



CDSS

WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES

744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

September 28, 2015

ALL COUNTY LETTER NO. 15-66

TO: ALL COUNTY WELFARE DIRECTORS
 ALL CHIEF PROBATION OFFICERS
 ALL FOSTER CARE MANAGERS
 ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
 ALL ADMINISTRATIVE LAW JUDGES
 ALL TITLE IV-E AGREEMENT TRIBES
 ALL CONSORTIA PROJECT MANAGERS

SUBJECT: FEDERAL KINSHIP GUARDIANSHIP ASSISTANCE PAYMENT
 (KIN-GAP); SUCCESSOR GUARDIAN

REFERENCE: [PUBLIC LAW \(P.L.\) 113-183](#); [ASSEMBLY BILL \(AB\) 12](#); [WELFARE AND INSTITUTIONS CODE \(W&IC\) SECTIONS 11386\(i\) and 11391\(c\)](#); [ELIGIBILITY AND ASSISTANCE STANDARDS \(EAS\) MANUAL SECTION 41-430](#); ALL COUNTY LETTERS (ACL) [11-15](#) AND [11-86](#)

The purpose of this ACL is to provide counties with information and instructions regarding new provisions of the federally-funded Kin-GAP Program when the current relative guardian is replaced with a successor guardian. Federal law now provides for the continuation of Title IV-E Kin-GAP eligibility if the relative guardian dies or is incapacitated and the successor legal guardian is named in the agreement (or any amendments to the agreement) pursuant to the federal Preventing Sex Trafficking and Strengthening Families Act of 2014 (P.L. 113-183).

KIN-GAP PROGRAM BACKGROUND

California has had a state-funded Kin-GAP Program since 2001. Among other benefits, that program allows for the continuation of the program payment in the event a new guardian (referred to in statute as “co-guardian” or “alternate guardian”) is appointed. Although this provision has existed in state law, federal law did not provide a similar provision for the federally-funded Kin-GAP Program and did not permit federal eligibility to continue when another guardian was appointed by the court. As such, cases where

a new guardian was appointed then became eligible for, and moved to, the state-funded Kin-GAP Program.

With the enactment of P.L. 113-183, federal law now allows continued eligibility in the federally-funded Kin-GAP Program in the event the current relative guardian passes away or is otherwise incapacitated and is no longer able to care for the child; the replacement guardian is referred to in statute as a “successor guardian.”

SUCCESSOR GUARDIAN IN THE FEDERAL KIN-GAP PROGRAM

The overriding goal of the child welfare system is to ensure that every child or youth has a safe, stable, and loving home. In order to ensure that the needs of youth and families are met, the California Department of Social Services (CDSS) encourages counties to discuss successor, subsequent, or alternative guardians in all Kin-GAP cases, so that they can be prepared should the need arise. These discussions will be valuable in promoting permanence, stability, safety, and continuity in families.

Given the individualized needs of children and families over time, counties are also encouraged to ask the kinship guardian to review the selection of the proposed successor guardian at the time of reassessment. The kinship guardian is also encouraged to have discussions with the individual he or she has identified regarding the individual’s willingness and ability to be the successor guardian. The named successor guardian does not need to sign an agreement or become otherwise involved until the need to appoint a new successor guardian due to death or incapacity occurs, and he or she is willing to become the guardian.

The successor guardian does not have to be a relative or non-relative extended family member (NREFM) to be eligible for Kin-GAP funding under the new federal law. Documentation of the relationship between the child and the proposed successor guardian, as required by W&IC section 11391(c), is not required for naming a successor guardian or for funding purposes, but it may be required for establishing the guardianship. Nothing in federal law precludes the kinship guardian from identifying more than one successor guardian.

To ensure eligibility is maintained for federally-funded Kin-GAP cases, it is strongly recommended that a successor guardian be named when executing the initial Kin-GAP agreement. If the current guardian is not able, or is unwilling, to identify a successor guardian at the time of the initial agreement, a successor guardian may be subsequently named in an amendment to the agreement.

Counties are advised that solely naming an individual to serve as a successor guardian is insufficient. The named individual and home must be assessed as required pursuant to W&IC section 11386(i). A new period of six months in placement with the successor

guardian is not required; however, the Kin-GAP payments cannot resume until the successor guardian meets all eligibility requirements. A new Kin-GAP agreement between the successor guardian and the responsible county must be signed prior to the court's appointment of the successor guardian.

Counties are instructed to track the determination of continued eligibility for the state and federal Kin-GAP programs following the appointment of a successor guardian. This information will be useful for claiming, reporting, and auditing purposes. Cases in which federal eligibility was terminated prior to the issuance of this ACL, due to the appointment of an alternate or co-guardian, may not be re-evaluated for federal eligibility or reestablished under the federal program. Counties will be informed of the effective date of claiming, following approval of the state plan amendment.

INCAPACITY DEFINED

Federal law does not define incapacity for the purpose of continuation of Kin-GAP eligibility. As a result, CDSS relies upon the foster care program's definition of incapacity to provide guidance. In cases of foster care, "incapacity" is defined as it relates to a parent of the child for the purpose of determining deprivation. Section 41-430 of the California Eligibility and Assistance Standards (EAS) defines incapacity, in part, to mean the existence of:

...a physical or mental illness, defect, or impairment that reduces substantially or eliminates the parent's ability to support or care for the child...and which is supported by acceptable evidence...

For purposes of determining whether the successor guardian is appointed due to the incapacitation of the kinship guardian, counties should look to this definition for guidance. Counties must document the basis for determining that the reason for replacement with a successor guardian was incapacity of the relative guardian. Documentation may include, but is not limited to, any of the following:

- A Medical Report or other written statement from a physician, licensed or certified psychologist, or other appropriate professional that provides information sufficient to substantiate the determination of incapacity and includes:
 - A diagnosis of the guardian's condition and explanation of the extent to which it substantially reduces or eliminates the guardian's ability to support or care for the child.
 - The doctor's name, address, and phone number.

- Where a written statement cannot be obtained without delay, a verbal statement from the physician, licensed or certified psychologist, or other appropriate professional verifying incapacity may be accepted.
 - If obtained verbally, documentation must include the date verification was obtained, the name of the person who supplied the verification, and the name of the county person who obtained verification.
- Other reliable documentation.

VERIFICATION OF DEATH

For purposes of determining whether the successor guardian is appointed due to the death of the kinship guardian, counties must obtain verification of death.

Documentation may include, but is not limited to, any of the following:

- A copy of the death certificate.
- A Medical Report or other written statement from a physician or other suitably qualified personnel.
- Where a written statement cannot be obtained without delay, a verbal statement from the physician or other suitably qualified personnel verifying death may be accepted.
 - If obtained verbally, documentation must include the date verification was obtained, the name of the person who supplied the verification, and the name of the county person who obtained verification.
- An obituary or newspaper account of the guardian's death.
- Other reliable documentation.

FORM REVISIONS

The *Kin-GAP Program Agreement Amendment (SOC 369A)* has been revised to allow a successor guardian to be identified. When the kinship guardian intends to identify a successor guardian, that intent must be documented and the individual named on page three of the SOC 369A at either the signing of the initial agreement or during any amendment to that agreement.

STATE KIN-GAP FOR CHILDREN

There are no changes to the state-funded Kin-GAP Program. An alternate or co-guardian may be appointed for reasons other than death or incapacity of a guardian or if a successor guardian was not named in the initial or subsequent agreement. If such appointment results in the case no longer being federally eligible, eligibility would then continue under the state-funded Kin-GAP Program, assuming all other eligibility conditions are met.

CAMERA READY FORMS AND TRANSLATIONS

For a camera-ready copy of the forms in English, contact CDSS' Forms Management Unit at: fmudss@dss.ca.gov. If your office has internet access, you may obtain these forms from the CDSS webpage at: <http://www.dss.cahwnet.gov/cdssweb/PG19.htm>.

When all translations are completed per Manual of Policies and Procedure section 21-115.2, including Spanish forms, they are posted on an ongoing basis on the CDSS webpage. Copies of the translated forms can be obtained at: http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm.

For questions on translated materials, please contact CDSS' Language Services at (916) 651-8876. Until translations are available, recipients who have elected to receive materials in languages other than English should be provided the English version of the form or notice along with the GEN 1365 (Notice of Language Services) and a local contact number.

QUESTIONS

Questions concerning Kin-GAP Program eligibility requirements should be directed to the Foster Care Audits and Rates Branch, Funding and Eligibility Unit at (916) 651-9152. Questions concerning Kin-GAP Program policy should be directed to the Foster Caregiver Policy and Support Unit at (916) 657-7465.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

Attachment

c: County Welfare Directors Association of California
Chief Probation Officers of California

KINSHIP GUARDIANSHIP ASSISTANCE PAYMENT (KIN-GAP) PROGRAM AGREEMENT AMENDMENT

This form amends and supplements the SOC 369 to memorialize the terms, conditions, rights, responsibilities, and agreements reached between the county child welfare agency, probation department or Title IV-E agreement tribe and the relative guardian.

NOTICE: This agreement describes the guardianship assistance benefit that you will receive. If you agree, please sign the agreement and return it to the responsible public agency. If you disagree, please contact the responsible public agency. If you and the agency cannot reach an agreement, you will receive a Notice of Action which explains how to request a state hearing to resolve the matter.

I/We, _____ and _____, have
(NAME OF LEGAL GUARDIAN) (NAME OF LEGAL GUARDIAN)

entered into an agreement with the _____ for a
(NAME OF RESPONSIBLE PUBLIC AGENCY)

(check one) federally eligible;
 state eligible Kinship Guardianship Assistance Payment (Kin-GAP) for _____
(NAME OF CHILD)

This Kin-GAP Agreement will continue until it is modified or terminated in accordance with its terms.

This is (check one) an initial agreement
 an amendment to the agreement dated _____
(DATE OF INITIAL AGREEMENT)

1. A Kin-GAP benefit of \$ _____ per month is authorized to begin _____
(BEGINNING DATE OF PAYMENT)

The child's needs must be reassessed at least every two years. The next scheduled reassessment is

(REASSESSMENT DATE)

2. Unless the benefit is ending because of age, _____ will send a Statement of Facts
(RESPONSIBLE PUBLIC AGENCY)

Supporting Eligibility for Kinship Guardianship Assistance Payment (Kin-GAP) Program (KG 2 form), at least 60 days before the next reassessment date. I/We shall complete the KG 2 and return it within 14 days to _____
(RESPONSIBLE PUBLIC AGENCY). I/We understand that failure to complete and return this form in a timely manner may result in an interruption, delay or termination in the receipt of the benefit.

3. If applicable, any specialized care increment (SCI) that the child receives may change as the needs of the child change.

4. A child receiving Kin-GAP shall be eligible for an age-related increase after his or her 5th, 9th, 12th and 15th birthdays. (In Marin County, the age-related increase occurs after his or her 5th, 7th, 12th, 13th and 15th birthdays.)

5. The Kin-GAP benefit may not exceed the age-related, state-approved foster family home care rate, and any applicable state-approved SCI, that would have been paid if the child had remained in foster care.

6. The Kin-GAP payment that the child receives may change if other income is received by or on behalf of the child.

7. A child receiving Kin-GAP benefits may retain cash and other assets subject to limitations established by law.

8. A child receiving Kin-GAP shall be eligible for a clothing allowance in accordance with state law and as established by the county of legal responsibility.

-
-
9. For a youth eligible for a Kin-GAP benefit who is a teen parent and has a child living in the same home, the rate may include a two hundred dollar (\$200) monthly payment made to the relative caregiver in a whole family foster home.
 10. If a child is living with a teen parent who is eligible for Kin-GAP benefits, the rate paid to the relative guardian on behalf of the teen parent shall include the "infant supplement" which is an additional benefit for the care and supervision of the child.
 11. Payments on behalf of a child who is a recipient of Kin-GAP benefits and who is also a consumer of a California regional center services shall be based on the dual agency rates established by the State Department of Social Services.
 12. Continuation of the Kin-GAP benefit depends upon my/our responsibility for the support of the child and on the child's continued receipt of my/our support.
 13. I/We agree to inform the agency immediately if any of the following occurs:
 - Our address changes.
 - The youth is no longer residing in the family home.
 - I/We are no longer providing any type of support to the youth.
 - I/We are no longer responsible for the support of the youth.
 - Guardianship is terminated and/or dependency is reinstated.
 - The child begins to receive earned or unearned income (i.e., Social Security, SSI/SSP, other).

Failure to report these changes may result in an overpayment which may be recovered by a one-time charge or a reduction in current and future Kin-GAP benefits.

14. I/We understand that _____ will remain eligible to receive a Kin-GAP benefit from the State of California regardless of where I/we reside.
(NAME OF CHILD)
15. I/We understand that under the terms of this agreement the child is eligible for medical services under Medi-Cal, California's Medicaid program. It is understood that if we move to another state we will need to apply for Medicaid in that state. I/We are aware that medical coverage and social services may vary in other states.
16. I/We understand that the child will not be eligible to receive a Kin-GAP payment after reaching the age of 18 years **unless** he or she is in school and is expected to graduate by the age of 19 years.
17. Effective January 1, 2012, a former dependent child or ward of the juvenile court who is eligible for the Kin-GAP program and who attained 16 years of age before originally entering the Kin-GAP program shall continue to receive aid up to 19 years of age; effective January 1, 2013, up to 20 years of age; and, effective January 1, 2014, up to 21 years of age [the extension of benefits for those between 20 and 21 years of age shall be contingent upon appropriation by the California Legislature], as long as one or more of the following conditions exist:
 - (1) The individual is completing secondary education or a program leading to an equivalent credential.
 - (2) The individual is enrolled in an institution which provides postsecondary or vocational education.
 - (3) The individual is participating in a program or activity designed to promote or remove barriers to employment.
 - (4) The individual is employed for at least 80 hours per month.
 - (5) The individual is incapable of doing any of the activities described in (1) to (4), inclusive, due to a medical condition, and that incapability is supported by regularly updated information in the case plan of the individual.
18. Kin-GAP benefits shall continue to age 21 if the youth has a physical or mental disability that warrants the continuation of assistance.

Pursuant to Welfare and Institutions Code Section 1403(c), relative guardians who receive Kin-GAP payments are responsible for reporting to the responsible public agency when the nonminor former dependent no longer satisfies at least one of the five conditions described above.

19. I/We understand that under the terms of this agreement the child is eligible for services which include assistance in the filing of a petition to appoint a co-guardian or a successor guardian for the child to have dependency jurisdiction resumed, or to terminate guardianship.
20. I/We will not be charged or have to pay any fees or costs to establish guardianship.
21. Once the youth attains the age of 16, he or she may request and receive independent living program services.
22. The youth, who was in foster care between the ages of 16 - 18 while under the care and custody of the juvenile court, is eligible to apply for a Chaffee Education and Training Voucher.
23. I/We acknowledge that a copy of this written agreement has been received.
24. I/We understand that reimbursement can be made for reasonable and verified nonrecurring expenses incurred from obtaining legal guardianship to the extent the expenses don't exceed \$2,000. Reimbursement shall not be made for costs otherwise reimbursed from other sources.
25. In the event of my death or incapacitation I/we would like _____ to become the successor guardian.
(NAME OF SUCCESSOR GUARDIAN)

I/We are in agreement with the provisions of this document.

=====

I/We are not in agreement with the provisions of this document and request a state hearing.

LEGAL GUARDIAN	DATE	RESPONSIBLE PUBLIC AGENCY REPRESENTATIVE	DATE
LEGAL GUARDIAN	DATE	RESPONSIBLE PUBLIC AGENCY NAME, ADDRESS TELEPHONE NUMBER	

TO REQUEST A REASSESSMENT, GET HELP CONCERNING GUARDIANSHIP OR TO REQUEST SERVICES, PLEASE CALL OR WRITE THE PUBLIC AGENCY LISTED ABOVE.