

Permanency & Concurrent Planning

Effective November 1, 2007
Revised March 1, 2009
Revised August 1, 2010
Revised October 1, 2010
Revised October 3, 2011
Revised December 1, 2011
Revised May 03, 2013
Revised January 21, 2015
Revised September 28, 2015
Revised June 27, 2016
Revised March 16, 2017
Revised January 31, 2018
Revised April 02, 2018
Revised August 5, 2019

TABLE OF CONTENTS

III. PERMANENCY/CONCURRENT PLANNING

| | | |
|----|--|----|
| A. | Permanency for Children Defined..... | 1 |
| B. | Concurrent Planning for Children Defined..... | 2 |
| C. | Juvenile Courts and Permanency Planning..... | 2 |
| | 1. Court Orders..... | 2 |
| | 2. Court Reports..... | 2 |
| | 3. Permanency Hearings..... | 3 |
| | 4. Judicial Review..... | 4 |
| | 5. Administrative Review..... | 5 |
| D. | Reasonable Efforts..... | 6 |
| | 1. Requirements to Make Reasonable Efforts..... | 7 |
| | 2. When Reasonable Efforts Are Not Required..... | 7 |
| | a. Involuntary Termination of Parental Rights of a Sibling..... | 7 |
| | b. Parents Involvement in Criminal Activity..... | 8 |
| | c. Aggravated Circumstances..... | 8 |
| E. | Termination of Parental Rights in Out-of-Home Care..... | 11 |
| | 1. Case Situations Requiring Termination of Parental Rights..... | 11 |
| | 2. Exceptions to Termination of Parental Rights Requirements..... | 11 |
| | a. Relative Placement..... | 11 |
| | b. Services Not Provided..... | 12 |
| | c. Compelling Reasons..... | 12 |
| F. | Permanency/Concurrent Goals..... | 13 |
| | 1. Return to Parent..... | 14 |
| | 2. Permanent Relative Placement with Transfer of Custody To The Relative..... | 14 |
| | 3. Permanent Relative Placement with DHR Retaining Custody..... | 15 |
| | 4. Adoption by Current Foster Parent..... | 16 |
| | 5. Adoption with No Identified Resource..... | 17 |
| | 6. Kinship Guardianship..... | 18 |
| | 7. Another Planned Permanent Living Arrangement, Court Approved..... | 18 |
| | 8. Adult Custodial Care..... | 20 |
| G. | Relative Resources..... | 20 |

| | | |
|-----|---|----|
| H. | Kinship Guardianship Program Requirements..... | 22 |
| 1. | Purposes of Kinship Guardianship..... | 22 |
| 2. | Legal Bases..... | 23 |
| 3. | Children Eligible to Receive Kinship Guardianship Subsidy Payments..... | 23 |
| 4. | Individualized Service Plan Requirements for Kinship Guardianship..... | 25 |
| 5. | Requirements for a Relative to Become a Kinship Guardian..... | 25 |
| 6. | Rights and Limitations of a Kinship Guardian..... | 26 |
| 7. | Requirements for a Juvenile Court to Appoint a Kinship Guardian..... | 27 |
| 8. | Kinship Guardianship Agreements..... | 28 |
| 9. | Successor Guardianship..... | 29 |
| 10. | Siblings of Children Eligible for Kinship Guardianship Subsidy..... | 33 |
| 11. | Medicaid and Kinship Guardianship..... | 33 |
| 12. | Payment of Kinship Guardianship Subsidies..... | 33 |
| 13. | Non-Recurring Expenses for Kinship Guardianship..... | 34 |
| 14. | Continuation of Kinship Guardianship Subsidy Payments..... | 35 |
| 15. | Termination of Kinship Guardianship Subsidy Payments..... | 35 |
| 16. | Re-evaluation of Kinship Guardianship..... | 36 |
| 17. | Revocation of Kinship Guardianship..... | 36 |
| I. | Federal Parent Locator Service (FPLS)..... | 36 |
| J. | The Individualized Service Planning Process for Out-of-home Care..... | 37 |
| 1. | Assessment..... | 38 |
| 2. | Individualized Service Plans..... | 39 |

III. PERMANENCY/CONCURRENT PLANNING

A child in out-of-home care must have permanency and concurrent planning goals identified by the Individualized Service Plan (ISP) team members and the juvenile court. The criteria are outlined in the permanency and concurrent planning sections.

A. Permanency for Children Defined

Safe and permanent homes are the desired outcomes for children in our child welfare system, and whenever possible, permanency should be achieved through children living in their own homes. There are times when children's safety and well-being require out-of-home placement, and for some of these children, a permanent return home is not feasible. Some families, despite support and services, are unable to create a safe environment for their children and other appropriate permanent arrangements must be located and finalized. In these situations, federal and state law, as well as best child welfare practice, require that another legal, permanent home be found for the children.

Children need a sense of belonging and connections to a family, and there is no adequate substitute for stable, permanent family ties. "Permanency" in child welfare refers to family and community connections that contribute to children's physical, social, and emotional development, and overall well-being. Permanency can be characterized by the following:

- membership in a family that is intended to endure over a lifetime;
- continuity of the relationship between children and their family;
- continuity of the relationship between children and their community through peer and adult relationships, and/or membership or participation in community groups; (e.g., educational, religious, cultural, recreational); and
- a living arrangement that encourages and promotes children's sense of well-being.

"Permanency planning" is a case planning process for children in the child welfare system. It includes taking systematic, prompt, purposeful, and decisive action to maintain children in a permanent and stable living arrangement with their own family, or when that is not possible, to secure a permanent living arrangement through placement with relatives, an adoptive family, or another planned permanent living arrangement.

Permanency planning shall be implemented through the ISP process as described in *Individualized Service Plan Policy*. Decisions impacting children's permanency status are made in a series of steps involving the children's/family's ISP team members and the juvenile court. The team approach assures input from a diverse group of people who are knowledgeable and concerned about the children and their family, and these individuals must consider all possible permanency options in order to make the best plan for the children.

This policy section provides child welfare staff with guidelines and procedures that are designed for timely achievement of permanency when children are placed in out-of-home care.

B. Concurrent Planning for Children Defined

Concurrent planning is working on the most desirable permanency goal while, at the same time, establishing and pursuing an alternate permanency goal. It is a case management method that emphasizes candor, goal-setting, completion of selected activities within specified time limits in work with children and families in order to facilitate a more timely achievement of permanence and stability.

Child welfare staff are strongly encouraged to utilize concurrent planning to facilitate a more timely achievement of permanency and stability in the event the original permanency goal cannot be achieved. Rather than pursuing one permanency goal exclusively until efforts are exhausted, the ISP Team should determine the "next best" permanency goal and a timeframe for achieving that goal in the event the primary goal cannot be achieved. Staff should actively encourage parents to assist with developing the concurrent planning goal, and parents should be made fully aware that both goals are being actively pursued.

Concurrent planning goals are the same as the permanency goals, and they are entered on FACTS. When a concurrent plan is established, the plan and the date plan is established must be entered on FACTS.

C. Juvenile Courts and Permanency Planning

1. Court Orders

Child welfare staff must abide by all court orders, including those issued in courts other than juvenile courts. This includes orders that are in existence when children and/or their families begin receiving child welfare services (e.g., orders resulting from a divorce) and orders regarding the provision of additional services and/or imposing or lifting restrictions subsequent to the development of an ISP.

Child welfare staff must contact local counsel to have a court order lifted or modified if it substantially inhibits attainment of a child's permanency goal.

If the court refuses to modify or lift the order, the child welfare supervisor must notify the Family Services Director to obtain concurrence that the order meets one or both of the criteria referenced above. If so, State Department of Human Resources (SDHR), Legal Office will be contacted to determine what action, if any, needs to be pursued.

2. Court Reports

Child welfare staff are required to prepare and submit court reports (unless otherwise directed by the local juvenile court) when child welfare staff file a dependency complaint and petition for legal custody or placement of children in foster care (e.g., adjudicatory hearings); at six (6) month judicial reviews; and prior to all permanency hearings. These reports **must** contain accurate and legally defensible information since the judge may incorporate the court report into the court order. Child welfare staff must prepare a thorough court report that includes information that the hearing and court order are required to address. The report must contain detailed documentation that supports child welfare's reasonable efforts requirements. This includes, at a minimum, the following information:

A summary of the reason for child welfare involvement [i.e., how, why, and when the child(ren) and family became involved with the Department of Human Resources (DHR)];

- The family conditions and circumstances which must be addressed for the child(ren) to have a safe, stable, and permanent living situation;
- The child(ren)'s permanency goal and the concurrent planning goal in the event the primary goal cannot be achieved;
- The child(ren)'s current out-of-home placement and any placement changes that have occurred since the last permanency hearing;
- The parents' and children's current status related to their progress, or lack thereof, towards addressing the needs identified in the ISP and achieving the permanency goal;
- The array of services and other steps that have been provided to address the identified needs and achieve the established permanency and concurrent planning goals; and
- Child welfare's recommendation regarding future steps including any significant needs that remain to be addressed and the timeframe for addressing those needs.

Having court reports in an automated folder can assist workers to quickly make needed changes in court reports. Court reports may be saved in an automated folder by case name and date. They can be copied and renamed for updating. Automated files should be transferred if cases are transferred.

Note: Psychological evaluations and treatment progress notes for children and their family members must **not** be attached to court reports as supporting documentation. Health Insurance Portability Accountability Act (HIPAA) prohibits sharing such reports. If this is an issue for your local juvenile court, a child welfare supervisor must contact SDHR Legal Office for guidance.

3. Permanency Hearings

Permanency hearings are held to determine whether child welfare staff has made reasonable efforts to achieve a child's permanency goal and reasonable efforts must be addressed in the court order resulting from the hearing. Permanency hearings determine when a child can and will be:

- returned to and safely maintained at home; or
- placed with a relative and referred for a transfer of legal custody; or
- placed with a relative with DHR retaining custody; or
- placed for adoption with foster parents or unidentified resource; or
- placed in another planned permanent living arrangement; or
- placed in a kinship guardianship arrangement; or
- placed for adult custodial care.

To qualify as a permanency hearing, the hearing must be open to the age-appropriate child, the child's parents, legal custodians, relative caregivers, legal guardians, the child's foster parents, and any pre-adoptive parents. Alabama law does not currently provide for a permanency hearing to be conducted by an administrative body; therefore a permanency hearing must be conducted by a juvenile court. If juvenile court referees conduct permanency hearings, their recommendations must be ratified (i.e., signed) by the original signature of the juvenile court judge [Code of Alabama 1975, § 12-15-106(g)].

Foster parents, pre-adoptive parents, and relatives providing care for children must be provided written notification of juvenile court hearings (Code of Alabama 1975, § 12-15-307). County child welfare staff is responsible for providing this notification or ensuring that it is provided by the juvenile court staff. Additionally, foster parents, pre-adoptive parents or relatives providing care for a child have a right to be heard in any proceeding to be held with respect to the child during the time the child is in the care of the specific caregiver. Notice of right to be heard does not make the caregiver a party to the proceeding.

In all cases where reasonable efforts are required, the initial permanency hearing must be held within twelve (12) months from the date a child is considered to have entered care. In cases where the juvenile court has determined that reasonable efforts are not required to be made, the initial permanency hearing must be held within thirty (30) days of that determination. [Social Security Act §471(a)(15)(E)(i); §475 (5)(C); 42 U. S. C. 675; Code of Alabama 1975 §12-15-312(e), 12-15-315]

Subsequent permanency hearings must be held no less frequently than every twelve (12) months thereafter to assure that established timeframes for achieving permanency are being met. Permanency hearings are also required for children in DHR custody who reside in the home with their parents. [Social Security Act §475 (5)(C); 42 U. S. C. 675; Code of Alabama 1975 §12-15-315]

4. Judicial Reviews

Judicial reviews are completed at six-month intervals between permanency hearings and may fall at the same interval as the six-month ISP. Judicial reviews entail the county department submitting a court report that will assist the juvenile court in determining:

- The continuing necessity for and appropriateness of the child's placement;
- The extent to which all parties have complied with the ISP and achieved the goals described in the plan;
- Progress made toward alleviating or mitigating the circumstances necessitating placement;
- A target date for achieving a permanent plan for the child.

5. Administrative Reviews

Some counties will not have a judicial review process through the juvenile court described above. If the county department does not have a judicial review process, an administrative review process must be set up that incorporates review of the child's ISP at six-month intervals between permanency hearings. An ISP meeting may serve as an administrative review if it meets the following administrative review guidelines. (Refer to *Individualized Service Plans Policy*, Section II, C (7) (c) for discussion on ISPs serving as administrative reviews).

a. Composition of Review Panel

The Administrative Review Panel will differ from one case to another.

While some of the panel members may also be ISP team members, the panel consists of others outside the ISP team and serves a different purpose.

- (1) Professional Staff – The administrative review panel should consist of professional staff involved in the case. Those considered appropriate are: DHR child welfare worker for the child and parents; supervisor for the case; probation officer of the child in the case; legal guardian; staff of the child care facility where the child is in placement; and staff from other agencies such as Mental Health. When appropriate, foster parents or homemakers may be included. To protect confidentiality of information, the County DHR must have a written agreement with panel participants, other than staff of the County DHR, juvenile court or group child care facility where the child is residing. The parents should be informed that panel participants will receive a written report on the outcome of the review.

There must be at least one person on the panel, in addition to the above named professional staff, who is not in the direct line of supervision or in the delivery of services to the child or parents. This person may be another service supervisor in the County DHR but not the Director, Assistant Director, program supervisor responsible for foster care services or other persons who provide services to the child such a mental health workers, probation officers, and foster parents. If the County DHR has difficulty in identifying someone to serve on the panel who is not a part of the direct line of supervision and not involved in the delivery of services to the child or parents, contact the Office of Permanency for consultation.

- (2) Parent and Child – The review shall be open to participation by the parents. The child may be included in the review hearing depending upon the child's level of understanding.

b. Written Notice to Parents

The County DHR must notify the parents in writing of the date, time, and location of the review at least 2 weeks prior to the review hearing. The

notification must advise the parents that they and the child have the right to be accompanied by a representative of their choice.

c. Format and Consent of Review

The DHR child welfare worker for the case is responsible for convening the panel and explaining to participants the purpose of the review. The review shall include:

- (1) A determination of the continuing necessity for and appropriateness of the child's placement;
- (2) A discussion of the extent to which all parties have complied with the ISP and achieved the goals described in the plan;
- (3) A summary of progress toward alleviating or mitigating the circumstances necessitating placement;
- (4) A target date for achieving a permanent plan for the child.

The parents should have the opportunity to state their perception of the problems/conditions which led to the child's removal; participate in formulating the treatment plan by providing input regarding the child's needs; and establish goals for themselves.

During the administrative review, progress should be evaluated to ensure that necessary services are being provided to the child and natural family, and a treatment plan, including visitation, should be formulated with accompanying time frame.

d. Reporting

After the review is completed, the DHR child welfare worker is responsible for preparing a written report to be distributed to panel participants giving the panel's conclusions and recommendations. If the parents are unwilling or unable to participate in the review proceedings, they are to be informed that the review was held, and advised of the contents of the discussion and the treatment plan developed. In addition, they are to be provided with a copy of the written report and advised of the time of the next review.

D. Reasonable Efforts

Prior to placement of a child in out-of-home care, DHR child welfare staff must make reasonable efforts to prevent or eliminate the need for the child's removal from home. Children's health and safety shall be the primary concerns when reasonable efforts determinations are made by both child welfare staff and the juvenile court. DHR child welfare workers' focus is on whether their efforts have been reasonable in light of the children's health and safety needs.

Once children have been placed in out-of-home care, child welfare staff must make reasonable efforts for the children to return home unless a juvenile court has determined that reasonable efforts are not required. **Detailed documentation must be maintained of reasonable efforts in each child's/family's case record, in all ISPs, and in all court reports.** The juvenile court must issue judicial findings related to reasonable efforts requirements and juvenile court orders must address whether reasonable efforts were

made. Local DHR legal counsel can assist with developing court order language that will meet federal funding requirements.

1. Requirements To Make Reasonable Efforts

DHR child welfare staff must make reasonable efforts to achieve a child's permanency goal by:

- preserving families while maintaining the children's health and safety, and preventing or eliminating the need to remove children from their home;
- providing for the safe and proper care of children in out-of-home placements;
- reunifying children with their family through the provision of services that will facilitate the children's safe return home;
- placing children in a permanent home or living arrangement when they cannot be safely reunified with their family in a timely manner.

Department child welfare staff is responsible for providing children and families with "time limited family reunification services" that include a comprehensive array of services that assure reasonable efforts have been made to achieve the child's permanency goal within specified timeframes. There are two permanency goals, reunification and adoption, that have federally established timeframes for achieving the permanency goal.

- If the permanency goal for the child is reunification, the timeframe is, in most situations, within 12 months from the date the child is considered to have entered care and consistent with the initial permanency hearing. There are recognized situations when reunification cannot occur within 12 months but it is not appropriate to abandon it as a permanency plan at the permanency hearing. It is acceptable to extend reunification efforts past the permanency hearing (past 12 months) if the parent(s) has been diligently working toward reunification and the county department and the court expect that reunification can occur within a time frame that is consistent with the child's developmental needs. [Refer to Section E (2)(c) for a discussion of "substantial progress" related to possibly continuing time limited reunification services.] Reunification services can only be extended during the 15 month period that begins on the date that the child is considered to have entered foster care. [Federal Register: January 25, 2000(Volume 65, Number 16); Social Security Act §431(a)(7);and 42 U. S. C. 629a]
- If the permanency goal is adoption, either by the current foster parent or a resource not yet identified, the federally established time frame is twenty-four (24) months from the date the child is considered to have entered care.

At each federal Child and Family Services Review the length of time to achieve the permanency plan of these two timeframes (12 months for reunification and 24 months for adoption) is reviewed for compliance. Non-compliance in either of

these two timeframes may result in penalties. The ISP team determines the timeframe for achieving all other permanency goals.

2. When Reasonable Efforts Are Not Required

When child welfare staff and the ISP team obtain information that falls into one of the situations where reasonable efforts are not required and the assessment indicates the children cannot safely remain at home or be safely returned home, the information shall be presented to the juvenile court for a judicial determination that reasonable efforts are not required. The juvenile court **may** excuse child welfare staff from making reasonable efforts to preserve or reunify families when the team determined that a child cannot safely remain at home or be safely returned home based on evidence that any of the situations described below exist.

a. Involuntary Termination Of Parental Rights of a Sibling

Reasonable efforts to preserve or reunify families are not required by child welfare staff when a juvenile court determines that a child's sibling has had parental rights involuntarily terminated.

b. Parents Involvement In Criminal Activity

Reasonable efforts to preserve or reunify families are not required by Department child welfare staff when a juvenile court determines that a child's parent has:

- committed murder or manslaughter of another child or murder or manslaughter of the other parent of the child [Code of Alabama 1975, §12-15-312 (c) (2)]; or
- been convicted of rape in the first degree, sodomy in the first degree or incest. [Code of Alabama 1975 § 12-15-312 (3)].
- aided or abetted, attempted, conspired, or solicited to commit murder or manslaughter of another child or of the other parent of the child [Code of Alabama 1975, §12-15-312 (c) (4)]; or
- committed a felony assault which resulted in the serious bodily injury to the child or another child or to the other parent of the child [Code of Alabama 1975, §12-15-312 (c) (5)].

The term "serious bodily injury" means bodily injury which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

When any of the situations described above exists, Department child welfare staff **must** file a termination of parental rights (TPR) petition **or** join in a TPR petition filed by another party unless a relevant exception exists. Refer to Exceptions to Termination of Parental Rights Requirements for additional information.

c. Aggravated Circumstances

Reasonable efforts to preserve or reunify families prior to placement of the child in foster care are not required by Department child welfare staff when a juvenile court determines that a child's parent has subjected the child or a sibling of the child to an "aggravated circumstance" and the risk of child abuse or neglect is too great for the child to remain at home or to be safely returned home. Aggravated circumstances include, but are not limited to, aggravated stalking, abandonment, torture or chronic abuse. [Code of Alabama §12-15-312 (c) (1)].

Aggravated circumstances are further clarified to include the following.

- i. Parent allows a child to use alcohol or illegal drugs which cause abuse, neglect or substantial risk of harm to the child;
- ii. A parent's substance misuse or abuse interferes with the ability to keep the child safe. This could include when a parent refuses to participate in or complete treatment, or treatment has been unsuccessful. The case record must contain documentation of the Department's child welfare staff's efforts to involve the parent in treatment and the parent's response.

Written documentation from a substance abuse professional regarding the parent's participation in treatment (e.g., attendance, progress, successful completion) is required if substance abuse will be presented to the juvenile court as an aggravated circumstance for child welfare staff to be excused from making reasonable efforts. When documentation from that professional cannot be obtained due to Health Insurance Portability and Accountability Act (HIPAA) restrictions or other confidentiality laws, child welfare staff shall seek a court order allowing the professional to provide the information. County Departments should have their local attorney contact SDHR Legal for assistance with preparing the petition/motion.

Child welfare staff must, based on their case record documentation and information from the substance abuse professional, determine whether reasonable efforts should be pursued, and if not, seek the juvenile court's approval of this decision. The juvenile court is ultimately responsible for issuing the determination regarding whether child welfare staff may be excused from making reasonable efforts.

A parent has demonstrated extreme disinterest in the child by:

- not complying with the steps outlined in the ISP over a period of (six) 6 months **and** documentation exists that parental ability to actively participate in the ISP process

has been assessed and confirmed, and services to support the permanency goals of “remain with parent” or “return to parent” have been provided; or

- repeatedly leaving the child with someone unwilling or incapable of providing care **and** not returning as promised.
- iv. An infant or a child has been abandoned, as defined in the Code of Alabama 1975, §12-15-301 (1); the infant’s/child’s identity is unknown; and the parent is unknown or cannot be located after a diligent search.
- v. A parent has an identified emotional or mental condition, and there is clearly no treatment that can improve or strengthen the parent’s condition enough to allow the child to safely remain or return home. This may be partially indicated by prior substantial and prolonged unsuccessful mental health treatment. Documentation from the treating physician or a qualified mental health professional must exist in support of this aggravated circumstance. If the treating physician refuses or is reluctant to provide the information due to HIPAA regulations, child welfare staff must seek a court order that will allow the physician to provide the information. In these situations, the HIPAA Privacy Authorization should not be obtained from the parent as it is questionable that the parent can fully understand its purpose. County Departments should have their local attorney contact SDHR Legal for assistance with preparing the petition/motion.
- vi. The parent is incarcerated and the child is deprived of a safe, stable and permanent parent-child relationship. Factors to consider are the child’s age; the timeframe for incarceration; the quality and nature of the parent-child relationship; and the realistic, potential frequency of visitation during the incarceration. [Code of Alabama 1975 §12-15-312 (c) (1) (a) (b) (c) (d) (e) (f)].
- vii. A parent has committed abusive acts against the child or a sibling to the child, **and** the risk of maltreatment is too high for the child to safely remain or be returned home. The following factors (which are not an all-inclusive listing) may be considered as a basis for this determination.
- the child has received a serious or life-threatening injury or is at risk of serious harm (e.g., prior death of a sibling; unexplained broken bones; severe failure to thrive; infant unattended for prolonged periods of time); or
 - a parent has a diagnosed profound character disorder which has resulted in the intentional infliction of extreme pain on the child for that parent’s

personal relief or self-gratification. The perverse or compulsive nature of the act may include injuries resulting from repeated sexual abuse, burns, hair-pulling, or factitious disorder by proxy (Munchausen's Syndrome).

- viii. A parent has previously abused and/or neglected the child and/or other siblings; Department child welfare staff has provided substantial, appropriate services to prevent or eliminate the needs preventing the children from safely remaining at or returning home; **and** the parent continues to display the same or similar abusive and/or neglectful behavior. The abuse and/or neglect, the identified needs, the services provided to address the needs, and the parent's behaviors must be documented in the case record and addressed in the ISP.

When aggravated circumstances exists, child welfare staff must petition/motion the juvenile court for a ruling that reasonable efforts are not required to be made. If this situation exists **OR** the juvenile court has already issued a judicial finding that reasonable efforts are not required, the Department must make reasonable efforts to:

- Place children permanently with a relative; or place for adoption with the current foster parent; or place for adoption with a resource not yet identified; or arrange for a kinship guardianship; or place in another permanent home / living arrangement
- Complete whatever steps are necessary to finalize the permanent placement and achieve the permanency goal.

If the juvenile court has issued a judicial finding that reasonable efforts are not required to be made, a permanency hearing must be held within thirty (30) days from the date of the juvenile court's finding, and a TPR petition must be filed within sixty (60) days of the juvenile court's finding per Code of Alabama 1975, §12-15-312 (e). Refer to section on permanency hearings for further information.

E. Termination of Parental Rights in Out-of-Home Care

1. Case Situations Requiring Termination of Parental Rights (TPR)

Federal regulations and the Code of Alabama 1975, §12-15-317(1)(a)(b)(c)(d)(e)(f) require Department child welfare staff to **file** a TPR petition or **join** in a TPR petition filed by another party, unless a relevant exception exists, when any of the following situations occur:

- a child has been in foster care in the custody of the Department cumulative months of the most recent 22 months and there is no documented compelling reason; or

- a child has been abandoned [Code of Alabama 1975, §12-15-318 (c)(1) and §12-15-319 (a)(1)]; abandonment is presumed for 4 months, but may be factually established earlier; or
- if a parent has, preceding the filing of the petition:
 - i. committed murder or manslaughter of another one of their children; or
 - ii. aided or abetted, attempted, conspired, or solicited to commit murder or manslaughter of one of their other children; or
 - iii. committed a felony assault or abuse which resulted in serious bodily injury to the child; one of their other children; or the other parent of the child.

The term “serious bodily injury” means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. [Code of Alabama 1975 §12-15-319 (a) (5) c]
 - iv. been convicted of rape in the first degree, sodomy in the first degree or incest. [Code of Alabama 1975 §12-15-319(b)].

Note: Refer to Appendix for a discussion on the use of TPR as a Relevant Key Indicator/Data threshold.

2. Exceptions to Termination of Parental Rights Filing Requirements

The purpose of TPR is to provide an avenue for a child’s permanency, and TPR should be pursued when there is a reasonable expectation that permanency can be achieved. Department child welfare staff must make a professional judgment as to whether TPR is **needed** to achieve permanency, and that judgment must be supported by detailed documentation. Any of the following situations may be used as an exception to the requirements for terminating parental rights. (Code of Alabama 1975 §12-15-317(2) a. b. and c.)

a. Relative Placement

The Department is not required to file or join in a TPR petition when children are placed with a relative and that relative has agreed, formally or informally, to provide a permanent home for the child. (See “G. Relative Resources” for definition of a relative). The case record must contain documentation supporting this exception, and the plan **must** be supported by a court order.

b. Services Not Provided

The Department is not required to file or join in a TPR petition if reasonable efforts to return a child home are required and **Department child welfare staff have not provided services** deemed necessary for the child’s safe

return home within the timeframes specified in the ISP. The ISP and case record must establish and contain documentation of the following:

- “return to parent” as the permanency goal;
- a specific listing of the needed services which have not been provided;
- the reasons the needed services have not been provided;
- the steps that will be taken to obtain the necessary services.

Note: Use of this exception requires detailed documentation which identifies the steps, timeframes, and personnel to deliver the necessary services.

c. **Compelling Reasons**

The Department is not required to file or join in a TPR petition if child welfare staff have documented in the ISP (which must be available for juvenile court review) that there is a “compelling reason” that filing or joining in a TPR petition would not be in the child’s best interests.

There are no statutory definitions for compelling reasons. The following situations **may** qualify as realistic compelling reasons not to file or join in a TPR petition. Evidence justifying the compelling reason and that TPR is not in the child’s best interests must be factually documented in the case record and approved by the juvenile court. Compelling reasons include, but are not limited to, the following.

- A child is age 14 years or older, and there is documentation to support that adoption has been thoroughly discussed with the child, and the child does not desire adoption and refuses to consent;
- A child is married, separated or divorced;
- A child is a minor and is pregnant;
- A child has a relative resource identified as a permanent home, the home evaluation is either approved or pending completion (includes Interstate Compact for the Placement of Children cases), and adoption has been explored, but is not feasible;
- A child is a minor and has a diagnosis of a mental, physical or emotional illness for which treatment is ongoing and a physician or psychiatrist has documented that TPR would not be in the child’s best interests;
- A child is attached to birth family, and if that attachment is broken, it would cause irreparable damage to the child. There must be documentation from a professional who is working with the child that supports this compelling reason;

- A child is institutionalized with a permanency goal of adult custodial care;
- A child, who is a member of a sibling group, has unique needs that can only be met in a placement apart from the siblings, and there is attachment to those siblings that, if broken, would be detrimental to the child; a treatment therapist must provide documentation that supports this compelling reason;
- A child's permanency goal is "Another Planned Permanent Living Arrangement, Court Approved;"
- A child and family members are making "substantial progress" toward and appropriately established permanency goal. When this compelling reason is being considered, a child welfare supervisor must contact SDHR Family Services, Office of Permanency for consultation. In most cases, this compelling reason is directly connected to reunification, and it may only be established during the first 12 months following the date the child is considered to have entered care. [42 U. S. C. 629a]

Factors to consider when determining substantial progress include:

- i. Assessment of effectiveness and "fit" of current services; have the "right" services been provided;
- ii. parental understanding and acknowledgment of the parental behavior which places the child's safety and health at risk;
- iii. parental understanding and acknowledgment that their behavior must change;
- iv. successful completion of ISP steps to address identified needs; and
- v. stable parental performance to remove or eliminate the needs placing the child's safety and health at risk.

F. Permanency/Concurrent Goals

A "permanency goal" is the desired outcome or permanent plan for a child that the ISP is designed to achieve. Permanency goals shall, whenever possible, be selected in partnership with age-appropriate children and their family during the ISP process. It is agency responsibility to begin working at the very outset toward the most suitable permanent plan for the child, involving the natural parents and relatives, the child and the foster family or provider as appropriate. Out-of-home care is designed to be temporary, and the alternatives of return home, relative placement, or adoption, are to be aggressively pursued by the worker so that no child is left in foster care without a suitable permanent plan. In cases of institutional placement, it is the Department's responsibility to work cooperatively with the appropriate institutional staff focusing on the needs of the child and his family.

Permanency is for all children, including youth age fourteen (14) years and older. Youth (age 14 years and older) should take an active role in determining their permanency goal and in the planning process for their future. For older children, permanency is not only concerned with placement, but with relationships that will sustain them into and throughout adulthood. Therefore, when establishing permanency goals for youth, Department child welfare staff must consider how returning youth to family or placing them with relatives, connecting them to the community through community organizations, or placing them for adoption will provide youth with relationships and positive permanent connections that are intended to last a lifetime.

Department child welfare staff must make every effort to achieve permanency and finalize a child's permanent placement within the timeframe described in each permanency goal's description. For all permanency goals (other than adoption), Department child welfare staff must continue involvement with children following their placement in the intended permanent home to ensure that they are in a safe and stable living arrangement, and that they have a **permanent** home. All children shall receive "post foster care" supervision services for a minimum of three (3) months after the date they move into their anticipated permanent living arrangement. Post foster care supervision begins at the time the child is physically placed in their planned permanent placement. The purpose of this supervision is to monitor and evaluate the living situation, and to provide supports and services to facilitate successful achievement of a permanent living arrangement. Refer to *Adoption Policies and Procedures*, DHR Placements, Section IV, for post adoptive services requirements.

Permanency goals for children in Out-of-Home Care are identified below. A description of each permanency goal is given and a statement of when that goal is considered to be achieved; the timeframe for achieving the goal and any special requirements associated with the goal's use. The permanency goals are listed according to the order in which they are to be considered for children in out of home care. The established goal is entered in FACTS and changed in FACTS if the goal is changed by the ISP team.

1. Return to Parent (Reunification)

When reunification is the established permanency goal, all identified needs, services and activities to achieve the goal must be explored and services offered to the child and family to resolve the issues that brought the child into care. In accordance with federal regulations, reunification services are time limited. If the permanency goal for the child is reunification, the timeframe is, in most situations, within 12 months from the date the child is considered to have entered care and consistent with the initial permanency hearing. There are recognized situations when reunification cannot occur within 12 months but it is not appropriate to abandon reunification as a permanency plan at the permanency hearing. It is acceptable to extend reunification efforts past the permanency hearing (past 12 months) if the parent(s) has been diligently working toward reunification and the county department and the court expect that reunification can occur within a time frame that is consistent with the child's developmental needs. Reunification services can only be extended during the 12 month period that begins on the date that the child is considered to have entered foster care. [Federal Register: January 25, 2000(Volume 65, Number 16); Social

Security Act §431(a) (7); and 42 U. S. C. 629a] When reunification is the permanency plan, and it appears that it cannot be achieved by the time of the 12 month permanency hearing but is realistically attainable within 15 months of the date the child is considered to have entered care, a compelling reason to continue reunification efforts should be presented at the permanency hearing.

All relevant information must be presented to the juvenile court during a case review or permanency hearing to support the plan of return to parent. Permanency is achieved when legal custody is returned to the parent.

2. Permanent Relative Placement with Transfer of Custody to the Relative

This goal is intended to be permanent and self-sustaining. It does not preclude consideration of legalizing the placement through adoption. The custody transfer provides the relative with the authority and responsibility to protect, educate, provide care and control, and make decisions for the child, but it does not require TPR. The relative must be willing to accept custody with the understanding that a home will be provided for the child until adulthood. Written documentation of the relative's long-term commitment and ability to meet the child's needs must be provided to the juvenile court. The timeframe for achieving this permanency goal is set by the ISP team. Permanency is achieved when legal custody is placed with the relative.

3. Permanent Relative Placement with DHR Retaining Custody

This permanency goal includes situations where a relative is willing to care for a child until adulthood, but DHR retains legal custody and financial responsibility for the child. It is not DHR's intent to hold custody of children indefinitely. Therefore, prior to selecting this permanency goal, the permanency goals of return to parent, permanent relative placement with transfer of custody to the relative, and adoption must first be explored by the ISP Team and determined not to be in the child's best interests. Consideration must also be given to transferring legal custody to this relative. The reasons why this relative is unable to be the child's legal custodian must be thoroughly documented, and the juvenile court must make a determination that "Permanent Relative Placement With DHR Retaining Custody" is the best plan for this child due to the long-term commitment and desire of the relative to meet the child's needs.

These situations will involve relatives who may or may not be approved as related foster family homes. Regardless of the situation, all relatives must be thoroughly screened and trained to meet the needs of the children in their home. On-going assessment of the continued appropriateness of this permanency goal is required through ISPs and permanency hearings for as long as DHR retains custody. The timeframe for achieving this permanency goal is set by the ISP team. Permanency is achieved when the juvenile court approves the permanent plan (i.e., permanency goal) and names the relatives as the permanent placement in a written court order.

4. Adoption by Current Foster Parent

It is the responsibility of the Department child welfare worker to discuss with the foster parents their interest in adoption when non-related adoption has been

determined inappropriate. If the foster parents are a couple, both parents' willingness and desire to adopt a specified child must be assessed. The Department child welfare worker should involve the resource worker for the foster parents in making a decision about a specific foster parent adoption. (A county's staffing pattern determines how this is handled). In order for the ISP Team to establish this goal, there must be considerable work performed by the Department child welfare worker to establish whether foster parent adoption is a viable permanency plan for a specific child. Information is gathered and assessed in the areas of a child's attachment to the foster parents; length of time the child has been in the foster home; age of the child in relation to the age of the foster parents; foster parent's health and income; involvement with and/or interference from biological family; ability of the foster parents to meet the child's long-term best interests; contingency plan in the event of a foster parent's death or debilitating illness; and other family members' acceptance of the adoption. Each of these areas is discussed at length in *Adoption Policies and Procedures* DHR Placements section. The information gathered by the Department child welfare worker is presented to the ISP Team to determine if foster parent adoption is a viable plan. It is the ISP Team's responsibility to establish foster parent adoption as the permanency plan.

According to federal regulations, the target date for achieving this permanency goal should not exceed 24 months from the date the child is considered to have entered care. Therefore, this permanency goal should be established as soon as it is known that return to parents or relative placement is not a viable plan. Within three months of establishing this goal, there must be forward movement to achieve the goal. Forward movement can be actions taken by the foster parents or caseworker to begin the finalization process of adoption. It may include actions to approve the foster home as an adoptive home if not already dually approved; retaining of legal advice by foster parents; or resolving of barriers to a foster parent adoption. Permanency is achieved when the judge signs the final decree of adoption.

NOTE: If a child's permanency plan is changing from Foster Parent Adoption to Adoption With No Identified Resource, the Family Services Division Director and Children and Family Services Deputy Commissioner must both sign the approval. The case should be staffed with the Family Services Director before any approval or denial is made.

5. Adoption with No Identified Resource

Recruitment of potential adoptive resources must begin as soon as the permanency goal becomes adoption. The TPR petition may be filed once there has been a judicial finding that reasonable efforts have been made or are not required to be made, or the ISP Team determines that it is in the child's best interests (e.g., aggravated circumstances exist).

According to federal regulations, the target date for achieving this permanency goal should not exceed 24 months from the date the child is considered to have entered care. Permanency is achieved when the judge signs the final decree of adoption.

6. Kinship Guardianship

Effective October 1, 2010, the permanency goal of “kinship guardianship” may be identified by the ISP team as the most appropriate permanency plan for certain eligible children. This permanency goal is limited to children who are eligible to receive either IV-E foster care or non IV-E state foster care maintenance payments and have resided in a fully approved related foster family home for at least six consecutive months. Only after the following case by case determinations have been made on a child, can the permanency goal of kinship guardianship be established: (1) Being returned home or adopted are not appropriate permanency options and not in the best interests of the child; (2) The child demonstrates a strong attachment to the prospective kinship guardian and the kinship guardian has a strong commitment to caring permanently for the child; and, (3) If a child has attained the age of 14, the child must be consulted regarding the kinship guardianship arrangement. All of the criteria must be met and must be documented in the child’s record. Kinship guardianship is a judicially created relationship and would therefore, be achieved at the point that kinship guardianship is awarded by the juvenile court to the relative. The custody status of kinship guardianship substantiates that a child is leaving out-of-home care and entering a kinship guardianship arrangement. Prior to any kinship guardianship payments being initiated, the child must have a “kinship guardianship” custody status documented in FACTS. Both the permanency plan and custody status are documented in FACTS.

Federal and state legislation provides the legal means of obtaining the permanency goal of kinship guardianship for children in foster care. The timeframe for achieving this goal is set by the ISP team. To implement kinship guardianship relationships for children in the Department’s custody, separate programmatic policy can be located in Section H of this policy.

7. Another Planned Permanent Living Arrangement, Court Approved (APPLA)

This permanency goal is restricted to use only with youth ages 16 and older and should only be selected after all other current efforts have been exhausted. There must be clear documentation as to the efforts made to reunify the child with the family, place with relatives or to identify and/or recruit an adoptive resource.

Before considering APPLA for older children with TPR, planned discussions with the child must be held, that include an explanation of adoption in words the child can understand. The youth’s feelings about adoption and the reasons for not wanting the agency to pursue this goal are to be clearly discussed, including the provision of accurate information regarding any misconceptions about adoption that may exist. The record must include detailed narrative as to these discussions around adoption and any recruitment efforts for adoption on behalf of the youth.

For children in treatment or residential/group care, who have consistent visitation or contact with parents or relatives, APPLA is not an appropriate permanency goal as the permanency goal must reflect actual casework activity. If the Department views the family as a possible future resource for a child, the permanency goal should reflect reunification or placement with a relative, even if it appears the goal will not be achieved within normal ASFA time frames.

APPLA may be an appropriate plan for older youth when all other permanency goals have been considered and ruled out by the ISP team. Child welfare staff must examine efforts that have been made to identify and recruit a permanent placement for the youth, including parents, relatives, current and former caregivers, mentors/coaches, teachers, counselors, and/or employers. Involve the youth in identifying potential resources. Department child welfare staff must follow up on all possibilities. Department child welfare staff must also identify significant individuals with whom connections must be established and/or maintained in order for the youth to have a sense of belonging and support as a young adult since the development of relationships with significant individuals and communities is crucial to the young adult's future stability and success. An example of such a case might be an older youth who cannot be reunified with family or adopted, is in a stable foster home placement and the foster family is willing to enter into an APPLA agreement.

When APPLA is selected as the permanent plan, a Planned Permanent Living Arrangement Agreement (DHR-FCS-807) should be completed and name the identified permanent planned resource. There must also be documentation of a compelling reason, and that, due to this reason, no other goal is presently appropriate. For youth in stable foster homes, the court order should include the name of the foster parents. The use of this as a permanent plan also requires juvenile court review and concurrence.

County staff may negotiate a Planned Permanent Living Arrangement Agreement (DHR-FCS-807) with residential facilities only as a last resort after all other possibilities have been explored and when a child has extreme needs that require long term residential care. Prior to a residential facility signing the agreement, there must be an ISP meeting during which this plan is agreed to by the ISP team as the permanent plan for the child and formalized in the ISP. If an agreement is negotiated with a residential facility, it must be signed by the facility administrator or an individual with authority to sign for the facility. The facility administrator or person signing must be told that signing the agreement means that the facility recognizes the child's problems; that the child cannot be re-united with family and there are no other resources; and that the facility will care for the child into adulthood at which time community resources for adults may be needed.

An individual employee of a residential care facility may express an interest in becoming an individual resource for a youth who can be cared for in an approved foster home after leaving the residential facility. The individual must be willing to commit to the youth after the youth leaves the residential placement and into the youth's adulthood. The individual must understand that the commitment is until the youth reaches adulthood even if the individual is no longer an employee of the facility. Since the individual is most likely unrelated to the youth, the individual must be approved as a foster parent/home. Prior to the signing of an agreement by the individual, the child's ISP team must determine that all other possibilities have been explored; must assess and determine that placement with the individual is an appropriate plan; and determine the potential resource's ability to commit to the youth into adulthood.

The caseworker should clearly document discussions with the child and identified resource family about their long-term commitment. The caseworker must also

continue to document on-going assessments and efforts to achieve a legal commitment to another permanent plan while routinely reviewing the plan of APPLA (e.g. through meaningful monthly visits, ISPs and permanency hearings) for as long as DHR retains custody. Thus, the choice of APPLA signifies that the ISP team is continuing its efforts to seek a permanent placement for a child and therefore no timeframe is set for the achievement of this permanency goal.

8. Adult Custodial Care

This permanency goal may be used for physically or mentally disabled children for whom it appears supervision and care will always be needed. "Adult Custodial Care" must include transition to DHR's Adult Services Program or another agency's service system. Permanency is achieved when the ISP team determines that reunification, adoption or permanent placement with a relative (with or without transfer of custody) is not appropriate due to the physical or mental disability of the child, and it is documented that custodial care will be needed into adulthood. For further guidance, refer to Section VIII (I).

G. Relative Resources

Federal and state statutes encourage preference be given to adult relatives who meet relevant child protection standards over non-related caregivers when placing children in foster care or for adoption. Relative is defined as "an individual who is legally related to the child by blood, marriage, or adoption within the fourth degree of kinship, including only a brother, sister, uncle, aunt, first cousin, grandparent, great grandparent, great aunt, great uncle, great-great grandparent, niece, nephew, grand niece, grand nephew, or a stepparent (Code of Alabama 1975, §12-15-301 (13)). This definition applies only to children found to be dependent by a juvenile court. By narrowing the list of relatives included within the fourth degree of kinship by blood, marriage or adoption, guidance is provided to juvenile courts, Department child welfare workers, and other stakeholders in making relative placement decisions for children. At the time of involvement with the family, but no later than 30 days after a child's removal from the home, child welfare staff should exercise due diligence in seeking detailed information from the child's parents about both paternal and maternal adult relatives and other family members and provide notification as described below. With passage of Public Law 113-183, relative notification is extended to include notifying parents of the child's siblings when the parent has legal custody of such sibling. [42 U. S. C. §671(a) (29); Social Security Act, Section 471 (a) (29)]. Forms have been developed and are located in the Appendix section. These include the "Paternity Worksheet"; the "Relative Resource Identification" for both mother and father; and the "Sample Relative Resource Letter." Steps to be taken to obtain detailed information about relative resources must be addressed in all ISPs until the permanency goal is achieved.

If parents/primary caregivers are unwilling to provide information, child welfare staff may petition the juvenile court or file a motion for an order that requires the parents to provide information that is sufficient to seek out potential relative resources. The petition or motion, whichever is preferred by the local juvenile court, must be filed no later than the adjudicatory hearing (i.e., the hearing in which the child is declared dependent).

As potential relative resources are identified, child welfare staff shall contact these individuals, using the Sample Relative Resource Letter located in iDHR Documents, to determine their ability and willingness to serve as a permanent home. Relatives must be

Informed of the following:

- that the child has been or is being removed from the home/custody of the parent;
- that the relative has options to participate in the care and placement of the child;
- that options may be lost if the relative does not respond;
- that the relative may become a related foster family home; and
- that certain services and supports are available to a child in a foster family home.

When relatives indicate an interest in providing a permanent home for the children, a thorough evaluation of this resource must be conducted. Department child welfare staff must obtain, evaluate and document information in the case record on all household members in the related home according to the following areas, at a minimum.

Identifying Information – Includes name, age, gender, Social Security number, and marital status.

Physical Environment – Description of the home and neighborhood (e.g., proximity to schools and stores; urban, suburban, rural) and plans for accommodating the child(ren) to be placed.

Education And Employment – Education and employment history; stability of current employment.

Financial Situation – Income sources; assets and obligations; money management skills; discuss financial/ medical options and assist relatives with making a realistic decision about their ability to provide for the children with or without outside assistance; and if assistance is needed, the nature and extent of that assistance.

Health – Current physical and mental status, issues and/or needs. While medical evaluations are not required, child welfare staff should inquire about each family member's health and document this discussion along with any concerns noted.

Physical Attributes And Personality Traits – Height, weight, and other aspects of physical appearance. Adjustment to present life situation, including information which reflects personality traits.

Background And Interpersonal Relationships – Current relationship with each household member; household members' roles; parent/child relationship if any children currently in the home; relationship with extended family and friends; relationship with own parents and siblings during childhood and early adult years; general reputation and standing in community.

Interests – Religious affiliation, social and cultural identity; community activities; formal and informal supports.

Background Checks – Clearance of Child Abuse Neglect Central Registry and a criminal history background check.

If relatives are selected as the permanent home and child welfare staff plan to recommend that the relatives be granted custody of the children, each adult household member (i.e., age 19 years and older) must consent to ABI and FBI criminal history checks. DHR has determined that when relatives are designated as a permanent placement, they are "acting in the capacity of a related foster home," and thorough background checks are

critical to ensuring the juvenile court that this resource can serve as a **safe**, permanent home.

Criminal history checks are not required at the initial placement of a child in a related home. Criminal history checks are only required when the permanency plan becomes permanent relative placement with transfer of custody to relative.

SDHR's Office of Criminal History Checks (OCHC) does not issue suitability letters for relatives because the criminal law does not encompass relatives. OCHC will issue a letter confirming the completion of a criminal history check and any criminal activity revealed. Child welfare staff must make a professional decision about whether the home is safe for the children.

Note: Child welfare staff shall initiate ABI/FBI (Criminal History checks) as soon as the permanency goal becomes "permanent relative placement with transfer of custody to the relative" but no later than three months prior to the next permanency hearing due date.

Capacities And Relationship With Child(ren) To Be Placed – Nature and duration of relationship; capacity to fulfill parental role and meet the child's physical and emotional needs; attitude towards child and that child's parents; ability and willingness to make decisions in the child's best interests even when those decisions may or do conflict with the opinions, needs, and preferences of the parents or other family members; ability and willingness to support the child's maintaining contact with parents, other family members, and friends.

History And Relationship With DHR – Summary experience with DHR (e.g., number and nature of prior contacts; number of visits and interviews during this evaluation process); ability and willingness to cooperate with DHR and participate with the child's individualized service planning team.

References – Contact with at least three (3) persons who know the entire family, and no more than one (1) should be related by blood or marriage.

H. Kinship Guardianship Program and Policy Requirements-Effective October 1, 2010
Since the early 1990's, the Department has recognized the benefit to children to be placed with relatives when they cannot remain in their own home. An increasing number of relatives are providing care to children in the Department's custody and in related foster care. It is in the best interests of children, families, and the public to establish legal kinship guardianship assistance to meet the needs of children who would otherwise remain in the foster care system. [Code of Alabama (1975), § 12-15-301 (7), § 12-15-314 (f) (1)]. The Title IV-E state plan requirements apply to the kinship guardianship program Section 471 of the Social Security Act codified at [42 U. S. C. § 671 (a).

1. The purposes of kinship guardianships include, but are not limited to, the following:
 - To establish procedures to effect a legal relationship between a child, who is in the legal custody of the Department, and a kinship guardian, provided that the child is not living with either parent, a legal guardian or legal custodian;
 - To terminate legal custody of the child held by Department;

- To provide a child in the legal custody of the Department with a stable, consistent, and long-term relationship with a kinship guardian that will enable the child to develop physically, mentally, and emotionally to the maximum extent possible;
- To establish a permanent placement alternative that keeps a child from remaining in the custody of the Department under juvenile court supervision when the child cannot be reunited with parents, legal guardian or legal custodian and adoption is not an alternative;
- To establish a new legal relationship which is permanent during the minority of the child, and is not subject to modification or revocation merely for a material change in circumstances which occurred since the kinship guardianship was granted. A request for a change in the kinship guardianship relationship shall show that change would materially promote the child's best interests and welfare, and that the positive good brought about by the change would more than offset the inherently disruptive effect caused by uprooting the child; and
- To prevent children from remaining in the foster care system and assist relatives whereby they can be provided financial assistance to help bear the long-term costs of providing care and parenting a child.[Code of Alabama (1975), § 38-12-32, § 38-12-35].'

2. Legal Bases

Congress passed the Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351, which created a new option for states to provide kinship guardianship assistance payments to relatives who assume legal guardianship of children for whom they have cared for as related foster parents. Public Law 110-351 established eligibility criteria and other requirements for the Title IV-E kinship guardian assistance program which provides federal financial participation for kinship guardianship subsidy payments. To implement the federal legislation, the Alabama Legislature passed into law the "Alabama Kinship Guardianship Subsidy Act" (Act No. 2010-712), effective October 1, 2010, that established kinship guardianships; established a kinship guardianship subsidy program; and set procedures and legal authority for establishing kinship guardianships. . On September 29, 2014, Congress enacted Public Law 113-183, Preventing Sex Trafficking and Strengthening Families Act which among other issues, amended federal requirements for states to operate a title IV-E kinship guardianship program. To implement Public Law 113-183, the Alabama Legislature passed Act 2016-129, Strengthening Families and Childhood Activities, on April 7, 2016 to be effective July 1, 2016.

3. Children Eligible to Receive Kinship Guardianship Subsidy Payments

The definition of a child in the Introduction Section of *Out-of-Home Policies and Procedures*, Glossary section, applies to children considered for kinship guardianship. In general, a child may be eligible for a kinship guardianship payment, if the child meets the following criteria:

- Removed from his/her home pursuant to a voluntary placement agreement which gives the
- Department the responsibility for the placement and care of the child;

- Removed from his/her home as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child; and
- Eligible for Title IV-E foster care or non IV-E state foster care payments while residing for at least six (6) consecutive months in the home of the prospective kinship guardian who is also a fully approved related foster home. [Code of Alabama (1975), § 12-15-314(f) (5) b.1.; Social Security Act §473(d) (3) (A) (i) (II); and 45 CFR 1356.21]. The Social Security Act and Code of Federal Regulations require that a child meet all eligibility criteria pursuant to the cited sections, while in the home of the fully approved related foster home for at least six consecutive months. Therefore, the months during which a child is ineligible for Title IV-E foster care payments, due to having no permanency hearing or judicial determination of reasonable efforts to finalize a permanency plan, cannot be considered in determining the consecutive six month requirement. While a child is not required to be eligible every day of a consecutive six month period, Code of Alabama (1975), § 12-15-314 (f) (5) b.1. provides for the six month period to be “immediately preceding” the date the written request is filed.

In addition to the general requirements, there are requirements that apply to children on a case-by-case basis and must be determined through the ISP process. These include the following:

- A determination that being returned home or adopted are not appropriate permanency options and not in the best interests of a specific child; and
- A determination that the child demonstrates a strong attachment to the prospective kinship guardian and the kinship guardian has a strong commitment to caring permanently for the child; and
- With respect to a child who is age fourteen (14) or older, the child must be consulted regarding the kinship guardianship plan; and if eighteen (18) years or older the child must consent to the prospective kinship guardianship. [Code of Alabama (1975) § 12-15-315 (a) (4)“f; and, and Social Security Act § 473, (d)(3)(A)(iv)].

In the child’s ISP there must be a description of the steps that the Department has taken to determine that it is not appropriate and not in the best interests of a child to be returned home or adopted. During the judicial review or administrative review (Refer to C, (4) (5) above) any discussion of permanency planning for the child should include the appropriateness of reunification and adoption. In addition, the child’s ISP must describe the reasons why placement with a fit and willing relative, through a kinship guardianship subsidy arrangement, is in the child’s best interests. There must also be efforts to discuss adoption with relatives and why it was not pursued. Efforts to discuss kinship guardianship with the child’s parents or the reason why such efforts were not made should be addressed in the ISP.

The child welfare worker must determine and document that the child demonstrates a strong attachment to the prospective kinship guardian. The documentation should include how the determination was made and how the child meets the requirements. The

attachment of the child to the relative and the relative to the child should be addressed in the judicial review or the administrative review.

If a child is age 14 or older when the permanency plan of kinship guardianship is determined by the ISP team, both state and federal laws require that the child be consulted. In most situations, this is a child welfare worker responsibility. Consent on the part of the 14 to 18 year old child is not required. If the child is over age 18, consent is required. (See the Forms Section for "Consent of Child Who Is Eighteen or Older to Appointment of a Kinship Guardian").

4. Individualized Service Plan (ISP) Requirements and Kinship Guardianship

Both federal and state statutes require that specific information be included in the ISP for each child with a permanency plan of kinship guardianship. Documentation of the information will be made in FACTS in the CFA and ISP when the permanency plan of kinship guardianship is established. The ISP must describe the following:

1. How the child meets the eligibility requirements for the kinship guardianship program;
2. The steps the Department has taken to determine that return to the home or adoption is not appropriate;
3. The efforts the Department has made to discuss adoption with the child's relative foster parent and the documented reasons that adoption is not an option;
4. The efforts the Department has made to discuss kinship guardianship, inclusive of the kinship guardianship subsidy arrangements, with the child's parent(s), legal guardian or legal custodian or the documented reason such efforts were not made;
5. The reason that permanent placement with a fit and willing relative caregiver through a kinship guardianship arrangement is in the child's best interests; [Code of Alabama 1975, §12-15-315(e)]

5. Requirements for a Relative to Become a Kinship Guardian

Before a relative can receive Title IV-E kinship or state Kinship guardianship payments for an eligible child certain criteria must be met. Relative is defined as "an individual who is legally related to the child by blood, marriage, or adoption within the fourth degree of kinship, including only a brother, sister, uncle, aunt, first cousin, grandparent, great grandparent, great aunt, great uncle, great-great grandparent, niece, nephew, grand niece, grand nephew, or a stepparent [Code of Alabama (1975), § 12-15-301 (13)]. By having the same definition for relative for the kinship guardianship program and the relative notification requirements discussed above, consistency is maintained.

The prospective kinship guardian must meet specific requirements:

- Must have a strong commitment to caring permanently for the child; and
- Must have cared for the child at least six consecutive months while the child has been residing in the home of the approved related foster home, and while the child has been simultaneously in the legal custody of the Department; and
- Must have entered into a kinship guardianship subsidy agreement with the Department prior to assuming legal guardianship through the juvenile court; and

- Must assume, through juvenile court appointment, legal guardianship of the child.

Other requirements of a kinship guardian include:

- Must be a caregiver who is 21 years of age or older, other than a parent, legal guardian or legal custodian;
- Must be a relative, as defined in Alabama law;
- Must be a fully approved foster parent; and
- Must be willing to assume care of the child with the intent to parent the child to adulthood.

There must be a completed ABI/FBI fingerprint based criminal records check of the relative and a child abuse and neglect registry check of the prospective kinship guardian and other adults in the home in any state the prospective kinship guardian or other adults have lived for the past five years. This is accomplished during the approval process for the relative to be an approved related foster home. (Subsequent criminal history checks are not required after the initial CHC for approval as a related foster home because the Department of Public Safety provides the Department of Human Resources updates of any activity on individuals that CHC have previously been requested by the Department).

Federal regulations require that the related home be fully approved as a related foster home in order for the child to be eligible for Title IV-E foster care maintenance payments and therefore qualify for kinship guardianship payments (ACYF-CB-PI-08-007). Provisionally approved related foster homes do not meet the kinship guardianship requirement that a IV-E eligible child must be in a fully approved related foster family home for six consecutive months prior to a kinship guardian being appointed. The time that a IV-E eligible child is placed in a provisionally approved home, is not counted in the six consecutive month requirement.

The Department requires all non IV-E state kinship guardianship homes meet the same criteria cited in the paragraph above.

6. Rights and Limitations of a Kinship Guardian

A kinship guardian shall have the same rights, responsibilities and authority relating to the child as a parent. This includes, but is not limited to, making decisions concerning the care and well-being of the child; consenting to routine, preventative, necessary, elective, cosmetic and crisis medical, dental and mental health needs; arranging and consenting to educational plans for the child; arranging and consenting to athletic, sport, or other activity participation; applying for financial assistance and social services for which the child may be eligible; applying for a permit or license; applying for admission to a college or university; responsibility for activities necessary to ensure the safety, permanency and well-being of the child; ensuring the maintenance and protection of the child.

The kinship guardian has the authority to decide whether visitation between the parent, legal guardian or legal custodian and the child is appropriate. The juvenile court also may order visitation between a parent, legal guardian, or legal custodian and the child to maintain or restore a parent-child relationship if this is in the best interests of the child.

Regarding educational plans for the child, the appointment of the kinship guardian terminates the education rights of the parent. Therefore, the kinship guardian is deemed the parent for special education matters (IDEA) and other educational purposes. The kinship guardianship court order gives the kinship guardian the authority to enroll the child in school and consent to school-related activities.

A kinship guardianship appointment gives the kinship guardian the legal authority to authorize or consent to medical care, dental care and mental health care for the child. Additionally, the kinship guardianship order provides the kinship guardian with the right to consent to non-school related activities, placements, and events; and the authority to enroll the child in health, homeowner, employment, motor vehicle and other insurance.

Parents retain the right to consent to the adoption of the child or a name change for the child. Parents, legal guardians or legal custodians retain the obligation to pay child support, and the juvenile court may order this. Appointment of a kinship guardian does not limit or terminate a child's right to inheritance from a parent, legal guardian or legal custodian. Appointment of a kinship guardian does not preclude a child from insurance derived from or between the child and parent/legal guardian/legal custodian.

7. Requirements for a Juvenile Court to Appoint a Kinship Guardian

After a child has been placed in the Department's custody, and after the ISP Team has determined that "kinship guardianship" is the most appropriate permanent plan, and after there is a kinship guardianship subsidy agreement in place, and after there is a court order in which the permanency plan of "kinship guardianship" is affirmed, can the Department file with the juvenile court a written request for the appointment of a kinship guardian. Only the Department may file a request for the appointment of a kinship guardian. [Code of Alabama (1975) § 12-15-314 (f) (1) (3); § 12-15-315(a) (4); ACYF-CB-PI-08-07, December 24, 2008].

A kinship guardian may be appointed by the juvenile court only in the following situations:

- A parent of the child is living, but all parental rights have been terminated or restricted by prior court order; however, for kinship guardian purposes, the blood relationship with the child will remain intact and recognized in defining relative caregiver after parental rights are terminated; and
- The child has resided without the parent, legal guardian or legal custodian with the individual caregiver seeking to become a kinship guardian for a period of six consecutive months or more immediately preceding the date the written request is filed, and the parent, legal guardian or legal custodian of the child is currently unwilling or unable to provide adequate care, maintenance and supervision for the child or there are extraordinary circumstances; and
- No legal guardian of the child is currently appointed pursuant to Alabama Uniform Guardianship and Protective Proceedings Act, Code of Alabama, 1975, Section 26-2A-1, et.seq.

The written request filed by the Department must allege specific information that is verified. The Department child welfare worker is responsible for providing to the DHR attorney the following information;

- a. Facts that if proved will meet the requirements for a kinship guardianship;
- b. The date and place of birth of the child, if known, and if not known, the reason for the lack of knowledge;
- c. The legal residence of the child and the place where the child resides, if different from the legal residence;
- d. The marital status of the child if applicable;
- e. The name and home and business addresses of the prospective kinship guardian and the name of all residents of the prospective kinship guardian's household;
- f. The relationship between the prospective kinship guardian and the child;
- g. The names and home and business addresses of the parents of the child, of known;
- h. The names and home and business addresses of legal guardians or legal custodians;
- i. The existence of any pending matters involving the custody of the child;
- j. A signed statement from the prospective kinship guardian that the individual agrees to accept the duties and responsibilities of being a kinship guardian;
- k. The existence of any other proceedings pending before the juvenile court involving the child, and if such matters exist, a statement that departments, agencies, individuals, or entities authorized or involved in the proceedings, by law or court order, do consent to the appointment of a kinship guardian for the child;
- l. The results of a criminal history background check and a child abuse/neglect record check on the prospective kinship guardian and all adult residents (age 19 and over) who reside in the household of the prospective kinship guardian;
- m. A statement of whether the child is an American Indian or an Alaskan Native and if the child is subject to the Indian Child Welfare Act of 1978. If so, the motion shall include the tribal affiliations of the parents, legal guardians, or legal custodians of the child. In addition, the motion must specify actions taken to notify the child's tribe, the parents of the child, legal guardians or Indian custodians and the results of the notifications; and
- n. Other relevant information that supports the written request for the appointment of a kinship guardian.

It is the juvenile court's responsibility to find that a prospective kinship guardian qualifies to be appointed as a kinship guardian, and that the best interests of the child are served by the requested appointment. Following appointment of a kinship guardianship, the juvenile court may make any other disposition of the matter that will serve the best interests of the child. [Code of Alabama 1975, §12-15-314 (f) (2) (3)]

8. Kinship Guardianship Agreements

The Department is required to negotiate and enter into a written and binding kinship guardianship subsidy agreement with the prospective kinship guardian and to provide the prospective kinship guardian with a copy of the agreement. The Kinship Guardianship Subsidy Agreement (DHR-FCS-2210) must be in place, i. e., signed by the prospective kinship guardian and the agent of the Department, prior to the court appointment of the legal kinship guardian. After the title IV-E eligible or non IV-E child meets all eligibility requirements (See Number 3 above); and, after the kinship guardian has committed to care for the child until adulthood; and, after the juvenile court has appointed the relative as a kinship guardian in accordance with Alabama statutes, only then may the Department pay kinship guardianship subsidy payments. Such payments cannot exceed the age-appropriate foster care maintenance payments that the child would have received had the child remained in foster care in the related foster home. (Refer to Payment Section below). [Social Security Act codified at, § 471(a)(28); § 475(7); § 473(d)(2); Code of Alabama 1975 § 38-12-37(a) (1) (2) (3) (4); ACYF-CB-PI-08-07, December 24, 2008]

The Kinship Guardianship Subsidy Agreement (DHR-FCS-2210) shall become effective only upon the juvenile court entering an order awarding kinship guardianship [Section 473 of the Social Security Act codified at 42 U.S.S., § 673; Code of Alabama 1975 § 38-12-37(a)] The Kinship Guardianship Subsidy Agreement (DHR-FCS-2210), specifies, at a minimum, (1) the amount of each kinship guardianship subsidy; (2) any additional services and assistance that the child and kinship guardian will be eligible to receive under the agreement; (3) the procedure by which the kinship guardian may apply for additional services; (4) that the Department will pay nonrecurring expenses associated with obtaining a legal court order of kinship guardianship; (Refer to section below on Non-Recurring Expenses for further information.); and (5) a successor legal guardian is named in the agreement. In addition to the minimum requirements specified in the agreement, other requirements include (1) payments are made monthly to the kinship guardian; (2) payments are adjusted in accordance with age appropriate foster care board payments established by the Department; (3) payments may also be adjusted based on the circumstances of the kinship guardian and the needs of the child; and (4) kinship guardianship payments agreed to under the agreement will remain in effect without regard to the State of residency of the kinship [Code of Alabama §38-12-37 and §38-12-38]

9. Successor Legal Guardian

Public Law 113-183, Preventing Sex Trafficking and Strengthening Families Act enacted September 29, 2014 provides a means of preserving eligibility for title IV-E kinship guardianship subsidy payments to a title IV-E eligible child in the event of the death or incapacity of the kinship guardian. Section 473 of the Social Security Act codified at [42 § U. S. C. (673)(d)(3)(c)] which provides that “the eligibility of a child for a kinship guardianship assistance payment.....shall not be affected by reason of the replacement of the relative guardian with a successor legal guardian named in the kinship guardianship assistance agreement”... or in any amendment to the agreement. The purpose of the new provision is to preserve the child’s eligibility for title IV-E payments in the event of the current kinship guardian’s death or incapacity and to encourage states to maintain family connections through the appointment of a successor guardian.

Public Law 113-183 sets forth the concept of “incapacity” of a kinship guardian. A short term inability (e. g. surgery) of the kinship guardian to carry out the duties of a kinship guardian would not be considered sufficient to require a successor guardian. “Incapacity”

involves a long term inability of the original kinship guardian that is not expected to change or improve and that makes it impossible for the kinship guardian to carry out the duties of a legal guardian as discussed in Section 6 above. The long term and substantial inability to protect and care for the child may be the result of (1) a physically debilitating illness, disease or injury; or (2) a mental impairment, either of which results in a substantial inability of the kinship guardian to carry out their duties as a kinship guardian or to understand the nature and consequences of decisions concerning the care and protection of the child. Because a petition to the juvenile court to relieve the original kinship guardian will be necessary, a statement from a physician and/or a psychologist that the original kinship guardian is incapacitated and unable to carry out the duties of a kinship guardian is needed.

The federal law does not require that the successor legal guardian named in the agreement be related to the child.

Interpretations on Public Law 113-183 provided by the Children's Bureau through the Child Welfare Policy Manual provides requirements in implementing the successor guardian provision. In addition, passage of Act 2016-129, Strengthening Families and Childhood Activities, by the 2016 Alabama Legislature, provides statutory authority for the State of Alabama to implement a "successor guardianship" program as an aspect of the Kinship Guardianship Program. The following four actions are the minimum federal requirements of Public Law 113-183 to implement successor guardianship.

- Fingerprint based criminal background checks of the national crime information databases (NCID) are required on the successor guardian and other adults living in the home of the successor guardian.
- Child abuse and neglect registry checks on the successor guardian and other adults living in the successor guardian's home are required. The Department must complete child abuse and neglect clearances on all household members age 14 and older.
- Before a successor guardian may receive a guardianship payment, the fingerprint based criminal records check and the child abuse and neglect registry checks of the successor guardian and any adults living in the home of the successor guardian must be conducted.
- A guardianship assistance agreement must be completed with the successor guardian before the successor guardian may receive a guardianship assistance payment.

To implement the minimum requirements for successor guardian child welfare staff shall follow the procedures outlined below:

- A. When Kinship Guardianship is determined to be the permanency plan for a child, child welfare staff should begin to explore with the prospective kinship guardian any relative resource who may be named as a successor guardian. The Department's "Practice Model's Guiding Principles" provides that the Department "shall promote the timely achievement of permanency for children so that they may live with their birth/relative family, and if that is not possible,

have enduring relationships living with a permanent family that preserves birth family and other significant connections, and provides commitment, stability, belonging, and smooth successful transitions into adulthood.” When a suitable relative is not available to be named as a successor guardian, child welfare staff should explore with the prospective kinship guardian suitable non-relatives.

- B. A criminal history check (CHC) shall be completed on prospective successor guardians **prior** to naming an individual as a successor guardian in the Kinship Guardianship Subsidy Agreement (DHR-FCS-2210). The same criteria used in determining the suitability for foster/adoptive resources will be used for successor guardians. Completion of the CHC includes receipt of a favorable suitability letter. Receipt of an unsuitability letter will result in that individual being unable to be named as a successor guardian. The Department reserves the right to complete a subsequent CHC if the successor guardian is called upon to become the legally appointed guardian.

The Federal Child Welfare Manual provides that more than one successor guardian may be listed in the Kinship Guardianship Subsidy Agreement in the event that the first named individual is not available to serve should the need for a successor guardian arise. The requirement for a CHC prior to naming an individual on the Agreement applies only to the individual named in the Agreement as having first priority. If the need arises and the person with first priority cannot serve as successor guardian, a CHC must be completed on the named individual being considered as successor guardian before guardianship payments are initiated.

- C. Child abuse and neglect clearances shall be completed on prospective successor guardians before they are named in the Agreement (DHR-FCS-2210). These clearances shall be performed in accordance with current policy regarding child abuse and neglect clearances for foster/adoptive resources. The Department reserves the right to complete a subsequent child abuse and neglect clearance if the successor guardian is called upon to become the legally appointed guardian.

Child abuse and neglect clearances for successor guardians that are completed prior to naming an individual in the Agreement, as with criminal history checks, applies only to the individual named in the Agreement as having first priority as a successor guardian. Should the need arise and this individual cannot serve, a child abuse and neglect clearance must be completed on the named individual who is being considered as successor guardian.

- D. A preliminary home evaluation shall be completed on the proposed successor guardian prior to naming the individual as successor guardian in the agreement. Refer to Section G, Relative Resources of this Policy, for a discussion of areas to consider in the preliminary home evaluation. Recognizing that individual and family circumstances are likely to materially change from the time of the original appointment of a kinship guardian to the

need for a successor guardian, the preliminary home evaluation should consider the following at a minimum:

- Identifying Information;
- The present physical environment although this is subject to change;
- Financial Situation to assure that the individual can meet his/her financial obligations;
- Health, physical attributes, interpersonal relationships;
- Capacity to provide and care for child to be placed; and
- History and Relationship with the Department.

E. County Departments' Responsibilities When It Becomes Necessary to Appoint a Successor Guardian [Code of Alabama § 12-15-301(16), 12-15-314(f)(6)]

The prospective successor guardian is required to notify in writing either the Department or the juvenile court that the kinship guardian is deceased or incapacitated. The prospective successor guardian is required to show satisfactory documentation that the eligible child is living in the home of the successor guardian. A child may be placed directly into the successor guardian's home based on the previously completed criminal history check, child abuse and neglect clearances and the preliminary home evaluation.

At the point that a child needs a successor guardian appointed, the Department must complete CHCs and child abuse and neglect clearances on all adults living in the home of the successor guardian. In accordance with child abuse and neglect clearance policies, such clearances must be completed on all household residents age 14 and older and must include clearances in any state that the individual has resided during the past five years.

A successor guardian may be appointed by the juvenile court if the following has occurred:

- i. No legal guardian of the child is currently appointed pursuant to Alabama Uniform Guardianship and Protective Proceedings Act, Code of Alabama, 1975, Section § 26-2A-1, et.seq.
- ii. A child 14 years or older has been consulted as to his or her position regarding the prospective successor guardianship.
- iii. A child 18 years or older, if capable of giving effective consent, has consented to the successor guardianship.

A request for the appointment of the prospective successor guardian may be filed with the juvenile court either by the prospective successor guardian or by the Department. Successor guardians may be reimbursed for non-recurring expenses incurred in the appointment as successor guardian. [Refer to Number 12 below for information on Non-Recurring Expenses].

A final home evaluation shall be completed by the Department before the court is petitioned requesting that the named successor guardian be appointed as legal guardian. The county department is responsible for determining whether

a subsequent CHC and/or child abuse and neglect clearance should be completed on the prospective successor guardian.

10. Siblings of Children Eligible for Kinship Guardianship Subsidies

The Department may enter into kinship guardianship subsidy agreements and make payments pursuant to such agreements on behalf of siblings of a Title IV-E eligible child provided the siblings and the eligible child are placed with the same relative under the same kinship guardianship placement arrangement. The Department, through the ISP process, and the kinship guardian must agree that such a placement is appropriate. There is no requirement that the siblings of the Title IV-E eligible child be placed with the prospective kinship guardian at the same time as the eligible child is placed. The sibling is not required to meet the eligibility criteria described in item three (3) above. Separate non-recurring expenses for kinship guardianship may be made for each sibling of the eligible child. Also, separate juvenile court orders appointing kinship guardians shall be made for each sibling. [Social Security Act § 473(d) (3) (B)]

11. Medicaid and Kinship Guardianships

Children who receive Title IV-E kinship guardianship subsidy payments are categorically eligible for Medicaid in the State where the child resides. Since a child who receives federal kinship guardianship subsidy would have been in a fully approved related foster home for the six-month period immediately preceding the written request for a kinship guardianship and would have been receiving federal foster care maintenance payments, the child will already be approved for Medicaid. When a child begins to receive kinship guardianship payments, it is the responsibility of the county Department child welfare worker to initiate the DHR-FCS-2211, "Kinship Guardianship Subsidy – Medicaid." This form is accessed in iDHR Documents and may be used for individuals and sibling groups. Include the information of the kinship guardian. Submit the form to Certification Support Division, Alabama Medicaid Agency, Post Office Box 5624, Montgomery Alabama 36130. If a child, who receives a Title IV-E kinship guardianship payment, moves to another state, the child continues to be eligible for Medicaid in the other state. The Office of Permanency coordinates this since the child's case is open only for kinship guardianship payments.

12. Payment of Kinship Guardianship Subsidies

Payments to kinship guardians are authorized by the SDHR Office of Permanency. FACTS has been enhanced to incorporate the kinship guardianship documentation and payment requirements. It is the counties' responsibility to document information in FACTS that provides for the permanency plan of Kinship Guardianship; ISP requirements discussed above; general information on the kinship guardianship; eligibility criteria for kinship guardianship subsidy; kinship subsidy agreement and approval; and the juvenile court order appointing the kinship guardianship. It is the responsibility of SDHR, Office of Permanency to process kinship guardianship payments and to re-evaluate a child's continued circumstances that impact receipt of payments. County departments receive training from FACTS training staff regarding specific use of FACTS in documenting and payment of kinship guardianship subsidies.

13. Non-Recurring Expenses for Kinship Guardianship

The Department child welfare worker shall inform the prospective kinship guardian about payment of non-recurring expenses. Reimbursement for non-recurring expenses related to kinship guardianship is provided for children eligible for the federal kinship guardianship subsidy. Kinship guardianship expenses associated with obtaining kinship guardianship and incurred by kinship guardians will be paid to the extent that the total cost does not exceed \$2,000. Reimbursement cannot exceed \$2,000 per child and should be filed within one year of the issuance of the court order establishing the kinship guardianship.

One-time kinship guardianship expenses include reasonable and necessary expenses directly related to establishing the legal guardianship of a child, which are not incurred in violation of state or federal law, and which have not been reimbursed from other sources or other funds. This includes, but is not limited to, attorney fees; court costs; transportation costs that may be incurred while seeking a kinship guardianship; and other expenses related to achieving the kinship guardianship permanency plan. If there are questions about other expenses that may be included in non-recurring expenses, a contact should be made with the Office of Permanency.

In order for kinship guardians to receive reimbursement of non-recurring expenses, the following items must be submitted to the County Department by the kinship guardian.

- A written request for reimbursement of payment filed no later than 12 months from the date of the Kinship Guardianship court order;
- Original paid receipts;
- An itemized bill listing the full name of the child, date of service, and items or services received; and
- A copy of the Kinship Guardianship order

Once received by the County Department, the items must be reviewed for accuracy and submitted to the Office of Permanency for reimbursement. The Office of Permanency will process the request for payment and respond directly to the kinship guardian regarding the request for reimbursement.

The Department will file a written request for a kinship guardian to be appointed for a child, but there may be situations in which the kinship guardian also has legal fees. The Department may make a direct payment to an attorney for the provision of non-recurring legal expenses associated with the kinship guardianship up to the maximum amount of \$2,000.

For direct payment, the representing attorney must submit the following items to the Office of Permanency.

- A written request for payment no later than 12 months from the date of the Kinship Guardianship court order;
- An original itemized bill which contains the full name of the child for whom services were rendered; The kinship guardian **must** sign the original bill confirming the provision of services and noting agreement for payment to be made directly to the attorney;
- A current Request for Taxpayer Identification Number and Certification (W-9); and

- A copy of the Kinship Guardianship court order.

14. Continuation of Kinship Guardianship Subsidy Payments

Children may continue to receive kinship guardianship subsidy payments through the age of 21 years in certain circumstances addressed below. The Department has opted to extend Title IV-E foster care maintenance payments and kinship guardianship payments for certain children up to the age of 21 [Social Security Act § 475 (8) (B)]. In cases of a Kinship guardianship agreement being entered into after a child attains the age of sixteen (16), the kinship guardianship subsidy may continue until the child reaches the age of 21 if the child also meets certain other requirements addressed below. The kinship guardian is required to report to the Office of Permanency during the re-evaluation how a youth, age 18 years of age and up to 21 years of age, meets the educational, employment, or disability conditions. The following describes circumstances in which kinship guardianship payments may be continued past 18 years of age of the child.

- The child reaches the age of 18 and the kinship guardianship agreement was entered into after the child attained the age of 16 and the kinship guardian continues to provide care and one of the following circumstances is exists.
 - (1) The eligible child is completing secondary education or a program leading to an equivalent credential; or
 - (2) The eligible child is enrolled in a postsecondary or vocational education institution; or
 - (3) The eligible child is participating in a program or activity designed to promote or remove barriers to employment and independence; or
 - (4) The eligible child is employed at least 80 hours per month; or
 - (5) The eligible child is incapable of doing any of the activities described above due to a medical condition, either mental or physical, and the incapability is supported by regularly updated information; or

Should a kinship guardianship arrangement be entered into for a child 18 years of age or older, including the agreement and legal appointment of a kinship guardian, the child shall consent to the kinship guardianship if the child is capable of giving effective consent. [2010 Legislative Session, Act 2010-712, Code of Alabama 1975, §12-15-315 (a) (4) (f)].

15. Termination of Kinship Guardianship Subsidy Payments

Children eligible for the federal kinship guardianship subsidy shall continue to receive such payments until one of the following conditions occur which require termination of the payments.

- The child has not attained the age of 18, but the Department has determined that the kinship guardian is no longer legally responsible for the support of the child.
- The kinship guardian is no longer providing support to the child/youth of any age under the care of the kinship guardian. An example would be a child who is emancipated through marriage or other means or a child who enters the military and the kinship guardian no longer provides financial support for the child.

- Other reasons that may terminate kinship guardianship payments include reaching age 18 and none of the situations discussed in Continuation of Kinship Guardianship Subsidy Payments exist; the request of the kinship guardian; a child's return to care; a kinship guardian has started to receive other sources of income on behalf of the child which may reduce or terminate the kinship guardianship payment; the kinship guardianship is otherwise terminated or revoked by the juvenile court.

16. Re-evaluation of Kinship Guardianship

Kinship guardians receiving a subsidy must keep the Department informed of circumstances that would make the child for whom they receive subsidy payments ineligible to receive payments or eligible for payments in a different amount [Social Security Act §473(a) (4)]. The Office of Permanency will notify kinship guardians annually to request information to determine continued eligibility to receive payments. Kinship guardians will be requested to address those circumstances that may impact the kinship guardianship payment.

17. Revocation of Kinship Guardianship

While kinship guardianship appointments are intended to be permanent until a child attains adulthood, there is a provision [Code of Alabama 1975, § 12-15-314 (f) (8) a. and b.] for the revocation or modification of such orders. A petition to modify or revoke a kinship guardianship must contain proof that there is a material change in circumstances since the order was granted and show that the change being requested, either modification or revocation, would materially promote the child's best interests and welfare, and that the positive good brought about by the requested change would more than offset any disruptive impact caused by uprooting the child. If the kinship guardianship is revoked, the child shall be placed in the legal custody of the Department. If the kinship guardianship is modified, the child shall remain with the kinship guardian, but the Department shall provide court-ordered protective supervision.

I. Federal Parent Locator Service (FPLS)

Case situations will exist where the custodial parents and/or other family members are unable to provide information about a parent's (custodial or non-custodial) current whereabouts. This may include the whereabouts of a child's father regardless of whether or not paternity has been established and a mother when her whereabouts are unknown. Fostering Connections to Success and Increasing Adoptions Act authorized state child welfare programs to use the FPLS when there is a need to locate non-custodial parents, putative fathers or relatives of a child if there are issues involving child custody, visitation, or seeking relative resources for adoption or permanency purposes. FPLS is a computerized network of information on individuals including Social Security numbers, most recent home addresses, wage and benefit information, and employment data. Each state maintains its own State Parent Locator Service (SPLS) and that information is transmitted to the FPLS.

All FPLS information is confidential, and its use or disclosure shall be limited to the purposes prescribed by 42 U.S.C. § 453. Unauthorized use or disclosure could result in civil or criminal penalties as proscribed by law. FPLS information shall be accessible only

to those DHR employees who need it to perform their official duties, and that information must be stored in a location that is physically safe from unauthorized persons.

Each county director shall designate a staff person (preferably a supervisor) who is authorized to submit FPLS requests to SDHR. At the end of each fiscal year, each designee **must** sign a FPLS County Designee Authorization (refer to Forms And Instructions) and submit the original signed authorization to the Family Services, Attention FPLS Request. If a designee is unable to fulfill their responsibilities during a fiscal year, the county director must appoint a new designee and submit a new authorization form.

Federal law prohibits the disclosure of any FPLS information if a state's Title IV-D agency has placed a "FV" (i.e., family violence) indicator on an individual, or the State has reasonable evidence of domestic violence or child abuse and disclosure of FPLS information could be harmful to children or their custodial parent. The only exception to this prohibition would be those situations where the court having jurisdiction issues an order for the support and maintenance of a child. If a court or its agent makes the FPLS request through a state's Title IV-D agency, the FPLS information will be provided directly to the court. The court is permitted to share the information with DHR only when a determination has been made that further disclosure would not be harmful to the children or custodial parent.

All requests for FPLS information **must** be submitted by a state's Title IV-D Program. In Alabama, that program is SDHR's Child Support Enforcement (CSE) Division. SDHR's Family Services will act as the clearinghouse for FPLS requests from child welfare staff receiving and forwarding all requests to CSE. SDHR's Family Services will maintain a centralized database that tracks both pending and completed requests.

FPLS inquiries are limited to one (1) per quarter per individual for whom the information is being requested. Child welfare staff shall use the following steps to request information from the FPLS.

1. Complete the Family Services Locate Data Sheet (DHR-FCS-2093). (Refer to Forms and Instructions for the 2093.)
2. Submit the 2093 and any supporting documentation to the county designee.
3. The county designee must then complete the Transmittal For FPLS Requests (refer to Forms And Instructions), attach the completed 2093 (after checking it for accuracy), and submit the transmittal and 2093(s) to SDHR, Family Services Partnership, Office of Child Welfare Policy, Attention: FPLS Request by fax, hand mail, or regular mail.

SDHR Family Services forwards the 2093 request to CSE for submission to FPLS. When CSE receives the FPLS response, Family Services is notified and the information is forwarded to the county office submitting the request. The county designee is responsible for addressing the confidentiality requirement with child welfare staff, particularly when the returned 2093 reveals the presence of a family violence indicator.

In order to safeguard confidential information, child welfare staff shall document needed demographic information (e.g., full name, address, employer) in the case record, and

submit the original completed 2093 for filing. Refer to instructions for the Family Services Locate Data Sheet (DHR-FCS-2093) for filing requirements.

J. The Individualized Service Planning Process for Out-of-home Care

States are required through Title IV-E of the Social Security Act to have written case plans for children in out-of-home care. Alabama has developed the individualized service case planning process whereby case plans are developed. For a detailed discussion of the Individual Service Planning Policies refer to *The Individualized Service Plans Policy*. The ISP process encompasses all phases of assessment and decision-making for child welfare services, and ISPs must contain specific goals and steps that are designed for the timely achievement of each child's permanency goal. ISP's for children in out-of-home care must include plans for enabling the children to safely return home, and when that is not possible, to locate and finalize a safe, stable permanent living situation that supports the children's relationship with family and other individuals who play a significant role in their lives.

1. Assessment

Assessment findings are the predominant factors used when making reasonable efforts determinations to preserve or reunify families. Health and safety are major concerns and must be continually assessed during the child's stay in out-of-home care. As child welfare staff make contact with children and families, every effort must be made to fully involve parents, custodians, and other caregivers in the ISP process in order to achieve the permanency goal. An accurate assessment of the child's and family members' strengths and needs, the reason for child welfare involvement, and the behaviors and/or factors which need to change must be identified and shared with the family.

In addition to safety and health, child welfare staff must gather information during the assessment process about:

- relative resources as a potential out-of-home placement prior to considering an unrelated foster family home;
- relative resources as a potential permanent home for concurrent planning purposes; and
- circumstances that may serve as evidence for a juvenile court to make decisions related to reasonable efforts, TPR petitions, and exceptions to TPR requirements. Child welfare staff must inform parents, custodians, and other caregivers about:
 - making substantial and meaningful progress in order for the children to returned home in a timely manner if the children are residing in out-of-home care;
 - the legal timeframes for achieving permanency and that the ISP they develop with their child and family planning team will identify detailed information on how this will be accomplished; and
 - the consequences that may result from compliance or non-compliance with the ISP.

Prior to the initial child and family planning team meeting, the worker, age-appropriate children and their families shall discuss permanency options which will meet the children's needs for safety, permanence and overall well-being, and which will eliminate safety threats and reduce risks to a safe level. Consensus about the overall desired case outcome (i.e., permanency goal) and the timeframes for its achievement need to be reached. The use of and need for concurrent planning shall also be discussed with age-appropriate children and their family members.

2. Individualized Service Plans

The ISP team develops permanency goals, concurrent planning goals, and their target dates must be developed during the initial ISP and all subsequent reviews. No later than the initial ISP, parents and custodians must be provided the pamphlet titled "Parents of Children in Foster Care." Child welfare staff shall clearly discuss the pamphlet's contents with the parents/custodians in a manner that allows these individuals to understand federal and state guidelines related to achieving permanency for their children. Efforts must also be made for parents to remain involved with the permanency planning process in order to support the attainment of each child's permanency goal.