

Kinship Caregiver Handbook for Professionals

A Guide for Social Service Providers Assisting
Kinship Caregivers

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About the Agency

Kids' Voice of Indiana

Kids' Voice of Indiana is a 501(c)3 organization which has been committed for more than twenty-five years to promoting, protecting, and preserving the rights and best interest of children across the state of Indiana through three Programs, the Derelle Watson-Duvall Children's Law Center of Indiana, the Bette J. Dick GAL for Kids Program, and the Supervised Parent-Child Visitation Program.

The Indiana law discussed in this Handbook is current as of July, 2011. Indiana law frequently changes due to the published opinions of the Indiana Supreme and Appellate Courts and legislation enacted annually by the Indiana General Assembly.

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INTRODUCTION

Do you assist individuals who are raising children not their own? Many aunts, uncles, grandparents, and adult siblings raise children when the children's parents are unable to raise them on their own. These people are referred to as kinship caregivers. Many resources and information are available to help kinship caregivers. This purpose of this pamphlet is to aid you in assisting kinship caregivers by providing resources and information to guide kinship caregivers.

In today's society, it is not unusual for a grandparent, aunt, cousin, sibling, or family friend to take responsibility for the raising of a child. The United State Census Bureau estimated in 2009 that 7.8 million children lived with at least one grandparent. It may be intimidating to be a kinship caregiver. Changing from being a friend, grandmother, aunt, or uncle to a fulltime caregiver is difficult, for both the caregiver and the child. This pamphlet provides information to help social service providers better serve kinship caregivers. Below is a brief roadmap that is intended to be used as a reference guide. Within the roadmap there are references to later sections with more information.

I. Kinship Caregiver Roadmap

What are the first things a kinship caregiver may need to do?

a. Who may a kinship caregiver need to contact?

i. Department of Child Services (DCS)

The Department of Child Services (DCS) may have already been involved in the child's life. If a kinship caregiver was appointed to care for the child as a result of a Child in Need of Services (CHINS) hearing, then the caregiver likely has already been in contact with DCS. The caregiver should be sure to keep in touch with the DCS Family Case Manager (FCM) assigned to the child's case. It is important that the caregiver cooperate with the DCS investigation if one is ongoing. The caregiver should make sure that the child attends all meetings and counseling or doctor's appointments that are part of the DCS case plan. The caregiver may also want to talk to DCS about becoming a Resource Family. See Section (II) for more information about becoming a Resource Family.

ii. The Child's School

If the child was enrolled in school, the caregiver should contact the school and inform the school that he or she is now caring for the child. The caregiver may want to inquire what information the school needs from him or her, such as emergency contact information. The caregiver may also want to ask the school about transportation, parent-teacher conferences, if the child receives counseling services at school, and if the child has an

Individualized Education Plan (IEP). In some situations, the caregiver may need to be the legal guardian of the child to access school records and be involved in the child's education. See Section (III) on Guardianship & Third party Custody below.

Schools are often supportive networks of teachers and staff that care about the child and want to see the child succeed. By working together with the school staff the caregiver will be able to share information about the child and better serve the child.

iii. Court Office, Prosecutor's Office, or Parent's Attorney

If the child is the subject of a Court case, the caregiver should notify the Court office that the child is living with the caregiver. The caregiver should give the Court his or her contact information, including the caregiver's phone number and address. If the caregiver is representing him or herself, the caregiver should file a pro se appearance form. For an example of a pro se appearance form, visit the Indiana Supreme Court website at www.in.gov/judiciary/supreme/. Click on the "Self Service Legal Center" on the top of the homepage and select "Forms and Instructions." A pro se appearance form is included in many of the civil case Court Forms Packets and may be used as an example. It is important that the caregiver files an appearance form so that the caregiver receives notice of upcoming court dates.

If the child's parent is represented by an attorney, the caregiver may want to contact the attorney. The caregiver should notify the attorney that the caregiver is caring for the child and provide his or her contact information so the caregiver may be notified of any upcoming Court proceedings. If the caregiver is represented by an attorney, the caregiver's attorney will contact the Court office and the parent's attorney on the caregiver's behalf.

The child may be entitled to child support from the child's parent(s). In Indiana, the Prosecutor's Office may be able to help the caregiver establish a Child Support Order for the child in his or her care.

iv. Biological Parent, Biological Grandparent, Legal Guardian

Depending on the situation, it may benefit the child to have frequent visitation with one or both biological parents. The Court may order that the child have visitation with his or her parent(s). The Court may order that the caregiver supervise the child's visitation with the parent(s) or that the caregiver transport the child to and from a supervised visitation center. If the child was previously cared for by a grandparent or legal guardian, the caregiver may need to facilitate visitation with the grandparent or legal guardian. The caregiver should be sure to follow any Court Orders regarding the child's visitation with parents. The child's physical, mental, and emotional health should be the primary concern in all visitations.

The child's parents, grandparents, or legal guardians may have information that will be

helpful as the caregiver cares for the child. For example, the parents or legal guardians may provide the name of the child's primary doctor/physician, what medication the child is currently taking, the child's favorite toy, or what time the child normally goes to bed. Transitioning to the caregiver's care may be difficult for the child and the little things the caregiver can do to make the child feel more at home will ease the transition.

v. Siblings of the Child

Maintaining as much of a family structure as possible will be helpful to the child. If the child has siblings, the caregiver should try to encourage the child to stay in contact with the siblings when it is safe for the child to do so. Encouraging the child's sibling relationships may involve having the siblings visit the child in the caregiver's home or transporting the child to and from supervised visitation facilities. If the child has older siblings, they may be a good resource with information about the child's past, needs, and preferences.

b. Transferring schools or enrolling the child in school

If the child remains in his or her current school, the caregiver should notify the school that the child is now residing with the caregiver and provide the school with the caregiver's contact information. Speaking with the child's teacher, counselor, and school psychologist or therapist, when applicable, will allow the school to better serve the child and will keep the caregiver informed of the child's education.

The caregiver may not be able to keep the child at the school that he or she previously attended if the caregiver lives in a different school district. The school the child will attend depends on the child's legal settlement. See the Indiana Department of Education's Form II attached to the back of this pamphlet. The caregiver may ask the parents to sign this form and take the signed form to the school.

If the child lives with the caregiver, the legal settlement may be the caregiver's home if:

- The child lives with the caregiver because the parents are unable to support the child, and
- The child is not living with the caregiver for the primary purpose of attending the school in the caregiver's district.

In this situation, the caregiver's home may be considered the child's legal settlement and the school may not require the caregiver to establish a legal guardianship to enroll the child in the school in the caregiver's district.

If the child lives with the caregiver and the caregiver is supporting and caring for the child, the legal settlement of the child is the caregiver's home, except when:

- The parents are able to support the child but have placed the child in the caregiver's home, or allowed the child to live with the caregiver, for the primary purpose of attending the school in the caregiver's district.

In situations where the above factors are disputed, the school may require that the caregiver be appointed the legal guardian or custodian of the student. The caregiver should ask for the child to remain in school while the caregiver seeks guardianship through the Court.

If the child does change schools, the caregiver may contact the child's previous school to get transcripts and records for the new school. It will greatly assist the new school in providing services for the child if the caregiver is able to provide the child's school records.

For additional information on school enrollment, see the Indiana Department of Education Form II, *Custodial Statement and Agreement: Third-Party Custody*, and the Indiana Department of Education Memorandum dated August 27, 2010 at the end of this handbook.

c. Getting the child's clothes and belongings

The child may have clothes, toys, pictures, and other personal items. Getting the child's personal items will help the child have consistency in his or her life and will make the transition to the caregiver's home easier. If it is reasonable to do so, the caregiver may contact the child's parent or previous caregiver and arrange to pick up the child's belongings.

The child may come to the caregiver with little or no personal belongings. The caregiver may need to provide items such as clothing, school supplies, and bedding for the child. See Section (I)(f) below on assistance.

d. Providing medical care for the child

A caregiver may be able to consent to health care for a child in a few different situations.

- i. If a judge has appointed the caregiver guardian of the child then the caregiver may consent to health care for the child.
- ii. If the caregiver is not a Court appointed guardian but is an adult sibling of the child, then the caregiver may consent to health care if there is no judicially appointed guardian or representative of the child, or if the guardian or representative is not reasonably available or declines to act, or if the existence of the guardian or representative is unknown to the health care provider.
- iii. If the caregiver is in loco parentis for the child, meaning that the caregiver has assumed the parental rights and duties of the child, then the caregiver may consent to medical care if there is no guardian or other representative of the child, if the guardian or

other representative is not reasonably available or declines to act, or if the existence of the guardian or other representative is unknown to the health care provider. IC 16-36-1-5.

iv. In an emergency situation the caregiver should take the child to the emergency room to receive medical treatment even if the caregiver does not have legal guardianship or legal custody. Failure to seek medical treatment for the child in an emergency could result in criminal liability for child neglect. IC 35-46-1-4.

The caregiver may want to ask the child's parent or previous caregiver if the child was seen by a primary physician. The caregiver may want to continue taking the child to the primary care physician or the caregiver may want to contact him or her to get the child's medical records so the child may be seen by another doctor.

If the child received health insurance, Hoosier Healthwise, or Medicaid, the caregiver will need to request the child's health insurance, Hoosier Healthwise, or Medicaid cards from the parent or the previous caregiver. If the caregiver is unable to get the information from the parent, the caregiver may need to contact the Family and Social Services Administration (FSSA) to complete the necessary steps to get the child's Hoosier Healthwise information. If the child receives Social Security payments because of the child's or parent's disability, or the parent's death, the caregiver may want to consider arranging to receive the Social Security benefits on the child's behalf. The caregiver should contact the Social Security Administration for more information. The contact information for FSSA and the Social Security Administration are provided in Section (IV), Useful Terms and Contact Information.

The caregiver should check with the child's parents or previous caregiver to learn whether the child was taking any regular medication. The caregiver will need to arrange for filling and picking up the child's prescription(s). If the child's medication was paid for by Hoosier Healthwise then the caregiver will need to get the Hoosier Healthwise card.

It may be possible for the caregiver to place the child on the caregiver's insurance. Some health insurance plans will allow an individual to add a family member or a child. Every plan is different and who may or may not be insured under the plan will change depending on a person's health insurance plan. The caregiver may contact his or her employer's human resource officer to inquire whether the child may be placed on the caregiver's insurance. The human resource officer will be able to provide the caregiver with the information or point the caregiver in the right direction.

e. Providing counseling for the child

The caregiver should ask the child's parent or previous caregiver if the child was seeing a therapist or counselor. If the child already has a mental health care provider, the caregiver should arrange for the child to keep seeing this individual if possible. If the child is not currently seeing a therapist, the caregiver may want to consider enrolling the child in counseling. An in-school counselor may be provided at the child's school.

f. Financial assistance to care for the child

As many caregivers likely know, taking care of a child is expensive and there may be financial resources available to help provide for the child's care.

Whether the caregiver is a formal or informal kinship care provider, the child may be eligible for government assistance such as Temporary Assistance for Needy Families (TANF), Food Stamps, Hoosier Healthwise (Medicaid), or Social Security benefits. The caregiver may want to check with the child's parent or previous caregiver to determine if the child was receiving government assistance. If the child was previously receiving government assistance, the caregiver will need to make sure that the necessary forms are completed so that the child, if eligible, may continue to receive the assistance while living with the caregiver. The caregiver should contact the FSSA Division of Family Resources and ask what he or she needs to do so that the child continues to receive assistance.

If the child was not previously receiving government assistance, the caregiver may want to consider applying for assistance for the child.

Different forms of government assistance may be available for children in unlicensed relative placement, or informal kinship care, and children in licensed relative placement, or formal kinship care. A kinship caregiver should apply for financial assistance such as TANF, and confirm eligibility for Supplemental Security Income (SSI) or other Social Security Benefits. Children who qualify may only be eligible to receive SSI or TANF. Many factors will have to be considered but it is important to apply for the assistance and see what is available.

II. What is Kinship Care?

Kinship care can have many meanings. Per the Indiana Department of Child Services (DCS) website in July, 2011, Indiana DCS defines kinship care as "the full time care, nurturing and protection of children by relatives or other adults who have a relationship or bond with the family, who are members of their tribes or clans, or are godparents." The Child Welfare League of America uses a broader definition and defines kinship care as "the full-time care, nurturing and protection of children by relatives, members of their tribes or clans, godparents, stepparents, or any adult who has a kinship bond with a child." What this means for a kinship caregiver is that he or she cares for a child with whom the caregiver has a relationship, but the caregiver is not the child's biological mother or father.

There are two different types of kinship care in Indiana, **formal** and **informal**.

Formal kinship care occurs as a result of a Court hearing called a Child in Need of Services (CHINS) adjudication that results with the child being placed with a relative or other adult who has a relationship with the family. A CHINS adjudication often occurs when there is some reason to believe that the child is abused or neglected and the Court needs to be involved to protect the child and ensure that the child is receiving appropriate treatment or care. This begins

with a petition filed by DCS. The importance here is that this form of kinship care only begins after a formal ruling by a Court, naming the caregiver as the child's caregiver.

Informal kinship care occurs when an individual cares for a child not his or her own without a ruling from the Court appointing the individual as the child's caregiver. In informal kinship care, the caregiver may have initially believed that he or she would be caring for the child for only a short time. Yet for a variety of reasons, the parent(s) were unable or unwilling to resume care of the child. Although the kinship caregiver may provide the day to day care for the child, in the eyes of the law the parent is still in charge of the child. Most likely the caregiver has no legal rights or legal relationship to the child and cannot make legal decisions on the child's behalf. Informal kinship caregivers may be able to apply for financial assistance such as Hoosier Healthwise or TANF. Each governing agency for assistance has its own criteria to determine when they will and will not provide financial assistance.

A Closer Look at Formal Kinship Care...

Because the Court is more closely involved in formal kinship care, additional information is provided. In Indiana, the Indiana Code (IC) regulates CHINS processes and any formal/informal kinship care relationships. For more information see Section (V)(ii) on how to access the Code. The Code will be referenced throughout the pamphlet. The Code begins with IC and the following numbers indicate the title, article, chapter, and section where more information can be found.

Formal Kinship Care and the CHINS Process

A formal kinship care provider may be involved as a temporary placement for the child before the child is adjudicated a CHINS. A child may be taken into temporary protective custody by law enforcement with a Court Order, or by a law enforcement officer, probation officer, or a family case manager if there is probable cause to believe the child is a missing child or is a CHINS. These both may be done before the filing of a CHINS petition. IC 31-34-2-1. IC 31-34-2-3.

The Juvenile Court may designate a place where children taken into temporary protective custody without a Court Order shall be taken. IC 31-34-4-3; IC 31-34-4-4. The Court shall consider placing the child with a suitable and willing blood relative, adoptive relative, de facto custodian, or stepparent, before placing the child in any other out-of-home placement, but relatives who are not licensed foster parents must have a home study and criminal history check before placement. IC 31-34-4-2; IC 31-9-2-22.5. Please see DCS's website for more information at www.in.gov/dcs. On the left hand side of the screen click on "Foster Care."

Indiana law provides that DCS shall deny a license to an applicant who has been convicted of any of the following felonies: murder, causing suicide, assisting suicide, voluntary manslaughter, reckless homicide, battery (IC 35-42-2-1) within the past five years, domestic battery, aggravated battery, kidnapping, criminal confinement (IC 35-42-3-3) within the past five years, a felony sex offense under IC 35-42-4 (rape, criminal deviate conduct, child molesting, child exploitation, vicarious sexual gratification, child solicitation, child seduction, sexual

battery, sexual misconduct with a minor), carjacking (IC 35-42-5-2) within the past five years, arson (IC 35-43-1-1) within the past five years, incest, neglect of a dependent, child selling, a felony involving a weapon under IC 35-47 or IC 35-47.5 within the past five years, a felony relating to controlled substances under IC 35-48-4 within the past five years, an offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3, and a felony that is substantially equivalent to a felony listed above which was convicted in another state. IC 31-27-4-13(a).

DCS may deny a foster care license to an applicant who has been convicted of a felony that is not listed in the above paragraph, or has had a juvenile adjudication for an act listed in the above paragraph, that if committed by an adult, would be a felony. IC 31-27-4-13(b).

A potential kinship care provider may also be involved in the CHINS proceeding. In a CHINS proceeding, the caregiver may ask the DCS family case manager to be considered as a placement for the child. Indiana law requires DCS or the Court to notify kinship care providers of the date and time of CHINS hearings. For most hearings the Juvenile Court must give kinship care providers the opportunity to be heard in Court and to make recommendations to the Court. The Court will also appoint a Guardian Ad Litem or a Court Appointed Special Advocate to represent the child's best interest. A kinship care provider should stay in contact with the Guardian Ad Litem or Court Appointed Special Advocate regarding the child's needs and well-being.

If the child is adjudicated a CHINS, the Court may consider placing the child with a kinship care provider. The Juvenile Court shall hold a dispositional hearing within 30 days of a child being adjudicated a CHINS to consider, among other things, the alternatives for care, treatment, rehabilitation, or placement. IC 31-34-19-1. Dispositional options for the child which the Juvenile Court may order include removing the child from home and placing the child in foster care, relative care, a shelter care facility, or other placement. IC 31-34-20-1.

The Court is required to hold a permanency hearing twelve months after the child is removed from the parents or the dispositional decree is entered, whichever occurs first. A kinship care provider may be identified as the child's proposed permanent family at the permanency hearing. IC 31-34-21-7.5. This would not be a final decision though. The child may be placed for adoption. IC 31-34-21-7.5 (c)(C). The child may also be placed with a responsible person including an adult sibling, a grandparent, aunt, uncle, or other relative who is able and willing to act as the child's permanent custodian and carry out the responsibilities required by the permanency plan. IC 31-34-21-7.5 (c)(D).

A legal guardian may also be appointed for the child. The legal guardian is a caretaker in a judicially created relationship between the child and caretaker that is intended to be permanent and self-sustaining. The parental rights of care, custody, and control of the child and decision making concerning the child's upbringing are transferred to the caretaker. IC 31-34-21-7.5 (c)(E).

Periodic review hearings will continue until the CHINS case is closed or dismissed and the DCS wardship is released. After the plan has been identified it will be put into place through other Courts and processes under different cause numbers. For example, a new guardianship, third

party custodianship, or adoption case may be initiated.

Jurisdiction: CHINS, Guardianship, Third Party Custody, and Adoption Cases

To make valid Court Orders, a Court must have jurisdiction over the child's case. If the child's parents are divorced or paternity has been established and the Dissolution or Paternity Court has entered a Custody Order for the child, the Dissolution or Paternity Court has ongoing jurisdiction over the child's custody until the child reaches the age of 21. If a CHINS or delinquency petition is filed regarding the child, the Juvenile Court has temporary priority jurisdiction over the child's custody until the CHINS or delinquency case is closed.

If the child has been adjudicated a CHINS or a delinquent child, the Dissolution or Paternity Court has only concurrent original jurisdiction with the Juvenile Court for the purposes of modifying custody. If the Dissolution or Paternity Court enters a modification Order while the child is still under the Juvenile Court's jurisdiction, the Dissolution or Paternity Order is effective only when the Juvenile Court enters an Order approving the custody modification or terminating the CHINS proceeding. *See* IC 31-30-1-12; IC 31-30-1-13.

If the Juvenile Court modifies child custody, child support, or parenting time and terminates the CHINS or delinquency case, then the Dissolution Court having concurrent original jurisdiction shall assume or reassume primary jurisdiction of the case to address all issues. IC 31-30-1-12(c). A court that assumes or reassumes jurisdiction may modify custody, child support, or parenting time in accordance with the applicable modification statutes. IC 31-30-1-12(d). A Juvenile Court Order modifying custody, child support, or parenting time survives the termination of the CHINS or delinquency proceeding until the Dissolution Court with concurrent or original jurisdiction assumes primary jurisdiction and modifies the Order. IC 31-30-1-12(e). If a Juvenile Court establishes or modifies paternity and terminates the child's CHINS or delinquency proceeding, the Paternity Court with concurrent original jurisdiction shall assume or reassume primary jurisdiction of the case to address all other issues. IC 31-30-1-13(c). An Order establishing or modifying paternity of a child by a Juvenile Court survives the termination of the CHINS or delinquency proceeding. IC 31-30-1-13(d).

If the Juvenile Court has jurisdiction as noted above, the caregivers seeking guardianship or third party custody of the child should do so in the Juvenile Court. The caregivers may want to contact the child's DCS case manager and the child's Court Appointed Special Advocate/Guardian ad Litem to express interest, and to request criminal history checks, a home study, and foster parent training for themselves.

If the child is living with the caregivers due to a Juvenile Court CHINS or delinquency case, the caregivers should receive notice of any periodic case review hearings or permanency hearings in the CHINS proceeding and have an opportunity to be heard and to make recommendations to the court. IC 31-34-21-4. If the caregivers are foster parents or are otherwise temporary caretakers of CHINS, they must be given notice of detention, initial, disposition, periodic case review, permanency, and termination of the parent-child relationship hearings and shall have an opportunity to be heard and to make recommendations to the court at those hearings. IC 31-34-5-1; IC 31-34-5-1.5; IC 31-34-10-2(g); IC 31-34-19-1.3; IC 31-34-21-4; IC 31-35-2-6.5. The

caregiver must also receive notice of and the opportunity to be heard at the factfinding hearing. IC 31-34-11-1(c).

Beginning January 1, 2010, children who are wards of DCS in unlicensed relative placements may receive financial assistance from DCS. DCS may provide a personal allowance for children in an unlicensed relative placement for 180 consecutive days. These children may receive an annual personal allowance of up to \$240. The personal allowance funds may also be used to pay for some of the child's recreation expenses and some educational expenses. DCS has guidelines about when and how the funds may be spent. It is important to remember that all of DCS policies and directives are subject to change. For more information refer to DCS's website at www.in.gov/dcs. Click on "Foster Care" on the left hand side, then on "Relative/Kinship Caregivers."

Children in unlicensed relative placement may also receive clothing assistance from DCS. At the time a child is removed from his or her parent or caregiver, DCS will make sure that the child has adequate clothing for the child's own needs. DCS may also provide the relative caregiver with an Initial Clothing and Personal Items Allotment of up to \$200 per child. The Clothing and Personal Items Allotment is based on the child's individual needs; therefore, children who are removed from their home with sufficient clothing may not receive funds whereas other children with clothing needs may receive the entire \$200. DCS has guidelines on how and when the clothing funds may be spent. All clothing and personal items will go with the child if the child is returned home or moved to a different caregiver's home.

Children in unlicensed relative placement may receive a onetime payment of up to \$400 from DCS for a bed and bedding. The bed and bedding will go with the child if he or she moves from the caregiver's home. Additionally, assistance for children in relative placement may be available to pay for travel and childcare.

DCS policies may change. Check the DCS website at www.in.gov/dcs. For updated information click on "DCS policies" on the left hand side of the home page and then click on "Child Welfare Policies" which will appear beneath.

Formal Kinship Care and Becoming a Licensed Resource (Foster) Family

As a formal kinship care provider, a caregiver may need to become a licensed Resource (Foster) Family through DCS. If a child is placed with a caregiver in formal kinship care, the caregiver will be supervised by DCS. The caregiver will need to meet DCS requirements to become a licensed resource (foster) parent. DCS requirements include attending training, demonstrating financial and emotional stability, passing a home inspection, providing medical statements for everyone living in the caregiver's home, and passing a background check of CPS history and criminal history. The caregiver should contact the local DCS office for more information about becoming a Licensed Resource Family.

Licensed resource (foster) parents, or formal kinship care providers, may receive a foster care per diem from DCS. The per diem rates will vary according to the needs of the child and/or the agency that holds the license. See Section (III)(c) below for more information. The per diem

rates are subject to change and should not be relied upon as an exclusive means to care for the child. In recent years due to state budgetary issues the rates have been subject to reduction. For additional information, contact the DCS family case manager or private agency licensing worker.

III. Different Legal Options

A kinship caregiver has different legal options as he or she cares for the child.

a. Guardianship

A guardian is “a person appointed by a Court to have the care and custody of a child or the child’s estate, or both.” IC 31-9-2-49. A caregiver may become the guardian of a child through a probate proceeding under Title 29. A caregiver may also become a legal guardian as a permanency option for a child who has been adjudicated a CHINS in the Juvenile Court. If the Juvenile Court closes the CHINS case after creating a guardianship, the guardianship will survive the closure of the CHINS case and the Probate Court may assume or reassume jurisdiction of the guardianship and take further action as necessary. IC 21-34-21-7.7(d) and (e).

Potential Positive Aspects

A guardian will typically have all the rights and responsibilities of a parent. A caregiver who is Court appointed as the child’s guardian can more easily make legal decisions for the child, such as enrolling the child in school and providing medical care for the child. A guardian may also sign legal documents on behalf of the child. For example, a legal guardian can sign an application for the youth’s driver’s training, driver’s license, or permit, as long as the Court approves this decision. It is important to remember that the guardian assumes full financial responsibility for any damage or injury caused by the youth while driving.

Establishing a guardianship may also provide the caregiver and the child more stability. A guardianship may be terminated by a Court Order. This means that once the guardianship is established, the parent(s) of the child cannot remove the child from the caregiver’s care without a Court Order terminating the guardianship. In contrast, in an informal kinship care arrangement with no Court Order, the parents are still the legal guardians of the child and may remove the child from the caregiver’s care at any time. Effective July 1, 2011, the Court may include in its Order creating a guardianship any terms and conditions that a parent must meet in order to seek modification or termination of a guardianship. IC 29-3-8-9. This means that the Court may specify certain things that a parent must do (such as completing parenting classes or securing stable housing) before the parent may ask for the guardianship to end.

As a legally established guardian, the caregiver may have access to financial assistance to help care for the child. Possible financial assistance the caregiver may apply for includes TANF if the caregiver is a relative of a certain degree, free or reduced school lunches, food stamps, and Hoosier Healthwise. The various forms of financial assistance have certain requirements that must be met. Some of the programs may require the child to be related to the caregiver within a certain degree. If the caregiver is uncertain whether he or she will receive assistance, it is important to remember that the caregiver still may apply for the assistance. The assistance

agencies may not prevent the caregiver from applying. If the caregiver applies and is denied, the caregiver may be able to appeal the denial.

Potential Negative Aspects

If the parent(s) do not consent to the caregiver having guardianship of the child, then establishing a guardianship may be a difficult legal process for the caregiver. The Court will begin with the presumption that children should be with a parent. As the person petitioning to become guardian, the caregiver will need to overcome this parental presumption by proving that the child should not be with the parent. The person wishing to establish the guardianship will need to prove that the parent is unfit, or has long acquiesced in leaving the child with the guardian or third party custodian, or present evidence demonstrating that a strong emotional bond has formed between the child and the guardian. These factors are important, but the Court is not limited to this criteria. The Court must also be convinced that the child's best interests are substantially and significantly served by placement with another person and that the guardianship is in the child's best interests.

Establishing a guardianship when the parent does not consent may be difficult emotionally. The caregiver will need to present the Court with negative information about the parent which may strain the caregiver's relationship with the parent.

A law concerning guardianships, IC 29-3-8-9, was amended effective July 1, 2011. If a caregiver becomes guardian of a child, either as part of a permanency plan as part of a CHINS case or through Probate Court, then the Court may require that the child live with the guardian until the guardianship is modified or terminated. If the Court includes this requirement in its Order, the caregiver must be sure that he or she is able to provide an on-going home for the child. If the caregiver is no longer able to have the child reside with him or her, then the caregiver should request the Court to modify or terminate the guardianship. Caregivers who have unstable housing or who may not be able to have the child live with them long-term should carefully consider whether they are able to care for the child.

If a guardianship is granted, the Court may order that the parent(s) have parenting time (visitation) with the child. The Court will balance the parent's right to parenting time with the child's right to safety and stability. If the Court orders parenting time, the caregiver may need to provide transportation for the child to and from visits with the parent(s) or may need to host visits in the caregiver's home. When it is safe to do so or the Court so orders, it is important the guardian encourage the child to see his or her parent(s), even though this may require extra work from the caregiver.

A guardianship is not a permanent legal relationship. Unlike adoption, which is permanent, a guardianship terminates by operation of law when the child turns 18 years old. A guardianship may be terminated before the child turns 18 years old if it is no longer necessary. Another person could be appointed guardian or the child could be returned to a parent when the guardianship terminates. Additionally, the guardianship may terminate if the parent petitions to terminate the guardianship.

If the parent petitions to terminate the guardianship, the Court will schedule a hearing on the petition. The guardian may seek an attorney to present evidence as to why the guardian should continue to be the child's guardian. The guardian has the burden of proving that the parent is unfit at that time, has long acquiesced in the guardian caring for the child, or a strong emotional bond has formed between the child and guardian, and that the child's best interest are still substantially and significantly served by the guardianship. The guardian may go to Court with or without an attorney. The assistance of an attorney will be very helpful in these proceedings, see Section (V), Legal Resources, for information about legal aid providers and representing yourself in Court.

Once the caregiver's guardianship of the child terminates, the caregiver has no legal rights to the child as the child's former guardian. This means if the parent contests the caregiver's guardianship of the child and the Court terminates the guardianship, the Court cannot order the parent to allow the caregiver to see the child. It may be emotionally difficult for both the caregiver and the child if the guardianship terminates and the parent does not allow the caregiver to maintain contact with the child.

b. Third Party Custody

In third-party custody, a person who is not the child's parent may be granted custody by the Court to determine the child's upbringing, including the child's education, health care, and religious training. The caregiver may be appointed as third party custodian of a child when there is already a Paternity or Dissolution Court with jurisdiction. Third party custody is different from guardianship because guardianship may be granted when there is not a Paternity or Dissolution Court with jurisdiction.

Third party custodians may be included in the CHINS proceeding. A permanent custodian may be appointed as a permanency option in a CHINS adjudication. A child may be placed with a responsible person including: an adult sibling, a grandparent, an aunt, an uncle, or other relative who is able and willing to act as the child's permanent custodian and carry out the responsibilities required by the permanency plan. IC 31-34-21-7.5(c)(D).

The Court may grant the caregiver custody of the child as the de facto custodian. A de facto custodian is a person who has been the primary caregiver and the financial support of a child for six months if the child is under three years of age and for one year if the child is at least three years of age. IC 31-9-2-35.5. In a Dissolution or Paternity case, if the Court finds by clear and convincing evidence that the child has been cared for by a de facto custodian then the de facto custodian will be made a legal party to the Court case. IC 31-17-2-8.5, IC 31-14-13-2 and 2.5. The Court will consider the required factors and may award custody to the de facto custodian if it will be in the child's best interests.

Potential Positive Aspects

Third party custody shares many of the same positive aspects as guardianship. For example, as a third party custodian, the caregiver will be able to make legal decisions on behalf of the child. A third party custodianship will also provide the caregiver and the child with more stability as the

parents will need to go back to Court and ask for the custodianship to be changed. The Court will schedule a hearing on the petition and the caregiver may seek an attorney to present evidence as to why the caregiver should continue to be the child's custodian.

A custody proceeding may be initiated by a person other than a parent. Third party custodians may be a family member such as a grandparent, aunt, or uncle. They may also be people who are not related to the child by blood.

The parents can choose to consent to the third party custodianship. If the parents do consent to the custodianship, the legal proceeding will be much easier for all the parties involved than if the parents do not consent. The Court will conduct a fact sensitive inquiry when determining whether to establish the custodianship. This means that the Court will look closely at the specific facts of the case and the reasons why a custodianship may or may not be best for the child.

As a third party custodian, if the caregiver is financially eligible and related to the child in a certain way, the caregiver may be able to receive TANF and Hoosier Healthwise benefits to help care for the child.

Potential Negative Aspects

The custodian's rights and duties may be limited as agreed by the parties in writing or if the Court determines that the child's physical health would be endangered or emotional development would be significantly impaired otherwise. This means that the caregiver may not be able to make some decisions for the child or raise the child a specific way if the parties agree or the Court so orders. For example, the caregiver may need to raise the child in a religion different from the caregiver's if the parents will only consent to the custodianship if the caregiver agrees or if the Court orders the caregiver.

Like a guardianship, a third party custodianship may be difficult to establish when the parents do not consent. There is a strong presumption that the child's best interests are ordinarily served by placement in the custody of the natural parent. However, a person other than the natural parent may have custody of the child if this person shows clear and convincing evidence that the best interests of the child require the placement, that the placement with this person will be a substantial and significant advantage to the child, and that the parent is unfit or acquiesced in the third party caring for the child so that a strong emotional bond has formed between the child and the third party.

If a third party custodian is appointed for a child, the Court may order specific parenting time be provided to the child's parents. The Court will balance the parents' rights to parenting time with the child's right to safety and stability. The caregiver may need to facilitate the child's parenting time with his or her parent(s).

Also like guardianship, third party custody may terminate. Custody may be modified from a third party custodian back to a parent. The burden to maintain the third party custodianship is on the custodian. The third party custodian must prove by clear and convincing evidence the natural

parent's unfitness or acquiescence or demonstrate that a strong emotional bond has formed between the child and the third party. The third party custodian must present detailed and specific information that the custodianship is in the child's best interests. Once again, it may be emotionally difficult for the caregiver to show the Court evidence of the parent's unfitness. A contested third party custody proceeding may strain the caregiver's relationship with the parents; however, this may be necessary to do what is best for the child.

c. Foster Care or Relative Placement through a CHINS Proceeding

In foster care or a relative placement as a result of a CHINS proceeding, DCS has legal wardship of the child and the child lives with the caregiver selected by DCS. A grandparent, relative, or non-parent may care for the child while a CHINS proceeding is pending, as a dispositional placement option, or as a permanency option.

DCS is required to consider relative placements for children in many different stages of the CHINS proceeding, including in the case plan, detention, and disposition. The Court may order that the caregivers complete a relative home study and that DCS makes a recommendation to the Court before a child is placed with a relative.

Placement with a relative is encouraged, as Indiana law prefers placement in the least restrictive, or most family like setting, which is close to the parents' home, least interferes with family autonomy, is least disruptive of family life, and provides reasonable opportunity for parent participation in the child's care and treatment. IC 31-34-18-4.

If a child is placed with a relative as a permanency option through a CHINS proceeding, this arrangement is formal kinship care. In formal kinship care, the caregiver may need to become a resource (foster) parent licensed through the State. A person may have to invest time, money, and energy into becoming a resource parent. A resource parent is a licensed adult who meets the minimum requirements in place to be able to foster a child or be a formal kinship caregiver. DCS has set these minimum requirements to help them establish a guideline that they will use to determine who they feel will be able to care for those children. It is important to remember that DCS may be working to reunify the child with his or her parent(s).

A Note on Reunification as the Permanency Plan

If reunification is the permanency plan, the caregiver should consider the child's long term safety needs after the CHINS case is closed. The caregiver should plan for the reality that the child will likely be spending time with each parent after reunification. If the child's parents are living apart, paternity or dissolution of marriage custody Orders and parenting time (visitation) Orders will dictate the type and amount of access each parent has to the child. The caregiver should let the reunification service provider know about Paternity or Dissolution Court Orders affecting the child.

Caregivers should remember that Court Orders from the CHINS case (such as not allowing contact with an abuse perpetrator or requiring supervised visitation) cannot be legally enforced by DCS after the CHINS case is closed. Legislation effective July 1, 2011 provides that some

CHINS Orders on Paternity and Dissolution survive termination of the CHINS case *until the Paternity or Dissolution Court changes the Order*. The Dissolution, Paternity, or Guardianship Court has jurisdiction to issue a similar Order after the CHINS case is closed, but the parent or guardian/custodian must request and seek enforcement of the Order. After the CHINS case is closed, parents, guardians, and third party custodians will need to pay for legal services, access pro bono legal providers, or represent themselves in court.

Potential Positive Aspects

Once a caregiver becomes a licensed resource (foster) parent, the caregiver may be eligible for financial assistance from the State in the form of a foster care per diem. The per diem rates will vary according to the needs of the child and/or the agency that holds the license. Effective January 1, 2012, the standard per diem payments for foster care for ages infant through 4 years is \$18.28, for 5 to 13 years is \$19.85, and for 14 to 18 years is \$22.90. Different per diem rates apply to Foster Care with Services, Therapeutic Foster Care, and Therapeutic Plus. Foster parents may receive payments such as Initial Clothing Allowance, Liability Insurance, Personal Allowance, Special Occasion Allowance, and Travel reimbursement in addition to the per diem payment.

The per diem rates and additional payments are subject to change and should not be relied upon as an exclusive means to care for the child. The caregiver should contact the DCS Family Case Manager for information about the current foster care per diem rate.

As a licensed resource (foster) parent, the caregiver may find it easier to legally provide for the child. As a licensed resource parent, the caregiver will have a legally recognized relationship with the child and may consent to things for the child, such as medical care or enrolling the child in school. Often a resource parent may be able to consent to medical treatment for emergency and routine procedures, but the resource parent should verify ability to consent to medical care with the DCS family case manager. See IC 31-28-3-2.

Potential Negative Aspects

In formal kinship care, a caregiver may need to become a licensed resource (foster) parent. Becoming a licensed resource (foster) parent will involve spending time, energy, and possibly money necessary to complete the required trainings, home visits, and background checks.

Although the child lives with the caregiver, DCS has a wardship over the child. While the caregiver will be able to make many of the day to day decisions for the child, any legal decision is ultimately left to DCS. It is also important to remember that DCS will be working toward reunifying the child with his or her parent(s). It may be frustrating or emotionally difficult for some caregivers to care for a child while knowing that the child may eventually be returned to his or her parent(s).

DCS has outlined numerous events and requirements that must be met for a caregiver to become a licensed resource (foster) parent. The prospective foster parent must be at least 21 years of age and be capable of passing a criminal history and background check. The caregiver's fingerprints

will be taken. The caregiver must also be able to demonstrate that he or she is financially stable and owns or rents a home that meets the physical safety standards. There are numerous training requirements as well, along with home visits and assessments. Please see DCS's website at www.in.gov/dcs for more information on becoming a licensed resource (foster) parent.

The Foster Parents Handbook, A Guide for Indiana Foster Parents on CHINS and Termination Court Proceedings is available free of charge on the Kids' Voice website at www.kidsvoicein.org. Click on the link titled "Foster Parents Handbook" on the main page to be directed to the Handbook.

d. Adoption

In adoption, a new permanent parent-child relationship is created. An adoption forever dissolves the biological parent-child relationship and creates a new parent-child relationship. Once an adoption decree is entered, the biological parents have no legal duties or obligations to the child. Likewise, an adoption removes the biological parents' rights to the child. The parent-child relationship is terminated by operation of law. IC 31-19-15-1. A new birth certificate may be issued for the child. IC 31-19-13-1.

Adoption may be a permanency plan for a CHINS.

Indiana case law provides that relatives do not have a preferential legal right to adopt. Blood relationship is a material factor but is not controlling. Instead, the controlling factor in an adoption is the best interests of the child. *In Re Adoption of Childers*, 441 N.E. 2d 976, 980 (Ind. Ct. App. 1982).

DCS has requirements that must be met before a person may be an adoptive parent. Please see DCS's website at www.in.gov/dcs or call 1-888-25-ADOPT for more information on becoming an adoptive parent.

Potential Positive Aspects

Adoption provides the most protection and stability among the various legal options discussed in this pamphlet. The intention of a legal adoption is the termination of the biological parents' rights and the establishment of a new parent-child relationship, but it is possible a legal proceeding could be initiated by the biological parent(s) to contest the adoption. Once an adoption decree is entered, it is extremely difficult for a parent to have the Court overturn the adoption and take the child.

Adoption makes legally caring for the child very easy. Once the adoption is finalized, the adoptive parent has full rights to the child, just as the parent would to a child who is biologically their own. The adoptive parents are permanently responsible for the child, until the child is emancipated.

Caregivers who adopt children may apply for government assistance for the child, such as Supplemental Security Income or Social Security Benefits, when applicable. Caregivers who

adopt children may also apply for post adoption financial assistance from DCS.

A Note on Adoption Subsidy Payments

An “adoption subsidy” is defined as payments by DCS to an adoptive parent of a child with special needs after the adoption decree has been entered and during the time the child is residing with and supported by an adoptive parent. IC 31-19-26.5-1. A “child with special needs” is a child who (1) is a hard-to-place child; and (2) meets the requirements of a special needs child, as specified in 42 U.S.C. 673(c) and DCS rules. IC 31-19-26.5-2. A “hard to place child” is a child who is “disadvantaged because of ethnic background; race; color; language; physical, mental, or medical disability; or age; or because the child is a member of a sibling group that should be placed in the same home.” IC 31-9-2-51. Additionally, a child who is two (2) years of age or older is a hard to place child for determining eligibility for state adoption subsidies. IC 31-19-27-1.5.

All eligibility determinations for adoption subsidy payments will be made by DCS, either through a written agreement entered into with the adoptive parents before or at the time the court enters a final decree of adoption or receipt of a final Order in an administrative appeal. IC 31-19-26.5-3. For subsidy payments to be made, DCS must also determine that the child is not eligible for federal adoption assistance and that “sufficient funds are available in the adoption assistance account of the state general fund, and can reasonably be anticipated to be available in that account during the term of the agreement or Order, to make the payments as specified in the agreement or Order.” IC 31-19-26.5-3.

If the caregiver’s petition for adoption contains a request for financial assistance, the court will refer the caregivers to DCS to complete and submit an Indiana Adoption Program application to determine if the child is eligible for federal Adoption Assistance or the adoption subsidy under IC 31-19-26.5. IC 31-19-11-3(a). DCS will determine the child’s eligibility for financial assistance. The court may not order payment of federal Adoption Assistance or an adoption subsidy. IC 31-19-11-3(b) and (c).

If DCS determines that there are not or will not be available sufficient funds in the adoption assistance account, DCS may approve new adoption subsidy agreements only for children in a DCS wardship at the time the adoption petition is filed or DCS may give priority funding to new adoption subsidy agreements for children who were in a DCS wardship. IC 31-19-26.5-4.

The amount of subsidy payments may not exceed the amount that would be payable by DCS for the monthly care of a child in a foster family home at the time the subsidy agreement is made or the time the subsidy is payable, whichever is greater. IC 31-18-26.5-5.

In some situations, DCS may make payments for medical or psychological care or treatment of an adoptive child, in addition to subsidy payments. In order to receive these additional payments, the child must be a child with special needs, based in whole or in part on a psychical, mental, emotional, or medical condition that either existed before the adoption petition was filed or is causally related to specific conditions that existed or events that occurred before the petition was filed, as determined by a physician or psychologist licensed in Indiana. Additionally, the

adoptive parent must apply to DCS in the form and manner specified by DCS for assistance in paying for the special services that the child needs to remedy the child's special needs. DCS must determine that the services required are not and will not be covered by private health insurance available to the child or adoptive parent or the Medicaid program in Indiana. DCS must also determine that paying for the required services without assistance would cause a significant financial burden and hardship for the adoptive family. Finally, sufficient funds must be available in the adoption assistance account to cover the cost of the additional assistance. IC 31-19-26.5-6(a).

If a child receives an adoption subsidy payment, DCS may require the adoptive parents to submit a verified report as a condition for continuation of subsidy payments. IC 31-19-26.5-8. If the report or other information received by DCS indicate a "substantial change" in the conditions that existed when the adoption subsidy agreement was signed, then DCS may modify or discontinue the payments. IC 31-19-26.5-8(c). The adoptive parents will receive notice if the payments are modified or discontinued. IC 31-19-26.5-8(c). Otherwise, the subsidy payments will terminate when the child becomes eighteen years old, or the child is emancipated, or the adoptive parents are no longer providing financial support to the child, and if the child dies or the adoption is terminated. IC 21-19-26.5-9(a).

DCS may continue subsidy payments for a child between eighteen and twenty-one years old if the child is enrolled in secondary school, an institute of higher learning, a course of career or technical education, or if the child needs continuing support and assistance for a physical, medical, mental, or emotional condition that limits or prevents the child from becoming self-supporting. IC 31-19-26.5-9(b).

The Indiana Adoption Program policy letter, dated December 5, 2008, and the Indiana Adoption Program forms describe policies related to assistance. The documents may be found at www.in.gov/dcs. The following is a summary of significant policies:

- When an adoptive family has been identified for a particular adoptive child, the DCS family case manager shall give the adoptive parents a copy of the Eligibility Predetermination Letter issued by the DCS Central Eligibility Unit, an explanation of the Indiana Adoption Program, and an Indiana Adoption Program application to complete. The completed Indian Adoption Program Application must be sent to the DCS local office no later than ten business days after the petition for adoption is filed. The DCS local office shall submit the application and any supporting documentation to the DCS Central Eligibility Unit, including any recommendations for approval or denial of the assistance requests.
- After the DCS Central Eligibility Unit reviews and makes a final eligibility determination, it will send the Final Adoption Program Eligibility and proposed assistance agreement within 40 calendar days via certified mail, return receipt requested, to the adoptive parents or their attorney if they are represented by an attorney for the adoption.
- The family case manager shall discuss and negotiate the terms of the adoption agreement with the adoptive parents, and or the adoptive parents' attorney.

- If the adoptive parents agree to the terms of the adoption agreement, the family case manager shall obtain the adoptive parents' signatures, and return the signed adoption agreement to the DCS Central Eligibility Unit. The Central Eligibility Unit shall obtain the DCS Director's signature on the agreement and send a copy of the final executed agreement to the adoptive parents or their attorney.
- Adoptive parents who disagree with the eligibility determination may submit a Request for Administrative Review (this form is one of the Indiana Adoption Program forms at www.in.gov/dcs) within 30 days.
- No monthly payments for postadoption financial assistance shall begin until a copy of the final decree of adoption is submitted to the DCS local office attorney.
- The amount of monthly postadoption financial assistance shall not exceed 75% of the standard foster care per diem rate for both Indiana adoption subsidy and federal Adoption Assistance. (Note that the standard foster care per diem rate is lower than the special needs or therapeutic foster care rate.)
- DCS will determine the child's eligibility for Non Recurring Adoption Expenses. (Adoption attorneys may receive payment for legal services through Non Recurring Adoption Expenses.) The amount of Non Recurring Adoption Expenses allowable per child is \$1,500.
- DCS policy prioritizes the payment of federal Adoption Assistance, Court Ordered subsidies entered before January 1, 2009, and Non Recurring Adoption Expense Agreements. DCS policy also establishes a waiting list for payment of state adoption subsidies. DCS may implement a percentage reduction in all payment obligations after 30 days written notice to the adoptive parent if insufficient funds are available to pay for all State Subsidy Agreements.
- Unless otherwise provided in an adoption agreement or Court Order, all payments and services provided under an adoption agreement shall terminate when:
 - (1) the child has attained the age of eighteen; or
 - (2) the child becomes emancipated; or
 - (3) the adoptive parent is no longer legally responsible for support of the child; or
 - (4) the adoptive parent(s) or the adoptive child dies; or
 - (5) the child's adoption is terminated.
- All adoptive parents who have entered into adoption agreements for postadoption financial assistance shall submit a fully complete Adoption Program Status Report to DCS Central Office after June 1, and before July 1 of each calendar year. If the agreement was signed or monthly payments began after April 15 of any year, the first Status Report shall be due before July 1 of the following year. Failure to submit the required report shall be grounds for termination or suspension of payments under a State Adoption Subsidy Agreement, until the report has been submitted, reviewed, and approved by DCS. Adoptive parents are also required to notify the DCS Central Office in writing of the occurrence of any event that is or could be grounds for termination or suspension of the adoption agreement or Court Order.

- DCS will not approve any applications for continuation of adoption agreements for children over the age of eighteen unless all state adoption subsidies placed on the waiting list have been approved for commencement of payments, except as otherwise required by state and federal law.
- If funding is available, adoption agreements may be continued beyond the date the adoptive child reaches the age of eighteen under certain circumstances. An adoptive parent and the adoptive child shall jointly submit an Application for Continuation of Adoption Agreement (this form is on the website, www.in.gov/dcs) not later than 30 days before the child's eighteenth birthday, and include documentation of: (1) the child's physical, mental, medical, or emotional condition (if the child's condition is the basis for continuing assistance); (2) the child's educational needs (if they are the basis for continuing assistance); and (3) continued parental support.

If the adoptive parents' request for postadoption financial assistance is denied, the parents may request an administrative review by the DCS Director or his designee. The parents may request review when denial occurs on the Final Adoption Services Eligibility Determination, when the adoption assistance is terminated or suspended under an adoption agreement or Court Order before the child is eighteen years old, when the assistance is discontinued or modified in an adoption agreement or Court Order, or when the continuation of payments under an adoption agreement or Court Order is denied after the child has reached the age of eighteen.

Administrative review or an administrative hearing will not be provided concerning DCS decisions on the availability of funds in the State Adoption Assistance Account based on the DCS Director's annual review. Review or a hearing will not be provided when percentage reductions in current state adoption subsidy payments are determined. Also, review or a hearing will not be provided for other DCS decisions regarding the state adoption subsidy program.

Adoptive parents may access the form to request an administrative review at www.in.gov/dcs in the section Indiana Adoption Program forms. Instructions on the form state that adoptive parents must notify DCS of the name, address, and telephone number of the adoptive parents' attorney. The following attachments must be included with the completed form: (1) a copy of the DCS decision of which review is requested; (2) copies of all documents that support the request; and (3) a doctor's statement for Medicaid requests. The form and attachments must be mailed to Department of Child Services, Field Operations Admin. Review, 302 West Washington Street, Room E306, MS47, Indianapolis, IN. 46204. The form states that if the request is not received within 45 calendar days of the date on the Final Adoption Program Eligibility Determination, the adoptive parents will give up their right to any DCS review of the decision in the future.

The DCS Director, or his designee, will issue a Notice of Final Administrative Review Decision. The Notice will include a form to Request an Administrative Hearing. The adoptive parents may submit a written Request for an Administrative Hearing within 30 days of the receipt of the Notice. Adoptive parents may request an administrative hearing only in three specific instances: (1) Final Adoption Services Eligibility Determination, (2) termination or suspension of adoption assistance under an adoption agreement or Court Order before the child becomes eighteen years old, or (3) discontinuance or modification of adoption assistance.

Potential Negative Aspects

If the caregiver was previously a foster parent to the child before adopting the child, the foster care per diem will stop after the adoption. It is possible that the foster care per diem may end before any adoption assistance payments begin. Additionally, post adoption financial assistance has changed significantly in recent years and it is possible that there may not be post adoption financial assistance available, or that the assistance amounts may be reduced.

Adoptions are also complex legal proceedings and often require the prospective adoptive parents to hire an attorney to navigate the legal process. The cost of the attorney's legal services up to \$1,500 per child may be paid by DCS as a Non Recurring Adoption Expense.

IV. Useful Terms and Contact Information

Adoption

Adoption is the act of terminating the biological parent's legal rights and assigning those legal rights to the adopting parents. Adoption is a legal process that occurs through the Court system where the biological parents either agree to, or the Courts remove, their legal rights. The Court then assigns the legal rights to the adoptive parents.

Child In Need of Services (CHINS)

Abused and neglected children are called Children In Need of Services (CHINS) in Indiana law. There are ten CHINS categories:

1. Neglect
2. Abuse
3. Victim of Sex Offense
4. Parental allowance of child's participation in obscene performance
5. Parental allowance of child's participation in sex offenses
6. Child endangerment of self or others
7. Parental failure to participate in school disciplinary proceedings
8. Missing child
9. Child born with fetal alcohol syndrome or trace amounts of substance in system
10. Child has injury or abnormal development or endangering condition caused by mother's use of substance during pregnancy.

Court Appointed Special Advocate

Is a community volunteer who has been trained in a program approved by the court and is appointed by the court to represent the child's best interest during the course of proceedings.

Custodian

Custodian is the person with whom a child resides.

De Facto Custodian

A person other than a parent who has served as the primary caregiver and financial support of a child for one year, or six months if the child is under three years of age. Any time period after a legal custody proceeding has begun does not count toward the one year or six months time requirement. Foster parents are not de facto custodians.

Department of Child Services (DCS)

The Department of Child Services (DCS) is a state agency that provides direct attention and oversight of protecting children and child support enforcement. DCS protects children who are victims of abuse or neglect and strengthens families through services that focus on family support and preservation. The Department also administers child support, child protection, adoption and foster care throughout the state of Indiana. The DCS Central Office is located in the Indiana Government Center South at 402 West Washington Street, Room W302. DCS may be found on the internet at www.in.gov/dcs/ for any policy decisions please refer to the website and on the left hand side click “DCS policies” then click on “Child Welfare Policies” which appears beneath.

Dissolution Court

The Court where divorces are granted and custody and parenting time of the children are determined. Commonly called “Divorce Court.”

Foster Care

Foster care is the system coordinated by DCS where they place children with individuals to provide a stable environment while the reunification process is occurring. The individuals are licensed through DCS and have physical custody of the children while DCS retains a wardship over the children.

FSSA (Family and Social Services Administration)

The FSSA, Division of Family Resources is the State agency that is responsible for receiving applications for Medicaid, Food stamps, TANF, and other health related items. On the internet at www.in.gov/fssa. To view a list of county offices click on the blue text stating “To locate your FSSA Division of Family Resources County Office, please click here.” You can also dial 211 to get contact information for human services.

GAL (Guardian Ad Litem)

Like the Court Appointed Special Advocate, the GAL is an individual who has received specialized training and represents the child’s best interest in different proceedings.

Guardianship

Guardianship is a legal relationship that is created through the Court system where a person other than the child’s parent has legal custody of the child. The Guardian is the individual who is legally responsible for the child.

In Loco Parentis

In loco parentis means in place of the parent and it occurs when someone other than the parent has assumed the parental rights and duties of the child.

License

Includes a license for foster homes that may be issued to a person applying to be a foster family home. May be issued by the DCS Central Office through the Residential Licensing Unit Manager. Issued through the Residential Licensing Unit Manager when the applicant completes the application process and the local DCS director or the director's designee submits his or her recommendation and approval.

Licensed Child Placing Agency

Licensed Child Placing Agencies are private agencies that provide training and make recommendations regarding families and children in adoption settings.

Paternity Court

The Court that hears and decides cases when a child is born to an unmarried woman. This Court has the authority to establish paternity.

Probate Court

The Court that orders and terminates guardianships.

Putative father

The term used to refer to a man who is believed to be the father of a child born out of wedlock. That man has not had actual paternity established but is believed to be the father because of some reason, like the mother's statements.

Relative Placement

A qualified adult relative provides care for a related child through a placement that may be either licensed or unlicensed. Indiana law provides that the Court must consider placing the child in the home of a relative before placing the child elsewhere.

Resource Home

Foster homes, pre-adoptive homes, and relative homes that are resources for children in out of home placements or adoptions.

Resource Family

Foster parents, adoptive parents, relative or kinship caregivers who are licensed through the State.

Social Security Administration

The federal agency responsible for providing assistance to individuals, primarily those who are retired, disabled, or survivors. The Social Security Administration website is

www.ssa.gov. The Social Security Administration can also be contacted by telephone at 1-800-772-1213.

State Office of Guardian Ad Litem/Court Appointed Special Advocate

A program of the Indiana Supreme Court that certifies, distributes funding, and provides training for the Indiana county programs that provide Guardian ad Litem/ Court Appointed Special Advocates for children in CHINS cases. The website, www.in.gov/judiciary/galcasa/ includes a directory of all of the Indiana county programs.

Temporary Conditional Custodian

When a guardianship is established, a temporary conditional custodian is designated as the person responsible for caring for the child upon the death of the guardian. Upon the death of the guardian, the temporary conditional custodian would take the child into his or her home temporarily and may petition the Court for permanent custody.

Third Party Custody

Third party custodianships are granted in Paternity or Dissolution Courts. An individual other than a biological parent, or adoptive parent, retains custody over a child. This third party could be a friend, a family member, or a foster parent.

V. Legal Resources

i. Access to Pro Bono Attorneys

The Indiana Pro Bono Commission of the Indiana Supreme Court lists pro bono providers who provide legal representation to eligible people who lack funds to pay a private attorney. Indiana is divided into fourteen pro bono districts. The names and telephone numbers for pro bono providers may be accessed through the Indiana Supreme Court website at www.in.gov/judiciary. Click on “Agencies and Programs” on the top of the screen, then select “GAL/CASA.” Unfortunately, the pro bono legal providers have limited resources and cannot accept every eligible person who applies to them for services.

ii. Help for People Who are Representing Themselves

Some Indiana counties have a law library located in the county Courthouse which can be used by members of the public to research Indiana laws and legal forms. Some public libraries have copies of Indiana statutes, and the reference librarian can help the public find statutes. All of Indiana’s statutes can be found on the legislative website, www.in.gov/legislative. Go to the lower right-hand side of the homepage for the “View Indiana Code” function. The thirty-six (36) named Titles of Indiana law can then be accessed by article number and name and chapter number and name.

People who are representing themselves in Court may view informational videos on self-representation on the Indiana Supreme Court website. Click on “Self-Service Legal Center” on the top of the home page, www.in.gov/judiciary. The Self-Service Legal Center link contains a video, Court forms, and other information, including Spanish language information.

CUSTODIAL STATEMENT AND AGREEMENT:
THIRD-PARTY CUSTODY

This agreement is prepared by the State Superintendent of Public Instruction as required by I.C. 20-26-11-3.

Student Information

Name: (last) _____ (first) _____ (mi) _____
(street) _____ (city) _____ (state) _____ (zip code) _____
Last school corporation attended: _____
Current school corporation: _____

Indicate the reason for utilization of this form:

- _____ The student has been abandoned.
_____ The parents are unable to support the student and the student is living with the guardian or custodian, who is supporting and caring for the student. The student was not placed with the guardian or custodian for the primary purpose of attending school in the school corporation of the guardian's or custodian's residence.
_____ The parents are living outside the United States and maintain no home in any school corporation.

Parent Information

Name: (last) _____ (first) _____ (mi) _____
(street) _____ (city) _____ (state) _____ (zip code) _____

Guardian or Custodian Information

Name: (last) _____ (first) _____ (mi) _____
(street) _____ (city) _____ (state) _____ (zip code) _____

_____ agrees to assume all the duties and be subject to all the liabilities of the
(person with whom student will live)

parent of _____ with respect to dealing with the school corporation and for all other purposes
(student)
under Indiana Code 20-26. This agreement is binding from the date signed until terminated by the parent or guardian in writing.

I affirm, under the penalties for perjury, that the foregoing representations are true.

Name (printed)

Name (printed)

Signature

Signature

Date

Date

Acknowledged by _____ on behalf of _____
(name and title) (school corporation)

Date _____



MEMORANDUM

TO: Superintendents and Principals
FROM: Cathy Danyluk, Chief State Attendance Officer
DATE: August 27, 2010
SUBJECT: Enrollment Restrictions and Denial of Enrollment

Individuals cannot be denied enrollment for the following reasons. They must be enrolled immediately.

- Lack of a birth certificate. A student must have a birth certificate or other reliable proof of the student's date of birth (IC 20-33-10(a)(2)). Failure to provide a birth certificate or other reliable proof of the date of birth within 30 days of enrollment may result in a report to the Indiana Clearinghouse for Missing and Exploited Children (ICMEC) at 800-831-8953.
- Showing up late for the beginning of the semester. The compulsory school attendance law requires attendance and requires the school administrator to ensure that children of compulsory school attendance age are enrolled (IC 20-8.1-2-29).
- Not having rental receipts, a mortgage document, driver's license, social security card, lease agreement or other forms of official identification. State law does not require any document with an address as a prerequisite to enrollment. Asking for any document to assist in determining legal settlement or right to attend school based on the location of the residence is appropriate. However, if the parent does not have documents or proof of residence a child cannot be denied attendance for that reason alone. Attendance officers [or school officials] have authority to investigate the residence of parents to ensure compliance with state law. Children may not be removed from school without due process of law (I.C. 20-33-8-17; I.C. 20-33-8-19).
- Not being a citizen of the country or the state. A child must be in school in Indiana if the child will reside in the state for at least 30 days (511 IAC 1-7-1). Note: Enrollment must be immediate when intent to remain for 30 days is determined. This is without regard to legal domicile (I.C. 20-33-2-3).
- Being an undocumented alien. Children of undocumented aliens must be allowed to attend public school (*Plyler v. Doe*, 457 US 202 (1982))

- Not having a stable residence. Homeless children must be accommodated and may not be removed from school for legal settlement reasons alone. Contact the Christina Endres, State Coordinator, McKinney Vento Program, 317/232-0548 or endres@doe.in.gov.
- If a parent moves out of the district the child may remain in the school at the parent's discretion until at least the end of the semester (I.C. 20-26-11-2(8)).
- Lack of immunization. Children must be enrolled in school whether or not they have required immunizations. If they do not have the required immunizations and the school refuses to grant a statutorily allowed 20 day waiver, the child may be excluded from school.
- Not speaking English.
- Adults over the age of 18. While a student is required to attend school until the age of 18 per the compulsory attendance law (I.C. 20-33-2), this code does not specify an age of which they can no longer attend. Individuals have a constitutional right to attend school until they have received a high school diploma. Receipt of a GED is not equivalent to a high school diploma and does not extinguish the right to earn a high school diploma. Schools do have the right to determine the placement within their jurisdiction. Placement might include: traditional school schedule; alternative placement; credit recovery; adult education, etc. as long as the student is still able to earn a diploma.

The final arbiter of the right to attend school and legal settlement is the Indiana State Board of Education (I.C. 20-26-11-15). The parent of any child denied the right to attend school or expelled due to lack of legal settlement should be advised of the right to appeal to the State Board of Education.

Please contact Cathy Danyluk, Chief State Attendance Officer at 317/232-9150 or cdanyluk@doe.in.gov if you have questions.