

To: State of Indiana
From: Grandfamilies State Law & Policy Resource Center: Heidi Redlich Epstein and Kara Clunk
Re: Indiana's Compliance with the Kinship Guardianship Assistance Provision of the Fostering Connections to Success and Increasing Adoptions Act of 2008
Date: September 8, 2009

The following is an analysis of the Indiana Administrative Code title 465 to determine whether it complies with the requirements of the Kinship Guardianship Assistance Program option as contained in the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections). This memorandum summarizes the similarities and differences between Indiana's current Assisted Guardianship Program and the requirements for kinship guardianship assistance payments provision listed in the Fostering Connections Act of 2008.

Indiana currently maintains a program called "Assisted Guardianship Program."¹ Under this program, an individual who has been appointed and acting as a guardian for a child or a person who meets the conditions of rule 2-8-3 in title 465 of the Indiana Administrative Code may enter into a written guardianship assistance agreement with the county director.² These guardianship assistance agreements provide for monthly assistance payments to the guardian on behalf of the child.³

In order to comply with the Fostering Connections Act the Indiana Assisted Guardianship Program, as defined in the Indiana Administrative Code, would require slight modifications to the current laws, as well as revisions to the guardianship agreements presently used for this program. Although the Indiana Program requires relative guardians to enter into written, binding agreements, the information contained within the agreements must also comply with the Federal law. In addition, Indiana needs to modify the child eligibility, guardian eligibility, and siblings provisions to mirror the requirements from the Fostering Connections Act. Finally, Indiana should add a provision mandating that the state agency document all efforts and findings with regard to placement with a relative guardian in each child's case file.

¹ 465 IND. ADMIN. CODE 2-8-1 (2009).

² *Id.*

³ *Id.*

Entering into Written Kinship Guardianship Assistance Agreements

Indiana’s Assisted Guardianship Program (“Program”) complies with the Fostering Connections Act requirement that the State and kinship providers enter into a written, binding Kinship Guardianship Assistance Agreement.⁴ Similarly, the Indiana Program mandates that the county director of a county office of family and children enter into a written and binding agreement with guardians.⁵ This binding agreement will provide “monthly assistance payments to the guardians on behalf of a child.”⁶ Therefore, with regard to this requirement, the written guardianship assistance agreements comply with the Fostering Connections Act.

Partial Compliance with Minimum Requirements of Kinship Guardianship Assistance Agreements

A. Compliance with the Amount of and Modification of Payment

The Fostering Connections Act mandates that the written kinship guardianship assistance agreement (“agreement”) specify the amount of payment and that the payment may be modified according to the guardian’s need for the payment.⁷ Similar to the Federal law, Indiana’s Program requires that the “division or county office” determine the amount of monthly payments to an eligible guardian “based on the needs of the child as determined in accordance with the applicable guidelines for financial assistance to families and children provided through TANF.”⁸ In addition, Indiana’s Program also requires that the county office review each agreement annually to “redetermine the amount of future monthly assistance payments based on the information provided or obtained by the county office and the applicable TANF guidelines.”⁹ Therefore, the Program complies with the Fostering Connections Act because it specifies the amount of payment and provides the option for the payment to be modified yearly.

⁴ Fostering Connections to Success and Increasing Adoptions Act of 2008 42 U.S.C. § 473(d)(1)(A)(i) (2008); P.L. 110-351 §101(b) (2008)...

⁵ tit. 465, § 2-8-1(2)(h).

⁶ *Id.*

⁷ § 473 (d)(1)(B)(i).

⁸ tit. 465 § 2-8-5(b).

⁹ *Id.* at § 2-8-5(2)(e).

B. Potential Noncompliance of Specifying the Manner of Payment Requirement

Unlike the Fostering Connections Act,¹⁰ the Indiana Administrative Code does not require that the agreement specify the manner of the payment.¹¹ Please note that the Grandfamilies State Policy and Resource Center staff did not have the opportunity to review any form guardianship agreements used in Indiana. Without currently indicating the manner of the payment in the Administrative Code, we recommend that each county office scrutinize the guardianship agreement forms used to ensure that it articulates the manner in which the relative guardian will receive payment to comply with the Fostering Connections Act.

C. Compliance with the Listing of Additional Available Services Requirement

The Indiana Program complies with the Fostering Connections Act requirement that the agreement specify “additional services and assistance that the child and relative would be eligible for under the agreement.”¹² Indiana’s Program requires—upon approval of the guardianship assistance agreement—that the county office disclose information concerning resources “that may be available to the guardian or child through the county office or other community agencies, to assist the guardian in providing for the child’s physical, mental, psychological, educational, and other needs appropriate to the child’s development and transition into adult status and independent living.”¹³ Consequently, Indiana’s Program complies with the Fostering Connections Act’s requirement for additional available services to be listed in the written agreements.

D. Noncompliance with the Explanation of the Procedure for Applying for these Services

In addition to listing the additional available services, in order to comply with the Fostering Connections Act, the agreements between the guardian and the county office need to specify “the procedure by which the relative guardian may apply” for these additional services.¹⁴ According to the Indiana Administrative Code, the Indiana Program does not require its county departments to specify how to apply for the additional services listed in their written

¹⁰ § 473 (d)(1)(B)(i).

¹¹ tit. 465 §§ 2-8-1 to 2-8-11.

¹² § 473 (d)(1)(B)(ii).

¹³ tit. 465 § 2-8-8(a).

¹⁴ § 473 (d)(1)(B)(iii).

agreement.¹⁵ Unless these procedures are included in the provision referencing “information concerning”¹⁶ the available resources, then Indiana needs to clarify that the county department must also specify the application procedures for these resources.

E. Partial Compliance with Capped Nonrecurring Expenses Requirement

Indiana’s Program does not comply with the Fostering Connections Act mandate that the State “will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child” to the extent that the fees do not exceed \$2,000.¹⁷ Indiana *permits* the county office to “pay all or any designated portion of the legal costs and other expenses of the guardianship proceedings.”¹⁸ However, Indiana needs to modify its Administrative Code to comply with the Federal requirement that the State pay the total cost of nonrecurring expenses, including legal costs, up to \$2,000. The Administrative Code should be modified by adding that the “the county office **will** pay all or any designated portion of the legal costs and other nonrecurring expenses of the guardianship proceedings . . . up to \$2,000” instead of the current language used which states that the county has the option to pay some of the expenses. Upon modification of this general language, Indiana will comply with the Fostering Connections Act.

F. Noncompliance with Interstate Applicability of Kinship Guardianship Assistance Agreements

The Indiana Program does not comply with the Fostering Connections Act mandate that the agreement shall remain in effect without regard to the relative guardian’s state residency.¹⁹ The Indiana Program states neither that the agreement shall remain in effect regardless of the relative guardian’s state residency, nor lists the consequences of the relative guardian moving out of the State of Indiana.²⁰ The only requirement to continue the assistance payments is that the “eligible child must currently reside with the guardian in the home of the

¹⁵ tit. 465 §§ 2-8-1 to 2-8-11.

¹⁶ *Id.* at § 2-8-8.

¹⁷ § 473 (d)(1)(B)(iv).

¹⁸ tit. 465 § 2-8-4(b).

¹⁹ § 473 (d)(1)(C).

²⁰ tit. 465 § 2-8-6.

guardian.”²¹ Indiana must specify in the agreement that the payment may continue no matter where the relative guardian lives, even outside the State of Indiana, as long as the case was adjudicated in the Indiana court system. Once this provision is added to the agreement, this portion will comply with the Fostering Connections Act.

G. Compliance with No Effect on Federal Reimbursement Provisions in the Fostering Connections Act

Similar to the Fostering Connections Act,²² nothing in the Administrative Code suggests that anything in the section (iv) of the minimum requirements sections shall affect Indiana from receiving reimbursement from the Federal Government for nonrecurring costs.²³ The Indiana Program complies with the Fostering Connections Act on this provision.

H. Potential Compliance with Maximum Amount of Kinship Guardianship Assistance Payments

The Indiana Program complies with the Fostering Connections Act mandate that payment received on behalf of the child shall not exceed the amount of foster care maintenance payment that the child would have received if they had remained in foster care²⁴ depending on the maximum amount of foster care maintenance payment that Indiana permits. The Indiana Program limits the amount of payment to, at the maximum, of \$512 per child.²⁵ The Administrative Code does not explain whether this is the maximum amount of foster care maintenance payment a child would receive in Indiana. Therefore, Indiana could modify the Administrative Code to reflect this more general restriction mandated by the Federal law if it is not already in practice by the limit of \$512 per child.

²¹ *Id.* at § 2-8-3(3). *See also Id.* at § 2-8-6(a)(8)(b)(1) (“The division or county office may terminate any monthly assistance payment and guardianship assistance agreement upon occurrence of the event that the child is no longer residing in the home of the guardian.”).

²² § 473 (d)(1)(D).

²³ tit.465 §§ 2-8-1 to 2-8-11.

²⁴ § 473 (d)(2)..

²⁵ tit. 465 § 2-8-5(b).

Partial Compliance with Child’s Eligibility for a Kinship Guardianship Assistance Payment

A. Remove the Thirteen-Year-Old Restriction

The Indiana Program specifies that a child is eligible if the child is “not less than thirteen (13) years of age” which violates the Fostering Connections Act.²⁶ The Children’s Bureau Program Instructions clarifies that once a state opts to provide kinship guardianship assistance payments, it is required to provide such assistance to **all** eligible children as defined under the act. Therefore, this program cannot be limited to children of a certain age. To comply with the Fostering Connections Act, Indiana must remove the thirteen-year-old provision from its eligibility requirements.

B. Partial Compliance with Voluntary Placement or Removal by Judicial Determination and Residing with Relatives for at Least Six Months Requirements

The Indiana Program partially complies with the Fostering Connections Act’s requirement that a child is eligible to receive payments if they are voluntarily placed with a relative or removed because of judicial determination and if they have been living in their relatives home for at least six (6) consecutive months.²⁷ The Administrative Code does not specify whether a child may receive payments if he or she was voluntarily removed from their home.²⁸ However, similar to the Fostering Connections Act, the Indiana Program permits a child who is removed from his or her home through judicial determination and has been living with the prospective relative guardian for at least six (6) consecutive months to be eligible for assistance payments.²⁹

Additionally, under Fostering Connections, the child must have been eligible for foster care maintenance payments under Title IV-E, 42 U.S.C. § 472 while residing for at least six (6)

²⁶ tit. 465 § 2-8-2(1)(A).

²⁷ § 473 (d)((3)(A)(i)(I) – (II).

²⁸ tit. 465 § 2-8-2. Indiana permits voluntary placement agreements (IC 31-34-1-16), however this provision is not accounted for in the child’s eligibility section of tit. 465 § 2-8-2.

²⁹ tit. 465 § 2-8-2(4); tit. 465 § 2-8-2(7).

consecutive months in the home of the prospective relative guardian.³⁰ Therefore, the child must meet all eligibility requirements for Title IV-E foster care, including the requirement that the child was removed from an AFDC-eligible home.³¹ The current assisted guardianship law in Indiana requires the child to be living with the relative for the requisite 6 months in a home that meets all requirements for licensing as a foster family home under IC 12-17.4-4.³² The law also states that the gross family income attributable to the child under TANF be less than 250% of the federal poverty level, which could fulfill the IV-E eligibility requirement for the federal program depending on IV-E eligibility requirements for the state of Indiana.³³ Therefore, in reference to these provisions, the Indiana Program partially complies with the Fostering Connections Act's child eligibility requirements.

C. Noncompliance with the Child's Strong Attachment and Guardian's Commitment Provision

The Indiana Administrative Code is silent in regard to the Fostering Connections Act's provision deeming a child must demonstrate a "strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child" in order to be eligible for payments.³⁴ The Administrative Code does not specifically articulate these provisions,³⁵ and at this time the Grandfamilies State Policy and Resource Center staff is uncertain what local county agency criteria are used to assess the relationship between the child and the prospective relative. Under Fostering Connections the state agency is required to document the ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment in the child's case plan, which would include how the agency determined that the child demonstrates this strong attachment. Upon these modifications, Indiana will comply with the Fostering Connections Act.

D. Noncompliance with Provisions Requiring Ruling out Reunification and Adoption and Consultation of Child over 14 Provisions

³⁰ § 473 (3)(A)(i)(II).

³¹ *Id.*

³² tit.465 §§ 2-8-3(2) & (4).

³³ *Id.* at § 2-8-2(3).

³⁴ § 473 (d)(3)(A)(iii).

³⁵ tit.465 § 2-8-2.

The Indiana Program does not clearly meet the Fostering Connections Act’s child eligibility requirements if “being returned home or adopted are not appropriate permanency options for the child” and that a child “who has attained 14 years of age” needs to be consulted regarding the kinship guardianship arrangement.³⁶ These requirements are not contained in the Indiana Administrative Code. The only reference that was found was in the Indiana Department of Child Services Child Welfare Manual, Chapter 8, Section 40, “the court has to approve a Case Plan goal of guardianship as being preferable to reunification or adoption.” But it is yet unclear how this decision to select guardianship as the appropriate permanency plan is determined by the agency. Therefore, it is recommended that the agency document the determination that returning a child to his or her home and adoption are no longer feasible permanency plans and this determination should be reviewed by the court. Additionally, the agency must document the consultation with a child 14 years old and older in the child’s case plan. Upon these modifications in the agency’s policy, Indiana will comply with the Fostering Connections Act.

G. Noncompliance with Siblings Provisions

The Indiana Program does not comply with the Fostering Connections Act requirement that “the child and any siblings of the child may be placed in the same kinship guardianship arrangement, if the State agency and the relative agree on the appropriateness of the arrangement for the siblings, and the payments may be paid on behalf of each sibling so placed.”³⁷ The Indiana Program does not provide for such support to the child and their siblings. However, the Program does deem a child eligible for assistance if the “child is a member of a sibling group where at least one (1) of whom is not less than thirteen (13)” years old.³⁸ This rule needs to be clarified further and the age limit removed. Fostering Connections makes it clear that siblings may benefit from kinship guardianship assistance even though they do not meet all the eligibility requirements, if one of the siblings qualifies. It also states that each sibling is eligible for their own kinship guardianship assistance payment and that the legal guardian must be reimbursed for non-recurring costs associated with obtaining guardianship up to \$2,000 for each individual child. Upon Indiana’s

³⁶ § 473 (d)(3)(A)(ii); § 473 (d)(3)(A)(iv).

³⁷ § 473 (d)(3)(B)(i)–(ii).

³⁸ tit. 465 § 2-8-2(1)(B).

modification to their Administrative Code on this provision, Indiana will comply with the Fostering Connections Act.

Partial Compliance with Guardian’s Eligibility Provisions

A. The Guardian Must be the Child’s Relative

Although Fostering Connections require the guardian to be a relative to qualify for kinship guardianship assistance, the federal government has yet to define relative. Under the Indiana Administrative Code, a relative is defined as a person who has a relationship to a child by marriage, blood, or adoption, other than a parent. (i.e.: grandparent, brother, sister, stepparent, step grandparent, stepbrother, stepsister, first cousin, uncle, and aunt) For the purpose of this rule, a grandparent may also include a great-grandparent.³⁹

B. Partial Compliance with Foster Care Licensing Provision

The Administration for Children, Youth and Families currently requires the home to be licensed in order for the child to be eligible for Title IV-E foster care maintenance payments, and therefore qualify for guardianship assistance.⁴⁰ Fostering Connections requires the guardian to have undergone fingerprint based criminal record checks and child abuse and neglect registry checks, as well as all adults in the guardian’s home must also have undergone registry checks. The current assisted guardianship law in Indiana requires the child to be living with the relative for the requisite six (6) months in a home that “meets all requirements for licensing as a foster family home under IC 12-17.4” but it is unclear if the guardian must actually be approved and licensed.⁴¹

Further under the Indiana Department of Child Services Child Welfare Manual, Chapter 8, Section 40, Assisted Guardianship Checklist, the policy requires that the “relative that child is currently placed with be an approved relative home.” The policy manual continues to say however that “Per Policy, relative does not have to have been an approved home for six (6) months, but must *be* approved as of the time of the AG case.” This would be problematic

³⁹ tit. 465 § 2-8-1(j).

⁴⁰ §§ 473(d)(3)(A)(i) & (iii); § 471(a)(20)(D); ACYF-CB-PA-01-02.

⁴¹ tit. 465 §§ 2-8-2(6) & (7).

under the federal requirements and needs to be clarified. Indiana should add a provision to their Administrative Code Guardian's Eligibility section (r. 2-8-3) mandating that the relative be licensed as a foster parent to comply with the Fostering Connections Act.

C. Noncompliance with Requirement that the Guardian be Willing to Care for the Child on a Permanent Basis

Indiana should add a provision mandating that the state agency determine if the relative guardian has a strong commitment to caring permanently for the child. Though the current Administrative Code states that the “guardian must be primarily responsible for providing appropriate care, support, maintenance, education, and welfare of the child”⁴² this does not sufficiently show that the state agency has made an official determination regarding the relative's commitment. The state agency must document the ways in which the guardian and child meet the eligibility requirements for a kinship guardianship assistance payment in the child's case plan. This documentation should include how the agency determined that the relative guardian has a strong commitment.

Add Documentation Provision Regarding Child's Case Plan Requirements

To ensure not only that the child is receiving sufficient care, but also that Indiana is complying with the Fostering Connections Act, Indiana should codify a policy that the state agency must document their findings and any efforts made in the child's case file with a written memorandum or in progress notes. Specifically, the agency should document efforts to determine that reunification and adoption are not in the best interest of the child, and that guardianship is in the best interests. The state agency should also document any efforts made to discuss adoption as a permanency option with the guardian and efforts to discuss guardianship with the parents or reasons why this permanency option was not discussed with them. Additionally, the state agency should document reasons for separation, if siblings not placed together. Finally, the state agency should also document that both the child and the guardian meet the eligibility criteria listed above in the child's case plan.

⁴² tit. 465 § 2-8-3(5).

Conclusion

In conclusion, Indiana needs to slightly modify its Administrative Code and scrutinize its guardianship agreements to ensure compliance with the Fostering Connections Act. While a state may provide state funded guardianship assistance payments to whichever children it chooses, to be eligible for federal assistance, the children and their caregivers must meet the requirements in the act. (§473(d)(1)(A); P.L. 110-351 §101(b); ACYF-CB-PI-08-007 p.2). Some states have explored a tiered approach of children eligible under federal requirements who receive federal dollars and a second group of children who receive kinship guardianship funded by state dollars alone, as they do not meet the federal requirements.