



Children's Law Center of California

CA Fostering Connections to Success Act: Kin-GAP Fact Sheet Memo No. 3 (amended)

Summary: AB 12/212 made several changes to the Kin-GAP program. While overall these are positive changes, it has caused some interpretation issues resulting in misinformation and potentially detrimental situations for our clients.

For example, FYI 11-15 issued by DCFS (in response to ACL 11-15) states that a Kin-GAP guardianship agreement, specifically forms SOC 369 & 369A, must be completed prior to the establishment of the guardianship. This means if the guardianship is entered into prior to the completion of the guardianship agreement, the relatives can never be eligible for Kin-GAP funding and the case must always remain open for that guardian to receive benefits.

While CLC is actively coordinating with DCFS and California Department of Social Services to resolve this problem, until further notice, attorneys must be mindful of this issue. The following information and practice tips should help you in navigating these cases.

Glossary of Terms

Kinship Guardianship Assistance Payment (“Kin-GAP”): financial aid received by a relative (or “kinship”) guardian on behalf of the child after termination of the dependency court case provided certain eligibility requirements are met.

Adoptions Assistance Program (“AAP”): financial aid received by adoptive parent/parents on behalf of a child after signing the Adoption Assistance Program Agreement.

Relative Legal Guardianship: Legal guardianship established with a relative caregiver. Dependency court case can be open, in which case the guardian will *not* be receiving Kin-GAP. The dependency case can also be terminated, in which case the guardian *should* be receiving Kin-GAP if certain eligibility requirements are met.

Non-relative Legal Guardian: Legal guardianship established with a non-relative. The guardian is not eligible for Kin-GAP, but may be receiving other benefits.

AB 12/212 Changes Related to Guardianships

- Extends payment of Kin-GAP and AAP up to age 21 for youth who have a *mental or physical disability* that warrants the continuation of assistance, regardless of the age of the child when the guardianship was established or initial AAP agreement was signed. These extended benefits began **January 1, 2011**.
- Extends payment of Kin-GAP and AAP up to age 20 or 21¹, provided the guardianship was established or initial AAP agreement was signed when the youth was at least 16 years old. These extended benefits begin **January 1, 2012** and will follow the same time frame as extended foster care.
- Extends payment of benefits to *non-relative legal guardians* up to age 20 or 21, regardless of the age of the child when the guardianship was established, as long as the guardianship was created in juvenile court. These extended benefits begin **January 1, 2012** and will follow the same time frame as extended foster care
- Allows CA to draw down Federal IV-E funds for Kin-GAP (previously CA only had a state funded Kin-GAP program). Youth for whom federal eligibility cannot be established *may* be eligible for state funded Kin-GAP. All efforts to establish federal eligibility should be exhausted first.
- Shortens the time frame a youth must now spend in a foster care placement with a relative before establishing the guardianship from one year to six months.

****PRACTICE TIPS****

If a relative guardianship is already in place and there is now a request or recommendation for termination of jurisdiction AND the legal guardian needs continued funding (i.e. KinGAP) AND the SOC 369 & 369A forms were not completed prior to the establishment of the guardianship, DO NOT TERMINATE JURISDICTION.

- If the guardianship is entered into prior to the completion of the guardianship agreement, the relatives can never be eligible for Kin-GAP funding and the case must always remain open for that guardian to receive benefits.
 - If the court refuses, object and make the record that the implementation of the relative guardianship without the completed SOC 369 & 369A will potentially result in the loss of any Kin-GAP eligibility in the future.

If a relative guardianship is not yet created, the Department is recommending legal guardianship, the SOC 369 & 369A forms have been completed, and:

- **Your client is not yet 16 years old:** You may want to advocate to delay the guardianship if your client is close to 16 in order to ensure extended benefits eligibility. Advocating for delaying a guardianship (or adoption) should be done on a case-by-case basis, weighing such factors as the age of the youth and the benefit of permanency against the benefit of extended

¹ Currently, the law provides for the extension of foster care, Kin-GAP and AAP benefits up to age 19 in 2012 and up to age 20 in 2013. There is provision for that to be extended up to age 21 beginning January 1, 2014, but this is contingent upon budget appropriation by the state legislature.

foster care payments. *Examples: if your client is 15 years old and has significant needs, asking for a continuance until that youth turns 16 would give the caretaker up to three years of additional funding (18 – 21). Obviously your analysis would be different if your client is 3 years old.*

- **Your client is 16 or 17 (but will not turn 18 in 2011):** There should be no problem closing the case with Kin-GAP as long as the SOC 369 & 369A were completed prior to establishing the guardianship.
- **Your client will turn 18 in 2011:** For the small subset of 17 year olds for whom Kin-GAP is recommended, but who are turning 18 between now and the end of the year, closing their cases this year could be detrimental. Please consult with Lindsay Elliott if this situation arises.

If a relative guardianship is not yet created and the Department is recommending legal guardianship, but the Department and/or caregiver is requesting continued court supervision:

- Until further notice, DO NOT IMPLEMENT ANY RELATIVE GUARDIANSHIPS unless SOC 369 & 369A have been completed. If the Department is recommending that the case remain open, or the caretaker has made it known s/he would prefer for the case to remain open, it is unlikely that SOC 369 & 369A were completed. Without these completed forms, you should request a continuance and cite the ACL 11-15, as well as FYI 11-15.
 - If the court refuses, object and make the record that the implementation of the relative guardianship without the completed SOC 369 & 369A will potentially result in the loss of any Kin-GAP eligibility in the future.

IN SUM, DO NOT TERMINATE WITH KIN-GAP UNLESS THE FOLLOWING FORMS ARE COMPLETED PRIOR TO ESTABLISHMENT OF THE GUARDIANSHIP:

1. **SOC 369: Agency Relative Guardianship Disclosure, AND**
2. **SOC 369A: Kin-GAP Payment Program Amendment Agreement**

FURTHER, if you have any concerns that your client's relative caretaker will not be eligible for Kin-GAP funding once the case is closed (because the caretaker's path to foster care funding was difficult, ASFA issues, criminal history, etc.), you can request that the Court order the Revenue Enhancement Department to evaluate form KG2: Statement of Facts Supporting Eligibility for Kin-GAP Program to verify the caretaker will be eligible for Kin-GAP. Once the Department has provided verification Revenue Enhancement Department has received the completed KG2 and verified a relative caregiver will eligible for Kin-GAP funds when jurisdiction is terminated, you can then proceed with the guardianship and termination.

