



<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY</b>	
<b>Chapter 14:</b> Adoption Assistance and Guardianship Assistance <b>Section 02:</b> Negotiations for Guardianship Assistance Program	
<b>Effective Date:</b> January 1, 2023	<b>Version:</b> 5

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## POLICY OVERVIEW

The Indiana Guardianship Assistance Program (GAP) (includes federal title IV-E and state funded guardianship assistance is provided to eligible children, to assist guardians with their obligation to meet the children’s needs. The goal of this program is to promote permanency in an efficient and expeditious way for children who may otherwise have their permanency delayed.

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## PROCEDURE

The Indiana Department of Child Services (DCS) will provide ongoing financial and other assistance through GAP. The GAP program is provided to eligible children to assist the legal guardian with obligations in meeting the child’s needs. See policy 14.01 Guardianship Assistance Program (GAP) for additional information. Eligible children may receive a periodic payment, as negotiated between the guardian and DCS. Eligibility for Medicaid and the reimbursement of appropriate Non-Recurring Expenses (NRE) are not negotiated.

It is DCS’ responsibility to determine the periodic payment amount that is appropriate in each individual case. DCS will work collaboratively with families and/or their attorneys to understand and determine the current and ongoing needs of the children who are placed with guardians and the cost to meet those needs. The circumstances of each family will be considered in combination with the resources available to guardians to determine a periodic payment amount that will assist with integrating children into families. This policy outlines how such levels of assistance should be negotiated to determine the periodic payment amounts for guardianship assistance applicants who are determined to be eligible for guardianship assistance after July 1, 2012.

**Note:** The negotiated amount cannot exceed the amount that would have been payable for the child if the child were in foster care.

Upon the approval of a Final Guardianship Assistance Eligibility Determination that verifies a child is eligible for guardianship assistance, DCS will meet with the prospective guardian to discuss the steps for completing and finalizing the guardianship assistance agreement. DCS will provide a copy of the following documents to the prospective guardian:

1. The notice of Final Guardianship Assistance Eligibility Determination form;
2. The Subsidy Negotiation Checklist describing the information needed from the prospective adoptive parent(s) for consideration and discussion with DCS in negotiating

- and determining any periodic payment to be paid by DCS under the agreement;
- 3. Other information prepared by DCS staff for consideration in determining the periodic payment amount; and
- 4. A guardianship assistance agreement in the form currently approved by DCS.

If DCS determines that a child is not eligible for guardianship assistance, DCS will provide the prospective guardian with the Request for Administrative Review - Indiana Guardianship Assistance Program form.

**Note:** Other information will include, but will not be limited to, information about the availability of services after the guardianship is finalized and the ability of the prospective guardian to renegotiate certain terms of the agreement in the event the child or family's circumstances change.

The amount of the periodic payment to be included in the agreement will be determined through discussion and negotiation between the prospective guardian, the prospective guardian's attorney, and DCS. Negotiations will occur through Central Office and will be approved by the DCS local office in the county where the child's CHINS or other juvenile court case is pending. In that negotiation, the DCS LOD, or designee, and DCS Central Office Attorney will represent DCS. The prospective guardian may choose to be represented by an attorney or to participate directly in the negotiation without an attorney.

The Final Guardianship Assistance Eligibility Determination form, unsigned guardianship assistance agreement, and other information prepared by DCS staff for consideration in determining the periodic payment amount (eligibility documents) will also be provided to the DCS Negotiations Unit. Upon receipt, an assigned Negotiator will offer 50% of the child's correct foster care payment rate to the prospective guardian and/or their attorney. If the offer is not accepted promptly, the Negotiator will request income and expense information and documentation from the prospective guardian to negotiate the periodic payment amount. The prospective guardian will have an opportunity to discuss the information with DCS in order to negotiate the periodic payment amount.

**Note:** Effective June 27, 2022, the base subsidy for the guardianship assistance periodic payment for GAP or state funded guardianship assistance will not be less than 50% of the amount that would have been payable for the eligible child's care if the child were in foster care. This rate is offered to the prospective guardian of the eligible child regardless of demonstrated need. If the prospective guardian(s) wish(es) to negotiate for a higher subsidy, they may do so. If the prospective guardian(s) do(es) not want to receive a subsidy and sign an agreement indicating the same, the resulting periodic payment for the eligible child will be \$1.

Negotiation of the periodic payment amount will occur and be completed within 45 calendar days after the date the DCS Negotiations Unit receives the eligibility documents, unless an extension of the negotiation deadline has been approved by the DCS LOD or designee.

The following factors and information based on the documentation required by DCS and provided by the prospective guardian will be considered in negotiating the periodic payment amount above the 50% threshold:

1. The current needs of the child, needs that are anticipated to occur within one (1) year after the finalization of the guardianship, and the cost of the identified anticipated needs;

**Note:** The needs and expenses of the child that are anticipated to occur after one (1) year of the execution of the agreement may be addressed through a request to modify the agreement at the time the need and expenses arise.

2. The circumstances of the guardian and the guardian's family, including the ability to provide for the child's current needs;
3. Resources available to the prospective guardian and the guardian's family to provide for the current needs of the child, such as health care, services, public education, activities related to child development and transition to independent living, sources of income and availability of extended family and community resources;
4. The extent to which identified needs of the child can be met through services covered by Medicaid or other resources;
5. The ability of the prospective guardian and the guardian's family to seek renegotiation of the periodic payment amount based on unanticipated changes in the child's needs or the family's circumstances, as provided in this policy; and
6. Any other specific facts pertaining to the child or prospective guardian that either DCS or the prospective guardian considers relevant to the goal of integrating the child into the prospective guardian's family.

**Note:** Any child eligible for a GAP payment is also eligible for payment of NRAE associated with obtaining legal guardianship of the child. In order to be eligible for Medicaid, a IV-E GAP payment must be made. A child who is eligible for state-funded GAP will need a separate evaluation by the Division of Family Resources (DFR) to determine the child's Medicaid eligibility.

If negotiation of the periodic payment amount has not resulted in an approved agreement within 45 calendar days of DCS' receipt of the eligibility documents, or other approved deadline, DCS will send a final offer letter to the prospective guardian, and/or the guardian's attorney, if applicable, stating the periodic payment amount that DCS agrees to pay. The final offer letter will include the Request for Administrative Review Indiana GAP form and information about the availability of an administrative review process. A prospective guardian may sign a guardianship assistance agreement, which includes the periodic payment amount identified in the final offer letter while pursuing an administrative review of the amount. See policy 14.04 Administrative Review for Guardianship Assistance Program for additional information.

Except for determination of the periodic payment amount or the addition of a successor guardian, the provisions of the guardianship assistance agreement form approved by DCS cannot be altered or amended without approval of both the DCS General Counsel and the DCS Deputy Director of Field Operations, or their respective designees. Approval or disapproval of any requested content or format change in the agreement form is not subject to administrative review or administrative appeal.

The agreement must be signed by both DCS and the prospective guardian before entry of the order establishing legal guardianship. **If the decree is entered before the agreement has been signed by both DCS and the prospective guardian, no agreement may be entered into and the child is not eligible for any form of guardianship assistance under the Indiana Guardianship Assistance Program.**

The Family Case Manager (FCM) will:

1. Meet with the prospective guardian within 15 calendar days after receipt of the Final Guardianship Assistance Determination form for a child who is eligible and may

- potentially receive periodic payments under a signed agreement;
2. Provide the prospective guardian with a copy of the pertinent documents, including the Subsidy Negotiations Checklist, and discuss the procedure for completing the agreement;
  3. Inform prospective guardian of the option to add a successor guardian to the GAP agreement.

**Note:** If the successor guardian assumes responsibility for the child, the successor guardian will need to complete background checks and be appointed by the court in the guardianship proceeding, prior to receiving GAP assistance payments for the child's care.

4. Explain the other steps and procedures needed for purposes of finalizing the guardianship of the child, including the opportunity to negotiate the amount of the periodic payment. See separate policy 14.01 Guardianship Assistance Program (GAP) for additional guidance;
5. Provide the prospective guardian with information about the availability of services that can be requested and provided by DCS;
6. Explain to the prospective guardian they may request a change in the periodic payment amount if the child's needs or family's circumstances change. See policy 14.03 Modifications and Continuation of a Guardianship Assistance Agreement for more information.

**Note:** A GAP agreement can be amended to add a successor guardian.

7. Explain to the prospective guardian that the Guardianship Assistance Agreement **must be signed before finalizing the guardianship**;

**Note: If the Guardianship Agreement is not signed by all parties prior to the finalization of the guardianship, then the Guardianship Agreement is not valid, and thus, in such situation all guardianship assistance payments and other benefits are forfeited.**

8. Send a signed copy of the Guardianship Assistance Agreement form and order establishing legal guardianship to the DCS CEU inbox.

The DCS LOD or designee will:

1. Approve or deny a written request to extend the negotiation deadline; and
2. Provide the DCS Central Office Attorney with information necessary to negotiate the appropriate periodic payment amount; and
3. Sign the completed Guardianship Assistance Agreement on behalf of DCS.

The DCS Central Office Attorney who oversees the DCS Negotiation Unit will:

1. Assign each negotiation to one of the Negotiators; and
2. Ensure the prospective guardian and/or the prospective guardian's attorney receives a copy of the signed Guardianship Assistance Agreement form.

The DCS Negotiations Attorney will:

1. Review information received from the DCS LOD and the prospective guardian necessary to negotiate the appropriate periodic payment amount;
2. Communicate with the DCS LOD about the information received and the calculations

made in order to recommend to the DCS LOD a periodic payment range for the guardianship subsidy;

3. Document and retain how the information provided was evaluated to calculate a periodic payment amount;
4. Discuss the periodic payment with the prospective guardian and/or the prospective guardian's attorney, and negotiate the amount of the Guardianship Assistance Agreement;
5. Present the Guardianship Assistance Agreement for signature to the prospective guardian and DCS LOD or designee when the negotiations result in agreement, and
6. Prepare and send a final offer letter that includes information about the availability of administrative review to the prospective guardian and/or the prospective guardian's attorney when the negotiations do not result in agreement within 45 calendar days unless an extension is agreed to by the LOD or designee. Enclose the Request for Administrative Review Indiana Guardianship Assistance Program form.

The DCS CEU will send a packet to the FCM, which includes:

1. Notice of Final Guardianship Assistance Eligibility Determination;
2. The agreement (in the form currently approved by DCS) to the prospective guardian;
3. The Subsidy Negotiations Checklist (if applicable);
4. Other information prepared by DCS to inform DCS staff and the prospective guardian concerning the determination and duration of the periodic payments of assistance or subsidies; and
5. The Request for Administrative Review Indiana form, if applicable.

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## RELEVANT INFORMATION

### Definitions

#### Final Offer Letter

The final offer letter is a letter sent by the DCS Negotiations Attorney which states DCS' final offer for the amount of the periodic payment under a Guardianship Assistance Agreement. The letter will include information about the availability of an administrative review process and the Request for Administrative Review Indiana Guardianship Assistance Program form.

#### Periodic Payment

A periodic payment is a per diem amount, paid monthly, to be specified in a written Guardianship Assistance Agreement.

### Forms and Tools

- Central Eligibility email: [centralized.eligibility@dcs.in.gov](mailto:centralized.eligibility@dcs.in.gov).
- Final Guardianship Assistance Eligibility Determination – Available via CEU
- Payment Request Information (PRI) Indiana GAP – Available via CEU
- [Request for Administrative Review Indiana GAP](#) – Available via CEU
- State Guardianship Assistance Agreement (SGAP) – Available via CEU
- Title IV-E Guardianship Assistance Agreement (GAP) – Available via CEU

### Related Policies

- [14.01 Guardianship Assistance Program \(GAP\)](#)
- [14.04 Administrative Review for Guardianship Assistance Program](#)

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## LEGAL REFERENCES

- [IC 29-3-1-7.5: "Incapacitated person"](#)
- [IC 29-3-8-9\(f\): Requirements, terms, and conditions included in order creating guardianship; requirements for modifying or terminating guardianship; notify and refer to department of child services; conduct of hearing IC 31-9-2-17.8\(1\)\(E\): "Child services"](#)
- [42 USC 673\(d\)\(1\): Kinship guardianship assistance agreement](#)

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## PRACTICE GUIDANCE- DCS POLICY 14.02

*Practice Guidance is designed to assist DCS staff with thoughtful and practical direction on how to effectively integrate tools and social work practice into daily case management in an effort to achieve positive family and child outcomes. Practice Guidance is separate from Policy.*

N/A

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