



A Guide to Using the Guardianship Assistance Agreement

June 2010

What is the guardianship assistance agreement?

A guardianship assistance agreement is a legal contract between the guardian and the agency that addresses the assistance and services the agency is agreeing to provide to the guardian. The guardianship agreement is different from the order that the court issues granting guardianship.

What are the requirements for the guardianship assistance agreement in the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections)?

Fostering Connections requires that in order for a state to be reimbursed for the guardianship assistance payments it makes on behalf of children under Title IV-E, it must negotiate and enter into a written, binding guardianship assistance agreement with the prospective relative guardian of a child who is eligible for federally supported guardianship assistance, and provide the prospective relative guardian with a copy of the agreement. It further requires that, at a minimum, the guardianship assistance agreement must specify:

- the amount of, and manner in which, the guardianship assistance payment will be provided to the guardian; and 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 that the child and relative guardian will be eligible for under the agreement;
- the procedure by which the relative guardian may apply for additional services as needed;
- 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; and
- that the guardianship assistance agreement will remain in effect without regard to the state residency of the relative guardian.

How does the guardianship assistance agreement differ from the guardianship order by the court?

Once signed, the guardianship assistance agreement specifies the obligation the agency has to provide the guardian and child with assistance and services. It also spells out the obligation of the guardian to advise the agency of any change in the guardian's circumstances or needs of the child. The court's order granting guardianship to the relative, on the other hand, sets forth the guardian's rights and responsibilities for the care of the child and may address visitation.

Is the guardianship assistance agreement to be prepared before guardianship is awarded by the court?

Generally, Fostering Connections requires that the guardianship assistance agreement be negotiated between the prospective relative guardian and the agency before guardianship is awarded. The agreement then takes effect upon the court awarding legal guardianship to the relative. The only exception to this rule is those cases in which guardianship was awarded before the state began receiving federal guardianship assistance payments. In these cases, a guardianship agreement may be prepared after guardianship already has occurred, provided that the other eligibility requirements of Fostering Connections also have been met.

How can the guardian be sure that they understand what is in the guardianship agreement?

It will be important to ensure that the prospective guardian understand the obligations set forth in the agreement. The guardian should have ample opportunity to review the guardianship assistance agreement and should be advised to have an attorney or other representative review the agreement to ensure there are no questions or concerns about future obligations of either the guardian or the agency. The state is obligated to pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child up to \$2,000, which can include legal fees for an attorney to review the guardianship assistance agreement.

How is the guardianship assistance agreement developed?

The guardianship assistance agreement must be negotiated by the prospective relative guardian and the agency with custody of the child. In addition to the guardian, it might be helpful to engage others who know the child and his or her needs in the negotiations concerning assistance and services for the child. This might be an attorney or guardian ad litem for the child, the child's caseworker or that worker's supervisor, and an attorney or other representative for the guardian. The guardian may also wish to have other support people available to ensure that he or she clearly understands the terms of the agreement, such as a kinship navigator or other community representative. While some of the language in the agreement is standard, each agreement will be unique, depending upon the needs of the child and circumstances of the guardian.

Must youths be consulted about the agreement?

No. Fostering Connections requires that youths 14 years of age and older be consulted regarding the guardianship arrangement, but does not specifically require that they be consulted about the guardianship assistance agreement. However getting the youths' view on services needed prior to negotiations on the agreement would be helpful.

Must the child's parent be involved in the negotiations around the guardianship assistance agreement?

No. The guardianship assistance agreement is a legal contract between only the guardian and the agency. Fostering Connections requires only that the agency make efforts to discuss the guardianship arrangements with the child's parent or parents and document those efforts in the child's case plan, or specify why such efforts were not made.

Must the guardianship assistance agreement be renewed annually?

Fostering Connections does not require an annual review of the agreement. However, it does require that the agreement specify 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. Some states may require the guardian to notify the agency annually that he or she remains legally and financially responsible for the child and of any change in circumstances or needs. It is important that the guardianship assistance agreement specify whatever this arrangement is and the consequences, if any, for the guardian not submitting the annual statement. Some states send a form to the guardian annually which must be completed and returned. An annual submission also can be used to re-certify the child's eligibility for Medicaid and other services being provided as part of the agreement.

What happens if a guardian dies or can no longer care for a child?

If there is a guardianship assistance agreement, the agency must be notified when there are changes in the circumstances of the guardian to care for the child. Some states provide the authority for a guardian, when he or she is appointed by the court, to name a successor guardian who the guardian wants to care for a child in the event of their death or incapacitation. The naming of a successor guardian would typically be spelled out in the court order. Fostering Connections does not specifically address the appointment of a successor guardian and includes no authority to transfer guardianship assistance payments to a successor guardian.

When does the Guardianship Assistance Agreement terminate?

It is important that the circumstances in which the agreement will terminate are specified in the guardianship assistance agreement. Generally, the agreement would terminate when its terms have been met or the circumstances of the guardian or child have changed in such a way so as to result in termination of the agreement. These circumstances might include death of the child or guardian, or the guardian being no longer legally or financially responsible for the child or requesting that the payments stop. The child may also no longer meet the eligibility requirements for guardianship assistance by reaching age 18 (or older as specified in the agreement) or emancipating, whichever comes first. It is important that any such reasons for termination be specified in the agreement.

May the guardian challenge revisions to or termination of the Guardianship Assistance Agreement?

A guardian who has been receiving Title IV-E guardianship assistance has a right to a fair hearing if he or she wants to challenge revisions or termination of that assistance as specified in the guardianship assistance agreement. The agreement should specify that a notice from the agency of any change in the conditions of the agreement must specify the reasons for the revisions or termination of the agreement and notify the guardian of his or her right to a fair hearing.

For further information on the Guardianship Assistance Agreement, please contact Beth Davis-Pratt from the Children's Defense Fund at edavis-pratt@childrensdefense.org or Jennifer Miller from ChildFocus at jennifer@childfocuspartners.com