

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

What is the Kinship Guardianship Assistance Program?

Kinship Guardianship Assistance Program (Kin-GAP) is designed to provide financial and other supports to children living with relative caregivers who have obtained a legal guardianship through foster care or juvenile justice court proceedings. Kin-GAP provides another option to formal kinship caregivers who do not want to adopt but who want legal permanency and no further involvement with the foster care system.¹ Kin-GAP allows a child to exit the foster care or juvenile justice system to the home of a relative with the same financial and healthcare supports that they would have received if they had remained in care.

Children who exit foster care or the juvenile justice system to a Kin-GAP-eligible legal guardianship are eligible for monthly maintenance payments equal to the foster care family home rate (including any level of care or other specialized rate)² and have categorical eligibility for Medi-Cal with no share of cost.³

As with California's foster care benefit, or AFDC-FC, program, Kin-GAP is actually two benefit programs, one federally funded⁴ and the other state funded.⁵ From the perspective of the child and caregiver who are receiving the benefit, there is little difference between the two programs with the state program intended to support youth who are not eligible for the federally funded Kin-GAP program.⁶

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 removed from home pursuant to a voluntary placement agreement or as the result of a judicial determination, including being adjudged a dependent of the court pursuant to WIC 300 or a ward of the court pursuant to WIC 601 or 602;

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

² As of April 1, 2021, Kin-GAP guardianships are eligible for all level of care (LOC) levels. See ACL 22-59, p. 6.

³ Welf. & Inst. Code §§ 11366 & 11389.

⁴ For the federal Kin-GAP program, see 42 U.S. Code § 673 *et. seq.* and Welf. & Inst. Code § 11385 *et. seq.*

⁵ For the state Kin-GAP program, see Welf. & Inst. Code § 11360 *et. seq.*

⁶ See Welf. & Inst. Code § 11362(a): "the state-funded aid provided under the terms of this article on behalf of children in kinship care who are not eligible for federally funded Kin-GAP." See also, generally, Welf. & Inst. Code § 11361 for legislative intent of the program. Some practical differences to the programs are noted below.

- (3) Have been residing 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;
- (4) Have had a kinship guardianship with that relative established in juvenile court; and
- (5) Have had his or her dependency dismissed or wardship terminated concurrently with or subsequently to the establishment of the kinship guardianship.⁷

While youth must obtain a kinship guardianship in juvenile court to be eligible for Kin-GAP benefits, they do not need to have ever been placed formally in foster care; instead, they may move directly from a Voluntary Placement Agreement (VPA) to a guardianship in lieu of being adjudicated a dependent child by the court as long as they were under the VPA with that approved relative for six consecutive months.⁸

A youth may also be eligible for a Kin-GAP payment if they are the sibling of a child that is eligible for the federal Kin-GAP program as long as the child welfare department, probation agency, or Indian tribe and the prospective relative guardian agree on the appropriateness of the arrangement for the sibling.⁹

How does a relative caregiver qualify for Kin-GAP?

To qualify for Kin-GAP, the caregiver must be a relative of the child and enter into a Kinship Guardianship Assistance Agreement.¹⁰ For purposes of Kin-GAP, the definition of relative differs between the federally funded and state funded programs. For both programs, a relative is an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship.¹¹ 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.¹²

In addition to the above, the federal Kin-GAP program's definition of relative also includes an approved, nonrelated extended family member (NREFM), an adult member of the Indian child's tribe, and an adult who is currently the foster parent and who has established a significant and family-like relationship with the child and has been identified as the child's permanent connection.¹³

⁷ Welf. & Inst. Code §§ 11363 & 11386.

⁸ See Welf. & Inst. Code §360(a).

⁹ Welf. & Inst. Code § 11388.

¹⁰ Welf. & Inst. Code §§ 11364, 11387.

¹¹ Welf. & Inst. Code §§ 366.21(k), 11362(c), and 11391(c).

¹² *Id.*

¹³ Welf. & Inst. Code §11391(c)(2-4).

If the caregiver is not considered a relative for the applicable Kin-GAP program, the youth will likely still be eligible for similar financial supports through a subsidized guardianship that is funded with the AFDC-FC benefit program.¹⁴

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.¹⁵
- 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 exercise proper and effective care and control of the child; and to provide for the basic needs of the child including child care and protection from the child's parents.¹⁶ Protections exist to prevent discrimination against potential guardians based on physical disability.¹⁷

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.¹⁸ The prospective guardian will also enter into a written, binding kinship guardianship assistance agreement with the Agency that specifies, among other things:

- Details related to funding, including amount and the process for adjustment;
- Any additional services and assistance;
- A procedure by which the relative guardian may apply for additional services;

¹⁴ Such a subsidized guardianship is outside this fact sheet on Kin-GAP; however, it is important to note that AFDC-FC subsidized guardianships are available to non-relatives through either the juvenile court or probate court guardianship process. Welf. & Inst. Code §§ 11401(d), 11402(k) & 11405.

¹⁵ Welf. & Inst. Code §11386(c).

¹⁶ Welf. & Inst. Code §§ 361.3, 361.4, & 309(d).

¹⁷ Welf. & Inst. Code § 361.3(a)(8)(B). "In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control."

¹⁸ ACL 11-15, p.26-27 Form KG-2.

- That the agreement will remain in effect regardless of the state of residency of the legal guardian and the responsibility of the legal guardian to report changes in the needs of the child or other circumstances that would affect payment.¹⁹

The juvenile court appoints the relative as the legal guardian of the child and terminates dependency jurisdiction or wardship. 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.²⁰ Upon termination of jurisdiction, the child is eligible for Kin-GAP payment.²¹

What happens if Kin-GAP benefits are denied?

Should the relative disagree with the department's determination in the Kin-GAP application, payment process, or payment amount,²² the relative has the right to appeal the decision by requesting a state hearing.

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.²³ This includes any level of care or specialized care increment, dual agency rate, special subsidies for parenting youth, and clothing allowance.²⁴ The amount of assistance is specified in the Kinship Guardianship Assistance Agreement.²⁵ 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.²⁶ The monthly Kin-GAP payment is meant to cover food, clothing, shelter, daily supervision, school supplies, personal needs, and child liability insurance.²⁷ The Kin-GAP benefit is not considered income to the guardian for

¹⁹ Welf. & Inst. Code §§ 11364(b) & 11387(b). See also SOC 369. To receive federal financial participation, this negotiated agreement must be executed prior to establishment of the guardianship. See Welf. & Inst. Code § 11387(a).

²⁰ Welf. & Inst. Code § 366.3(a) & (b).

²¹ Welf. & Inst. Code § 366.22(d).

²² Including the family care rate structure in Welf. & Inst. Code § 11405(g) and specialized care increment in Welf. & Inst. Code § 11405(h).

²³ 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.

²⁴ Welf. & Inst. Code §§ 11364(d)(5-7), 11364(g), 11387(d)(5-7), 11387(g). Also see ACL 22-59, p. 6 (clarifying that youth in Kin-GAP guardianships are eligible for Level of Care (LOC) rates).

²⁵ Welf. & Inst. Code §§ 11364(b), 11387(b).

²⁶ ACL 11-15, p. 7. The Kin-GAP payment is considered income to the child not the relative guardian. Welf. & Inst. Code §§ 11371 & 11390(c).

²⁷ Welf. & Inst. Code §§ 11364, 11387 & 11460(b) (intended to cover needs otherwise covered by AFDC-FC payment).

purposes of determining the guardian's eligibility for other aid programs, including Section 8 housing vouchers,²⁸ unless required by federal law.²⁹

The Kin-GAP payment includes any specialized care increment the child would be eligible to receive in foster care.³⁰ 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.³¹ As of April 2021, Kin-GAP payments are eligible for increased funding based on Level of Care rate levels.³²

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

(1) Medi-Cal

Children receiving Kin-GAP are categorically eligible for Medi-Cal with no share of cost.³³ Children under 21 who are on Medi-Cal and qualify under medical necessity criteria, are eligible to receive community-based specialty mental health services, including Pathways to Well Being services, regardless of their foster care involvement.³⁴ Children who receive federal Kin-GAP benefits will be eligible for Medicaid in the state where they reside.³⁵ Children who receive state Kin-GAP benefits are eligible for Medi-Cal as long as they are eligible for Kin-GAP payments and are a resident of California.³⁶ Unlike emancipated foster youth,³⁷ Kin-GAP youth who age out of 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.³⁸

(2) Independent Living Program Services

Kin-GAP children are eligible for the Independent Living Program (ILP).³⁹ The program offers services such as vocational and employment training, training in living skills, and counseling.⁴⁰ Since the child no longer has a child welfare worker, the child or the guardian must request ILP services.

²⁸ U.S. Dep't of Hous. and Urban Dev., Pub. and Indian Housing Notice 2012-1.

²⁹ Welf. & Inst. Code § 11371.

³⁰ Welf. & Inst. Code §§ 11364 & 11387; CDSS All County Letter 11-15 pps. 13-14.

³¹ *Id.*

³² ACL 22-59, p. 6.

³³ Welf. & Inst. Code §§ 11366 & 11389.

³⁴ Dep't of Health and Hum. Servs., Mental Health & Substance Use Disorder Services Notice 16-004.; Dep't of Health and Hum. Servs., Behavioral Health Information Notice 21-073.

³⁵ CDSS ACL 11-15, p. 16.

³⁶ *Id.*

³⁷ Emancipated foster youth residing in California who were in foster care in any state on their 18th birthday are eligible for Medi-Cal coverage up to the age of 26 regardless of income or assets. Welf. & Inst. Code § 14005.28(a).

³⁸ CDSS ACL 11-15, p. 16.

³⁹ Welf. & Inst. Code §§ 11375(a) & 11390(f).

⁴⁰ Welf. & Inst. Code § 10609.4.

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.⁴¹

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.⁴² The form will also provide the caregiver with funding options available should the relative choose to take legal guardianship of the related foster child.⁴³ Relatives should negotiate the Kinship Guardianship Assistance Agreement⁴⁴ 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 whose negotiated Kin-GAP payments commenced after their 16th birthday or youth with a disability (see below).⁴⁵

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 21.⁴⁶
- (2) Children are eligible for Kin-GAP up until the age of 21 if:
 - a. the youth attained age 16 before the Kin-GAP negotiated payments commenced, 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

⁴¹ Welf. & Inst. Code §§11364(c), 11387(d) & 11465(c)(6)(B); ACL-11-15, pps. 13 & 15.

⁴² CDSS ACL 11-15, p. 28-29, Form SOC 369, Agency-Relative Guardianship Disclosure.

⁴³ *Id.*

⁴⁴ Form SOC 369A

⁴⁵ Welf. & Inst. Code §§ 11363 (c - d) and 11386 (g - h).

⁴⁶ Welf. & Inst. Code §§ 11363(c)(2) and 11386(g)(2).

- v. is incapable of doing any of the above activities due to a documented medical condition.⁴⁷

Payments may be reduced or suspended if the responsible county agency determines that the relative guardian is no longer supporting the child.⁴⁸

Kin-GAP payments should continue if the child merely moves or lives independently of the relative guardian as long as the relative guardian continues to provide support for the child.⁴⁹ This may include such circumstances as the youth moving to attend school.

What happens if the relative caregiver moves?

Kin-GAP payments continue regardless of the state of residency in which the relative guardian resides.⁵⁰ However, children funded through the state-only Kin-GAP program do not remain eligible for Medi-Cal if they are not residents of California.⁵¹ Children who are federally eligible for Kin-GAP will be eligible for Medicaid in the new state when their residency changes.⁵²

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.⁵³

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.⁵⁴ A new period of six months of placement with the successor guardian is not required.⁵⁵ The prospective guardian is not required to be approved as a resource family for the sole purpose of receiving Kin-GAP benefits.⁵⁶

If support from the relative guardian ends before the youth has turned 18 years old and no successor guardian is available, the juvenile court should be notified and dependency jurisdiction may be restored.⁵⁷

If support ends after the youth has turned 18 years old but before they turn 21 years old due to either the death of the guardian or the guardian no longer providing ongoing

⁴⁷ Welf. & Inst. Code §§ 11363(c) & 11386(g)(1). 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.

⁴⁸ ACL 11-15, p. 5.

⁴⁹ *Id.*

⁵⁰ Welf. & Inst. Code §§ 11364(b) (4) & 11387(b)(4).

⁵¹ ACL 11-15, p. 16.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Welf. & Inst. Code §11386(i); ACL15-66

⁵⁵ *Id.*

⁵⁶ Welf. & Inst. Code § 11386(i)(3).

⁵⁷ Welf. & Inst. Code § 366.3(b).

support and the youth would have been eligible to receive Kin-GAP after attaining the age of 18, the youth may file a petition to reenter foster care as a nonminor dependent.⁵⁸

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](#)

⁵⁸ Welf. & Inst. Code §§ 11403(c) & 388.1(a)(1-2).