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## BILL ANALYSIS



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Senate Bill 529 (as enacted)  
Sponsor: Senator Judy K. Emmons  
Senate Committee: Families, Seniors and Human Services  
House Committee: Judiciary

**PUBLIC ACT 227 of 2015**

Date Completed: 3-31-16

**CONTENT**

**The bill amended the Guardianship Assistance Act to do the following:**

- **Authorize the Department of Health and Human Services (DHHS) to pay guardianship assistance to a successor guardian on behalf of an eligible child, if the successor guardian was appointed due to the death or incapacitation of the preceding guardian and other conditions are met.**
- **Extend to a successor guardian certain requirements that apply to a guardian.**
- **Modify one of the eligibility criteria for a child to receive guardianship assistance.**
- **Authorize the DHHS to promulgate rules necessary to implement and administer the guardianship assistance program in compliance with Federal law.**

The bill took effect on December 17, 2015.

Guardianship Assistance Eligibility

Under the Act, a child is eligible to receive guardianship assistance if the DHHS determines that all of the following apply:

- The child has been removed from his or her home as a result of a judicial determination that allowing the child to remain in the home would be contrary to the child's welfare.
- The child has lived in the home of the prospective guardian for at least six consecutive months.
- Reunification and placing the child for adoption are not appropriate permanency options.
- The child demonstrates a strong attachment to the prospective guardian and the guardian has a strong commitment to caring for the child.
- If the child has reached 14 years of age, he or she has been consulted regarding the guardianship arrangement.

Under the bill, the guardian must have a strong commitment to caring for the child until the child reaches 18 years of age.

(The Act defines "eligible child" as a child who meets the eligibility criteria set forth in the Act for receiving guardianship assistance. "Guardian" means a person appointed by the court to act as a legal guardian for a child under the juvenile code.)

Under the Act, a guardian who meets all of the following conditions may receive guardianship assistance on behalf of an eligible child:

- The guardian is the eligible child's relative or legal custodian.
- The guardian is a licensed foster parent and approved for guardianship assistance by the DHHS.
- The eligible child has lived with the prospective guardian in his or her residence for at least six months before the DHHS receives the application for guardianship assistance.

The bill provides that a successor guardian may receive guardianship assistance payments if the eligibility criteria for a child to receive guardianship assistance are met.

The bill defines "successor guardian" as a person appointed by the court under the juvenile code to act as a legal guardian when the preceding guardian is no longer able to act as a result of his or her death or incapacitation. The term does not include a person appointed as a guardian if that person's parental rights to the child have been terminated or suspended.

#### Payment of Assistance to Successor Guardian

The bill allows the DHHS to pay guardianship assistance to an eligible successor guardian on behalf of an eligible child. The successor guardian must apply to the Department for guardianship assistance.

A successor guardian may be eligible to receive guardianship assistance on behalf of an eligible child if the DHHS determines that all of the following apply:

- A guardianship assistance agreement for the child was in effect before the appointment of the successor guardian.
- The successor guardian was appointed by the court as a result of the death or incapacitation of the preceding guardian.
- The preceding guardian had an active guardianship assistance agreement for the child before his or her death or incapacitation.
- The successor guardian meets all of the conditions set forth in the Act.

The preceding guardianship assistance agreement may be transferred to a successor guardian who has been appointed by the court. Transfer of the agreement occurs when the successor guardian enters into a written, binding guardianship assistance agreement with the DHHS.

Payment of guardian assistance may not be made to a successor guardian until the court appoints a successor guardian. If the successor guardian began caring for the child before the court appointed him or her, guardianship assistance payments may be made retroactively to the date of death of the relative guardian, the date of incapacity of the relative guardian, or the date the successor guardian assumed care of the child, whichever is later.

The Act specifies that the DHHS may not provide guardianship assistance under certain conditions, including after the death of a guardian. Under the bill, that applies unless a successor guardian has been appointed by the court.

#### Other Requirements

The Act requires a guardian to apply for and maintain medical insurance or assistance for which the child is eligible. A guardian must cooperate with the DHHS and provide all information that he or she possesses as requested by the Department to facilitate its compliance with reporting requirements. An applicant for guardianship assistance, or a guardian or child who has received guardianship assistance, may appeal a DHHS decision denying the application, establishing or modifying guardianship assistance, or terminating the assistance.

Under the bill, those provisions also apply to a successor guardian.

**FISCAL IMPACT**

The bill may have a positive fiscal impact on State and local government. To the extent that the appointment of successor guardians results in the continuance of existing guardianship assistance agreements under which the successor guardians are eligible to receive assistance on behalf of eligible children, there will be no fiscal impact. If the appointment of a successor guardian reduces the need for other services that a child requires due to the loss of the preceding guardianship, there may be savings to both State and local governments through the Child Care Fund. Local governments must pay 50% of the costs of foster care placements into the Child Care Fund; in those cases, the children are not eligible for Title IV-E funding (Federal assistance provided to reimburse states for foster care, adoption assistance payments, and guardianship assistance payments).

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.