14. Legal Guardian Placements

14.1 Definition

14.1.1 Legal Guardian (LG)

A LG is the individual appointed permanent or temporary guardianship of a child by the Juvenile or Probate Court. Appointment of guardianship does not necessarily mean that parental rights have been terminated. The court grants a legal guardian the right to make most decisions regarding the child, but does not grant all the legal rights and responsibilities of a parent to the guardian.

Generally, unless terminated by court order, a guardianship ends when the child turns 18, is adopted, marries or becomes emancipated. As long as all the other requirements are met, the youth may be eligible to receive AFDC-FC up to age 21. For information regarding benefits after the age of 18, refer to Foster Care Handbook Chapter 39.

The information contained in this chapter does not apply to the Kinship-Guardianship Assistance Program (Kin-GAP).

14.2 Guardianships

Legal guardians may be related or non related and may or may not have dependency attached.

Non Related (NR) LG

• The NRLG is not related (within the fifth degree) by birth or adoption to the child,

• May have had guardianship established by a Juvenile or Probate Court, and

• The child does not have to be a dependent of the court in order to receive state AFDC-FC. (EAS 45-203)

Related LG

• The guardian is related to the youth within the fifth degree.

• May have had guardianship established by a Juvenile or Probate Court, and
• A related LG is not eligible for AFDC-FC unless dependency is attached.

**Dependency Attached**

A child in a legal guardianship (related or non-related) may have dependency attached. In this situation, there must be a dependency order which states that care, control and custody of the minor is vested with the Social Services Agency. A dependency order stating “supervision” by the Social Services Agency is insufficient for AFDC-FC eligibility purposes. Only when a dependency order is in effect may federal AFDC-FC be claimed for an otherwise eligible child placed with a related or non-related legal guardian. Children living with NRLGs lose federal eligibility when the dependency order is dismissed. However, the case may still be eligible for non-federal AFDC-FC payments. For children in relative guardianships, the payments end when dependency ends.

**Reminder:**

*The dependency order of the juvenile court always takes precedence over the legal guardianship order.* Processing of dependent LG cases follows the current Foster Care workflow.

**Dependency NOT Attached**

Relative guardianships without dependency are not eligible for AFDC-FC benefits. However, non-dependent non-related legal guardianships (NDNRLGs) are eligible for non-federal benefits. These cases may come from Juvenile or Probate Court.

**Temporary Guardianship**

Based on the *Timmons v. McMahon* court decision, regardless of whether the guardianship order is temporary or permanent, all non-dependent children living with non-related legal guardians, who meet all eligibility requirements for state AFDC-FC may receive funding under this program.

**Adopted Child in a Legal Guardianship**

Sometimes an adopted child (whose parents are receiving Adoption Assistance Program (AAP) payments) will have a change in legal guardianship and live with a NDNRLG. When this change occurs, the action of guardianship does not terminate parental rights. Adoptive parent(s) who continue to support the child they may continue to receive AAP benefits and the NDNRLG may apply for benefits as a LG. For more information regarding AAP refer to Foster Care Handbook Chapter 37.
14.3 Requirements

The child must meet all general requirements. NRLGs have the same interview and cooperation requirements as parents and a SAWS 2 Plus is required at initial application. Guardians who do not cooperate with the county will not be paid state AFDC-FC. (EAS 45-203.611(c) and 45-302.241)

14.4 Residency

The county of residency is the county with payment responsibility. Therefore, if the child’s guardian moves to another county, but remains within California and there is no ongoing dependency in Santa Clara County, the worker must initiate an Inter-County Transfer (ICT) as the county with payment responsibility has changed.

Each state has its own guardianship regulations and may not recognize a guardianship established in another state. Effective July 27, 2017, All County Letter (ACL) 17-82 states that children residing in California with a NRLG whose guardianship was issued by a court of another state may now be eligible for AFDC-FC. The guardianship must be registered in California and as of the date of registration, the guardianship is enforceable in the same manner as a guardianship issued by a California court under the Probate Code or Welfare and Institutions Code (WIC). The registered guardianship orders are eligible for AFDC-FC as of the date of the registration or the date of application, whichever is later, and assuming all other eligibility conditions are met.

Note:

If legal guardianship is granted in California and the guardian(s) moves to another state, the county will stop making foster care payments. In addition, the other state is not required by law to offer the same assistance.

14.5 Funding Options

14.5.1 Federal AFDC-FC Eligibility

Federal AFDC-FC may be issued (whether or not the LG is related) if the legal guardianship case has dependency attached. In this situation, there must be a dependency order in effect which states that care, control and custody of the minor is vested with the Social Services Agency.
Note:

When the dependency order is dismissed and the LG is a relative, the child LOSES BOTH FEDERAL AND STATE eligibility for the AFDC-FC program. Children living with NRLGs lose federal eligibility when the dependency order is dismissed. If otherwise eligible, payment can be made from the State AFDC-FC program which requires an aid code change.

14.5.2 State AFDC-FC Eligibility

State AFDC-FC may be issued for an otherwise eligible child who is placed with a *non-related* legal guardian. Children placed with relatives are not eligible for state AFDC-FC. A child does not need to be a dependent of the court to receive state AFDC-FC.

14.6 Rates

There are three rate tiers for Non Related Legal Guardianship cases.

Tier I is based on NRLG cases (including Probate cases) where guardianship was established prior to May 1, 2011. These are age-based rates.

Tier II is based on NRLG cases (including Probate cases) where guardianship was established on or after May 1, 2011 through December 31, 2016. These are age-based rates.

Tier III is based on NRLG cases (NOT Probate cases) where guardianship was established on or after January 1, 2017. These rates are no longer based on age and are paid the Level of Care (LOC) Basic rate.

Refer to Foster Care Handbook Chapter 20 and “Santa Clara County Foster Care Rates Chart” form (SCD 2405) for information on Special Needs and Specialized Rates.

Note:

NRLG probate cases established on or after January 1, 2017 are only eligible for the LOC Basic Level rate.

14.6.1 Forms and Documentation (Non-Dependent Cases)

The LG of a non-dependent child must clear eligibility with BOTH the EW and the SW before payment can be made. When there is no dependency, service requirements, payment instructions and assignment of a SW must still be made. Therefore, the SW must provide Foster Care Eligibility a completed “Foster Child's Data Record and AFDC-FC Certification” form (SOC 158A).
LG Intake Packet

Clerical mails the LG an intake packet with the documents below:

- “Contact Information Notice” form (SCD 2457). This is the cover letter including the Intake EW name, phone number and instruction for the LG to contact the EW to schedule an appointment.
- “Initial Application for CalFresh, Cash Aid and/or Medi-Cal/Health Care Programs” form (SAWS 1)
- “Language Survey - Interpreter/Translation Request” form (SCD 1264)
- “Notice and Agreement for Child, Spousal and Medical Support” form (CW 2.1 NA)
- “Support Questionnaire” form (CA 2.1Q)
- “Voter Registration - Would You Like to Vote?” form (SCD 508)
- “Lump Sum” form (SCD 836)
- “Know Your Rights” form (PUB 13)

During Triage/Intake

The forms listed above are reviewed during the Intake process. Other forms completed and documentation collected at this point may include, but are not limited to, the following:

- Letters of Guardianship or court order for legal guardianship (JV-330)
- “Rights and Responsibilities” form (SAWS 2A)
- “Statement of Facts Supporting Eligibility for AFDC-Foster Care” form (FC 2)
- Social Security Card (request SCD 196 or MC 194)
- Request for Birth/Income/Resource Verification
- “Child Welfare Intake for Non-Dependent Children with Guardians” form (SCD/SCZ 1489A)
14.7 Redeterminations (RRR)

When there is no dependency, the SW CANNOT complete the FC 2 for the legal guardian of a non dependent child. The legal guardian is required to cooperate with service requirements and RRR. If the legal guardian fails to cooperate in completing the RRR, the AFDC-FC payment must be discontinued.

14.8 Unaccompanied Minors (UM)

Unaccompanied Minors lose UM status when the caretaker is a legal guardian.

14.9 Processing Legal Guardianship Cases

Cases with dependency attached will follow existing foster care process. Refer to chapter 42.10 for the non-dependent LG workflow.