

Kinship Guardianship Assistance Program (Kin-GAP) A Fact Sheet Prepared by the Youth Law Center

What is the Kinship Guardianship Assistance Program?

Kin-GAP is designed to support children living with relative caregivers, who would otherwise remain in foster care. The program provides relative caregivers who are either unable or unwilling to adopt the child with another option for caring for the child in a permanent placement in the relative's home.¹ Children in foster care are eligible for monthly foster care maintenance payments, as well as other social support services. However, some relative caregivers want freedom from the intrusiveness of the foster care system or a greater sense of permanency and control over the living arrangements. Kin-GAP is a compromise, permitting a child to remain eligible for monthly maintenance payments equal to the foster care family home rate (including any level of care rate), while providing a more permanent placement.

For more information on relative caregivers, please see the Youth Law Center's Fact Sheet, "Relative Caregivers."

Who is eligible for Kin-GAP?

To be eligible for Kin-GAP, the youth must:

- (1) Meet the age requirements. (See *How long may a relative caregiver receive Kin-GAP benefits?* below.)
- (2) Have been a dependent or ward of the juvenile court;
- (3) Have been living with the same relative for at least 6 consecutive months;
- (4) Have had a kinship guardianship with that relative established in juvenile court as the result of a permanent plan; and
- (5) Have had his or her dependency dismissed or wardship terminated concurrently with or subsequently to the establishment of the kinship guardianship.²

How does a relative caregiver qualify for Kin-GAP?

The caregiver must be a relative of the child and enter into a Kinship Guardianship Assistance Agreement.³ For purposes of Kin-GAP, a relative is an adult⁴ who is related to the child by blood, adoption, or affinity within the fifth degree of kinship.⁵ This includes stepparents, siblings, step-siblings, half-siblings, grandparents, great-grandparents, great-great grandparents, great-great-great grandparents, aunts, great

¹ Welf. & Inst. Code §§ 11360-11379 (state only) & 11385-11393 (federally eligible).

² Welf. & Inst. Code §§ 11363 & 11386.

³ Welf. & Inst. Code §§ 11364, 11387.

⁴ Welf. & Inst. Code § 101(a) ("Adult" means a person 18 years of age or older").

⁵ Welf. & Inst. Code §§ 366.21(k), 11362(c), and 11391(c). Although parents are "relatives," biological parents are prohibited from becoming Kin-GAP guardians because doing so would be inconsistent with the program's purpose.

aunts, great-great aunts, great-great-great aunts, uncles, great uncles, great-great uncles, great-great-great uncles, first cousins, first cousins once-removed, nieces, nephews, and the spouse of any divorced or deceased relative in this list.⁶

For federal eligibility purposes relative is also defined to include nonrelated extended family members (NREFMs), tribal members, and foster parents with a familial-like relationship with the child.⁷ However, children living with legal guardians who do not fall within the definition of “relative” can qualify for and receive foster care benefits (AFDC-FC) without having an open dependency case regardless of whether the guardianship was established through probate or juvenile court.⁸

A relative caregiver who is interested in obtaining Kin-GAP should contact the child’s attorney and the social worker or probation officer to specifically request a formal assessment and court review. The relative should also express his or her interest to the juvenile court judge.

The formal assessment of the relative will consider the:

- Best interest of the child. If the child is over the age of 12, he or she must be consulted.⁹
- Wishes of the parent
- Location of siblings and half-sibling
- Moral character and criminal history of the relative and other adults in the home
- Nature and duration of the relationship between the relative and the child
- Relative’s desire to care for the child
- Relative’s ability to provide a safe, secure, stable environment and the exercise control over; and to provide for the basic needs of the child including child care and protection from the child’s parents¹⁰.

After the assessment, the relative will be required to fill out a “Statement of Facts Supporting Eligibility for Kinship Guardianship Payment (Kin-GAP) Program,” the form for collecting Kin-GAP eligibility information.¹¹

The juvenile court appoints the relative as the legal guardian of the child and terminates dependency jurisdiction. The juvenile court will terminate jurisdiction if it finds that there are no objections from the relative caregiver, it is in the child’s best interests, and no exceptional circumstances exist.¹² Upon termination of jurisdiction, the child is eligible for Kin-GAP payment.¹³

⁶ *Id.*

⁷ Welf. & Inst. Code § 11391(c); ACL 14-28.

⁸ Welf. & Inst. Code §§ 11401(d) ,11402 (k) & 11405.

⁹ Welf. & Inst. Code §11386(c).

¹⁰ Welf. & Inst. Code §§ 361.3, 361.4, and 309(d).

¹¹ ACL 11-15, p.26-27 Form KG-2.

¹² Welf. & Inst. Code § 366.3(a). The law does not define exceptional circumstances, but common situations include: special needs children; hesitancy/ resistance by the relative to participate in Kin-GAP.

¹³ Welf. & Inst. Code § 366.22(d).

What happens if Kin-GAP benefits are denied?

Should the relative disagree with the department's determination in the Kin-GAP application or payment process, the relative has the right to appeal the decision by requesting a state hearing.¹⁴

If approved, what type of assistance is available under Kin-GAP?

The Kin-GAP program provides monthly payments to the relative caregiver up to the same foster care rate that would be paid for the youth in a family home in foster care.¹⁵ The amount of assistance is specified in the Kinship Guardianship Assistance Agreement.¹⁶ Kin-GAP is not a means-tested program. Neither the income of the child's parents, the Kin-GAP guardian, nor any other relative in the household is used to determine the child's Kin-GAP eligibility.¹⁷ The monthly Kin-GAP payment is meant to cover food, clothing, shelter, daily supervision, school supplies, personal needs, and child liability insurance.¹⁸ The Kin-GAP benefit is not considered income to the guardian for purposes of determining the guardian's eligibility for other aid programs, unless required by federal law.¹⁹

The Kin-GAP payment includes any specialized care increment the child would be eligible to receive in foster care.²⁰ Children are also entitled to the annual state supplemental clothing allowance and any county clothing allowance they would have received if they were still in foster care.²¹

Once a child enters Kin-GAP, they may no longer be eligible for some services that were available in foster care.²² However, a Kin-GAP child remains eligible to receive the following benefits:

¹⁴ Welf. & Inst. Code § 10950.

¹⁵ Welf. & Inst. Code §§ 11364 & 11387. Modeled on the Adoption Assistance Program, the statute provides that the rate shall not exceed what the child would receive in foster care and is negotiated based on the needs of the child and the circumstances of the relative. As a practical matter, relatives should be able to get the current foster care rate, including any applicable supplements, if they feel they need it. Relative caregivers will also be able to request increases if the foster care rates are increased or if their payment is below the current foster care rate.

¹⁶ Welf. & Inst. Code §§ 11364(b), 11387(b).

¹⁷ ACL 11-15, p. 7. The Kin-GAP payment is considered income to the child not the relative guardian. Welf. & Inst. Code §§ 11371 & 11390.

¹⁸ Welf. & Inst. Code §§ 11364, 11387 & 11460 (intended to cover needs otherwise covered by AFDC-FC payment).

¹⁹ Welf. & Inst. Code § 11371.

²⁰ Welf. & Inst. Code §§ 11364 & 11387; CDSS All County Letter 11-15, pp. 13-14.

²¹ *Id.*

²² The child is no longer under the jurisdiction of the court and the placing agency is no longer obligated to see that the child's needs are met.

(1) Medi-Cal

Children continue to be eligible for Medi-Cal when they leave foster care through Kin-GAP.²³ Children who receive state Kin-GAP benefits will receive Medi-Cal benefits for as long as they receive Kin-GAP and maintain California residency. Children who receive federal (Title IV-E) Kin-GAP benefits will be eligible for Medicaid in the state where they reside.²⁴ Unlike emancipated foster youth,²⁵ Kin-GAP youth who emancipate from Kin-GAP are not categorically eligible for Medi-Cal as young adults. However before terminating Medi-Cal coverage, counties must evaluate youth for eligibility under other Medi-Cal programs.²⁶

(2) Independent Living Program Services

Kin-GAP children are eligible for the Independent Living Program (ILP).²⁷ The program offers services such as vocational and employment training, training in living skills, and counseling.²⁸ Since the child no longer has a child welfare worker, the child or the guardian must request ILP services.

What benefits are available to relatives caring for minor parents under Kin-GAP?

A relative guardian caring for a minor parent who has her child living in the same home should receive an Infant Supplement and an additional two hundred dollar (\$200) monthly payment that would be paid to a caregiver in a whole family foster home (a shared responsibility plan is not required).²⁹

How does a relative caregiver determine his/her best funding options?

The caregiver will be provided with an “Agency-Relative Guardianship Disclosure” form that will state whether or not the child is eligible. The form will provide information about

any payment change that will occur if the child enters Kin-GAP.³⁰ The form will also provide the caregiver with funding options available should the relative choose to take legal guardianship of the related foster child.³¹ Relatives should negotiate the Kinship Guardianship Assistance Agreement³² before going to court to have the guardianship established to avoid unnecessary pressure to sign the agreement at the last minute. Relatives should also consider that eligibility for extended Kin-GAP to age 21 is limited to youth who enter Kin-GAP after their 16th birthday or youth with a disability.³³

²³ Welf. & Inst. Code §§ 11366 & 11389.

²⁴ CDSS ACL 11-15, p. 16.

²⁵ See, Welf. & Inst. Code §14005.28

²⁶ CDSS ACL 11-15, p. 16.

²⁷ Welf. & Inst. Code §§11375(a) & 11390(f).

²⁸ Welf. & Inst. Code § 10609.4.

²⁹ Welf. & Inst. Code §§11364(c), 11387(d) & 11465; ACL-11-15, pp. 13 & 15.

³⁰ CDSS ACL 11-15, p. 28-29, Form SOC 369, Agency-Relative Guardianship Disclosure.

³¹ *Id.*

³² Form SOC 369A

³³ Welf. & Inst. Code §§ 11363 (c) & (d) and 11386 (g) & (h).

How long may a relative caregiver receive Kin-GAP benefits?

Kin-GAP payments can be made on behalf of an eligible child until the child turns 18 years old with the following exceptions:

- (1) Children with mental or physical disabilities that warrant the continuation of assistance are eligible for Kin-GAP until they reach the age of 21.
- (2) Children are eligible for Kin-GAP AAP after age 18 if:
 - a. the youth attained age 16 before Kin-GAP, and
 - b. the youth is engaging in one or more of the following activities
 - i. completing secondary education or a program leading to an equivalent credential,
 - ii. enrolled in an institution that provides postsecondary or vocational education,
 - iii. participating in a program or activity designed to promote, or remove barriers to, employment,
 - iv. employed for at least 80 hours per month, or
 - v. is incapable of doing any of the above activities due to a documented medical condition.³⁴

Payments may be reduced or suspended if the responsible county agency determines that the relative guardian is no longer supporting the child.³⁵

What happens if the relative caregiver moves?

Kin-GAP payments continue regardless of the state of residency in which the relative guardian resides.³⁶ However, children funded through the state-only Kin-GAP program do not remain eligible for Medi-Cal if they are not residents of California.³⁷ Children who are federally eligible for Kin-GAP will be eligible for Medicaid in the new state when their residency changes³⁸.

A child who is under the jurisdiction of the California juvenile court system and is placed with an out-of-state relative is also eligible for the Kin-GAP Program.³⁹

³⁴ Welf. & Inst. Code 11363(c) & 11386(g)(1). Effective January 1, 2013, the payment duration extends until the youth turns 20, for youth who meet the eligibility requirements. Effective January 1, 2014, payments will last until the youth turns 21, as long as the youth continues to meet the eligibility requirements in § 11403(b). ACL 11-15 and 11-15EII.

³⁵ ACL 11-15, page 5I.

³⁶ Welf. & Inst. Code §§ 11364(b) (4) & 11387(c).

³⁷ ACL 11-15, p. 16.

³⁸ *Id.*

³⁹ *Id.*

What happens if the guardianship terminates?

If the guardianship is terminated, eligibility for Kin-GAP also ends, *unless* there is an alternate kinship guardian, co-guardian, or for federally eligible youth, a successor guardian.⁴⁰

Resources:

Kin-GAP ACLs and other CDSS information may be found here:

<http://www.cdss.ca.gov/inforesources/Foster-Care/Kinship-Guardianship-Assistance>

Kin-GAP Forms

- [KG 1 \(12/11\) - Kin-GAP Mutual Agreement For 18 Year Olds](#)
- [KG 2 \(1/11\) - Statement Of Facts Supporting Eligibility For Kinship Guardianship Assistance Payment \(Kin-GAP\) Program](#)
- [KG 3 \(12/11\) - Kin-GAP Mutual Agreement For Nonminor Former Dependents](#)
- [KG 4 \(2/14\) - Kinship Guardianship Assistance Payment \(Kin-GAP\) Program - Nonrecurring Legal Guardianship Expenses Agreement](#)
- [KG 5 \(2/14\) - Kinship Guardianship Assistance Payments \(Kin-GAP\) Program Nonrecurring Legal Guardianship Expenses Form](#)
- [SOC 369 \(12/10\) - Agency-Relative Guardianship Disclosure](#)
- [SOC 369A \(7/15\) - Kinship Guardianship Assistance Payment \(Kin-GAP\) Program Agreement Amendment](#)

⁴⁰ Welf. & Inst. Code §11386(i); ACL15-66