

# Pursuing Permanence for Children in Foster Care

Issues and Options for Establishing a Federal Guardianship  
Assistance Program in New York State

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## INTRODUCTION

Each year in New York State, approximately 3,700 children are taken into child protective custody and placed into the homes of relative foster parents. Most of these kinship foster care placements last longer than one year, so on any one day approximately 6,400 foster children are residing in the homes of grandparents, aunt, uncles and other relatives. Most of these placements are concentrated in New York City (nearly 90%), so state-level trends are dominated by what happens in the City.

Three-quarters of the children who are placed with kin start out in these homes as their initial or second placement. The remaining one-quarter eventually find their way to relative homes after two or more prior placements in unrelated foster homes, group homes or institutions. For the three-quarters who start out in kinship foster care, roughly 40% will be there less than a year. Most of them return to their parents or else their caregiver or another relative agrees to take them into their legal custody. The remainder will be moved to a foster family home or another kinship placement. For the other 60%, who are still residing in their extended family home after a year, the chances of their returning to their parents diminish sharply. Most of them, about 70%, are at risk of joining a lengthy backlog of children in long-term foster care until they reach majority age or are dropped from the program at age 21.

The question of what to do about the backlog of children in long-term foster care remains a major concern of city, county, state and federal policymakers. Experience and research show that children who age-out of foster care before establishing a lasting relationship with at least one caring adult will face formidable challenges in negotiating their own successful transition to independent adulthood. Fortunately there is a silver lining to this cloud of concern over the lack of permanence in the lives of children in long-term foster care. Half of the children who start out in kinship foster care and stay longer than a year end up spending the remainder of their childhood with their extended family. Although these children have found a lasting home in a safe and stable setting, it is not a permanent home in the legal sense of the term. The family must continue to receive regular visits from child welfare workers and appear before the family court on a periodic basis. They must secure prior authorization before obtaining hospital care for the child, traveling out of state, or even signing permission slips for school photos. And because legal responsibility is still vested with the city or local district, the family remains at risk of losing custody of the child if a caseworker or judge ever decides that another home is in the child's best interests.

New York State has been a pioneer in bringing legal permanence to the lasting family relationships that children have been able to forge in long-term, kinship foster care. It was one of the first states to declare kinship care the preferred out-of-home setting for children who are removed from their parents' homes. It was also one of the first to recognize the necessity of providing ongoing financial assistance to families who are willing to adopt the children currently under their foster care. Although relatives initially faced obstacles in taking advantage of the adoption assistance program, state and federal regulations have since made their access easier. Now approximately 10% of the children who start out in kinship foster care in New York end up being adopted by their caregiver and receiving a subsidy payment.

There is now a general acceptance of the possibility of improving rates of kinship adoption for those children who can't be reunified with their parents. Practice wisdom in the early 1990s once dictated, however, that kin don't adopt because it runs against cultural traditions. In retrospect, this was an over-generalization. More recent research shows that many kin will indeed adopt if they believe adoption to be in the best interests of the child (Testa, Shook, Cohen & Woods, 1996). At the same time, one size does not fit all. Other research shows that if offered a less adversarial alternative to termination of parental rights and adoption, many relatives will voice a preference for the alternative (Testa & Cohen, 2009).

The alternative to adoption, which has found favor among families who harbor reservations about adopting their own kin, is subsidized guardianship. Unlike adoption, subsidized guardianship does not require termination of parental rights before legal responsibility can be transferred. Birth parents still retain residual rights to visit their children and to consent to their adoption. Guardianship also does not relieve birth parents of the financial obligation of child support, which usually happens after parental rights have been terminated. Also children retain rights of association with their siblings, grandparents, and other extended family members, which usually become unenforceable once the links through the birth parents have been legally severed.

The concept of legal guardianship has been a federally recognized permanency option ever since the passage of the Adoption Assistance and Child Welfare Act (AACWA) of 1980. But unlike foster care and adoption, AACWA did not provide for ongoing federal financial assistance to families after they assumed legal guardianship of children formerly under their foster care. Because federal IV-E funding ended once a child was discharged to the legal guardianship of a family, most states found it difficult to fund entirely from state and local resources legal guardianship arrangements at the same level of financial assistance as foster care

or subsidized adoption. Although some financial assistance was available to the families through the federal TANF program, the amounts were far less than the assistance they received as foster parents. Predictably, legal guardianship became a seldom used permanency option for those already in foster care and was eventually forgotten.

Even though some relative foster families were able to adopt with support from federal and state adoption assistance programs after the passage of AACWA, the majority of children simply remained in the foster care system until they aged out of care at 18 or 19 years old if they needed to finish high school and sometimes until their 21<sup>st</sup> birthday.<sup>1</sup> The effects of adding another cohort each year to a growing backlog of children in long-term kinship foster care first became visible in the nation's largest metropolitan areas in the mid-1980s. In New York City, Chicago, and Los Angeles, the build-up in kinship foster care sharply elevated the in-care population of foster children to unprecedented heights. Eventually the local imbalances between entries into care and exits from care put pressure on caseload growth at the national level. Although influential voices in national policy circles helped to frame the solution in terms of adoption bonuses and the elimination of obstacles to transracial adoption, others at the federal and state levels recognized the importance of addressing the problem of long-term kinship foster care (Testa and Miller, 2005).

One of the earliest calls for the creation of a new legal category to provide a subsidized permanency option for those kin who wish to care for their families' children on a long-term basis but do not wish to adopt was voiced in a Report by the Mayor's Commission for the Foster Care of Children that New York City Mayor David Dinkins appointed in 1991 (Mayor's Commission for the Foster Care of Children, 1993). Dubbed "kinship guardianship," the Commission called for passage of legislation that would authorize monthly payments for the care and maintenance of a child formerly under the foster care of an approved or certified relative foster parent until the child's majority or until the child ceased to be the legal responsibility of, or to receive support from, the kinship guardian. The amount of the kinship guardianship payments for a particular child was recommended to be the same as the adoption subsidy that would be provided by the social services district if the child were being adopted.

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<sup>1</sup> Prior to the passage of the Fostering Connections to Success and Adoption Improvement Act (FCSAA) of 2008, States could receive federal reimbursement for foster children only until age 19 if they were completing a high school degree. Many states, like New York, extended their assistance at state expense until age 21. With the passage of FCSAA, states can now claim federal reimbursement for children until age 21 if they maintain certain eligibility requirements.

The lack of a federally reimbursable kinship guardianship option, however, stymied the passage of state kinship guardianship legislation in New York. In response to complaints over the lack of federal funding flexibility, the U.S. Department of Health and Human Services issued regulations in 1995 that enabled states to apply for authorization to waive certain requirements of Social Security titles IV-B and IV-E to facilitate the demonstration of new approaches to the delivery of child welfare services. One of the possible innovations the regulations highlighted was subsidized guardianship. Since that time, 11 states have mounted federal subsidized guardianship demonstrations.<sup>2</sup> Bolstered by the positive findings from the evaluation in the state of Illinois, legislation was introduced in both chambers of Congress in 2005 to make legal guardianship a subsidized permanency option under the Social Security Act. After successful replications in the states of Tennessee and Wisconsin, key provisions of these bills were later incorporated into the bipartisan Fostering Connections to Success and Increasing Adoptions Act (FCSIAA) of 2008 which President Bush signed into law (P.L. 110-351).

The new law authorizes states to amend their state IV-E plans in order to claim federal funds to assist relatives in becoming the permanent legal guardians of children currently under their foster care. The purposes of this report are to examine the issues and consider the options for establishing such a program in New York State. Because the federal program targets children in long-term kinship foster care, Section 1 of the report begins with an overview of key issues regarding the involvement of kinship caregivers in the formal foster care system. Many of these issues reflect the longstanding challenges and tensions inherent in reconciling traditional norms of kinship altruism and family duty with the legal-bureaucratic requirements of a modern welfare state. These tensions have played out in terms of whether kinship care should be treated like family reunification, that is a form of family permanence in and of itself, or instead as a permanency resource that needs to be converted through adoption or guardianship into a lasting legal relationship.

The view that extended family care was akin to family reunification allowed workers in the past to ignore kinship care as a potential resource for legal permanence. Research conducted in the 1990s helped to revise this view and set the stage for the emergence of a new permanency planning movement in the late 1990s that tapped into kinship care as a permanency resource (Testa, 2008). Section 2 looks at the changing evidence base with respect to kinship care and legal permanence. This is followed by a review in Section 3 of the lessons learned from the

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<sup>2</sup> They include in alphabetical order: Delaware, Illinois, Iowa, Maryland, Minnesota, Montana, New Mexico, North Carolina, Oregon, Tennessee, and Wisconsin.

eleven federal child welfare demonstrations that were conducted by states in the 1990s and 2000s to test these ideas.

Section 4 traces the role that these child welfare waiver demonstrations played in bolstering support for making subsidized guardianship a IV-E entitlement program under the Social Security Act. Section 5 outlines the various components and options that New York and other states need to consider when signing on to the federal program. This is followed by a discussion in Section 6 of key start-up issues that build on the authors' experiences in implementing the subsidized guardianship demonstration in Illinois and evaluating its replications in the states of Tennessee and Wisconsin.

Section 7 uses some innovative statistical matching methods to estimate the potential impact of subsidized guardianship on permanency outcomes in New York State. This is followed by a series of simulations in Section 8 of the fiscal consequences of different methods of allocating the potential costs and savings of subsidized guardianship among the state and local districts. This includes looking at several ways of funding guardianship assistance payments within as well as outside of the foster care block grant framework. Finally we offer in Section 9 some recommendations for ongoing monitoring and evaluation of the longer-term effects of subsidized guardianship on legal permanence, family stability, and financial affordability.

## **SECTION 1: KINSHIP FOSTER CARE IN NEW YORK AND OTHER STATES**

Kinship foster care refers to the full time care of children who have been taken into public custody and placed into the homes of relatives who are supervised and supported under formal foster boarding home agreements with the public child welfare agency. After accelerating in the mid-1980s, the number of initial placements into kinship foster homes in New York State peaked in 1989 and declined steadily until 2004. In terms of the counts of children in kinship foster care on any one day, the state's in-care population swelled to 24,000 children in the early 1990s before dropping to about 4,300 at the end of 2005. Since that time, admissions into kinship foster care and the size of the in-care population have gradually increased again. As of September 30, 2009, there were approximately 6,200 children residing in the foster homes of relatives in New York State.

The reasons for the rapid influx of children into kinship foster care in the mid-1980s are related to policy changes that were implemented in New York City. In 1985, the New York State Department of Social Services issued regulations that facilitated the incorporation of kinship care

into the formal foster care system. Prior to this time, most children who were taken into child protective custody and placed with kin were not recognized as foster care placements. Instead children were simply left in the custody of kin with minimal screening and administrative oversight by the public child welfare agency and without foster care boarding home payments. If the family required financial assistance, it came mostly from the Aid to Families with Dependent Children (AFDC) program (now TANF), which paid far less than the amount of foster boarding subsidy that licensed homes received from the formal foster care system.

The AFDC program was established in 1935. It assisted dependent children who were deprived of financial support and resided in their own homes or in the homes of relatives. The program was originally conceived as a means to family maintenance by “enabling each state to furnish financial assistance and other services ... to needy dependent children and the parents *or relatives* with whom they are living to help maintain and strengthen family life ... (emphasis added, quoted in Bell, 1965:154). In 1962, the AFDC- foster care program was established under IV-A of the Social Security Act. It provided federal financial assistance for the removal of IV-A eligible children from the homes of parents and relatives and the children’s placement into foster care. Because states had considerable discretion as to whether to serve children in kinship care under the family maintenance or foster care provisions of the Social Security Act, there was enormous inconsistency in how children in nearly identical circumstances with similar needs were treated by the child protective system.

A series of legal and federal administrative challenges to the inconsistent treatment of children in kinship care helped to set the stage for New York City’s creation of a separate home approval process for relatives. In 1979, the U.S. Supreme Court mandated the equal payment of federal foster care subsidies to relatives who met the same home licensing or approval standards that are required of adults who are not related by birth or marriage to the child. Because Illinois (the named defendant in the lawsuit) had used foster home licensing standards to approve relative homes, the state was legally obliged to incorporate these approved homes into the formal system.

New York was initially insulated from the ruling because the state did not license or approve relatives who accepted the custody of children removed from the parents’ homes. But the state’s practice came under scrutiny in 1982 when a federal foster care audit uncovered inconsistencies in New York’s handling of children under relative care (Wulczyn & Goerge, 1992). This was followed by the City’s promulgating separate standards in 1985 for the approval of relative homes as formal foster care placements. Then in response to the *Eugene F. v. Gross*



Lawsuit in 1986, the City entered into negotiations with the Legal Aid Society concerning the incorporation of relative placements into the foster care system. It was as a result of this administrative refocusing that the size of the kinship foster care program in New York mushroomed from less than one hundred to more than 24,000 children (Takas, 1993).

Illinois also experienced rapid growth in its kinship foster care program after implementing a separate home approval process for kin in 1986 that was modeled after New York's. At the end of 1986, the size of the Illinois Home of Relative (HMR) program stood at 3,600 children. By June of 1995, the numbers had swelled to 26,000.

The sharp upsurge in the respective kinship foster care programs in both New York and Illinois has been portrayed as an outgrowth of the "blurring of the boundaries" between each state's child dependency jurisdiction and its child abuse and neglected jurisdiction (Testa, 1997). Unless the lines could be more clearly demarcated between these two interrelated but legally distinct public purposes, states like New York and Illinois faced the risk that a substantial portion of the much larger population of children in informal living arrangements with kin could become incorporated into the formal foster care system. Forecasts prepared at the time suggested that the size of the program in Illinois could easily surpass California's home of relative caseload of 36,000, even though California had three times as many total children under 18 years old as Illinois (Illinois Department of Children and Family Services, 1995).

Both New York and Illinois took steps to stem the rising tide of kinship placements that were brought into the foster care system, particularly "non-removal" cases of children who were already residing in the relative's home prior to child protective intervention. Illinois formalized these policy changes in its Home of Relative (HMR) Reform Plan that it implemented in July of 1995. The plan changed the way the state exercised child protective authority over children in informal kinship care and coordinated public assistance benefits with child welfare services (Testa, 1997).

First, the Illinois plan restricted the definition of neglect by eliminating parental absence from the relative's home as the sole reason for taking children into public custody, as long as the children were already living in the relative's home and were not in immediate need of protection. Families who needed help were instead referred for extended family support services that aided them in applying for public assistance and in obtaining legal authority to consent for children's medical care, enroll them in school, and make other decisions necessary for their proper care.

Second, the Illinois plan clarified that when children were removed from their parent's home and then placed with relatives who passed a basic safety check, the families were to be offered a choice between becoming a licensed foster parent or remaining a non-licensed kinship caregiver. If they chose the latter, families would be paid jointly by the public assistance agency and the child protective agency at the level of the AFDC "standard of need." This payment was about twice the amount relatives could receive for children who were not in public custody, but about 30% to 60% lower, depending on family size, than the boarding payment for licensed foster care. Families that chose to apply for foster home licensing and were subsequently certified as able to provide the same licensed standard of care as nonrelated foster parents with respect to sleeping room size, telephone access, and training requirements were eligible for the full foster care boarding payment. As a result, the plan eliminated the separate approval process for relative homes that the state previously operated (Testa, 1997).

Intake into Illinois's HMR program began to decline approximately six months prior to the plan's formal announcement in anticipation of the change in policy. The largest impact resulted from the change in the definition of child neglect which no longer indicated children for "lack of supervision" if the parent was absent from the relative's home but the child was in the safe care of the extended family. A secondary impact resulted from the offer of the AFDC standard of need to non-licensed kin. The MIT economist, Joseph Doyle (2007), published a study of the effects of Illinois's HMR Reform Plan. He estimated that the offer of the AFDC standard of need grant cut the amount of the initial payment to non-licensed kin by an average of 30%. Prior to this, non-licensed relatives were offered the same amount as fully licensed foster parents. Doyle estimated that the change in the initial subsidy offer reduced the probability of relatives to provide substitute care by an average of 15%, with especially large declines for infants, teenagers and children who require mental health services. As a result of the policy changes, intake into the HMR program declined precipitously between December of 1994 and December of 1999. Doyle's analysis of the plan's long-term impact indicated that the health, education, and placement outcomes for the children did not appear to suffer following the decline in the subsidy offer. Similar declines in kinship care intake also occurred in New York City before and during this period, but the reasons for the drop and the impact of the reductions are less completely documented.

## **SECTION 2: THE UNTAPPED POTENTIAL OF KINSHIP FOSTER CARE FOR LEGAL PERMANENCE**

Illinois' narrowing of its definition of child neglect to exclude children in pre-existing, safe extended family arrangements and reducing the initial subsidy offer to kin helped to sharpen the boundaries between financial assistance and child protection in the state. Quarterly intake into kinship foster care fell from 3,860 placements in March of 1995 to 2,600 placements of March of 1997. But despite these front-end reductions, the in-care population continued to rise during this period from 26,840 children in kinship foster care to 28,600 children. The in-care population continued to increase because exits out of kinship foster care did not surpass entries into care as was anticipated but instead also fell and started to track intake reductions. This led to a leveling-off in the size of the in-care population of children in Illinois kinship foster care at around 28,000.

The expectation that exits would exceed entries was based on several policy innovations that Illinois included in its HMR reform plan to spur permanency planning for children in kinship foster care. Research conducted in 1993 found that caseworkers were willing to nominate some 24% of kinship families for subsidized guardianship (Testa et al., 1996). Because there was no federal reimbursement at the time, Illinois created a new foster care status that it dubbed Delegated Relative Authority (DRA). The rules and regulations that the state issued in January of 1995 outlined the conditions that families had to meet in order to qualify for DRA status and the types of decisions they would be able to make on their own. The authority assigned to the relative included: traveling out of state for up to 30 days, obtaining regular medical and dental check-ups for the child without prior permission, releasing confidential information for educational and medical purposes, and managing funds provided for any services. Worker visits would be reduced to twice yearly, but the administrative case reviews would continue to be conducted on the regular six-month cycle.

The research also uncovered an unexpected finding: a much larger fraction of relative caregivers were willing to consider adoption than practice wisdom had previously indicated was likely. Prior research had suggested that relatives were opposed to termination of parental rights and adoption because the processes violated traditional norms of relatedness and recast extended family identities into "unnatural" parent-child roles (Rowe et al. 1984; Thornton 1991). Although a large percentage of kin remained opposed to adoption on precisely these grounds, more recent research suggested that a majority of relative caregivers were at least willing to consider adoption. In addition to the 24% nominated for guardianship, 21% were nominated by

caseworkers for adoption in a reassessment of permanency planning goals for children in kinship foster care that the IDCFS funded in 1993 (Testa et al., 1996). This compares to the 4% of children with adoption goals prior to the reassessment.

The Illinois HMR reform plan modified the state's rules on adoption assistance by extending eligibility to non-licensed relative caregivers who were looking after children in foster care. The Illinois plan also reinforced the benefits and advantages of DRA for both families and the state. Despite these measures, however, very few long-term foster care cases were converted into the new foster care status in the aftermath of the plan's implementation and only slightly more were converted into adoptive homes.

Investigations into the possible reasons for the failings of the new permanency options to take hold in Illinois uncovered two key problems: 1) financial incentives were misaligned with the new permanency goals for kin because contract agencies (which managed 80% of the kinship foster care program in Illinois) were paid only if children remained in foster care; and 2) the new foster care status of DRA was misaligned with the permanency preferences of contract agencies and staff because the state still retained legal custody of children. Although overall agency workloads would be reduced, staff would still carry a full workload except they would be responsible for twice as many DRA cases as foster families. Furthermore, because the children would still be under public custody, there was apprehension among contract agencies and staff that they would be held accountable if anything went amiss. Instead they preferred a permanency status that would allow families to continue receiving equivalent financial subsidies to foster care but granted them full legal responsibility for the children without having to become the children's mother or father. In effect, what they were asking for was subsidized guardianship.

In July of 1995, Illinois found a way to address the field's desire for a new permanency option of subsidized guardianship under the title IV-E waiver provisions that the U.S. Children's Bureau had recently announced. Under section 1130 of the Social Security Act, the U.S. Department of Health and Human Services (HHS) received authority to permit as many as ten States to conduct demonstration projects that involve the waiver of certain requirements of titles IV-B and IV-E to facilitate the demonstration of new approaches to the delivery of child welfare services. The IDCFS submitted an application to HHS requesting waiver authority to permit a five-year demonstration of federally subsidized legal guardianship as a permanency option under title IV-E. A year later, on September 22, 1996, Illinois became the second state after Delaware to obtain a child welfare waiver.

During the interim between the application's submission and the approval of the waiver in September of 1996, Illinois tackled the problem of misaligned financial incentives that favored long-term foster care over family permanence. In February of 1997, IDDFS outlined the scope of its proposed performance contracting system for children in foster family care (Illinois Department of Children and Family Services, 1997). The document described the growth of kinship foster care in Illinois, the role that HMR reform played in reducing intake into the program, and the failure of the new permanency options of DRA and kinship adoption to compensate for the precipitous decline in reunification rates (Illinois Department of Children and Family Services, 1997). It located the performance problem in a contracting system that reinforces maintaining children in foster care while it discourages permanence by replacing familiar discharged cases with new challenging ones or, worse, shrinking referrals altogether.

To align financial incentives with permanency objectives a new contracting system was developed that set an annual performance standard of 6 permanencies and 2 other exits for every 8 entries to maintain a balance of 25 children for every one worker. Assuming that workers met the permanency standard for all of their cases, this would result in a complete turnover of cases in four years which translates into a median length of stay of 2 years. If the standard were exceeded for the agency as a whole, it would still be guaranteed the administrative payments for its caseloads of 25 children as though the children were still in care. If it fell short, the agency would have to make up the deficit from its own resources. In this way, financial incentives were realigned to reward reunifications, adoptions and guardianship and to discourage long-term foster care.

The IDDFS implemented its performance contracting system for the HMR program in Cook County, Illinois in July of 1997. As with HMR reform, the field's response anticipated the official start date. By the end of June of 1997, the number of exits exceeded the number of entries for the first time in a decade in the HMR program. The rise in exits was led by adoptions followed by the new permanency option of subsidized guardianship. The same pattern was repeated a year later when performance contracting was implemented for regular foster care in Cook County and for the HMR program in the remainder of the state (Taylor & Shaver, 2010). As a result, the in-care population of foster children in Illinois fell continuously from a high of 51,800 children in March of 1997 to a level 16,000 children after December of 1997.

Most instructive about this case of kinship foster care in Illinois is how the field consistently underestimates the potential for permanent homes among children living with their extended family. Table 2.1 shows the permanency outcomes for the 1,116 children whose

permanency plans were reassessed as part of the 1993-94 Relative Caregiver Assessment Survey (Testa et al., 1996). Before the assessment (col. 3), the permanency goal for 77% of the children was either long-term foster care in the relative’s home or independence. After the assessment, the percentage dipped to 50% but as of March 30, 2009 only 42% had remained in or aged out of long-term foster care. The largest discrepancy between the permanency recommendations after reassessment and actual permanency outcomes involved adoption by kin. Although the

**Table 2.1**— Permanency Outcomes as of March 30, 2009 for Children in the 1993-94 Relative Caregiver Social Assessment Survey Conducted in Cook County, Illinois

	Permanency Outcomes as of March 30, 2009	Permanency Recommendations 1993-94	
		After Assessment	Before Assessment
Group size	1116	1116	1116
Reunification	7%	5%	19%
Adoption	37%	21%	4%
Subsidized guardianship/DRA	14%	24%	na
Long-term care/independence	42%	50%	77%

percentage that was recommended for adoption increased from 4% to 21% after the assessment, in actuality 37% were eventually adopted by their relatives. In fact, many of the children recommended for DRA ended up being adopted. Nonetheless, a sizeable fraction (14%) exited foster care through the newly implemented permanency option of subsidized guardianship under IV-E waiver authority.

### **SECTION 3: LESSONS FROM THE IV-E WAIVER DEMONSTRATIONS**

Illinois was the second state after Delaware to receive IV-E waiver authority to operate a subsidized guardianship program with federal funds. They were soon joined by the states of North Carolina, Oregon, and Maryland. The first wave of guardianship demonstrations approved between 1996 and 1998 was intended to test the efficacy of subsidized guardianship in promoting family permanence. Although all of the demonstrations were similar in the sense of providing financial support to the legal guardians of children who had previously been under the family’s foster care, individual state waivers permitted variation in program designs and eligibility criteria in order to learn about the most promising components of the new program.

The most consequential difference involved the amount of the guardianship subsidy compared to the foster care payment. Delaware, Illinois, and Oregon offered the same amount as

the family would receive as foster parents, while North Carolina and Maryland established payment levels that were lower than the foster care payment. In North Carolina, the subsidized guardianship payment was set at \$250 per month per child, which was less than the licensed foster care payment that ranged from \$315 to \$415 per child, depending on the child's age. Maryland set the payment level at \$300 per month, which was in between the \$188 provided to the first child under the TANF child-only program and the average licensed foster care payment of \$600 per child.

During the first three years of North Carolina's demonstration, none of the counties used the guardianship option. So in October 2000, the subsidy was increased to equal the foster care maintenance payment. In Maryland too few exits were observed among foster children who received the licensed foster care payment to develop reliable estimates of the effects of assignment to the intervention group. Only among the foster children who received the lower TANF child-only payment were significant differences observed in the instantaneous (hazard) rate of exiting from foster care. The Maryland evaluators concluded that the guardianship subsidy would have to be increased to at least the same level as the foster care rate to have a significant effect on permanency outcomes for children in licensed foster care settings (James Bell Associates, Inc., 2010). As a result of these findings, most of the subsequently approved six subsidized guardianship waiver applications approved during the second wave of demonstrations from 2000 to 2006 stipulated that the subsidy was to be equal to the foster care payment or adoption assistance payment. The exception was Montana, which set the subsidy level at \$10 below the foster care amount.

The length of time the waivers stipulated that a child had to reside in the caregiver's home before qualifying for subsidized guardianship also varied during the first wave of demonstrations. The shortest duration was 6 months in the North Carolina, Oregon, and Maryland demonstrations and one and two years, respectively in the Delaware and Illinois demonstrations. After the passage of the Adoption and Safe Families Act (ASFA) of 1997, Illinois lowered the minimum duration to one year in deference to the shortened permanency timelines mandated under ASFA. Four of the demonstrations approved during the second wave set 6 months as the minimum duration while Wisconsin set 12 consecutive months and New Mexico stipulated no minimum.

Initially the guardianship subsidies were available to both relatives and non-relatives. Some states, however, sought to restrict the eligibility of non-relatives by setting restrictions on the ages children could qualify for guardianship assistance. Illinois and Oregon, for example,

permitted children aged 12 and older to be discharged with subsidy to the legal guardianship of a non-relative. North Carolina imposed no age restrictions, while Delaware restricted subsidized guardianship to children aged 12 and older and Maryland excluded non-relatives from the program altogether. During the second wave of demonstrations, children in both related and non-related foster care were deemed eligible and age restrictions were eliminated in most of the states. Delaware and Wisconsin designated a separate family category that they called “kin,” which could include a non-related individual who was previously acquainted with the child (e.g., godparent, teacher, or family friend) or with whom the child had developed a significant relationship over time (e.g., a foster caregiver).

Another condition that varied during the first wave of demonstrations but later became more uniform during the second wave was the eligibility of the family for IV-E foster care assistance. Illinois, North Carolina, and Maryland received approval to spend IV-E funds on non-IV-E eligible families. This permission did not mean that states could claim IV-E reimbursement for non-eligible children but rather they could spend any IV-E savings on the extension of guardianship subsidies to non-IV-E eligible families. The reason this was possible was due to the unique way that states could claim IV-E reimbursement under the waiver.

Instead of claiming federal reimbursement for the total days spent in IV-E eligible foster care by the children who exited to guardianship, the waiver generated claims by basing bills on the average days of IV-E eligible foster care spent by children in the comparison group. For example, children assigned to the intervention group in Illinois spent an average of 1,089 days in foster care compared to the 1,298 days in the comparison group as a result of the higher rate of permanence in the intervention group and the shorter time to achieve guardianship. Because IV-E administrative claims for foster care in Illinois ran on average approximately \$11 per day higher at the time than the IV-E administrative costs for guardianship and adoption, multiplying this unit cost by the additional 209 days spent on average in foster care in the comparison group yielded a net administrative IV-E cost savings of \$2,294 per child assigned to the intervention group. Multiplying this imputed per-child savings by the total 40,000 children ever assigned to the intervention group in Illinois produced a surplus claim of approximately \$90 million dollars that the state was able to reinvest in guardian subsidies for non-IV-E eligible children and other child welfare improvements. In other words, spending on the comparison group, which receives the regular federally eligible services, approximates the reimbursements that the state would have received for the children assigned to the intervention group in the absence of the waiver. In this way, a cost-neutrality limit for federal reimbursement is established each quarter which



results in the federal government's spending no more than it would have spent in the absence of the waiver.

In order for the cost-neutrality formula to work satisfactorily, it is important that the comparison group look as much like the intervention group as possible, on average. This means that there should be nearly equivalent proportions of boys and girls, older and younger children, wealthier and poorer families, and other important distinctions in both groups. Such statistical equivalence seldom arises naturally. Even neighboring communities profile differently on a variety of characteristics. Therefore in order to obtain an acceptable degree of statistical equivalence, the two groups have to be constructed purposely. This is best achieved through the use of some chance process, such as a toss of the coin, a lottery, or table of random numbers, to assign subjects to the intervention or comparison groups. Such methods of random assignment increase the likelihood that the two groups will be statistically equivalent within the bounds of chance error on most observable as well as unobservable characteristics. Consequently a comparison group based on random assignment serves as a good approximation of the "counterfactual," that is what would have happened to the members of an intervention group in the absence of the intervention. With random assignment, the comparison group provides information on not only what the expenditures might have been in the absence of the intervention but also what the effects of the intervention might have been in terms of the child safety, family permanence, and future well-being.

During the first wave of demonstrations, only Illinois and Maryland opted for random assignment for cost-neutrality and evaluation purposes. Because of the small numbers in Delaware (the goal was to enroll ten children per year in subsidized guardianship), the state opted for a historical (pre/post) comparison design. North Carolina embedded its evaluation within a larger flexible funding demonstration and ultimately selected 38 comparison counties to compare with 38 intervention counties. Oregon also embedded its evaluation of subsidized guardianship within a larger flexible funding demonstration and relied on a non-equivalent comparison group design to assess efficacy.

Implementation problems and weak evaluation designs hampered drawing any firm conclusions about the efficacy of subsidized guardianship in Delaware, North Carolina, and Oregon. One clear lesson learned, however, was the importance of instructing workers in how to hold discussions with families about permanency alternatives and clarifying philosophically where guardianship fits within the permanency continuum. Although Maryland did opt for random assignment, the limited attractiveness of the subsidy to licensed foster families left too

few families for drawing valid causal inferences. For families receiving the TANF child-only benefit, the independent evaluators reported a quicker exiting time in the intervention group but little difference in overall permanency rates. By the end of the demonstration, 42% of the children in the intervention group achieved permanence as compared to 43% of the children in the comparison group.

Among all of the first wave demonstrations, only Illinois had sufficient numbers and the strongest evaluation design for drawing valid causal inferences about the efficacy of subsidized guardianship in reducing length of stay and improving rates of family permanence. By the end of the initial five-year demonstration there was a 6.1 percentage point difference (sig. = .02) in the overall permanency rates (reunification, adoption, and guardianship) for the intervention compared to the comparison group. The overall permanency rate for the 3,287 age-eligible children assigned to the intervention group reached 78% as of March 2002 compared to 72% for the 3,470 children assigned to the comparison group.

Because of the higher permanency rate and quicker times to guardianship than to adoption in the intervention group, the smaller percentage that remained in or aged out of long-term foster care translated into the millions of dollars in administrative savings referenced above which Illinois was able to spend on subsidized guardianships for non-IV-E eligible families and other child welfare improvements. Furthermore, analysis of abuse and neglect filings found little difference in subsequent maltreatment: the overall proportion who had a substantiated report of abuse and neglect was 6% in the comparison group and 5% in the experimental group. This lack of difference helped to alleviate concerns that children in subsidized guardianship arrangements might be at greater risk of harm due to the withdrawal of administrative oversight and casework services, coupled with the greater potential access of abusive and neglectful parents to the guardian's home. But in fact, subsequent indicated abuse and neglect was lowest among children discharged to legal guardians.

The one expectation that was not borne out by the Illinois evaluation was the effect on home stability rates: approximately the same proportion of children in the comparison group (67%) was still living in the same home in which they resided at the time of random assignment as the intervention group (69%). This lack of difference prompted speculation that legal permanence may be less consequential than other extra-legal factors, such as biological relatedness and feelings of affection, for the degree of home stability (Testa, 2005).

Partially on the basis of the strength of the Illinois findings, a second wave of demonstrations was approved after 2000 that replicated the program and evaluation design of the Illinois demonstration (Wisconsin and Tennessee) or extended it in different ways to test the effectiveness of subsidized guardianship across variations in populations (e.g., Native Americans in Montana and New Mexico) and state policy environments (Minnesota and Iowa). Because of the importance of replications in affirming the validity of causal inferences, the following material concentrates on the findings from the demonstrations in states of Illinois, Wisconsin, and Tennessee.

Doubts about the generalizability of the Illinois findings on subsidized guardianship stemmed from state's unique policy history that was detailed in the previous section. Prior to the implementation of Illinois' waiver in 1997, the state had recently implemented its HMR reform plan that supported non-licensed relative caregivers at a lower subsidy level than what relatives could receive as licensed foster or adoptive parents. As a result, there was a financial incentive for the majority of caregivers enrolled in the Illinois HMR program to leave the foster care system for higher subsidies under either adoption assistance or the new subsidized guardianship program. The question left hanging was whether there would be as large an effect on permanency rates for other populations and in other settings where such financial incentives did not exist.

The opportunity to test the external validity of the Illinois findings came about as a result of the approval of two waiver applications from Wisconsin (2005) and Tennessee (2006), which closely replicated the demonstration and evaluation design in Illinois. The same independent evaluation team that conducted the Illinois evaluation won the bids to evaluate the Wisconsin and Tennessee demonstrations. The advantage is that similar methods of random assignment, survey construction, and data analysis were used across all three sites.

Tables 3.1 to 3.3 shows that randomization was largely successful in balancing the characteristics of children and their caregivers who were assigned to the intervention and comparison groups in all three of the waiver programs implemented in Illinois, Milwaukee, Wisconsin, and Tennessee. Given that intervention and comparison groups look statistically similar at the start of the demonstration, any differences that later emerge with respect to permanency outcomes and days spent in foster care can plausibly be attributed to the offer of subsidized guardianship to the intervention group. Because of the smaller sample sizes in Wisconsin and Tennessee, chance fluctuations produced larger differences in baseline characteristics (e.g. family and home structures) than the differences in Illinois. Meanwhile any

residual significant differences could be handled by including statistical controls in analyzing permanency outcomes.

Tables 3.4 to 3.6 present the differences in the permanency outcomes for all three states and average foster care days for Illinois and Milwaukee, Wisconsin. The results show that overall permanency rates were higher and fewer average days of foster care were consumed in the intervention group than in the comparison group. By the end of the observational periods, 25.7% of the intervention group was eventually discharged to permanent guardianship in Illinois, 22.6% in Milwaukee, Wisconsin, and 40.7% in Tennessee. The combined permanency rate of guardianships with reunifications, adoptions, and living with other relatives was 6.6 percentage points higher in the intervention group than in the comparison group in Illinois, 18.8% higher in Milwaukee, Wisconsin, and 11.2% in Tennessee. Because of the overall permanency difference and the shorter time it takes to finalize legal guardianships than adoptions because parental rights do not need to be terminated, children assigned to the intervention group consumed an average of 209 fewer days of foster care than children assigned to the comparison group in Illinois and 141

**Table 3.1**—Differences in sample characteristics of children and caregivers assigned to the Illinois subsidized guardianship demonstration from 1997 to 1999.

	Intervention	Comparison	Difference
<b>Child characteristics</b>			
Average Age at interview	9.9	10.1	-0.2
Average Age at removal	4.8	4.8	0.0
Female	49.5%	49.7%	-0.2%
White	9.9%	9.4%	0.5%
Black	83.6%	85.3%	-1.7%
<b>Caregiver characteristics</b>			
Age at interview	51.2	51.8	-0.7
White	10.7%	10.8%	-0.1%
Black	82.5%	83.2%	-0.8%
Married	32.5%	32.2%	0.3%
Less than high school	40.0%	39.9%	0.1%
High school graduate	17.2%	19.3%	-2.1%
Some college	28.5%	24.8%	3.7%
Full-time employment	34.8%	34.2%	0.6%
Not in labor force	47.6%	48.7%	-1.1%
Intend to raise child to adulthood	78.7%	79.6%	-0.9%
<b>Caregiver-child relationships</b>			
Grandparent-grandchild	43.4%	48.3%	-4.9%
Aunt/Uncle-niece/nephew	18.0%	18.1%	-0.1%
Foster parent-foster child	18.5%	17.2%	1.3%
Unmatched ethnic backgrounds	2.8%	3.3%	-0.5%
Sample N	1,197	1,228	

**Table 3.2**—Differences in sample characteristics of children and caregivers assigned to the Wisconsin subsidized guardianship demonstration from 2006 to 2009.

	Intervention	Comparison	Difference
<b>Child characteristics</b>			
Female	52.2%	47.7%	4.5%
White	26.1%	21.7%	4.4%
Black	76.3%	74.9%	1.4%
Race unknown	1.2%	1.3%	-0.1%
Hispanic origin	5.4%	7.7%	-2.3%
Diagnosed disability	11.6%	15.8%	-4.2%
Mental retardation	0.4%	0.8%	-0.4%
<b>Principal caregiver family structure</b>			
Married couple	7.5%	7.6%	-0.1%
Unmarried couple	13.7%	10.2%	3.5%
Single female	74.3%	78.8%	-4.5%
Single male	4.6%	1.7%	2.9%
Undetermined	0.0%	1.7%	-1.7%
<b>First 6 month placement setting</b>			
Pre-adoptive home	5.0%	3.8%	1.2%
Kinship foster home	81.7%	81.8%	-0.1%
Non-related foster home	10.8%	9.3%	1.5%
Group home	1.7%	1.7%	0.0%
Institution	0.4%	1.3%	-0.9%
Other	0.4%	1.1%	-0.7%
<b>Resource home structure</b>			
Married couple	35.4%	26.8%	8.6%
Unmarried couple	3.8%	6.0%	-2.2%
Single female	56.3%	57.9%	-1.6%
Single male	2.1%	4.3%	-2.2%
Not applicable	2.5%	5.1%	-2.6%
Title IV-E eligible	63.5%	59.4%	4.1%
Sample N (Children)	245	241	

**Table 3.3**—Differences in sample characteristics of children and caregivers assigned to the Tennessee subsidized guardianship demonstration in 2006-2009.

	Intervention	Comparison	Difference
<b>Child characteristics</b>			
Female	51.1%	49.4%	1.7%
White	40.9%	41.1%	-0.2%
Black	59.3%	59.3%	0.0%
Race unknown	0.8%	1.3%	-0.5%
Hispanic origin	2.3%	3.3%	-1.0%
<b>Diagnosed disability</b>			
Mental retardation	2.7%	3.5%	-0.8%
<b>Principal caregiver family structure*</b>			
Married couple	13.2%	10.8%	2.4%
Unmarried couple	2.6%	9.0%	-6.4%
Single female	69.2%	62.8%	6.6%
Single male	4.4%	6.7%	-2.3%
Undetermined	10.7%	10.8%	-0.1%
<b>First 6 month placement setting</b>			
Resource home	95.4%	97.0%	-1.6%
Group home	0.0%	0.3%	-0.3%
Institution	0.5%	0.00%	0.5%
Other	4.1%	2.7%	1.4%
<b>Resource home structure</b>			
Married couple	41.5%	39.7%	1.8%
Unmarried couple	2.0%	3.3%	-1.3%
Single female	49.4%	48.9%	0.5%
Single male	2.5%	5.1%	-2.6%
Not applicable	4.7%	3.0%	1.7%
Title IV-E eligible	44.3%	51.2%	-6.9%
Sample N (Children)	379	284	

\*Statistically significant at the .10 level.

**Table 3.4**—Differences in permanency outcomes and cumulative days spent in foster care ten years after randomization for children assigned to the Illinois subsidized guardianship demonstration as of June 2007.

	Intervention	Comparison	Difference
Combined permanency outcomes	87.0%	80.4%	6.6%
Reunification	5.2%	7.7%	-2.6%
Adoption	56.1%	72.1%	-16.0%
Permanent guardianship	25.7%	0.6%	25.2%
Average days of foster care	1,089	1,298	-209
Sample N	1,197	1,228	

**Table 3.5**—Differences in permanency outcomes and cumulative days spent in foster care four years after randomization for eligible children assigned to the Wisconsin subsidized guardianship demonstration as of September 2009.

	Intervention	Comparison	Difference
Combined permanency outcomes	69.0%	50.2%	18.8%
Reunification	5.7%	9.5%	-3.8%
Adoption	39.2%	36.5%	2.7%
Living with other relatives	1.2%	2.9%	-1.7%
Permanent guardianship	22.9%	1.2%	21.7%
Average days of foster care	490.1	631.1	-141
Sample N	245	241	

**Table 3.6**—Differences in permanency outcomes and cumulative days spent in foster care three years after randomization for children assigned to the Tennessee subsidized guardianship demonstration as of October 2009.

	Intervention	Comparison	Difference
Combined permanency outcomes	78.2%	67.0%	11.2%
Reunification	2.9%	3.0%	-0.1%
Adoption	30.3%	55.5%	-25.2%
Living with other relatives	4.3%	5.4%	-1.1%
Permanent guardianship	40.7%	3.0%	37.7%
Sample N	379	284	



fewer days in Milwaukee, Wisconsin. Data on paid foster care days were not available for Tennessee.

The findings from the replications of the Illinois demonstration in Wisconsin and Tennessee confirm that the observed effects of subsidized guardianship on family permanence can confidently be generalized beyond the particular policy context of the Illinois foster care system. Overall permanency rates are higher in the intervention group than in the comparison group in all three states and fewer average days of foster care are consumed in Illinois and Wisconsin. Similar reductions in paid foster care days are expected in Tennessee.

Subsidized guardianship offers an attractive alternative to adoption and appears to address many of the concerns that some relatives and caseworkers express about kin adopting their own family members. Unlike adoption, guardianship does not recast kinship relations into the nuclear family mold of parent and child. Guardians retain their extended family identities as grandparents, aunts, and uncles. It does not require the termination of parental rights, which legally estranges children not only from their birth parents but also from their unadopted siblings. Birth parents may still exercise a limited role in their children's upbringing. They hold on to certain residual rights and obligations, such as the rights to visit and consent to adoption as well as the obligation for child support. Children may also retain rights of sibling visitation. If circumstances change, parents may petition the court to vacate the guardianship and return the children to their custody, unlike adoption that is consummated only after the birth parents' rights to regain custody are permanently extinguished. Finally, guardianship limits the financial liability of guardians for the upkeep of their wards, unlike adoption that reassigns these financial obligations fully to the adoptive parents.

Despite these advantages, there are some concerns that subsidized guardianship will detract from the numbers of children who might be reunified or adopted in the absence of the guardianship subsidy. The first concern, however, is not borne out by results from the waiver demonstrations in Illinois, Wisconsin, and Tennessee. Across all three sites, there is scant evidence of an adverse effect of guardianship eligibility on reunification rates. The differences in the reunification rates between the intervention and comparison groups are well within the bounds of chance statistical fluctuation (see Tables 3.4 to 3.6).

On the other hand, the same cannot be said for adoption. Both Illinois and Wisconsin show evidence of a substitution effect. The possibility of guardianships' crowding out adoptions was foreshadowed early on during the Illinois demonstration (Testa, 2002). Even though there is

still a 6.6% permanency advantage a decade after the start of the demonstration, comparing the adoption proportions suggests that perhaps as much as two-thirds of the families that opted for legal guardianships in the intervention group might have eventually consented to adoption if the subsidized guardianship option were not available.

The findings from the Wisconsin and Tennessee demonstrations show mixed results on this issue of substitution effects. So far, the adoption trade-off has not been replicated in Milwaukee but there are indications of such a substitution effect in Tennessee. After three years of implementation, it also appears that as many as two-thirds of the children discharged to subsidized guardianship might eventually have been adopted in the absence of the waiver. Opinions about the practical significance of such a substitution effect appear to divide along the lines of whether people embrace the original meaning of permanence as “lasting,” which is rooted in the psychology of attachment, or accept the newer meaning of permanence as “binding,” which is rooted in the legal definition of permanence as a lifelong commitment that is legally enforceable (Testa, 2005). This newer emphasis on legally binding commitments is a recent innovation in permanency planning, and its application demotes guardianship in the hierarchy of permanency goals: adoption as well as reunification must be “ruled-out” before guardianship can be pursued as a permanency goal.

While there is consensus that permanency commitments should not be casually broken, not much is known about the extent to which the newer concept of permanence as binding confers much additional benefit above and beyond the original meaning of permanence as lasting. The answer to this question of trade-off ought to depend, in some measure, on whether there are meaningful differences in the qualities of permanence that are linked to a foster child’s being adopted compared to his or her being taken into legal guardianship. If there are no differences in outcomes than it could be argued that the deference to family preferences may be worth the trade-off. It’s impossible, of course, to observe what might happen if a child were adopted and then compare the (counterfactual) outcomes if that same child were instead taken into private guardianship. Simply comparing adopted children to children taken into legal guardianship will yield biased estimates of the differences between the groups because they tend to differ with respect to many other factors (e.g. age, prior residence with caregiver, and special child needs) that are also related to child welfare outcomes. It is necessary to adjust statistically for any differences before drawing any meaningful conclusions about the significance of any substitution effects.

A recent effort to control for selection biases with respect to the kinds of children taken into guardianship and adoption in Illinois found little difference in home stability rates among children discharged to legal guardianship compared to their nearest matches in the comparison group (Testa, 2010). In the absence of matching, the rate of instability was 1.81 times higher among the guardianship cases than among the adoption cases in the comparison group. This is commonly the type of observational comparison made by caseworkers and lawyers in their practice settings. But it is a misleading one because it fails to take into consideration the many differences in characteristics with respect to child age, behavior problems, degree of prior commitment by the caregiver, that differentiate children who are adopted versus those taken into legal guardianship. Once the appropriate adjustments are made statistically, the difference in the rate of instability falls to only 1.16 times higher among guardianship cases when ordinary least squares regression is applied and to 0.86 the rate when matching methods are applied (Testa, 2010). Thus both methods of statistical adjustment yield similar conclusions: the kinds of children and caregivers that select into guardianship are no more prone to break-up as a group than if they had remained in foster care or had become adopted.

The absence of a significant difference in stability rates among guardianship cases and what might have happened if the guardianship option didn't exist doesn't mean that agencies shouldn't be vigilant in guarding against potential substitution effects. The fact that Wisconsin was able to implement subsidized guardianship without cutting into its adoption numbers suggests that the substitution of guardianship for adoption is far from inevitable. Nonetheless, whether there are any practical gains to delaying legal permanence through guardianship in the hopes of converting a family to adoption is something worth considering.

#### **SECTION 4: THE FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008**

The early findings from the Illinois demonstration on the greater family permanence, shorter lengths of stay, and administrative savings in the intervention group than in the comparison group (Testa, Cohen, Smith & Westat, 2003), and the subsequent positive results for child safety and well-being as well (Testa, 2005), convinced the federal government to renew the Illinois waiver for another five years (U.S. Department of Health and Human Services, 2004). The evidence was compelling enough for the Pew Commission on Children in Foster Care (2004) to recommend amending title IV-E of the Social Security Act to fund guardianship assistance. Congressmen Danny Davis (D-IL) and Timothy Johnson (R-IL) acted on the Illinois findings and the Pew Commission recommendations by introducing bipartisan legislation in 2007, the

Kinship Caregiver’s Support Act (H.R. 2188), which authorized all states to offer federal guardianship assistance payments to relatives who assume legal guardianship of children under their foster care. Similar bi-partisan legislation had already been introduced in the Senate (S. 661) by Senators Hillary Clinton (D-NY) and Olympia Snowe (R-ME). Both pieces of legislation were subsequently taken up by the House Ways and Means Committee. The positive results from the replications in Wisconsin and Tennessee helped to fortify support for subsidized guardianship. The provisions were subsequently incorporated into the Fostering Connections to Success and Improving Adoptions Act that President Bush signed into law on October 7, 2008 (P.L. 110—351).

The passage of the Fostering Connection to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) was a significant step forward in helping children and youth who are at risk of long-term foster care. The legislation in its entirety promotes the finding of permanent families for foster children by supporting relative guardianships and older-child adoptions. In addition, provisions of the legislation support the extension of federal support for selected groups of foster, adoptive, and guardianship youth to age 21. The law also provides significant protections and supports for American Indian children.

A key element of the legislation is the creation of a federally supported Guardianship Assistance Program (GAP) for relatives. The GAP legislation affords states the option of using federal Title IV-E funds to support kinship guardianship payments for children living in the homes of relative foster parents who become the children’s legal guardians. There are several key program components related to the child’s and caregiver’s eligibility for guardianship assistance, which the state must honor in order to qualify for federal support. How the state implements these components can greatly affect the program’s perceived responsiveness to relative caregivers as well as the program’s appeal to judges, state budget examiners, local social service districts, program advocates, and other stakeholders.

## **SECTION 5: GUARDIANSHIP ASSISTANCE PROGRAM: PROGRAMMATIC COMPONENTS AND OPTIONS**

The federal GAP reflects key lessons learned from the IV-E waiver demonstrations. In other respects, it omits key portions from the legislation because of a lack of consensus over the desirability of certain elements of the demonstrations, such as the availability of guardianship subsidies to non-related foster parents and the eligibility of non-licensed kinship caregivers. The

following list describes the key programmatic components of GAP as defined in the final legislation:

### **Child's Eligibility**

- **IV-E Foster Care Eligible**

In order to be eligible for GAP payments, a child must be eligible to receive Title IV-E foster care maintenance payments while residing in the fully licensed home of the prospective relative guardian for six months. A state can opt to provide a non-IV-E eligible child a guardianship payment, but the subsidy would not be eligible for federal reimbursement (See state funded alternatives).

- **Judicial Determination**

To be eligible for a federally supported guardianship subsidy the child must have been “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 or that placement would be in the best interests of the child. Federal financial participation dollars are available for foster children in voluntary placement for 180 days. For Title IV-E reimbursement to continue beyond this point, a judicial determination that continuation in foster care is in the best interests of the child must be made within 180 days of placement.

- **Age**

The federal law does not allow for any eligibility restrictions based on the age of the child.

For those concerned about young children going to GAP it is important to remember why subsidized guardianship was incorporated into the Social Security Act. The entitlement was created to provide an economically viable permanency option that is responsive to the traditional values and informal norms of extended family care that have been practiced for generations regardless of the age of the child in need of permanence. Although guardianship may be especially good for older wards, who often present special concerns that make adoption difficult, it was not created to expressly to meet the needs of

older wards. GAP was created to meet the needs of relative caregivers of children of all ages who feel that adoption does not accord with their sense of family permanence.

- **Siblings**

The Act supports sibling relationships by requiring states to make reasonable efforts to place siblings together in foster care, kinship guardianship, and adoptive arrangements unless it is contrary to the safety and well being of any of the children. The Act further supports sibling relationships by allowing states to offer a federally reimbursable subsidy to a home where another sibling of the child is already in an eligible kinship guardianship arrangement without that sibling having to meet title IV-E requirements on his or her own. While states can require that each child must individually meet all of the IV-E eligibility criteria for guardianship in his or her own right, the lack of flexibility may cause caregivers and caseworkers to make clinical decisions at the expense of the timely attainment of permanence. For example, a caseworker may delay permanence for an eligible child so that he or she can exit to permanence at the same time with a sibling who may not yet meet the criteria. Allowing an otherwise ineligible sibling to go to guardianship with a sibling who has already exited the system to guardianship not only promotes sibling relationships but also can save the state/local social service district dollars that would have been spent to support the non-qualifying child in foster care.

- **Appropriateness of Guardianship**

The law requires states to determine that adoption and reunification are not appropriate for a child prior to pursuing the goal of guardianship. In instances where guardianship is being pursued, the law requires documentation in the child's case plan that describes the reason that guardianship with a relative is in the best interests of a child, efforts made to discuss adoption with the child's relative, why adoption was not pursued, and efforts made to discuss guardianship with the parents, and any reasons that such efforts were not made.

While documentation of efforts is required, states have the flexibility to define the meaning of "not appropriate." States such as Illinois have developed concrete criteria for making this determination including: 1) there are no grounds to terminate parental rights; 2) a child 14 years of age or older refuses to consent to adoption (after counseling has been provided), 3) a child has been listed with the adoption listing service for a year. In

addition, Illinois' criteria also made allowance for family sentiments, such as the caregiver was uncomfortable with altering family relationships.

To determine the appropriateness of a permanency goal, best practice supports full disclosure of potential options. Full disclosure allows members of the child and family team such as casework professionals, caregivers, birthparents and children, when age appropriate, to make a fully informed choice about which goal best meets the unique needs of the family. Safeguards are in place to ensure that quality decision making is utilized in practice. The law requires documentation in the case plan to support the decision as to why placement with a relative in a guardianship arrangement is in the best interests of the child. Furthermore, the decision of the child and family team will be reviewed by the court. Under existing law, the court charged with setting the child's permanency goal is responsible for determining that the goal is in the child's best interests prior to its establishment as the court ordered plan.

- **Consulting a child aged 14 years old or older**

According to the law, a child 14 years of age or older must be consulted about the guardianship arrangement. The law does not further define "consulted" so its precise meaning is left to the state. It appears that a standard guardianship order used in New York requires a child over the age of 14 to "express a preference for the appointment of the guardian." The inclusion of a child in the making of the permanency decision should be documented in the case plan per the law.

## **Guardian's Eligibility**

- **Definitions of Relative**

Although federal legislation limits the availability of guardianship to relatives, the law and other instructions disseminated by ACF provide no specific language for the definition of "relative." Each state, therefore, has the flexibility to craft a definition of relative for inclusion in their state plan. A definition is subject to approval from ACF, but once approval is granted the approved definition cannot be revoked by the federal government. OCFS' current definition includes relatives within the second degree or third degree to the parent or step-parent of the child. Half-siblings can live in the home of a "relative" as long as one child is related by definition to the caregiver. The current state definition does not include "fictive kin" or individuals who have a close relationship with

the child prior to placement, such as godparent or close family friend. Because these individuals typically have “familial-like” relationships with the children and birthparents, many of the issues that constitute barriers to adoption exist for these caregivers as well. Therefore, expanding the definition of relative beyond blood and marriage to include these other “fictive kin” relationships offers states the opportunity to expand the population that is eligible for GAP. To avoid objections that an overly broad definition of kin subverts the intentions of the law, a state may want to consider a narrower definition of kin that includes, for example, only godparents or close family friends acknowledged by the birth parents. A broader definition could also include anyone with whom the child has had a relationship that pre-exists placement, such as a neighbor, teacher, or coach. If the state has a statutory definition of relative, the legislation will need to be modified prior to the implementation of the program. It is important to note that if the definition is legislated it therefore applies to all state programs. OCFS will need to consider the financial and programmatic impact beyond subsidized guardianship. If there is no statutory definition, the state may define “relative” specifically for GAP in administrative rules and procedures. Illinois, Tennessee and Delaware all use an expanded definition of relative that includes individuals not related by blood or marriage. Illinois’ definition includes godparents. Rhode Island policy uses the following definition, “kin” or “relative” means an individual who is related to the child by blood, marriage or adoption. In addition, consideration may be given to placing a child with an individual, also considered to be “kin”, who is part of the family support system such as a non-related godparent, caretaker, close family friend, neighbor, clergy or other adult who has a close and caring relationship with the child. Tennessee’s definition includes persons with whom the child has a relationship that pre-exists placement such as teacher, neighbor, family friend, and clergy.

- **Background Checks**

According to the law, the prospective relative guardian must undergo a criminal record check that includes fingerprinting to allow checks of national crime information databases, and child abuse and neglect registry in states where the prospective guardian currently resides and any other state in which the prospective guardian resided within the past five years. If the state has established a timeframe for which such checks are valid, a new background check would not be needed if the caregiver’s most recent check falls within the prescribed timeframe. The federal law further stipulates that all individuals over the age of 18 who reside with the prospective guardian must have child abuse and



neglect registry checks completed. New York's current practice on background checks is more stringent than the federal law. New York requires the fingerprinting of all adults in the home who are 18 years of age or older and requires that all adults in the home undergo the same background checks as the prospective adoptive or foster parent.

- **Length of Time in Licensed or Approved Home and Length of Time in Foster Care**

As of March 23, 2010, the federal government changed its policy regarding restrictions on the length of time a child must reside in the caregiver's home before subsidized guardianship can be initiated. As a result, title IV-E agencies, if they so choose, may require children to have spent a specified period of time in foster care beyond 6 months and/or with the prospective guardian before they are eligible for title IV-E GAP.

However, to be eligible for IV-E reimbursement, the child must have resided in the fully licensed or approved home of a kinship foster parent for at least 6 consecutive months. When the six months standard must be met is ambiguous in the law and the Children's Bureau is exploring this issue. The 6-month minimum was imposed to ensure that casework and court professionals had at least a half a year to assess the viability of alternative permanency options, such as reunification and adoption, and the quality of the living arrangement. The latter includes satisfying the law's requirement that a state must determine and document that the child has a strong attachment to the prospective guardians and that the guardian is committed to caring for the child.

The inclusion of the minimum time frame in the law is, in part, intended to prevent the premature movement of the child to guardianship. Unlike the 15-of-22 month rule on termination of parental rights, it does not mandate states to pursue this option once the six month time frame has been passed. There are, in addition, other considerations and factors that will likely cause a child to be in the home much longer than the six-month minimum prior to the finalization of a guardianship order. These include reasonable efforts requirements, court processes and eligibility guidelines. For example, the law says that a child must be eligible for IV-E foster care maintenance payments for 6 consecutive months prior to the finalization of guardianship. This means that the home must first be licensed or approved before the 6-month clock can start ticking. Given that it takes most new relative caregivers 75-90 days to become fully licensed or approved, compliance with the IV-E eligibility requirement alone ensure that most children will be in the home longer than 6-months. In light of the factors that impact the length of time a child is in a

home before guardianship can be pursued, lengthening the prescribed time frame might unnecessarily lengthen a child's time in the foster care system by delaying permanence.

- **Legal Transfer of Guardianship**

The caregiver must be appointed the legal guardian after the subsidy agreement has been negotiated and finalized with the local social service district.

## **Guardianship Agreement Requirements**

- **Guardianship Agreement**

To receive federal reimbursement dollars a guardianship assistance agreement must be negotiated between the caregiver and the local social service district. It must be finalized prior to the transfer of guardianship and the caregiver must receive a copy.

- **Amount of Subsidy**

The law states that the subsidy available to kinship guardians cannot exceed the amount that would have been made available on behalf of the child if the child had remained in the foster care system. This means that states have the option of offering payments below the level that a child would have received while in foster care. As noted in Section 3, findings from the Maryland and North Carolina waiver demonstration caution against reducing the guardianship subsidy below the amounts for foster care and adoption. It follows that if guardianship subsidies are to reach their intended population, the amount should also be equal to those provided for adoption assistance. Providing different financial incentives to the family for choosing one permanency alternative over the other undermines the clinical aspects of making a permanency decision. The state should also consider mirroring adoption assistance rules and procedure regarding the adjustment of subsidy amounts based on the circumstances of the relative guardian and the needs of the child.

- **Non-Recurring Expense Reimbursement:**

In accordance with the federal law, states are to provide reimbursement for non-recurring expenses associated with the transfer of guardianship such as legal fees and travel expenses. The law allows up to \$2,000 in reimbursable expenses for covering such costs. However, the law does allow states to set a lower amount for reimbursement. States can

attempt to minimize the need for reimbursement dollars by providing legal representation for a prospective guardian rather than requiring the relative to hire a private attorney.

- **Length of Eligibility for Payments**

The law requires that states make guardianship assistance payments until the child turns 18. As with adoption assistance, a child can receive kinship guardianship assistance up to age 21 if the state determines that the child has a physical or mental disability which necessitates the continuation of the subsidy payment.

Beginning October 2010, states may opt to receive IV-E reimbursement for providing care and financial support to youth in guardianship arrangements until 19, 20, or 21 years of age if the youth exited to guardianship after the child turned 16 and is completing high school or an equivalency program, enrolled in post secondary or vocational school, participating in a program designed to remove barriers to employment, employed no less than 80 hours per month, or is incapable of meeting such requirements because of a medical condition. This also applies to youth living in adoptive homes or independent living settings, as well as foster family and group homes.

In New York, adoption assistance maintenance subsidies remain in effect until the child's 21<sup>st</sup> birthday if the adoptive parent is still legally and financially responsible for the child. The state could consider extending guardianship subsidies until 21 at state cost regardless of eligibility for IV-E reimbursement.

- **Out-of-State Residence**

The law requires that the kinship guardianship assistance agreement of a child who moves out of state must continue to be supported by the state of origin regardless of the state of residency of the relative guardian. All terms of the agreement will remain in effect and the state that entered into the agreement will be responsible for fulfilling the terms of the agreement.

- **Eligibility for Adoption Assistance after Guardianship**

According to the law, a child who is IV-E Adoption Assistance eligible at the time of the transfer of guardianship will maintain eligibility for adoption assistance as though the guardianship did not happen. This means that a child can shift from receiving

guardianship assistance to adoption assistance with the same caregiver without having to re-enter foster care. OCFS and local social service districts would need to consider the process for completing the necessary subsidy agreements. In addition, the districts would need to consider the level of legal support that would be provided to caregivers wanting to adopt. In Illinois, for example, the Department of Children and Family Services will facilitate the legal process for a transfer only in the event that the biological parent has died representing a significant change in the case since the guardianship was finalized or if termination of rights occurred prior to the transfer of guardianship.

- **Medicaid Eligibility**

The law makes children in federally reimbursable kinship guardianship arrangements categorically eligible for Medicaid just as they are through adoption assistance. It will be important for OCFS to apprise Medicaid officials of any changes in the law so that necessary accommodations can be made. Communication is critical to ensuring that eligible caregivers do not experience a disruption in medical coverage, for example by alerting guardians to the time that verification of eligibility remains valid (e.g. monthly or annual issuance of insurance cards).

Regarding children who reside in a state other than the state providing the child's IV-E guardianship assistance, correspondence from the USDHHS Center for Medicare and Medicaid Services states "the child must be made IV-E eligible in the State of residence, regardless of whether the State of residence covers kinship guardianship assistance under its IV-E state plan." Although the instruction is clear, it is probable that putting this policy into practice may be challenging. Currently there is no inter-state compact like ICAMA to regulate/monitor the practice around providing medical coverage to families residing outside the state providing the subsidy.

Because New York is considering making the permanency option available to non-IV-E eligible children, the state should consider making Medicaid policy for non-IV-E eligible children parallel to the practice for non-IV-E eligible children receiving adoption assistance.

For a child who is Title IV-E eligible, moving to another state after adoption will result in the transfer of responsibility for the child's Medical Assistance to the new state of residence. For a child who is eligible for Medical Assistance through MA/COBRA, if he/she moves to another state after adoption, the continuation of

MA/COBRA will depend on the policy of the new state of residence. However, the county responsible for the subsidy agreement will continue to be responsible for the Medical Assistance if the child is unable to obtain MA/COBRA in the other state or NYS medical subsidy if the child is otherwise eligible.

- **Chaffee and ETV**

Youth who are 16 years of age or older at the time they exit the foster care system to kinship guardianship or adoption are eligible for the same array of independent living services that would have been available to them if they had remained in foster care. This is an important provision, because often a caregiver, youth, child advocate, or attorney will delay the attainment of permanence to capitalize on the availability of such services. Some think that without this provision that exiting the system to guardianship at 16 or older is a “bad deal.” The support provided by Chafee services should make the attainment of permanence for older wards a more appealing option. In addition to Chafee services, this population will also be eligible for Education and Training Vouchers (ETV). New York State policy currently includes ETV for the population of youth who exit the foster care system to adoption.

- **Standard Protections Under IV-E**

All protections afforded to children under a IV-E state plan that are not specifically limited by the law to title IV-E Foster Care or Adoption Assistance Programs will also apply to the Kinship Guardianship Assistance Program. Some examples of these protections include fair hearings, confidentiality of information, program audits, program administration, interstate placements, school attendance, notice to relatives, home studies, and sibling placements.

### **Non-Federally Funded Program Alternatives**

- **Non IV-E eligible children**

There will be children living in the home of approved relative foster parents who are not IV-E eligible for GAP. The state must decide if it will allow non-IV-E eligible children to exit foster care to the GAP. From a financial perspective, it is prudent to allow these children to receive a subsidy. If a child is not Title IV-E foster care eligible, the state/district is currently absorbing both the administrative and maintenance portions of

the costs from state and local sources. If the child exits the system to guardianship, the state/district will assume only the maintenance payment cost because the ongoing administrative expenses will be eliminated or reduced to a nominal amount.

- **Transfer of subsidies in the event of death of the guardian**

Although federal law allows for the continued eligibility for adopted children in the event of the death of the adoptive parent, the Act does not provide for continued eligibility for the guardianship subsidy in the event that the child's guardian dies. For a child to qualify for a guardianship subsidy with another caregiver, the child would have to re-enter foster care and meet the eligibility criteria in the home of the subsequent relative. The economic hardships that impact relative foster parents typically impact those relatives who would step forward to care for the child in the event of the death of the guardian. If relatives cannot afford to care for the child without a subsidy, the child will likely have to re-enter the foster care system. Providing a state/local social service district subsidy would prevent the trauma of entry into foster care for the child and save local social service districts the administrative costs associated with foster care.

Currently, New York State policy allows for the transfer of an adoption subsidy for a child under the age of 18 to a legal guardian(s) or custodian who is appointed by the court following the death of the adoptive parent(s) for the purpose of payment of adoption subsidy. For a child over 18 the subsidy can be transferred to a guardian, adoptee, or representative payee. This policy could be extended to children receiving federally supported guardianship subsidies.

- **Post Permanency Services**

In New York, local social service districts are required to provide post-adoption services to families that need help with the often challenging transition from foster care to adoption. The post-adoption services may extend for short period or up to three years from the date that the adoption is finalized by the court. Social services provided by the districts may vary, but can include support groups and counseling and largely consist of linkages to community resources. The transition from foster care to guardianship can be just as challenging for a family as the transition from foster care to adoption. Therefore, just as with adoptions, post-permanency services to ensure that guardianship arrangements endure is critical to supporting the families.

In addition to providing necessary support to families, the availability of post-permanency services is a wise economic investment for the state. Just as with adoption, states should consider providing support services that prevent children from re-entering foster care, as ruptured permanencies would mean increased foster care caseloads and increased costs to the districts.

## **SECTION 6: KEY START-UP ISSUES**

In order to improve the prospects for the successful implementation of GAP, OCFS should prepare to address many key start-up issues. Full attention to these issues will increase the likelihood that state and local child welfare professionals will be fully equipped to implement GAP.

### **Statute, Rules, and Regulations**

#### *Legislation and Administrative Laws*

Many states implementing GAP will need to develop new legislation or modify existing legislation to reflect federal GAP standards. Although guardianship is referenced in the Social Services Law, Surrogate Court Proceedings, and Family Court Act, New York will need to ensure that the existing laws, as well as the NYCRR have been modified to reflect the availability of guardianship as a permanency goal and exit reason. In addition, it will be important that the law complies with criteria delineated under section 101 of the FCSIAA. All proposed changes must be officially adopted and submitted to the federal government along with the modified state plan.

### **Policy Considerations**

When crafting the legislation and rules that guide the GAP, there are many policy issues that will require considerations. Some examples are as follows (see components and alternatives for additional information):

- Definition of relative
- Length of time in the home of the relative
- Appropriateness of reunification or adoption as permanency goals
- Availability of health insurance / Medicaid eligibility
- Non-IV-E eligible children

- Unlicensed caregivers
- Guardianship disruptions
- Age related and cost of living increases for subsidies
- Out-of-state residence
- Availability of Chafee Independent Living Services and ETV
- Child support

## **Casework Practice and Procedures**

### *Assessment Materials*

Special attention should be paid to any assessment materials that are currently being used for adoption to decide whether to modify the tool or develop an alternative tool for making determinations about the appropriateness of guardianship for a family.

### *Subsidized Guardian Agreement and Related Paperwork*

GAP subsidy Agreements must be created to comply with federal and state documentation standards. The easiest way to promote compliance is to modify existing adoption subsidy agreements to accommodate the eligibility and reimbursement factors associated with GAP. Because eligibility criteria differ, guardianship subsidy agreements will be similar to, but not exactly like, adoption assistance agreements. Differences in eligibility requirements should be accounted for in the modification of the documentation. The New York State Adoption Service (NYSAS) has several forms that can be modified for use for the Kinship Guardianship Assistance Program. Some examples of the forms are as follows:

- Adoption Subsidy and Non-Recurring Cover Sheet and Expenses Agreement (LDSS-4623 and LDSS 4623A)
- Adoption Subsidy and Non-Recurring Adoption Expenses Agreement Technical Amendment and Upgrade/Substantive Amendment ( LDSS-4623C-1 and 4623C-2)
- Parental Certification of Continued Support and Educational Status of the Child (OCFS-7015)

### *Service Plans*

For states implementing GAP, the federal legislation requires that specific documentation be in



the case plan. Without the specified documentation states will be out of compliance and risk the withholding of IV-E reimbursement. The State of New York case plan requirements can be found in 18 NYCRR 428.6 “Family Assessments and Service Plans.” The specifics of the case plan requirements that must be added are as follows:

- The steps the agency has taken to determine that return home and adoption are not appropriate goals for the child;
- The reasons that siblings or half-siblings are not placed together;
- The ways in which the child meets the eligibility requirements for guardianship assistance payments;
- The efforts that have been made to discuss adoption with the relative foster parents and in the case where adoption is not chosen the reasons for this decision; and
- The efforts that have been made by the agency to discuss the guardianship assistance arrangement with the birthparent(s). If no effort has been made, the reason for this should be clearly documented as well.

## **Data Tracking/ Information Technology**

Changes to the state’s data system will be necessary and will impact data collection and reporting on IV-E eligibility, IV-E claiming, payments to families, and casework practice.

## **Fiscal**

### *IV-E Claiming and State Plan Amendments*

The IV E- state plan must be submitted by any state to the federal government to indicate the state’s intent to provide payment to relatives who assume guardianship of related children in foster care. In addition, to adding the necessary language the state will be required to cite and submit all state statutory, regulatory, and policy references. The state plan amendment pre-print can be found at <http://www.acf.hhs.gov/programs/cb>.

A title IV-E agency that is operating GAP is able to claim administrative and training costs associated with the administration of the program. The state must have an approved public assistance cost allocation plan that reflects these expenditures. It is important to note that IV-E reimbursement dollars have been made available through the federal legislation to populations that were not previously IV-E reimbursable. Training and administration dollars can now be accessed for training provided to private child welfare staff, judges, court personnel, attorneys,

guardians ad litem, other court appointed special advocates and current and prospective relative guardians. Allowable training costs and activities related to the GAP can be claimed at the designated FFP rate if documented in the title IV-B training plan and an approved cost allocation plan.

## **Communication and Training**

### *Communication Plan*

The successful implementation of a GAP typically hinges on getting “buy in” from those parties who will be engaged in the implementation of the program. Therefore, prior to implementation, it is critical to consider who will need to hear the message about GAP and to what extent they will need to understand the intricacies of the policies and procedures guiding the use of the program.

Most obviously, training and communication are essential components of increasing the likelihood that the GAP is utilized by state and local child welfare professionals. It will be critical to get the program message out to those professionals who facilitate the permanency planning processes for foster children, such as caseworkers, supervisors, attorneys, and judges. However, while getting the word out to agency and court staff is critical, there are many other stakeholders who will also be critical to the success of a newly implemented program such as child welfare advocates, kinship navigator and community program staff, budget officers, and legislators. Each one of these groups has the potential to derail the use of guardianship as a permanency option and therefore, the state should make sure that it has done its best to convey a consistent and concise message. The best way to ensure that all necessary parties are informed about the program is to create a communication plan. The communication plan should clearly delineate the following:

- **Target Audience:** Identify all of the groups and organizations that will need to be included in the “training” process.
- **Target Dates:** Identify target dates for all those in need of training. This helps to ensure that the state/localities have the time to promote stakeholder buy-in prior to implementation. Training dates should be scheduled well in advance to ensure that participants are able to attend and logistical details can be finalized. It is also important to consider the frequency of the training/communication. One shot training does not generally ensure buy in or promote adequate understanding of a program. This is

particularly true in light of caseworker turnover, but multiple opportunities to review a program helps to ensure understanding and use.

- **Contributions Needed from Target Group:** Identify what each group's critical contribution is to the success of the program. For example, judges are critical because they have to be willing to transfer guardianship from the public caregiver to the private individual stepping forward to assume responsibility for the ward. As a result, judges must support the use of guardianship as a viable permanency alternative for children in care for the program to be successful.
- **Goals/Objective for Target Group:** To ensure that the training/communication is productive, it is important to consider what needs to be accomplished. An example of a goal may be to ensure that all casework staff understand how to complete the Kinship GAP subsidy paperwork.
- **Communication Type:** Each training/communication should be tailored to meet the needs and job expectations of the specific group. Each group will not require the same degree of training. Some groups, such as court personnel, will need general information about the program philosophy, goals, and implementation. However, casework practitioners will require additional, detailed information on program policies and procedures to fulfill their work obligations.
- **Responsible Party:** Identify who will be responsible for training/communicating with the designated group. When identifying the responsible party, it is important to consider who will be the most effective communicator with the designated group. The target audience must be able to trust and relate to the person communicating the message.

An important detail to remember when establishing a communication plan is that professionals are busy. Most professionals are not looking to have more time obligations so make sure to take advantage of existing opportunities such as monthly administrative meetings, previously set aside training days, monthly organizational meetings, and network gatherings.

Finally, when communicating with professional it is critical to train/communicate prior to the implementation of the program. Professionals are more receptive when they feel like they are a part of the process rather than having the process foisted upon them. Training early and often gives those who need to utilize the program an opportunity to process the information, collect answers to unanswered questions, consider how it will impact daily work, and determine how it will be integrated into their practice in advance of the start of the program. When the program begins, those who have received training should be ready to hit the ground running.

### *Craft a Clear Message*

The creation of a new program creates opportunity to consider and redefine or support practice models and philosophies. The GAP gives OCFS an opportunity to convey a clear message about the agency's philosophy about permanence and how the program will enhance the state's permanency landscape. To capitalize on this opportunity, it will be important for the state/localities to craft a clear message about guardianship. No matter who is being trained they will need to have a clear understanding of the guiding principles. In order to do this effectively the following questions will need to be answered:

- What are the expectations for the lasting nature of guardianship?
- Which types of children should be considered for guardianship?
- How does guardianship compare to adoption as a permanency alternative? When is one option preferred over the other, and when are the options simply considered alternatives?

When implementing a GAP, it is important that the child welfare community understand the significance of the new permanency option for families. The message to the public should include a reminder about the historical role that kin have played in caring for related children, as well as the support that kinship care has provided to the foster care system. Although the benefits of living with family may seem obvious, there are still many professionals who work with children who believe in myths such as the apple doesn't fall far from the tree. Given that guardianship is an important means by which children can be discharged from the child welfare system that supports traditional kinship norms, the message should encompass the agency's philosophy on the role of families in the permanency planning process. Although, it is likely that the process for discussing/working with families to attain permanence has already been solidified, it is important that casework professionals and other stakeholders have a clear understanding of how guardianship fits into the established process. GAP training is a good opportunity for the agency to reiterate its philosophy about working with families to attain permanence and gives professional staff an opportunity to reflect on how they have been incorporating the philosophy into practice. Questions that the agency should be prepared to address when working with families are as follows:

- How should kin, birth families, youth and other professionals be involved in permanency planning?

- Who determines how permanency options are presented to families, which option is best for a child/family, and whether adoption and reunification has been determined as inappropriate for the child?
- What are the differences between adoption and guardianship that should be conveyed to the parties making the permanency decision?
- What are the specific roles and responsibilities of family and professionals in moving a case to guardianship?

Years of research on guardianship have demonstrated that there are several common concerns that professionals working with children and family have about the program. The issues that consistently are cause for concern are:

- GAP will not increase overall permanence
- GAP will displace reunifications
- GAP will undermine the attainment of adoptions
- GAP is less stable and is of less quality than adoption
- GAP will cost a state more money in the long run

The success of the program often hinges on a state's ability to clearly and concisely answer these questions. It is important to address the answers to these questions in the carefully crafted program message. The evidence provided in the previous sections will help provide the empirical support to give the argument strength.

### ***Allow Time to Process***

Introducing subsidized guardianship is a paradigm shift. All professionals involved with implementing the program will need time to process this change in the permanency structure. During the training sessions, give time for child welfare and other professionals to express and explore:

- Personal biases such as the belief that a caregiver should not receive a subsidy to care for a related child or the child will not be safe in the home of the relative without child welfare oversight are common concerns of professionals learning about subsidized guardianship for the first time. Without a chance to process the issues, the biases can prevent appropriate utilization of the program.
- Philosophical issues such as “guardianship is not as permanent as adoption” can also stand in the way of program utilization. It is important to give the

professionals time to discuss these issues with their peers. Peers can often offer support and insight for their colleagues that cannot always be delivered by a trainer.

### ***Appoint a Guardianship Guru***

To ensure quality implementation and utilization of the GAP, it is advisable to anoint someone as the “guardianship guru.” This point person should be the final arbiter for answering unsettled questions, trouble shooting, and coordinating solutions to guardianship issues. The guru will be responsible for encouraging the success of the program by helping the agency control the flow of information, encouraging program utilization, avoiding the spread of inaccurate information, and minimizing the frustration of stakeholders with understanding program complexities.

### ***Develop a Training Curriculum***

Any training curriculum should begin with the clearly crafted messages discussed above. This information is going to be critical regardless of the background of the participants. In addition, the training curriculum must clearly define as many of the “nuts and bolts” as possible.

For casework staff in particular, it will be necessary to clearly and completely define the process by which a child exits the system to a GAP arrangement. For casework staff the mechanics of guardianship are as critical as understanding the philosophy of the work because without the details the work cannot be completed. Therefore, it is important to work out as many of the of the practice details as possible before the start of the training. A solid training curriculum should include the following:

- History of kinship foster care
- Subsidized guardianship programs in other states
- Subsidized guardianship waiver findings
- Passage of FCSIAA
- Statutory, administrative rule and procedural changes
- Clinical considerations in the case assessment/permanency planning process
- Educational tools and resources
- Documentation and forms
- Working with the courts
- Other legal process and issues
- Information systems changes

Obviously, there are times when training must begin and the details have not yet been finalized or in some instances practice directives have changed. It is important that staff leaves the training with a clear understanding about how new or modified information will be shared or how directives can be accessed.

### ***Create Educational Resource Tools***

Child welfare staff is constantly receiving information on new programs. With all of the changes it can be difficult to integrate new information into practice after one training session. Therefore, it is important to create tools that can be used by professionals and caregivers for quick reference and education. Resources can include:

- Making the Adoption/Guardianship Decision
  - <http://www.state.il.us/dcf/docs/adoptigdmanl.pdf>
- Comparison Chart of Permanency Alternatives
  - <http://www.state.il.us/dcf/docs/adoptigdmanl.pdf>
  - <http://www.state.tn.us/youth/fostercare/spg.htm>
- Guardianship Fact Sheet/Summary
  - [http://www.state.il.us/dcf/adoption/SubGuardi\\_Fact.pdf](http://www.state.il.us/dcf/adoption/SubGuardi_Fact.pdf)
  - <http://www.state.tn.us/youth/fostercare/spg.htm>
- FAQ
  - <http://www.state.tn.us/youth/fostercare/spg.htm>
- Post Adoption Services Guide
  - [http://www.state.il.us/DCFS/docs/Post\\_Adopt.pdf](http://www.state.il.us/DCFS/docs/Post_Adopt.pdf)

New York State already has “Having a Voice and a Choice: A Handbook for Relatives Raising Children.” This document could be modified to include necessary Kinship Guardianship Assistance details. There is also a Foster Parent’s Guide to Adoption. A similar resource could be created for kinship foster parents to guide them through the guardianship process.

### **Family Court/ Legal**

It is important to consider judges and other court personnel as partners in implementing guardianship. There are several issues that will need to be addressed with the judges, Administrative Offices of the Court, and LSSD/state legal staff.

- Legal representation for families seeking guardianship

- Filing the petition for guardianship (process and whose attorney)
- Parental consent to guardianship
- Child consent to guardianship
- Legal representation for guardianship families returning to court (visitation issues, contested request to return the child to the biological parent)
- Requests to return the child to the biological parent
- Requests to dissolve the guardianship
- Legal responsibility for the child in the event of the death or incapacitation of the guardian
- Adoption after the transfer of guardianship
- Child support related issues
- Content of Guardianship Order (sibling visitation, parental visitation, modification of the order)

## **SECTION 7: ESTIMATES OF THE POTENTIAL EFFECTS OF GAP IN NEW YORK STATE**

The most rigorous method for drawing causal inferences about the potential effects of subsidized guardianship on family permanence is the randomized controlled experiment that was implemented under IV-E waiver authority in the states of Illinois, Tennessee, and Wisconsin. The question that its architects wanted to answer is what would happen if children who are denied subsidized guardianship instead are offered this option. Of course such comparisons can never be made at the individual level because it is impossible simultaneously to deny and to offer the option to each individual family. Instead evaluators have to fall back on high quality approximations to this impossible “what if” scenario (what statisticians call the counterfactual) by conducting a randomized controlled experiment to draw causal inferences at the group level. By employing a process such as a lottery, coin flips or table of random numbers to offer a chance selection of children and families this permanency option, administrators can feel confident that the characteristics of the intervention group (who are offered the option) and the comparison group (who are denied the option) are statistically equivalent on average within the bounds of statistical error. The thinking is that if the two groups start out looking statistically similar at the initiation of the experiment and then if any significant differences later emerge after implementation, administrators can be reasonably confident that the cause of the differences is



the intervention itself rather than any pre-existing group dissimilarities or concurrent policy changes (which affect both groups<sup>3</sup>).

As we noted above for the waiver demonstrations in Illinois, Tennessee, and Wisconsin, randomization succeeded in balancing the average characteristics of the two groups on a host of observed and (likewise unobserved) attributes of children and families (see Tables 3.1-3.3). Therefore it is acceptable to infer that the availability of subsidized guardianship was the prime reason for the significant boosts in permanency rates, shortened durations of foster care, and fewer proportions of children in long-term foster care that were observed across all sites. The fact that the experiment was replicated in different localities, at different times, and with similar results instills greater confidence in the generalization of similar impacts to other states that implement subsidized guardianship. Many child welfare administrators are now trying to determine if their state or local community is among the jurisdictions to which this generalization applies or instead is one of the exceptions to the rule. Short of replicating the sorts of rigorous evaluations that were accomplishable under IV-E waiver authority, there are other scientifically credible “quasi-experimental” methods for estimating the likely effects of subsidized guardianship in different jurisdictions.

### **Propensity Score Matching**

Evaluation methods that approximate the statistical equivalence that is best obtained through random assignment are called quasi-experiments. Over the past several decades, evaluators have made tremendous strides in conceptualizing the assumptions that need to be satisfied in order to draw valid causal inferences from non-experimental research and how best to approximate the necessary conditions using statistical methods.

One promising approach that was alluded to in Section 3 above is the method of “propensity score matching” (PSM). The concept is quite straight forward. The goal of PSM is to balance the average characteristics of two non-randomly formed intervention and comparison groups by matching subjects or units in one group to their nearest match in the other group. Some subjects or units will be unmatchable and must be dropped from the comparison. But those that remain will look on average similar to their matched counterparts, so the statistical equivalence that is best obtained through random assignment can be approximated to some extent (i.e., for those characteristics that are explicitly measured) with the use of PSM.

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<sup>3</sup> This assumes that the policy change does not “interact” with the assignment to the intervention group so that the impact is significantly greater or less for the intervention group than the comparison group.

Several years ago, one of us and another colleague published a study comparing the permanency outcomes for foster children placed with non-relatives to those of children placed with kin (Koh & Testa, 2008). The question we ideally wanted to answer is what would happen if the children who are placed in non-related foster homes were instead placed with kin. The use of PSM to approximate this impossible counterfactual seemed well suited to the interest at hand because of the difficulties with randomly assigning children to the foster care of strangers versus relatives. Instead, the “propensity” of children to be under the care of non-relatives was modeled using key predictors, such as child’s age, race, and reason for removal, to generate a “score” for each child. Scores indicated how likely it is that a child with a certain set of predictors would be residing in the foster home of non-relatives.

Fortunately, for the purposes of the study, there were some children with high propensities for kin placement who were nonetheless placed in non-related homes (maybe the worker was especially busy that day). Conversely, there were some children with low propensities who were nonetheless placed with kin (maybe the worker made a special effort to locate a family member). Matching children in the non-kin group to children in the kin group who shared nearly the same propensity score (nearest match) for being in non-related foster care resulted in a matched sample of children that looked equivalent on average with respect to characteristics, such as age at removal, child race, child disability, and reason for placement.

Comparing the permanency outcomes for the entire (unmatched) sample of children (“apples”) who were placed in non-relative care with the entire sample (“oranges”) who were placed with kin supported many of the commonly accepted findings about the differences between kin and non-kin foster care that had been previously reported in the research. The simple “apples-to-oranges” comparison, for example, indicated that children in non-relative foster care were more likely to be reunified and adopted than children in kinship foster care. When the comparisons were made for the “pears-to-pears” matched samples that were now balanced on many child and family characteristics, however, the permanency differences almost entirely disappeared. The only difference that still remained significant was that children placed with non-relatives were more likely to experience an initial placement disruption than children placed with kin. Because this difference in stability rates held up even after the two groups were matched to look statistically similar at initial placement, the result lent credence to the inference (drawing an analogy to experimental research) that kinship may be causally related to the higher observed rates of initial placement stability. The fact that the permanency differences disappeared after matching also suggested that one of the cardinal assumptions of causal inference, i.e., all significant confounders of the relationship between the intervention and

outcome have been accounted for in the predictive model, may have been unwittingly violated in previous studies. Even though PSM appears to have some advantages over other quasi-experimental techniques, such as regression adjustment, PSM unfortunately is also vulnerable to the same charge of “omitted variable bias.” This is the key reason why PSM and other quasi-experimental techniques can never entirely replace randomized controlled experiments since only randomization can balance the groups on both measured and unmeasured variables.

### **Application to Subsidized Guardianship**

The same method of PSM can also be applied to approximate the counterfactual of what would happen in states, such as New York, that did not have IV-E waiver authority if instead they had been granted a waiver to offer subsidized guardianship just like Illinois, Tennessee, and Wisconsin. To conduct this analysis, it is necessary to link children in New York kinship foster care to their nearest match that was randomly assigned to the experimental groups in the comparison states. Fortunately we are able to use AFCARS data from all four states going back several years to identify a common set of predictors of the kinds of children who were likely to be placed in New York kinship foster care compared to children in the experimental sites. Unfortunately not all of the variables that are available in AFCARS can be used as predictors because of missing information. For example, physical abuse cannot be used as a predictor because New York did not until recently report reason for removal to AFCARS. Similarly, foster family structure cannot be used because Illinois lacks information on the family structures of non-licensed relative foster parents since this information is only kept in licensing records.

Table 7.1 shows the predictors that were available for matching and the corresponding means or percentage distributions for both the unmatched and matched samples of children. The sample consists of children who were in active kinship foster care cases at the start of federal fiscal year 2006 (October 1, 2005) plus any additional children who were placed with kin during the fiscal year. The sample is restricted to children in kinship foster care since the federal GAP does not provide for subsidies to non-related foster parents who become legal guardians of children formerly under their care. The sample is also restricted to children who had been living continuously in their relative’s home for a year or more even though the federal program allows for a shorter 6-month duration. The restriction to children in kin homes for at least a year was the minimum duration that was allowable across all three IV-E waiver demonstrations at the

**Table 7.1**— AFCARS Data for Children in Kinship Foster Homes for a Year or Longer, Unmatched and Matched New York and Experimental Site Samples, September 30, 2005 In-Care Population and FFY2006 Entry Cohort

Predictors	Unmatched Samples		Matched Samples	
	New York State	Experimental Sites (IL, TN, WI)	New York State	Experimental Sites (IL, TN, WI)
Group size	5,460	8,590	4,214	4,214
Child's age				
Mean age at removal	4.8	4.8	5.0	4.9
Mean age at placement with kin	6.6	5.9*	6.5	6.4
Placement history				
Mean number of removal episodes	1.3	1.2*	1.2	1.2
Mean number of placements	2.0	2.3*	2.1	2.1
Mean days from removal to placement	408	328*	364	360
Child demographics				
Female	51%	49%	50%	50%
African American	58%	63%*	72%	73%
Non-Latino White	8%	29%*	10%	11%
Latino	23%	6%*	12%	12%
Other race/ethnicity	0.5%	0.2%*	1%	0.3%*
Race/ethnicity unknown	10%	2%*	5%	4%*
Programmatic				
IV-E claimable	38%	41%*	39%	38%
Pre FFY2000 entry cohort	4%	4%	4%	4%
FFY2000 entry cohort	2%	2%	2%	2%
FFY2001 entry cohort	3%	3%	3%	3%
FFY2002 entry cohort	6%	6%	7%	7%
FFY2003 entry cohort	8%	11%*	9%	9%
FFY2004 entry cohort	15%	21%*	16%	16%
FFY2005 entry cohort	25%	29%*	26%	26%
FFY2006 entry cohort	36%	24%*	33%	34%

\*Significantly different from the New York sample at the .01 level.

relative's home. This rule mimics that eligibility requirements for assignment to the demonstration in all three of the experimental sites.

Table 7.1 flags with an asterisk those differences that are statistically significant at the .01 level. This means that if the two samples were randomly drawn from the same population of children, we would be wrong only one time out of a hundred in concluding that there was a difference in predictors (characteristics) when in actuality there was no difference. Because the ability to detect a statistically significant difference improves with larger sample sizes, several of the differences in the unmatched sample are flagged as significant even though the size of the difference does not appear to be important in a practical sense (e.g. number of removal episodes). On the other hand, there are some differences that are quite large in a practical sense and are likely to confound any extrapolation from the experimental sites to the New York experience.

The first important difference is the much longer average length of time that elapsed from the time of removal until children were placed into the relative's home. The second is the much higher proportion of Latino children and much lower proportion of non-Latino white children in the New York sample compared to the experimental sample. This Latino difference, in particular, makes it especially challenging to find suitable matches since only 6% of children in the experimental sites are of Latino origins compared to 23% in New York.

Further complicating the matter is the fact that AFCARS does not differentiate the Latino population by country of origin so that it is very likely that New York children of Puerto Rican descent are being matched to children of Mexican descent in the experimental sites. The challenges in finding suitable matches for Latino children help to explain why only 77% of the original New York sample was matched to the sample in the experimental sites. Almost two-thirds of the unmatched New York children are of Latino origins and 30% are coded as race unknown.

Among the 77% of children that could be matched, all of the important differences observed for the two unmatched samples were wiped away. With the exception of the trivial differences between children of other or unknown racial or ethnic backgrounds, all of the remaining differences between the two matched samples are statistically negligible. This reduction in the selectivity biases associated with the placement of children in New York versus children in the experimental sites improves the credibility of extrapolating from the matched experimental sample to the matched New York sample. Although not as strong as the causal inferences that may be drawn from randomized controlled experiments, PSM offers a high quality approximation for estimating what might have happened after September 2005 if New York State had been able to implement a IV-E subsidized guardianship program similar to the programs in Illinois, Tennessee, and Wisconsin.

Table 7.2 displays the before and after-matching outcomes for children who stayed in or exited from kinship foster care as of September 30, 2009. Most notable is the significant permanency differences between the New York and experimental samples, which remains after matching. Although the difference diminishes with the removal of measurable confounding influences, a 9 percentage-point advantage for the experimental sites still persists. This result suggests that New York is also likely to experience a significant boost in family permanence if the state were to implement the federal GAP. At the same time, this net boost could come at the expense of a small reduction in reunifications and a larger reduction in adoptions. The concern about the implications of trading-off an overall higher rate of family permanence at the expense of some losses in adoptions is an issue that has been raised before in the Illinois and Tennessee evaluations (Testa, 2005; Testa & Cohen, 2009). As noted above, the substitution of guardianships for adoptions has not yet happened in Milwaukee, Wisconsin after four years of implementation (Testa, Slack, Gabel, Evans, & Cohen, 2010).

**Table 7.2--** Permanency Outcomes as of September 30, 2009 for Children in Kinship Foster Homes for a Year or Longer, Unmatched and Matched New York and Experimental Site Samples, September 30, 2005 In-Care Population and FFY2006 Entry Cohort

	Unmatched Samples			Matched Samples		
	New York State	Experimental Sites (IL,TN,WI)		New York State	Experimental Sites (IL,TN,WI)	
			Diff.			Diff.
Group size	5,460	8,590		4,214	4,214	
Long-term foster care	42%	30%	12%	43%	34%	9%
Still in care	34%	22%	11%	34%	25%	9%
Runaway	0.2%	0.0%	0.2%	0.2%	0.0%	0.2%
Transfer to another agency	0.1%	0.0%	0.1%	0.1%	0.0%	0.1%
Reached majority age	8%	8%	1%	8%	8%	0%
Exited foster care	58%	70%	-12%	57%	66%	-9%
Reunification with parents	24%	21%	3%	24%	22%	2%
Adoption	30%	27%	3%	29%	23%	6%
Permanent Guardianship	0%	19%	-19%	0%	18%	-18%
Living with other relatives	4%	3%	1%	4%	3%	1%

Before the availability of federal guardianship subsidies, the substitution of guardianships for adoptions at the magnitude suggested above would have certainly doomed the affordability of any state guardianship program. This is because the state would be replacing a federally reimbursable option of adoption for an entirely state-funded option of guardianship. Fortunately this concern has been rendered moot by the passage of FCSIAA. Now both options stand on equal fiscal footing with respect to federal reimbursement. Nonetheless the affordability concern still remains for reunifications with parents and discharges to the legal custody of relatives in which no ongoing financial support is provided from child welfare resources. While it is the case that such families could qualify for TANF grants, the amounts of these payments are substantially less than subsidized guardianship if the subsidies were to be maintained at the same level as foster care. Furthermore, TANF maintenance payments to needy relatives expire after 5 years, and while the child-only allotments can be continued beyond five years, they can only be paid until a child is 18 or 19 at the oldest whereas guardianship and adoption subsidies can continue in some cases until age 21.

The results from the PSM analysis help to put into perspective the magnitude of the affordability concern regarding the substitution effects on reunification and discharges to relatives. Contrary to some expectations, the availability of subsidized guardianship does not appear to impact rates of family reunification in any large way. This was a key finding from all three randomized control experiments. The same result appears to hold for the present study. As shown in Table 7.2, the rates of reunification look quite similar for children in both the New York and experimental samples. In fact looking across the board across states at all of the matched and unmatched sites suggests that at best only 20% to 25% of children have any real prospects of being reunified with their birth parents after they have spent more than a year with their extended family.<sup>4</sup>

It is largely the case that relatives are just as interested as child welfare administrators in taking advantage of reunification prospects to the fullest extent possible. As we learned from focus groups that we convened with kin in the early 1990s (Testa et al., 1996), few grandparents, aunts and uncles relish the thought of looking after their grandchildren, nieces, and nephews if the children's birth parents are competent and capable of fulfilling these responsibilities. The

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<sup>4</sup> The reason that the reunification percentages reported in Section 3 above are so much lower than the percentages reported in the matched sample is because the results from the wavier samples were based on only those families that were eligible for caregiver interviews. Since children who were reunified with their parents were ineligible for caregiver interviews, the percentages of children reported as reunified under represent the actual number of children assigned to the demonstration who were reunified.

family's first preference for the children to be reunified may help explain why the availability of subsidized guardianship doesn't appear to affect reunification rates adversely.

By far the greater affordability concern has to do with whether relatives will continue to accept legal custody of the children, as a discharge outcome from foster care, once it becomes widely known that they could qualify for ongoing financial assistance if they were to instead assume legal guardianship of the children. The courts in New York possess the authority to award to relatives either the legal custody of the child or the guardianship of the person of the child. Both custody and guardianship are judicial mechanisms for reassigning day-to-day responsibilities for the care and control of a child. The actual practice of awarding legal custody or guardianship of the person to relative foster parents tends to vary from county to county in New York, but the bottom line is that only legal guardianship qualifies for a federal subsidy under the GAP. This naturally gives rise to the suspicion that subsidized guardianship will crowd out legal custody as a discharge option. Because legal custody doesn't come with ongoing financial assistance from child welfare resources, the financial worry is the same as for reunifications. Families will opt to take the higher-cost option of subsidized guardianship (for the state, at least) over the lower-cost option of legal custody.

The use by the courts of the mechanism of legal custody to discharge foster children from the care of the state to the custody of relatives is a practice that is not without controversy. In fact the accusations of undue pressures being placed on families became so acute in Chicago in the early 1990s that the Cook County Juvenile Court issued an injunction that forbade the state child welfare department from cajoling relative foster parents into accepting legal custody under the threat of removing the child if the family desired to remain in the foster care system (Testa, 1997). We do not mean to imply that undue pressure is now being placed on relatives to accept legal custody in jurisdictions that continue to permit the practice. But it does seem that the prospect of forfeiting foster care assistance may set an upper limit on the proportions of kin who are able and willing to support their grandchildren, nieces and nephews out of their own pockets or with TANF and accept legal custody of the children.

In New York City, past trends indicate that at most only 4% of children who have been residing with kin for more than a year will exit foster care to the legal custody of relatives. The overall percentage is higher in upstate counties. In Table 7.2, the data suggest that the upper limit on legal custody may be reached within 4 years time for the state as a whole. Interestingly, almost the same fraction exit to the legal custody of kin in the experimental sites. This suggests that perhaps a small fraction of kin may be willing to exit foster care regardless of the financial



implications for their family finances. Otherwise they would have remained in foster care. The fact that these cases clear out early in the placement process also suggests that the desire to be free of the foster care system may be the overriding motivation for these families even if it involves a substantial loss in financial aid. Whatever the true reason, the lack of meaningful differences between the proportions exiting to legal custody between the New York and experimental samples cautions against making the blanket assumption that guardianship will invariably crowd legal custody as a discharge option.<sup>5</sup>

The data presented in Table 7.2 suggest that the more likely outcome for relatives where birth parents are unable to safely resume daily care giving responsibilities is for them to remain as foster parents. Although many might eventually agree to adopt the children in their care, a sizeable proportion will remain in the system until the children age out of foster care. This fact is more clearly seen with the data presented in Table 7.3, which restricts the follow-up time to those children who remain with same relatives with whom they were originally residing at the start of the observation period.

A key finding from the randomized controlled experiments that was mentioned above is also visible in Table 7.3, that is, the stability of placement in the relative's home appears to be unaffected by the availability of subsidized guardianship. Identical proportions exited their relative's home to another foster placement in both the New York and experimental samples. This observation reinforces a point made a few years ago that legal status appears to have much less significance for the stability of family life than is commonly supposed (Testa, 2005). What seems to matter more instead is the quality of the personal and social relationships between the caregiver and the child. Changes in legal status appear to come after the fact as a way of solemnizing a commitment that is already rooted in lasting family relationships. From this perspective, subsidized guardianship adds another mechanism for granting legal recognition to a stable, committed relationship that already exists without demanding too harsh a financial sacrifice from the families willing to take such a step.

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<sup>5</sup> The upper limit of 4% to 6% on legal custody outcomes applies only to the larger, more urbanized counties and jurisdictions in Illinois, New York, Tennessee, and Wisconsin. Outside of these areas, reliance on legal custody can sometimes account for as many as 20% to 60% of all discharges from kinship foster care. Since these less urban jurisdictions serve only about one-fifth of the kinship foster care population, and less so in New York, the lesser reliance on legal custody in the other jurisdiction pulls down the overall proportion to 6%. In Illinois, where the practice is discouraged, less than 1% of children are discharged to the legal custody of kin. This has been the pattern since an injunction against the practice was imposed in 1995. Outside of New York City, the rate of discharge to legal custody in Upstate New York is 8%. Outside of Nashville and Memphis, the rate is 17%, whereas outside of Milwaukee, the rate is 28%.

**Table 7.3—** Outcomes as of September 30, 2009 for Children in Who Remained with the Same Relatives They were Residing with at the Start of the Observation Period, Unmatched and Matched New York and Experimental Site Samples, September 30, 2005 In-Care Population and FFY2006 Entry Cohort

	Unmatched Samples			Matched Samples		
	New York State	Experimental Sites (IL, TN, WI)		New York State	Experimental Sites (IL, TN, WI)	
		Diff.			Diff.	
Group size	5,460	8,590		4,214	4,214	
Moved from relative's home to another foster placement	25%	25%	0%	26%	27%	-1%
Never moved from relative's home	75%	75%	0%	74%	73%	1%
Still in foster care	21%	13%	8%	21%	14%	7%
Reunified from relative's home	20%	16%	4%	21%	15%	6%
Adoption	25%	24%	2%	24%	21%	4%
Permanent Guardianship	0%	17%	-17%	0%	16%	-16%
Living with other relatives	3%	3%	0%	3%	3%	0%
Runaway	0.1%	0.0%	0.1%	0.1%	0.0%	0.1%
Transfer to another agency	0.1%	0.0%	0.1%	0.1%	0.0%	0.1%
Reached majority age	6%	3%	3%	6%	4%	2%

The data in Table 7.3 illustrate that when the financial disincentives are removed, a sizeable fraction of relatives, 16% to 17%, are willing to accept the responsibilities of guardianship of the persons of the children already under their foster care. Assuming that the net permanency boost of 9 percentage points (see Table 7.1 above) that is observed for the matched samples also applies to the unmatched children in the New York sample, a reasonable projection is that implementation of a IV-E guardianship program at the start of federal fiscal year 2006 would have resulted in a net addition of 500 permanencies over the next four years from among the 5,560 children who had been living with relatives in New York for a year or more during federal fiscal year 2006.

## **SECTION 8: ESTIMATES OF THE POTENTIAL FISCAL IMPACTS ON THE STATE AND LOCAL DISTRICTS**

The fiscal savings from a net additional 500 permanencies through legal guardianships are entirely on the administrative side. Were those children to remain in long-term foster care, they would have continued to require routine casework visitation, administrative supervision, and the attention of the courts, which could cost as much as \$12,000 per child annually for counties that now pay administrative overhead fees to contract foster care agencies in addition to the board rate (Carrion, 2010). The costs on the board side are largely a wash since subsidized guardians would continue to receive the same maintenance payments that they received as foster parents, although some states are able to reap some savings because day care subsidies are discontinued and cost-of-living adjustments aren't always passed along to legal guardians. Additionally, states may elect to offer a lower subsidy amount to legal guardians than what they could receive as foster parents. The legislation in New York allows for payments as low as three-fourths of the foster care rate if the local district does so for adoption and the family's income is higher than 140% of the State's income standard.

In order to estimate the net administrative savings that might result from reductions in the length of stay (LOS) in foster care, it is necessary to project the LOS differences that would arise from the introduction of subsidized guardianship. This is best done using the matched sample of New York kinship foster care cases since PSM removes some of the important confounding influences by selecting those experimental cases that are most like the kinship foster care cases in New York in terms of sex, age, race, ethnicity, and prior foster care experience. The simplest comparison imputes the same LOS dynamics observed in the experimental sites to the matched sample of kinship foster care cases in the New York sample. Comparing the sum of foster care days and mean length of stay in column 1 to column 2 in Table 8.1 shows an 11% difference in the length of stay between the New York and the experimental sites. This suggests a reduction of 105 days of foster care per child at the end of four years that would result from the introduction of a federal guardianship assistance program. When applied to the entire population of 5,460 children who were in New York kinship foster care for a year or more on October 1, 2005 or entered during the federal fiscal year and stayed longer than a year, the reduction in the average length of stay translates into 573,000 fewer days of paid foster care (assuming the same permanency dynamics for the matched and unmatched cases). For counties that now pay administrative overhead fees to contract foster care agencies, the administrative cost savings

**Table 8.1**— Sum of Foster care Days and Mean Length of Stay (LOS) as of September 30, 2009 for Children in Kinship Foster Homes for a Year or Longer, Unmatched and Matched New York and Experimental Site Samples, September 30, 2005 In-Care Population and FFY2006 Entry Cohort

	New York State	Matched Experimental Sites (IL, TN, WI)	
		LOS Dynamics in Sites	LOS Dynamics in NY
Group size	4214	4214	4214
Sum of foster care days	4,076,081	3,633,865	3,758,454
Mean LOS	967.3	862.3	891.9
% Difference		-11%	-8%
	Sum of Foster Care Days by Exit Status		
Long-term foster care			
Still in care	1,964,022	1,452,999	1,452,203
Runaway	7,668	460	852
Transfer to another agency	5,484	1,633	2,194
Reached majority age	282,690	283,702	287,679
Exited foster care			
Reunification with parents	664,376	634,534	600,544
Adoption	1,030,018	665,659	816,098
Permanent Guardianship	0	490,693	490,693
Living with other relatives	119,805	81,520	94,874
Missing	2018	22,665	13,319
	Mean LOS by Exit Status		
Long-term foster care			
Still in care	1364.9	1365.6	1364.9
Runaway	852.0	460.0	852.0
Transfer to another agency	1096.8	816.5	1096.8
Reached majority age	831.4	819.9	831.4
Exited foster care			
Reunification with parents	651.3	688.2	651.3
Adoption	842.2	687.0	842.2
Permanent Guardianship	0.0	663.1	663.1
Living with other relatives	692.5	595.0	692.5

resulting from the LOS reduction could be as much as \$18.8 million (= \$32.87 x 573,000) over the full four years.

The assumption that the same LOS dynamics observed in the experimental sites after the introduction of subsidized guardianship would also apply to the matched cases in New York is realistic only for the children who age-out or remain in foster care since the samples are matched on age, entry into foster care, and time in care prior to kinship placement. The mean LOS is almost identical for these groups as shown in the bottom panel of Table 8.1. With respect to discharge dynamics, however, the assumption is less tenable, especially with respect to adoption.

Whereas the average time from the start of the observation period (October 1, 2005) to the finalization of adoption is 842.2 days in New York (see Table 8.1), the average time to adoption in the experimental sites is 687.0 days. New York State statistics are heavily dominated by discharge dynamics in New York City. But the lengthier average time to adoption also applies to areas with large kinship foster care populations outside of the City: 779.4 in Westchester County, 816.2 in Orange County, and 806.7 in Suffolk County. These compare to the following average times to adoption in the experimental sites: 563.1 in Milwaukee, 569.5 in East St Louis, IL, 595.2 in Nashville, 615.1 in Peoria, 617.7 in Memphis, and 644.8 in Chicago. Some of this difference probably reflects more adversarial legal processes in New York courts compared to other juvenile and family court jurisdictions. The differences also appear with respect to reunifications, where the average times in New York (with the notable exception of Chicago) are also lengthier. Whether Chicago's atypically long average time of 757.2 days to family reunification compared to New York City's of 674.7 reflects greater risk adversity in Chicago courts or a more challenging population to reunify given the low removal rate in Chicago is difficult to assess. Nonetheless the assumption that the same discharge dynamics apply both to New York and other jurisdictions outside of New York seems faulty.

The results listed under Column 3 in Table 8.1 arise from our attempt to accommodate different permanency dynamics by imputing the LOS dynamics observed in New York to the matched cases in the experimental sites. As noted above, the results don't vary much between columns 2 and 3 for children in long-term foster care. With respect to adoptions, however, and to a lesser extent living with other relatives, the increases in the sums of foster care days are much larger when New York dynamics are applied to the experimental cases than when the observed dynamics are used.

Comparing now the sum of foster care days and mean length of stay in column 1 to column 3 in Table 8.1 shows an 8% difference in the length of stay compared to the 11% reported above. This suggests a reduction of 75 days of foster care per child at the end of four years that would result from the introduction of a federal guardianship assistance program. When applied to the entire population of 5,460 children, the reduction in the average length of stay now translates into 412,000 fewer days of paid foster care (again with same caveat about permanency dynamics for the matched and unmatched cases). For counties that pay administrative overhead fees to contract foster care agencies, a more conservative estimate of the administrative cost savings would be in the neighborhood of \$13.5 million (= \$32.87 x 412,000) over the full four years. Again this applies only to the children in care or entering during FFY 2006.

### **Offsetting Costs after Permanence**

The estimated cumulative administrative savings of \$13.5 million over four years have to be balanced against the extra costs of continuing maintenance payments to legal guardians who might otherwise accept legal custody without a subsidy or participate in the return of the children to their birth parents. It can be inferred from the data presented previously in Table 7.2 that approximately half of the 18% of matched cases that exit to subsidized guardianship in the experimental sites might remain in foster care if subsidized guardianship were not implemented in New York, but the other 9% might be reunified (2%), discharged to the legal custody of kin (1%), or adopted (6%). As already noted, the substitution of subsidized guardianships for adoptions is a wash from a fiscal point of view since both children continue to receive subsidies after permanence until they turn age 18 or 19 or older. But the substitution of subsidized guardianships for reunifications and legal custodianships, even if the percentages are small, can be substantial in dollar terms because financial assistance from child welfare resources ends after the children are discharged to parental or relative custody.

To gain some feel for how much of the administrative savings would have to be reinvested into additional assistance payments, the length of stay calculations were rerun under the assumption that subsidies for adopted children and legal wards would continue until their 18<sup>th</sup> birthday. This adds an additional 51,000 days of financial assistance that would have to be supported from state or county child welfare resources over the full four years. At an average foster care boarding rate of about \$20 per day in New York, the additional costs would trim about \$1.0 million from the \$13.5 million in administrative savings. A reason why the drain isn't larger is because some children who are reunified recycle back into foster care. Approximately 9% of reunifications in the matched New York sample and 12% in the matched experimental

sites reentered foster care during the period of observation. This compares to less than 2% of guardianships. Still another reason why the offset isn't larger is that children who remain in long-term foster care in New York seldom lose their benefits at age 18. Extending the adoption and guardianship subsidies to age 19, however, would trim only an additional \$310,000 from the administrative savings. Although the size of the offset is fairly modest, the drain on savings would undoubtedly grow larger as subsidies continue to be paid out beyond September 30, 2009. But the magnitude is unlikely to be to the degree that turns the savings from the administrative side into net spending deficits on the subsidy side.

### **Alternative Cost Allocation Methods**

From the perspective of New York taxpayers, spending on subsidized guardianships rather than on long-term foster care is a worthwhile investment not only because it saves dollars but also because it brings legal permanence to hundreds of children who otherwise would spend the rest of their childhood in state custody. The method by which the costs are to be allocated and resulting savings distributed among local districts and with the state government, however, is a highly contentious matter depending on the formula used to apportion costs among local, state and federal revenues.

Since 1995, New York State has relied on the Foster Care Block Grant to allocate state revenues among the state's 58 social services districts to fund the delivery of foster care services. The block grant is intended to constrain the use of foster care placements by capping state reimbursement to local districts for foster care payments and administration and offering financial incentives to reduce the numbers of children in foster care. The goals of reduction are also promoted by funding adoption subsidies outside of the block grant with the state's picking up 75% of the non-federal share of costs from state revenues and the remaining 25% coming from local resources.

In keeping with the philosophical principles of safe reduction in the use of foster care placements and promotion of legal permanence, the allocation of the costs of guardianship assistance payments should logically follow the same funding pattern used for adoption assistance. At any other time, this undoubtedly would be the favored choice by all interested parties. But at this time of unprecedented state deficits, adding assistance for another 500 permanent placements to the state's side of the spending ledger would exacerbate the state's budgetary problems. As an aside, this would also be an issue if adoptions were suddenly to

increase by an additional 500 cases, but no one is anticipating such an increase in permanence in the absence of subsidized guardianship.

The current fiscal climate appears to leave New Yorkers with a choice between two less desirable alternatives: 1) postponing implementation of the federal guardianship program until the fiscal climate improves and depriving hundreds of children of legal permanence in the meantime, or 2) figuring out a way to tap into that portion of the block grant that would otherwise have been spent on long-term foster care to fund guardianship subsidies and thereby depriving local districts of some of the financial incentive for pursuing permanence. The Governor's proposed 2011 budget opts for the latter choice, but the proposal has elicited criticism from social service district administrators and child advocates (New York Public Welfare Association, Inc., 2010; Citizen's Committee for Children of New York, Inc., 2010).

In order to acquire a better sense of the fiscal implications of various cost allocation methods, four simulations were conducted that estimate the net savings and bonus payments to districts under different cost allocation methods. So that the effects of different allocation methods can be gauged at the district level, the matched sample is grouped into five comparison districts and five experimental districts. The simulations assume that the experimental districts respond to a hypothetical subsidized guardianship initiative begun in FFY 2006 in New York using propensity score matching methods to generate the counterfactual estimates of the financial impact of subsidized guardianship, while the comparison districts adhere to the factual status quo.

Table 8.2 starts with the FY 2010 baseline allocation that is generated from historical foster care claims from July 1, 2008 to June 30, 2009. The first simulation (SI) assumes that subsidized guardianship is funded identically to long-term foster care. Under this scenario, guardianship subsidies are included in the historical claims for foster care payments but are excluded for the calculation of the bonus set-asides tied to foster care reductions from October 1, 2005 to September 30, 2009. The next simulation (SII) assumes that subsidized guardianship is funded outside of the block grant just like adoption assistance at a 75% state and 25% local allocation of costs of the non-federal share. SIII assumes that subsidized guardianship is funded within the block grant so that guardianship cases are counted as foster care cases for the base allocation but as a reduction in foster care days for the bonus set-aside. Finally, SIV assumes like SII that subsidized guardianship is funded outside of the block grant but at a 65% state and 35% local allocation of costs of the non-federal share.



Table 8.2—Net Savings and Bonus-Asides for Fictional Districts under Alternative Cost Allocation Methods, Matched Samples of Children in Kinship Foster Care

Comparison	Baseline	Net Savings/Bonus Set-Asides			
		I	II	III	IV
District C1	\$26,350,380	\$0	\$0	\$0	\$0
District C2	\$525,420	\$970,521	\$432,266	\$468,391	\$432,266
District C3	\$553,060	\$0	\$0	\$0	\$0
District C4	\$498,240	\$0	\$0	\$0	\$0
All other	\$2,470,320	\$0	\$0	\$0	\$0
<b>Intervention</b>					
District I1	\$14,844,140	\$0	\$2,156,954	\$41,385	\$2,031,517
District I2	\$3,741,400	\$194,472	\$88,402	\$913,872	\$54,847
District I3	\$3,311,300	\$4,846,373	\$3,601,583	\$4,505,458	\$3,562,748
District I4	\$91,160	\$283,800	\$300,096	\$366,061	\$298,419
All other	\$10,566,240	\$0	\$756,945	\$0	\$713,691

The baseline estimates assume an average daily foster care maintenance rate of \$20.00. They are based on historical claims for foster care days and hypothetical guardianship subsidy days for the period from July 1, 2008 to June 30, 2009. The first thing worth noting is that each of the comparison districts, with the exception of District C2, is unaffected by any of the changes in cost allocation methods. This is because it is assumed that none of these districts award guardianship subsidies. As a result, the sizes of their respective kinship foster care populations either increase or remain stable, which excludes them from receiving any bonus set-aside funds.

The exception is District C2 that was able to achieve reductions in foster care days either by diverting children to the legal custody of kin or by expediting the discharge of children to parental custody or adoption. What is notable in this regard is that District C2 benefits the most under SI, which assumes that guardianships are excluded from the distribution of bonus set-aside funds. This is because competition for these funds is restricted to only those districts that are able to achieve reductions through diversion or increased reunifications and adoption. Once guardianships are appropriately counted as contributing to the reduction in foster care days, the competition for funds widens and the bonuses are disbursed among a larger group of districts under simulations II, III, and IV. When this happens, District C2 benefits the most under

Simulation III because the total amount of the bonus set-aside funds is based on the inclusion of guardianship subsidies within the block grant whereas they are excluded under SII and SIV.<sup>6</sup>

Most of the impact of alternative cost allocation methods is restricted to those hypothetical districts that are assumed to take advantage of the federal subsidized guardianship program. As might be expected, the intervention districts as a whole benefits the most under SII because a larger share of the costs of guardianships are shifted to the state government and districts reap the benefits in terms of bonus payments and freed-up funds that would otherwise have been spent with block grant funds. Some of the additional cost to the state can be mitigated by increasing the district share to 35% of the non-federal share of guardianship costs as proposed by the Citizen's Committee for Children of New York (2010). The impact is shown under SIV. This alternative would also maintain a financial incentive for counties to pursue adoptions since state reimbursement for adoption would continue to be 75% of the non-federal share.

The cost-allocation method that would pose no additional financial burden on the state but would more appropriately reward districts that pursue subsidized guardianship is SIII. Under this scenario, three intervention districts receive higher shares of the bonus payouts than what they would receive under SI. Although two districts (C2 and I3) would lose money by shifting from SI to SIII, these two districts would still be amply rewarded with bonus payments that approach or exceed their historical foster care claims (see Table 8.2 above).

## **SECTION 9: MONITORING AND EVALUATING THE IMPLEMENTATION AND IMPACT OF SUBSIDIZED GUARDIANSHIP**

The findings from the subsidized guardianship demonstrations in Illinois, Wisconsin, and Tennessee and our extrapolations about the likely positive effects in New York argue strongly for the implementation of a federal Guardianship Assistance Program (GAP). The promised benefits in terms of additional permanencies, shortened length of time in care, and increased administrative savings seem well worth the uncertain risks of somewhat fewer adoptions and possibly slightly higher spending due to reduced reunifications and discharges to the legal custody of kin if the cost projections presented above don't pan out. In our estimation, the best available evidence suggests that the likely benefits of a New York GAP outweigh the potential

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<sup>6</sup> This result comes about only if the bonus set-aside is calculated as a fixed percentage of historical claims. In the simulations conducted above, the bonus set-aside was fixed at 10% of historical foster care claims. Under simulations I and III, this amount equals \$6,295,166. Under simulations II and IV, it equals \$5,809,650 because subsidized guardianships are funded like adoption assistance and excluded from the calculation of historical foster care claims.

risks. This green light signal, however, should not be taken to mean that policymakers and administrators can be complacent about such risks. Implementation of a federal GAP must be accompanied by a carefully designed system for monitoring and evaluating the impact of subsidized guardianship on child safety, family permanence, future financial liabilities, and the potential growth of kinship foster care.

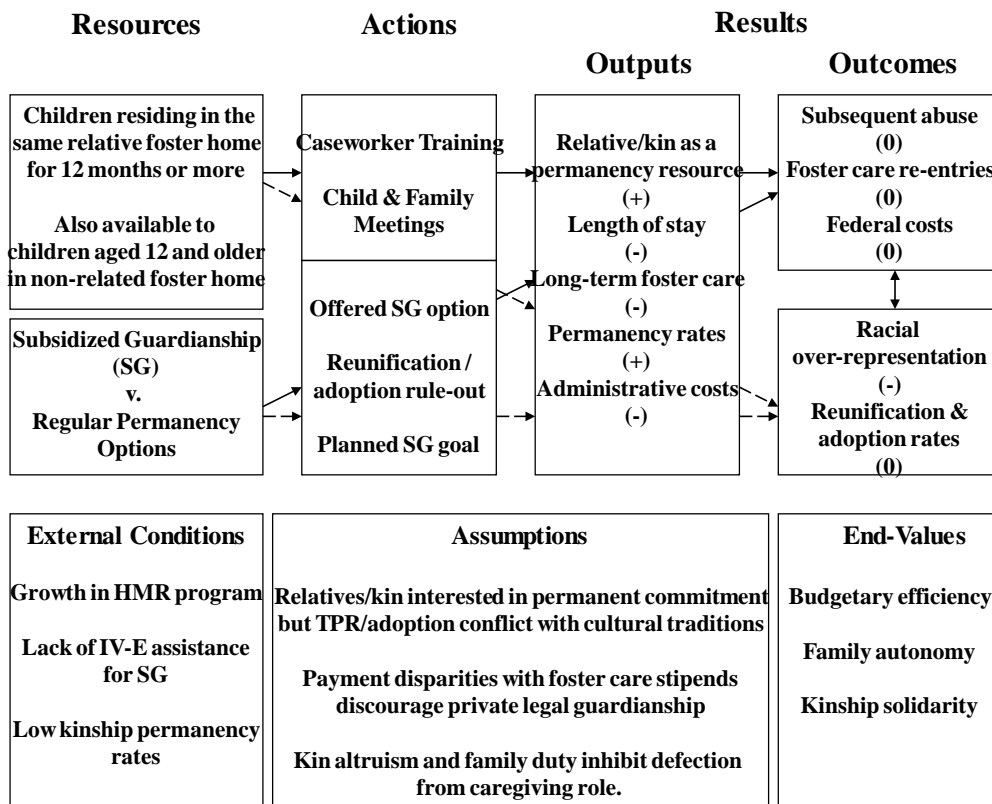
This section builds on the results-oriented accountability (ROA) framework that was developed at the Children and Family Research Center to monitor and evaluate Illinois' efforts to improve outcomes for the plaintiffs' class of children and their families under the *B.H. Consent Decree* (Testa and Poertner, 2010). This framework builds on a common foundation of clinical practice and policy management, which conceives of child welfare monitoring and evaluation as cycling through five successive stages as follows:

1. *Outcomes Monitoring*: Are the desired results broadly defined and validly measured to ensure that children's best interests are served?
2. *Data Analysis*: Is the gap between the desired and actual results of practical importance and statistical significance to warrant taking corrective action?
3. *Research Review*: What potential courses of corrective action are supported by empirical evidence and how strongly?
4. *Evaluation*: How efficacious, effective, and efficient are the implemented actions in accomplishing the desired results?
5. *Quality Improvement*: Should the implemented actions be continued, improved, or discontinued or should the desired outcomes, logic model, and underlying theory of action be redefined?

The preceding sections of this report can be regarded as working through the first three stages of monitoring and planning. The desired results have been defined primarily in terms of family permanence with secondary concerns for child safety and well-being. The extrapolation of findings from the federal guardianship demonstrations using propensity score matching methods suggests that there may be a permanency gap of as much as 9 percentage points between current performance levels and what may be potentially achievable in New York. Lastly a review of the evidence from the rigorous evaluations of the waiver demonstrations in Illinois, Wisconsin, and Tennessee reinforce the view that subsidized guardianship is a promising practice for helping to close this gap.

In initiating the evaluation stage of ROA it is helpful to construct a logic model that visually depicts how a policy or program is supposed to work in accomplishing the desired results and what underlying theoretical assumptions are being made (W. K. Kellogg Foundation, 2004). Figure 9.1 depicts the logic model that was employed in the evaluations of the Illinois, Wisconsin and Tennessee waiver demonstrations and can serve as a point of departure for the monitoring and evaluation of the implementation of GAP in New State.

**Figure 8.1**—Subsidized Guardianship Logic Model



Source: Testa, M. F. & Poertner, J. (2010). *Fostering accountability: Using Evidence to Guide and Improve Child Welfare Policy*. Oxford: Oxford University Press, p. 197.

Many of the same external conditions that prompted the waiver demonstrations in the other three states also motivate New York’s interest in GAP. The recent growth in the kinship foster care program in New York City, the absence of a federally reimbursable subsidized

guardianship program, and the awareness of a lower than desired permanency rate for foster children residing with relatives has stimulated interest in implementing GAP as a way of improving family permanence at no additional cost and without adversely affecting child safety and re-entry risks.

The best place to begin preparations for tracking whether program implementation is in accord with the expectations delineated in the logic model is to draw on available data from the state's existing foster care information systems. We will focus on AFCARS because this is the information system of record for the federal government, but other state information systems may provide better data for monitoring and evaluating program implementation.

The AFCARS data as of September 30, 2009 indicates that there were about 3,780 foster children who residing with kin for longer than one year in New York State. Approximately 90% of these potential candidates for the federal GAP reside in New York City. As noted above, although children in non-related foster care were eligible for guardianship subsidies in the waiver demonstration, they can only be included in the federal GAP if they meet the state definition of "relative," which, if the state elects, may include persons with whom the child has a non-biological relationship that pre-exists placement such as a godparent, teacher, neighbor, family friend or clergy. The New York legislation does not currently include these additional categories of non-biological relatedness.

The critical actions necessary to implement GAP, such as caseworker training, child and family meetings, the actual offer of subsidized guardianship, and the rule-out of reunification and adoption, are not traceable within AFCARS but information is available on permanency planning goals. Of the 3,780 potential candidates for GAP as of September 30, 2009, 43% are carrying a permanency goal of reunification, 43% a goal of adoption, and less than 1% a goal of legal guardianship. Based on information from the demonstration sites, it can be expected that the guardianship goal in New York could rise to as high as 20% if GAP were to become available. It is likely that some of this increase will eat into the percentage currently earmarked for adoption but careful assessment will be necessary to evaluate whether the current adoption and reunification goals reflect realistic prospects for family permanence.

Many of the expected outputs and outcomes identified in the logic model above can be specified in advance based on the estimates developed in Section 7 above or from a wholesale clinical reassessment of case goals by workers. Actual attainment of many of these expected outputs and outcomes can be tracked with existing AFCARS data, such as length of stay,

permanency rates, and the impacts on reunification and adoption rates. But the remainder, such as re-abuse rates and cost data will need to come from other sources. All of this should be accompanied by regular monitoring of key implementation actions, such as training, child and family meetings, offers of subsidized guardianship, and reunification and adoption rule-out. Some of this reporting is required under the GAP and will require the development of additional data collection systems to provide the necessary information.

An issue that deserves much more careful research and discussion than can be covered in this report is the potential impact of GAP on the numbers of children discharged to the legal custody of relatives as well as the numbers taken into kinship foster care. The upper limit of 4% to 6% on legal custody outcomes that was referenced in Section 7 applies only to the larger, more urbanized counties and jurisdictions in New York as well as in Illinois, Tennessee, and Wisconsin. Outside of these areas, reliance on legal custody can sometimes account for as many as 20% to 60% of all discharges from kinship foster care. This wide variation reflects different sensibilities over the extent to which kinship foster care is a family duty or a public expense. The U.S. Supreme Court has come down on the side of its being a public expense. Local opinions continue to regard it as a family duty. Undoubtedly the introduction of subsidized guardianship will accelerate bringing these long simmering issues to the surface. It is a discussion that needs to happen openly in the public forum.

## **CONCLUSION**

The key conclusion of this report is that federally subsidized guardianship is a permanent and cost effective alternative to retaining children in long-term foster care. The results from the three waiver demonstrations in Illinois, Wisconsin, and Tennessee provide a solid evidence base upon which a federal GAP can be built in New York. Extrapolating the findings from these three federal demonstrations to New York State suggest the following:

- Federally subsidized guardianship encourages a significant proportion of committed and caring relative foster parents who otherwise would stay in the foster care system to assume permanent legal responsibility of the children under their care. It is anticipated that the program could boost existing permanency rates by as many as 9 percentage points.

- Discharging foster children to subsidized legal guardianship is a cost effective alternative to retaining them in foster care because of the administrative savings achieved from case closing and the discontinuation of agency and judicial oversight.
- There is insufficient evidence to suggest that the offer of subsidized guardianship adversely impacts rates of renunciation with birth parents.
- Although the added choice of subsidized guardianship appears to encourage some caregivers under conditions of full disclosure of all permanency options to select legal guardianship over adoption, there is insufficient evidence of any adverse impact on the long-term stability of these living arrangements. With careful training and monitoring of rule-out provisions, it should be possible to keep undesirable substitution effects to a minimum as was accomplished in Milwaukee, Wisconsin.

If New York decides to implement a federal GAP, it is recommended that the state take measures to address as many of the start-up issues identified in Section 6 of this report as possible. Full attention to these issues will improve the prospects that state and local child welfare professionals will be properly equipped to implement the GAP. The improved results in the Wisconsin and Tennessee replications over the original demonstration in Illinois are in large measure due to the lessons learned from the implementation of subsidized guardianship programs in Illinois and other early waiver states.

Implementation of GAP is likely to push New York farther past the milestone it and other states like Illinois surpassed in the early 2000s when the number of children in subsidized permanent homes exceeded for the first time the total number of children in foster care. Although the shift from foster care to family permanence bodes well for children and families, the new FCSIAA also recognizes that that the work of supporting and strengthening these new families doesn't necessarily end. Even though regular casework and judicial oversight are no longer required, some homes still will need occasional support to promote child well-being and a smaller percentage will need more intensive interventions to preserve family stability. In addition, success in preventing child removal and moving children into permanent homes does not mean that follow-up work with the smaller number of remaining foster children grows any simpler. The residual group in state custody comprises an increasingly older population of foster youth with complex developmental, educational, and mental health needs.

Meeting the challenges of what we have previously called the "post-permanency world" of child welfare will necessitate innovative partnerships among federal and state governments and local districts, courts, service providers, associations and universities, which can both fulfill

traditional foster care obligations and support and strengthen these newly-formed permanent homes. Financial arrangements are a key element of such partnerships. By enlarging the adoption assistance entitlement to include subsidized guardianship, the federal government has given states an important opportunity to reinvest the resulting savings in programs that support home-based services for children at risk of removal, post-permanency services to adoptive parents and legal guardians caring for adolescents, and transitional assistance to current and former foster youth emerging into self-sufficient adulthood. There is general recognition that funding subsidized guardianship outside of the foster care block grant similar to adoption assistance is philosophically in keeping with the goals of permanency planning and best equips local districts to target their capped dollars on the areas of greatest need. Even if fiscal constraints make it difficult to fund subsidized guardianship exactly like adoption assistance in the short run, there are several intermediary alternatives previewed in Section 8 that could better equip local districts to meet the challenges posed by newer forms of family permanence as well as prepare foster youth to make the extended transition to successful and responsible adulthood.

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