

NYS KINSHIP GUARDIANSHIP ASSISTANCE ACT

The Fostering Connections to Success and Increasing Adoption Act of 2008 created an option for States to provide a kinship guardianship assistance program with Federal Financial Participation for those relatives willing to provide a permanent home for a related foster child but unwilling to adopt. Following Federal requirements, the New York Legislature passed a resolution, enacted into law in 2009, authorizing New York's participation in the program. The statute (Social Services Law Section 458 A,B,C) is effective April 1, 2011 and both the Office of Court of Administration and OCFS are drafting procedures on how the statute is to be implemented. What follows, therefore, is an overview of the statute.

- **WHAT IS KINSHIP GUARDIANSHIP?**

A person certified as a foster parent and related by blood, marriage or adoption to a child who has resided in the home as a foster child for 6 months, may apply to the Court for appointment as the child's legal guardianship. Upon appointment of a kinship guardian, the child is discharged from foster care and lives with the kinship guardian without any monitoring or involvement by the Local Department of Social Services ("LDSS") or agency. A kinship guardian acquires all rights over the child akin to a birth parent, including among others the right to consent to the child's medical treatment and make decisions regarding his/her education. Guardianship does not terminate a birth parents parental rights. In appropriate circumstances the Court may order visits between the child and birth parent or even terminate the guardianship if in the child's best interests.

- **WHAT IS KINSHIP GUARDIANSHIP ASSISTANCE?**

Upon approval of a relative as a kinship guardian, LDSS will enter into an agreement with the relative to pay a monthly stipend for the care and maintenance of the child similar to the monthly board payments the relative received while the child was in foster care. Payments will continue until the child is 18 or, if the child was over 16 when the kinship guardian was appointed, until the child is 21 provided the child attends school, vocational training, or is employed for 80 hours per month. Payments will terminate if the kinship guardian no longer is legally responsible for the child or no longer supports the child. Payments continue if the kinship guardian and child live in or move out of state.

- **WHAT ARE THE CRITERIA FOR APPROVAL OF A KINSHIP GUARDIAN?**

Upon application to LDSS for approval as a kinship guardian, and for approval of an assistance agreement, LDSS must conduct a state and national criminal background check of the proposed guardian and of any person over 18 residing in the home. If they completed a criminal record check as part of the approval, certification, or renewal as a foster parent; the background check does not have to be completed.

LDSS must also obtain a report from the State Central Register on whether the proposed guardian and household members over 18 are the subjects of an indicated report of child abuse

or maltreatment. LDSS must request information from the child abuse registry of any other state where such persons lived in the previous 5 years, unless the out-of-state checks were done as part of the certification process.

LDSS also must find that

1. Return home and adoption are not permanency options for the child;
2. The child demonstrates a strong attachment to the proposed relative guardian;
3. The proposed relative guardian demonstrates a strong commitment to caring for the child on a permanent basis;
4. The child has been consulted if 14 years old or older, and
5. Appointment of the proposed relative as guardian is in the child's best interests.

- **ENTERING INTO THE KINSHIP GUARDIANSHIP ASSISTANCE AGREEMENT**

Once LDSS approves the relative as a kinship guardian, they jointly enter into an Assistance Agreement. A copy must be given to the prospective guardian and it must specifically state:

1. The amount of assistance payments. It must be calculated according to the method the LDSS uses to calculate adoption subsidies either 100% of the foster care maintenance rate (board rate) or between 75% and 100% of the rate based on the relative guardian's income;
2. Payments are based upon the amount of foster care maintenance that the child received in foster care and are subject to annual changes in room and board rates and clothing replacement allowances;
3. The payment rate may be adjusted depending on the child's needs, as where clinical evaluations show the child requires a higher level of care than basic;
4. How payments will be made;
5. Additional services and benefits for which the child and guardian are eligible - medical assistance, independent living services and educational and training vouchers, and how the guardian may apply for such services;
6. That the agreement remains in effect, even if the relative guardian and child live in or move to another state.

The agreement must also notify the relative guardian that he is entitled to payment of up to \$2,000 to their attorney for services rendered in the guardianship proceeding or in payment of other qualified expenses, as where a relative guardian lives outside the state and must travel to New York for the Court Hearing. These are known as "non-recurring expenses."

As to medical assistance, a child who is Title IV-E eligible is automatically eligible for Title XIX medical assistance. A child who is not Title IV-E eligible is eligible for medical assistance only to the extent medical costs are not covered by insurance or other means, and only if the guardian applies for such other coverage or the LDSS determines that the guardian has good cause not to

apply. The guardian must apply for medical assistance at the same time she applies for approval as a relative guardian.

Independent living services and educational and training vouchers are available if the child leaves foster care for kinship guardianship after age 16.

- **FAIR HEARINGS**

A prospective kinship guardian may apply for a Fair Hearing before an OCFS Administrative Law Judge if LDSS denies his or her application for kinship guardianship assistance, discontinues payments or regarding the amount of payments.

- **COURT HEARINGS**

Once the prospective guardian and the LDSS have entered into an Assistance Agreement, the prospective guardian files a petition in Court for an order of guardianship. The Assistance Agreement must be attached to the petition. The petition is filed either in the pending neglect or abuse proceeding or at a permanency hearing. The petition may be filed even though the child is not free for adoption. In determining the petition, the Court must hold a hearing if all the parties to the proceeding do not consent. If a birth parent does not consent, the Court must find extraordinary circumstances. If a party other than a parent does not consent, the Court must find that granting the petition is in the child's best interests. In no case can the Court grant the guardianship petition without the parent's consent prior to the dispositional phase of the neglect/abuse proceeding. Children over 14 must be asked their preference for a guardian, and youth over the age of 18 must consent.

In determining the petition, the Court is instructed to consider the child's permanency goal and the relationship between the child and the prospective guardian. The order of guardianship must require that the LDSS and the attorney for the child be provided notice of, and be made parties to, any subsequent proceedings regarding custody or guardianship of the child.

Michael A. Neff

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