evaluation and research are needed in the following areas:

- **Additional rigorous evaluations of programs designed to promote permanence for children exiting foster care:** More evaluations, with control and experimental group methodologies, are needed to demonstrate that subsidized guardianship promotes permanence and well-being for children leaving the foster care system. To date, the most rigorous evaluations have been supported through the Title IV-E waiver demonstrations. States can use the waiver process to instill a culture that is supportive of rigorous evaluations.
- **Evaluation of programs that offer guardianship to families in order to keep children out of foster care:** Existing evaluations focus primarily on children exiting foster care, yet there is also a great need for legal permanency for children who do not enter foster care and are being cared for by relatives not licensed as foster parents. Evaluations of subsidized guardianship at the front end, before children formally enter the system, would increase understanding of the potential to achieve safety and stability for children in these situations, as well as the fiscal implications of such arrangements.

## 3. Conduct further research into the impact of specific features of subsidized guardianship.

Rigorous experimental design should be coupled with qualitative evaluations of specific features of interest, including:

- **The perception of belonging among children:** The Illinois evaluation demonstrated that children in guardianship arrangements had a strong sense of family belonging, which contributed to their overall sense of permanence and well-being. Additional qualitative work should be done to understand more about the relationship between children and caregivers, their perception of their guardianship arrangements, and the contribution of specific aspects of the guardianship arrangements to their positive perceptions of belonging and stability.
- **The use, impact, and implications of subsidized guardianship in minority communities:** Different cultures may experience and value subsidized guardianship differently. Evaluations can help us understand the different cultural perspectives on subsidized guardianship, as well as the impact of subsidized guardianship on the over representation of minority children in foster care.
- **Fiscal implications of subsidized guardianship:** Existing evaluations report positive findings about children's safety and permanence in subsidized guardianship placements. However, more analysis of the fiscal implications of subsidized guardianship is critical. Pairing information about the relative public costs with an understanding of the effects of subsidized guardianship on children will be critical in future advocacy efforts.
- **The need for and impact of post permanency support services for guardian caregivers:** Subsidized legal guardianship holds the promise of providing safe, stable, permanent placements for children in foster care with their relatives. Yet, like adoptive parents,

relative guardians face the daunting challenge of raising and mending some of the most disadvantaged children in our society. Services that uniquely address these challenges should be identified and evaluated in order to promote continued permanence and well-being among children in guardianship placements.

- **Other areas of interest:** These may include the impact of subsidized guardianship on related vs. non-related caregivers, the impact of training on understanding about subsidized guardianship and how it compares to other permanency options, the use of subsidized guardianship to keep together sibling groups, and the implications of subsidized guardianship for different age groups, particularly older youth.

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## What Are the Cost Considerations for Subsidized Guardianship?

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### Introduction

One of the primary goals of our nation's child welfare system is to ensure that the children who have been removed from their parents' homes as a result of abuse or neglect are reunified or placed in another permanent living situation in a timely manner. Historically, adoption has been emphasized as the foremost permanency goal for children who cannot return home. Recognizing that adoption may not always be the best option for children placed with relatives, federal child welfare policies now recognize permanent legal guardianship as a desirable permanency outcome. Since the passage of the Adoption and Safe Families Act in 1997, more states are exploring new permanency options for children, including subsidized guardianship. However, these changes in policy have not, to date, been coupled with financing changes to support them at the federal level. Financing strategies for subsidized guardianship programs vary from state to state, and funding can be difficult to obtain. This issue brief addresses how states are currently funding subsidized guardianship programs, describes how program structure affects funding, and discusses how to compute the costs of subsidized guardianship.

### How are States Financing Subsidized Guardianship Programs?

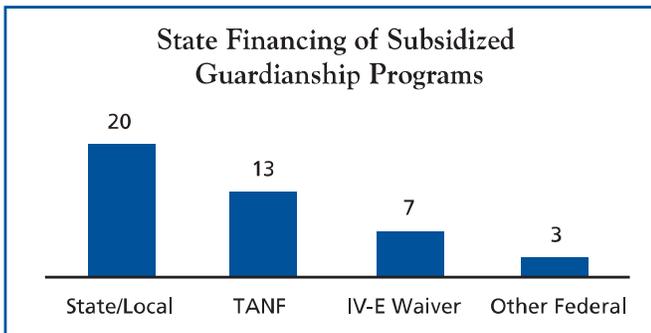
States use a number of strategies to fund their subsidized guardianship programs. Federal child welfare funding is limited. The federal government

provides states with open-ended financial support for eligible children in long-term foster care and eligible foster children who are adopted, and has been doing so for many years. However, the federal government does not provide such support for children who are cared for by relatives or other foster parents who assume legal guardianship, despite specific recognition of legal guardianship as a permanent placement option in federal law and policy.

Generally, federal child welfare funding for subsidized guardianship has been allowed only on a demonstration basis. In 1994, Congress authorized the U.S. Department of Health and Human Services (HHS) to grant waivers to 10 states under the Child Welfare Waiver Demonstration Program, allowing them the flexibility to waive certain federal requirements in order to design innovative child welfare experiments. In 1997, Congress expanded this authority to allow 10 additional waivers each year for five years. To date, seven states have been granted waivers to implement subsidized guardianship programs with federal reimbursement for guardianship payments under Title IV-E of the Social Security Act,<sup>1</sup> and additional proposals are currently awaiting HHS approval.

Lack of federal financial support under Title IV-E, however, has not discouraged state enthusiasm for implementation of subsidized guardianship programs. According to surveys by the Urban Institute and the Children's Defense Fund, 34 states and the District of Columbia have programs that offer ongoing financial assistance to persons who assume permanent legal guardianship of foster children.<sup>2</sup> The states that do not have Title IV-E waivers to operate subsidized guardianship programs rely on a variety of funding sources: 19 states and the District of Columbia use

state and/or local funds; 13 states use funds from the Temporary Assistance for Needy Families (TANF) block grant; and three states use other federal funds (including funds from the Social Services Block Grant, Title IV-B Child Welfare Services Program, and Medicaid).<sup>3</sup>



### What are the Fiscal Implications of Various Program Elements?

Subsidized guardianship programs in the states vary considerably in their design. They not only have different funding sources, but they differ in eligibility requirements for both children and caregivers, payment levels, support services offered, and requirements for ongoing supervision. These different design features all have fiscal implications for the programs.

**Eligibility.** Eligibility requirements for subsidized guardianship programs determine which caregivers may receive ongoing financial assistance for which children. Most states require that a child already be in the custody of the state to be eligible for subsidized guardianship payments. In most of these cases, states are already paying for the care the child receives, and the guardianship subsidy does not result in a “new” cost. However, a handful of states allow kin caring for a child who is not adjudicated abused or neglected and thus not in state custody to be eligible for ongoing subsidized guardianship payments. While some of

these families may have been getting payments under the TANF Program, others may not. As states consider subsidized guardianship programs and evaluate potential costs, they must decide which children will be eligible. They also must determine whether payments will be limited to relatives with legal guardianship or whether unrelated foster parents and other unrelated individuals with close ties to the child or family would also be eligible.

**Payment.** The level of payment in subsidized guardianship programs also clearly affects cost. States differ in the level of ongoing payment they offer to kin who become legal guardians. Many states offer payments that are close to or equal to the state’s basic foster care rate. However, this may not necessarily be the same amount caregivers were receiving when the child was in foster care. For example, foster parents sometimes receive payments above the basic foster care rate when caring for a child with special needs. While some states offer subsidized guardianship payments that are equal to what a child received in foster care, including these extra payments, others limit guardianship subsidies to basic foster care rates. There are also a number of states that offer payments to legal guardians that are considerably less than foster care payments.

**Support Services.** Support services that are offered to legal guardians and the children for whom they are caring also affect cost. Many state subsidized guardianship programs make children and/or their guardians eligible for a variety of support services in addition to ongoing financial assistance. These services may include medical assistance or health services, mental health services, child and respite care, housing assistance, transportation, or other family support and preservation services. In considering costs, a state will have to weigh the relative costs and benefits of the

services it provides for children and caregivers after placement.

**Ongoing Supervision.** The costs of ongoing administration and supervision for children in subsidized guardianship programs vary from state to state. Although child welfare agencies are no longer legally responsible for the child's care when a relative assumes permanent legal guardianship, several state subsidized guardianship programs require child welfare agency staff to continue to monitor the child's placement. This supervision varies from periodic certification that the child is still living with the relative to annual face-to-face visits with the child and caregiver until the child turns 18. In all states, the level of supervision for children in legal guardianship placements is less than that required for children who remain in foster care; however, continued supervision at any level has cost implications.

### **How Does a State Compute the Cost of Subsidized Guardianship Programs?**

The cost of subsidized guardianship programs will vary depending on decisions about the various program elements described above, as well as the state's kinship foster care policies described below. Some believe that subsidized guardianship programs may even reduce the financial burdens placed on state child welfare agencies. Such beliefs are based on the assumption that under subsidized guardianship programs, agencies will provide the same level of financial support (or less) as they were providing for children in foster care, but the agency will not incur the administrative costs (including costs associated with court involvement and ongoing supervision) associated with maintaining an open foster care case on a long-term basis. Results of an evaluation of Illinois' subsidized guardianship program implemented

under a Title IV-E waiver demonstrate that the program produced significant cost savings, in large part due to reduced administrative costs.

### ***Compare the costs of caring for the child with and without a subsidized guardianship program***

The costs and potential cost savings of a subsidized guardianship program will depend upon how the state's child welfare policies have treated kinship caregivers in the past. The costs and extent of cost savings, if any, will vary from state to state and over time.

If subsidized guardianship is available only for children already in state custody, then a state must determine the cost of keeping a child in long-term foster care to calculate the relative costs of subsidized guardianship for these children. These costs include the financial payments made to foster parents, the services and supports provided to the child and foster parents, and the worker and court time associated with providing ongoing supervision. If all of these costs remain the same when a child leaves foster care for the subsidized guardianship program, a state can generally assume that there will be no increased costs for subsidized guardianship for these children.

However, if families in the subsidized guardianship program are paid at a lower rate than they were when the children were in foster care, if they do not get the full array of services given to foster parents, and if ongoing supervision is eliminated or reduced significantly, there are likely to be cost savings when a subsidized guardianship program is established. It is also important to remember that if a state sets its guardianship subsidy rate lower than its foster care payment rate, there will be a disincentive for kin who are receiving foster care payments to move into subsidized guardianship programs. For example,

Maryland, under the Title IV-E Child Welfare Waiver Program, developed a subsidized guardianship program with payments that were greater than their TANF payment but less than their foster care payment rate. Evaluators of the program noted that kin who were receiving TANF grants and stood to gain \$122 a month or more under the new subsidized guardianship program were likely to take permanent legal guardianship. However, kinship foster parents in Maryland who were already receiving foster care payments and would lose \$300 per month under the subsidized guardianship program chose to forego guardianship.

Prior research has also demonstrated that kin who are caring for children in foster care often do not receive the same level of financial payments, services and supervision as non-kin foster parents.<sup>4</sup> In many states, kin may not be eligible to receive foster care payments for the children in their care and are instead relegated to applying for TANF payments, which generally are less than foster care payments. In states with policies of this sort, subsidized guardianship payments may well cost more than the cost of leaving children with their kin without an assurance of permanence.

There are also states where many grandparents and other relatives raising their grandchildren receive no public financial assistance. In some states these are kin who are involved with the child welfare system and the courts but the children are not in state custody. Others are kinship care families who have no involvement with the child welfare system. In both situations, subsidized guardianship programs that offer payments will result in increased costs to care for the children in these families.

#### ***Examine the impact of subsidized guardianship on administrative costs***

The expectation that subsidized guardianship programs

will reduce the financial burden placed on states is based in large part on savings related to administrative costs. Therefore, the administrative expenses a state incurs for foster children will have a significant impact on the potential savings the state may achieve with a subsidized guardianship program; these may vary greatly by state and locality. One reason, for example, that Illinois has been able to achieve significant cost savings from its subsidized guardianship Title IV-E waiver demonstration is that the state has relatively high administrative costs for foster children. Other states with lower administrative costs may not realize such large savings when they implement subsidized guardianship programs, especially in the short-run when states incur the costs of program start-up. In trying to assess the administrative costs of subsidized guardianship, it is important to look at program start-up costs and also the requirements for ongoing services and supervision for the children in the program. The more continuing services and supervision that are provided, the higher the costs will be for the subsidized guardianship program. Again, however, these costs must be compared with equivalent costs for the children if they had remained in foster care.

#### ***Look at the interaction of subsidized guardianship and adoption***

It also is important to look at how subsidized guardianship and adoption interact. On the one hand, if subsidized guardianship is made available, some kin may decide to take this option instead of adoption. This is particularly true, and will have obvious fiscal implications, if the subsidized guardianship program is more generous in what it provides to the child and family than the adoption assistance program. While no state has a subsidized guardianship payment that is greater than its adoption assistance payment, some state subsidized guardianship programs may offer

additional services or other assistance that are not available when families adopt.

While not common, a striking example is Connecticut's subsidized guardianship program, which offers help with the full cost of college tuition, a benefit not offered to children who are adopted. There are other states that offer assistance to children who are adopted, but not to children who achieve permanency through subsidized guardianship. All of these options have important fiscal implications, in addition to their importance to young people seeking permanency.

In looking at the interaction of subsidized guardianship and adoption, it is also helpful to know the relative rates of dissolution in the two placement options so the state can factor in the likelihood of additional costs when children return to foster care. Unfortunately, there currently are insufficient data on both adoption and guardianship dissolution rates to assess the relative fiscal implications of implementing subsidized guardianship.

There is also evidence that the availability of subsidized guardianship and the increased emphasis on permanence may result in more children being adopted by kin. In Illinois, for example, the number of relatives who decided to adopt increased when subsidized guardianship was available as a permanency option. The ongoing cost of caring for children who are adopted may be less than maintaining these children in long-term foster care and thus may reduce the cost of implementing subsidized guardianship.

### **What Federal Policy Changes Have Been Proposed to Increase Funding for Subsidized Guardianship Programs?**

Child welfare advocates have made a number of federal policy recommendations designed to increase

funding and other supports for subsidized guardianship programs. In addition, these recommendations seek to create equity in the federal support provided for adoption and guardianship. These recommendations and their cost implications are discussed briefly below.

- **Expand Title IV-E to cover subsidized guardianships:** The experiences of states like Illinois suggest that subsidized guardianship has proven to be effective and should be considered an allowable expense under the Title IV-E program. The fiscal implications for the federal government of allowing states to claim federal reimbursement under Title IV-E for subsidized guardianship payments can be calculated using the approach discussed above.

The federal government provides matching funding to states for Title IV-E eligible children in long-term foster care. Under Title IV-E, the federal government reimburses states for maintenance payments as well as the administrative costs associated with these placements. If states could seek federal assistance for guardianship payments (up to the level of foster care payments) for Title IV-E eligible children who would otherwise be in long-term foster care and supported with federal foster care payments, the federal government would save the continued administrative expenses associated with these placements while other costs remain constant.

However, the federal government would face an additional financial burden if Title IV-E funds were used to pay for subsidized guardianship payments for children placed in foster care with relatives who are not eligible to receive federal foster care payments. These generally would be relatives ineligible for federal foster care payments

because they were provisionally licensed or were licensed, but the licensing was based on different criteria than that used for non-kin foster parents.

- Extend incentive payments to children placed in permanent guardianship:** The Adoption Incentive Program, enacted as part of the Adoption and Safe Families Act of 1997 and reauthorized in 2003, provides funding for incentive payments to states that increase the number of children adopted from foster care above an established baseline. Some advocates argue that these incentives place pressure on states to focus on adoption as the sole permanency outcome. The incentives could be strengthened by basing them on the number of children who achieve permanency each year through either permanent guardianship arrangements or through adoption. Expanding the number of placements that could qualify for bonuses would increase the cost of the program, especially if the number of adoptions eligible for incentive payments stayed the same or increased.
- Continue the use of TANF funds for subsidized guardianship programs:** Funds under the Temporary Assistance for Needy Families Program are currently used in some states to contribute to the cost of subsidized guardianship programs in keeping with their purpose of maintaining children with relatives when their parents cannot care for them. Kinship care advocates want to maintain the current flexibility within the TANF program so that these funds can continue to be used for subsidized guardianship payments. No additional costs would be incurred.
- Extend federal waiver authority:** The Title IV-E Child Welfare Waiver Demonstration Program

allows states to use Title IV-E funds flexibly to test innovative permanency approaches, including subsidized guardianship. Advocates would like to see this waiver authority continued and states allowed to apply for demonstrations for subsidized guardianship programs, without regard to the number of waivers already awarded for this purpose. The law requires these child welfare waiver demonstrations to be cost neutral, so no additional federal costs would be incurred in extending them.

## Next Steps

It is important to consider the fiscal implications of subsidized guardianship programs when establishing or expanding them. In assessing costs, each of the following steps should be taken and the relevant data from each should be included in calculations of cost.

### 1. Understand how program decisions impact the cost of subsidized guardianship.

In program design, weigh the cost implications of decisions about the eligibility of children and caregivers, payment rates, support services, and the ongoing supervision of children in the care of permanent guardians

### 2. Assess the existing public cost of supporting children who will receive subsidized guardianship.

Review which of the children who will receive subsidized guardianship payments are already receiving public funds and determine the anticipated cost differences between the programs

### 3. Understand the impact on administrative costs.

Assess the impact that the subsidized guardianship program will have on administrative costs by comparing administrative costs of keeping children in foster care

with those likely to be incurred for children in subsidized guardianship.

**4. Study the anticipated impact of the subsidized guardianship program on adoptions in the state.**

Examine how the availability of subsidized guardianship will affect adoptions and consider the cost implications, including the cost of subsidies, ongoing services and supports, and potential dissolutions or disruptions.

**5. Assess cost implications over time, not just at the initial implementation stage.**

What, for instance, will start-up costs be and how will the population of children entering into guardianship change over time?

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## Endnotes

1. Two additional jurisdictions, California and the District of Columbia, received waivers to implement subsidized guardianship programs, but voluntarily terminated their waivers before they were implemented.
2. See A. Jantz, Rob Geen, Roseana Bess, C. Andrews, and V. Russell, *The Continuing Evolution of State Kinship Care Policies*. Washington, D.C.: The Urban Institute, 2002 and Children's Defense Fund and Cornerstone Consulting Group, *Expanding Permanency Options for Children: A Guide to Subsidized Guardianship Programs*. Washington, D.C.: Authors, January 2003.
3. Iowa's program was not yet funded at the time of the Children's Defense Fund survey.
4. See Rob Geen, ed., *Kinship Care: Making the Most of a Valuable Resource*. Washington, D.C.: The Urban Institute Press, 2003.



## How Do We Build Support for Subsidized Guardianship: The Role of Advocacy

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### Introduction

Guardianship as a permanency option is explicitly promoted by the federal Adoption and Safe Families Act of 1997.<sup>1</sup> Despite the recognition that guardianship can lead to a safe and stable home for abused and neglected children, the legislation did not create the necessary financial incentives to enable states to increase their use of guardianship or ensure the stability of guardianship placements over time. Recent data from the Adoption and Foster Care Administrative Reporting System (AFCARS) show a growing preference for guardianship, with a 77 percent increase in the number of youth entering guardianship from the child welfare system in the two year period between 1998 and 2000.<sup>2</sup> Yet, questions about sources of funding to subsidize guardianships, adequacy of the subsidy amounts, and availability of support services remain at the center of local, state, and national policy discussions.

This issue brief describes the important leadership role for families and caregivers as effective advocates for subsidized guardianship. More specifically, it examines the invaluable role that advocacy – by and on behalf of children and families involved with or at risk of becoming involved with state child welfare systems – continues to play in policy debates on subsidized guardianship. This advocacy role can take many different forms. It involves educating and working with policymakers to craft new policies and opportunities to help promote and expand quality

subsidized guardianship programs and to increase other supports for kinship caregivers to help them provide quality care for their children. It also takes other forms including:

- Developing practice models that bring families to the table and engage them in decision making about their futures, including family group conferencing, team decision making, and other variations on these models
- Organizing communities to advocate for the needs of children living with relatives
- Developing local agency leadership that recognizes and supports the importance of advocacy for kinship caregivers
- Using the legal system to secure the resources needed for children to remain in safe and stable families.

These different faces of advocacy, as well as some recommendations for promoting and supporting advocacy and the role of advocates, are described more fully below.

### Bringing Families to the Table

Advocacy for individual children and families, including relative caregivers, is essential. Family group conferencing, which was developed by the Maori people of New Zealand, along with other stakeholders of that nation's child welfare system, is an advocacy strategy with great potential for relative caregivers. Family group conferencing is a decision-making approach that empowers families, including birth families, kinship families, and foster families to

be at the center of decision making about their children. It builds upon the concept that families should have a voice in planning and decision making for their children involved with child welfare and allows families to advocate for their children together with those they trust.

Family group conferencing models have been used to help families become active participants in planning at all stages of child welfare involvement, including prior to placement, as part of efforts toward reunification, and when reunification has been ruled out, as part of other permanency efforts. Its goals include: improvement of the state agency's capacity for making decisions in the child's best interests; respectful treatment of families; inclusion of a family's natural support system in helping it work toward solutions; and greater ownership of the plan by parents, extended family, caregivers, and other support systems, thereby leading to greater likelihood of successful implementation.<sup>3</sup>

A variety of models and techniques to more actively engage families in the child welfare process have emerged. Team decision making (TDM), for instance, is one model that has become an integral part of the Annie E. Casey Foundation's Family-to-Family Initiative, which provides state child welfare systems with principles, strategies, and tools to rebuild their foster care systems.<sup>4</sup>

The family group conferencing approach has enormous potential to provide families and prospective caregivers with information about guardianship, to engage them in an assessment of the appropriateness of a guardianship placement, and to empower them to advocate on behalf of the children in their care. These conferences, or team meetings, provide a useful forum to educate all parties about all available

permanency options, and the implications of each, as early in the process as possible.

## **Community Organizing**

Across the country, grandparents and other relative caregivers are also organizing to advocate on behalf of the children they are raising and other kinship care families. There is a growing movement among kinship caregivers to demand new supports and services for themselves and their children, including subsidized guardianship. The growing force of these advocates was never more apparent than at the first-ever national GrandRally to Leave No Child Behind®, attended by more than 850 grandparent and other relative caregivers from 23 states at the U.S. Capitol in Washington, D.C., on October 15, 2003. The purpose of the GrandRally, which was co-sponsored by the Children's Defense Fund, AARP, Child Welfare League of America, Generations United, and the National Committee of Grandparents for Children's Rights, was to educate policymakers about the need for services and supports to better enable relatives to raise their children. GrandRally participants met with Members of Congress and their staff to encourage increased attention to the needs of kinship caregivers and the children in their care, and solutions to the challenges they face.

Organized groups of relative caregivers have also made a significant difference in state and local communities. In Connecticut, for example, Carolyn Jackson is one of many unsung heroes in the movement of grandparents, relatives, and potential guardians advocating for support for the children they are raising and support and respect for their tireless work as caregivers. While working as a parenting coordinator for the New Haven Public Schools, Jackson observed that the number of grandparents

involved with their school-age grandchildren had sharply increased. A caregiver herself, she initiated a support group for relative caregivers named “Grandparents on the Move.” In June of 2003, Grandparents on the Move co-sponsored a two-day statewide summit, which offered workshops on topics including: child welfare agencies and the law, male involvement, food and wellness, and the effects of trauma on children and families. Jackson also organized a contingent of Connecticut grandparents and other guardians to participate in the 2003 GrandRally in Washington.

Carolyn Jackson’s efforts are only some of the many activities, including policy advocacy, undertaken by proponents of subsidized guardianship in Connecticut. In 1997, subsidized guardianship advocates succeeded in securing the enactment of Connecticut Public Act 97-272, which provides guardians with a monthly subsidy equivalent to the foster care grant, a medical subsidy, and a lump sum/special needs subsidy to cover some of the incidental expenses incurred when the guardianship family is first formed. Subsequent efforts by grandparents and other relative caregivers to expand such assistance still continues in the state.

Policy advocacy by grandparents and other relatives raising children is also underway in other states. In the Spring of 2004, the Florida Kinship Center at the University of Southern Florida School of Social Work sponsored its Fourth Annual GrandRally in Tally to educate legislators and policymakers about the kinship caregiving experience. Kinship caregivers and their supporters delivered dolls to their legislators carrying a laminated message describing the numbers of children being raised by relatives in his or her district. The National Committee of Grandparents for Children’s Rights also held a rally at the New York State Capitol in Albany to push for policy improve-

ments on behalf of grandparents who are raising grandchildren. Similar rallies are planned in other states in the Fall of 2004 and in 2005.

## **Local Agency Leadership**

Local agency leaders can also play a significant role by recognizing the needs of relative caregivers and their children and supporting their capacity to be advocates for the children in their care. In El Paso County, Colorado, for example, a comprehensive approach to strengthening vulnerable families includes innovative financing and enhanced supports for relatives and other caregivers. The county department of social services uses a broad approach to Temporary Assistance for Needy Families (TANF) and child welfare that combines child abuse prevention with anti-poverty services.<sup>5</sup> Financial and other supports are available to help relative caregivers raise a child irrespective of the program or human services “door” through which the family first enters the social service system.

In El Paso County, the State District Court is a critical partner in efforts to prevent unnecessary placement of children in the foster care system and to support vulnerable families. The court provides legal assistance to relative caregivers who seek to become guardians if parental consent has been obtained. Once a guardianship petition has been granted, the court exercises only minimal oversight of the case, and guardians make annual reports. Through a specialized Family Empowerment Team in the county’s department of social services, the court may actively connect guardians and their children with needed services. This team works with kinship families to avoid involvement of the child welfare system when appropriate and to provide them with financial assistance and other supports.<sup>6</sup>

## Effectively Utilizing the Legal System: Relatives as Plaintiffs

Another important way that relative caregivers advocate for themselves and the children they raise is through the legal system. In *Youakim v. Miller*, for example, one family in the early 1970's demonstrated courage and determination as it challenged the State of Illinois on behalf of its children, as well as other relative caregivers. Linda Youakim and her husband argued that they were financially unable to provide adequately for Linda Youakim's two siblings who had been placed in their home and for two other siblings placed in non-relative foster care without financial assistance. The U.S. Supreme Court ruled in *Youakim v. Miller*,<sup>7</sup> which became a class action on behalf of the Youakims and other relatives in similar situations, that children eligible for federal foster care payments are entitled to the same payments, whether they are in relative or non-relative foster homes. The case resulted in a significant change in state and national policy toward relative caregivers, and also became a model for how families can use the legal system to create a more equitable system for vulnerable populations.

In a more recent case, *Rosales v. Thompson*, another grandparent caregiver, this time in California, also used the courts to advocate for her grandchild. In *Rosales*, Mrs. Rosales argued that the current eligibility rules set forth by the U.S. Department of Health and Human Services for the federal foster care program were too narrow and denied her the level of assistance she needed to care for her grandchild in California. The Ninth Circuit Court of Appeals agreed with her.<sup>8</sup> Its ruling makes more children in foster care in the states covered by the Ninth Circuit (Alaska, Arizona, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) eligible for federal foster care payments.

## Conclusion

Advocacy by individuals and communities affected by social inequities and injustices has long been the fuel for social change in this country. Vulnerable families, who often have the most to gain, have historically led heroic efforts to make life better for generations to come. Fifty years ago, for example, the United States Supreme Court decided what was arguably the most significant civil rights case of the 20th century – the 1954 *Brown v. Board of Education* decision – in which a unanimous court held that segregated schools were inherently unequal. Countless American heroes and heroines literally risked life and limb to make certain the protections of the Fourteenth Amendment to the United States Constitution equally applied to the education of their children and their children's children.

Today, in communities across the nation, often nameless and faceless advocates are working to maintain family integrity and end discrimination in child welfare practices. Together, they can promote placements with relatives and caregivers and ensure that the principles of equal protection and opportunity apply to their economically fragile extended families. These advocates are not only the most tireless shapers of evolving national and state subsidized guardianship policies, they are also the caregivers of our children.

## Next Steps

Steps that can be taken to honor and support the efforts of advocates for children living with relatives include:

### 1. Include the voices of relatives in advocacy work.

Ensure that advocacy efforts in support of subsidized guardianship always include the voices of the

grandparents, other relative caregivers, and youth in kinship care families.

## **2. Fully inform kinship caregivers about rights and options.**

Child welfare agencies should provide education and training opportunities to inform kinship caregivers of their legal rights, educate them about the child welfare process, make them aware of their eligibility for services and benefits, and educate them about the differences between guardianship and adoption as permanency options.

## **3. Involve kinship caregivers in child welfare decision making.**

Agencies should promote the use of family group conferences and related approaches to maximize the potential for all parties – including relative caregivers – to advocate for what is in the best interests of their children.

## **4. Launch public awareness campaigns to promote adequate supports for kinship caregivers, including subsidized guardianship.**

Advocates and other child welfare stakeholders should use data, outcomes and research on kinship care and subsidized guardianship as tools to inform the public and policymakers. At the local level, community newspapers, cable and radio stations, and the internet are valuable tools to raise public awareness. Relative caregivers and youths raised by relative caregivers should be involved in such efforts.

## **5. Provide support to assist grandparents and other relative caregivers.**

The child welfare community can help kinship caregivers develop advocacy strategies for their local, state, and federal policymakers. This includes making the most of personal contacts, as well as broader based information campaigns.

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## **Endnotes**

1. Adoption and Safe Families Act, 42 U.S.C. 675.
2. Mark Testa, “When Children Cannot Return Home: Adoption and Guardianship, Children, Families and Foster Care.” Available at [www.futureofchildren.org](http://www.futureofchildren.org).
3. See “Team Decision-Making Protocol/Policy Outline” at [www.Caseynet.org](http://www.Caseynet.org).
4. Ann Moynihan, Mary Ann Forgery, & Debra Harris, “Achieving Justice: Parents and the Child Welfare System.” Paper presented at Fordham Interdisciplinary Conference, Fordham Law School, 2001.
5. Rutledge Q. Hutson, *A Vision for Eliminating Poverty and Family Violence: Transforming Child Welfare and TANF in El Paso County, Colorado*. Washington, D.C: Center for Law and Social Policy, January 2003.
6. *Ibid.*, p. 35.
7. *Youakim v. Miller*, U.S. Supreme Court, 425 U.S. 231, 96 S. CT. 1399, 47 L.Ed. 2d 701, 1976 U.S. LEXIS 34.
8. *Enedina Rosales v. Tommy G. Thompson*, U.S. Court of Appeals for the Ninth Circuit, 321 F. 3d 835; U.S. App. LEXIS 3766; 2003 Cal. Daily Op. Service.



## What is the Role of the Courts in Securing Subsidized Guardianship as a Permanency Option?

### A Checklist for Courts

Courts have a significant role to play in making decisions about permanency outcomes for children in the child welfare system. For the purposes of this checklist, guardianship is considered a permanency option when children cannot return to their birth parents due to safety concerns and when there are compelling reasons why adoption is not in the best interests of the child. This checklist can be used when considering both subsidized and unsubsidized guardianships, although the ability of the guardian caregiver to adequately provide for the child without a subsidy must always be taken into account.<sup>1</sup>

It is important that judges, attorneys, and court personnel participate fully in the development of subsidized guardianship initiatives and in efforts to enhance subsidized guardianship as a permanency option. This includes their involvement in the creation of a legislative framework and the development of policies and procedures to implement it. Their perspective on these laws, given their role in granting or denying legal permanence through guardianship, is invaluable.

Court jurisdiction over subsidized guardianship varies from state to state. In some states, the juvenile or family court oversees all matters related to guardianship. In other states, only probate courts have jurisdiction over subsidized guardianship cases. For Native American families, the tribal court may have jurisdiction. While the court's role may differ based on the nature and location of the court, the following checklist outlines key court functions involved in

assessing the appropriateness and quality of subsidized guardianship for children.

#### 1. Courts must assess the appropriateness of the guardianship arrangement, by determining that there is:

- Evidence that guardianship is in the child's best interest
- Oversight to ensure that a permanent arrangement is considered in a timely fashion so that children do not unnecessarily stay in foster care
- Evidence that there is a strong bond between the child and caregiver
- Evidence that the guardian is fully committed to the long-term care of the child and has the capacity to provide a safe and nurturing environment.

#### 2. Courts must ensure that individual rights are protected, by eliciting evidence that:

- Reunification has been ruled out as a permanency option
- The child is in a safe and nurturing environment
- All family members – the birth parents, the child (when appropriate) and the caregivers – have had multiple opportunities to participate in decision making
- The guardianship arrangement is consistent with the wishes of older youth
- All family members are fully informed of the permanency options available to them and the implications of each, and they have fully considered adoption as a permanency option
- The guardian's rights and responsibilities are clearly laid out, including decision-making authority and responsibilities regarding visitation
- The parents' rights and responsibilities are clearly laid out, including the right to visitation (if appropriate), the right to petition the court to revoke the guardianship, and the responsibilities to pay child support
- All parties understand that subsidized

guardianship is intended to result in a lasting commitment to the child.

### **3. Court's must strive to ensure the sensitive, thorough and efficient handling of guardianship arrangements by requiring that:**

- The court that considers legal guardianship fully understands the history, experience, culture, and family dynamics of the child
- The court that oversees adoption proceedings for children exiting foster care also oversees, to the extent possible, the provision of legal guardianship for children exiting foster care
- Court personnel understand the role of the child welfare agency and other courts, if appropriate
- Processes for transferring cases from one court to another are clearly articulated and the information systems of both courts support the efficient transfer of information about children and families
- Cases that must be transferred across state lines or between states and tribal jurisdictions follow the requirements of the Interstate Compact on the Placement of Children (ICPC) and the Indian Child Welfare Act (ICWA).

### **4. Courts must process the appropriate documents to support the guardianship arrangement, including:**

- A guardianship agreement signed by caregivers, birth parents (when possible), and children (when appropriate) that lays out all the terms and conditions of the guardianship arrangement
- A court order legalizing the guardianship arrangement.

### **5. Courts must help establish their ongoing monitoring role after the guardianship has been legalized by ensuring that:**

- Clear guidelines are established for consideration of petitions by birth parents to revoke the guardianship
- Guardians have the resources and support

needed to prevent guardianship disruptions

- Guardians have access to and understand their eligibility for post permanency services and supports
- Provisions, including the designation of a standby guardian, are established to deal with the death or disability of guardians, or other circumstances that make the guardian no longer able to care for the child
- Child welfare agencies are involved, to the extent possible, in any decisions regarding modifications of the guardianships
- Courts understand their role, if any, with regard to annual subsidy review.

### **6. Courts must have the tools needed to play an effective role in guardianship considerations and to collaborate with other agencies to ensure that effective decisions are made regarding permanency by ensuring that:**

- Court personnel have access to thorough training about guardianship, including its place in the permanency continuum, the differences between guardianship and other permanency options, the involvement of families (including youth) in decision making, the unique needs of kinship care providers and different cultural groups, and the procedures for finalizing a guardianship
- Court personnel have a firm understanding of the dynamics of abuse and neglect, child and youth development, kinship care issues, and ongoing service needs for families
- Court personnel have access to the information and deliberations of the child welfare agency, including documentation of home visits and home studies, documentation of subsidy determinations, etc.
- Information systems support the efficient transfer of information between the child welfare agency and the courts.

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#### **Endnotes**

1. For a summary of what subsidized guardianship is and how it is used, see, Overview, Questions and Answers About Subsidized Guardianship, at pages 3-11.

## What is the Role of the State Legislature in Securing Subsidized Guardianship as a Permanency Option?

### A Checklist for State Legislatures

Providing a strong policy framework for subsidized guardianship and other permanency options requires carefully constructed state legislation. Legislative provisions must clearly delineate a continuum of choices for ensuring safe, permanent homes for vulnerable children. The statutory framework as a whole must meet the challenge of protecting the best interests of each child by providing clear guidelines for the use of various permanency alternatives. At the same time, policies must allow for the many unique circumstances that arise from the complexity of individual experiences, family relationships, and cultural practices.

Development of subsidized guardianship as a permanency option requires—and provides an opportunity for—thoughtful review of existing statutes. The following checklist suggests legislative provisions to consider when reviewing state statutes or when crafting subsidized guardianship legislation. However, every state has its own approach for developing laws and policies, and subsidized guardianship must fit that context. For more information on these legislative considerations as well as examples of state laws, see “Creative Legislative Approaches to Subsidized Guardianship” in *Expanding Permanency Options for Children: A Guide to Subsidized Guardianship Programs*.<sup>1</sup>

#### 1. Provide a strong statutory framework for subsidized guardianship:

- Mirror subsidized adoption provisions in subsidized guardianship laws and link the statutes
- Direct the courts to consider subsidized guardianship as one option in permanency hearings and disposition procedures
- Provide appropriate direction to the public child welfare agency to ensure that subsidized guardianship is considered as a permanency planning option and that the agency has the authority and resources needed to achieve the desired goals
- Consider whether to authorize a separate state guardianship program
- Review probate code provisions related to guardianship for consistency with or clarification of the differences between these and related provisions in statutes governing dependency proceedings for children who have been abused or neglected
- Use legislative intent language to clarify the philosophical rationale and desired results for guardianship.

#### 2. Encourage appropriate use of subsidized guardianship as one choice along a continuum of permanency options for children:

- Specify the placement and disposition options available to the courts and the considerations that should be given to each
- Require that reunification with the birth parents be considered and determined to be inappropriate before considering other permanency options
- Ensure that caregivers have access to information about adoption and how it compares to guardianship before eliminating adoption as an option
- Specify that all other permanency options, including reunification, adoption, and guardianship, be considered and ruled out

before other planned permanent living arrangements, such as long-term foster care, are permitted.

### **3. Ensure that the courts and state agencies consider certain factors when determining whether subsidized guardianship is appropriate for an individual child:**

- Ensure that guardianship is in the best interests of the child
- Determine whether subsidized guardianship is available only for children in the custody of the state
- Determine what consideration will be given to a child's age
- Ensure that guardianship, as well as other supports, is routinely considered for older youth
- Ensure that the child's special needs for assistance are considered
- Ensure that the child's development within his/her family and culture is considered and that cultural traditions are honored whenever possible
- Determine whether exceptions for eligibility will be made to keep sibling groups together, allow students to continue to receive subsidies, and/or respond to the disability of a child or guardian.

### **4. Ensure that the courts and state agencies consider certain factors when determining whether an individual is an appropriate guardian for a child:**

- Ensure that the guardian is capable of and committed to providing a safe and permanent home for the child
- Ensure that there is a strong bond between the guardian and child and that the guardian is making a long-term commitment to the child
- Ensure that the older child's preference is considered
- Determine whether the birth parent's preference is to be considered
- Define whether relatives and/or non-kin guardians are eligible

- Ensure that the guardian understands the importance of the child's culture to his/her development and that the guardian shares that culture whenever possible
- Provide procedures to help ensure that the guardian makes a well-informed decision about which permanency option is in the best interests of the child.

### **5. Outline the rights and responsibilities of birth parents and guardians:**

- Ensure that birth parents understand their rights, including the right to visitation, consent to the child's adoption or name change, etc.
- Ensure that birth parents understand their responsibilities with regard to child support, health insurance, etc.
- Ensure that guardians understand their rights, including the right to make important decisions with regard to health, education, and financial issues
- Ensure that guardians understand their responsibilities with regard to the child's emotional and physical well-being.

### **6. Prevent the breakup of guardianship when it is not in the best interests of the child. Provide appropriate standards for courts and agencies to consider when assessing requests to revoke or relinquish guardianship:**

- Create standards for the courts and agencies when reviewing petitions by birth parents to regain custody of the child
- Prevent unnecessary breakups by ensuring that the guardian and child have access to assistance needed to maintain a permanent relationship
- Provide protection by requiring revocation of placements that are harmful or not in the child's best interests
- Require planning for a successor guardian in the event that the permanent guardian dies or becomes unable to care for the child
- Outline the roles and responsibilities of the state agency and courts when children are removed from the care of the guardian

- Outline procedures for converting the guardianship to adoption.

### **7. Require written agreements between the court or public agency and the guardian that protect the child’s best interests:**

- Ensure that the guardian, birth parent(s) and youth receive information about all permanency options and their implications to help them make a well-informed decision concerning permanent placement
- Ensure that rights and responsibilities of all parties are specified in the agreement
- Ensure that visitation, child support, health care coverage, child care, and other eligibility issues are clearly outlined before the guardianship is granted.

### **8. Authorize public agencies and courts to provide the necessary assistance to ensure that a guardianship placement is a safe and permanent home for the child:**

- Direct the state to provide adequate, ongoing services as needed to protect and nurture the child without being overly intrusive
- Ensure that post guardianship services are equivalent to the assistance available for subsidized adoption, including reimbursement for legal fees, medical assistance, child care, food stamps, independent living services, counseling, and other support
- Authorize adequate subsidy payment levels
- Preserve the guardian’s eligibility for other benefits, as needed, to ensure a safe and nurturing environment for the child and financial security for the guardian.

### **9. Encourage ongoing monitoring of the overall impact of guardianship placements:**

- Authorize evaluation of subsidized guardianship or provide for ongoing monitoring by the legislature or an independent entity
- Ensure that any cost savings resulting from subsidized guardianship are identified.

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### **Endnotes**

1. Children’s Defense Fund and Cornerstone Consulting Group, *Expanding Permanency Options for Children*, Authors, Washington, D.C. 2003.



**Subsidized Guardianship as a  
Permanency Option  
Meeting on Policy and Program  
Developments  
September 17, 2003**

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