

# Becoming a Legal Guardian

## FOR A CHILD IN FOSTER CARE



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# Becoming a Legal Guardian for a Child in Foster Care

## Introduction

*This guide is an overview of questions that are frequently asked by relative caregivers and foster parents when considering legal guardianship of a child who is in foster care. For more details about your particular situation, we encourage you to work with your OCS caseworker, guardian ad litem and adoption/guardianship specialist in your area. This guide strives to be accurate and up to date, but in the case of any discrepancies, the Alaska Statute, the Foster Care Regulations and the most recent Office of Children's Services (OCS) Policies and Procedures always take precedence.*

Alaska Center for Resource Families (ACRF) provides post adoption and post guardianship supports for families and can be a great place to start when seeking ideas, support or information about available services. Contact ACRF at 1-800-478-7307 and ask to talk with the adoption/guardianship support specialist for your region or check out their website at [www.acrf.org](http://www.acrf.org).

## What is guardianship?

For children in foster care, guardianship is an important option when efforts to achieve reunification with birth parents is not possible. Guardianship can provide a stable and permanent family for the child, and should not be used to provide a temporary living arrangement. Guardianship is a legal relationship in which a court gives an adult caregiver the authority to care for a child. Guardianship authorizes caregivers, usually a relative or a close family friend, to make the same daily decisions that a parent might make, such as enrolling a child in school or authorizing medical care. Unlike adoption, guardianship does not require the termination of parental rights, and therefore may allow the birth parents to remain involved in the child's upbringing if appropriate.

## What are the differences between adoption and guardianship?

Both adoption and guardianship are a way to help a child achieve an exit from Foster Care to a permanent home; if they cannot be reunified with the family from which they were removed. It is important for resource families to be aware of the differences in these options to ensure it's the best choice for the child and their family.

Adoption is the preferred option for permanency and OCS must demonstrate efforts to seek an adoptive home for all children. Adoption should especially be considered first for very young children and for

children who are not placed with a relative. In adoption, parental rights are terminated and the child/youth is legally recognized as a permanent member of the adoptive family even after age 18. In adoption, the birth certificate is changed to reflect the adoptive parents' names.

Guardianship means the legal guardian becomes the legal and custodial guardian of the child and most decision-making is given to the guardian. The legal relationship officially ends at age 18, though guardians usually continue to regard the youth as a permanent member of their family. The child is not eligible for inheritance rights from the guardian unless the guardian specifies inheritance in their will. OCS may use guardianship as a permanency goal when establishing permanency with a relative, for an older youth in foster care, a youth who does not give consent to adoption or in a situation where it is more culturally appropriate to pursue guardianship rather than termination of parental rights. Guardianships may be eligible for a financial subsidy to assist with the special needs of the child, and they need to have an approved home study. There can be some risk to the stability of a guardianship in that it can be dismissed by the court, but this rarely happens. Guardianship should be entered into with an intention that this is a stable and permanent family for the child to grow up in, and not a temporary arrangement.

In addition:

- Guardianship provides children with a sense of stability, identity and belonging to a family.
- Guardianship provides legal recognition to a parental figure in the child's life and allows that guardian to make decisions about day-to-day life for that child.
- Guardianship allows the child to leave the foster care system when he or she is not able to return home to their birth family.
- Guardianship may allow the birth family to retain the original roles in the family (for example, grandparents/grandchildren).
- For children over the age of 10 who must consent to their adoption, some youth will find guardianship preferable in order to maintain their cultural and family identity.
- Finally, for some cultures guardianship may be more respectful and culturally appropriate.

To see a side-by-side comparison between adoption and guardianship, see **APPENDIX A.**

Guardianship carries some risk to future stability in that birth parents whose rights have not been terminated can petition to set aside the legal guardianship and regain custody. A judge and a guardian ad litem would be involved in any legal decision to dissolve a guardianship.

For a full chart of the major differences between adoption and guardianship, please see **APPENDIX A.**





## What are the requirements to qualify for legal guardianship of a child?

If you are agreeing to do a legal guardianship for a child in foster care, the following applies:

- You must have cared for the child a minimum of six months or have previously cared for the child at least six months.
- You must agree to assume guardianship duties and responsibilities and provide a stable home for the child until they reach age 18.
- You must have an approved guardianship home study.

## What responsibilities do I have with the court? Do I need to file paperwork?

When you become a legal guardian you agree to file annual reports to the court about how the child is doing. These reports need to be filed on an annual basis until the youth turns 18 years old, and then a final report is filed. The guardian should keep track of the guardianship child's property, such as cash, inheritance, entitlements or gifts and should apply on the child's behalf for any benefits he or she may be eligible for. You need to account for these funds during your annual report to the court. You can find a sample of this report at <https://public.courts.alaska.gov/web/forms/docs/pg-640.pdf>.

Legal guardians may be able to claim a minor child as a "qualifying relative" on taxes, but you should consult a tax professional before doing so to make sure that your situation qualifies. If your youth has income to declare, as a legal guardian you should help them prepare a return or secure assistance for them.

## What supports are available to me as a legal guardian?

As a legal guardian, you become financially responsible for providing the child with basic food, clothing, shelter, schooling and supervision. A child in foster care is almost always eligible for guardianship assistance in the form of a subsidy. Guardianship subsidies are based on the special needs of the child and have to be negotiated and finalized before the final guardianship court hearing.

You will receive documentation about whether you will receive a Federal (IV-E) Guardianship Subsidy or a state subsidy before the guardianship is finalized. Eligibility for a Federal (IV-E) Guardianship Subsidy is dependent on factors, such as if the prospective guardian is a relative and whether the child was eligible for Federal funding for foster care for at least six months. Here are the differences in the benefits between a Federal (IV-E) Guardianship Subsidy and state guardianship subsidies:

A Federal (IV-E) Guardianship Subsidy:

- A negotiated monthly financial payment.

- Medicaid benefits which may also be utilized in other states if the family moves.
- A reimbursement of up to \$2,000 in non-recurring expenses related to the finalization of the guardianship, such as attorney fees.

State Guardianship (with no Medicaid Benefits):

- A negotiated monthly financial payment.
- A reimbursement of up to \$2,000 in non-recurring expenses related to the finalization of the guardianship, such as attorney fees.

A child who is not eligible for a federal guardianship subsidy may still be able to receive health insurance through an application made by the guardian to Denali Kid Care Medicaid or through Indian Health Services if the child qualifies. The guardian may also explore putting the child on their own health insurance policy. The guardianship subsidy may be used to help offset the costs of the insurance premiums. Questions about eligibility requirements for Medicaid should be directed to the Recipient Helpline at 800-770-5650 (option 2).

For questions about the guardianship subsidy or to request changes after finalization of the guardianship, contact the Adoption/Guardianship Unit of the State of Alaska Office of Children’s Services at 907-465-3209.

**Is guardianship permanent? Can birth parents claim their children later?**

Guardianship carries some risk to future stability in that any person may petition to dissolve the guardianship, including the guardian. A person considering guardianship may want to talk to the attorney they have hired to finalize their guardianship if they are concerned about the possibility of the guardianship being challenged after finalized. The guardianship order filed with the court usually provides for notice to OCS in the event that the parent seeks to have the guardianship set aside or if the legal guardian requests to be relieved of the duties of guardian.

The court makes the decision about whether to dissolve the guardianship. A guardian ad litem might be appointed by the court to investigate your home, the child’s bank account and medical care; this may occur if someone files for a review hearing, if you miss your reporting requirements or any time the court decides it is necessary.

If continued legal guardianship is not feasible, such as in the event of the guardian’s ill health or other circumstance, guardians and family members can make stable arrangements for guardianship children without OCS becoming re-involved. In the event the birth parents have made significant changes in their life and the guardian agrees the best plan for the child is to resume living with their parent or another person, than the guardian should contact the OCS Adoption/Guardianship Unit as soon as possible. A guardian may be held responsible for paying back subsidy funds if





they do not notify OCS that the guardianship has ended or the child has moved. The guardianship subsidy cannot transfer to another caregiver and ends immediately when a guardianship is dissolved by the court. If the subsequent caregiver is interested in a subsidy payment to help meet the child's needs, than they should contact the OCS Adoption/Guardianship Unit at 465-3209 **prior** to any court hearing to finalize an adoption or guardianship. If the court dissolves the guardianship OCS is usually notified, but legal custody by OCS does not automatically resume. If the child is reported to be abandoned or unsafe OCS may open a new case to assess the need for custody.

### **Does OCS stay involved with my home after the guardianship?**

No, once the legal guardianship finalizes in court, OCS closes the child protection case with the idea that this placement is a permanent and stable family living arrangement for the child. Legal guardianship is a legal commitment and a legal relationship to a child at least until the child turns 18 years old.

### **Can I move or leave the state once I have legal guardianship?**

Yes, you can move within the state and out of the state. You need to update the court and any other persons specified in your guardianship order with your contact information. Your reporting requirements remain the same. If you are receiving a guardianship subsidy, notify the OCS Adoption/Guardianship Unit in the state office with your new contact information. If you have a federal guardianship which includes Medicaid, OCS State Office will ask Alaska Medicaid to close and will ask the new state to open a Medicaid case.

### **What happens with the child's Permanent Fund Dividend? Am I responsible for applying for it now?**

When a child is in OCS custody OCS applies for the PFD on behalf of the child and keeps in a trust account. After the guardianship finalizes, the guardian becomes responsible for filing for the child's PFD. Past PFDs received while a child was in OCS custody are held in a trust for the child until he or she turns 18 years old. Once the child turns 18 the funds are released directly to them, unless your guardianship attorney petitions the court to have the funds released early.

### **Am I legally liable for a child if they do damage?**

The guardian is not liable to third persons for acts of the minor to the extent that a parent might be liable for those acts.



## What happens when the child turns 18? Can I continue to be a legal guardian to an adult if needed?

Your obligation as a legal guardian to a minor ends at the age of 18 years old when the minor becomes an adult. Many families continue a familial relationship with the youth into adulthood, and at 18 a youth can consent to his or her own adoption if desired. For an adult who needs a guardian or a conservator there is a process to petition for adult guardianship for an incapacitated adult who is unable to care for themselves. Other birth family members can also apply to be adult guardians.

## What if parental rights have not been terminated? What rights do birth parents retain?

In a legal guardianship the birth parents may maintain some residual rights and responsibilities. If a parent's rights are intact he or she is still required to pay child support. The child support payments do not go directly to the guardian, as the child support goes to the state to help pay for the guardianship subsidy.

Guardianship is often used as a way to help maintain the child's family connections. Contact with birth parents in guardianship arrangements is encouraged in all cases except where birth parents would seriously interfere with the permanence of the placement or present a danger to child and guardian. The court can delegate these parental rights to the guardian if requested, especially when parental rights have been terminated or when the birth parents may not be readily available.

Here are some residual rights a birth parent may retain if their parental rights are still intact:

- Reasonable visitations
- Consent to adoption
- Consent to marriage
- Consent to military enlistment
- Consent to major medical treatment except in cases of emergency
- Right to claim the body of a deceased child

You may want to discuss birth parent rights with the guardianship attorney you have hired to complete your guardianship to ensure the guardianship order is clear on retained rights and visitation expectations.

## Under what circumstances does a guardianship end?

Guardianship of a minor terminates when the minor attains the age of 18 years, marries, is adopted, or dies, or when the guardian resigns, dies or is removed by the court.





## What happens if my spouse or I die? What happens to our children?

Children of legal guardians do not hold rights to inheritance or social security survivor benefits if a guardian passes away unlike a child of an adoptive parent. Guardians should have a plan for a successor guardian in case something happens to them. If there is a Federal (IV-E) guardianship in place, the successor guardian may be able to receive a guardianship subsidy if they arrange the subsidy with the OCS State Office Adoption/Guardianship Unit in advance of any guardianship hearing. If there is no plan for the child upon the guardian's death, OCS may become involved to ensure the child is cared for.

## I am providing guardianship to a child in my home, and now I want to adopt him. What do I do?

It may be possible to adopt the child after becoming their guardian. It is likely you will have to hire an adoption attorney to advise you in this matter. Finalizing an adoption will end the child's eligibility for the guardianship subsidy. Prior to petitioning for adoption, the guardian should contact the OCS Adoption/Guardianship Unit at 907-465-3209 to discuss what your options are for an adoption subsidy in your particular case.

## Advice From Other Legal Guardians:

We asked guardians who have completed legal guardianships to share advice for families considering legal guardianship. This is what they shared:

*"Know that legal guardianship is different than foster care. As the guardian, you get to make the decisions about the child and don't need to consult a caseworker or a Guardian ad Litem. But on the other hand you also don't have a caseworker to call if you need resources or to get a child into counseling. You have to do that. If your child gets in trouble, you are the one that has to deal with that."*

*"Ask yourself questions and do your homework. Think through the ramifications of the following questions for the long term. What happens if there is a divorce or a break-up of the adult relationship? What happens if you are deceased? What happens if you are incapacitated? A child's behavior and attitude may change after moving from foster care into guardianship—are you prepared to stick with it if it isn't a positive change?"*

*"Talk to the youth about what guardianship is and how it differs from both foster care and adoption. Many kids will respond positively to not living in foster care anymore but being able to live in a stable place. It might be easier for them knowing that they can still have a relationship with their parent and they are not being adopted. Youth need to understand how guardianship is different from foster care and different from adoption."*

*“Older youth need to know that guardianship is not like adoption in terms of inheritance. Unless you put a child in your will, he or she will not be inheriting any of your property if you pass away even if he is living with you at the time.”*

*“Have a system in place to make a clear differentiation between the child’s funds and your funds. PFDs held in trust are released to youth at 18 years of age and you should be applying for a youth’s PFDs while he or she is in your home. Make sure all of that goes into an account separate from yours. You cannot commingle your funds and you should be sure that you can clearly account for all the funds that come to the child while in your care.”*

*“As you are moving toward guardianship, keep things in writing from your caseworker. Caseworkers may change frequently and promises made under one caseworker verbally may not hold if the worker changes.”*

## Sources Used In Developing this Guide

FAQ on Guardianship of Minor Children. Retrieved from <https://family.findlaw.com/guardianship/faq-on-guardianship-of-minor-children.html>

OCS Child Protective Services Manual [dhss.alaska.gov/ocs/Documents/Publications/CPSManual/cps-manual.pdf](https://dhss.alaska.gov/ocs/Documents/Publications/CPSManual/cps-manual.pdf) Section 3.12

Alaska Court System Self-Help Services: Guardianships & Conservatorship Retrieved from <http://www.courts.alaska.gov/shc/guardian-conservator/>

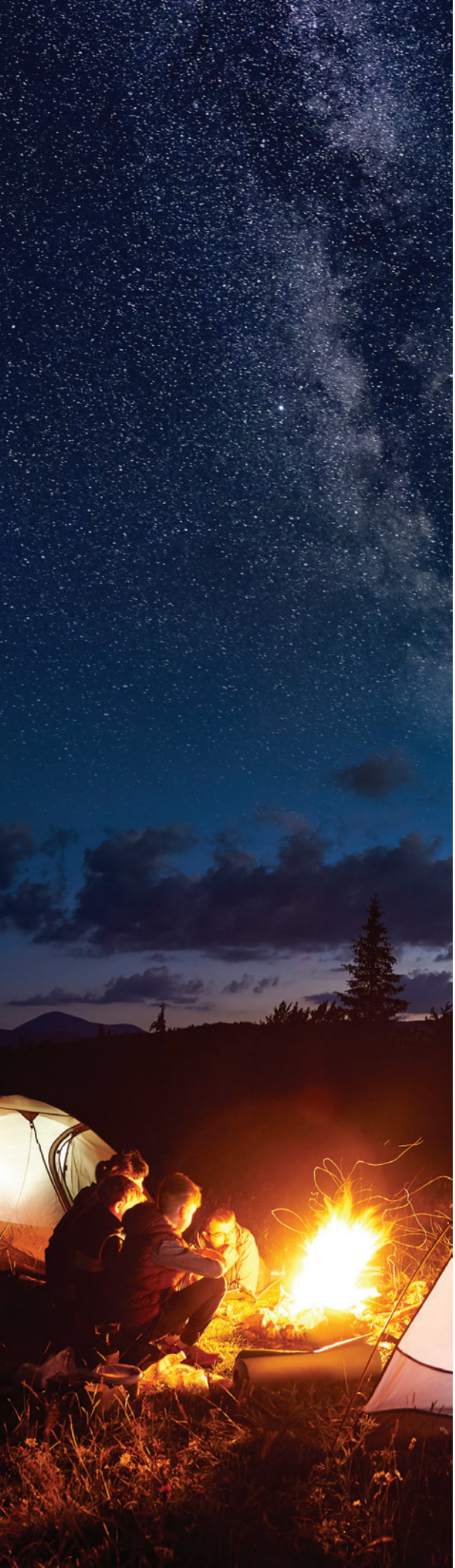
Alaska State Association for Guardianship & Advocacy (ASAGA) Retrieved from <http://asaga.info/>. For more information about Adult Guardianships and Conservatorships, go to the Alaska State Association for Guardianship & Advocacy (ASAGA), a volunteer organization that provides tools, resources and advocacy in Alaska.

Alaska Center for Resource Families, A Project of Northwest Resource Associates. (2016). INFORMATION PACKET: Guardianship. [www.acrf.org](http://www.acrf.org)

Quality Improvement Center for Adoption and Guardianship Support and Preservation. What Social Service Professionals Need to Know To Support Guardianships Families. Retrieved from <https://qic-ag.org/>

Personal Communication and Review with Tiffany Brookwell of Otterson Law Office, Yvonne Hill and Jack Eddy of the Adoption/Guardianship Unit, OCS State Office, Department of Health and Social Services Office of Children’s Services.





## APPENDIX A: Adoption & Guardianship

Adoption	Guardianship
<p><b>Legal Status</b></p> <p>Birth parent’s rights are voluntarily relinquished or involuntarily terminated.</p> <p>The adoptive parent is given all the rights and responsibilities that once belonged to the birth parent.</p> <p>Adoption is a permanent lifelong legal relationship.</p> <p>Both persons in a married couple must adopt, unless a judge has excused the other spouse from adopting.</p>	<p><b>Legal Status</b></p> <p>Birth parents’ rights may or may not be voluntarily relinquished or involuntarily terminated. The birth parent may retain “residual rights” when parental rights have not been relinquished or terminated.</p> <p>The guardian is given legal responsibility for the child and assumes the rights of care, custody and supervision of the child.</p> <p>Although guardianship legally ends when the child turns 18 most legal guardians enter into this commitment intending it to be a lifetime relationship. Guardianship may also end with a court order.</p> <p>The guardian must file an annual report with the court.</p>
<p><b>Decision Making</b></p> <p>All decisions are made by the adoptive parent except for provisions in court orders establishing parental retained privileges.</p>	<p><b>Decision Making</b></p> <p>Decisions regarding school, medical treatment and most other life decisions are made by the guardian.</p> <p>When parental rights have not been relinquished or terminated the birth parents may retain important rights as specified in the guardianship order, e.g., visitation, consent to adoption, consent to marriage, consent to military enlistment and the right to claim the body of a deceased child.</p>

Adoption	Guardianship
<b>Birth Certificate</b>	<b>Birth Certificate</b>
The adoptive parent determines the child's legal name which is put on the child's new birth certificate. The child's adoptive parents are added to the birth certificate.	Usually, the child retains his or her name. The child's parents remain on the birth certificate, and the birth certificate is not changed.
<b>Inheritance</b>	<b>Inheritance</b>
An adopted child has all of the same rights as birth children when the adoptive parent does not have a will. Otherwise, inheritance rights are established through a valid will as they are for birth children.	The child has no rights of inheritance from the guardian unless the child has been included in the guardian's will.
<b>Consent of the child</b>	<b>Consent of the child</b>
A child who is 10 years of age or older must consent to his or her own adoption, unless the court in the best interest of the minor dispenses with minor's consent.	A child who is 10 years of age or older must consent to his or her own guardianship.
<b>Death of Adoptive Parent(s)</b>	<b>Death of Guardian</b>
The adoption subsidy ends with the death or termination of rights of the adoptive parents. The child most likely will remain eligible for adoption assistance in any subsequent adoption. Please contact OCS regarding requirements well before the second adoption is finalized.	A guardianship subsidy ends due to the death or incapacitation of his or her guardians.  A subsidy may be only be offered to the successor guardian listed in the subsidy agreement for Federal IV-E Guardianship Subsidies prior to a guardianship hearing.
<b>Termination of Adoption</b>	<b>Termination of Guardianship</b>
The commitment entered into by adopting a child is one that lasts for a lifetime. Adoptive parents retain their parental rights until such time as a court terminates parental rights.	Guardianship is a strong commitment to the child and is intended to be a lifetime relationship.  The guardianship terminates when the child turns 18, or when the guardianship is terminated by a court order.





Adoption	Guardianship
<p><b>Subsidy</b></p> <p>A child in foster care is almost always eligible for adoption assistance in the form of a subsidy. The adoptive parents are financially responsible for the support of the child. The adoption subsidy lasts until the month the child turns 18.</p>	<p><b>Subsidy</b></p> <p>A child in foster care is almost always eligible for guardianship assistance in the form of a subsidy. A guardian is financially responsible for the child. Guardianship subsidy lasts until the month the child turns 18.</p>
<p><b>Medicaid/Other Health Insurance</b></p> <p>Adoption subsidies almost always include Medicaid coverage.</p> <p>Adoptive parents can choose to place their child on their private insurance. Medicaid would be secondary to private insurance.</p> <p>Adopted children can continue to access Indian Health Services if eligible.</p> <p>The adopted child may be eligible for continued Medicaid coverage through age 21 if the Division of Public Assistance eligibility requirements are met.</p>	<p><b>Medicaid/Other Health Insurance</b></p> <p>Only Federal IV-E Guardianship Subsidies include Medicaid.</p> <p>Guardians may be able to place the child on their private insurance. Guardianship children can continue to access Indian Health Services if eligible</p> <p>If a child remains in foster care through their 18th birthday they are eligible for Medicaid until age 26.</p>
<p><b>Permanent Fund Dividend and Independent Living Benefits</b></p> <p>Effective October 24, 2016, any PFD funds held in trust by OCS are released when the child turns 18, unless there is a court order to release the funds earlier. Adoptive parent files for PFD's subsequent to adoption.</p> <p>If a youth is adopted after their 16th birthday they remain eligible for Independent Living Benefits.</p>	<p><b>Permanent Fund Dividend and Independent Living Benefits</b></p> <p>Any PFD funds held in trust by OCS are released when the child turns 18, unless there is a court order to release the funds early. Guardian files for PFD subsequent to guardianship.</p> <p>If a youth is placed in a guardianship after their 16th birthday they remain eligible for independent living benefits.</p>

Adoption	Guardianship
<p><b>Child Support</b></p> <p>Termination of parental rights means the biological parents are not responsible for continuing child support after the date of adoption. They may still be responsible for past child support which was not paid.</p> <p>If an adoptive child returns to custody in Alaska the Child Support Services Division will not collect child support from the adoptive parent, if they were notified it was an OCS adoption.</p>	<p><b>Child Support</b></p> <p>If the birth parents' rights have not been terminated they are responsible to pay child support.</p> <p>The child support will be collected by the State of Alaska. This child support benefit will not be directed to the guardian due to the subsidy payment.</p>
<p><b>Relationship with the Birth Parent</b></p> <p>The adoptive parent has the right to determine if the child will have any relationship with the birth parents and how that will occur, unless there are other specific provisions in a court order.</p>	<p><b>Relationship with the Birth Parent</b></p> <p>If the birth parents' rights have not been terminated they may have the right to have contact or visit the child as specified in the guardianship order.</p>





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