

Legal Guardianship Policy

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West Virginia Department of Health and Human Resources
Bureau for Children and Families
Office of Children and Adult Services
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Legal Guardianship

1.0 Introduction

1.1 Introduction and Overview

Permanency improves the outcome in virtually every area of a child's life. Children who achieve permanency have a better chance to form strong emotional bonds and to live happy lives. They are more likely to have access to health care, live in safe communities, finish school and go on to succeed on their own as adults. They are less likely to have behavioral or mental health problems, abuse alcohol or drugs, get into trouble with the law or face poverty or homelessness.

The federal government acknowledges only 4 primary permanency options for children in foster care:

- Reunification
- Adoption
- Legal Guardianship
- Placement with a fit and willing relative (kinship care)

A fifth option is APPLA - Another Planned Permanent Living Arrangement – the Court may sanction this permanency option to meet the individual child's needs. After considering and ruling out reunification, adoption, legal guardianship and placement with a fit and willing relative, and ensuring the child is aged 16 or older, the MDT may conclude that APPLA is the most appropriate permanency plan for the child.

A legal guardianship is a judicially created and legally binding 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. Parental rights are not required to be terminated in order to sanction a legal guardianship under WV Code [§49-4-112 The Fostering Connection to Success and Increasing Adoptions Act 2008](#) (Fostering Connections) allows for the State to enter into Guardianship agreements to provide assistance payments to grandparents and other kin/relatives who have assumed the Legal Guardianship of children for whom they have cared for as a **certified** foster/adoptive parent and for whom they have committed to care for on a permanent basis. The Fostering Connections Act allows for Title IV-E reimbursement for these

payments to **kinship/relative** Legal Guardians. In WV, the Department has defined kinship/relatives for the purposes of the placement of children as “any person related to the child by blood or marriage including cousins and in-laws. This includes persons who the child considers a relative, such as a godparent or significant others whom the child claims as kin may also be considered as a placement resource”. Legal Guardianship is still permitted with non-kinship/relative but will not be IV-E reimbursable.

WV state code provides for the Department to utilize Legal Guardianship as a viable permanency option once reunification and adoption have been ruled out. Legal Guardianship was added to the WV State Code in 1998 as a result of the [1997 Adoption and Safe Families Act \(ASFA; PL 105-89\)](#).

(For a more thorough discussion on permanency options, refer to Foster Care Policy Section 4.4 Permanency Planning)

1.2 Philosophical Principles

Safety is the paramount concern that must guide all child welfare services. When making decisions about a child, including those decisions regarding services provided, placement and permanency planning, the safety of the child must be the foremost issue in determining what is in the best interest of the child.

Permanency planning efforts should begin as soon as a child enters the custody of the Department or when it appears it may happen. This is done through concurrent planning. Concurrent planning should be utilized to allow staff to work to reunify the family while simultaneously planning for the possibility that reunification will not succeed. All possible resources should be considered in order to arrive at the least restrictive, appropriate environment for the child. Priority consideration must be given to the child’s relatives for the most suitable placement provided the best interest of the child is the primary consideration. Throughout the life of the child’s case, appropriate family members should be sought out and considered for placement of the child or for family connections with the child.

The creation of a permanent family for children in custody is the main objective for children that are unable to be reunified with their family of origin. Adoption must be the primary choice for permanency planning, with other alternatives being considered only after adoption has been ruled out. Once reunification and Adoption have been ruled out, Legal Guardianship may be considered provided it would be in the child’s best interest.

1.3 Mission and Vision

Our Mission: “The Bureau for Children and Families provides an accessible, integrated, comprehensive quality service system for West Virginia’s children, families and adults to help them achieve maximum potential and improve their quality of life.”

Our vision: “West Virginia’s children, families, and adults have achieved well-being, safety, and independence.”

West Virginia’s Department of Health and Human Resources (DHHR or the Department), Bureau for Children and Families (BCF) is dedicated to providing and assuring accessible quality services for individuals and families to achieve their maximum potential and improve their quality of life. The Office of Children and Adult Services (CAS) is committed to providing a collaborative service delivery system that assures safety and promotes the health, stability and well-being of vulnerable adults, children and families.

1.4 Legal Basis for Legal Guardianship

The WVDHHR is given the responsibility to provide child welfare services to the children of WV through Chapters 48 and 49 of the Code of West Virginia. [The Rules of Procedure for Child Abuse and Neglect Proceedings](#) issued by the Supreme Court of West Virginia and opinions entered by the Court in various cases also provide further interpretation and clarification of the statutes. The statutes may be found within FACTS (go to FACTS, Help, Court/Legal, WV Code) or on the internet at www.legis.state.wv.us. The Rules of Procedure for Child Abuse and Neglect Proceedings and Court Opinions may be found on the internet at www.state.wv.us/wvsca.

(For additional Legal/Regulatory guidance impacting permanency, see Adoption Policy Section 1.1)

1.5 Definitions

Abandonment - Any conduct by the birth mother, unknown mother, legal father, determined father, birth father, unknown father or putative father that demonstrates a purpose to forego all duties and relinquish all parental claims to the child.

Adoption - The judicial act of creating the relationship of parent and child where it did not previously exist. Adoption is a family-building permanency option that provides a permanent, forever home for a child. A voluntary surrender or termination of parental rights from the birth parents must occur before the adoption can be finalized in a court of law. The adoptive parent then becomes the child's legal parent and as such has the formal and legal responsibility for the child

Adult - A person who is eighteen years of age or older.

Agency - A public or private entity, including the Department of Health and Human Resources, that is authorized by law to place children for adoption or legal guardianship.

APPLA - Another Planned Permanent Living Arrangement. APPLA is a case plan designation for children in out-of-home care for whom there is no goal for placement with a legal, permanent family. APPLA is an acceptable designation only after reunification, adoption, permanent guardianship, or placement with a fit and willing relative are found not to be in the best interests of the child. However, APPLA designations must include plans for permanent placements of children and youth that meet their developmental, educational, and other needs.

Birth Father - The biological father of the child.

Birth Mother - The biological mother of the child.

CASA – A Court Appointed Special Advocate (CASA) representative is appointed primarily in civil protection proceedings involving child abuse and/or neglect. Duties of a CASA representative include an independent gathering of information through interviews and review of records; facilitating prompt and thorough review of the case; protecting and promoting the best interests of the child; follow-up and monitoring of court orders and case plans; making a written report to the Court with recommendations concerning the child's welfare; and negotiating and advocating on behalf of the child. CASA remain involved until permanency is achieved.

Child's Case Plan - The plan prepared by the Department pursuant to the federal requirements for a comprehensive plan for every child in foster care developed within 60 days of the date the child entered foster care and the requirements of WV State Code 49-6-5 following the adjudication by the Court that the child is an abused and/or neglected child. For youth entering foster care through juvenile proceedings, the same requirements for all foster children including the Child's Case Plan must be followed. The Child's Case Plan is a comprehensive document which directs the provision of all casework services including the services provided to the

child. All casework services provided to the child while the child is in placement must be delivered in accordance with the Child's Case Plan.

Concurrent Planning - A Permanency planning strategy for assuring an expedient permanent placement for a child by simultaneously planning for reunification and an alternative permanent placement such as adoption or legal guardianship.

Conditional Subsidy – also referred to as **Deferred Subsidy**. Families with deferred subsidy agreements have the option of negotiating payments in the future, should the child's needs or family's circumstances warrant a monetary subsidy.

Consent - The voluntary surrender to an individual, not an agency, by a minor child's parent or guardian, for purposes of the child's adoption, of the rights of the parent or guardian with respect to the child, including the legal and physical custody of the child. [48-22-108](#)

Criminal Identification Bureau Record – (CIB) - A fingerprinting process that identifies those who have been arrested or convicted of a criminal act or behavior. [See CIB policy.](#)

Determined Father - a person: (1) in whom paternity has been established pursuant to the provisions of article 24-101 and section 16-5-12 of the W. V. Code, by adjudication or acknowledgement; or (2) who has been otherwise judicially determined to be the biological father of the child entitled to parental rights; or (3) who has asserted his paternity of the child in an action that is pending at the time of the filing of the adoption petition. See [48-22-109 in WV state code.](#)

Disruption - a process that ends after the child is placed in a legal guardianship home and before it is legally finalized, resulting in the child's return to (or entry into) foster care or placement with new legal guardians.

Dissolution – a process in which the legal relationship between the legal guardians and the child is severed, either voluntarily or involuntarily, after the legal guardianship is legally finalized. This results in the child's return to (or entry into) foster care or placement with new legal guardians.

Genetic and Social History - A comprehensive report on the birth parents, siblings, grandparents, etc., which shall contain the following information: Medical history, health status, cause of and age at death, height, weight, eye and hair color, ethnic origins, levels of educational and professional achievement, and religion.

Guardian Ad Litem (GAL) - The court appointed attorney assigned to the child during the abuse and neglect proceedings. This person's responsibility to the child continues until permanency is achieved.

Health History – is a comprehensive report of the child’s health status at the time of placement for adoption including medical history, including neonatal, psychological, physiological and medical care history.

Homestudy - A homestudy or family assessment is the process by which information is gathered and evaluated to assess a family’s ability to provide care for children who may be placed in the home through foster care. This assessment includes evaluating the physical environment of the home for safety and to determine adequate space, the family’s capacity for parenting, as well as, the family’s motivation and commitment to providing a safe, caring environment for children.

Legal Father - Before adoption, the male person having the legal relationship of parent to a child: (1) who is married to its mother at the time of conception; or (2) who is married to its mother at the time of birth of the child; or (3) who is the biological father of the child and who marries the mother before an adoption of the child.

Legal Guardianship - A legally binding relationship between a child and a caretaker, other than the child’s biological parent, that may be considered as a permanent placement option for the child. This arrangement transfers all the rights and responsibilities for a child from the Department to the caretaker through a court sanctioned process. Parental rights are not required to be terminated for a child to be in a Legal Guardianship. A monthly maintenance subsidy, medical card, and non-recurring subsidy may be provided to eligible children placed in an approved home to ease the financial burden of caring for the child.

Non-recurring Expenses - Non-recurring expenses are one-time expenses directly related to the finalization of a child with special needs. Typical expenses that are paid or reimbursed to the family include the home study fees, attorney fees, replacement of the birth certificate, and travel to and from the child, including mileage, lodging and meals.

Outsider Father - The biological father of a child born to or conceived by the mother while she is married to another man who is not the biological father of the child.

Permanency Plan - A formal written part of the Child’s Case Plan that determines the permanent placement for a child in the state’s custody. Permanent placements include reunification, adoption, legal guardianship or placement with a fit and willing relative. If those options have been exhausted, the Court may consider an AP-PLA plan such as emancipation or continued foster care.

Placement with a fit and willing relative - If reunification or adoption is not in the child's best interest, the Court may place the child with a suitable adult relative who has made a commitment to provide a suitable and permanent home for the child until the child reaches the age of majority and to prepare the child for adulthood and independence. Permanent placement with a fit and willing relative does not terminate the parent-child relationship, therefore the child may still inherit from the biological parents and the biological parents may still be ordered by the court to provide financial and medical support.

Relative/Kinship Care – Services provided by any person related to the child by blood or marriage including cousins and in-laws. Persons the child considers a relative, such as a godparent or significant others the child claims as kin may also be considered as a placement resource.

Relinquishment - The voluntary surrender to an agency by a minor child's parent or guardian, for purposes of the child's permanency. This surrenders the rights of the parent or guardian with respect to the child, including the legal and physical custody of the child.

Reunification - When children must be removed from their birth families for their protection, the permanency goal is to achieve reunification with the birth as safely as possible.

Sibling – Any individual the child considers a sibling or an individual who is considered by state law to be a sibling or who would be considered a sibling under state law if it were not for a disruption in parental rights, such as a termination of parental rights, divorce, or death of a parent.

Specialized/Therapeutic Foster/Adoptive Care – A service that combines the benefits of the protection, support and nurturing of a family foster/adoptive care setting with the benefits of treatment services provided by the agency and foster /adoptive parents. Specialized foster/adoptive care is designed to serve children with a variety of issues such as emotional/behavioral disturbance, psychiatric diagnoses, delinquency, developmental disorders, intellectual functioning deficiencies, and medical disorders.

Subsidized Legal Guardianship –Subsidized legal guardianship is the transfer of legal responsibility for a minor child from the state to a private certified caregiver or guardian, who is provided with a monthly subsidy and/or medical card for the care and support of the child. The transfer of legal responsibility removes the child from the child welfare system, allows a caregiver to make important decisions on the child's behalf, establishes a long-term caregiver for the child, and addresses their financial needs through ongoing subsidy.

Transitioning Adult – An individual with a transfer plan to move to an adult setting who meets one of the following conditions:

(1) Is eighteen years of age but under twenty-one years of age, was in departmental custody upon reaching eighteen years of age and committed an act of delinquency before reaching eighteen years of age, remains under the jurisdiction of the Juvenile Court, and requires supervision and care to complete an education and or treatment program which was initiated prior to the eighteenth birthday.

(2) Is eighteen years of age but under twenty-one years of age, was adjudicated abused, neglected, or in departmental custody upon reaching eighteen years of age and enters into a contract with the Department to continue in an educational, training, or treatment program which was initiated prior to the child's eighteenth birthday.

Unknown Father - A biological father whose identity the biological mother swears is unknown to her.

1.6 Nondiscrimination, Grievance Procedure & Due Process Standards, Reasonable Modification Policies

Nondiscrimination

As a recipient of Federal financial assistance, the Bureau for Children and Families (BCF) does not exclude, deny benefits to, or otherwise discriminate against any person on the ground of race, color, national origin, disability, age, sex, sexual orientation, religion or creed in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, whether carried out by BCF directly or through a contractor or any other entity with which BCF arranges to carry out its programs and activities.

This statement is in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (nondiscrimination on the basis of race, color, national origin) ("Title VI"), Section 504 of the Rehabilitation Act of 1973 (nondiscrimination on the basis of disability) ("Section 504"), the Age Discrimination Act of 1975 (nondiscrimination on the basis of age) ("Age Act"), regulations of the U.S. Department of Health and Human Services issued pursuant to these three statutes at Title 45 Code of Federal Regulations Parts 80, 84, and 91.

The Bureau for Children and Families shall not retaliate against, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, Section 504 or the Age Act, or because she or he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

In addition, BCF will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all BCF programs, services, and activities. For example, individuals with service animals are welcomed in

Department of Health and Human Resources, Bureau for Children and Families, offices even where pets are generally prohibited.

In case of questions, or to request an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a BCF program, service, or activity, please contact:

WV DHHR: Children and Adult Services

Contact Person: Health and Human Resources Specialist

Telephone number: (304) 558-7980

Grievance Procedure and Due Process Standards

It is the policy of the Bureau for Children and Families (BCF) not to discriminate on the basis of disability. BCF has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and/or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. These statutes prohibit discrimination on the basis of disability. In addition, the Bureau for Children and Families does not discriminate against individuals due to race, color, national origin, disability, age, sex, sexual orientation, gender identity or religion. Laws and Regulations, 28 C.F.R. Part 35 and 45 C.F.R. Part 84, may be examined by clicking [here](#) or visiting <https://www.ada.gov/reg3a.html>.

Any person who believes he or she has been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for any Bureau for Children and Families official to retaliate in any way against anyone who files a grievance or cooperates in the investigation of a grievance.

Procedure:

Grievance requests due to alleged discriminatory actions must be submitted to the Department of Health and Human Resources, Equal Employment Opportunity (EEO)/Civil Rights Officer, within 180 business days of the date the person filing the grievance becomes aware of the alleged discriminatory action. To file the grievance, the grievant must complete form [IG-CR-3](#) and mail to West Virginia Department of Health and Human Resources, Office of

Human Resources Management, EEO/Civil Rights Officer, One Davis Square, Suite 400, Charleston, WV 25301. The grievant may also contact the WV DHHR, EEO/Civil Rights Officer, for more information.

WVDHHR: Office of Human Resource Management

Contact Person: EEO/Civil Rights Officer

Telephone number: (304) 356-4566

A grievance must be in writing, containing the name and address of the person filing it. The grievance must state the problem or action alleged to be discriminatory and the remedy or relief sought.

EEO/Civil Rights Officer shall conduct an investigation of the grievance. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the grievance. EEO/Civil Rights Officer shall maintain the files and records of Bureau for Children and Families relating to such grievances.

The EEO/Civil Rights Officer shall issue a written decision on the grievance no later than thirty (30) calendar days after its filing, unless the Coordinator documents exigent circumstances requiring additional time to issue a decision.

The person filing the grievance may appeal the decision by contacting the U.S. Department of Health and Human Service, Office for Civil Rights.

The availability and use of this grievance procedure doesn't prevent a person from filing a private lawsuit in Federal court or a complaint of discrimination on the basis of disability with the:

Office for Civil Rights
U.S. Department of Health & Human Services
200 Independence Ave., S.W.
Room 509F HHS Bldg.
Washington, D.C. 20201
800-368-1019 (voice)
202-619-3818 (fax)
800-537-7697 (TDD)
OCRComplaint@hhs.gov (email)

The Bureau for Children and Families will make appropriate arrangements to ensure that individuals with disabilities are provided reasonable modifications, if needed, to participate in this grievance process. Such arrangements may include, but are not limited to, providing interpreters for the deaf, providing taped cassettes of material for the blind, or assuring a barrier-free location for the proceedings. The EEO/Civil Rights Officer will be responsible for such arrangements.

A: Grievances Regarding the Child Protective Services Worker or Casework Process

At any time that the Bureau for Children and Families (BCF) is involved with a client, the client (adult or child), or the counsel for the child has a right to express a concern about the manner in which they are treated, including the services they are or are not permitted to receive.

Whenever a parent, child or counsel for the parent or child has a complaint about Child Protective Services or expresses dissatisfaction with Child Protective Services the worker will:

- Explain to the client the reasons for the action taken or the position of the BCF which may have resulted in the dissatisfaction of the client.
- If the situation cannot be resolved, explain to the client his/her right to a meeting with the supervisor.

- Assist in arranging for a meeting with the supervisor.

The supervisor will:

- Review all reports, records and documentation relevant to the situation.
- Determine whether all actions taken were within the boundaries of the law, policies and guidelines for practice.
- Meet with the client.
- If the problem cannot be resolved, provide the client with the form “Client and Provider Hearing Request”, SS-28, found in Appendix A of this policy.
- Assist the client with completing the SS-28, if requested.
- Complete the form IG-BR-29 CPS/APS (to be completed by Bureau staff)
- Submit the form immediately to the Chairman, state board of Review, DHHR, Building 6, Capitol Complex, Charleston, WV 25305.

For more information on Grievance Procedures for Social Services please see Common Chapters Manual, Chapter 700, and Subpart B or see WV Code [§29A-5-1](#).

Note: Some issues such as the decisions of the Circuit Court cannot be addressed through the Grievance Process. Concerns about or dissatisfactions with the decisions of the Court including any approved Case plan must be addressed through the appropriate legal channels.

Reasonable Modification Policy

A: PURPOSE:

In accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA), the Bureau for Children and Families (BCF) shall not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. The BCF shall make reasonable modifications in Child Protective Services program policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless BCF can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

B: POLICY:

The Bureau for Children and Families is prohibited from establishing policies and practices that categorically limit or exclude qualified individuals with disabilities from participating in the Child Protective Services program.

The Bureau for Children and Families will not exclude any individual with a disability from the full and equal enjoyment of its services, programs, or activities, unless the individual poses a direct threat to the health or safety of themselves or others, that cannot be mitigated by reasonable modifications of policies, practices or procedures, or by the provision of auxiliary aids or services.

The Bureau for Children and Families is prohibited from making Child Protective Services program application and retention decisions based on unfounded stereotypes about what individuals with disabilities can do, or how much assistance they may require. The BCF

will conduct individualized assessments of qualified individuals with disabilities before making Youth Services application and retention decisions.

The Bureau for Children and Families may ask for information necessary to determine whether an applicant or participant who has requested a reasonable modification has a disability-related need for the modification, when the individual's disability and need for the modification are not readily apparent or known. BCF will confidentially maintain the medical records or other health information of Child Protective Services program applicants and participants.

The Bureau for Children and Families upon request, will make reasonable modifications for qualified Child Protective Service program applicants or participants with disabilities unless BCF can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

BCF must consider, on a case-by-case basis, individual requests for reasonable modifications in its Child Protective Services program, including, but not limited to, requests for substitute caregivers, respite caregivers, more frequent support from a case worker, additional classroom and/or online training, mentorship with an experienced foster/adoptive parent, note takers, and other auxiliary aids and services.

The Bureau for Children and Families will not place a surcharge on a particular qualified individual with a disability or any group of qualified individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids and services or program accessibility, that are necessary to provide nondiscriminatory treatment required by Title II of the ADA and Section 504.

To address any violations of this Reasonable Modification Policy, consult the Bureau for Children and Families Grievance Procedure. To request reasonable modifications, or if you have questions, please contact:

WV DHHR: Children and Adult Services

Contact Person: Health and Human Resource Specialist

Telephone number: (304) 558-7980

2.0 Intake

Legal guardianship is the permanent transfer of legal responsibility for a child in state custody to a kin/relative or an individual other than his or her parents. Unless specified otherwise by the Court, a grant of custody of a child to the Department by the Court is sufficient for the Department to transfer legal guardianship. The Department may consent to the transfer of legal guardianship when certain conditions are met.

2.1 Eligibility for Legal Guardianship

The decision to pursue subsidized legal guardianship as a permanency option is to be made by the Multidisciplinary Treatment Team (MDT). The membership of the MDT is specified in [State Code §49-4-405](#), there may be additional parties as is necessary on a case by case basis. The decision to pursue legal guardianship must be in the child's best interest and must be so documented.

Within the Uniform Child or Family Case Plan (Case Plan), filed with the Court prior to disposition, the child's worker must recommend legal guardianship as the permanency plan for the child and detail the steps necessary to achieve permanency.

Legal guardianship should be considered for a child when the following conditions have been met:

1. The permanency goals of reunification and adoption have been ruled out by the Multidisciplinary Treatment Team for the child and the reasons are documented in the case record.
2. The child has resided with the prospective guardian for at least six (6) months immediately prior to establishing legal guardianship and was eligible for foster care maintenance payments.
3. The guardianship home was certified or approved as meeting the requirements as a foster home during the 6 months prior to establishing legal guardianship.
4. The child must be at least twelve (12) years old if he or she is in the home of an unrelated caretaker, unless it is decided by the MDT that it would be in the child's best interest to do Legal Guardianship at a younger age. There is no age limit when the caretaker is a kin/relative provided if it is in the child's best interest.
5. The best interest determination must be documented in the child's case plan.
6. The child must have a strong attachment to the prospective legal guardian and the guardian must have a strong commitment to caring permanently for the child.
7. The child who is (14) years of age or older, has been consulted regarding the guardianship arrangement.

For a child who does not meet these eligibility requirements for legal guardianship, the child's worker will work with the Multidisciplinary Treatment Team to determine what is in the child's best interest and if necessary, develop an appropriate alternative permanent living arrangement to be included in the child's case plan.

For a child who does meet the criteria for legal guardianship, the child's worker must assess the appropriateness of the case for this permanency plan. A child may be considered for legal guardianship even though it is not the permanency goal for all children in a sibling group.

2.2 IV-E Eligibility in Legal Guardianship

The Fostering Connections Act has made it possible for a relative legal guardianship setting to qualify for Title IV-E funding. For this to occur, the child had to be Title IV-E eligible while in foster care with the prospective relative guardian for six consecutive months.

In order to be eligible to receive IV-E reimbursable kinship guardianship assistance, a child must be "*eligible for* Title IV-E foster care maintenance payments in the prospective relative guardian's home." This means that a child must meet all eligibility requirements for Title IV-E foster care, including the requirement that the child was removed from an AFDC-eligible 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 placed in a certified or approved home. However, the child does not have to be *receiving* those payments while in the relative guardian's home. In this case, the distinction between being "eligible for" and "receiving" Title IV-E assistance may be a distinction with no real meaning. Fostering Connections requires a child to be in foster care for at least six consecutive months with the prospective kin/relative guardian before finalizing the Legal Guardianship and receiving the subsidy. It is likely therefore that foster care payments will be paid and, since the child is eligible for Title IV-E foster care, it is likely that the child will receive federally reimbursed legal guardianship payments. ([§473\(d\)\(3\)\(A\)\(i\)](#); [P.L. 110-351 §101\(b\)](#); [ACYF-CB-PI-08-007 p. 2](#); [ACYF-CB-PA-01-02](#))

3.0 Assessments

3.1 Introduction

It is the responsibility of the Department to ensure that when a child enters foster care, they receive any appropriate and necessary assessments to ensure the child's placement is appropriate and able to meet the needs of the child. There will

be instances throughout the life of a child's time in care that continued assessments may need to be done. It is the responsibility of the child's worker to ensure that these assessments are done when needed and are completed in a timely manner. The information gathered will be used by the MDT to continue work on the child's placement plan.

3.2 Health Care

The Department has the continuing responsibility to develop and maintain the physical and emotional health of children in foster care. In current medical practice, health supervision of children is based on periodic visits for health appraisal and medical care which includes taking a thorough medical history of the child, careful physical examinations, medical treatment, routine immunizations, mental health counseling and treatment and guidance for caretakers.

Refer to [Foster Care Policy Section 3.2](#) for complete information on Health Care and worker's roles and responsibilities

3.3 Comprehensive Assessment Planning System (CAPS)

State statute requires the establishment of a multidisciplinary treatment (MDT) planning process to assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families when a judicial proceeding has been initiated and for certain juveniles who are the subject of a court proceeding (See [Multi-Disciplinary Treatment Team Foster Care Policy Section 4.1](#) for a detailed description of the MDT process). State statute [§49-4-406](#) requires the Department to adopt a uniform comprehensive assessment protocol or tool to assess children's individual needs and strengths and subsequently identify services to be included in the service plan. The type of process or tool to be utilized is left to the discretion of the Department.

In order to meet the requirements in [49-4-406](#) the Department, in partnership with private providers, developed and implemented the Comprehensive Assessment Planning System (CAPS).

Refer to [Foster Care Policy Section 3.3](#) for complete information on the utilization of CAPS and worker's roles and responsibilities.

3.4 Regional Clinical Reviews

The clinical review process is a coordinated effort designed to provide a comprehensive, objective, clinical review of designated youth. The role of this review is to identify what the youth's current treatment and permanency needs are and to serve as a resource to the youth's MDT in guiding decision making. Youth that are targeted for this review process include youth currently in out-of-state residential treatment facilities or at risk of out-of-state placement.

Refer to [Foster Care Policy Section 3.5](#) for complete information on the Regional Clinical Review and the worker's roles and responsibilities.

3.4 Educational Stability

Child welfare agencies are required to assure educational stability for children in care. This applies not just at the initial time of a child's removal from their home, but during the life of the case. Repeated moves and school changes make it difficult for children to remain on target with their education. It is important that the Department continually works with the education agency to ensure the child is enrolled and attending school. Under Fostering Connections, agencies must ensure that all children receiving federal assistance (kinship guardianship, adoption, or foster care) are enrolled and attending school. [§471 \(a\)\(30\)](#).

Refer to [Foster Care Policy Section 3.6](#) for additional information on Educational Stability and the worker's roles and responsibilities.

3.5 Life Skills Assessment and Transitioning Services for Youth 14 Years and Older

For all children in foster care over the age of fourteen (14), the child's caseworker is responsible for ensuring that a Life Skills Assessment is completed. The Department must ensure that all adults entrusted with the care of the children placed in state's custody demonstrate appropriate social behavior; respond properly to stressful situations, and promote good physical, emotional and intellectual well-being. It is through the observation of positive adult behavior and through interaction with positive adult role models that children and youth develop and demonstrate positive attributes.

The learning/transition plan is used to document the selected learning goals and activities the youth's worker and/or provider will use during life skill learning sessions and as the youth transitions to adulthood.

Refer to [Foster Care Policy 3.7](#) for additional information as well as worker roles and responsibilities.

4.0 Case Plan

The case planning process must be followed for a child being placed in a Legal Guardianship placement as it would for any other child in Foster Care. Per [Section 475\(1\)\(F\)](#) of the Social Security Act the IV-E agency must describe the following in the case plan:

- How the child meets the eligibility requirements of Legal Guardianship
- The steps the agency has taken to determine that return to the home or adoption is not appropriate
- The efforts the agency has made to discuss adoption with the child's kin/relative foster parent and the reasons why adoption is not an option
- The efforts the agency has made to discuss kin/relative guardianship with the child's parent or parents or the reasons why efforts were not made
- The reason why a permanent placement with a prospective kin/relative guardian and receipt of a kin/relative guardian assistance payment is in the child's best interest; and
- The efforts made by the agency to discuss with the child's parent(s) the kin/relative guardianship assistance arrangements or why efforts were not made.

If the child's legal guardian placement does not include the child's siblings, the case plan must also include a description of the reasons why the child is separated from siblings during placement. If an order of sibling separation has not been previously entered by the Court and the Uniform Child or Family Case Plan includes placement of a child in a legal guardianship separate from his or her siblings, the worker must secure a court order which finds that it is in the best interest of the child not to be placed in the same home as his or her sibling. The order must be documented on the Action tab of the Hearings Summary screen, Hearings Outcome section of the Court Order screen and in the details of the permanency plan screens in FACTS.

As a result of Fostering Connections, when a child is placed in a IV-E reimbursable kin/relative legal guardianship placement, the DHHR may make IV-E reimbursable guardianship assistance payments on behalf of each sibling of the eligible child if they are placed with the same kin/relative under the same kin/relative guardianship

arrangement, provided this placement is appropriate for each sibling and is so documented in each child's case plan. ([Section 473\(d\)\(3\)\(B\) of the Social Security Act](#)).

5.0 Case Management

5.1 Placement

When planning the placement of the child into legal guardianship, the worker must request a copy of the home study, any updates that have been made to the home study and a copy of the most current recertification, which shows that the home is currently certified, from the Homefinding Specialist or initiate the Interstate Compact on the Placement of Children process if the prospective legal guardian resides in another state.

For custody of a child in foster care to be transferred to a legal guardian, the Department must consent to the transfer. The child's worker must request consent from the Regional Director or designee for the transfer of custody from the Department to the prospective legal guardian. The signed copy must be included in the child's paper record and reflected in Document Tracking in FACTS and scanned into the Case File Cabinet.

Subsidy

5.2.1 Financial Subsidy

It is the responsibility of the child's worker to determine the child's eligibility for subsidized legal guardianship and to inform the interested caretaker of the child's eligibility. If the caretaker requests to receive subsidy benefits to aid in providing for the present and/or future needs of the child, the child's worker will negotiate and enter into a written, binding **Legal Guardianship Subsidy Agreement** with the prospective relative guardian, and provide the prospective relative guardian with a copy of the agreement. The Subsidized Guardianship Application form is located in FACTS. [Section 473\(d\)\(1\)\(B\) of the Social Security Act](#) prescribes certain requirements for the **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 **guardian**; the manner in which the payment may be adjusted periodically, in consultation with the **guardian**, based on the circumstances of the legal 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 of residency of the **guardian** pursuant to [473\(d\)\(1\)\(C\) of the Social Security Act](#).

Legal guardians who provided foster care for the child prior to legal guardianship through the DHHR or a child placing agency will receive a monthly maintenance payment up to \$600.00 per child unless a rate increase is approved. Subsidy rate increases will only be considered on a case by case basis and will require a waiver from the Director of Social Services or designee. Legal guardians must contact the office of Children and Adult services if they are seeking adjustments to post legal guardianship subsidy payments. **It is the responsibility of the legal guardian to report the receipt of the legal guardianship subsidy to any other agency that may be supplying the child any other support benefits.**

Additional services are available after the legal guardianship has been finalized through Socially Necessary Services. The same services that are available for Post-Adoption are available for Post-Legal Guardianship. To access these services, the family will contact the DHHR office in which the legal guardianship case is managed.

This subsidy application must be completed, approved and an agreement signed by the legal guardian **before** the transfer of custody is finalized. After guardianship has been legally transferred, a new agreement for subsidy cannot be entered into in the future with the same legal guardian but it may be amended.

For the purposes of ensuring the child will continue to be cared for in the event the legal guardian should pass away or otherwise be unable to care for the child, the agreement should name a Primary and Secondary Successor Guardian. In addition to naming a Primary and Secondary Successor Guardian, the agreement must also allow for the ability for the guardian to modify the named Successor Guardians in the event either the primary or secondary are unable to fulfill their responsibilities. Provided the legal guardian names a successor guardian(s), there would be no termination of subsidy on the child's behalf and the child would not have to return to the care, custody and control of the Department. The parties, including the Department, would need to call the original MDT and go before the Court to have the new guardianship legally sanctioned.

The subsidy may be paid on a monthly basis until the child is age eighteen (18) or the child is emancipated. **However, the child's subsidy may be extended on a yearly basis, up to age 21, if the child meets any of the following conditions:**

- **the child is completing secondary education or a program leading to an equivalent credential;**

- the child is enrolled in an institution which provides post-secondary or vocational education;
- the child is participating in a program or activity designed to promote, or remove barriers to, employment;
- the child is employed for at least 80 hours per month; or
- the child is incapable of doing any of the above described activities due to a medical condition.

The Legal Guardianship Annual Review will be used to document the child is meeting one of the conditions to continue subsidy payments. Failure to return the review can result in a suspension or termination of the subsidy payment. The Legal Guardianship Annual Review form is required for all children who receive a Legal Guardianship Subsidy. Under Fostering Connections, agencies must ensure that all children receiving federal assistance (kinship guardianship, adoption, or foster care) are enrolled and attending school. ((§471 (a)(30); P.L. 110-351 §204(b))

5.2.2 Conditional/Deferred Subsidy

If an eligible child has no immediate need for a subsidy, the legal guardian should be encouraged to at least enter into a conditional/deferred subsidy agreement to provide for the consideration and protection of the child's future needs. This conditional/deferred subsidy may be adjusted to a negotiated amount as the circumstances of the family and/or needs of the child change.

5.2.3 Medical Subsidy

Planning for the child's medical subsidy shall include a review of any health insurance or medical coverage available to the child through the prospective legal guardian's insurance/medical coverage. To the fullest extent possible, the child will be included under the legal guardian's health insurance. Medical benefits as provided under Title XIX of the Social Security Act, (Medicaid) will be available to an eligible child who qualifies for subsidized legal guardianship through the issuance of a medical card based on this review. Medical and health services for children residing out-of-state will only be available from a West Virginia approved Medicaid provider.

5.2.4. Non-recurring Expenses

A one-time only payment – per legal guardianship episode, not to exceed two thousand dollars (\$2,000.00) per child, is available to cover legal fees, transportation costs, home study fees and other expenses related to the transfer of legal guardianship of a child in state custody. All invoices/receipts for these funds must be collected and combined with the first monthly maintenance payment to the legal guardians. This will also be available for successor guardians.

5.2.5 Worker Actions to set up Subsidy

- The child's worker will enter the type and amount of the subsidy in the appropriate screens in FACTS. The legal guardian provider must be in FACTS and linked to the child on the legal guardianship screen.
- The child's worker will generate the **Application for Subsidized Guardianship report and the Legal Guardianship Agreement** from FACTS and obtain the legal guardian's signature. There must be three original **Legal** Guardianship Agreements signed by the legal guardian. This person could be a foster parent or kin/relative caretaker. The worker will update Document Tracking in FACTS and scanned into the Case File Cabinet.
- Before submitting to Regional Director or designee for approval of agreement, etc. be sure the Legal Fee is **entered**.
- The child's worker will submit the subsidy application, all original agreements, and the **Recommendation and Consent for the Transfer of Guardianship form** to the supervisor for review.
- Worker must be sure Court Sanction Date is entered as this drives payment and medical coverage.
- Once the legal guardianship documents are approved by the supervisor, the legal guardianship documents are sent to the Regional Director or Designee for review and approval.
- After the legal guardianship documents are approved by the Regional Director or Designee, he/she will sign all the attached applications, agreements and consents. The Regional Director or Designee will send the signed documents back to the worker. The worker will update Document Tracking in FACTS, enter the signature date in FACTS and proceed to the court hearing process. (NOTE: **The Legal Guardianship subsidy approval** is requested upon receiving Court sanctioning, not Regional Director's signature.)

5.3 Child Financial Account

If the child has a special account for unearned benefits such as SSA or SSI, the child's worker will notify the Financial Clerk and the appropriate agency the transfer of guardianship has occurred and a new representative payee, typically the legal guardian, should be appointed. The child's worker must ensure the closure of the child's client account. The balance of the account shall go to the new legal guardian to be used for the child once the placement reimbursement has been made.

5.4 Educational Assistance

When developing the guardianship agreement, the youth's case worker must specify the youth's right to **Education and Training Vouchers (ETV)** to the degree that

funding remains available at the time such assistance is needed. A youth in legal guardianship may apply for the ETV assistance at any time prior to his/her 21st birthday. The ETV funding may continue until age 23 for youth enrolled and making satisfactory progress on his/her 21st birthday. An application for ETV funds must include the youth's educational plan. The youth's guardianship caseworker should refer the youth to the **Chafee Community Support Services Program**.

6.0 Case Review

6.1 Court Review

As stated in [Rule 39 of the Rules of Procedure for Child Abuse and Neglect Proceedings](#), the court shall conduct a permanent placement review conference at least once every three months, requiring the MDT to attend and report as to progress and development in the case. In this capacity, the MDT may be referred to as the permanent placement review committee, whose responsibility it is to monitor the implementation of the permanency plan for the child and report on the progress and developments in the case every three months until the child's permanent placement is achieved.

Until the Legal Guardianship is finalized, the child is still in Foster Care and the policies pertaining to court hearings and reviews must be followed.

(Please refer to [Foster Care Policy Section 6.0](#) for further information)

Fostering Connections requires that in the child's case plan there be a description of the steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted. The Court will continue to hold quarterly status reviews and permanency hearings until permanency is achieved. The Case Plan Progress Report will be submitted to the court at each hearing. During this review, any discussion of permanency planning for the child should include the appropriateness of reunification and adoption. The child's case plan developed by the Agency, in consultation with the child's parent(s) and in kinship/relative guardianship cases, the child's relative, must also describe the reasons why placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child's best interest, the efforts made to discuss adoption with the child's relative, and why adoption was not pursued, and the efforts made to discuss the kinship guardianship with the child's parent or parents, or the reason why such efforts were not made. ([§475\(1\)\(F\)](#); [P.L. 110-351 §101\(c\)\(4\)](#))

6.2 Court Action to Finalize Legal Guardianship

Court action is necessary to transfer custody of the child from the Department to the legal guardian. The prospective legal guardian's attorney will petition the Court to request the change in legal custody of the child. A copy of the legal guardian's home study, a copy of the child's post-termination placement plan, any termination of parental rights documentation, an original signed **Legal Guardianship Agreement**, Application for Subsidized Guardianship and an original signed consent must be submitted to the attorney for the prospective legal guardian for filing with the petition. The child's worker will ensure the prospective legal guardian, the child, the child's birth parents (if termination of parental rights (TPR) has not occurred), and the child's attorney are notified of the date and location of the hearing.

At the hearing, the Court will determine whether to grant the request for transfer of custody. The child's worker and prospective legal guardians must attend the hearing.

After the finalization of the legal guardianship, the child's worker will provide the legal guardians with one original signed agreement, a certified copy of the court order, and the child's original birth certificate.

After obtaining the court sanction of the legal guardianship placement, the child's worker will enter the date of the court order on the Legal Guardian screens and Court screens in FACTS and request approval of the Regional Director or Designee. The Regional Director or Designee will then approve the request and FACTS will automatically populate the court sanction date as the start date of the subsidy. The child's worker will complete all necessary recordings within five (5) working days from the date the court hearing was held in order to facilitate timely federal reporting.

The legal guardian must provide the child's worker with all invoices or receipts to initiate payment for the one-time only non-recurring expenses related to the transfer of legal guardianship. The payments will be entered in FACTS on the Subsidized Legal Guardianship screen prior to requesting approval by the Regional Director or Designee.

Once the legal guardianship has been finalized, copies of the petition, final court order, subsidy agreement and any/all other documents relative to the finalization

of the legal guardianship must be submitted to the IV-E worker.

6.3 Yearly Subsidy Review

Once a child is in Legal Guardianship, each year sixty (60) days prior to the child's birth date, the Legal Guardianship Annual Review form containing the terms of the agreement, conditional services, and space to list the child's additional needs is to be generated through FACTS by the worker responsible for the Legal Guardianship case. This form will also document the child's school enrollment status. The review form will also serve to gather information for the continued eligibility for youth age 18 – 21. The child's worker will send this form to the legal guardian(s) as a self-declaratory review of eligibility and need for continued subsidy assistance. The Legal Guardianship Subsidy Annual Review, with instructions for completing the form and explaining the deadline for the return, is to be sent with the review form. The review form will automatically be generated for children 18-21 by FACTS.

The legal guardian **must** notify the child's worker of the following changes:

- The child is no longer the legal responsibility of the guardian;
- The child no longer requires assistance for the special needs for which the subsidy was being provided;
- The child becomes eligible for benefit payments such as SSI, Veterans benefits, Railroad Retirement benefits, inheritance payments or financial settlements etc. that would affect the monthly subsidy;
- A change has occurred in the circumstances of the family that might affect the amount of the subsidy;
- There is a change of address of the guardian or the child; or
- The child is no longer attending school

In the event that the legal guardian is no longer legally responsible for the support of the child or if the child is no longer receiving any support from the legal guardian, the Department will terminate the subsidy payment to the legal guardians.

The legal guardian must keep the DHHR informed of circumstances which would make him/her ineligible for payments or eligible for payments in a different amount ([sections 473\(a\)\(4\)\(A\) and \(B\) of the Social Security Act](#)).

The Legal Guardianship agreement will terminate when the child attains the age of eighteen (18) or is otherwise emancipated, unless the youth meets one of the qualifications to continue the subsidy. Under no circumstances shall a subsidy

agreement extend beyond the child's twenty-first (21st) birthday.

A title IV-E guardianship assistance payment may extend to the age of 21 for a child on whose behalf a guardianship assistance agreement was entered into so long as at the age of 18 the child is;

- **the child is completing secondary education or a program leading to an equivalent credential;**
- **the child is enrolled in an institution which provides post-secondary or vocational education;**
- **the child is participating in a program or activity designed to promote, or remove barriers to, employment;**
- **the child is employed for at least 80 hours per month; or**
- **the child is incapable of doing any of the above described activities due to a medical condition. ([section 475\(8\)\(B\)\(iv\) of the Social Security Act](#)).**

To continue the benefits past 18, the yearly review must be completed and returned. Once the review is received by the worker, it will be reviewed by the worker and any additional information needed to verify eligibility will be requested. The legal guardian(s) will have 15 days to return any requested information. If the verification is not returned, or the child does not meet the requirements for continued eligibility, a denial letter will be sent to the legal guardians along with information on how to appeal the decision and the Fair Hearing process. The signed review form will be filed in the child's case record and must be included in document tracking and saved to the file cabinet in FACTS.

6.4 Disruption of Legal Guardianship

As soon as DHHR becomes aware that a Legal Guardianship may disrupt, it is imperative that a worker contacts the family to determine what, if anything, the DHHR can do to preserve the legal guardianship placement. This may include referring the family for a CAPS Assessment and/or a Clinical Review.

It is the child's worker's responsibility to ensure the child's safety and well-being as well as establish a new permanency plan for the child if necessary.

6.4.1 Disruption - child placed in DHHR custody

If the child is removed from an adoptive home or other permanent placement after the case has been dismissed from the Court's docket, any party with notice thereof and the receiving agency shall promptly report the matter to the circuit court of origin, the Department, and the child's counsel, and the court shall schedule a

permanent placement review conference within sixty (60) days, with notice given to any appropriate parties and persons entitled to notice and the right to be heard. The Department shall convene a multidisciplinary treatment team meeting within thirty (30) days of the receipt of notice of permanent placement disruption

If the child is placed into the custody of the Department, the Department worker must make an appropriate placement for the child. **The worker must document the removal and placement information in FACTS.** The DHHR worker must initiate the child's original MDT so the case plan for the child can be revised with a new permanency plan.

If the subsidy payment and medical card needs to be stopped, a disruption date must be entered in FACTS. The disruption date is the date the legal guardian is no longer providing care or assistance to the child and the permanency plan is no longer reunification with the Legal Guardian.

If the guardian is seeking services in addition to placement of the child, a Request to Receive Services referral will be entered and a new case record opened to facilitate the documentation of such.

6.4.2 Disruption – with a Successor Guardian

If the child's guardianship placement disrupts due to the guardian's death or inability to continue providing for the child, provided the guardian named a successor guardian at the time the agreement was signed, the child may move to reside with the successor guardian. [The Preventing Sex Trafficking and Strengthening Families Act](#), enacted in September 2014, provides for the guardian to name a successor guardian so the care of the child will be ensured to continue as well as the subsidy and medical coverage for the child. For Legal Guardianship cases in which Legal Guardians **named a** successor guardian, the subsidy will follow the child. **The Successor Guardian and all people in the home over age 18 must have a CPS/APS background check and a CIB/NCIC check. The Successor Guardian will need to enter into a new Legal Guardianship Agreement and this agreement must be sanctioned by the Court.**

7.0 Case Closure

7.1 Records Management

After the establishment of legal guardianship, the child's state guardianship record, the family record and the legal guardian provider record will be maintained in the District Office initiating the agreement. Family cases are closed if no child's case remains open.

Upon closure of the subsidy for the child, the child's state guardianship and provider records should be closed in FACTS. The paper file record shall be closed and archived according to Department record guidelines.

If the child is removed or relinquished from an adoptive home or other permanent placement after the case has been dismissed, any party with notice thereof and the receiving agency shall promptly report the matter to the circuit court of origin, the Department and the child's counsel, and the Court shall schedule a permanency hearing within sixty days (60) of the report to the Circuit Court, with notice given to any appropriate parties and persons entitled to notice and the right to be heard. The Department shall convene a multidisciplinary treatment team meeting within thirty (30) days of the receipt of notice of permanent placement disruption.

8.0 Other

8.1 Going from Legal Guardianship to Adoption

There are instances after a Legal Guardianship has finalized, the family and child decide they would like to pursue adoption. In the event this happens, the family will need to contact the Department and request the case be placed on the court's docket. The Department **must** be involved in this court process and the adoption process will be followed. **Contact FACTS Helpdesk for technical assistance.**

(Refer to Adoption Policy)

8.2 Youth in Legal Guardianship with Child of their own

In the event a youth in foster care has an infant child of their own, that infant child will automatically be eligible for a subsidy equal to what the youth receives. It is not necessary for the infant child to be in State's custody to receive this subsidy. However, if the foster parent enters into a Subsidized Legal Guardianship agreement for the minor mother, the minor mother's subsidy would be increased to cover care for infant also. All parties need to be aware the subsidy agreement is specific to the minor mother and she retains custody and control of the infant. The subsidy will end when the minor mother is no longer eligible.

If the infant child is removed from the custody of his/her birth parent, the combined subsidy must be separated effective the date the infant child is removed.

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