**Section 302.405 Subsidized Guardianship Program**

a)General Provisions

1) Funding Source

Subsidized guardianship is a program for which the Department has received waivers from the federal Department of Health and Human Services (DHHS) under section 1130 of the Social Security Act to operate a child welfare demonstration project. The program offers a subsidized private guardianship arrangement for children for whom the permanency goals of return home and adoption have been ruled out. Guardianship is governed by the Illinois Probate Act [755 ILCS 5] and the Illinois Juvenile Court Act [705 ILCS 405]. A relative caregiver or licensed foster parent caring for a child determined to be eligible for the subsidized guardianship program shall be made aware of the availability of subsidized guardianship and the types of assistance available. The subsidized guardianship agreement must be signed prior to the transfer of guardianship.

2) Continued Eligibility of Children

If guardianship is dissolved because of the death or incapacitation of the guardian or voluntary relinquishment, a child who previously received a subsidy continues to be eligible for the subsidized guardianship program. The child's financial circumstances may be treated as if the financial circumstances are the same as the first time guardianship was transferred.

b) Subsidized Guardianship Agreement

The type, amount and duration of subsidized guardianship shall be agreed to in writing by the Department and the subsidized guardian prior to the transfer of guardianship, and shall be set forth in the subsidized guardianship agreement, which shall be binding on the parties to the agreement. The agreement shall also stipulate that the agreement shall remain in effect regardless of the state where the subsidized guardian resides currently or in the future and shall contain provisions for the protection of the interests of the child in cases in which the subsidized guardian and child move to another state while the agreement is in effect. The amounts of ongoing subsidized guardianship payments are subject to change based on changes in State or federal law regarding adoption assistance payments. Subsidized guardians may refuse any or all payments offered by the Department. The child for whom guardianship is transferred and for whom the guardian is receiving a subsidy shall receive only those services and/or payments specified in the subsidized guardianship agreement.

c) Eligibility Criteria

1) For a child to qualify for subsidized guardianship, the following criteria must be met:

A) the child is not a member of the control group; and

B) the child has been in the custody of the State for one year or more immediately prior to establishing subsidized guardianship and is likely to remain in care, and the parent has consented to the subsidized guardianship arrangement or the Department has good cause to seek a private guardian without consent and will give notice to the parent of the guardianship hearing; and

C) the child has a strong attachment to the potential guardian and the guardian has a strong commitment to the child; and

D) the permanency goals of return home and adoption have been ruled out for this child and documented in the case record.

2) In addition to the requirements of subsection (c)(1), in order for a child to qualify for subsidized guardianship, at least one of the following criteria must be met:

A) the child has lived with a relative for at least one year immediately prior to establishing subsidized guardianship; or

B) the child is 12 years of age or older and has lived with a non-relative for at least one year immediately prior to establishing subsidized guardianship; or

C) the child is a member of a sibling group for whom guardianship will be transferred together, of which at least one child has resided with the prospective subsidized guardian for at least one year and meets all subsidized guardianship criteria; or

D) the guardianship of the child will be transferred to a prospective guardian who has previously taken subsidized guardianship of another child born of the same mother or father; or

E) the child is under 12 years of age, is living with a non-relative, and has no older sibling for whom subsidized guardianship is being considered but is eligible due to the fact that:

i) subsidized guardianship has been determined to be in the child's best interests; and

ii) the basis for the decision is documented and approved by the Department Guardianship Administrator or designee; or

F) the child was previously in subsidized guardianship, but the guardian has died or the guardianship was voluntarily relinquished; or

G) the child was previously in subsidized guardianship, but due to the mental or physical incapacity of the guardian, the guardian can no longer discharge the responsibilities necessary to protect and care for the child, and guardianship was or will be vacated; or

H) the child who had been adopted who was eligible for subsidized guardianship prior to the adoption, continues to be eligible for subsidized guardianship in the event his or her adoptive parent is unable to care for him or her due to the death or total mental or physical incapacity of the adoptive parent.

d) Determination Whether Subsidized Guardianship is in the Best Interests of the Child

1) Prior to approving a subsidized guardianship arrangement for a child, the Department shall determine whether subsidized guardianship is in the best interests of the child. In making this determination, the Department shall consider all relevant factors including but not limited to:

A) the wishes of the child's prospective subsidized guardian;

B) the wishes of the child under the age of 14 or the consent of the child, if over age 14;

C) the interaction and interrelationship of the child with the prospective subsidized guardian;

D) the child's adjustment to the present home, school, and community;

E) the child's need for stability and continuity or relationship with the prospective subsidized guardian; and

F) the mental and physical health of all individuals involved.

2) The Department shall ensure that the subsidized guardianship arrangement is a safe and suitable placement by means of a safety check, which shall include a CANTS/SACWIS and LEADS check.

e) Types of Assistance

The types of assistance that a family may apply for include:

1) Non-recurring Expenses

Payment for non-recurring expenses for reasonable and necessary miscellaneous costs, and legal fees related to subsidy review, that are directly related to the transfer of guardianship, subject to the maximum set by the Department of $500 per child.

2) Ongoing Monthly Payments

A) An ongoing monthly payment to be determined through the discussion and negotiation process between the prospective guardian and the Department based on the needs of the child and the circumstances of the family. This payment should combine with the guardian's resources to cover the ordinary and special needs of the child. This payment shall not exceed the amount the child receives in his or her current foster family home upon transfer of guardianship unless the child is in an unlicensed relative placement. In such a case, upon transfer of guardianship the guardian may receive up to the applicable licensed foster family home rate. The ongoing monthly payment shall only be issued to one custodial caregiver identified as payee in the assistance agreement, and this person shall be the designated authority for the purpose of service provision**.** In the event that there is a change in the custodial status of the child, the Department shall be notified. If a change in payee is necessary, notification shall be sent to the Department in writing with the supporting legal documentation attached. A non-custodial parent may request notice of periodic reviews or subsequent amendments to the assistance agreement regarding their children. The ongoing monthly payment may be adjusted for any benefits the child will continue to receive, such as Social Security, Veteran's benefits, railroad retirement or black lung benefits. Supplemental Security Income (SSI) benefits shall not be considered in determining the ongoing monthly payment amount. When the child is SSI-eligible following the transfer of guardianship, the guardian shall tell the Social Security Administration the amount of the ongoing monthly payment that they are receiving. The Social Security Administration may reduce the SSI payment dollar for dollar as the receipt of SSI is based on income.

B) Although eligibility for a subsidy under the subsidized guardianship program shall be determined regardless of the financial circumstances of the prospective subsidized guardian, the types and amounts of assistance under each subsidized guardianship agreement shall be determined by the Department in the same manner as described for adoption assistance in Section 302.310(c) of this Part.

3) A Medicaid card.

4) Needs Not Payable Through Other Sources

A) Physical, emotional and mental health needs not payable through insurance or public resources (e.g., other State or community funded programs) that are associated with, or result from, a condition whose onset has been established as occurring prior to the transfer of guardianship. Payment shall not be made until the Department has been notified in writing that such services will begin and has approved the requested services, and a contract (when applicable) has been executed. The Department's reimbursement shall be limited to what is usual, customary, and reasonable based on Medicaid-eligible service rates in the community as determined by the Department.

B) The Department will not pay for physical, emotional, medical, mental health or psychological services or treatment for a pre-existing condition or risk factors unless the pre-existing condition, service or risk factor is included in the subsidized guardianship agreement.

5) Therapeutic Day Care

Therapeutic day care is available only for children who are determined to have a disability that requires special educational services through an Individualized Education Plan (IEP), an Individual Family Service Plan (IFSP), or a 504 Educational Special Needs Plan and is not fundable through another source. Specific therapeutic interventions must be provided as an integral part of the day care programming. Payment for therapeutic day care shall not be made until the Department has been notified in writing that such services will begin and has approved the requested services, and a contract has been executed (when applicable).

6) Employment Related Day Care

Payment may be made for day care for children under the age of three years ifthe guardian is employed or in a training program that will lead to employment. Payment for day care services shall end on the child's third birthday. This day care payment cannot be used in addition to therapeutic day care.

7) Respite Care for Medically Fragile/Technology Dependent Children

A) The Department may make payment for care for children who have a pre-existing condition that meets the medical eligibility guidelines used by the Department of Healthcare and Family Services (HFS) for the Home and Community Based Services (HCBS) Waiver program for Children who are Medically Fragile/Technology Dependent. The payment shall not exceed 10 days per State fiscal year.Unused days from one fiscal year cannot be carried over to a new State fiscal year or donated to another family. This program is operated by the Division of Specialized Care for Children (DSCC) for HFS. DCFS regional nurses shall assist in making this determination of whether the child meets the eligibility criteria for the waiver program.

B) Respite care shall be provided by an authorized provider licensed by the Department of Public Health as a children's respite care center under the Alternative Health Care Delivery Act [210 ILCS 3]. The provider must accept the Medicaid nursing hourly rate as the payment rate for the respite care. DCFS shall select and contract directly with the authorized provider to pay for this service. The subsidized guardians must not already be receiving respite care from another source.

i) For existing subsidized guardianship cases, if the subsidized guardian agrees to apply, the guardian should apply for the HCBS waiver program. As part of this application process, medical eligibility and cost neutrality calculations shall be determined. If determined eligible and the subsidized guardian agrees to accept HCBS waiver program services, then the respite care shall be provided through that program (if respite care is available as part of the service package resulting from these determinations and there is available capacity in the waiver program).

ii) For new subsidized guardianship cases, the subsidized guardian must apply for the HCBS waiver program. As part of this application process, medical eligibility and cost neutrality calculations shall be determined. If determined eligible, the subsidized guardian must agree to accept HCBS waiver program services, and the respite care shall be provided through that program (if respite care is available as part of the service package resulting from these determinations and there is available capacity in the waiver program).

8) College Scholarships

Children who are receiving subsidized guardianship assistance may also apply for a 4-year college scholarship awarded by the Department to high school or high school equivalent graduates.

9) Guardianship Incentive (Independent Facilitation Grants)

The Department will pay an incentive payment for children who are 14 to 18 years of age when guardianship with subsidized guardianship was awarded during the time period of March 15, 2001 through January 31, 2003. The Department will provide a payment of $3000 to be awarded to a child placed in subsidized guardianship under the following circumstances in the manner described:

A) In order to assist youth who have been receiving subsidized guardianship to make the transition to adulthood, the Department will provide a payment of $3000 directly to the youth upon termination of his or her subsidized guardianship subsidy.

B) The payment is intended to assist the child's transition to adulthood by helping pay for education, housing, or other forms of vocational training or employment assistance.

C) In order to be eligible for this payment, the child:

i) must have been the legal responsibility of the Department prior to the subsidized guardianship; and

ii) must have been 14 to 18 years of age when the guardianship was awarded to the private guardian during the time period of March 15, 2001 through January 31, 2003.

D) Children in subsidized guardianship within this time period who do not have their private guardianship finalized by January 31, 2003 will not be eligible for this grant award.

E) The payment will be awarded directly to the child.

10) Enhanced Subsidized Guardianship and Adoption Assistance

The Enhanced Subsidized Guardianship and Adoption Program (ESGAP) provides transition services to youth who are 14 years old or older when adopted or when guardianship is transferred. It is a Title IV-E waiver program that is federally funded. Federal regulations limit the Title IV-E waiver services a child can receive to those offered by the waiver program to which he or she is assigned. Children are randomly assigned to a single Title IV-E waiver program per mandatory federal guidelines for the program.

A) ESGAP provides the following services to youth as they transition to adulthood:

i) Youth in College/Vocational Training;

ii) Employment Incentive Program;

iii) Life Skills Training;

iv) Housing Cash Assistance; and

v) Education and Training Vouchers.

B) To be eligible for ESGAP, the youth must meet the following criteria:

i) Is 14 years of age or older and not yet 18 years of age when moving to adoption or guardianship; is assigned to the subsidized guardianship demonstration group; and is eligible for adoption assistance or subsidized guardianship; or

ii) Is a younger sibling of an eligible youth and is moving to permanency in the same home and at the same time as the eligible youth.

C) Documentation from the caseworker that the child is eligible for ESGAP must be included in the subsidy packet prior to the finalization of the adoption or transfer of guardianship.

f) Responsibilities of the Subsidized Guardian

Subsidized guardians are responsible for the following:

1) ensuring that parents have the opportunity to visit their children in accordance with the provisions/orders of the court; and

2) notifying the Department no later than 30 days after any one of the following occurrences:

A) The child is no longer the legal responsibility of the guardian.

B) The guardian no longer financially supports the child.

C) The child graduates from high school or equivalent.

D) There is a change of residential address or mailing address of the guardian or the child.

E) The child dies.

F) The child becomes an emancipated minor.

G) The child marries.

H) The child enlists in the military.

I) The mental or physical incapacity of the guardian prevents the guardian from discharging the responsibilities necessary to protect and care for the child.

J) The custodial status of the child changes.

K) The guardianship is vacated.

g) Department Responsibilities

1) The Department shall ensure that members of sibling groups are placed together, unless there is an explicit determination that they should not be placed together for the reasons described in 89 Ill. Adm. Code 301 (Placement and Visitation Services).

2) The Department shall offer short-term support services for foster care and relative home providers prior to and during subsidized guardianship. Services will include preliminary screening, assessment, assistance in applying for subsidized guardianship, and payment of one time only court costs and legal fees, if required.

3) The Department shall ensure that an orientation is provided to the family to ensure that all family members understand the benefits and responsibilities of all the participants in the subsidized guardianship arrangement.

4) The Department shall ensure that each guardian has access to a caseworker that will respond to requests for information and assistance.

5) The Department shall ensure that all guardians are aware of their right to appeal service decisions with which they may disagree under 89 Ill. Adm. Code 337 (Service Appeal Process).

6) The Department shall accept custody of the child in accordance with the Abused and Neglect Child Reporting Act [325 ILCS 5] if the guardian does not care for him or her to the extent the child's health or well-being is endangered.

h) Periodic Reviews

Periodic reviews are annual recertifications that are required for children in guardianship homes to maintain their eligibility for the Title XIX Medicaid Program. The Department shall conduct periodic reviews to confirm that the child remains eligible for a Medicaid card. The guardian and, when applicable, parents, including non-custodial parents when the Department has been provided with the correct mailing address, will receive written notice of the review. The guardian is required to participate and cooperate with the review.

i) Termination of Payments

Payments for Subsidized Guardianship Assistance shall terminate when the Department has determined that any one of the following has occurred:

1) When the terms of the subsidized guardianship agreement are fulfilled.

2) The guardian has requested that the payment permanently stop.

3) The guardian is no longer financially supporting the child.

4) The child becomes an emancipated minor.

5) The child marries.

6) The child enlists in the military.

7) The child reaches age 18; a child 18 years of age graduates from high school or equivalent or reaches age 19, whichever occurs first; or a child who has a physical, mental or emotional disability that was documented prior to the 18th birthday reaches age 21.

8) The guardian dies.

9) The guardianship is vacated.

10) The child dies.

j) Title IV-E Waiver

The Department has a Title IV-E demonstration waiver from the Department of Health and Human Services to operate a subsidized legal guardianship program. The Title IV-E terms and conditions allow reinstatement of the child's IV-E eligibility status that was in place prior to the establishment of the guardianship in situations where the guardianship disrupts. Therefore, if a guardianship disrupts and the child returns to foster care or is going to be adopted, the State would apply the eligibility criteria in section 473 of the Social Security Act for the child as if the legal guardianship had never occurred.

k) Appeal of Department Decisions

A guardian has a right to file a service appeal in accordance with 89 Ill. Adm. Code 337 (Service Appeal Process) when:

1) The guardian disagrees with the Department's determination that a child is ineligible for subsidized guardianship assistance;

2) Subsidized guardianship assistance or a specific subsidized guardianship assistance component was denied;

3) The Department denies the guardian's request to modify the subsidized guardianship assistance agreement; or

4) When a subsidized guardianship assistance agreement has been amended, suspended or terminated without the concurrence of the guardian.

l) Demonstration Group

Although participation in the subsidized guardianship program is statewide, for purposes of meeting the cost neutrality, federal funding, and evaluation requirements of the federal waiver demonstrations, clients will be randomly assigned in three geographical areas of the State to a demonstration group or a cost neutrality group. The demonstration group will be subject to the waiver provisions of the demonstration, and the cost neutrality group will be subject to the regular treatment services according to the Department's rules and procedures.

The three areas are:

1) Cook Central Region.

2) East St. Louis sub-region serving the following counties:

A) Madison;

B) St. Clair;

C) Bond;

D) Clinton;

E) Washington;

F) Monroe; and

G) Randolph.

3) Peoria sub-region serving the following counties:

A) Fulton;

B) Henderson;

C) Knox;

D) Warren;

E) Henry;

F) LaSalle;

G) McDonough;

H) Mercer;

I) Rock Island;

J) Tazewell;

K) Peoria;

L) Bureau:

M) Marshall;

N) Putnam;

O) Woodford; and

P) Stark.

(Source: Amended at 31 Ill. Reg. 11611, effective July 10, 2008)