

 <b>VERMONT</b> DEPARTMENT FOR CHILDREN AND FAMILIES Family Services Policy Manual		<h1>195</h1>
Chapter:	Adoption and Guardianship Services	
Subject:	Guardianship Assistance Program	Page 1 of 7
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## Purpose

To provide guidelines for determination of eligibility for guardianship assistance as well as other important information about the guardianship assistance program.

## Table of Contents

Purpose .....	1
Table of Contents.....	1
Definitions .....	1
Policy .....	2
Role of the Permanency Planning Manager and Project Family.....	2
Eligibility for Guardianship Assistance.....	2
Sibling Eligibility .....	4
Types of Assistance.....	4
Determining the Types and Amount of Assistance.....	4
Payment for Special Services.....	5
Reimbursement of Non-Recurring Guardianship Expenses.....	5
Modification of Agreement.....	5
Suspension or Reduction of Guardianship Assistance Payments .....	5
Termination of the Agreement.....	5
Successor Guardians.....	5
Guardianship Assistance over Age 18 .....	6
Guardianship Assistance Initiated between Youth’s 16th and 18th Birthday.....	7
Appeal of Eligibility Decisions.....	7

## Definitions

**Relative or Kin:** A person related to the child by blood, marriage or adoption OR a person who has a relationship with a child that was established prior to division involvement.

**Sibling:** A child related by biological, marital, or legal ties (e.g., inclusive of step-siblings, half-siblings, and adoptive siblings).

 <b>VERMONT</b> DEPARTMENT FOR CHILDREN AND FAMILIES Family Services Policy Manual		<h1>195</h1>
<b>Chapter:</b>	Adoption and Guardianship Services	
<b>Subject:</b>	Guardianship Assistance Program	Page 2 of 7

## Policy

Under 33 V.S.A. §4903 (7), and in conjunction with applicable federal law, the DCF commissioner may provide aid to certain children who before a permanent guardianship was established were in the care and custody of the department.

The purpose of the Guardianship Assistance Program (GAP) is to provide financial resources to assist relative foster parents to provide permanency for a youth in DCF custody when neither reunification nor adoption is appropriate.

The department administers a guardianship assistance program for children eligible under Title IV-E of the Social Security Act. For children ineligible for Title IV-E, it also administers a state-funded program. To the extent possible, the department strives to provide equitable services across both programs, to the benefit of the children receiving assistance.

### **Role of the Permanency Planning Manager and Project Family**

As soon as a family services worker knows that a permanent guardianship may be considered for a child/youth in DCF custody, they should contact the division's permanency planning manager for consultation about the child's eligibility for guardianship assistance. Project Family staff will also assist with the negotiation of guardianship assistance agreements.

### **Eligibility for Guardianship Assistance**

Children and youth are eligible for guardianship assistance if:

- The child is in DCF custody;
- The proposed guardian is a relative as defined in this policy;
- The child has been living with the proposed guardian in licensed foster care for at least six months; and,
- The department has determined all of the following:
  - Return home (reunification) or adoption are not appropriate permanency options;
  - The child demonstrates a strong attachment to the prospective relative guardian;
  - The relative guardian has a strong commitment to caring permanently for the child; and
  - The child, if age 14 or older, is willing to consent to the guardianship arrangement.

For a child to be eligible for Title IV-E funding for guardianship assistance, they must have received IV-E payments while in foster care.

 <b>VERMONT</b> DEPARTMENT FOR CHILDREN AND FAMILIES Family Services Policy Manual		<h1>195</h1>
Chapter:	Adoption and Guardianship Services	
Subject:	Guardianship Assistance Program	Page 3 of 7

The department may determine a child/youth's eligibility for guardianship assistance at any time appropriate to case planning. Guardianship assistance payments begin when the permanent guardianship is ordered.

Background checks are required before a permanent guardian may receive a guardianship assistance payment:

1. Finger-printed supported criminal background checks<sup>1</sup> are required for the prospective guardians if they have not been completed within the last 2 years. See Family Services [Policy 221](#) regarding background checks for a list of felony convictions that prohibit permanent guardians from receiving guardianship assistance.
2. Child Protection Registry Checks for the prospective guardians and all other adults currently living in the household:
  - a. Vermont checks will be repeated, even if done recently for another purpose.
  - a. Checks in any state in which the prospective guardians and all other adults currently living in the household have lived in the past 5 years. If these individuals moved to Vermont within the last 5 years, and since that time checks were completed for the purposes of foster care, guardianship, or adoption, they will not be repeated.

These requirements apply to successor guardians. No guardianship assistance payments may be made to a successor guardian until these requirements are met.

The prospective guardians and the DCF Commissioner or FSD Deputy Commissioner must sign a written agreement for guardianship assistance, with clearly delineated terms, before the permanent guardianship is legally finalized. Division staff or a designated contractor must explain the agreement orally to the prospective guardian(s).

The agreement, binding on the parties, must specify the amount of payment and the nature of the assistance the department will provide. The agreement will remain in effect regardless of the state of residence.

The department will provide a copy of the signed agreement to the permanent guardians. Payments may begin when the permanent guardianship is legally established.

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<sup>1</sup> Note: It takes about 12 weeks for the results of a finger-print supported criminal background check to be returned, once submitted. These checks can and should be completed in advance of any court proceeding.

 <b>VERMONT</b> DEPARTMENT FOR CHILDREN AND FAMILIES Family Services Policy Manual		<h1>195</h1>
<b>Chapter:</b>	Adoption and Guardianship Services	
<b>Subject:</b>	Guardianship Assistance Program	Page 4 of 7

### Sibling Eligibility

Title IV-E allows for broad eligibility for guardianship assistance for siblings who are placed with the same person under a guardianship arrangement and it is determined that the placement is appropriate. The siblings need not be placed simultaneously.

If the department is working towards establishing permanent guardianship and a guardianship assistance agreement for a child and a sibling of that child is already under the guardianship of that relative (even if through the probate court), it may be possible to provide guardianship assistance to the previously placed sibling.

Similarly, if the department already has a guardianship agreement in place for a child, and a sibling of that child comes under the guardianship of the same relative, it may be possible to provide guardianship assistance to that subsequently placed sibling.

Due to the complexities of sibling eligibility, the family services worker should consult with the division's permanency planning manager as early as possible if this is being considered.

### Types of Assistance

The department may grant guardianship assistance in one or more of the following forms:

- A monthly assistance payment. The needs of the child or youth and the circumstances of the guardians will determine if the department will grant this payment and in what amount.
- Payment for special services not provided for by other sources to meet the child's needs.
- Certain non-recurring expenses directly related to the establishment of the guardianship of a child in the commissioner's custody that have not been reimbursed by another source, up to \$2000.
- Vermont Medicaid, or if the child is eligible for Title IV-E guardianship assistance, Medicaid in any state. Guardians may have to apply for Medicaid in other states on the child's behalf.

### Determining the Types and Amount of Assistance

The amount of assistance will be determined through agreement between the prospective guardians and the department. The needs of the child will be the primary consideration. However, the circumstances of the prospective guardians will be considered as well. In no case may the payment exceed the amount that would have been paid during the period if the child had been in a foster family home.

 <b>VERMONT</b> DEPARTMENT FOR CHILDREN AND FAMILIES Family Services Policy Manual		<h1>195</h1>
Chapter:	Adoption and Guardianship Services	
Subject:	Guardianship Assistance Program	Page 5 of 7

### Payment for Special Services

The department may agree to pay for special services needed to address present or future special needs of the child. The DCF Commissioner or FSD Deputy Commissioner makes such decisions in the context of available resources and whether or not the department would likely have paid the claimed need had the child been in a foster family home.

### Reimbursement of Non-Recurring Guardianship Expenses

The department will pay certain non-recurring expenses directly related to the establishment of the guardianship of a child in the commissioner’s custody that have not been reimbursed by another source, up to \$2000.

### Modification of Agreement

Either party may request modification of the agreement at any time. However, the agreement cannot be modified without the agreement of both parties, except as provided in this policy.

When the permanent guardian requests that the amount of assistance be raised, the upper limit for any increased is the amount that would have been paid if the child had remained in foster family care to this date.

### Suspension or Reduction of Guardianship Assistance Payments

The department may suspend or reduce guardianship assistance payments when:

- The child reenters foster care or another out-of-home setting; or
- The guardian is in receipt of other sources of income on behalf of the child.

### Termination of the Agreement

A guardianship assistance agreement will be terminated when:

- The child has attained the age of 18 or a lower age if specified in the agreement;
- The child has attained 21 years of age, if the department determines that the child has a mental or physical disability which warrants the continuation of assistance to age 21;
- The child has not attained 18 year of age, when the relative guardians are no longer legally responsible for the support of the child; or
- The child is no longer receiving any form of financial support from the relative guardians.

### Successor Guardians

A relative guardian entering into an initial or amended guardianship assistance agreement may name a successor who will assume guardianship if the guardian dies or

 <b>VERMONT</b> DEPARTMENT FOR CHILDREN AND FAMILIES Family Services Policy Manual		<h1>195</h1>
Chapter:	Adoption and Guardianship Services	
Subject:	Guardianship Assistance Program	Page 6 of 7

becomes incapacitated. The court may name a successor guardian in the initial order for permanent guardianship. The successor guardian need not be a relative of the child or the guardian. If the court makes such an order, and this successor guardian becomes the permanent guardian, that guardian is eligible to receive guardianship assistance on the child's behalf.

If the court did not make an order naming a successor guardian, should the permanent guardians be unable to continue as guardians, a potential successor guardian can be identified. However, custody of the child reverts initially to the department. The steps are as follows:

1. The child reenters DCF custody.
2. The successor guardian applies to be a licensed foster parent, if they have not already done so. This will require all background checks to be completed.
3. The child is placed with the successor guardian in licensed foster care and lives with them in that status for at least six months.
4. The department enters into a guardianship assistance agreement with the successor guardians.
5. The youth, if over 14, agrees to the new permanent guardianship.
6. A new order of permanent guardianship is made by the family division judge.
7. Guardianship assistance begins on the date of the order.

#### **Guardianship Assistance over Age 18**

When the department has provided guardianship assistance for a child/youth under the age of 18, the department may enter into an agreement to provide assistance over the age of 18 under the following circumstances:

- The young adult has not yet graduated from high school. In this case, assistance may be provided until the date on which the young adult (1) graduates or (2) leaves school without graduating; or
- When the department has determined that the young adult has a lifelong mental or physical disability that limits activities of daily living as determined by a medical professional. Assistance may be provided up to the young adult's 21st birthday as long as his/her guardian continues to provide financial support (regardless of whether the young adult has completed high school.)

For all over-age-18 agreements, the rate will be the current rate for level 3 foster care, or the rate being paid before age 18, whichever is lower. Special services are not available after age 18.



 <b>VERMONT</b> DEPARTMENT FOR CHILDREN AND FAMILIES Family Services Policy Manual		<h1>195</h1>
<b>Chapter:</b>	Adoption and Guardianship Services	
<b>Subject:</b>	Guardianship Assistance Program	Page 7 of 7

**Guardianship Assistance Initiated between Youth’s 16th and 18th Birthday**

For agreements entered into after a youth turns 16, the initial agreement will articulate the specifics of the assistance that will be paid before the age of 18, and if warranted, after the age of 18. Provisions governing payments over the age of 18 will conform to the section on that topic. Under no circumstances will special services continue past the age of 18.

**Appeal of Eligibility Decisions**

The child’s permanent guardians may request a fair hearing if the state unilaterally denies, suspends, reduces, discontinues, or terminates a guardianship assistance agreement. This includes circumstances under which the state fails to advise the guardians about the availability of guardianship assistance for children in the state’s foster care system.

If the Human Services Board, after fair hearing, or the Vermont Supreme Court rules in favor of the child, a guardianship assistance agreement will be implemented in accordance with the board’s ruling, even after the finalization of the permanent guardianship.