

# Section 14A. Approving and Implementing Guardianship as a Permanency Plan

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Guardianship is an acceptable permanent plan for a child in substitute care when a child cannot be safely returned to the home of a parent. Adoption is the preferred plan; however, guardianship is an acceptable alternative plan when adoption does not best serve the interests of the child. A decision to pursue guardianship as a plan must be based on the individual safety, permanency and well-being needs of the child. Any child with an approved plan of guardianship with a relative is eligible for a subsidized guardianship.

This procedure describes the process for seeking approval to implement a permanent plan pursuant to Child Welfare Policy I-E.3.6.1 Guardianship as a Permanency Plan. The policy and this procedure require that a guardianship plan be considered and approved by the department only when the proposed guardian has been identified and is the substitute caregiver. Local offices may encounter situations when this requirement is not met because the court has changed the plan to guardianship before a substitute caregiver is identified and the plan approved. A common reason this might occur is if the plan is being changed because a child under 16 needs to be moved from an APPLA plan, and guardianship is determined to be the most appropriate new permanency plan. Our administrative rules now direct you how to proceed in these situations and the procedure is covered in section H of this chapter.

Under this procedure, before pursuing department approval of the guardianship plan the caseworker must assess the appropriateness of the plan and take into consideration the child's needs and functioning, the role of the parents in determining and affecting the long term plan, and the relationship between the child and substitute caregiver. The caseworker, along with assistance from the certifier, must assess the appropriateness of the substitute caregiver including the substitute caregiver's commitment to the child and the abilities and resources available to the substitute caregiver to meet the child's current and long-term needs for safety, permanency and well-being.

## A. When guardianship may be considered

### Caseworker

### Procedure

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- Guardianship may be considered only when the department has determined the child cannot safely be returned to the home of a parent, there is a compelling reason to not pursue adoption, and it is in the child's best interest to implement a permanency plan of guardianship. The caseworker must consult with his or her supervisor to determine whether or not to pursue a plan of guardianship.
- The following questions must be considered:

### **B. Assessing the appropriateness of the plan of guardianship for the child**

#### **Caseworker**

#### **Procedure**

- The caseworker must:
  1. Thoroughly review documentation and information on the child's needs and functioning. Consider how well the child is functioning within the foster home and in other settings. Observe the interactions between the substitute caregiver and child.
  2. Observe the actions the substitute caregiver is taking to meet the child's well-being needs. Child well-being includes, but is not limited to, the child's physical health, mental health, developmental, educational, vocational and emotional needs. Assessment of a family's ability to meet a child's well-being needs requires consideration of how the family and home environment are meeting the child's current unique needs, and the likelihood the family and home environment will continue to meet these needs and encourage the child to reach his or her potential.

Important indicators of the ability of a family to meet a child's well-being needs include the family's current willingness and follow through in scheduling and attending medical appointments, dental appointments and mental health services; their support and involvement in educational and developmental activities; and their ability and willingness to cooperate with professionals to meet a child's specific needs.

3. Request information from other members of the child's team on the needs of the child, how the child's unique needs are being met by the substitute caregiver, and the relationship between the child and substitute caregiver.

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The child's team is not entirely defined in policy. The term refers to a group of individuals who have an interest in the child's safety, permanency and well-being. The team may consist of different individuals depending on the case dynamics and legal status of the child. At a minimum, the team must include the caseworker, child's attorney, CASA, any child aged 14 and older and at their request a minimum of two members of the team they choose, and tribe if the child has ICWA status or a member of the Refugee Child Welfare Advisory Committee (RCWAC) if the child has refugee status. It may also include parents, relatives and other individuals familiar with the child's needs such as therapists, mentors and school staff.

4. Seek input from the child as developmentally appropriate, and ensure a child aged 14 or older and two persons (if any) they have selected to be part of their team, is consulted on the plan. Even a nonverbal child will offer behaviors and cues they feel safe and attached to the substitute caregiver. Although the child's consent is not required for the plan to be approved, a child's support of the placement and plan can facilitate the implementation and long term success of the plan.
5. Document in OR-Kids in the case notes and the permanency plan how the above requirements were met.

### **C. Assessing the parents' support of the plan of guardianship**

Guardianship does not require the rights of the parents to be terminated and parents often have a continuing relationship after the establishment of a guardianship. Depending on the type of guardianship established, a parent could return to court and ask the court to reconsider the plan of guardianship and return the child home to the parent. For this reason it is important the parents support the plan of guardianship if at all possible. Although the court would likely only consider such a request if the parents had made considerable progress, the request itself could be stressful for the guardian and the child. The caseworker must assess the parents' acceptance of guardianship as a permanency plan including their desire for continued contact with the child.

Important indicators of the ability of a family to meet a child's well-being needs include the family's current willingness and follow through in scheduling and attending medical appointments, dental appointments and mental health services; their support and involvement in educational and developmental activities; and their ability and willingness to cooperate with professionals to meet a child's specific needs.

### Caseworker

#### Procedure

- The caseworker must:
  1. Make efforts to discuss with each parent the plan of guardianship and seek input on their support of the plan.
  2. Make efforts to discuss with each parent their desires for continued contact and determine the type of contact they envision. Consideration should be given to the reasonableness of their requests and how their desires fit with the needs of the child and desires and willingness of the substitute caregivers about ongoing contact.
  3. Information on the assessment of the support of the plan of guardianship by the parents must be documented in OR-Kids case notes and the permanency plan.

### **D. Assessing the appropriateness of the substitute caregiver as a potential guardian**

### Caseworker

#### Procedure

- When considering guardianship as a plan both the caseworker and certifier must jointly assess whether the child's ongoing needs for safety, permanency and well-being are met in the home of the substitute caregiver. A review of Child "Placement Matching," OAR 413-070-0640 is necessary to determine the conditions that must exist in the family home to ensure these needs are met. The caseworker documents the information in OR-Kids case notes and the case plan. The information will be presented to a Permanency Committee if and when the department considers final approval of the plan. The following questions must be considered:
  1. Does the substitute caregiver demonstrate the ability to meet the child's physical and emotional needs for safety, and does the home environment encourage these needs to be met?
  2. What is the substitute caregiver's ability and willingness to promote and preserve the child's attachment to his or her family, including the caregiver's willingness to maintain relationships with siblings placed outside the home?

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3. Would permanent placement with the substitute caregiver provide a sense of continuity and familiarity for the child, such as keeping the child in a familiar school and preserving preexisting relationships?
4. Does the substitute caregiver demonstrate the ability and willingness to provide appropriate educational, developmental, emotional and physical support, such as advocating in school for a child with special needs and working cooperatively with outside professionals?
5. Does the substitute caregiver have the ability to provide a current and lifelong family relationship to the child, fully integrating the child into the family and providing support into adulthood?
6. What information exists to illustrate the substitute caregiver's ability to meet the child's lifelong needs for stability, including the child's lifelong needs for support and nurturing?
7. What is the likelihood the substitute caregiver will support the identity of the child's specific developmental, cultural, religious, and spiritual background and connections?

### Caseworker

#### **Procedure**

- The caseworker must:
  1. Consider the substitute caregiver's ability to meet the child's specific needs, the child's ability to maintain stability in the substitute caregiver's home, and the appropriateness of the plan and of permanent placement with the substitute caregiver.
  2. Consult with the substitute caregiver on their financial needs and community supports as well as the availability of guardianship assistance. When guardianship assistance will be requested, inform the substitute caregiver of the eligibility, application and ongoing requirements. Explain that if requested, any approved guardianship assistance subsidy will most likely be less than they are receiving for the foster care payment and can never exceed the foster care payment.
  3. Review the CF 0975 Duties of a Guardian with the guardian to ensure they are comfortable with the responsibilities involved in being a guardian, including the statutory requirement to provide an annual report to the court.

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The format of the annual report varies depending on the court of jurisdiction. In addition, some courts will send annual reminders that the report is due, while other courts rely on the guardian to remember the annual due date. At the time of the guardianship order, the guardian should check with the court to determine the report format and whether reminders will occur.

4. Describe the local office and court approval process involved in establishing guardianship to the substitute caregiver.
  5. Consult with the supervisor on a decision whether to proceed to request department approval to change the permanency plan to guardianship.
- Before requesting a Permanency Committee and formal department approval to change the plan, the caseworker must ensure the substitute caregiver has met the following requirements to be considered as a potential guardian:
    1. When residing in Oregon, the substitute caregiver must have a certificate of approval to provide foster care from the department, a licensed foster care agency in Oregon or a federally recognized tribe with a Title IV-E agreement with the department.
    2. When residing outside of Oregon, the substitute caregiver must be certified or otherwise approved by the state in which the substitute caregiver resides and approved as a placement for the child under the Interstate Compact on Placement of Children.
    3. The caseworker and the substitute caregiver must agree the substitute caregiver and child can maintain a stable relationship and function effectively without department supervision.
    4. The substitute caregiver must have an updated home study that describes how the substitute caregiver's skills and abilities meet the child's best interests and needs for safety and permanency. If this has not been completed, the caseworker should request the certifier to complete an amendment or update to the home study.
    5. The substitute caregiver must have adequate income and connections to community resources to maintain the household and be self-sufficient. This means the substitute caregiver should have the ability to provide for shelter, food and utilities. Neither the foster care payment nor a guardianship assistance subsidy should be the resource relied upon to pay the rent and meet the needs of the household. The foster care payment will no longer continue once the guardianship is implemented, and the guardianship assistance, if and when implemented, is to assist in meeting the child's specific needs.
    6. The substitute caregiver must have a strong commitment to caring permanently for the child.

### Caseworker

#### **Procedure**

- When a home study has been completed but does not include information on how the substitute caregiver's skills and abilities meet the best interests and needs for safety and permanency for the specific child, the certifier completes a summary or addendum to address these issues. A SAFE home study update does not need to be completed unless it is due.

### **E. Requesting department approval to change the permanency plan to guardianship**

Unless an exception exists, a Child Welfare program manager or designee must approve changing a primary plan to guardianship before the caseworker seeks approval from the court.

### Caseworker

#### **Procedure**

Upon receipt of the CF 0982, a staff member in the Guardianship Assistance Program completes the following:

- The caseworker must:
  1. Request a Permanency Committee.
  2. Ensure the members of the child's team, specifically those who are eligible members of the Permanency Committee, are informed of the date, time and location of the committee meeting and are invited to present comments in person or in writing to the Permanency Committee for consideration. The following members of the child's team are eligible Permanency Committee members: the caseworker, attorney for the child, CASA, a tribal representative for a child who is member of a tribe or eligible for membership in a tribe, and a member of the RCWAC for a child with refugee status.
  3. Ensure other individuals from the child's team whom can provide important information on the child's needs and functioning have been invited to the Permanency Committee. Consult with the supervisor to identify these individuals. Potential invitees may include the substitute caregiver, the child and other individuals familiar with the child's needs. Ensure these individuals know the purpose of the committee, why they have been invited

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to the committee and that they will be excused after their respective presentations to the Permanency Committee.

4. Complete the beginning section of the CF 0270 Permanency Committee form to identify the case member information and reason for the Permanency Committee request. Mark the box next to “Guardianship” in the sections titled “Requested for recommendations and decisions.”
5. Submit to the Permanency Committee and the Child Welfare program manager or designee the CF 0270 Permanency Committee form, the recent case plan and child specific case plan, and any additional information on the child and family being considered as the potential guardian family.
6. If guardianship assistance will be requested, complete the CF 0311G Guardianship – Case Plan Addendum and submit this to the committee.
7. Ensure the appropriate releases of information are on file if protected information is being released to the Permanency Committee on the substitute caregiver.
8. Present to the committee a summary of all prior efforts to achieve a more permanent plan and to place the child with a relative.

### **Caseworker and certifier**

#### **Procedure**

Upon receipt of the court order establishing the guardianship, the caseworker completes the following:

- The caseworker, with input from the certifier, presents the results of the assessment conducted in evaluating the appropriateness of guardianship as a plan and presents information on the ability of the substitute caregiver to meet the child’s ongoing needs for safety, permanency and well-being.

### **F. Review and approval of a guardianship plan**

#### **Permanency Committee members**

#### **Procedure**

- The members of the Permanency Committee review all of the information provided and the facilitator of the committee makes written recommendations on the CF 0270 Permanency Committee form. The written recommendations include information on whether guardianship is an appropriate plan, whether the substitute caregiver can meet the child’s needs and should

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be considered as a potential guardian, and the compelling reason for not pursuing adoption. The form is provided to the Child Welfare program manager or designee within three business days of the date of the committee.

### Child Welfare program manager/designee

#### **Procedure**

- The Child Welfare program manager or a designee attends the Permanency Committee and may ask clarifying questions. He or she does not participate in the committee deliberations or recommendations. Within one business day after receipt of the committee's written recommendations, the Child Welfare program manager or designee makes the final determination on behalf of the department on whether guardianship is an appropriate plan. Within the same time frame, the manager or designee provides written notification on the CF 0270 Permanency Committee form to the caseworker of the decision and basis for the decision. The Child Welfare program manager or designee considers the following to make this determination:
  1. How the permanency plan of guardianship meets the child's needs.
  2. The requirement that guardianship only be considered when a child cannot be returned home safely and adoption is not an appropriate plan.
  3. The input on the plan gathered from speaking with or observing the child.
  4. The parent's acceptance of the plan of guardianship.
  5. The information presented on the substitute caregiver's ability to meet the requirements for consideration as a potential guardian.
  6. The information presented on the skills, abilities and commitment of the substitute caregiver to meet the child's current and long-term needs for safety, permanency and well-being.
  7. Whether the department has provided the child and child's parents an opportunity to identify available permanency options.
  8. Whether or not the substitute caregiver is able to meet the child's needs described in Child Welfare Policy I-E.3.1 Placement Matching, OAR 413-070-0640, which describes the child's needs for the following:
    - a. Physical and emotional safety.
    - b. Attachment.
    - c. Educational, developmental, emotional and physical support.
    - d. Lifelong family relationships.
    - e. Stability.

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- f. Identification with developmental, cultural, religious and spiritual backgrounds and connections.

### Caseworker

#### **Procedure**

- After receipt of the decision by the Child Welfare program manager or designee, the caseworker must notify the following individuals of the decision:
  1. The child, if developmentally appropriate.
  2. The substitute caregiver.
  3. The members of the child's team who were eligible to serve on the Permanency Committee.

### **G. Requesting court approval to change the permanency plan to guardianship**

### Caseworker

#### **Procedure**

- When the Child Welfare program manager or the designee decides to not approve changing the plan to guardianship, the caseworker should consult with the supervisor to determine next steps in planning for the child. In addition, the caseworker should inform all members of the child's team and convene a meeting with the team to reconsider the child's permanency options.
- When the Child Welfare program manager or the designee decides to approve a change in plan to guardianship the caseworker must:
  1. Inform the DOJ attorney of the department's approval to change the plan to guardianship as DOJ will file the petition and represent the department in court.
  2. Request a permanency hearing before the court within 30 days of a decision by the Child Welfare program manager or designee to approve the plan of guardianship.
  3. Before the court hearing, provide the court with documentation supporting the department's position that guardianship is in the child's best interest and neither placement with parents nor adoption is an appropriate plan. The home study of the potential guardian family and the Permanency Committee/Child Welfare manager or designee report likely contains protected information on the potential guardian family that should not be

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released to the parties in the case. Instead, the reasons for supporting the plan should be summarized in a report to the court.

4. At the court hearing, recommend the court approve changing the child's permanency plan to guardianship and inform the court whether or not the potential guardian is applying for guardianship assistance.
  5. When guardianship assistance is being requested, inform the court that after the department has negotiated the amount of guardianship assistance with the potential guardian, a subsequent court hearing will be requested for the order of guardianship to be entered. The guardianship must not be established before the guardianship assistance agreements are signed as the child will not be eligible for the guardianship assistance.
- When the court does not approve the guardianship plan, the caseworker should consult with the supervisor to determine next steps in planning for the child. In addition, the caseworker should inform all members of the child's team and convene a meeting with the team to reconsider the child's permanency options.

### **H. When the court changes the plan to guardianship before the department's approval of the plan and potential guardian**

The court may change a child's permanency plan to guardianship before the department's approval of the plan and potential guardian using the Permanency Committee process as described in sections D, E and F of this chapter. This may occur for several reasons but most often will be that a child is under 16 years of age, return to parent as a permanency plan is now ruled out, there is no identified relative or guardian resource to date, and the child must be on a plan other than APPLA. The court, either on its own or with a recommendation from a party to the case, has determined that guardianship is the most appropriate permanency plan to work towards.

### **Caseworker**

#### **Procedure**

- After the court orders the permanency plan be changed to guardianship, change the permanency plan to guardianship in OR-Kids.
- Begin working on the identification of a potential guardian resource for the child. This may include reviewing guardianship with a current provider, updating the relative search or beginning general recruitment.
- If you have a child experiencing significant instability or special needs that prevents a foreseeable permanency plan of guardianship, your efforts to achieve guardianship may look different. You may be working on stabilizing the child so you can get to a point of being able to

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find a permanent, stable placement that might turn into a guardianship. Being able to identify a potential guardian resource for a child may begin with steps towards permanency readiness for the child.

- Once successful in identifying a potential guardian resource for the child, use the Permanency Committee process outlined in sections D, E and F of this chapter.
- The court has already changed the permanency plan to guardianship, so the court approval process outlined in section G of this chapter does not apply. However, you will need to keep the court updated on your progress towards permanency and a court hearing to review the finalization of a guardianship plan should be scheduled.

## I. Finalizing the plan

### Caseworker

#### Procedure

- Before recommending the court finalize a guardianship, the caseworker, caseworker's supervisor, supervising courtesy worker for the child, if any, and certifier for the family must come to a consensus that the guardianship should be finalized. The caseworker must:
  1. Collaborate with the certifier for the family and supervising courtesy worker for the child, if any, on the safety, permanency and well-being of the child. This will include a discussion of any CPS referrals either closed at screening or assigned during the episode of foster care, any certification issues reported during the episode of foster care, or any other information that will help determine whether it is appropriate to close DHS supervision of the placement.
  2. Provide a written finalization recommendation approved by the caseworker, supervisor courtesy worker for the child, if any, and certifier for the family. This document may be in the form of a memo or email, but must clearly state there is consensus that finalization of the guardianship be recommended to the court. The caseworker's supervisor must review and concur with the recommendation before the caseworker proceeds with the request to finalize.
  3. If there is disagreement on a final recommendation for guardianship, the caseworker, in consultation with the supervisor, will involve the program manager for the caseworker, supervising courtesy worker, if any, and certifier for the family in the final decision to recommend the finalization.
  4. If disagreement on a final recommendation for guardianship remains after consultation with the program manager(s) or if the program manager(s) requests further consultation, the program manager should contact the Child Permanency program manager or assistant manager for that consultation.

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- After the guardianship finalization memo is recorded in the case file, DOJ may proceed with the guardianship petition. After the filing of the guardianship petition by DOJ, the caseworker, with the assistance of the attorney from DOJ, requests a hearing to dismiss the department from the case and establish the guardianship.
- If guardianship assistance will be provided, the caseworker must await notification from the Guardianship Assistance Program that the guardianship assistance agreements have been signed and returned. This is required before requesting the final court hearing to establish the guardianship and dismiss the department from the case.
- The CF0972 form is completed by the caseworker and submitted to the DOJ attorney for filing along with the guardianship petition. This satisfies the statutory requirement that the department provide the court a report of suitability of a proposed guardian for a child in department custody.
- **When guardianship assistance is not being provided by the department**, the following is completed:
  1. After the receipt of the court order to finalize the guardianship plan and dismiss the department from the case, the caseworker ensures the foster care placement is closed.
  2. The local office must not be providing services to a child or family member on the case to close the case. Before closing the case, all the plans and outstanding work must be complete and approved in OR-Kids.
- **When guardianship assistance will be provided**, the case is not closed. Refer to the next Section 14b Establishing Guardianship Assistance for the process involving closing the foster care service and transferring the case.

### The role of the supervisor

- Review all previous department efforts to identify relatives, the outcomes of any assessment of a relative, and confirm there are no current actions to identify or assess a child's relative as a permanency resource.
- Determine with the caseworker if the case meets all requirements for a guardianship plan and ensure the caseworker has conducted a thorough assessment of the appropriateness of the plan and potential guardian.
- Ensure the caseworker schedules a Permanency Committee to review a proposed plan of guardianship.
- Consult with the caseworker to determine next steps in planning when approval to change the plan to guardianship is not approved by the department or the court.
- Ensure the caseworker follows the appropriate steps when requesting court approval of the plan.
- Ensure all outstanding work is complete and approved before case closure or transfer to Central Office for cases involving guardianship assistance.

## Forms and references

### Forms

- CF 0270, Permanency Committee Form  
<https://apps.state.or.us/Forms/Served/CE0270.doc>
- CF 0311G, Guardianship - Case Plan Addendum  
<https://apps.state.or.us/Forms/Served/CE0311g.doc>
- CF 0975, Legal Duties of a Guardian  
<https://apps.state.or.us/Forms/Served/CE0975.pdf>
- CSP 0975, Legal Duties of a Guardian (Spanish version)  
<https://apps.state.or.us/Forms/Served/CS0975.pdf>
- CF 0972, Letter to the Court on the Suitability of the Proposed Guardian  
<https://apps.state.or.us/Forms/Served/CE0972.doc>
- CF 0977, Annual Court Report  
<https://apps.state.or.us/Forms/Served/CE0977.doc>

### Child Welfare policy

- I-E.3.1, Placement matching  
[www.dhs.state.or.us/policy/childwelfare/manual\\_1/i-e31.pdf](http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e31.pdf)
- I-E.3.6, Legal permanency, concurrent planning and use of a Permanency Committee  
[www.dhs.state.or.us/policy/childwelfare/manual\\_1/i-e36.pdf](http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e36.pdf)
- I-E.3.6.1, Guardianship as a permanency plan  
[www.dhs.state.or.us/policy/childwelfare/manual\\_1/i-e361.pdf](http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e361.pdf)
- I-E 3.6.2. Guardianship assistance  
[www.dhs.state.or.us/policy/childwelfare/manual\\_1/i-e362.pdf](http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e362.pdf)
- I-E.6.1, Title IV-E foster care, adoption assistance and guardianship assistance eligibility  
[www.dhs.state.or.us/policy/childwelfare/manual\\_1/i-e61.pdf](http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e61.pdf)

Revised September 2015