




SPECIAL TRANSMITTAL

SUBJECT: Subsidized Permanent Legal Custodian - Successor

TO: County Children and Youth Social Service Agencies
Private Children and Youth Social Service Agencies
Pennsylvania Children and Youth Administrators
Pennsylvania Council of Children, Youth and Family Services

FROM: Jonathan Rubin 
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PURPOSE

The purpose of this transmittal is to inform county and private children and youth social service agencies about the opportunity for Subsidized Permanent Legal Custodians (SPLC) to name a successor permanent legal custodian (Successor). This transmittal provides information related to the process of naming a successor and transferring the subsidy to the named successor.

BACKGROUND

Pennsylvania's Act 80 of 2012 amended the Human Service Code to establish the SPLC program and identified eligibility requirements for the child and Permanent Legal Custodian (PLC). Furthermore, Act 80 of 2012 amended the Adoption Opportunities Act and Kinship Care Act, thereby extending adoption assistance and PLC subsidies for eligible youth between the ages of 18 and 21 providing the youth meets certain criteria. Pennsylvania's Act 91 of 2012 amended the Juvenile Act's definition of a child to include youth between the ages of 18 and 21 when certain criteria are met.

In 2015, Pennsylvania's Act 92 amended the Human Services Code to implement several provisions of the federal Preventing Sex Trafficking and Strengthening Families

Act of 2014, Public Law (P.L) 113-183. Section 1303.2 (relating to permanent legal custodianship subsidy and reimbursement) of the Human Services Code now allows a SPLC to name a Successor in their subsidy agreement. This allows SPLCs the opportunity to create and nurture long-term stable relationships with individuals who could potentially obtain custody of the child(ren) in the SPLC's care in the event of the SPLC's death or incapacitation and provides an opportunity for the child(ren)'s subsidy benefits to stay intact.

Recently, Pennsylvania enacted Act 14 of 2019 to reinstate provisions previously under Acts 80 and 92¹.

DISCUSSION

The federal Preventing Sex Trafficking and Strengthening Families Act of 2014 preserves kinship guardianship assistance payments, through the Guardian Assistance Program, to allow the eligible child continued payment when the successor guardian replaces the guardian in the event of death or incapacitation. Act 92 mirrors this provision in the Preventing Sex Trafficking and Strengthening Families Act; however, the program continues to be known as SPLC in Pennsylvania.

Once permanent legal custodianship has been chosen as a permanency option, a Permanent Legal Custodian (PLC) has been identified for the child, and the PLC is determined eligible for a subsidy to support the child's needs, the county children and youth agency (CCYA) must inform the PLC of the option to name a Successor in their SPLC agreement, prior to finalizing the agreement, and the ability to change the named Successor at any time by amending the agreement. A Successor is defined in Act 92 as a relative or kin:

1. With whom an eligible child resides for any period of time.
2. Who has been named as the Successor in a SPLC agreement executed by an eligible child's previous eligible PLC.
3. Who meets the requirements for employment in child-care services and approval as a foster or adoptive parent under 23 Pa.C.S. § 6344 (relating to employees having contact with children; adoptive and foster parents.)

The naming of a Successor in the SPLC agreement is voluntary and not required by law. For previously established SPLC agreements, the CCYA must inform the SPLC of the option to amend the agreement to include a Successor at any time. The SPLC also has the option of naming an alternate Successor.

When an SPLC names a Successor candidate, the CCYA must exercise due diligence in obtaining preliminary background information, to the extent possible, on the Successor candidate prior to finalizing or amending the SPLC agreement. Collecting

¹ Both Acts 80 and 92 were briefly interrupted after the Supreme Court of Pennsylvania ruled on July 18, 2018 that Act 80 of 2012 violates Article III, Section 4 of the Pennsylvania Constitution and was stricken in its entirety.

this information is a safeguard, providing CCYAs the ability to know whether the Successor being named will meet the criteria for approval. If the information obtained suggests the Successor does not meet the requirements for employment in child-care services and approval as a foster or adoptive parent under 23 Pa. C.S. § 6344, the CCYA must deny the Successor candidate named by the SPLC.

It is recommended that the SPLC and the Successor have ongoing conversations regarding the responsibilities of the Successor and the steps the Successor must take in the event of death or incapacitation of the original PLC. In the event of death or incapacitation of the original PLC, the Successor must file a petition with the court for custody of the child and the court shall determine if the original PLC meets the criteria for incapacitation or death has occurred, when determining custody of the child. Documentation to prove incapacitation may include but is not limited to medical records, psychiatric and psychological evaluations, testimony from medical professionals, and any additional information per the request of the judge responsible for transferring custody to the Successor.

For the purposes of this transmittal, the Office of Children, Youth and Families (OCYF) is defining incapacitation as a permanent, chronic and substantial inability, resulting from a mental or organic impairment, to understand the nature and consequences of decisions concerning the child in the care of the SPLC and a consequent inability to care for the child. The intent of the law is for the Successor to care for the child long-term and provide a permanent connection for the child.

In the event of the death or incapacitation of the original SPLC, and for the subsidy payment to continue, the Successor must be named in the SPLC agreement, obtain the necessary certifications as outlined in section 6344 of the Child Protective Services Law (CPSL) (listed below) for all household members over the age of 18, and obtain legal custody of the child prior to the transfer of the subsidy. The Successor must be willing to follow the original SPLC agreement and make a long-term commitment to the child.

The Successor and all Successor household members over the age of 18 must complete a Federal Bureau of Investigation criminal history background check, Pennsylvania child abuse history clearance and Pennsylvania State Policy criminal record check prior to the initial subsidy payment to the Successor. The CCYA must deny transfer of the child's subsidy to a Successor when the Successor or any household member over age 18 has been named as a perpetrator of a founded report of child abuse committed within five years or less prior to the request for verification and/or has been convicted of a crime under section 6344 of the CPSL or an equivalent crime under Federal law or the law of another state.

Legal custody must be transferred to the Successor prior to subsidy payment being made to the Successor. The SPLC agreement or the addendum to the SPLC agreement that includes the section for the Successor must reference that the payments can only begin after the Successor has committed to care for the child, has assumed legal custody of the child, and the agreement has been signed by all parties.

The final court order transferring custody of the child to the Successor and supporting documents shared with the court to assist in the determination of incapacitation or proof of death shall be provided to the appropriate CCYA. Because of the potential delay between the time the Successor assumes care of the child and legal custody is awarded, the CCYA is now able to pay the Successor retroactively to the date of the custody filing. The Department will participate, when applicable, in retroactive payments if made aware of the activity to establish reimbursement when a retro payment is made. Act 92 also amended section 1303.2 of the Human Services Code to require that the monthly subsidy amount paid to the Successor shall not exceed the monthly payment rate for foster family care in the county in which the child resides.

In accordance with federal and state laws, a Successor may be reimbursed up to \$2,000 per child for actual costs related to non-recurring expenses while obtaining legal custodianship. For example, certifications, filing fees, and court costs may be reimbursable to the Successor after receipts are submitted and reviewed by the CCYA's fiscal department.

The annual contact/evaluation form for the SPLC should be revised to include information related to the Successor. Revisions should include information on the ability of the SPLC to identify and/or revise the Successor and alternate Successor candidates if they choose to and to confirm whether the identified Successor(s) remain willing and able to assume the role (if necessary). Any changes or additions identified in the annual contact/evaluation form must be included in an amendment to the existing SPLC agreement. The naming of a new or different Successor(s) also requires the CCYA to secure certifications required by the CPSL.

CCYAs must adhere to the additional PLC/SPLC requirements identified in OCYF Bulletin #3130-10-02/3140-10-03, entitled "Permanent Legal Custodian Policy".