

WISCONSIN SUBSIDIZED GUARDIANSHIP WAIVER

Excerpt from Federal Waiver Terms and Conditions
September 2004

SECTION 2: IMPLEMENTATION

2.0 Under these Waiver Terms and Conditions, the State seeks to waive certain provisions of title IV-E of the Social Security Act for purposes of operating a subsidized guardianship payment program. The Waiver proposal focuses on improving permanency outcomes for children in out-of-home care through a comprehensive Guardianship Permanency Initiative that promotes guardianship as a permanency option, the use of relatives as permanency resources, and family-based permanency planning for children.

The overall goals of the State's Guardianship Permanency Initiative are to:

- make guardianship a viable permanency option and increase the number of caretakers who will provide permanent homes for children;
- implement a guardianship approval process that results in permanent guardianship for children with a disruption rate not greater than the adoption disruption rate;
- use a family-focused permanency planning approach that effectively supports families through all phases of the process;
- promote the use of relatives as adoptive resources and encourage relatives to consider adoption;
- contribute to the national understanding of permanency for children in the care of relatives and improve child welfare practice;
- develop an understanding of how familial and cultural differences affect permanency decisions for children; and
- reduce the administrative costs for stable placements by closing cases that no longer require ongoing child welfare program oversight.

Under these Waiver Terms and Conditions, the State will operate a demonstration of the Guardianship Permanency Initiative. The demonstration will be implemented initially in Milwaukee County by the Bureau of Milwaukee Child Welfare (BMCW), the public child welfare agency for Milwaukee County. The Initiative may be expanded to other counties in Wisconsin or statewide, as well as to American Indian tribes for cases involving the Indian Child Welfare Act (ICWA), with the approval of the Department. The State will submit for approval to the Department a detailed plan describing any proposed expansion of the Initiative to other counties or tribes. Expansion of the Initiative will occur in accordance with existing State laws.

The Initiative's target population will consist of children currently in licensed relative foster care placements, as well as children who enter licensed relative foster placement during the five-year waiver period. In addition, children for whom guardianship has

previously been awarded under Chapter 48 Wisconsin Statutes, but whose cases remain open in foster care, will be eligible to participate in the demonstration.

A small number of children placed with non-relatives may be included in the target population, but only where guardianship with a non-relative is determined to be in the child's best interest and adoption has been ruled out. Examples of non-relatives include extended family members who do not meet the Wisconsin statutory definition of a relative, god parents, or family friends who the child recognizes as significant persons in his/her life.

Under the Guardianship Initiative, eligibility for guardianship subsidy payments will be limited to children who have been in licensed relative foster placement for a minimum of one year. Exceptions will be made to the one-year period for children for whom reasonable efforts at reunification are not required, children for whom reunification has been ruled out as a permanency option, and for siblings of children already in subsidized guardianship. For a caretaker to be approved as a guardian, the child must be successfully placed with the caretaker for several months to demonstrate the placement's stability. There will be no minimum age limit for children considered for guardianship. Sibling groups of children will be kept together to the fullest extent possible.

Children in court-ordered kinship care placements, as well as children receiving TANF kinship care payments on a voluntary basis with no formal involvement in the child welfare service system, will be ineligible for the guardianship subsidy.

2.1 The Guardianship Permanency Initiative will include the following components:

Changes to state guardianship statutes: State law will be changed to clarify the nature of guardianship as a permanency outcome and to allow the payment of guardianship subsidies. The changes will also allow persons other than relatives to become guardians under the Wisconsin Children's Code.

Guardianship subsidy payment: The guardianship payment will provide ongoing financial support for eligible children participating in the Guardianship Initiative. The guardianship payment program will be operated in a manner similar to the adoption assistance program, with payments continuing until the child reaches adulthood. Guardianship payments may continue until age 19 to facilitate the child's completion of high school or an equivalent degree, or if subsequently allowed under State law, until age 21 for children with special needs. The program will include an annual review of the guardianship payment to ensure the child still resides with the guardian. Guardianship payments will cease if biological parents regain custody of the child, the child leaves the guardianship placement, the child is adopted, or the guardianship is terminated.

The guardianship payment will be based on the foster care payment amount in effect for the child at the time permanency is achieved. Guardianship payments will be equal to the basic foster care maintenance amount specified under state law plus any supplemental or

exceptional amount included in the foster care payment at the time the guardianship begins.

The Initiative allows payments to continue on behalf of a child to a new approved caretaker on an interim basis in the event that the original guardian dies, becomes incapacitated, or the guardianship is terminated. The new caretaker must meet safety requirements and the placement must be approved by the public child welfare agency responsible for the guardianship placement with the intent that the new caretaker seek to become the guardian or adoptive parent of the child. Payments will be continued for a maximum of 12 months to allow time to assess the stability of the placement and to complete necessary legal proceedings. For the purposes of the waiver demonstration, these transitional payments will be accounted for as guardianship payments. In the event that a guardianship arrangement ends due to the death or incapacity of the guardian, or the transition to a new guardian is unclear or not possible, court jurisdiction over the child will be re-established and the child will re-enter foster care.

Guardianship payment amounts will be specified in the guardianship agreement with the guardian. Once set, the guardianship payment will remain constant until the child reaches adulthood, unless the guardianship payment amount is changed under State law. No means test will be applied to prospective guardians to determine their eligibility to receive a guardianship payment. The guardianship program will also cover nonrecurring costs up to \$500, such as legal fees associated with finalizing the guardianship. For purposes of other programs, guardianship payments are intended to be regarded as public assistance payments and treated in the same manner as foster care or adoption assistance payments.

The guardianship subsidy payment program is part of a broader State initiative to increase the use of guardianship as a permanency option. As part of this initiative, families that are both eligible and ineligible for the guardianship subsidy will have access to the following services:

Licensing activities: Licensing activities under the Guardianship Permanency Initiative will include more thorough consideration of licensing exceptions for relatives under Wisconsin foster home licensing rules and additional rehabilitation reviews for relatives and household members to comply with safety requirements. Public child welfare agency case managers and licensing staff will work with relatives to assist them in meeting licensing requirements.

Guardianship casework process: The case manager, in consultation with permanency specialists, will work with the caretaker to review alternative permanency options for the child(ren) placed in the caretaker's home. The case manager will present the options of adoption, guardianship, kinship care, and long-term foster placement to determine the caretaker's interest in permanency and to identify the most appropriate permanency option.

The public child welfare agency will assess the appropriateness of subsidized guardianship for the child and caretaker. The assessment will examine the safety and stability of the placement, relationships among members of the household, and the relationship of the child and the caretaker with the child's biological parent(s) to determine future visitation arrangements. Guardianship will be pursued only for children and caretakers who demonstrate a strong commitment to each other and to permanent legal guardianship. The public child welfare agency and the caretaker will complete a guardianship agreement for the child.

The guardianship will be finalized through court action based on the guardianship agreement. Parents may give written consent to the appointment of the guardianship or they will be served notice of the guardianship petition. Children will have a court-appointed Guardian Ad Litem to represent their interests. When age- and developmentally appropriate, children will be involved in the guardianship decision to take their preferences into consideration. The order appointing a guardian will be entered upon a finding by a judge that the appointment is in the best interests of the child. The guardianship appointment will continue without further involvement by the court until termination of the guardianship appointment when the child reaches the age of majority, marries, or dies. The guardianship may also terminate upon the death, incapacity, or removal of a guardian by the court.

Support services: The State will offer a range of services and supports for guardians prior to and during subsidized guardianship. The services will parallel those offered to adoptive families. Services prior to guardianship will include preliminary screening, assessment of the home, and assistance in applying for subsidized guardianship. Services during guardianship will include referral to community services, access to post-adoptive resource centers, and assistance with adoption should a guardian subsequently seek to adopt the child.

Guardians will be eligible for the State child care assistance program for working parents and guardianship payments will not be counted as income for purposes of determining child care assistance eligibility. Children in subsidized guardianship will continue to be eligible for Medicaid. As in the case of foster care placements, biological parents will continue to have child support responsibilities for their children.

While children are in foster care, they may receive independent living services under the Chafee Foster Care Independence Program (CFCIP). CFCIP funds may also be used to provide "room and board" and other transitional services to former wards ages 18-21 and to pay for education and training vouchers. Under the terms of this demonstration, children who were adopted or entered subsidized guardianship after attaining age 15 shall retain eligibility for CFCIP-funded independent living, transitional and other support services, including education and training vouchers. The State will make available the same independent living and transition services to children in subsidized guardianship, adoption, or long-term kinship care as are available to youth ages 18-21. These services will be available to eligible children statewide.

Prospective guardians and guardians of children who enter subsidized guardianship will be eligible to receive permanency consultation and post-permanency support services. The State may pay for these services with title IV-B - Subpart 2 funds.

Training for guardianship program: Extensive training will be provided as part of the Guardianship Permanency Initiative to case managers, court staff, and attorneys. This training will promote an understanding of guardianship as a permanency option, including differences under State law between the use of guardianship for decision-making purposes and guardianship as a permanency option. Case managers will receive training in presenting guardianship to families and involving families in the identification of appropriate permanency goals for children.

Other services: Educational resources, including printed materials, information sessions, and in-home visits by case managers, will be provided to caregivers and youth to increase their understanding of differences between guardianship and other permanency options. Caregivers and youth will also receive information on services available to them once a guardianship is finalized.