

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Tool 10.C: Differences Between Guardianship and Adoption Reference: 10.01 Planning for Adoption - Overview, 10.23 Guardianship Overview, 10.24 Choosing Guardianship or Adoption as a Child's Permanency Plan	
	Effective Date: April 1, 2022	Version: 1

This document is intended for informational purposes only. It is a tool that may be used by the Family Case Manager (FCM) to assist in identifying some of the most common differences between guardianship and adoption. All prospective guardians and adoptive parents should seek legal counsel with regards to their guardianship or adoption questions.

All statements or information regarding subsidies, Medicaid, or Non-Recurring Guardianship/Adoption Expenses only apply if a Guardianship Subsidy Agreement or Adoption Subsidy Agreement is fully executed prior to the order awarding guardianship or the finalization of an adoption.

	Adoption	Guardianship
Goals		
Desired outcome for the child	<ul style="list-style-type: none"> Child may achieve permanency and is no longer in state custody. Child and adoptive family form a "forever family". 	<ul style="list-style-type: none"> Child may achieve permanency and is no longer in state custody. Child and birth family may have the opportunity to stay connected.
Legal Considerations		
Relationship with Birth Parent	<ul style="list-style-type: none"> Adoptive parent has the right to determine if the child will have any relationship with the birth parent. All rights with the birth parent to the child are severed by the court either through voluntary relinquishment or involuntary Termination of Parental Rights (TPR). Contact between the birth parents and the child may continue if a post adoption agreement is signed. 	<ul style="list-style-type: none"> Parental rights of the birth parent may or may not be terminated through voluntary or involuntary TPR. The birth parent retains rights to the child when parental rights have not been relinquished or terminated. In these circumstances, even when guardianship has been granted over a child, the birth parents remain the child's parents, however, they need a court order to be able to exercise their parental rights. If parental rights of the birth parent have not been terminated, the birth parent may petition the court for the right to visit the

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		<p>child unless a court orders no visitation. The guardian will have input into how the visits are structured, but the guardian cannot prevent visits from occurring if the visits were court ordered. If the guardian and parent cannot work out visitation scheduling, one (1) of the parties may wish to seek court intervention.</p> <ul style="list-style-type: none"> ▪ The birth parent may request the court dissolve the guardianship and the child returned to their care, but the birth parent must prove fitness to the court in order to prevail. DCS also has the opportunity to present evidence at the hearing.
Child's Legal Name	<ul style="list-style-type: none"> ▪ The adoptive parent determines the child's legal name. 	<ul style="list-style-type: none"> ▪ The child's legal name at birth is retained.
Rights of the Caregiver	<ul style="list-style-type: none"> ▪ All decisions are made by the adoptive parent. ▪ Adoption is a permanent, lifelong, and legal relationship. 	<ul style="list-style-type: none"> ▪ Guardianship gives legal responsibility, custody, and supervision of the child to the guardian. ▪ The guardian will have the right to make decisions regarding the child's school, health care, and major life decisions. If TPR has not occurred, the birth parent has the right to consent to adoption, if the guardian later decides to adopt the child.
Legal Documentation	<ul style="list-style-type: none"> ▪ The court decree finalizes the adoption of the child. ▪ Both persons in a married couple must adopt. 	<ul style="list-style-type: none"> ▪ The court order granting legal guardianship establishes the guardian for the child. ▪ When married, either one (1) or both spouses may be named the guardian.
Termination of Adoption or Guardianship	<ul style="list-style-type: none"> ▪ The commitment entered by adopting a child lasts a lifetime. ▪ An adoptive parent retains parental rights unless terminated by the court. 	<ul style="list-style-type: none"> ▪ Guardianship is a strong commitment to the child and is intended to be a lifetime relationship. The guardian may petition the court for permission to resign, or another person, such as a biological parent, may petition to dissolve the guardianship. ▪ Although guardianship legally ends when the child turns 18, most legal guardians enter into this commitment intending for it to be a lifetime relationship.

	Adoption	Guardianship
Financial Implications of Child Returning to DCS Care	<ul style="list-style-type: none"> ▪ If a child returns to DCS care and is no longer placed with the adoptive parent, the adoption subsidy (if the child was eligible for subsidy and a subsidy was negotiated) may be suspended until the child returns to the care of the adoptive parent, if it is determined that the adoptive parent is no longer providing financial or legal support to the child. ▪ The adoptive parent is obligated to notify DCS Central Eligibility Unit if the child is no longer in the family's care regardless of whether DCS is involved with the family if they are receiving an adoption subsidy. 	<ul style="list-style-type: none"> ▪ If a child returns to DCS care, the guardianship subsidy (if the child was eligible for subsidy and a subsidy was negotiated) may be suspended until the child is reunited with the guardian or successor guardian, if it is determined that the guardian is no longer providing financial or legal support to the child. ▪ The guardian is obligated to notify the DCS Central Eligibility Unit if the child is no longer in their care if they are receiving a guardianship subsidy.
Decision Making		
Consent of the Child	<ul style="list-style-type: none"> ▪ A child who is 14 years of age or older must consent to the adoption unless the court, in the best interest of the minor, dispenses with the minor's consent. 	<ul style="list-style-type: none"> ▪ A court may consider the wishes of a child 14 years of age or older, but the child's consent is not necessary. However, for any child 14 years of age or older to be eligible for guardianship assistance, the child must be consulted regarding the guardianship arrangement.
Inheritance	<ul style="list-style-type: none"> ▪ An adopted child has the same inheritance rights as a birth child. 	<ul style="list-style-type: none"> ▪ The child has no rights of inheritance from the legal guardian unless the child has been included in the guardian's will.
Death of Adoptive Parent/Guardian or termination of an Adoption or Guardianship	<ul style="list-style-type: none"> ▪ A child adopted with an adoption subsidy does not remain eligible for adoption assistance if the child's adoptive parent dies, the adoptive parent's parental rights are terminated, or if the adoptive parent is no longer financially responsible for the child. If the child is adopted by another individual, a new adoption 	<ul style="list-style-type: none"> ▪ A child for whom guardianship subsidy is received may remain eligible for Title IV-E guardianship subsidy if the child's guardian dies or is incapacitated and a successor guardian is named in the guardianship assistance agreement. However, if the guardianship is terminated or the guardian is no longer financially responsible for the child the subsidy may be terminated and the child may return to the care of the biological parents.

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	<p>assistance eligibility determination is needed.</p> <ul style="list-style-type: none"> ▪ If the adoptive parent(s) die, the child's birth parents do not regain their parental rights or any right to be involved in the child's life. 	
Subsidy and Services		
Eligibility and Duration for Subsidy/Services	<ul style="list-style-type: none"> ▪ A child in foster care (or a child adopted privately that meets the federal requirements) may be eligible for adoption assistance in the form of an adoption subsidy, Medicaid, and certain Non-Recurring Adoption Expenses (NRAE) if the special needs and other eligibility requirements are met. ▪ The adoption subsidy continues until the child turns age 18, unless it is determined that the adoptive parent is no longer legally or financially responsible for the child. ▪ Prior to turning age 18, the adoptive parent can apply for the subsidy to continue until age 21. The DCS Central Eligibility Unit reviews the adoptive parent's application to determine whether the child is eligible for continued subsidy. 	<ul style="list-style-type: none"> ▪ A child in foster care may be eligible for guardianship assistance in the form of a guardianship subsidy, Non-Recurring Guardianship Expenses (NRE), and may be eligible for Medicaid. Only children in out-of-home care are eligible for guardianship assistance. ▪ The guardianship subsidy continues until the child turns age 18, unless it is determined that the guardian is no longer legally or financially responsible for the child. ▪ Prior to turning age 18, the guardian can apply for the guardianship subsidy to continue until age 21 if the child is receiving Title IV-E guardianship assistance and the guardianship finalized when the child was ages 16 or 17. The DCS Central Eligibility Unit reviews the guardian's application to determine whether the child is eligible for continued subsidy.
Financial Responsibility	<ul style="list-style-type: none"> ▪ The adoptive parent is legally and financially responsible for the child. 	<ul style="list-style-type: none"> ▪ The legal guardian is legally and financially responsible for the child.
Amount of Subsidy	<ul style="list-style-type: none"> ▪ If eligible, the adoption subsidy is negotiated up to the amount of the per diem the child would receive in foster care. 	<ul style="list-style-type: none"> ▪ If eligible, the guardianship subsidy is negotiated up to the amount of the foster care per diem.

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Annual Review	<ul style="list-style-type: none"> ▪ The adoptive parent is not required to submit an annual report but may be periodically asked to provide an Adoption Program Status Report to confirm continued eligibility for adoption assistance. 	<ul style="list-style-type: none"> ▪ The guardian is not required to submit an annual report but may be periodically asked to provide a Guardianship Assistance Program Status Report to confirm continued eligibility for guardianship assistance.
Child Support	<ul style="list-style-type: none"> ▪ The legal obligation to pay future child support terminates effective the date of the adoption, but the obligation to pay past due child support is not terminated. 	<ul style="list-style-type: none"> ▪ If the parental rights of the birth parents have not been terminated and if ordered by the court, they are responsible to pay child support. ▪ Child support will not be redirected to the guardian if the guardian is receiving a subsidy payment.
Older Youth Services (OYS)	<ul style="list-style-type: none"> ▪ A youth may receive Older Youth Services (OYS) from 18 years of age up to the day before the youth's 23rd birthday if the youth was previously in foster care for a minimum of six (6) months and has achieved permanency through adoption on or after the youth's 16th birthday. ▪ A youth may receive post-secondary educational funding through the Education and Training Voucher (ETV) program; if enrolled in an accredited degree, certificate, or other program at a college, university, technical, or vocational school from 18 years of age up to their 26th birthday, if the child was previously in foster care a minimum of six (6) months and has achieved permanency through adoption on or after the youth's 16th birthday. ▪ A youth may maintain eligibility for 21st Century Scholars if adopted after the age of 13. 	<ul style="list-style-type: none"> ▪ A youth may receive Older Youth Services (OYS) from 18 years of age up to the day before the youth's 23rd birthday if the youth was previously in foster care for a minimum of six (6) months and has achieved permanency through guardianship on or after the youth's 16th birthday. ▪ A youth may receive post-secondary educational funding through the Education and Training Voucher (ETV) program; if enrolled in an accredited degree, certificate, or other program at a college, university, technical, or vocational school from 18 years of age up to their 26th birthday, if the child was previously in foster care a minimum of six (6) months and has achieved permanency through guardianship on or after the youth's 16th birthday. ▪ A youth may maintain eligibility for 21st Century Scholars if adopted after the age of 13.

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Medicaid and Other Insurance		
Eligibility of Medicaid	<ul style="list-style-type: none"> Adoption subsidies may include Medicaid coverage. Children eligible for Title IV-E adoption assistance receive coverage. Children eligible for State Adoption Subsidy (SAS) may also be eligible for Medicaid if they have a medical condition or physical, mental, or emotion disability, as determined by a licensed physician or the Severe Impairment Determination process. Adoptive parents may choose to place their child on their private insurance. Medicaid would be secondary to private insurance. The adopted child may be eligible for continued Medicaid coverage through age 21 if eligibility requirements are met. 	<ul style="list-style-type: none"> Children eligible for Title IV-E guardianship assistance may receive coverage. For children eligible for the State Guardianship Assistance Program (SGAP), the guardian may apply for coverage at the local Division of Family Resources (DFR) Office. Children eligible for Title IV-E guardianship assistance may be eligible for continued Medicaid coverage through age 21 in certain circumstances if eligibility requirements are met.

Additional resources and information may be found in the [Central Eligibility Unit \(CEU\) Binder](#) and in [Chapter 10 Guardianship and Adoption](#) and [Chapter 14 Adoption Assistance and Guardianship Assistance](#).