14. Legal Guardian Placements

14.1 Federal AFDC-FC Eligibility

Federal AFDC-FC may be claimed for an otherwise eligible child placed with a related or non-related legal guardian ONLY WHEN A DEPENDENCY ORDER IS IN EFFECT. This is because the dependency order of the juvenile court always takes precedence over the legal guardianship order.

14.1.1 Dependency Order

The DEPENDENCY ORDER MUST STATE CARE, CUSTODY AND CONTROL of the minor is vested with the Social Service Agency. A dependency order stating “supervision” by the Social Services Agency is insufficient for AFDC-FC eligibility purposes.

14.1.2 Related Legal Guardians

Children living with related legal guardians, when the dependency order is dismissed, LOSE BOTH FEDERAL AND STATE eligibility for the AFDC-FC program. When this happens, relatives may receive AFDC-FG. An intra-program status change (IPSC) must be initiated to ensure that no break in aid occurs.

14.1.3 Financial Disclosure

Because dismissal of a dependency order can affect a child's eligibility to Federal AFDC-FC and affect the foster parent's economic status, it is critical that all related foster parents be advised of the possible financial impact to the child's grant if the foster parents decide to become legal guardians.

14.1.4 SOC 369

It is the Social Workers responsibility using the “Financial Disclosure Form”, (SOC 369) to advise related foster parents that the AFDC-FC payment amount they are entitled to as foster parents may change to an AFDC-FG payment, which is usually smaller, if they become legal guardians.
14.1.5 Non-Related Legal Guardians

Children living with Non-Related Legal Guardians (NRLGs) lose Federal eligibility when the dependency order is dismissed. If otherwise eligible, payment can be made from the State AFDC-FC program. An Aid Code change must be done.

When dependency is dismissed and NRLG loses federal eligibility but benefits are to continue under the State AFDC-FC program, this is considered an intra-program status change. In order to remain eligible for benefits State AFDC-FC program requirements must be met.

14.1.6 Non-Related Legal Guardians Without Dependency

Non-related legal guardians, where the child is not a dependent of the court, have the same interview requirements as parents, and a SAWS 2 is required at initial application.

Non dependent children turning 18 years old are treated the same as dependent children. As long as all the other requirements are met, non dependent 18 year old foster care children may continue to receive FC based on their high school graduation date.

14.1.7 Service

Whenever dependency continues to be in effect, ALL services requirements must be met by the legal guardian including the non-related legal guardian.

14.1.8 Unaccompanied Minors (UM)

Unaccompanied minors (UM) lose UM status when the caretaker is a legal guardian.

14.2 State AFDC-FC

A State AFDC-FC program payment may only be made 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.
Note:
State law does not recognize “guardianship” decrees issued outside California.

14.2.1 Dependency Requirement

A child does not need to be a dependent of the court to receive State AFDC-FC.

If dependency is maintained, the legal authority for placement is the dependency, and case eligibility must be built around the dependency not the guardianship.

14.2.2 Temporary Guardianship

The *Timmons v. McMahon* court decision ruled that “All non-dependent children living with non-related legal guardians, regardless of whether the guardianship order is temporary or permanent, who meet all eligibility requirements for the State AFDC-FC Program may receive funding under this program.”

14.2.3 Service Requirement

Non-related legal guardians MUST cooperate with the Social Worker, to the extent required, or State AFDC-FC shall not be paid.

14.2.4 Intakes

Before eligibility can be cleared and payment made the Non-related Legal Guardian, of a non dependent child, must clear eligibility with BOTH the EW and the SW. When the service requirements have been met the SW will provide the EW with a completed (SR 2400), “Foster Child's Data Record” along with a copy of the “Placement Agreement”, (SOC 156).

[Refer to “Payment for Legal Guardians,” page 14-4 for procedures for payment to a Temporary Legal Guardian.]

A non-related legal guardian, with no dependency orders, has the same interview and cooperation requirements as a parent. Intake packets include the following forms:

- SC 41
- SAWS 1
- SAWS 2A
- CA 2.1's (CA2.1Q's)
- PUB 13
Legal Guardian Placements

- JA 2
- CHDP Brochure
- Request for S.S. Card (SC 196 or MC 194)
- Request for Birth/Income/Resource Verification

### 14.2.5 Payment for Legal Guardians

To comply with the *Timmons v. McMahon* court decision, Temporary Legal Guardians are processed for payment in the same expedited manner that we process payment for Legal Guardians who contact the agency to request a Foster Care payment. The process is as follows:

<table>
<thead>
<tr>
<th>STAGE</th>
<th>WHO</th>
<th>ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Contact</td>
<td>The initial contact person, Intake Supervisor, Information Supervisor or Receptionist, will refer the Legal Guardian (LG) to the Control Clerk at (408) 271-7432.</td>
</tr>
<tr>
<td>2.</td>
<td>Control Clerk</td>
<td>Collects all of the information needed to complete the SC 41 and refer the LG to the designated Foster Care Intake EW.</td>
</tr>
</tbody>
</table>
| 3.    | Intake EW | Coordinates the FC intake/Social Work interviews and set up the appointment with the LG.  
  
  **NOTE:** The LG must be advised to bring the Court Ordered Temporary Legal Guardianship paper to the intake interview. |
| 4.    | Control Clerk | Sends:  
  - The intake packet to the LG with the appointment letter and instructions.  
  - The SC 41 to the PAC MEDS clerk to be ID'd. |
| 5.    | Intake EW | Completes the interview to clear eligibility for the Foster Care payment and connects the LG with the designated Social Worker. |
| 6.    | Social Worker | Receives a copy of the Legal Guardianship court order  
  
  Interviews the LG  
  
  Completes an initial assessment  
  
  Sets up a tentative service plan, and issues an SR 2400 for the Foster Care payment to the LG based on the tentative case plan. |
| 7.    | Intake EW | Receives the SR 2400 authorizing the FC payment to the LG based on the tentative service plan  
  
  If all eligibility factors have been met, establishes the FC payment to the LG from the date on the SAWS 1 or the date of the Court Ordered Temporary Legal Guardianship, if that date is later. |
### Legal Guardian Placements

#### 14.2.6 RV's

The SW CANNOT complete the FC 2 for the legal guardian of a non dependent child. The legal guardian is required to cooperate. If the legal guardian fails to complete the RV their Foster Care must be discontinued.

The following chart clarifies potential program eligibility and RV cooperation requirements for Legal Guardians:

<table>
<thead>
<tr>
<th>STAGE</th>
<th>WHO</th>
<th>ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td>Social Worker</td>
<td>After the completion of the assessment process, criminal check, etc., if there is any change to the status of the child; the SW must issue a new SR 2400 to the EW to discontinue the Foster Care payment to the LG.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Potentially Eligible for FED AFDC-FC</th>
<th>Potentially Eligible for State AFDC-FC</th>
<th>Potentially Eligible for AFDC-FG</th>
<th>Legal Guardian Must Cooperate at RV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependent with Legal Guardian RELATIVE</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
<td>AFDC-FC - NO AFDC-FG - YES</td>
</tr>
<tr>
<td>Dependent with Legal Guardian NON RELATIVE</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Non Dependent with Legal Guardian RELATIVE</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Non Dependent with Legal Guardian NON RELATIVE</td>
<td>NO</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
</tbody>
</table>