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|  | <b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY</b>                       |                                     |
|   | <b>Chapter 14:</b> Guardianship  | <b>Effective Date:</b> July 1, 2019 |
|   | <b>Section 3:</b> Modification and Continuation of a Guardianship Assistance Agreement | <b>Version:</b> 4                   |

## STATEMENTS OF PURPOSE

The Indiana Department of Child Services (DCS) will process a request for modification of a current guardianship assistance agreement providing ongoing financial assistance through the Guardianship Assistance Program (GAP).

Guardians who have signed an agreement and are receiving periodic payments may, during the term of the agreement, submit a request to change the periodic payment amount.

The request must be submitted to the DCS local office that handled the Child In Need of Services (CHINS) case or Juvenile Delinquency (JD) case at the time the guardianship was finalized. The request must include the information and documentation required, or that the guardian would consider relevant for an initial [Payment Request Information \(PRI\) Indiana GAP](#) response. The request shall also include a detailed explanation of the change in circumstances of the child or guardian that was not known or anticipated at the time the current periodic payment was negotiated or most recent amendment to the agreement was determined. A request for modification may not be submitted more frequently than once in a consecutive 12 month period.

In considering a request for a change in the periodic payment amount, DCS may request from the guardian, or any other source, additional information that is determined to be relevant. Any information that DCS receives from a source other than the guardian will be shared with the guardian. The information will be subject to redaction of personally identifiable information that DCS determines should be kept confidential for protection of the persons involved. Within 45 calendar days of the date that DCS receives the requested information, DCS will decide whether to grant or deny the request to modify the agreement and will advise the guardian by letter of its decision.

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

If the DCS decision regarding a change to the periodic payment amount is not acceptable to the guardian, the right to request administrative review of the decision may be available. See separate policy [14.4 Administrative Review for GAP Assistance](#).

DCS may approve a temporary change in the periodic payment. The expiration date of the temporary change may be extended or renewed if the guardian submits a modification request and DCS determines that the circumstances on which the approved change was based continue to exist. All changes must be reflected in a written amendment to the agreement.

If the child is placed outside the home of the guardian and the guardian is not financially responsible for the placement (e.g. Juvenile Detention, foster care, etc.), DCS may request the guardian renegotiate the periodic payment amount for the duration of the out-of-home placement. Any change in the periodic payment amount will only be made by a written amendment to the agreement signed by DCS and the guardian.

**Note:** If DCS determines that the guardian is not providing financial support to or for the benefit of the child, or the guardian is no longer legally responsible for the support of the child, DCS may administratively suspend the periodic payments for the duration of the out-of-home placement or terminate the guardianship assistance agreement.

### **[REVISED] Continuation after the child turns 18 years of age**

In order to continue GAP beyond age 18 and up to age 21, the following must be satisfied; the guardianship must have been finalized on or after the child's 16<sup>th</sup> birthday (but before the child's 18<sup>th</sup> birthday) and the older youth must continue to meet at least one (1) of the following conditions:

1. Enrolled in secondary education or a program leading to an equivalent credential;
2. Enrolled in an institution which provides post-secondary or vocational education;
3. Participation in a program or activity designed to promote, or remove barriers to employment (e.g. Job Corps or attendance in classes on resume writing or interview skills);
4. Employed for at least 80 hours per month; or
5. Is incapable of doing any of the previously described educational or employment activities due to a medical condition.

If the older youth intends to meet these conditions after age 18, the guardian(s) should complete an [Application for Continuation of Guardianship Assistance Beyond Age 18](#), before the child turns age 18, and submit it to the DCS Central Eligibility Unit.

### **Addition of Successor Guardian for GAP**

In order to continue GAP assistance payments after the date of death or determination of incapacity [\[IC 29-3-1-7.5\]](#) of the original guardian, there must be a successor guardian named in the guardianship assistance agreement (including any amendment to the agreement that was effective before the date of death or determination of incapacity [\[IC 29-3-1-7.5\]](#) of the original guardian). See Related Information for more information about successor guardian.

**Note:** In the event that the successor guardian assumes responsibility for the child, he or she 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.

### **Code References**

1. [42 USC 673\(d\)\(1\): GAP eligibility and other conditions for payment under Title IV-E](#)
2. [42 USC 673 \(d\)\(2\): GAP eligibility and other conditions for payment under Title IV-E](#)
3. [IC 31-40-1-5 Obligation of parent or guardian for costs of placement; remittance of support payment; enforcement](#)
4. [IC 29-3-1-7.5 Incapacitated person](#)

## **PROCEDURE**

The Family Case Manager (FCM) will:

1. Notify the DCS Staff Attorney when a child receiving guardianship assistance has been removed from the home;
2. Gather information including a detailed explanation of the change in circumstances if the guardian requests a modification. The detailed explanation should include circumstances related to the child or guardian that was not known or anticipated at the time the current periodic payment was negotiated and provide documentation to the DCS Local Office Director (LOD); and
3. Coordinate with the DCS CEU staff and other entities in obtaining and providing to the DCS Staff Attorney documents such as the guardianship assistance agreement, previous modifications, the order establishing legal guardianship, and information on subsequent removals and out-of-home placements.

The DCS LOD or designee will:

1. Obtain a copy of the original agreement from the guardian, DCS CEU, or the DCS local office file when a request for modification of an existing guardianship assistance agreement is received;
2. Gather information from relevant sources, including the guardian, within 30 calendar days of the request to appropriately consider the request for a modification of the agreement; and complete the following steps:
  - a. Decide whether or not a prior request for modification has been received from the guardian within the previous 12 months. If so, deny the request for modification and include the [Request for Administrative Review Indiana GAP](#) form with the denial,
  - b. Decide whether or not a change in circumstances exists that was not known or anticipated at the time the periodic payment was negotiated. If not, deny the request for modification and include the [Request for Administrative Review Indiana GAP](#) form with the denial, or
  - c. If no request was received within the previous 12 months and the request documents a change in circumstances warranting review of the current periodic payment amount, submit the documentation and information to the DCS Staff Attorney to negotiate any appropriate change in the periodic payment.

The DCS Staff Attorney will:

1. Contact the guardian or their attorney and negotiate any appropriate change in the periodic payment amount with regard to the modification request that has been received. This should occur within 45 calendar days of receipt of the currently effective guardianship assistance agreement, the modification request, any additional information requested, and any other relevant information received from the DCS LOD or designee;
2. Contact the guardian and request that they renegotiate the periodic payment for the duration of the out-of-home placement.

**Note:** Any change in the periodic payment amount will be reflected in an amendment to the agreement that must be signed by both the guardian and the DCS CEU.

3. Prepare an amendment reflecting the revised terms if an agreement is reached;
4. Obtain the signature on the amendment by the guardian and the DCS LOD, or designee, and return the signed amendment to DCS CEU for processing;
5. Send a notice to the guardian stating that there is no agreement to the modification requested and include the [Request for Administrative Review Indiana GAP](#) form if no agreement can be reached within 45 calendar days of the receipt of the

documents and information described above, or an approved extension of time;  
and

6. Request an appropriate child support order under [IC 31-40-1-5](#) if the child is in an out-of-home placement for which DCS is making payment, and no agreement has been reached with the guardian regarding an amendment to the periodic payment amount.

The DCS CEU will:

1. Terminate a guardianship assistance agreement, or administratively suspend periodic payments under a guardianship assistance agreement, if it is determined that the guardian is not legally responsible or is not providing current support for the child;
2. Provide a copy to the appropriate DCS local office of the original guardianship assistance agreement and any amendments, when a guardian or DCS is requesting a modification; and
3. Process amendments of guardianship assistance agreements.

## **PRACTICE GUIDANCE**

### **Financial Support to or for the Benefit of the Child**

If DCS determines that the guardian is not providing financial support to or for the benefit of the child, or the guardian is no longer legally responsible for the support of the child, DCS may administratively suspend the periodic payments for the duration of the out-of-home placement or terminate the guardianship assistance agreement. This determination will be made on a case-by-case basis.

## **FORMS AND TOOLS**

1. [Guardianship Assistance Agreement](#) – Available via CEU
2. [Payment Request Information \(PRI\) Indiana GAP \(SF 55040\)](#)- Available via CEU
3. [Request for Administrative Review Indiana GAP](#)-Available via CEU
4. [Amendment to Guardianship Agreement](#) – Available via CEU
5. [Guardianship Program Status Report](#) – Available via CEU
6. [Application for Continuation of Guardianship Assistance Beyond Age 18](#)
7. [Notice of Administrative Suspension of Guardianship Assistance Periodic Payments](#) – Available via CEU

## **RELATED INFORMATION**

### **Definition of Financial Support for the Purposes of Guardianship Assistance**

If a guardian is no longer providing a form of financial support to or for the child, guardianship assistance benefits may be terminated or administratively suspended. DCS may determine that if the guardian is maintaining regular visitation with the child and is cooperating with the child's case plan to return home while the child is in out of home care, and if one (1) of the following are met, the guardian should be considered as providing financial support to the child:

1. The guardian is making regular payments, or otherwise providing support for the child, for:
  - a. Family therapy,
  - b. Tuition,
  - c. Clothing,
  - d. Maintenance of special equipment in the home, or

- e. Services for the child's special needs, such as occupational, physical, or speech therapy.
2. The guardian is providing support for the child while the child is in out of home care, in the form of regular monetary payments of not less than \$100.00 per month or provision of materials, supplies or services having an equivalent monetary value; or
3. The guardian is paying child support pursuant to a court order.

**Successor Guardian for the purpose of GAP**

DCS shall make monthly assistance payments to a successor guardian on behalf of the child, if the successor guardian:

1. Is named in the guardianship assistance agreement (including any amendment to the agreement that was effective before the date of death or determination of incapacity [[IC 29-3-1-7.5](#)] of the original guardian);
2. Has completed all required background checks which includes Fingerprint-Based National Criminal History Check (Fingerprint-Based Check); Child Protective Service (CPS) History Check; Sex Offender Registry Check; and Local LEA Records Check;
3. Has been appointed by the court in the guardianship proceeding as the child's guardian; and
4. Complies with all statutory duties and responsibilities of the guardian and the guardianship assistance agreement as approved and signed by the department and the original guardian, or any new guardianship assistance agreement signed by the department and the successor guardian.

**Note:** The home of the successor guardian does not need to be licensed as a foster family home at the time of placement of the child in that home or receipt of guardianship assistance on behalf of the child