

NEW YORK PUBLIC WELFARE ASSOCIATION, INC.

Kids Deserve Better: Making Kinship Guardianship Assistance Work for Them

March 10, 2010

Sheila Harrigan, Executive Director

The New York Public Welfare Association (NYPWA)

- Believes in kinship care as a permanency option for children
- Strongly supports the creation of a well-designed and appropriately funded kinship guardianship assistance program
- Recognizes the risks of enacting a proposal that falls short of these goals
- Represents the collective wisdom of the departments that have custody of the children in care throughout the State of New York

What are the shortcomings in the state budget proposal for kinship guardianship assistance?

- It lacks legal clarity. This ambiguity will result in some children being placed in guardianship prematurely and missing the opportunity to return home or to be adopted.
- It creates barriers to implementation by misaligning the funding plan with the program design.

How can these shortcomings be addressed?

The Law Must Be Clarified to Protect the Child's Best Interests

Subsidized kinship guardianship is a valuable option that builds on the strengths of children and families, but it is not a panacea for every child in care. The law needs to be specific so that the right decision is made on whether the best option for the child is to return home, to be adopted, to continue in foster care, or to have a permanent guardian. The budget proposal simply copies the federal language without adding provisions for how the program would work effectively in New York State, leaving unanswered legal questions that are too important to be dealt with merely in regulation.

There needs to be a statewide statutory framework on the criteria for inclusion in the subsidized kinship guardianship assistance program. It should not be possible to use this approach to target families who would otherwise never have been involved in the child welfare system. Only the most compelling reasons should warrant the use of a kinship guardianship arrangement. Most children will be more appropriately served by returning them to their parents or, when that is not possible, by pursuing adoption. In other cases, the foster care family needs the services provided by the local department of social services, and therefore the placement needs to be continued.

The bill language needs to establish local department of social services (DSS) approval as a prerequisite for each kinship guardianship determination. This approval is essential to ensure that guardianship is not ordered for children who need ongoing services or who could be safely returned home or adopted. The language must be revised to make it clear that the judge cannot order guardianship unless the local DSS, which is the custodian of the child, agrees that this is the best option for the child and advocates to the court that the child's permanency goal be changed.

info@nypwa.org

There must be sufficient time in foster care to determine that there is no possibility that the child is going to be able to go back home and that adoption is not the right alternative. The federal government sets a six month minimum; a more reasonable standard would be fourteen months. Consideration should also be given to the age of the child so that they are not steered into a guardianship arrangement prematurely.

The legislation must provide clarity that the court cannot order local district involvement once subsidized guardianship has been established. If services are needed, the case should remain in foster care.

The Funding Plan Must be Aligned with the Program Design

Guardianship is recognized as a permanent plan for children, as is adoption. Foster care is intended to be temporary while seeking a permanent solution. The Foster Care Block Grant (FCBG) is a form of reimbursement for the care of children in temporary placement. Guardianship is an alternative to adoption and should be funded under the same formula as adoption subsidies. Since guardianship and adoption are aligned programmatically, it follows that the funding should also be aligned. The executive budget proposal does not identify any costs associated with kinship guardianship assistance for 2010-11. Since there are no additional costs projected, the program can be funded through the adoption subsidies formula instead of through the FCBG without any negative impact. As kinship guardianship assistance expands in future years, the costs will increase. The funding should be re-evaluated when the child welfare funding methodology is reauthorized in June 2012 to make sure it fully supports the program.

A well designed kinship guardianship bill would support the following situation:

John is fifteen years old and has been in foster care for two years. He lives with his paternal aunt who came forward and became certified as a foster parent when he was removed from his home. John is doing very well with his aunt, who is committed to raising him. They do not need agency supervision or services. There is absolutely no possibility that John's parents are going to be able to take him home. John does not want to hurt his parents' feelings, and under no circumstances will he

consent to an adoption. The aunt is not willing to pressure her nephew in order to change his mind, even though she knows he will never return to his parents. She does not wish to seek Art. 6 custody or guardianship because she needs the financial support to care for John. Under the current system, John would be in foster care until he is between 18 and 21 years of age. If New York State passes enabling legislation for subsidized guardianship, there would be a way to close the case and end the permanency process at court, since John is in a stable and permanent home. The aunt and John would receive the financial resources that they require without the added interventions that they do not need.

Kinship guardianship would not be a good option in cases where:

- A child can still be safely returned to the parents, and placement with a relative is premature
- A child would benefit more from adoption
- A child needs services that are only available in a foster care arrangement

Conclusion

We believe in kinship care as a permanency option for children, and we strongly support the creation of a well-designed and appropriately funded kinship guardianship assistance program. The legal ambiguity in the current budget language will result in some children being placed in guardianship prematurely and missing the opportunity to return home or to be adopted. It will lead to litigation, and frustration and confusion on the part of families. The proposal also creates additional barriers to implementation by misaligning the funding plan with the program design. Kids deserve better, and we need to make kinship guardianship assistance work for them. The NYPWA recommends technical modifications that will address the shortcomings identified in this paper.

New York Public Welfare Association, Inc.
130 Washington Avenue
Albany, NY 12210
518-465-9305
www.NYPWA.org

info@nypwa.org