

## SUPPLEMENT TO THE FINAL STATEMENT OF REASONS

### a) Determination that Regulations Are Necessary

#### Section 31-075.22

This section is being amended for clarity and for consistency with Manual of Policies and Procedures (MPP) section 23-353. Previously, this section stated that the case record of a child who received Kinship Guardianship Assistance Payment Program (Kin-GAP) aid had to be retained for a minimum of three years "after the child's Kin-GAP case is closed pursuant to MPP section 23-353." However, this was unclear because it was inconsistent with MPP section 23-353, which references the Welfare and Institutions (W&I) Code section 10851 requirements that public social services records "be maintained for three years from the last date of aid or services [emphasis added]." As amended, this section makes it clear that the case record of a child who receives Kin-GAP payments must be kept for a minimum of three years from the last date of Kin-GAP aid in accordance with MPP section 23-353.

#### Section 31-206.317(c)

Section 31-206.317(c) is being amended for clarity and for consistency with the proposed regulations. Previously, the term "fit and willing relative" was used without being defined. As amended, this section now uses the term "prospective kinship guardian" instead; the use of this term is clearer because "kinship guardian" is defined in proposed Section 31-002(k)(3).

### b) 15-Day Renotice Statement

Pursuant to Government Code section 11346.8, a second 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. The following comments were received during the second 15-day public comment period from February 25, 2016 to 5:00 p.m. March 10, 2015:

### c) Incorporation by Reference Statement

In accordance with 1 CCR 20(c)(1), it would be cumbersome, unduly expensive and otherwise impractical to publish these forms in the California Code of Regulations (CCR) because the format of the forms would be too voluminous to fit in the CCR.

d) Testimony and Response

**Comments from Fresno County Department of Social Services (DSS)**

1. Section 45-607.214

Comment:

Section 45-607.214 refers to ACL 11-28. It does not seem prudent for regulations to refer the reader to an All County Letter. Can the pertinent information from the All-County Letter (ACL) be incorporated into the regulations?

Response:

The Department appreciates this comment and suggested language, but is not amending the regulation at this time. The referencing of an ACL in regulations may not be common, but in this circumstance it is consistent with state regulation development policy. Additionally, the language from ACL 11-28 has been incorporated in the regulations as well.

2. Sections 45-607.72 and .73

Comment:

Section 45-607.72 and .73 states the Social Security Administration will offset SSI/SSP and survivor's benefits (.72) and SS Disability payment (.73) against the federal Kin-GAP payment. This is only true for SSI/SSP. The SSI/SSP is Public Assistance under Title XVI and is Means Tested. Survivor's and Disability payments are an entitlement program under Title II and are not Means Tested. The Social Security Administration cannot offset Title II benefits due to a person receiving federal Kin-GAP. Title II benefits should be counted as income in the Kin-GAP program regardless of federal or state Kin-GAP status.

Response:

The Department appreciates this comment but is not amending the regulation at this time. Pursuant to Federal Public Law 110-351, the IV-E agency has the discretion to establish the conditions in the State under which a guardian may enter into an IV-E legal guardianship arrangement. Also, the suggested amendment would set a policy that narrows the population of youth eligible for Kin-GAP which would ultimately limit

opportunities to provide permanency for youth who would otherwise remain in foster care.

3. Section 45-607.85

Comment:

Section 45-607.85 states payment shall continue unless (.85) the placement and care responsibility is transferred from the guardian to the county welfare or probation department. Should this state unless it meets the requirements under 45-607-214?

Response

The Department appreciates this comment and suggested language, but is not amending the regulation at this time. The requirement referenced in 45-607.85 is specifically related to the filing of the 387 WIC petition and completely different than the requirement referenced in 45-607.214.

4. Section 45-600

Comment:

I was under the impression that the regulations in 45-600 would supersede Division 90-100 regulations; however, an amendment to Division 90-101 is included in the draft revision. The revisions is to remove the reference to the forms KG 1 and KG 2 but leaves the reference to the KG 2A. The KG 2A was made obsolete around 2011. Why would the KG 2A remain in the regulations? If the Division 90-100 regulations are to remain in effect, when would they be applied instead of using the Division 45-600?

Response:

The KG 2A will remain obsolete and the deletion of the appropriate Division 90-100 regulations will be addressed in a future regulations package.

**Comments from Ventura County Child Welfare Department**

1. Section 45-602.313

Comment:

Section 45-602.313 (a), (b) and (c) should be re-ordered. If physical or mental disability is met the other two conditions do not apply.

Response:

The Department appreciates this comment, but is not amending the regulation. The after age 18 eligibility requirements listed in this section are not sequential. Rather, this section lists the conditions under which Kin-GAP payments may continue after 18 and only one of these requirements needs to be met for eligibility.

2. Section 45-602.4

Comment:

In Section 45-602.4, Voluntary Placement Agreement (VPA) is not included as a general requirement. Both Federal and State regulations require that all general requirements are met.

Response:

This section addresses the basis upon which the court establishes jurisdiction over the child and ultimately establishes the guardianship. Although the VPA is a mechanism to place the child into the placement and care responsibility of the child welfare agency, which may then place the child with an approved relative, the VPA does not provide the court the jurisdiction necessary to establish the guardianship.

3. Section 45-604

Comment:

In Section 45-604, the text reads as if a child must be eligible to AFDC-FC (.1) and have a sibling that received Title IV-E Kin-GAP (.4) to be eligible. This is not consistent with the instructions provided in ACL 11-15. .1, .2, .3 and .5 are all required, but .4 is an alternative to .11.

Response:

Section 45-604.4 addresses the eligibility for federal Kin-GAP benefits for a sibling of a child who is eligible for federal Kin-GAP. Therefore, the "sibling" being referenced in 45-604 is not the "child" who is referenced in 45-604.11 and upon whom eligibility for the siblings is, in part, based. The "sibling" is not subject to the requirements of the "child" in 45-604.11.

Comment:

Successor Guardian and Subsequent Guardian should be its own section.

Response:

The CDSS appreciates this comment but is not amending the Subsequent and Successor Guardian sections as suggested. The current structure and intent of these sections is consistent with State and Federal Kin-GAP law. The successor and subsequent guardian provisions should not be placed in a stand-alone section. The successor guardian requirements are specific to the Federal Kin-GAP Program, whereas the subsequent guardian requirements are specific to the State Kin-GAP Program. By separating the two concepts and linking them with the State or Federal Kin-GAP program, the regulations ensure that the appropriate requirements are applied to the appropriate program and funding source

4. Sections 45-604.5 & 45-605.4

Comment:

In Sections 45-604.5 and 45-605.4, a copy of the CW 51 (or a substitute) should be included in the eligibility file if the social worker makes a determination not to refer.

Response:

The CDSS has not incorporated the CW 51 form into the CalWORKs Program regulations up to this point; therefore, the CW 51 is not referenced in this regulation package. However, there is nothing in regulation or statute that prohibits counties from electing to include the CW 51 in the Kin-GAP eligibility file.

Comment:

The handbook should be moved to follow .5.

Response:

The CDSS agrees and has made the change.