



Question & Answers on Subsidized Guardianship

What is legal guardianship?

Guardianship is a judicially created, permanent relationship between a child and a caregiver, often a relative. Guardianship conveys the following parental rights to the child's caretaker: custody; responsibility for the protection, education, and care and control of the child; and decision-making responsibilities as the child's caretaker.

What is the purpose of subsidized legal guardianship, and how does it work?

For some children in foster care, neither reunification with their birth parents nor adoption is a viable option. For these children, subsidized legal guardianship can be a route out of foster care and into a safe, permanent family. Subsidized guardianship makes another adult, often a family member, the permanent legal guardian of a child and is intended to be permanent but, unlike adoption, does not involve termination of the birth parent's rights. Under guardianship, the parents may retain certain rights, such as visitation, that they would not have under adoption. The guardianship is legalized in a court hearing, often after an assessment of the family has been completed. Legal guardians have responsibility for meeting all of the needs of the child on a day to day basis, and receive financial support similar to what foster parents or subsidized adoptors receive. When guardianship is transferred to a private caregiver, child welfare agencies and the court no longer must provide ongoing administrative review, caseworker visits, and judicial oversight, which saves administrative expenses. Because no one except the court has the power to remove the child from the guardian's home, the family and child gain a greater degree of stability and security than what foster care typically affords.

What is the Pew Commission on Children in Foster Care recommendation with respect to subsidized guardianship?

For those children for whom reunification or adoption are not options, the Pew Commission on Children in Foster Care recommends that the federal government provide federal guardianship assistance by making guardianship assistance a IV-E reimbursable expense, in a similar manner to reimbursable adoption subsidies.

Why does the Pew Commission recommend subsidized guardianship?

Simply put, to increase opportunities for more children to leave foster care and live with a permanent family when adoption or reunification or not possible.

When does the Commission recommend subsidized guardianship as a permanency option for children?

Because the Commission's guardianship assistance is intended to provide an additional route to permanence specifically *for children in foster care*, it should apply only under the following circumstances:

- When a child has been removed from his or her home and the state child welfare agency has responsibility for placement and care of the child;
- When a child has been under the care of the state agency for a given period of time, to be determined by the state;
- When a court has explicitly determined that neither reunification nor adoption are feasible permanency options for a particular child; and
- When a strong attachment exists between a child and a potential guardian who is committed to caring permanently for the child.

Will these legal guardians be subject to the same requirements as foster parents?

The Pew Commission recommends that federal requirements for background checks and Homestudy approval related to guardianship assistance be consistent with federal requirements related to foster care and adoption. Thus, federal eligibility would require that assisted guardianship placements be licensed or approved according to state standards, as licensing is a state responsibility.

Are children placed with relative guardians less safe than those placed with non-relative caregivers?

Studies indicate that children cared for by relatives are safer and less likely to move from one living arrangement to another, when compared to children in unrelated foster homes. The Pew Commission recommends that federal requirements for background checks and home studies related to guardianship assistance be consistent with federal requirements related to foster care and adoption.

What are some examples of situations where guardianship might be the best option?

There are some situations in which guardianship might be the best permanency option for a child, for example:

- A child is living with a relative who is able to make a permanent commitment but does not want to disrupt existing family relationships. As one grandmother put it, “I was ready to make a permanent commitment to my grandson but I was still going to be his grandmother, I was never going to be his mommy.”
- A family where termination of parental rights goes against a strongly held cultural norm, as in many Native American cultures. In tribal communities, guardianship would allow for the continuation of the tradition of customary adoptions.
- An adolescent who, after a clear understanding of the options, does not wish to be adopted but desires a permanent connection with his relatives or a foster family.
- A situation where a parent’s physical, emotional or cognitive disability prevents him or her from being an active, permanent caregiver but where termination of parental rights is undesired and unwarranted.

Why didn’t ASFA address this?

The Adoption and Safe Families Act made a significant step towards subsidized guardianship as a permanency option by endorsing guardianship as a legally acceptable route to permanence, enabling those children, for whom reunification or adoption – the preferred routes to permanence – are not possible, to exit foster care. Additionally, ASFA called for a national kinship care study, and allowing states to pursue waivers to test the effectiveness of subsidized guardianships as a permanency option.