

## Child and Family Services Policy Manual: Substitute Care for Children General Guardianship

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### Philosophy

The Department of Public Health and Human Services is committed to permanency for all children.

Guardianship is the most appropriate permanent placement option for some children and should be only used **when reunification and adoption have been ruled out as not in the child's best interest**. A determination that guardianship is the most appropriate permanent placement option must be made at a permanency staffing

### Definitions

A **child or youth (minor)** is any person under 18 years of age. Mont. Code Ann. 41-1-101.

A **legal guardian** is a person who has qualified as a caretaker of a child/youth in the custody of the Department or tribe and has been appointed guardian by the court.

A **legal guardianship** is a judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control of the child, custody of the child and decision making.

A **kinship guardian** is:

- a member of the child's extended family;
- a member of the child's or family's tribe;
- the child's godparents;
- the child's stepparents; or
- a person to whom the child, child's parents and family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the agency's involvement with the child or family. Also known as "fictive kin".

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A **Non-kinship guardian** is:

- a person to whom the child or child's family **did not have** a significant emotional tie **that existed prior** to the agency's involvement with the child or family. (i.e. foster parent).

An **eligible child for guardianship**:

- has been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and
- has resided with the prospective guardian for at least 6 months, and;
- does not have return-home or adoption as appropriate permanency options; and
- demonstrates a strong attachment to the prospective guardian and their guardian has a strong commitment to caring permanently for the child; and
- has been consulted regarding the guardianship arrangement if the child is 12 years or age or older

**\*NOTE:** There are additional eligibility requirements that need to be met for a child whose prospective guardian wishes to obtain financial guardianship assistance.(subsidy) See policy section 407-3 and 407-4 for these requirements

### Legal Requirements for Guardianship

The legal requirements for Guardianship are also located in Policy Section 302-4 <https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/302-4.pdf>

Appointment of a guardian by the court creates a legal relationship between the child and the guardian(s) which can only be terminated by the court.

The court may appoint a guardian for a child under Mont. Code 41-3-444, if the following facts are found by the court

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- the child has been adjudicated as a youth in need of care;
- the Department has Permanent Legal Custody or Temporary Legal Custody;
- the Department has made reasonable efforts to reunite the parent and child, further efforts would likely be unproductive; and reunification of the parent and child would be contrary to the best interests of the child
- either termination of parental rights is not in the child's best interests; or parental rights have been terminated, but adoption is not in the child's best interest;
- the guardianship is in the best interest of the child;
- the children have lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child(ren);
- it is in the best interests of the child(ren) to remain or be placed with the potential guardian;
- the Department has given its written consent to the appointment of the guardian; and
- the Department has given its written consent to the provision of a guardianship subsidy.
- if the child(ren) for whom the petition for guardianship has been filed is an Indian child(ren), as defined in the Indian Child Welfare Act (see Policy Section 305-1), the child's tribe has received notification from the State of the initiation of the proceedings.  
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/305-1.pdf>

In addition to the above, the following **requirements** must also exist before the Department will consent to a guardianship:

- if adoption is in the child's best interests, no appropriate adoptive family has been located despite a diligent search;
- the prospective guardianship family has been approved by the Department to become the legal custodian of the child;

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- the child for whom guardianship is being considered must have resided with the prospective guardian for a minimum of six months;
- the prospective guardian and the home of the prospective guardian must meet the youth foster home licensing requirements; and
- the prospective guardian must have been **fully licensed** as a foster parent.

### Advantages

The advantages of guardianship over long term foster care include:

- a legally recognized relationship in which the child's guardian(s) have the right and responsibility to make important decisions regarding the child without Department involvement;
- a more stable placement which can only be terminated by court action;
- the comfort and security of belonging without the need to terminate parental rights; and
- greater likelihood of parental acceptance since termination of parental rights is not required.

In addition, if the guardianship is with a kinship family, it:

- provides legal permanence to existing relationships in a manner which supports connections and cultural norms; and
- returns legal custody to family members; and assists family members in meeting the child's needs

*Benefits for Youth  
Placed in  
Guardianship  
After attaining age  
16*

Youth leaving foster care for kinship guardianship after attaining the age of 16 are eligible for Independent Living and Education and Training Vouchers. (Refer to section 408-1 Independent Living Services.)

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### **Selection of Family**

*Priority to Extended  
Family*

If the child meets the definition of an **abandoned child**, the court may give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts and uncles. Placement with the extended family member must be determined to be in the best interests of the child.

If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint based on a finding by the court that the extended family member is qualified to care for the child and which of the interested extended family members can best meet the child's needs. For information and protocol on selection of family, see Policy section 304-2 Diligent Search, Policy Section 402-4 Placement in Unlicensed Kinship, and Policy Section 802-4 Kinship Foster Care  
<https://dphhs.mt.gov/Portals/85/cfsd/documents/cfsdmanual/304-2.pdf>  
<https://dphhs.mt.gov/Portals/85/cfsd/documents/cfsdmanual/402-4.pdf>  
<https://dphhs.mt.gov/Portals/85/cfsd/documents/cfsdmanual/802-4.pdf>

### **Completing the Guardianship Process**

*Permanency Team  
Staffing*

**The following are steps that must be taken to proceed with and finalize a Guardianship:**

A permanency staffing must be held in order to determine the appropriateness of guardianship. Participants in the staffing must include the child's Child Protection Specialist, Child Protection Specialist Supervisor, Family Resource Specialist or Family Resource Specialist Supervisor and Permanency Planning Specialist. See policy section 409-2 for general information of Permanency Staffings  
<https://dphhs.mt.gov/Portals/85/cfsd/documents/cfsdmanual/409-2.pdf>

*Case Plan Planning  
Documentation*

The permanency team will determine if Guardianship is the most appropriate plan for the child and the necessary actions that must be taken prior to filing a petition for guardianship with the court. The staffing must include discussion and documentation of the following:

- how the child meets the eligibility requirements for guardianship (as defined on page two of this policy) and guardianship subsidy;
- the steps that have been taken to determine that reunification and adoption are not appropriate;

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- the efforts that have been made to discuss adoption with the prospective guardian and the reasons why adoption is not an option;
- the reasons why permanent placement with the prospective guardian and receipt of guardianship subsidy ( if a subsidy will be provided) is in the child's best interests;
- the efforts that have been made to discuss guardianship arrangements with the child's parent(s) or the reasons why efforts were not made;
- if the child for whom guardianship is being considered is not placed with siblings, a description of the reasons why the child is separated from the siblings.

**This documentation is part of the child's case plan and must be included in or attached to the case plan.** (CFS-157a case plan document attachment.)

<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/cfs-157aguardianshipcaseplanningattachment.doc>

The Permanency Team as part of the staffing assigns action steps and responsibility to the appropriate team members for completion in order to facilitate timely permanency for the child.

### *Action Steps*

Action steps include:

- documented discussion with the prospective guardian regarding guardianship and for children who are legally free for adoption, documented discussion of both guardianship and adoption;
- provision of all available information regarding the child and the child's birth family to the potential guardian; (See *CFS-133 Agreement on Guardianship Placement* <http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/CFS-133%20Agreement%20on%20Guardianship%20Placement.doc>)
- completion of an assessment of the guardianship home and family (refer to Policy Section 802-6); <https://dphhs.mt.gov/Portals/85/cfsd/documents/cfsdmanual/802-6.pdf>

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- preparation of a life story book for the child if one has not been completed;
- discussion with the County Attorney or attorney representing the Department of the recommendation to petition the court for guardianship with the identified family;
- completion of a **CFS-133, Agreement on Guardianship Placement;**  
<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/CFS-133%20Agreement%20on%20Guardianship%20Placement.doc>
- assistance to the potential guardian to identify ways that will help the child to maintain positive connections to his/her culture and heritage;
- assistance to the proposed guardian in identifying the strengths and needs of the placement and the support services that may be available that the guardian is willing to utilize;
- request for a signed consent for guardianship from the appropriate Regional Administrator.
- discussion of availability of financial assistance including guardianship subsidy, Social Security Income, child only grant through the Office of Public Assistance etc.
- In cases where the Guardianship Subsidy will be requested, completion of a **CFS-132 Guardianship Program Title IV-E Eligibility Determination** to determine which subsidy program is most appropriate; (See CFS-132 Guardianship Program Title IV-E Eligibility Determination )  
<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/cfs-132.doc>

The results of the permanency team staffing, including assigned responsibility and time lines for completion of task, should be attached to the **DPHHS-CFS-157 Guardianship Requirements and Request for Approval** and maintained in the case file. (See

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*CFS-157 Guardianship Requirements and Request for Approval*  
<http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/cfs-157guardianshipandrequestforapproval.doc>

### Guardianship Home Assessment Required

In accordance with ARM 37.50.1101, the prospective guardian(s) must meet the Youth Foster Home Licensing requirements.

A Guardianship Assessment is conducted by the Family Resource Specialist or assigned worker. It involves an assessment of the prospective guardian and the guardian's home environment in regards to the needs of the specific child for which they wish to provide a permanent home.

In order to complete the assessment, an updated home visit is required with the prospective guardian focusing on his/her understanding of the rights and responsibilities of a guardianship, the child's needs, the prospective guardian's ability to meet those needs and their willingness to make a permanent commitment. **The family may also need to complete an updated fingerprint based criminal and CPS check specifically for the guardianship.** See Policy Section 802-6 for Guardianship Assessment guidelines and Policy Section 802-3 Criminal Record and Protective Service Checks

<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/802-6.pdf>  
<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/802-3.pdf>

### Guardianship Home Reassessment

If guardianship for children for whom a guardianship assessment was completed is not established within one year of the approval of the guardianship assessment, a re- assessment must be completed. An annual name-based check will also be completed in accordance with Policy Section 802-3,

<https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/802-3.pdf>

**A guardianship assessment or re-assessment is only valid for the specific child or children identified on the application. If a person wishes to become a guardian for additional children, a new application and assessment must be completed.**

### Prospective Guardian's viewing of Child(ren)'s records

The prospective guardian must be given the opportunity to *view* the child's file to ensure they are able to meet the needs of the child and provide permanency for the child. Copies of the child's information may be provided to the prospective guardian upon



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<b>Agreement on Guardianship Placement</b>	<p>request; however, no hard copies of parent's information contained in the child's file may be provided to the prospective guardian at the time the file is viewed. <b><i>If the prospective guardian views the file, the prospective guardian must sign a confidentiality statement.</i></b> (refer to Policy Section 502-3 Confidentiality and Case Records Summary of Rules for Disclosure for more information)  <a href="https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/502-3.pdf">https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/502-3.pdf</a></p> <p>The Agreement on Guardianship Placement should be completed at the time the file is reviewed by the family. This form documents the Title 72 Rights and Responsibilities of a Guardian and what documentation the family has received from the Department.          (See form CFS-133)  <a href="http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/CFS-133%20Agreement%20on%20Guardianship%20Placement.doc">http://ours.hhs.mt.gov/forms/CFSforms/PlacementForms/CFS-133%20Agreement%20on%20Guardianship%20Placement.doc</a></p>
<b>Subsidy Eligibility</b>	<p>The Department has the authority to provide financial assistance (subsidy) to eligible children for whom guardianship is established under Mont. Code Ann. § 41-3-444. ( See Policy section 407-3 for State-funded Subsidies and 407-4 Title IV-E subsidy requirements)  <a href="https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-3.pdf">https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-3.pdf</a>  <a href="https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-4.pdf">https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-4.pdf</a></p>
<b>Medicaid Eligibility</b> <i>Medicaid Application</i>	<p>If the guardian is not requesting a subsidy or is not eligible for a subsidy and the guardian wishes to receive Medicaid, the Child Protection Specialist or assigned worker should inform the guardian that an application for Medicaid must be made at the County Office of Public Assistance in the county in which the guardian resides. The application, form HCS-250/HCS-251 Application for Assistance will require information relating only to the child. The OPA staff will require verification of the child's income and resources. (see Policy Section 407-3 and 407-4 for subsidized guardianship and Medicaid transition)  <a href="https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-3.pdf">https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-3.pdf</a>  <a href="https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-4.pdf">https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/407-4.pdf</a></p>
<b>Availability of Other Services</b>	<p>At the guardian(s) request, contact information and/or formal referrals may be made to local support groups, community outreach, mental health and available community based services that can assist and provide support for this relationship upon the final decree.</p>

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### Child Support

CSED should be notified when a decree of guardianship is issued if there is an open child support case. The Department's child support case will be closed whether or not a subsidy is being provided. If the guardian wishes to pursue child support, the guardian may contact CSED to request services.

### Educational Requirement

As a condition of receiving a subsidy, the guardians must have the child enrolled in school or in an authorized independent study program, or the child must be home schooled consistent with the law of the State or other jurisdiction in which the school, program, or home is located during the entire time the legal guardianship is in place. If the child does not remain enrolled in school or in an authorized independent living study program, or the child is not home schooled consistent with the law of the State or other jurisdiction, the guardians will not be eligible to continue to receive the subsidy; however, the legal guardianship will remain in place.

### Preparing for Court

#### *Regional Administrator Consent*

The original signed Consent To Guardianship must be provided to the attorney who will (or has) filed the petition for guardianship. This may be either the County Attorney (or other attorney representing the Department) or the child's Guardian Ad Litem. Each County Attorney may have a protocol for filing and the documentation they need to file a Consult with County Attorney for guidance when filing a petition.

### CAPS Entry

When a decree of guardianship has been issued, **the Child Protection Specialist shall transfer the child in CAPS** to the Regional Program Assessment Specialist (PAS). The PAS can then enter the guardianship decree information, and the date the permanency team determined that guardianship was the most appropriate option for the child into CAPS.

**The Program Assessment Specialist** can then complete the following CAPS entries:

- **CRTD** - complete **CRTD** using a disposition code of **GSP** Guardianship (Youth). **This is the only guardianship code that is to be used.**
- **RELL** check relationships on **RELL** to be certain the guardian has been added to the relationships as **LGD** (legal guardian);

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- **SERL/SERP/SERN-** All Foster care services on **SERL** must also be closed. **Children for whom guardianship has been established are not eligible for services such as clothing allowance, day care or respite.**
- **CPHL/GARD** complete the **GARD** screen. This is accessed by closing foster care entry with the exit reason of **POG**. Type **GARD** into PATH on **CPHL** and **F11**.
- **IARD- (for non-subsidized guardianships only)** a Closure Review may be completed on IARD. \*Check all Payment screens to ensure all necessary payments have been posted before closing this screen.

### Case Records

The field case record of a child for whom guardianship is established is retained in the county office until the child's 18<sup>th</sup> birthday. At that time the record is sent to the Central Office for permanent storage. A completed CFS -382 Receipt for Files to Central Office must accompany the box in which the file is sent. <http://ours.hhs.mt.gov/forms/CFSforms/ResourceFamilyandLicensingForms/cfs382.pdf>

### Resignation of Guardianship

A guardian may petition the court for permission to resign the guardianship. The petition may include a request for appointment of a successor guardian. Notice of a hearing for resignation of guardianship must be provided to:

- the Department;
- any court appointed Guardian Ad-Litem;
- the child's parent(s) if the rights of the parent(s) have not been terminated; and
- 
- any other persons directly interested in the welfare of the child.

### Guardianship to Adoption

After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary or permanent legal custody to the Department.

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### Revocation of Guardianship

Occasionally a guardian may wish to pursue adoption after the guardianship has been finalized. For guidance refer to Policy Section 302-4 Guardianship-Legal Procedures <https://dphhs.mt.gov/portals/85/cfsd/documents/cfsdmanual/302-4.pdf>

The court may revoke a guardianship if continuation of the guardianship is not in the best interests of the child. A petition to revoke the guardianship must be filed and a hearing held on the petition prior to revocation of the guardianship by the court.

Notice of the revocation hearing must be provided by the person filing the petition to:

- the child's guardian;
- the Department;
- any court appointed Guardian Ad-Litem;
- the child's parent(s) if the rights of the parent(s) have not been terminated; and
- any other persons directly interested in the welfare of the child

### References

Social Security Act Sections 471-475  
 45 CFR 205.10; 45 CFR 1355.30  
 Mont. Code Ann. § 41-3-444  
 Mont. Code Ann. § 41-3-607  
 Mont. Code Ann. § 72-5-231  
 Mont. Admin. R. 37.50.1101-1102  
 Fostering Connections to Success and Increasing Adoption Act of 2008 PL110-351

Rev. 10/03  
 10/06  
 10/07  
 12/09  
 07/10  
 10/11  
 10/12  
 03/15