

# Child Welfare Policy Manual

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## Questions & Answers

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### 8.5 Guardianship Assistance Program

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**1. Question: Are children that are receiving title IV-E guardianship assistance payments eligible for Medicaid?**

**Answer:** Children who receive title IV-E kinship guardianship assistance payments are categorically eligible for title XIX pursuant to section 473(b)(3)(C) in the State where such child resides.

- **Source/Date:** 08/12/09
- **Legal and Related References:** Social Security Act § section 473(b)(3)(C)

**2. Question: Do the fair hearing requirements in section 471(a)(12) and 45 CFR 205.10 apply to the title IV-E Guardianship Assistance Program (GAP)?**

**Answer:** Yes. The title IV-E agency must provide an opportunity for a fair hearing to any individual whose claim for kinship guardianship assistance available under title IV-E is denied or is not acted upon with reasonable promptness per regulations in 45 CFR 205.10.

- **Source/Date:** 08/12/09
- **Legal and Related References:** Social Security Act § section 471(a)(12); 45 CFR 205.10; 45 CFR 1355.30(p)(2)

**3. Question: Describe the case plan requirements for children who have a permanency plan of relative guardianship.**

**Answer:** Section 475(1)(F) of the Social Security Act requires the title IV-E agency to include specific information in the case plan for each child with a permanency plan of placement with a relative guardian and receipt of kinship guardian assistance payments. The case plan must describe the following: 1) how the child meets the eligibility requirements; 2) the steps the agency has taken to determine that return to the home or adoption is not appropriate; 3) the efforts the agency has made to discuss adoption with the child's relative foster parent and the reasons why adoption is not an option; 4) the efforts the agency has made to discuss kinship guardianship with the child's parent or parents or the reasons why efforts were not made; 5) the reason why a permanent placement with a prospective relative guardian and receipt of a kinship guardian assistance payment is in the child's best interests; and 6) the

reasons for any separation of siblings during placement. If the child's placement with the prospective relative guardian does not include siblings, the case plan must also include a description of the reasons why the child is separated from siblings during placement.

- **Source/Date:** 08/12/09
- **Legal and Related References:** Social Security Act § section 475(1)(F)

**4. Question: Which title IV-E plan requirements apply to the guardianship assistance program?**

**Answer:** The title IV-E plan requirements that are not specifically limited to the title IV-E foster care maintenance payment or adoption assistance programs also apply to the guardianship assistance program under title IV-E. These requirements are in sections 471(a)(2) through 471(a)(9); 471(a)(12), 471(a)(13), 471(a)(20)(C), 471(a)(25), 471(a)(26), and 471(a)(30) through (a)(32) of the Social Security Act, and address topics such as agency organization and program administration, program audits and monitoring, confidentiality of information, fair hearings, interstate placements, school attendance and sibling placement. Further, Departmental regulations at 45 CFR 1355.30 apply to the title IV-E guardianship assistance program to the same extent that they apply to the title IV-E foster care maintenance payments and adoption assistance programs.

- **Source/Date:** 08/12/09
- **Legal and Related References:** Social Security Act § sections 471(a)(2) § (9), 471(a)(12) § (13), 471(a)(20)(C), 471(a)(25) § (26), 471(a)(30) § (32); 45 CFR 1355.30

**5. Question: May a title IV-E agency that is operating a title IV-E guardianship assistance program (GAP) claim allowable administration and training costs?**

**Answer:** A title IV-E agency that is operating a title IV-E GAP may claim allowable administrative and training costs for the proper and efficient administration of the guardianship assistance program.

- **Source/Date:** 08/12/09
- **Legal and Related References:** Social Security Act § section 474(a)(3)

**6. Question: Is a title IV-E agency obligated to reimburse the non-recurring expenses (NREs) (e.g., legal fees) if the legal guardianship is never finalized?**

**Answer:** Yes. A title IV-E agency is obligated to reimburse NREs incurred pursuing legal guardianship, even if the guardianship is never finalized, pursuant to section 473(d)(1)(B)(iv) of the Social Security Act (the Act). A kinship guardianship assistance agreement must be in place with a prospective relative guardian prior to the establishment of the legal guardianship and must specify, among other things, that the title IV-E agency will pay the total cost of NREs associated with obtaining legal guardianship of the child, to the extent the total cost

does not exceed \$2,000 (section 473(d)(1)(B)(iv) of the Act). A title IV-E agency may claim Federal financial participation at the 50 percent rate for NREs incurred pursuing legal guardianship per section 474(a)(5) of the Act.

- **Source/Date:** 10/14/2011
- **Legal and Related References:** Social Security Act § sections 473(d)(1)(B)(iv) and 474(a)(5)

**7. Question: Is a guardianship assistance agreement required between the successor legal guardian and the title IV-E agency?**

**Answer:** Yes. The requirements for a guardianship assistance agreement in section 473(d)(1) of the Act apply to the successor legal guardian.

- **Source/Date:** 2/18/2015
- **Legal and Related References:** Social Security Act – sections 473(d)(1), 473(d)(3)(C)

**8. Question: Are title IV-E agencies required to have a successor legal guardian option?**

**Answer:** Yes. Title IV-E agencies with approved title IV-E guardianship assistance plans must include the successor legal guardian provision as part of their guardianship assistance program, and must amend their title IV-E plans per instructions in [ACYF-CB-PI-14-06](#).

- **Source/Date:** ACYF-CB-PI-14-06 (11/21/14); 2/18/2015
- **Legal and Related References:** Social Security Act – sections 473(d)(1), 473(d)(3)(C)

**9. Question: What is the definition of “relative ? for the title IV-E program?**

**Answer:** Except where the title IV-E statute directly references the definition of relative under the former Aid to Families with Dependent Children (AFDC) program, title IV-E agencies have the discretion to define the term “relative” for the purposes of title IV-E.

Specifically, title IV-E agencies must use the definition of “specified relatives” as described in section 406(a) of the Social Security Act (the Act) as in effect on July 16, 1996, and implemented in 45 CFR 233.90(c)(1)(v) for the following title IV-E foster care provision:

- Title IV-E foster care maintenance payment eligibility in part depends on whether a child would have received AFDC in the home of a “specified relative” from which the child was removed in or for the month of removal if the child has lived with the “specified relative” within 6 months of the child’s removal (see section 472(a)(3)(A) of the Act and Child Welfare Policy Manual 8.3A.11, Q/A #4).

Title IV-E agencies have the discretion to define “relative” when it is not otherwise defined by the statute, including under the following provisions:

- A title IV-E agency may define "relative" for purposes of claiming administrative costs for a limited period of time while the relative's application for licensure or approval as a foster family home is pending, in accordance with 472(i)(1)(A) of the Act. (The child must have been removed from the home of a "specified relative" in order to be eligible for this administrative cost claiming.)
- A title IV-E agency may define "relative" for purposes of waiving non-safety licensing standards for relatives permitted under section 471(a)(10)(D) of the Act.
- A title IV-E agency has discretion to define the term "relative" for the purposes of the Title IV-E Kinship Guardianship Assistance Program. This means that the Children's Bureau will accept a title IV-E plan or amendment that contains a reasonable interpretation of a relative, including a plan that limits the term to include biological and legal familial ties or a plan that more broadly includes Tribal kin, extended family and friends, or other "fictive kin" (see section 471(a)(28), section 473(d) and ACYF-CB-PI-10-11).
- Under the relative notification requirements of section 471(a)(29) of the Act, the title IV-E agency has discretion to determine the scope of the terminology "all other adult relatives." However, to the extent that it is practical, the Children's Bureau suggests that the agency use the same definition of "relative" for the relative notification provision and the title IV-E kinship guardianship assistance program option (if the agency elects the guardianship option) (see ACYF-CB-PI-10-11).
- A title IV-E agency that elects to develop different licensing or approval standards for relative or kinship foster family homes and non-relative/non-kinship foster family homes under 45 CFR 1355.20 may define "relative" and "kin" when determining to whom they will apply the relative licensing and approval standards. The Children's Bureau encourages agencies to define relative and kin in a way that is inclusive of tribal custom and adopt a broad definition of relative and kin for purposes of licensing and approval standards.
- A title IV-E agency that elects to claim federal financial participation for allowable administrative costs of independent legal representation provided to the relative caregiver of a child who is eligible for title IV-E foster care under 45 CFR 1356.60(c)(4)(ii), has discretion to define the term "relative." For example, a title IV-E agency may define relative to include kin and "fictive-kin." In exercising this discretion, the Children's Bureau encourages title IV-E agencies to implement a definition of "relative" that includes a wide range of kinship relationships to support early identification of relatives and kin and to help remove barriers to kinship placements.

- **Source/Date:** 8/8/2024

- **Legal and Related References:** Social Security Act sections 471(a)(10), (28) and (29), 472(a)(3)(A) and (i)(1)(A); 473(d); 45 CFR 233.90(c)(1)(v), 1355.20, and 1356.60(c)(4)(ii); Child Welfare Policy Manual 8.3A.11, Q/A #4 and 8.1B, Q/A #11; ACYF-CB-PI-10-11