Permanency Considerations and Guardianships
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Presentation Goals

- Considerations when choosing a permanent plan.
- Benefits and best practices related to guardianships.
- Relative Guardianship Assistance Program (RGAP) qualification requirements.
- Barriers to Guardianships and RGAP
Permanency Plan Development

- Permanency planning starts from day one.
  - Continues throughout the lifetime of the child’s case until permanency is achieved;
  - Secures a safe, stable and permanent home for the child as soon as possible;
  - Protects the child developmentally;
  - Protects primary attachments or creates new attachments; and
  - Preserves cultural and family connections.

Permanency Plan Development

- Concurrent Planning: working towards more than one potential permanency option.
  - Reunification
  - Adoption
  - Guardianship
  - Non-Parental Change of Custody
Shared Planning Meetings

- Shared Planning Meetings are utilized to assess the case and determine permanency options for each child.

- Children's Administration holds shared planning meetings at 4-6 months and 9-11 months from the Original Placement Date (OPD), and then every 6 months until permanency is achieved.

Shared Planning Meetings: Consider All Permanency Options

- Policy and best practice indicates all parties to the case should be invited.

- Clear identification of case plan and alternatives.
  - Consider all permanent planning options for the child;
  - Clearly identify the permanent plan;
  - Articulate the reasons the chosen permanent plan is best for this specific child; and
  - Ensure that an explanation of both adoption and guardianship has been provided to the caregiver.
Shared Planning Meetings

- Continued assessment of placement: does this placement meet this child’s needs?
- Relative search: has a continuing effort been made to locate relatives?

Considerations for Permanent Plans

- **Reunification** is considered when safety concerns have been managed.
- **Adoption** is considered when reunification is not likely in the foreseeable future, continuation of the parent & child relationship diminishes the child’s prospects of early integration into a stable and permanent home, and adoption is in the specific child’s best interest.
Considerations for Permanent Plans

- **Guardianship** is considered when reunification is not likely in the foreseeable future, continuing the parent–child relationship is not detrimental to the child, a fit and willing guardian is available, and guardianship is in the specific child’s best interest.

- **Nonparental Custody** is considered when reunification is not likely in the foreseeable future, a fit and willing custodian is available, and nonparental custody, rather than adoption or guardianship, is in the specific child’s best interest.

Long-Term Foster Care (LTFC) is not a permanent plan.

- LTFC is only considered when child is 16 or older and,
- Other permanency plan options have been determined to not be in the best interest of the child.
- Continued efforts must be made to achieve legal permanency, unless determined to not be in the child’s best interest.
Factors to Consider for Adoption

- Adoptions and Safe Families Act of 1997
  - "The safety of the children to be served shall be of paramount concern"

- Adoption requires terminating the parent-child relationship.
  - Is continuing the parent-child relationship detrimental to the child's stability and well-being?

Factors To Consider For Adoption

- Open Adoption Agreement
  - Determination that this is in the child's best interests
  - Can allow a variety of contact/communication options
  - The adoptive parent retains the authority to determine if contact/communication is in the child's best interests
Factors to Consider for Guardianships

- Guardianship presumes that continuation of the parent-child relationship is beneficial to the child.
- Is the child in placement with a relative?
- Is the parent incarcerated?
- The assigned worker facilitates a visitation plan between the caregiver and the parents that will be a part of the guardianship order.
- Only qualified relative caregivers can receive an RGAP subsidy.

Adoption vs. Guardianship

The most stable placement for a child is one that cannot be disrupted.

- Provides lifelong legal ties to adoptive caregiver.
- Medicaid may be offered to the child up to age 21 through adoption support.
- Adoption cannot be terminated or modified upon a motion.
- Adoptive applicants must be 18 years of age or older.
- Guardianship ends once the child turns 18.
- Medicaid may be offered to the child up to age 18 through RGAP subsidy or CSO grant.
- Guardianship may be terminated/modified upon a showing of a substantial change in circumstances.
- Potential guardians must be 21 years of age or older.
Non-Parental Custody Decree vs. Guardianship

- Typically established in Superior Court, concurrent jurisdiction required.
- No subsidy available.
- Foster license not required to obtain custody.
- Once decree entered, dependency dismissed.
- Potential caregivers pay legal fees.

Established in Juvenile Court.
- Guardian may be eligible for RGAP funds not to exceed foster care maintenance payments.
- Foster license not required to obtain guardianship (required for RGAP).
- Once decree entered, dependency dismissed.
- Potential guardians do not pay legal fees.

Home Studies

- Chapter 13.36 RCW requires proposed guardians to meet minimum requirements to care for children under RCW 74.15.030, which includes receiving a positive home study.

- Chapter 26.10 RCW (Non-Parental Custody Agreements) does not require proposed custodians to meet the requirements of RCW 74.15.030.

- **CA policy** requires an approved home study whenever a relative steps forward, expresses interest in becoming a placement resource for the child and CA is considering placement into that home.
Permanency Plan Development

- Factors to Consider:
  - Family Functioning, prognosis for return home
  - Child’s needs: safety, well-being and stability (permanency)
  - Child’s familial and cultural connections
  - Child’s wishes if developmentally appropriate
  - Native American Status and Tribal recommendations
  - Sibling contact and placement
  - Parents plan for permanency
  - Parent and child relationship and whether continued relationship is beneficial to the child
  - Whether child is placed with relatives
  - Whether parent is incarcerated

Guardianship as a Permanent Plan

- Through the Shared Planning Process, a decision is made to establish a guardianship as an appropriate permanent plan prior to court approval.

- Determination is made whether a guardianship is most appropriate and in the child’s best interests.

- The child must be placed in the proposed guardian’s home for at least six months.

- The proposed guardian must have a home study that is approved for placement.
Guardianship as a Permanent Plan

- Case Worker must document that:
  - The guardian(s) has a strong commitment to be a permanent home for the child.
  - There is an emotional bond and a strong attachment between the child and the guardian(s).
  - The child's considerations for connections have been considered and will be met by the proposed guardian(s).
  - The child's medical issues are met by the proposed guardian(s).
  - The child has strong community ties, which may include church, school, relatives and friends.

Guardianship as a Permanent Plan

- The Case Worker explores with the proposed guardian a visitation schedule that will allow continued contact with child and parent(s).
  - The visitation schedule does not disrupt the stability of the placement.
  - The visitation schedule takes into account child safety issues if applicable.

- The proposed guardian will be responsible for the implementation of the visitation schedule once the guardianship is established.
Guardianship as a Permanent Plan

- The Case Worker ensures:
  - That the Permanency Planning Matrix DSHS form 16–231 has been reviewed with the proposed guardian(s) and youth.
  - That the proposed guardian(s) understands subsidy requirements either from the Relative Guardianship Assistance Program (R–GAP) or TANF Program.

- The Case Worker must inform the proposed guardian that the following services are not available under a plan of Guardianship:
  - Mileage
  - Respite care
  - Child care
  - Tutoring
  - Educational support
  - Travel reimbursement
  - Clothing vouchers
  - Case aid services
  - Case management services
  - Residential Treatment


Guardianship as a Permanent Plan

- The proposed guardian must sign the Declaration of Proposed Guardian.

- The case worker must obtain Regional Administrator or designee approval by submitting the Guardianship Approval Checklist (DSHS 15-324) and attachments prior to filing a guardianship petition with the court.

Guardianship Checklist

- A Shared Planning meeting has occurred which included the following participants as required:
  - Child (when appropriate per age and developmental capacity)
  - Potential Guardian
  - Birth Parents (when appropriate and available)
  - Current Caregivers (if different from potential Guardian)

- The child’s/youth’s opinions were considered in determining the Permanent Plan.

- The completed Shared Planning Meeting form and sign-in sheet are attached.

Clearly state the reason(s) that the permanent plans listed below are not in the child’s best interests:

- Reunification:

- Adoption:
Guardianship Checklist

☐ The current caregiver was provided the Permanency Planning Matrix, DSHS 16-231.
The proposed guardian is a ☐ Relative ☐ Non-Related Foster Parent ☐ Other Suitable Person

☐ CA case worker has complied with all Federal Indian Child Welfare Act requirements with respect to the child.
  Tribal or LICWAC decision ☐ supports ☐ or does not support a plan of guardianship.

☐ A thorough relative search has been conducted and documented.

☐ Placement with siblings was considered.
  If not placed with sibling(s), provide an explanation: _______________________________

Guardianship Checklist

☐ The proposed guardian understands and is willing to accept their roles and responsibilities to be a guardian and has signed the Declaration of Proposed Guardian. (Please attach the signed Declaration of Proposed Guardian).

☐ The proposed guardian is informed about and is prepared to manage any court ordered visits with birth family members. Recommended visitation plan is attached.

☐ CA has provided disclosure of information about the child to the proposed guardian, in order to ensure proper care for the child. (All information regarding this child from the health and education section of the file. Also include a copy of all court reports, and ICW information.) Date provided: ____________

☐ The proposed guardian has an approved home study. (Case Services Policy Manual Section 3240, Practices and Procedures Manual Section 4261, RCW 74.15.090).

☐ The child has been placed in the proposed guardian's home for at least six months prior to the guardianship being established. Date of placement: ____________
Guardianship Checklist

☐ The proposed guardian meets the requirements of, and will apply for, an R-GAP subsidy: ☐ Yes ☐ No

If yes:

☐ The proposed guardian has been informed that the guardianship hearing cannot take place until the R-GAP agreement is signed by the proposed guardian and the Regional R-GAP Gatekeeper.

☐ The Regional R-GAP Gatekeeper has been notified about the pending R-GAP application.

☐ The proposed guardian has been informed that she is not eligible for a guardianship subsidy through CA but may be eligible for assistance through the local Community Service Office.

Guardianship as a Permanent Plan

- The Assistant Attorney General (AAG) files the Guardianship petition in juvenile court.
  - No legal or filing fees for the proposed guardian(s).
  - Proposed guardian(s) may consult with an attorney at their own expense; however if they qualify for RGAP, RGAP funds will cover the consultation up to $2,000.00.

  - If the proposed guardian(s) qualify for RGAP, the RGAP agreement must be signed before the guardianship order is entered.
Guardianships With or Without Subsidy

- Title 13 Guardianships can be unsubsidized.
- The Relative Guardianship Assistance Program is available as a subsidy to qualified relative caregivers.
- Proposed guardians who do not meet R-GAP qualifications can apply to the Community Service office for medical and financial assistance. Qualifying for this assistance will be based on the caregiver’s income.

Relative Guardianship Assistance Program (R-GAP)

- Designed to promote relatives as a permanency placement for children in foster care.
- Provides relatives with assistance to care permanently for children.
- Increases stability and continuity for children.
- Promotes a sense of belonging; helps children stay connected to extended family and culture.*

*“Making It Work”, A Collaborative Project of the Children’s Defense Fund, Child Trends, ABA Center, Casey Family Programs, Child Focus and Generation United, April 23, 2013
R–GAP Subsidy Requirements

- Child must be IV–E eligible; determination is ONLY made by IV–E specialist.

- Information needed for determination:
  - Specify request is for RGAP subsidy
  - Identify relationship of prospective guardian to the child

- If the child has a sibling that already qualifies for R–GAP and is placed in the same home, that child does not need to be IV–E eligible.

R–GAP Subsidy Requirements

- To be IV–E eligible for this program, the child must be in the care, custody and control of a Title IV–E Child Placing Agency.

- Children in tribal custody are only eligible for this program if the Tribe is a IV–E Tribe.
  - IV–E Tribes currently are Lummi Nation, Quinault Nation, Port Gamble S’Klallam Tribe and Makah Tribe

- Children who are non–citizens are not eligible for R–GAP, even if a qualified sibling is in the home.
R-GAP Subsidy Requirements

- The proposed guardian must be a relative as defined in RCW 74.15.020(2)(a); or

- If the child is a member, or eligible to be a member, of a federally recognized tribe, the tribe’s law or custom may offer a broader definition of a relative that is acceptable for R-GAP.

Relatives: RCW 74.15.020(2)(a)
RCW 13.36.020(5)

- Any blood relative, including those of half-blood, including first cousins, second cousins, nephews or nieces and persons of preceding generations denoted by prefixes of grand, great or great-great;

- Stepfather, stepmother, stepbrother, and stepsister;

- A person who legally adopts a child or the child’s parent, the natural and other legally adopted children of such persons, and other relatives of the adoptive parents;

- Spouses of any persons named in (i), (ii), (iii) above, even after the marriage is terminated;

- Relatives, as named in (i), (ii), (iii) above, of any half sibling of the child.
R–GAP Subsidy Requirements

- Relative must be licensed for foster care.

- Relatives must:
  - Have a strong commitment to be the permanent placement for the child
  - Participate in shared planning and understand the benefits and limitations of guardianship with an R–GAP

R–GAP Subsidy Requirements

- Child must be in relative’s licensed home for at least 6 consecutive months (180 consecutive days) before an R–GAP agreement can occur.
  - This is different than IV–E eligibility.

- The R–GAP agreement must be completed and signed before the guardianship is entered into court.
Benefits Under R–GAP

- Medical, Mental Health and Dental Coverage
- Nonrecurring costs
- Monthly cash payment
- There are no income requirements to receive subsidy.

R–GAP Contract

- The contract is individually negotiated between RGAP Gatekeepers and the proposed relative guardians.
- Each Region has an RGAP Gatekeeper to negotiate RGAP subsidy contracts:
  - Region 1: Lorenzo Lopez: Lorenzo.Lopez@dshs.wa.gov
  - Region 2: Ricard Tupling: tupliri@dshs.wa.gov
  - Region 3: Holly Luna: lunahop@dshs.wa.gov
- Guardianship and RGAP Policy can be referenced in Practices and Procedures Manual 4340 and 43401
R–GAP Contract

- Contracts are between CA and the relative guardians and are a binding contract.

- The contracts may be renegotiated any time at request of the guardian when needs of the child or circumstances of the guardian have changed.

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R–GAP Contract

- The contract may include:

  - Monthly subsidy (*subsidy amount cannot exceed 80% of the amount of foster care/maintenance for the child*).

  - Non-recurring costs (*up to $2,000 reimbursed*) to finalize a relative guardianship (*expenses associated with obtaining legal guardianship*).

  - Eligibility for Medicaid.
R–GAP Contract

- The R–GAP contract can assist with daycare services if Children's Administration is paying for daycare services prior to establishing the guardianship.
  - If eligible, an amount for daycare can be negotiated with the R–GAP gatekeeper and included in the agreement.
  - There are limitations on this amount.

R–GAP Contract: Successor Guardian

- In the event of the death or incapacity of the legal guardian, R–GAP subsidy and services for the child(ren) will transfer to a successor legal guardian if named in the R–GAP Agreement or R–GAP Amendment prior to the death or incapacity of the guardian.
R–GAP Contract: Successor Guardian

- The named successor guardian must establish a legal guardianship with the child(ren).

- The R–GAP Agreement must be amended prior to the establishment of the new guardianship.

- Reimbursement of expenses associated with obtaining the new legal guardianship can occur up to $2,000.00 max.

R–GAP Contract: Successor Guardian

- The successor guardian must pass a background check.

- The successor guardian does not need to be a relative and does not need to be licensed as a foster parent.
Continued R–GAP Eligibility

- The R–GAP Subsidy may continue for youth up to age 21 if the following applies:

  - The youth achieved permanency through guardianship at age 16 or older and is:
    - Enrolled in high school or in a high school equivalency program;
    - Enrolled, applied for, or can show intent to timely enroll in a post-secondary vocational certification program;
    - Participating in a program or activity designed to promote or remove barriers to employment; or
    - Employed 80 hours or more a month.

Continued R–GAP Eligibility

- An R–GAP subsidy can also continue for a youth who has achieved permanency through a guardianship and has a mental or physical handicap which warrants the continuation of assistance up to age 21.
Barriers to Guardianship and RGAP

- Education/Training
- Home studies
  - Referrals
  - Court Ordered Placements
- Licensing Standards
- Others?

Guardianship Questions and Answers

- Must all permanent plan options, including adoption and guardianship, be considered when determining which permanent plan is in the child’s best interest?
  - Yes. The worker must be able to articulate the reasons the chosen permanent plan is best for the particular child to which he or she is assigned.
  - An explanation of all permanent plans must be provided to the identified permanent caregiver so that the caregiver can provide educated input during the shared planning process.
Guardianship Questions and Answers

- Does the guardian have to maintain the foster care license after the guardianship is established?
  - No

- Can a foster parent that is not related to the child be considered for a guardianship?
  - Yes, but the foster parent will no longer be eligible for foster care payments or any other paid services by CA.

- What is CA’s responsibility once a guardianship is established?
  - CA is not responsible for providing case management or other services after a guardianship is established.

Guardianship Questions and Answers

- Can new services be authorized for guardianships established prior to October 31, 2009 (grandfathered-in dependency guardianships)?
  - No new services will be authorized for the established guardianship. If services already are being provided, those are continued, but no new services will be provided.

- Can dependency guardians request additional subsidy when circumstances change?
  - Yes, a guardian in either dependency guardianship or Title 13 guardianship can request a change in subsidy amount based on a change in circumstances.
Guardianship Questions and Answers

- Can a youth in a guardianship be eligible for the Extended Foster Care Program?
  - No, the Extended Foster Care Program is not intended for youth who are not placed in licensed foster care.

- What can be offered for a youth in a guardianship who is turning 18 years old and has developmental delays?
  - The guardian needs to contact the Developmental Disabilities Administration for assistance.

Questions and Answers

- OTHER QUESTIONS