



Kinship Guardianship Assistance Payments (Kin-GAP)

A Fact Sheet Prepared by the Youth Law Center

What are the Kinship Guardianship Assistance Payments?

Kin-GAP is a California and federally-funded payment program designed to support foster children who have been placed in long-term foster care with a relative caregiver. 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 county foster care family home rate (including any specialized care increments), while offering the freedom of a permanent placement. Kin-GAP was initially funded as a state-only program through the state's Cal-WORKs program. Effective January 1, 2011, the California Foster Connections to Success Act (Assembly Bill 12, 2010) revised the existing state-only program and established a new federally subsidized Kin-GAP program.²

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 or subsequently to the establishment of the kinship guardianship.³

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

² *Id.*; See also, All County Letter (ACL) No. 11-15 (January 31, 2011) that provides the new program guidelines until new regulations are adopted. The new Kin-GAP program offers some enhancements to the old program for both federally eligible and state only eligible recipients. Emergency regulations implementing the new program will be promulgated.

³ Cal. Welf. & Inst. Code §§ 11363 & 11386.

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How does a relative caregiver qualify for Kin-GAP?

To qualify, the caregiver must be a relative of the child and enter into a Kinship guardianship assistance agreement.⁴ For purposes of Kin-GAP, a relative is an adult⁵ who is related to the child by blood, adoption, or affinity within the fifth degree of kinship.⁶ This includes stepparents, siblings, step-siblings, half-siblings, grandparents, great-grandparents, great-great grandparents, great-great-great grandparents, aunts, great 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. (Legal guardians who do not fall within the definition of “relative” qualify for foster care benefits (AFDC-FC) and can apply directly to the child welfare agency without juvenile court involvement.⁷)

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 an interest to the juvenile court judge.

The court will schedule a formal assessment of the relative, which will consider the:

- Best interest of the child. If the child is over the age of 12, he or she must be consulted.⁸
- 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 parents⁹.

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.¹⁰

If these requirements are met, the court can appoint the relative as the legal guardian to the child. The juvenile court will also need to terminate the juvenile court proceedings.

⁴ Cal. Welf. & Inst. Code §§ 11364, 11387.

⁵ Cal. Welf. & Inst. Code § 101(a) (“Adult” means a person 18 years of age or older”).

⁶ Cal. Welf. & Inst. Code §§ 366.21(k), 11362(c), 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.

⁷ Cal. Welf. & Inst. Code §§ 11401(d) & 11402(d).

⁸ Cal. Welf. & Inst. Code § 11386(c).

⁹ Cal. Welf. & Inst. Code §§ 361.3, 361.4, 309(d).

¹⁰ ACL 11-15, p.26-27 Form KG-2.

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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.¹¹ Upon termination of jurisdiction, the child is eligible for Kin-GAP payment.¹²

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 dispute or appeal the decision by requesting a state hearing.¹³

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

The Kin-GAP program provides monthly payments, per child, to a relative caregiver up to the same foster care rate that would be paid to licensed or approved foster parents in the county.¹⁴ The amount of assistance is specified in the Kinship Guardianship Assistance Agreement.¹⁵ Kin-GAP recipients will automatically receive the age-related increases in the basic foster care rate.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

¹¹ Cal. Welf. & Inst. Code § 366.3. The law does not define exceptional circumstances. However, the most common situations include: special needs children; hesitancy or resistance by the relative to participate in Kin-GAP.

¹² Cal. Welf. & Inst. Code § 366.22(d).

¹³ Cal. Welf. & Inst. Code § 10950.

¹⁴ Cal. 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.

¹⁵ Cal. Welf. & Inst. Code §§ 11364(b), 11387(b).

¹⁶ ACL 11-15, p. 13.

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

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

¹⁹ Cal. Welf. & Inst. Code § 11371.

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

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received if they were still in foster care.²¹ The monthly rate per child may vary based on the child's age, special needs and the responsible county child welfare agency.²²

Once a child enters Kin-GAP, they may no longer be eligible for services available to them while in foster care.²³ However, a Kin-GAP child remains eligible to receive the following benefits:

(1) Medi-Cal

Kin-GAP children do not lose their access to basic health care benefits when they leave foster care through Kin-GAP.²⁴ Children who receive state Kin-GAP benefits will continue to 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.²⁵ Unlike emancipated foster youth,²⁶ 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.²⁷

(2) Independent Living Program Services

Kin-GAP children are eligible for the Independent Living Program (ILP) at the age of 17 regardless of their ages when they entered Kin-GAP.²⁸ The program offers services such as vocational and employment training, training in living skills, and counseling.²⁹ However, these services are available only upon request by the child or the guardian.

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).³⁰

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

²¹ *Id.*

²² Cal. Welf. & Inst. Code § 11461. Specialized care rates and county clothing allowances vary by county.

²³ 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.

²⁴ Cal. Welf. & Inst. Code §§ 11366 & 11389.

²⁵ CDSS ACL 11-15, p. 16.

²⁶ See, Cal. Welf. & Inst. Code §14005.28

²⁷ CDSS ACL 11-15, p. 16.

²⁸ Cal. Welf. & Inst. Code §§11375(a) & 11390(f).

²⁹ Cal. Welf. & Inst. Code § 10609.4.

³⁰ Cal. Welf. & Inst. Code §§11364(c), 11387(d) & 11465; ACL-11-15, pp. 13 & 15.

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any payment change that will occur if the child enters Kin-GAP.³¹ The form will also provide the caregiver with funding options available should they choose to take legal guardianship of the related foster child.³² Relatives should also consider that eligibility for the phased-in extension of age eligibility for benefits (beginning January 1, 2012) is limited to youth who enter Kin-GAP after their 16th birthday.³³ Relatives should negotiate the Kinship Guardianship Assistance Agreement before going to court to have the guardianship established to avoid unnecessary pressure to sign the agreement at the last minute.

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

Youth are eligible for Kin-GAP until:

- (1) their 18th birthday
- (2) their 21st birthday if the youth has a physical or mental disability that warrants the continuation of assistance
- (3) their 19th birthday if
 - a. the Kin-GAP payments began after the child's 16th birthday, 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

Additionally, payments may be reduced or suspended if the responsible county agency determines that the relative guardian is no longer supporting the child or is no longer able to verify eligibility.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

³¹ CDSS ACL 11-15, p. 28-29, Form SOC 369, Agency-Relative Guardianship Disclosure.

³² *Id.*

³³ Cal. Welf. & Inst. Code §§ 11363(d) & 11386(h).

³⁴ Cal. Welf. & Inst. Code 11363(c) & 11386(g)(1).

³⁵ ACL 11-15, p. 5.

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

³⁷ ACL 11-15, p. 16.

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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

What happens if the guardianship terminates?

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

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Cal. Welf. & Inst. Code §11386(i).