

## SHD Paraphrased Regulations - CalWORKs

### 190 KinGap

#### 190-1

The Kinship Guardian Assistance Payment (Kin-GAP) is a child-only cash aid program for children with court dependencies (and effective October 1, 2006 for probation youth in foster care under the supervision of the delinquency court) who are placed with relatives who assume guardianship and opt to exit the foster care system. (All-County Letter (ACL) No. 99-92, October 25, 1999; ACL 07-13, March 13, 2007)

The CDSS was given the authority to initially implement the Kin-GAP legislation (established by Senate Bill No. 1901, Ch. 1055, Statutes of 1998 and modified by Assembly Bill No. 1111, Ch. 147, Statutes of 1999) by ACL, effective January 1, 2000. (ACL No. 99-97, November 4, 1999)

#### 190-1A REVISED 10/10

As of October 1, 2006, CDSS implemented new enhancements to the Kinship

Guardianship Assistance Payment (Enhanced KinGAP) program, which will, by action of Senate Bill 84, replace the KinGAP Plus program originally created under Assembly Bill 1808. CDSS will be mailing KinGAP recipients the new enhanced provisions under the KinGAP program, and these recipients will be instructed to contact their county offices to discuss eligibility concerns. Some of the enhanced provisions include:

Enhanced KinGAP now covers probation youth who are under the supervision of Juvenile Court. To be eligible, the child must have lived with the relative caregiver for at least 12 consecutive months; the legal kinship guardianship must have been established by Juvenile Court pursuant to Welfare and Institutions Code section 728, subdivision (d); and, had his or her wardship terminated pursuant to section 728, subdivision (e), concurrently or subsequently to establishing legal guardianship.

Enhanced KinGAP permits specialized care incremental (SCI) rates if the child was receiving AFDC-FC SCI payments in the month prior to the month that KinGAP benefits begin, as the child is otherwise eligible. Enhanced KinGAP permits the payment of the \$100.00 annual state supplemental clothing allowance. (All County Letter (ACL) Nos. 07-13, Mar. 13, 2007; 07-13 Errata, Aug. 8, 2007; and, 07-47, Nov. 21, 2007; referencing Stats. 2006, c. 75, (A.B. 1808); and Stats. 2007, c. 177, (S.B. 84); Welfare and Institutions Code (W&I) §11363.)

#### 190-1B ADDED

4/12The following CalWORKs regulations shall apply to children receiving Kin-GAP benefits:

The reception and application requirements of Sections 40-101 through 40-117 and 40-119 through 40-121, Sections 40-125.9 and 40-126 through 40-129, Sections 40-157 through 40-181.216, Sections 40-181.25 through 40-181.26, Sections 40-181.4 through 40-183, Sections 40-187 through 40-190, and Section 40-197.

The age requirements of Section 42-100.

The property requirements of Section 42-200. (1) For purposes of determining property eligibility, children in the Kin-GAP Program shall be treated in all aspects as a recipient, not as an applicant.

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The residence requirements of Sections 42-400 through 42-424.

The citizenship, alienage and language fluency requirements of Sections 42-430 through 42-435.

The responsible relative requirements of Sections 43-100 through 43-205.

The income requirements of Sections 44-100 through 44-133, and Section 44-207. (1) For purposes of determining income eligibility, children in the Kin-GAP Program shall be treated in all aspects as a recipient, not as an applicant.

The aid payment requirements of Sections 44-300 through 44-305, Sections 44-313; Sections 44-316 and 44-317, Sections 44-319 through 44-353.

The Records requirements of Section 48-000.

The Child Support Enforcement Program requirements of Sections 82-502 through 82- 520.

The Temporary Absence requirements of Section 82-812.

The excluded persons requirements of Section 82-832.

The Restricted Accounts requirements of Section 89-130.

(§90-110)

190-2 ADDED 10/10

In order to be eligible for KinGAP funding, the child must be living in the approved home of a relative. (§90-105.111.)

190-3 ADDED 10/10

For the purposes of KinGAP, the home must have been approved by the county, but the approval may occur prior to the child's transfer to the KinGAP Program, and need not be reassessed after the child transfers from CalWORKs or federal Foster Care to KinGAP. (§90-105.112.)

190-4

Pursuant to ACL 00-09, similar to CalWORKs, Kin-GAP payments are to be paid in the current month. MPP Section, 44-304.52 indicates that counties shall place the Kin-GAP payment in the mail to be received by the first calendar day of the payment month. (All County Information Notice I-32-05, July 13, 2005)

190-5

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To be eligible to receive a KinGAP payment, a child under 18 (or under 19 as provided in Section 11403), must meet all of the following conditions:

- (1) Been adjudged a dependent child of the juvenile court pursuant to Section 300, or, effective October 1, 2006, a ward of the juvenile court pursuant to Section 601 or 602.
- (2) Resided for at least six consecutive months in the approved home of the prospective relative guardian while under the jurisdiction of the juvenile court or a voluntary placement agreement.
- (3) Had a kinship guardianship established pursuant to Section 360 or 366.26.
- (4) Had his or her dependency jurisdiction terminated after January 1, 2000, pursuant to Section 366.3, or his or her wardship terminated pursuant to subdivision (e) of Section 728, concurrently or subsequently to the establishment of the kinship guardianship.

(Welf. & Inst. Code §11363, effective January 1, 2016)

#### 190-6

Each Kin-GAP child is in his or her own AU, even if there is a sibling or a needy caretaker relative living in the same home. (All-County Letter (ACL No. 99-97, November 4, 1999; §90-105.31, effective July 10, 2000)

The Kin-GAP recipient is excluded by law from receipt of CalWORKs (W&IC §11450(j)) and the income and aid payment of the Kin-GAP recipient is not considered available to CalWORKs applicants and recipients. (W&IC §11371) The needy caretaker relative of the Kin-GAP recipient may be in his/her own one-person AU, or included in an AU with other eligible dependent children. (W&IC §11450.16(B); §82-820.22, effective July 1, 2000). These rules are effective January 1, 2000. (ACL No. 99-92, October 25, 1999)

#### 190-7 ADDED 5/16

#### 191-1 ADDED 10/10

Notwithstanding section 11450 (setting KinGAP at 100 percent of Foster Care base), the rate paid on behalf of children eligible for KinGAP Plus benefits shall equal 100 percent of the base rate, as well as special care increment rates (Welf. & Inst. Code, §11461(e), (f)) providing these rates were received immediately prior to enrollment in the KinGAP program or KinGAP Plus program. (Welf. & Inst. Code, §11380.25, added by Stats. 2006, c. 75 (A.B. 1808), §30, made eff. Jul. 12, 2006; now repealed by action of Stats. 2007, c. 177, (S.B. 84) which reinstated WIC 11363.)

**191-1A**

For all existing KinGAP cases, the specialized care increments provided as part of the enhanced KinGAP Program will only apply to children who received AFDC-FC specialized care increments in the month before the month that KinGAP benefits began. Counties should make every effort to determine eligibility for the SCI as soon as possible but no later than a child's next annual redetermination or the end of the state fiscal year, June 30, 2007 whichever is earlier. Regardless of when such eligibility is established, however, any children determined eligible for the SCI will be eligible retroactively to October 1, 2006. For all new cases entering KinGAP after October 1, 2006 SCI eligibility will only apply to children who received AFDC-FC specialized care increments in the month before the month that KinGAP benefits began. (All County Letter 07-13, March 13, 2007)

**191-1B**

The KinGAP Program does not provide for SCI assessment or reassessment by a social worker. By statute, the amount of the SCI is determined by whatever SCI amount was received on behalf of the child in the month prior to entry into KinGAP. While the child's physical or behavioral condition may change, the KinGAP payment will not adjust as a result of any changes in the child's needs. However, if a county's specialized care plan automatically adjusts rates based on age, the KinGAP payment will also automatically adjust accordingly. (All County Letter 07-13, March 13, 2007)

**191-2 ADDED 10/10**

For children entering KinGAP on or after July 1, 2009 and receiving a SB 84 dual agency rate while in foster care immediately prior to enrollment in KinGAP, KinGAP shall be paid at the dual agency rate including a supplement to the dual agency rate, if applicable. If a foster care child is receiving the SB 84 early start rate under the CESISA, and is receiving AFDC-FC benefits immediately prior to enrollment in KinGAP, the child shall be considered and assessed for a dual agency rate. If it is determined the child has a developmental disability as defined under the Lanterman Act, and becomes a Regional Center consumer, the county shall retroactively pay the SB 84 dual agency rate payments from the child's third birthday forward, including the supplement to the dual agency rate, if applicable. (ACL No. 10-16, question 10, June 4, 2010; referencing Stats. 2009, c. 4, AB X4 4)

**192-1 ADDED 10/10**

When a child is transferring from AFDC-FC to KinGAP, but remains in the home of the same caretaker relative, the BDA of Kin-GAP is the first of the month following the dismissal of the dependency (see §90-105.132). CalWORKs shall be paid until the KinGAP payment begins. (§44-317.641.)

**192-1A ADDED 10/10**

When a child is transferring from CalWORKs to KinGAP, or vice versa, but remains in the home of the same related caretaker, the effective date of the program transfer is the first of the month following the request for change of program or the dismissal of the dependency (see §90-105.132). (§44-317.651.)

**192-2 ADDED 10/10**

Termination of the guardianship with a kinship guardian will terminate eligibility for KinGAP benefits. However, if an alternative guardian / coguardian is appointed under section 366.3 of the Welfare and Institutions Code who is also a kinship guardian, this person shall be entitled to receive KinGAP Plus benefits on behalf of the child. A new period of 12 months of placement with the alternative guardian / coguardian is not required if that person is assessed pursuant to section 361.3 of the Welfare and Institutions Code, and Juvenile Court terminates dependency jurisdiction. (Welf. & Inst. Code, §11380.2, subd. (c); now repealed by action of Stats. 2007, c. 177, (S.B. 84) which reinstated WIC 11363.)

**192-2A ADDED**

10/15Federal law 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).

(All County Letter 15-66 (September 28, 2015))

**192-2B ADDED**

10/15The 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.

(All County Letter 15-66 (September 28, 2015))

**192-2C ADDED**

10/15To be eligible as a successor guardian, the 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.

(All County Letter 15-66 (September 28, 2015))

192-3 ADDED 10/10

Following Juvenile Court's establishment of a legal guardianship, the Court may continue or terminate dependency jurisdiction, retaining jurisdiction over the child as a ward of legal guardianship. If however, a relative is appointed the legal guardian of the child and the child has been placed with the relative caregiver for over 12 months, the Court shall terminate dependency jurisdiction, except if the relative caregiver objects, or upon a finding of exceptional circumstances. (Welf. & Inst. Code, §366.3, subd. (a).)

192-4 ADDED 10/10

The discontinuance of federal Foster Care benefits for a child that was under the legal guardianship of a relative caregiver after the Court terminated dependency jurisdiction has been deemed as possible exceptional circumstances to preclude terminating dependency jurisdiction, in order to determine eligibility for continued federal Foster Care benefits. (*In re Joshua S.* (2007) 41 Cal.4th 261.)

193-1 ADDED 10/10

Many eligibility requirements for the Kin-GAP Program are based upon CalWORKs regulations, with some minor differences. The Kin-GAP child is subject to all CalWORKs requirements, as they pertain to child-only cases. (ACL 99-97, Issued Nov. 4, 1999.)

193-1A ADDED 10/10

The following CalWORKs' regulations shall apply to children receiving KinGAP benefits:

(a) The reception and application requirements of Sections 40-101 through 40-117 and 40-119 through 40-121, Sections 40-125.9 and 40-126 through 40-129, Sections 40-157 through 40-181.216, Sections 40-181.25 through 40-181.26, Sections 40-181.4 through 40-183, Sections 40-187 through 40-190, and Section 40-197.

(b) The age requirements of Section 42-100.

(c) The property requirements of Section 42-200. For purposes of determining property eligibility, children in the KinGAP Program shall be treated in all aspects as a recipient, not as an applicant.

(d) The residence requirements of Sections 42-400 through 42-424.

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(e) The citizenship, alienage and language fluency requirements of Sections 42-430 through 42-435.

(f) The responsible relative requirements of Sections 43-100 through 43-205.

(g) The income requirements of Sections 44-100 through 44-133, and Section 44-207. For purposes of determining income eligibility, children in the Kin-GAP

Program shall be treated in all aspects as a recipient, not as an applicant.

(h) The aid payment requirements of Sections 44-300 through 44-305, Sections 44-313; Sections 44-316 and 44-317, Sections 44-319 through 44-353.

(i) The Records requirements of Section 48-000.

(j) The Child Support Enforcement Program requirements of Sections 82-502 through 82-520.

(k) The Temporary Absence requirements of Section 82-812.

(l) The "excluded persons" requirements of Section 82-832.

(m) The Restricted Accounts requirements of Section 89-130. (§90-110.1.)

#### 193-2 ADDED 10/10

A person excluded from the assistance unit by law includes those receiving other forms of aid, such as SSI/SSP, Refugee Repatriate Payment (RRP), KinGAP or AFDC-FC. (§82-832.1(d).)

#### 193-3 ADDED 10/10

As in CalWORKs, a child 18 years of age is eligible for KinGAP only if the child is enrolled as a full-time student, as defined by the school, in high school or, if the child has not completed high school, in a vocational or technical training program which cannot result in a college degree, provided the child can reasonably be expected to complete the program before reaching the age of 19 years. The class work cannot be completed through a correspondence course. Once enrollment is terminated by the school or student, the student is no longer deemed to be enrolled fulltime in the program. (§§42-101.2, 21, .22.)

#### 193-3A ADDED 10/10

A child receiving KinGAP who is approaching his or her 18th birthday, must enter into a mutual agreement (state form KG 1) with the county prior to or within the month the child reaches 18 years of age. (§42-101.23.)

#### 193-3B ADDED 4/12

Effective on September 30, 2010, Assembly Bill 12 was signed into law. One of the provisions allows for KinGap Program benefits to be eligible for federal financial participation.

Effective, January 1, 2011, a child/youth may receive KinGAP benefits beyond his/her 18th birthday in two distinct ways: A) if the child has a documented mental or physical disability that warrants the continuation of assistance, he/she may receive benefits to the age of 21 regardless of his/her age when the initial kin guardianship was ordered; or B) if the child/youth does not have a documented mental or physical disability that warrants continuation of benefits, he/she may be eligible for KinGap benefits after 18 years old if they meet one of five following participation criteria: 1. Attending/completing high school or an equivalency program; 2. Enrolling in post-secondary or vocational school; 3. Participating in a program or activity that promotes or removes barriers to employment; 4. Employed at least 80 hours per month; and 5. He/she is incapable of participating in one through four above due to a documented physical or mental condition.

In addition to these five criteria, for federal KinGap, the child/youth must have turned 16 years old before the KinGap negotiated agreement payments; or for state KinGap, the youth/child must have turned 16 years old before the KinGap aid payments commenced.

The extension of KinGap benefits is effective on the following dates:

- January 1, 2012, up to age 19;
- January 1, 2013, up to age 20;
- Extension of KinGap benefits up to age 21 for youth who do not have a documented mental or physical disability is effective January 1, 2014 contingent on legislative appropriation

Exclusions:

- Child/youth in the federal KinGap Program that had not yet attained 16 years of age before the KinGap negotiated agreement payments commenced. These children/youth may continue to be eligible for KinGap up to 19 years old under the existing high school completion rule; or
- Child/youth in the state KinGap Program that had not yet attained 16 years of age before the KinGap aid payments commenced. These children/youth may continue to be eligible for KinGap up to age 19 under the existing high school completion rule.

(Welfare and Institutions Code (W&IC) 11403, ACL 11-86 (March 1, 2012))

194-1 ADDED 10/10

An overpayment is that amount of aid payment an AU has received to which it was not eligible. It may be all or a portion of the aid payment. It includes an immediate need payment, a special need payment, or aid paid pending a state hearing. (§44-350.15.)

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194-2 ADDED 10/10

When the caretaker relative was a member of the AU at the time of the overpayment, the county shall first seek recoupment from the caretaker relative recipient. (§44-352.31.)

194-2A ADDED 10/10

When the caretaker relative was not a member of the AU at the time of the overpayment, the county shall seek recovery from the members of the overpaid AU as specified under Section 44-352.33. (§44-352.32.)

194-2B ADDED 10/10

There shall be no priority order in seeking collection of the overpayment from members of the overpaid AU who were not the caretaker relative. (§44-352.33.)

194-2C ADDED

4/12 Consistent with the federal Improper Payments Act of 2002, AB 12 made the new state and federally funded Kin-GAP Programs subject to the same overpayment recoupment and remittance rules as federal AFDC-FC and AAP, pursuant to W&IC section 11466.24 and EAS Manual sections 45-304 thru 45-306. (All County Letter No. 11-15, January 31, 2011)