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PROGRAM INSTRUCTION

- TO:** State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act, Indian Tribes, Tribal Organizations and Tribal Consortia (Tribes)
- SUBJECT:** Title IV-E State Plan Amendment – Guardianship Assistance Program; Title IV-E Guardianship Demonstration Projects; Fostering Connections to Success and Increasing Adoption Act of 2008
- LEGAL AND RELATED:** Title IV-E of the Social Security Act (the Act); P.L. 110-351
- PURPOSE:** The purpose of this Program Instruction (PI) is to provide interested State title IV-E agencies and Tribes instruction on how to implement and operate the Guardianship Assistance Program (GAP) plan option as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law (P.L.) 110-351.
- INFORMATION:** P.L. 110-351 adds section 471(a)(28) to the Act, creating a new title IV-E plan option for States and Tribes to provide kinship guardianship assistance payments to relatives who assume legal guardianship of children for whom they have cared while foster parents. The law also adds new section 473(d) of the Act, which establishes eligibility and other requirements for the title IV-E GAP. Federal financial participation (FFP) using the applicable Federal medical assistance percentage is available for kinship guardianship assistance payments pursuant to section 474(a)(5) of the Act.

The title IV-E GAP applies to kinship guardianship agreements entered into prospectively as of the first day of the quarter in which an approvable title IV-E

plan amendment is submitted to ACF to implement the GAP, as described herein. A discussion of the amendments, effective dates for implementation and FFP follows.

State instructions for opting into the title IV-E GAP are included in this PI. Tribes that have an approved title IV-E plan pursuant to section 479B of the Act on or after October 1, 2009, may opt to operate a title IV-E GAP under the same conditions as the States. Tribal instructions for opting into the GAP will be forthcoming.

Eligibility.

Once a title IV-E agency begins operating a guardianship assistance program under title IV-E, it is obligated to provide such assistance to any child who is eligible for title IV-E kinship guardianship assistance payments (section 473(d)(1)(A) of the Act).

Child Requirements. To be eligible for title IV-E kinship guardianship assistance payments, a child must have been: 1) 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; and 2) eligible for title IV-E foster care maintenance payments during at least a six consecutive month period during which the child resided in the home of the prospective relative guardian who was licensed or approved as meeting the licensure requirements as a foster family home. While the Act does not require title IV-E foster care maintenance payments to have been paid on behalf of the child during the six month timeframe,, it does require that such a child meet all title IV-E foster care maintenance payment eligibility criteria pursuant to section 472(a),(b) and (c) of the Act and 45 CFR 1356.21 in the home of the fully licensed or approved relative foster parent for a consecutive six-month period to be eligible for title IV-E kinship guardianship assistance payments with that prospective relative guardian (section 473(d)(3)(A)(i)(II) of the Act).

Additionally, the title IV-E agency must determine that: 1) return home or adoption are not appropriate permanency options; 2) the child demonstrates a strong attachment to the prospective relative guardian; and 3) the relative guardian has a strong commitment to caring permanently for the child. Finally, the State must determine that a child who is 14 years or older has been consulted regarding the kinship guardianship arrangement. These determinations are not judicial findings but rather determinations made by the title IV-E agency (section 473(d)(3)(A) of the Act).

Prospective Relative Guardian Requirements. Before a relative guardian may receive title IV-E kinship guardianship assistance payments on behalf of a child, the title IV-E agency must conduct fingerprint-based criminal records checks of the national crime information databases of the relative guardian(s) and child abuse and neglect registry checks of relative guardian(s) and other adults living

in the guardian's home consistent with section 471(a)(20)(C) of the Act. Consistent with existing policy, if the State has established an appropriate timeframe that such background checks remain valid and such timeframe has not expired for the foster parent who previously received the background checks and is now seeking to become a prospective relative guardian, the State can consider the requirement of section 471(a)(20) of the Act met without conducting new background checks (Child Welfare Policy Manual 8.4F Q/A #13).

Title IV-E Kinship Guardianship Assistance Agreements and Payments. Section 473(d)(1)(A) requires that a title IV-E agency negotiate and enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian, and provide the prospective relative guardian with a copy of the agreement. Section 473(d)(1)(B) of the Act prescribes certain requirements for the kinship guardianship assistance agreement. It must specify the following: the amount of, and manner in which the kinship guardianship assistance payment will be provided to the prospective relative guardian; the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child; the additional services and assistance for which the child and relative guardian will be eligible under the agreement; and the procedure by which the relative guardian may apply for additional services.

Additionally, the kinship guardianship assistance agreement must provide that the agreement will remain in effect without regard to the State residency of the relative guardian pursuant to 473(d)(1)(C) of the Act, and must specify that the agency will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child to the extent the total cost does not exceed \$2,000.

The title IV-E kinship guardianship assistance agreement must be in place with a prospective relative guardian prior to the establishment of the legal guardianship. Once the relative guardian has committed to care for the child and has assumed legal guardianship for the child consistent with sections 471(a)(28) and 475(7) of the Act, the title IV-E agency may then pay kinship guardianship assistance payments on behalf of a child to the relative guardian. Kinship guardianship assistance payments may not exceed the foster care maintenance payment the child would have received if he or she remained in a foster family home (section 473(d)(2) of the Act).

Siblings. The title IV-E agency may make kinship guardianship assistance payments pursuant to a kinship guardianship agreement on behalf of each sibling of an eligible child who is placed with the same relative under the same kinship guardianship arrangement if the title IV-E agency and the relative guardian agree that the placement is appropriate (section 473(d)(3)(B) of the Act). Title IV-E nonrecurring expenses are also available for siblings so placed. The Act does not require that the State place siblings with the relative guardian of the child simultaneously with the title IV-E eligible child for the siblings to

qualify for payment under section 473(d)(3)(B) of the Act. The sibling does not have to meet the eligibility criteria in section 473(d)(3)(A) to receive kinship guardianship assistance payments or for the legal guardian to be reimbursed for the nonrecurring expenses related to costs of the legal guardianship.

Medicaid Eligibility. Children who receive kinship guardianship assistance payments are categorically eligible for title XIX pursuant to section 473(b)(3)(C) in the State where such child resides.

Fair Hearings.

The title IV-E agency must provide an opportunity for a fair hearing to any individual whose claim for kinship guardianship assistance available under title IV-E is denied or is not acted upon with reasonable promptness (section 471(a)(12) of the Act, and 45 CFR 205.10).

Case Plan Requirements.

Section 475(1)(F) requires the State to include specific information in the case plan for each child with a permanency plan of placement with a prospective relative guardian and receipt of kinship guardian assistance payments. The case plan must describe the following: 1) how the child meets the eligibility requirements; 2) the steps the agency has taken to determine that return to the home or adoption is not appropriate; 3) the efforts the agency has made to discuss adoption with the child's relative foster parent and the reasons why adoption is not an option; 4) the efforts the agency has made to discuss kinship guardianship with the child's parent or parents or the reasons why efforts were not made; 5) the reason why a permanent placement with a prospective relative guardian and receipt of a kinship guardian assistance payment is in the child's best interests; and 6) the efforts made by the agency to discuss with the child's parent(s) the kinship guardianship assistance arrangements or why efforts were not made. If the child's placement with the prospective relative guardian does not include siblings, the case plan must also include a description of the reasons why the child is separated from siblings during placement.

Title IV-E Plan Requirements.

The title IV-E plan requirements that are not specifically limited to the title IV-E foster care maintenance payment or adoption assistance programs also apply to the guardianship assistance program under title IV-E. These requirements are in sections 471(a)(2) through 471(a)(9); 471(a)(12), 471(a)(13), 471(a)(25), 471(a)(26), and 471(a)(30) through (a)(32) of the Act, and address topics such as agency organization and program administration, program audits and monitoring, confidentiality of information, fair hearings, interstate placements, school attendance and sibling placement. Further, Departmental regulations at 45 CFR 1355.30 apply to the title IV-E guardianship assistance program to the same extent that they apply to the title IV-E foster care maintenance payments and adoption assistance programs.

Title IV-E Agency Option to Extend the Duration of Title IV-E Kinship Guardianship Assistance Payments after October 1, 2010.

Beginning October 1, 2010, a title IV-E agency may extend the age that a child is eligible to receive kinship guardianship assistance payments up to age 19, 20 or 21 (at title IV-E agency option) under certain conditions. For a child on whose behalf a kinship guardianship assistance agreement was entered into after the child turned age 16, the title IV-E agency may opt to continue kinship guardianship assistance payments until the child attains age 19, 20 or 21 if the child, once he reaches 18, is: 1) completing secondary school (or equivalent); 2) enrolled in post-secondary or vocational school; 3) participating in a program or activity that promotes or removes barriers to employment; 4) employed 80 hours a month; or 5) determined incapable of any of the above due to a documented medical condition (section 475(8)(B)(iv) of the Act). Further information on this option will be issued at a later date.

Also beginning October 1, 2010, a title IV-E agency may not provide a kinship guardianship assistance payment if the agency determines that the relative guardian is no longer legally responsible for the support of the child or if the child is no longer receiving any support from the relative guardian. A relative guardian who receives kinship guardianship assistance payments on behalf of a child must keep the title IV-E agency administering the guardianship assistance program informed of circumstances which would make him/her ineligible for payments or eligible for the payments in a different amount (section 473(a)(4)(A) and (B) of the Act).

Administration and Training.

A title IV-E agency that is operating a title IV-E GAP may claim allowable administrative and training costs for the proper and efficient administration of the guardianship assistance program. These costs may be claimed in accordance with an approved public assistance cost allocation plan as per Departmental regulations at 45 CFR 95.507 at the following Federal financial participation (FFP) rates:

- 50% for nonrecurring expenses up to \$2,000 as well as administrative costs related to child placement and administration of the GAP pursuant to section 474(a)(3)(E) of the Act;
- 75% for short and long-term training of GAP personnel employed or preparing for employment by the public agency pursuant to section 474(a)(3)(A) of the Act;
- 75% for short-term training of prospective or existing foster parents pursuant to section 474(a)(3)(B) of the Act;
- 55% for short-term training of (among other individuals identified in the Act) relatives who have assumed guardianship in FY 2009, increasing by five percent each fiscal year until it reaches 75% in FY 2013, pursuant to section 474(a)(3)(B) and 203(b) of P.L. 110-351.

- 50% for Statewide Automated Child Welfare Information System (SACWIS) costs pursuant to 474(a)(3)(D) and (E) and, if required under 45 CFR 95.601, an approved Advanced Planning Document.

Allowable training costs and activities associated with the GAP may be claimed at the applicable FFP rate and must be addressed in the title IV-E agency's title IV-B training plan in accordance with 45 CFR 1356.60(b)(2) and in an approved cost allocation plan. Updates to the training plan in response to P.L. 110-351 are not due before the June 30, 2009 Child and Family Services plan submission deadline. Specific guidance for this submission will be issued at a later date.

Title IV-E Guardianship Waiver Demonstration Projects.

States with approved waiver demonstration projects providing guardianship assistance or services pursuant to section 1130 of the Act may continue to operate such projects in accordance with the existing applicable terms and conditions. Upon termination of such a project, the title IV-E State agency may continue to claim title IV-E and provide Medicaid if applicable, for the same assistance and services under the same terms and conditions that a child received under a guardianship demonstration project as of September 30, 2008. This claiming authority exists whether or not the State opts to operate a GAP pursuant to 473(d) of the Act (section 474(g) of the Act).

Financial Reporting.

Until a revised form ACF-IV-E-1 is issued, title IV-E agencies should report GAP expenditures as a component of and in the same manner as adoption assistance program expenses. To the extent that training costs are incurred where the transitional FFP rate of 55% is applicable, the costs are to be reported as part of "State and Local Training" with the reported amounts in the Federal share columns reflecting the actual total claimed FFP (combination of amounts subject to 75% and 55%). The form ACF-IV-E-1 must be supplemented with information to clearly identify (on a line by line basis) the portion of reported adoption assistance program expenditures that support the GAP. Further guidance on the submission of the ACF-IV-E-1 is forthcoming under separate cover.

Effective Date for Implementation of Guardianship Assistance Program.

A State may submit a title IV-E plan amendment to operate a title IV-E GAP after the date of the law's enactment, October 7, 2008. The Tribal option to operate a title IV-E GAP becomes available on October 1, 2009.

The State or Tribal title IV-E agency may implement and claim allowable guardianship assistance program costs beginning on the first day of the quarter in which an approvable title IV-E plan amendment is submitted to ACF to implement the GAP (45 CFR 1356.20(d)(8)). Allowable administrative costs for the title IV-E GAP can be claimed pursuant to an amended and approved

public assistance cost allocation plan (PACAP) or a pending PACAP in some situations (45 CFR 95.515).

A State or Tribe with an approved title IV-E plan amendment may claim title IV-E for only those children for whom the agency enters into a new kinship guardianship assistance agreement and who exit foster care to a new guardianship arrangement on or after the first day of the quarter in which the approved title IV-E plan amendment was submitted to ACF (section 471(a)(28) and 473(d)(1)(A) of the Act). Please note, however, that the child may satisfy the requirement pursuant to 473(d)(3)(A)(i)(II) of the Act (eligibility for title IV-E foster care maintenance payments while residing in the home of the prospective relative guardian for six-consecutive months) prior to the first day of the quarter in which an approvable title IV-E plan amendment is submitted to ACF to implement the GAP.

INSTRUCTIONS: State Plan Submissions.

Each State that elects to operate a guardianship assistance program must submit to ACF a revised title IV-E plan pre-print amendment (see Enclosure) that reflects the title IV-E statutory requirements for a GAP. In completing the amendment, States must record the applicable State statutory, regulatory or policy references and citations for the affected Federal requirement. States may submit their title IV-E plan amendment using the enclosed pages, or may use the electronic version found at the Children's Bureau web page at <http://www.acf.hhs.gov/programs/cb>. States may use a different format, provided that the format used includes all of the applicable title IV-E plan requirements of the Act as set forth in the new law. If a State chooses to use its own format, it must include all applicable State statutory, regulatory or policy references and citations for each requirement. If, at the time a State elects to operate a guardianship assistance program, ACF has issued a new title IV-E plan pre-print, the State should use the title IV-E plan pre-print instead of the enclosed plan amendment.

States that elect to provide a GAP must submit the completed title IV-E plan pre-print to the appropriate ACF Regional Program Manager for approval. The completed plan amendment may be submitted at any time. Please note that the plan amendment must be submitted electronically or on a compact disk. Where States are unable to submit electronic signatures for purposes of certification, they may submit the appropriate pages with original signatures. In addition, States must submit copies of referenced material to document compliance for any cited statute, regulation, policy and procedure.

INQUIRIES: Children's Bureau Regional Program Managers

/s/

Joan E. Ohl
Commissioner

Attachment A – Children's Bureau Regional Program Managers
Attachment B – State Plan Amendment Pre-Print

ATTACHMENT A– Children’s Bureau Regional Program Managers

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