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### PROGRAM INSTRUCTION

**To:** State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act (the Act), Indian Tribes, Tribal Organizations and Tribal Consortia (Tribes)

**Subject:** Title IV-E Plan Amendment – Guardianship Assistance Program; Title IV-E Guardianship Demonstration Projects; Fostering Connections to Success and Increasing Adoptions Act of 2008

**Legal and Related References:** Title IV-E of the Social Security Act; P.L. 110-351; ACYF-CB-PI-08-07 and ACYF-CB-PI-09-04 superseded.

**Purpose:** This Program Instruction (PI) supersedes ACYF-CB-PI-08-07 issued December 24, 2008 and ACYF-CB-PI-09-04 issued March 24, 2009. The purpose of this PI is to provide interested State title IV-E agencies and Tribes revised instructions on how to implement and operate the Guardianship Assistance Program (GAP) title IV-E plan option as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law (P.L.) 110-351.

**Background:** ACYF-CB-PI-08-07 provided the Children's Bureau's (CB) initial instructions for implementing the title IV-E option under section 471(a)(28) of the Act. The option provides for kinship guardianship assistance payments to relatives who assume legal guardianship of certain children for whom they have cared while foster parents. The PI limited title IV-E claims for guardianship assistance to those payments made on behalf of children newly entering guardianship on or after the first day of the quarter in which the State or Tribe's approved title IV-E plan amendment was submitted to ACF. Since that issuance, a number of stakeholders have expressed great concern with the interpretation in the PI that Federal reimbursement was available only on behalf of new guardianships and requested that we revisit the issue. We have done so and determined that an alternative interpretation is permissible. Therefore, this PI supersedes ACYF-CB-PI-08-07 in its entirety; republishes and updates the instructions regarding the program and eligibility criteria; and provides new guidance regarding the payments available for Federal reimbursement pursuant to an amended title IV-E plan. This instruction allows title

IV-E agencies to convert legal guardianships that existed prior to the plan submission, including those that may have been supported through State or Tribal funds, to the title IV-E GAP program provided that those children meet all eligibility criteria as described herein.

**Information:** P.L. 110-351 adds section 471(a)(28) to the Act, creating a new title IV-E plan option for States and Tribes to provide kinship guardianship assistance payments to relatives who assume legal guardianship of children for whom they have cared while foster parents. The law also adds new section 473(d) of the Act, which establishes eligibility and other requirements for the title IV-E GAP. Federal financial participation (FFP) using the applicable Federal medical assistance percentage is available for kinship guardianship assistance payments pursuant to section 474(a)(5) of the Act.

Federal reimbursement for allowable title IV-E GAP assistance is available as of the first day of the quarter in which an approvable title IV-E plan amendment is submitted to ACF to implement the GAP (45 CFR 1356.20(d)(8)), as described herein. A discussion of the amendments, effective dates for implementation and FFP follows.

### **Eligibility**

Once a title IV-E agency begins operating a guardianship assistance program under title IV-E, it is obligated to provide such assistance to any child who is eligible for title IV-E kinship guardianship assistance payments (section 473(d)(1)(A) of the Act).

*Child Requirements.* To be eligible for title IV-E kinship guardianship assistance payments, a child must have been: 1) removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child; and 2) eligible for title IV-E foster care maintenance payments during at least a six-consecutive month period during which the child resided in the home of the prospective relative guardian who was licensed or approved as meeting the licensure requirements as a foster family home. While the Act does not require title IV-E foster care maintenance payments to have been paid on behalf of the child during the six-month timeframe, it does require that such a child meet all title IV-E foster care maintenance payment eligibility criteria pursuant to section 472(a), (b) and (c) of the Act and 45 CFR 1356.21 in the home of the fully licensed or approved relative foster parent for a consecutive six-month period to be eligible for title IV-E kinship guardianship assistance payments with that prospective relative guardian (section 473(d)(3)(A)(i)(II) of the Act).

Additionally, the title IV-E agency must determine that: 1) return home or adoption are not appropriate permanency options for the child; 2) the child demonstrates a strong attachment to the prospective relative guardian; and 3) the relative guardian has a strong commitment to caring permanently for the child. Finally, the IV-E agency must determine that a child who is 14 years or older has been consulted regarding the kinship guardianship arrangement. These determinations are not judicial findings but rather determinations made by the title IV-E agency (section 473(d)(3)(A) of the Act).

*Prospective Relative Guardian Requirements.* Before a relative guardian may receive title IV-E kinship guardianship assistance payments on behalf of a child, the title IV-E agency must conduct fingerprint-based criminal records checks of the national crime information databases of the relative guardian(s) and child abuse and neglect registry checks of relative guardian(s) and

other adults living in the guardian's home consistent with section 471(a)(20)(C) of the Act. Consistent with existing policy, if the IV-E agency has established an appropriate timeframe that such background checks remain valid and such timeframe has not expired for the foster parent who previously received the background checks and is now seeking to become a prospective relative guardian, the IV-E agency can consider the requirement of section 471(a)(20) of the Act met without conducting new background checks (Child Welfare Policy Manual 8.4F Q/A #13).

*Title IV-E Kinship Guardianship Assistance Agreements and Payments.* Section 473(d)(1)(A) requires that a title IV-E agency negotiate and enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian, and provide the prospective relative guardian with a copy of the agreement. Section 473(d)(1)(B) of the Act prescribes certain requirements for the kinship guardianship assistance agreement. It must specify the following: the amount of, and manner in which the kinship guardianship assistance payment will be provided to the prospective relative guardian; the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child; the additional services and assistance for which the child and relative guardian will be eligible under the agreement; and the procedure by which the relative guardian may apply for additional services.

Additionally, the kinship guardianship assistance agreement must provide that the agreement will remain in effect without regard to the State residency of the relative guardian pursuant to 473(d)(1)(C) of the Act, and must specify that the agency will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child to the extent the total cost does not exceed \$2,000.

A kinship guardianship assistance agreement must be in place with a prospective relative guardian prior to the establishment of the legal guardianship. Once the relative guardian has committed to care for the child and has assumed legal guardianship for the child consistent with sections 471(a)(28) and 475(7) of the Act, the title IV-E agency may then pay kinship guardianship assistance payments on behalf of a child to the relative guardian provided that the agreement meets, or is amended to meet, all the requirements of section 473(d)(1) of the Act. Kinship guardianship assistance payments may not exceed the foster care maintenance payment the child would have received if he or she remained in a foster family home (section 473(d)(2) of the Act).

*Siblings.* The title IV-E agency may make kinship guardianship assistance payments pursuant to a kinship guardianship agreement on behalf of each sibling of an eligible child who is placed with the same relative under the same kinship guardianship arrangement if the title IV-E agency and the relative guardian agree that the placement is appropriate (section 473(d)(3)(B) of the Act). Title IV-E nonrecurring expenses are also available for siblings so placed. The Act does not require that the IV-E agency place siblings with the relative guardian of the child simultaneously with the title IV-E eligible child for the siblings to qualify for payment under section 473(d)(3)(B) of the Act. The sibling does not have to meet the eligibility criteria in section 473(d)(3)(A) to receive kinship guardianship assistance payments or for the legal guardian to be reimbursed for the nonrecurring expenses related to costs of the legal guardianship.

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

### **Fair Hearings**

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 (section 471(a)(12) of the Act, and 45 CFR 205.10).

### **Case Plan Requirements**

Section 475(1)(F) of the 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 prospective 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 efforts made by the agency to discuss with the child's parent(s) the kinship guardianship assistance arrangements or why efforts were not made. 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.

### **Title IV-E Plan Requirements**

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)(25), 471(a)(26), and 471(a)(30) through (a)(32) of the 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.

### **Title IV-E Agency Option to Extend the Duration of Title IV-E Kinship Guardianship Assistance Payments after October 1, 2010**

Beginning October 1, 2010, a title IV-E agency may extend the age that a child is eligible to receive kinship guardianship assistance payments up to age 19, 20 or 21 (at title IV-E agency option) under certain conditions. For a child on whose behalf a kinship guardianship assistance agreement was entered into after the child turned age 16, the title IV-E agency may opt to continue kinship guardianship assistance payments until the child attains age 19, 20 or 21 if the child, once he/she reaches 18, is: 1) completing secondary school (or equivalent); 2) enrolled in post-secondary or vocational school; 3) participating in a program or activity that promotes or

removes barriers to employment; 4) employed 80 hours a month; or 5) determined incapable of any of the above due to a documented medical condition (section 475(8)(B)(iv) of the Act). Further information on this option will be issued at a later date.

Also beginning October 1, 2010, a title IV-E agency may not provide a kinship guardianship assistance payment if the agency determines that the relative guardian is no longer legally responsible for the support of the child or if the child is no longer receiving any support from the relative guardian. A relative guardian who receives kinship guardianship assistance payments on behalf of a child must keep the title IV-E agency administering the guardianship assistance program informed of circumstances which would make him/her ineligible for payments or eligible for the payments in a different amount (sections 473(a)(4)(A) and (B) of the Act).

### **Administration and Training**

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. These costs may be claimed in accordance with an approved public assistance cost allocation plan as per Departmental regulations at 45 CFR 95.507 at the following Federal financial participation (FFP) rates:

- 50% for nonrecurring expenses up to \$2,000 as well as administrative costs related to child placement and administration of the GAP pursuant to section 474(a)(3)(E) of the Act;
- 75% for short and long-term training of GAP personnel employed or preparing for employment by the public agency pursuant to section 474(a)(3)(A) of the Act;
- 75% for short-term training of prospective or existing foster parents pursuant to section 474(a)(3)(B) of the Act;
- 55% for short-term training of (among other individuals identified in the Act) relatives who have assumed guardianship in FY 2009, increasing by five percent each fiscal year until it reaches 75% in FY 2013, pursuant to section 474(a)(3)(B) of the Act and 203(b) of P.L. 110-351.
- 50% for Statewide Automated Child Welfare Information System (SACWIS) costs pursuant to 474(a)(3)(D) and (E) of the Act and, if required under 45 CFR 95.601, an approved Advanced Planning Document.

Allowable training costs and activities associated with the GAP may be claimed at the applicable FFP rate and must be addressed in the title IV-E agency's title IV-B training plan in accordance with 45 CFR 1356.60(b)(2) and in an approved cost allocation plan.

### **Title IV-E Guardianship Waiver Demonstration Projects**

States with approved waiver demonstration projects providing guardianship assistance or services pursuant to section 1130 of the Act may continue to operate such projects in accordance with the existing applicable terms and conditions. Upon termination of such a project, the title IV-E State agency may continue to claim title IV-E and provide Medicaid if applicable, for the same assistance and services under the same terms and conditions that a child received under a guardianship demonstration project as of September 30, 2008. This claiming authority exists

whether or not the State opts to operate a GAP pursuant to 473(d) of the Act (section 474(g) of the Act).

### **Financial Reporting**

Until a revised form ACF-IV-E-1 is issued, title IV-E agencies should report GAP expenditures consistent with this PI as a component of and in the same manner as adoption assistance program expenses. To the extent that training costs are incurred where the transitional FFP rate of 55% or higher is applicable, the costs are to be reported as part of “State and Local Training” with the reported amounts in the Federal share columns reflecting the actual total claimed FFP (combination of amounts subject to 75% and 55%). The form ACF-IV-E-1 must be supplemented with information to clearly identify (on a line by line basis) the portion of reported adoption assistance program expenditures that support the GAP. Further guidance on the submission of the ACF-IV-E-1, and clarifying the provisions of ACYF-CB-PI-09-04 which are superseded by this Policy Instruction, is forthcoming under separate cover.

### **Effective Date for Implementation of Guardianship Assistance Program**

The State or Tribal title IV-E agency may implement and claim allowable guardianship assistance program costs beginning on the first day of the quarter in which an approvable title IV-E plan amendment is submitted to ACF to implement the GAP (45 CFR 1356.20(d)(8)). Allowable administrative costs for the title IV-E GAP can be claimed pursuant to an amended and approved public assistance cost allocation plan (PACAP) or a pending PACAP in some situations (45 CFR 95.515).

A State or Tribe with an approved title IV-E plan amendment may claim title IV-E on or after the first day of the quarter in which the approved title IV-E plan amendment was submitted to ACF (sections 471(a)(28) and 473(d)(1)(A) of the Act). The requirement for the agency to negotiate and enter into a guardianship assistance agreement with a prospective relative guardian prior to the legal guardianship per section 473(d)(1)(A) of the Act may be satisfied by agreements entered into prior to the title IV-E plan submission if they also meet or are amended to meet the requirements of section 473(d)(1)(B) and (C) of the Act prior to claiming costs for title IV-E. Additionally, a child may satisfy the requirement pursuant to section 473(d)(3)(A)(i)(II) of the Act (eligibility for title IV-E foster care maintenance payments while residing in the home of the prospective relative guardian for six-consecutive months) prior to the first day of the quarter in which an approvable title IV-E plan amendment is submitted to ACF to implement the GAP.

### **INSTRUCTIONS: Plan Submissions**

Each title IV-E agency that elects to operate a guardianship assistance program must submit to ACF a title IV-E plan pre-print amendment that reflects the title IV-E statutory requirements for a GAP. In completing the amendment, title IV-E agencies must record the applicable statutory, regulatory or policy references and citations for the affected Federal requirement. Title IV-E agencies may submit their title IV-E plan amendment using the preprint attached to ACYF-CB-PI-09-08 (section 6), an electronic version of which can be found at the Children's Bureau web page at: <http://www.acf.hhs.gov/programs/cb>. Title IV-E agencies may use a different format, provided that the format used includes all of the applicable title IV-E plan requirements of the Act as set forth in the new law. If a title IV-E agency chooses to use its own format, it must

include all applicable statutory, regulatory or policy references and citations for each requirement.

To the extent that a title IV-E agency seeks to claim title IV-E for children in guardianships in effect prior to the title IV-E plan amendment, the agency must submit a description to ACF that explains the process it will use to ensure that claims will be submitted on behalf of only those children who meet all GAP eligibility criteria. ACF may question costs and if necessary, defer payment consistent with 45 CFR 201.15, until it has such documentation that confirms that the title IV-E agency has a reasonable process in place to support such claims.

Title IV-E agencies that elect to provide a GAP must submit the completed title IV-E plan preprint to the appropriate ACF Regional Program Manager for approval. The completed plan amendment may be submitted at any time. Please note that the plan amendment must be submitted electronically or on a compact disk. Where title IV-E agencies are unable to submit electronic signatures for purposes of certification, they may submit the appropriate pages with original signatures. In addition, title IV-E agencies must submit copies of referenced material to document compliance for any cited statute, regulation, policy and procedure.

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