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Administrative Directive

Transmittal:	11-OCFS-ADM-
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning & Policy Development
Date:	
Subject:	Kinship Guardianship Assistance Program (KinGAP)
Suggested Distribution:	Directors of Social Services Foster Care Supervisors Child Protective Services Supervisors Adoption Supervisors Home-finding Supervisors Staff Development Coordinators
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Attachments:	Yes
Attachment Available Online:	Add links

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 426.1, 428.5(c), 430.11(c), Part 436 and 443.2(e)	SSL §§458-a-458-f (Part F of Chapter 58 of the Laws of 2010)		Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) ACYF-CB-PI-08-07 ACYF-CB-PI-10-01 ACYF-CB-PI-10-11

I. Purpose

The purpose of this Administrative Directive (ADM) is to provide comprehensive information and guidance to social services districts and voluntary authorized agencies about the Kinship Guardianship Assistance Program (KinGAP). KinGAP is a new program in New York State which goes into effect on April 1, 2011. It is designed to provide a monthly payment and other benefits to qualified relative guardians of foster children who have been discharged from foster care.

II. Background

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) [the federal Act] established, as an option for states, the authority to operate a KinGAP.

The federal Act added section 471(a)(28) to the Social Security Act (SSA), creating an option under Title IV-E of the SSA for states to provide kinship guardianship assistance payments to relatives who assume legal guardianship of children for whom they have cared while foster parents. The federal Act also added a new section 473(d) of the SSA, which established eligibility and other requirements for the Title IV-E Kinship Guardianship Assistance Program. Federal financial

participation (FFP), using the applicable federal medical assistance percentage, is available for Title IV-E eligible kinship guardianship assistance payments pursuant to section 474(a)(5) of the SSA. Currently, the percentage reimbursed under Title IV-E in New York State is 50%.

Other states have operated such a program including eleven federal child welfare demonstrations that were conducted by states in the 1990s and 2000s. Success of these programs instigated, in part, the passage of the federal Act. Currently there are # federally approved KinGAPs. For a thorough description of the history of KinGAP and implications for New York State, please refer to the report entitled "Pursuing Permanence for Children in Foster Care: Issues and Options for Establishing a Federal Guardianship Assistance Program in New York State." The report can be found at the following link:

<http://www.ocfs.state.ny.us/main/reports/Pursuing%20Permanence%20for%20Children%20in%20Foster%20Care%20June%202010.pdf>

Part F of Chapter 58 of the Laws of 2010 (Chapter 58) added to Article 6 of the Social Services Law (SSL) a new Title 10, entitled, "Kinship Guardianship Assistance Program" (see §§458-a-458-f of the SSL). In addition, Chapter 58 amended the Family Court Act (FCA) and the Surrogate's Court Procedure Act setting forth standards and procedures relating to the application for and issuance of letters of guardianship to prospective relative guardian(s).

The New York State statute meets all applicable federal requirements to operate a KinGAP and obtain federal reimbursement for eligible foster children. In addition, Chapter 58 includes New York State specific provisions and extends to children who, while not eligible under the Title IV-E kinship guardianship assistance program, are eligible for payments under New York State's KinGap.

As a condition for New York State's KinGap law (Chapter 58) to take effect, New York State had to obtain the approval from the federal Administration on Children, Youth and Families (ACYF) of the Department of Health and Human Services of a Title IV-E State Plan Amendment implementing KinGap. The Office of Children and Family Services (OCFS) filed the required State Plan Amendment with ACYF on December 22, 2010 and this plan amendment was approved on *date*. The effect of the federal approval of the Title IV-E State Plan Amendment is that federal Title IV-E reimbursement is available for otherwise eligible kinship guardianship assistance payments effective on *date*. It also means that the kinship guardianship assistance and non-recurring guardianship expense programs are in effect in New York as of *date*.

OCFS filed implementing regulations on an emergency basis, as authorized by Part F of Chapter 58 of the Laws of 2010, and at the same time filed these regulations for public comment on December 17, 2010. The regulations are effective April 1, 2011. They can be found at the following link:

<http://www.ocfs.state.ny.us/main/legal/Regulatory/final/>

III. Program Implications

KinGAP is a new program in New York State. It is expected that this program will enhance permanency for foster children who do *not* have a discharge goal of return to parent or adoption by providing safe permanent placements with relatives who receive financial and medical coverage for the continued care of a relative child who was in foster care.

KinGAP will likely encourage relatives who are currently serving as foster parents for a related foster child to agree to be a permanent resource for the child. Often, such relatives are reluctant to see the foster care relationship end and to assume legal guardianship because of the corresponding loss of necessary financial and medical coverage for the child.

KinGap will assist in addressing those cases where return to the parent is not safe or suitable and adoption is also not a viable or appropriate option. Often, especially with older foster children, the child will not consent to adoption. In some cases, the severing of parental rights required for an adoption with the child remaining with a relative caretaker can cause conflict and confusion for the child and can create issues and pressures within the family. Sometimes, adoption may actually destabilize family relationships because of the legal changes in relatives' roles, relationships and responsibilities. Moreover, adoption may be in conflict with the family's hopes for a parent/child reunification. Finally, the process required for the involuntary termination of parental rights is time consuming and uncertain.

KinGap establishes requirements for assessing when the child and the prospective relative guardian are eligible for kinship guardianship assistance payments. These requirements include a number of legal, clinical and assessment considerations that must be made before proceeding with a Kinship Guardianship Assistance arrangement, foremost is that the child has demonstrated a strong attachment to the relative and that the relative has a strong commitment to permanently caring for the child. All eligibility requirements will be detailed in section IV.

KinGAP also assists a relative who is eligible for kinship guardianship assistance payments by providing up to \$2,000 per child as part of the Non-Recurring Guardianship Expense Program for payment of the costs directly associated with securing letters of guardianship over the foster child. Furthermore, KinGap assists children after they leave foster care as part of a kinship guardianship assistance arrangement by making independent living services and education and training vouchers available to both support permanency and to prepare the child to live independently after the termination of the kinship guardianship assistance arrangement.

KinGAP has many facets to it; in many ways it resembles the New York State adoption subsidy program, but there are many significant differences, as well. It is very important for social services districts and voluntary authorized agencies to understand the legal and program requirements, policies and procedures that make up this program. A complete description is provided in this ADM.

IV. Required Action

A. Notice and Information about KinGAP

Both federal and state law require that due diligence be exercised to identify and locate a child's relatives within 30 days of the child's removal from the custody of the child's parent(s). The social services district must provide the relatives with notification of the child's removal and explain the options under which the relatives may provide care of the child through foster care or direct legal custody or guardianship, including kinship guardianship assistance, and any

options that may be lost by failure to respond timely to the notification [see also 18 NYCRR 430.11(c)(4)]. OCFS permits social services districts to make the notification verbally or in writing and does not prescribe a required format for the written notification. It is strongly recommended by OCFS and ACF that written notice be made. OCFS does require that relatives be given a copy of "Having a Voice and a Choice: New York State Handbook for Relatives Raising Children," if the relative is considering becoming the child's caregiver (see 09 OCFS-ADM-04). As an option, OCFS also developed a brochure "Know Your Options: Relatives Caring for Children" (see 10 OCFS-INF-03). Those policies remain in place. With this ADM, OCFS has developed a model notification letter that includes a brief description of the KinGAP option [see Attachment A] for relatives other than a non-custodial parent. Social services districts may use this model or develop their own relative notification letter, as long as it includes information on KinGAP, or verbally share this information with the relative(s). OCFS has developed a supplementary publication [##] for the handbook and brochure. This new publication, entitled "***Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGap)***", must accompany the handbook in situations where the handbook is required, per 09 OCFS-ADM-04. The publication can be found at [www.ocfs.state.ny.us/...](http://www.ocfs.state.ny.us/)

Training for all foster parents must include information on eligibility for KinGAP, including non-recurring guardianship expenses and medical coverage available under KinGAP. (see 18 NYCRR 443.2) The publication, ***Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGap)*** must be made available at training classes. The expectation is that the information will be reviewed with training class participants.

Social services districts must provide information upon request to any prospective kinship guardian on the availability and eligibility requirements for KinGAP. The publication, ***Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGap)*** is to be used for that purpose, augmented by reviewing the information with the prospective guardian and responding to any questions the person may have.

Regarding current caseloads, at the point in time when the KinGAP law takes effect, social services districts must review their foster care caseloads and identify all foster children placed with a relative foster parent (including foster homes that have been approved, and also those homes that have been certified and are caring for a foster child that is related to them by blood, marriage or adoption) and provide all such potentially eligible foster parents with information about KinGAP, within 90 days of the effective date of this ADM. The social services district must provide the publication, ***Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGap)*** and provide a face-to-face explanation of the program and respond to any questions posed by the foster parent.

Social services districts may also consider holding information nights, group meetings, introductory letters and other engagement techniques to promote understanding of the KinGAP and the benefits available as a permanency option.

B. Application for the KinGAP

Upon request, the prospective kinship guardian is to also be provided with an application for the KinGAP. The application OCFS 4430, is an OCFS prescribed form (see 18 NYCRR 436.2) and is an attachment to this ADM [Attachment B]. [Note: Social services districts that wish to create and utilize a local equivalent application must obtain prior OCFS approval to do so, by submitting the proposed local equivalent to the appropriate OCFS Regional Office.] Prospective relative guardians must apply to the social services district in order to obtain approval to receive Kinship Guardianship Assistance Payments. (Note: Applications may be submitted to a voluntary authorized agency, where the agency has responsibility for the foster child on whose behalf kinship guardianship assistance is being requested. Although the voluntary authorized agency may make a recommendation, the actual determination on the application rests with the social services district and the social services district must adhere to the 30 day time frame for making the determination.) The prospective relative guardian(s) must complete and sign the application, and any youth age 18 or over must also sign (as a confirmation of his or her consent). Where a prospective relative guardian is married, both spouses are encouraged to apply together, unless there is a legal separation. If married couples do not wish to jointly apply for kinship guardianship assistance payments, the caseworker should determine the reasons why not and assess these reasons as to the affect on the child's potential permanency. The prospective relative guardians should be made aware that if they do not apply jointly and kinship guardianship assistance payments are awarded to just one relative guardian and that relative guardian dies or otherwise cannot continue, the right to receive kinship guardianship assistance payments cannot be transferred to the other spouse.

If a person is not related to the foster child by blood, marriage or adoption, even if the person is the unmarried partner of a relative guardian, such person does not qualify to receive kinship guardianship assistance payments on behalf of the non-related child.

Within 30 days of receiving a completed application filed by the prospective relative guardian(s), the social services district must make a determination whether to approve or disapprove the application for KinGap. The 30 day time period commences when the filed application is complete, in other words, when certain requirements are met. These are detailed below: *eligible relative / time in foster care and court hearings*. Applicants have a right to a fair hearing before OCFS if a determination is not reached within 30 days of the filing by the prospective relative guardian(s) of a completed application (see fair hearings section). It should be noted that voluntary authorized agency caseworkers who have case planning responsibility for an applicable foster care case, or voluntary authorized agency caseworkers responsible for a particular foster child, may disseminate the application and make a recommendation as to whether it should be approved, but the social services district has the ultimate responsibility for the final decision whether to approve or deny the application. It is recommended that staff responsible for approving or denying an application complete the application in tandem with section II of the eligibility checklist (OCFS 4435). The eligibility checklist and instructions for completion can be found in the **Kinship Guardianship Assistance Practice Guide**. (See also eligibility section and fair hearing section of this ADM.)

C. Eligibility

In order for a prospective relative guardian and foster child to be eligible for kinship guardianship assistance payments the following criteria must be met:

- **Eligible relative / time in foster care** – the prospective relative guardian(s) must be related to the foster child by blood, marriage or adoption and must have cared for the child as a fully certified or fully approved foster parent for **at least six consecutive months** before application for KinGAP. This definition of a relative for KinGap is a broader definition than that of an approved relative foster parent who must be within the second or third degree of consanguinity to the parent. So any relative, whether an approved foster parent or a certified foster parent is considered an eligible relative. The approval or certification must be full certification or full approval, with no lapses in certification during this period. Any period where the child resided with the foster parent on an emergency basis while the full certification or approval was still underway, cannot be counted in meeting the six months time frame. However, the six months clock may be interrupted by brief, temporary periods of less than 30 days, due to hospitalization, stay(s) in psychiatric facilities, respite and comparable absences from the foster home.
- **Court Hearings** – for all children in foster care, prior to being eligible for kinship guardianship assistance payments, the foster child's *first permanency hearing* must have been completed. First permanency hearings are generally held at eight months. Usually, the date certain established for the initial permanency hearing is the date of removal from home plus 60 days plus 6 months. The court has the authority to establish a date certain at an earlier date than this timeframe. In addition, for children placed into foster care pursuant to Article 10 of the Family Court Act (abuse/neglect), the *fact finding* (FCA §1051) must also have been completed.

The time frames provided above are **minimum** time frames.

- **Return home and adoption are not appropriate permanency options**

Return home: Federal and state law provide that for a kinship guardianship assistance arrangement, return of the child to his or her home is not an appropriate permanency goal. In addition, state standards provide that the social services district must determine that it is in the best interests of the relative to become the guardian of the child. As part of that determination, the social services district must determine and document that compelling reasons exist that return home is not in the best interests of the child. (Such a determination must also be made in regard to the permanency goal of adoption.)

It is critical that diligent work be undertaken in all foster care cases to attempt to safely re-unite the foster child with his or her parent(s). No application for Kinship Guardianship Assistance should be determined until there is compelling reason to believe that:

- the child would not be able to be safely returned home in a reasonable timeframe considering the child's age and developmental level;
- the parent(s) circumstances and condition cannot be sufficiently ameliorated with direct services and supports and/or referral for services and supports; and

- the reason(s) for the removal have been thoroughly considered and the likelihood that the circumstances and conditions that led to the removal still exist.

In the course of permanency work undertaken in all foster care cases, such as development of Family Assessment and Service Plans (FASPs), Service Plan Reviews, case consultations to develop the Permanency Hearing Report, regular casework contacts with foster children, parents and foster parents, the options are to be fully discussed and evaluated, in order to make the most appropriate permanency decision.

Consistent with 18 NYCRR 428.5, the steps taken to determine that it is not appropriate for the child to return home and the compelling reasons why return home is not in the child's best interests must be documented in the case progress notes. The **Kinship Guardianship Assistance Case Practice Guide** contains additional tools and materials to help with this assessment and determination.

Adoption: Once it is determined that a child cannot be safely returned home, adoption must be ruled out as well. Although both children free for adoption and children not free for adoption are potentially eligible for KinGAP, for children not yet free, a number of factors must be considered. These include: whether the adversarial process of bringing a termination of parental rights (TPR) is best way of bringing permanency to the child; the perspective of both the parents and prospective relative guardian on the issue of termination of parental rights; the length of time it would take to achieve a termination; whether it is in the child's best interest to have his or her parents' rights severed; and the potential grounds for termination. Note: an acceptable reason for not filing a TPR when the child has been in foster care for 15 of the most recent 22 months is when a child is living in foster care with a relative. OCFS has issued guidance in the past about acceptable circumstances for *not* filing a TPR in 18 NYCRR 431.9; 98 OCFS-INF-03, in CONNECTIONS HELP, and in 11 OCFS-ADM #, regarding incarcerated parents and parents in residential drug treatment (Chapter 113 of the Laws of 2010).

For children already free for adoption, especially those children age 14 and older who can refuse consent to adoption, the child's perspective and input into the adoption decision must also be taken into account.

Consistent with 18 NYCRR 428.5, the steps taken to determine that it is not appropriate for the child to be adopted and the compelling reasons why adoption is not in the child's best interests must be documented in the case progress notes. In addition, the efforts made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship, and if the relative has chosen not to pursue adoption, the reasons for such choice, must also be documented in the case progress notes. The **Kinship Guardianship Assistance Case Practice Guide** contains additional tools and materials to help with this assessment and determination.

- ***Attachment to relative and consultation with the child*** – the child must demonstrate a strong attachment to the prospective relative guardian. State law requires that age appropriate consultation has been held with the child. For any child age 14 or older, or younger children who demonstrate sufficient maturity, a process of frank discussions with the child is necessary to ascertain the child's feelings about a KinGAP arrangement. It is strongly recommended that whenever possible, such discussions occur with children between the ages of 10 through 14, as well. The child's caseworker, therapist, if appropriate, child's attorney, and/or other service providers may collaborate in meeting with the child and determining that the child has been sufficiently informed, understands the implications of the KinGAP arrangement and feels prepared and comfortable with the decision. For children under the age of 10 who have not been consulted because they are very young or developmentally unable to verbally express an opinion, it is incumbent upon the worker to gauge attachment by actions and reactions of the child when with the prospective relative guardian. Children age 18 and over must consent to the Kinship Guardianship Assistance arrangement.

Consistent with 18 NYCRR 428.5, the steps taken to hold age appropriate consultation with the child regarding the kinship guardianship assistance arrangement, including the required consultation with a child who is 14 years of age or older, and the steps taken to secure consent of a child who is 18 years of age or older must be documented in the case progress notes. The **Kinship Guardianship Assistance Case Practice Guide** contains additional tools and materials to help with this assessment and determination.

- ***Relative commitment to permanently care for the child*** – the case worker and appropriate others must determine that the prospective relative guardian is ready, willing and able to provide a permanent home for the child until the child reaches adulthood. A series of meetings may be necessary to answer all of the questions the relative may have before making this commitment. The ***Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGap)*** for relatives on the KinGAP may be useful in providing the necessary factual information, but the relative's specific situation, especially as regards to the child's parent(s) is also a key factor in considering the KinGap option and the resultant family dynamics. The **Kinship Guardianship Assistance Case Practice Guide** contains additional tools and materials to help with this assessment and determination.
- ***Criminal History / SCR checks*** - in addition, for all applicant(s) and all members of the prospective guardian's household age 18 and over, a criminal history record check in New York State through the Department of Criminal Justice Services (DCJS) and nationally through the Federal Bureau of Investigation (FBI) must be made. Furthermore, a Statewide Central Register of Child Abuse and Maltreatment data base check through OCFS must be made, and if any applicant or other adult household member resided in another state within five years prior to the application for KinGap, a request for child abuse and maltreatment information maintained by the child abuse and maltreatment registry from the applicable child welfare agency in each such state of previous residence must also be made. All of the above noted checks already made for the purpose of certifying or approving the foster home satisfy these KinGAP requirements. Any household member age 18 and over who had not had such checks

must have them completed prior to the approval of an application submitted by the prospective relative guardian(s) for KinGap.

If the court wishes updated fingerprint information prior to issuing letters of guardianship:

An update can be requested by the court from the OCFS Fingerprint Unit by calling (518) 473-8595. The Update process is not a reprocessing of the fingerprints, but merely results in a file review of the criminal history record by OCFS. An updated summary letter will be provided that acts as an addendum to the original clearance or criminal summary letter. The updated summary letter simply provides a current date with a reference to the original letter date and indicates whether there have or have not been any changes to the criminal history since then. This process only includes DCJS history; there is no search and retain for FBI checks. If the court requests, both the original letter and the summary update letter should be submitted to the court, along with any other necessary documents required by the court prior to issuing letters of guardianship. Note: OCFS does not provide updated summary letters on closed records, nor on records where a Mandatory Disqualification has been reported previously. If OCFS receives a request on a closed record, the agency will be instructed that the individual will need to be reprinted. If a mandatory disqualification has been reported on the foster or adoptive parent, the agency is reminded that they cannot approve or certify the home.

- **Education / Employment/Incapacity Status of Youth Age 18 and Over** – in order to continue to make kinship guardianship assistance payments for youth over the age of 18 who had attained the age of 16 when the Kinship Guardianship and Non-Recurring Expense Agreement became effective, the youth must meet one of the following criteria. The child is:

- completing secondary education or a program leading to an equivalent credential; or
- enrolled in an institution which provides post-secondary or vocational education; or
- participating in a program or activity designed to promote, or remove barriers to, employment; or
- employed for at least 80 hours per month; or
- incapable of doing any of the activities described above due to a medical condition.

In order to meet **federal Title IV-E** eligibility requirements, in addition to satisfying the state statutory and regulatory requirements for New York State KinGap, the following additional federal criteria must be met:

- the child has been removed from the child's home pursuant to a voluntary placement agreement (section 384-a of the SSL) **or** by a court determination that continuation of the child in the child's home would be contrary to the welfare of the child (or that removal of the child from the child's home is in the best interests of the child); **AND**

- the child was eligible for Title IV-E foster care maintenance payments while residing for at least six consecutive months in the home of the prospective relative guardian(s).

Note: If one sibling satisfies *all* state and federal eligibility requirements and another sibling(s) or half-sibling(s) is to be part of the same kinship guardianship arrangement, the other sibling or half-sibling must meet the state eligibility requirements in his or her own accord, but the additional federal Title IV-E requirements listed above are considered met by virtue of the first sibling having met them.

Workers must complete eligibility documentation in the case progress notes, pursuant to 18 NYCRR 428.5 (c) (12) (iv) and on the specially constructed KinGAP Eligibility Checklist [OCFS 4435] for this purpose. The checklist is to be used to establish federal Title IV-E eligibility for that program, as well as to document that all state eligibility factors have been met. As appropriate, the progress note entries will serve as the backup documentation for entries made on the checklist, in addition to other necessary documentation such as foster home certifications/letters of approval; court orders documenting: the first permanency hearing; where applicable, the fact finding hearing under Article 10 of the Family Court Act; or where applicable, court orders issued upon the child's initial entry into foster care which stipulate that continuation in the child's current living situation would be "contrary to the welfare" of the child, or that foster care was in the child's "best interests." If the child entered foster care through a voluntary placement agreement, a copy of the voluntary placement agreement executed by a parent or guardian would be required documentation. The **Kinship Guardianship Assistance Case Practice Guide** contains an Eligibility Checklist and instructions for determining and documenting eligibility for the KinGAP. The Eligibility Manual for Child Welfare Services available at <http://www.ocfs.state.ny.us/main/fostercare/titleiv-e/chapter5.asp> will be updated with the same checklist and instructions.

Once the eligibility criteria have been met, it is appropriate to change the child's goal to "refer for legal guardianship," if it has not already been so changed. Unless expressly specified in an existing court order, a permanency hearing and court approval of the goal are not necessary to have occurred, in order to change the goal.

D. Case Plan Requirements

In addition to the individual eligibility requirements detailed above, a number of requirements must also be met, although they do not affect the child or prospective relative guardian's eligibility to receive kinship guardianship assistance payments.

For each child in foster care placed with related foster parent(s) where the child has the permanency planning goal of "refer for legal guardianship" and the plan is for a kinship guardianship assistance arrangement, the following must be documented in the case progress notes:

- **the reasons for any separation of siblings during placement**
Federal law requires that reasonable efforts must be made to place siblings and half-siblings who are in foster care in the same kinship guardianship assistance arrangement, unless joint placement would be contrary to the safety or well-being of any of the siblings. New York

State has a long history in requiring foster children and children placed for adoption to be placed with their siblings or half siblings. It is expected that in regard to the foster care placement of the child involved in a potential kinship guardianship assistance arrangement that the standards for sibling placements were addressed with regard to siblings and half-siblings also in foster care. That state standard is that siblings in foster care are to be placed together unless it is determined to be contrary to the health, safety or welfare of one or more of the siblings. [See 18 NYCRR 421.2(e), 421.18(d)(3), 430.11(c)(2)(vi) and 431.10 and 92 ADM- 24 Foster Care, Adoption: Requirements for Siblings Placement, Visitation and Communication; 07 OCFS-INF-04 Keeping Siblings Connected: A White Paper on Siblings in Foster Care and Adoptive Placements in New York State; and 10 OCFS- INF- 07 Flexibility in Sleeping Arrangement Requirements for Sibling Foster Care Placement.] Accordingly, when contemplating a kinship guardianship assistance arrangement, it is expected that the social services district will consider the placement of siblings who are in foster care and otherwise eligible for KinGap into the same kinship guardianship arrangement, consistent with applicable federal and state standards relating to the placement of siblings or half-siblings.

As stated elsewhere in this release, each sibling must individually satisfy the standards for New York State KinGAP. Each foster child must be the subject of a kinship guardianship agreement. They may be part of the same kinship guardianship agreement with the same relative guardian(s), or separate kinship guardianship agreements with the same relative guardian(s). Following entry into the required kinship guardianship agreement, letters of guardianship may either be issued for the whole sibling group together, or at separate times. That said, if the prospective relative guardian fully intends to be the guardian for a sibling group in foster care, all the children in the sibling group should be placed in that home, if they are not already, despite one or more of the children remaining in foster care status until kinship guardianship assistance can be achieved.

Also note: if any one child in the sibling group was Title IV-E eligible upon initial entry into foster care, the siblings or half siblings for which a kinship guardianship assistance arrangement is established, are all deemed to have met that criteria of Title IV-E eligibility for KinGAP. [See also note in Section C.]

Consistent with 18 NYCRR 428.5, the reasons for any separation of siblings or half siblings must be documented in the case progress notes.

- **the ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment**

See Section C

- **the efforts made to discuss with the child's parent or parents the kinship guardianship assistance arrangement, or the reasons why the efforts were not made**

Discussions with Child's Parent(s) – Unless the child is already free for adoption, in a kinship guardianship assistance arrangement, the child's parent(s) maintains parental rights. It is very important that parent(s) be made aware and understand what the potential kinship guardianship arrangement means in terms of decision

making for the child (education, health and medical, and all other important aspects of the child's life), contact and visitation, etc., and how or if it may result in the parent(s) ever retaking their parental role. At any time in the future a parent(s) may file a petition to ask for return of custody of the child. While the judge can grant the petition for the return of custody of the child if the parent shows a substantial change in circumstances since the original letters of guardianship were issued, the judge can also refuse to revoke or terminate the guardianship order if there has not been a substantial change in circumstances, or if the change is not in the child's best interests. The factors the judge will look at may vary depending on whether the parent(s) agreed to the original order issuing letters of guardianship or whether such order was made against the parent(s) wishes. In most cases the guardianship arrangement is likely to be a long-term arrangement, lasting until the child becomes an adult.

Full disclosure to the child's parent(s) is very important so that informed consent can be given. Obtaining the consent of the parent(s) is ideal; however it is not required for the court to grant letters of guardianship if extraordinary circumstances can be proven to the court. Generally, extraordinary circumstances include: abandonment, persistent neglect, unfitness, abuse, and if the child has already lived with the relative for an extended period of time (at least two years for grandparents; no stated time period in law for other relatives).

Consistent with 18 NYCRR 428.5, the efforts made to discuss with the child's parent or parents the kinship guardianship assistance arrangement, or the reasons why the efforts were not made, must be documented in the case progress notes. The **Kinship Guardianship Assistance Case Practice Guide** contains additional tools and materials to help with this topic.

E. Kinship Guardianship and Non-Recurring Guardianship Expense Agreement and Kinship Guardianship Assistance Payments

A written agreement between the social services official and the prospective relative guardian(s) must be made, and the agreement (the Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Agreement) must be signed by the prospective relative guardian(s) and the social services official (commissioner or designee) and must always precede the awarding of letters of guardianship by the court in order for kinship guardianship assistance payments to be made. The amount of payment must be determined (see below). Kinship guardianship assistance payments must be made monthly.

The agreement also specifies, among other things:

- that the payment may be adjusted periodically, in consultation with the relative guardian(s), based on the circumstances of the relative guardian(s) and the needs of the child;
- that independent living services are available to the child in accordance with 18 NYCRR section 436.9;

- the procedures by which the relative guardian may apply for additional services, as needed;
- that the social services district will pay the total cost of nonrecurring expenses directly associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2,000 per child;
- that medical coverage is available to a child in a kinship guardianship assistance arrangement;
- that the kinship guardian(s) must notify the social services official of any changes in circumstances that would impact continued eligibility for kinship guardianship assistance payments; and
- that such agreement will remain in effect regardless of the state of residence of the relative guardian throughout the duration of the agreement.

The KINSHIP GUARDIANSHIP ASSISTANCE AND NON-RECURRING GUARDIANSHIP EXPENSES AGREEMENT (OCFS 4431) is a state prescribed form and is Attachment C to this ADM.

The Amount

The social services official must designate in the Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Agreement the amount of kinship guardianship assistance payments that will be provided. The social services district has the option to either pay 100% of the applicable board rate, as defined below, or to take into consideration the income and family size of the relative guardian(s) in determining a percentage of the applicable board rate less than 100% of such rate.

If the social services district chooses for the kinship guardianship assistance program to apply the income and family size of the relative guardian(s), the amount of the monthly kinship guardianship assistance payment may not be less than 75% of the applicable board rate (foster care board rate, including any special or exceptional rate or an expanded rate provide to a minor parent / infant; clothing; and diaper allowance, if appropriate, paid as part of the foster care board rate) nor more than 100% of such rate. The rate chosen by the social services district must be equal to the rate used by the social services district for adoption subsidy payments under section 453 of the SSL. The social services official may consider the financial status and family size of the prospective relative guardian or relative guardian only for the purpose of determining the amount of the payments to be made.

The social services district must use the same option for all kinship guardianship assistance cases. If a social services district wishes to change from one option to another option, the district must inform OCFS in writing of the intended change at least 30 days prior to the effective date of the change. In addition, any such change in option must also apply to the district's adoption subsidy payments. The district must use the newly selected option for all new kinship guardianship assistance agreements entered into on or after the effective date of the change. Kinship guardianship assistance agreements finalized prior to the effective date of the change will not be affected by the change.

Computing the Amount of Annual Income and Determining the Amount of Assistance

For the purpose of the necessary calculations:

- family size is defined as the proposed relative guardian or guardian(s), any spouse of the proposed relative guardian, if they are not entering into the kinship guardianship agreement, any partner of the proposed relative guardian living in the home, and all children living in the home under the age of 21, including the prospective ward(s), but excluding any foster children not the subject of the Agreement; and
- family members whose income is countable is defined as only the income of the proposed relative guardian(s). The income of persons other than the prospective relative guardian may not be considered.

Only income earned as wages or salary from employment and net income from nonfarm self-employment or net income from farm self-employment may be considered in computing annual income. As evidence of income, a social services official may request wage stubs, or a recent W-2, or an employer's statement of wages, or, in the case of income other than wages or salary, a copy of the prospective kinship guardian's latest federal income tax return.

Once the annual income is computed, the following chart should be used in designating the amount of the kinship guardianship assistance payment. The applicable State Income Standard (SIS) is based on the most recent federal income official poverty level, adjusted by OCFS for family size. The applicable SIS is **275%** of the federal poverty level. The prospective kinship guardian(s) may voluntarily agree to a lower rate than would otherwise be paid, as long as such request is submitted in writing to the social services district.

KINSHIP GUARDIANSHIP ASSISTANCE PAYMENTS SCHEDULE

Annual income of relative guardian(s) Percentage of applicable State Income standard	Amount of kinship guardianship assistance payment
Less than or equal to 100%	100% of Applicable Board Rate
Over 100% but not more than 110%	95% of Applicable Board Rate
Over 110% but not more than 120%	90% of Applicable Board Rate
Over 120% but not more than 130%	85% of Applicable Board Rate
Over 130% but not more than 140%	80% of Applicable Board Rate
Over 140%	75% of Applicable Board Rate

Note: The Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Agreement is subject only to approval at the local district level. Unlike adoption subsidy agreements, the

Kinship Guardianship and Non-recurring Guardianship Expense Agreement is not submitted to OCFS for approval.

Amendments

Certain circumstances may allow the original Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Agreement to be amended, as described below.

After the Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Agreement is in effect, if the child exhibits a condition not known at the time of the signing of the agreement, or the child's condition worsens, the relative guardian(s) may apply to the social services district for an upgrade. An upgrade raises the amount of the payment rate (i.e. from basic to special, or from special to exceptional). There is no specific form for a relative who is receiving kinship guardianship assistance payments to *apply* for an upgrade. Relative guardians who make a request are to be advised, unless they have already done so, to submit a written, dated request to the social services district, explaining why an upgrade is needed, along with documentation that is pertinent to the child's condition or behavior, from a physician or other professional who has evaluated, assessed or treated the child for the condition or behavior which may warrant an upgrade. The social services district must use the definitions provided in 18 NYCRR 427.6 (c) and (d) in order to make the determination as to whether an upgrade is warranted.

It is the decision of the social services district that had entered into the original kinship guardianship assistance agreement whether to approve or deny the request. If the social services district approves the request, an amended kinship guardianship assistance agreement form (OCFS 4432) [see Attachment D] must be completed and signed by the relative guardian(s) and the social services district representative. If denied, the social services district must send a Denial of Upgrade notice [see Attachment H] that informs the relative guardian(s) of the denial and of the right to a fair hearing before OCFS.

If a fair hearing is requested because the upgrade request is denied, and the hearing decision is rendered in favor of the relative guardian, an amendment to the original agreement must be made.

Lastly, an amendment to the Agreement can be made to change the type of medical coverage that is provided to the child. For example: a guardian who used his or her own health insurance to cover the child, loses coverage and the child will receive coverage through Child Health Plus or Medical Subsidy.

The amended Agreement form resembles the original agreement in all ways, except that it contains a section to indicate the reason for the Amendment.

If a guardian dies and there is a remaining guardian, or if guardians divorce, or there are other comparable reasons for changing the payment check payee, no amendment to the Agreement is necessary. If appropriate, social services districts are to make the necessary changes in the system to accommodate the request.

Duration of Payment

Kinship guardianship assistance payments must be made to the relative guardian or guardians until the child's 18th birthday or, if the child was age 16 or older before the kinship guardianship assistance agreement became effective, then such assistance payments are to be made until the child reaches age 21, and the child is:

- completing secondary education or a program leading to an equivalent credential; or
- enrolled in an institution which provides post-secondary or vocational education; or
- participating in a program or activity designed to promote, or remove barriers to, employment; or
- employed for at least 80 hours per month; or
- incapable of doing any of the activities described above due to a medical condition.

Kinship guardianship assistance payments must be discontinued if the social services official determines that the child is no longer receiving any support from the relative guardian or that the relative guardian is no longer legally responsible for the support of the child. The term *any support from the relative guardian*, is defined as actual documented use at least 50% of such monthly kinship guardianship assistance payments by the relative guardian for the food, clothing, medical, education and/or shelter needs of the child. This includes but is not limited to when the status of the legal guardian is revoked, terminated, suspended, or surrendered or when the child is removed from the home of the kinship guardian, placed into foster care and the Family Court has approved a permanency planning goal for the child of *other than* return to the home of the relative guardian. See section on Annual Notification, below for other factors which may influence the duration of kinship guardianship assistance payments.

F. Annual Notification

There are notification and certification requirements that cover all children in kinship guardianship arrangements and notification, certification and documentation requirements specific to the educational status of school age children, and additionally, notification, certification and documentation requirements for youth age 18 and over in kinship guardianship arrangements who attained 16 years of age before the kinship guardianship agreement became effective.

OCFS regulation 18 NYCRR 436.6 provides that the social services official must issue, on an annual basis, in written form, a reminder to relative guardians in receipt of kinship guardianship assistance payments of their continued obligation to support the relative child, and to notify the social services official if they are no longer providing any support or are no longer legally responsible for the support of the relative child.

In addition, OCFS regulation 18 NYCRR 436.6 requires that the relative guardian(s) provide a certification of the education status of the school-age child and requires that the relative guardian(s) provide a certification of the status of children over the age of 18, if the child had attained 16 years of age before the kinship guardianship assistance agreement became effective.

Federal law requires assurances pertinent to the educational status applicable to each child eligible for Title IV-E KinGap funding who has attained the minimum age for compulsory education under state law and the education / employment status of each youth over the age of 18 who had attained 16 years of age before the kinship guardianship assistance agreement became effective. In implementing the federal law, the applicable New York State standards will apply to all children in

receipt of kinship guardianship assistance payments, irrespective of whether or not they are eligible for Title IV-E KinGap funding.

School-age children

For children in receipt of kinship guardianship assistance payments, who are of school-age under the laws of the state in which the child resides, the relative guardian(s) must certify that the child is one of the following:

- a full-time elementary or secondary student;
- has completed secondary education; or
- is incapable of attending school on a full-time basis due to the child's medical condition, which incapacity is supported by annual information submitted by the relative guardian as part of this certification.

The federal Administration for Children Youth and Families (ACYF) allows states flexibility in how to address whether and how to document the medical condition and incapability for such youth, as there is no case plan for youth who have entered a kinship guardianship assistance arrangement.

With regard to the educational status of the school-age child, if a reply is received indicating the child has a medical condition which incapacity makes the child unable to attend school full-time, the OCFS requirement is that the child's condition must be documented by a physician, or a physician's assistant or nurse practitioner under the supervision of a physician, or a licensed psychologist.

For purposes of this certification, an elementary or secondary school student means a child who is:

- enrolled, or in the process of enrolling, in a school which provides elementary or secondary education, in accordance with the laws of the jurisdiction in which the school is located;
- instructed in elementary or secondary education at home, in accordance with the laws of the jurisdiction in which the child's home is located; or
- in an elementary or secondary independent study education program, administered by the local school or school district, in accordance with the laws of the jurisdiction in which the child's school or school district is located.

Youth age 18 and over who entered KinGAP at age 16 or later

For children placed in a KinGAP arrangement, payments must continue until the child reaches age 21, if the child had attained 16 years of age before the kinship guardianship agreement became effective and the child is:

- completing secondary education or a program leading to an equivalent credential; or
- enrolled in an institution which provides post-secondary or vocational education; or
- participating in a program or activity designed to promote, or remove barriers to, employment; or
- employed for at least 80 hours per month; or
- incapable of doing any of the activities described above due to a medical condition.

The federal Administration for Children Youth and Families (ACYF) allows states flexibility in how to address whether and how to document the medical condition and incapability for such youth, as there is no case plan for youth who have entered a kinship guardianship assistance arrangement.

With regard to the educational / employment status of youth age 18 and over, if a reply is received indicating the child has a medical condition which incapacity makes the child unable to attend school full-time, the OCFS requirement is that the child's condition must be documented by a physician, or a physician's assistant or nurse practitioner under the supervision of a physician, or a licensed psychologist.

Model Letter and Certification Form

This ADM provides a model letter and certification form (OCFS 4433) pertinent to the above requirements. OCFS has created a single letter and certification form which incorporates all three scenarios listed above. (see Attachments E and F) Social services districts may use the model letter and form, or create one or more of their own, as long as they contain the certification and documentation elements addressed by the state models.

Copies of all notification (inquiry) letters, and all certifications and associated documentation replying to the inquiry, are to be retained as part of the kinship guardianship payment record for at least six years from issuance of the inquiry letter, and accessible for potential audit purposes.

Note: Social services districts are **not**, as a matter of course, to ask for documentation of support (only an attestation), without a reasonable cause to do so.

It is recommended that workers record an Anticipated Future Action (AFA) code in WMS to assist with being reminded of the distribution of the annual notification. For applicable youth over the age of 18, it is suggested that a log be kept of every child who had attained 16 years of age before the kinship guardianship assistance agreement became effective, in order to assist with keeping track of which kinship families need to respond to the section of the form relevant to such youth. An AFA should be entered one month before the youth's 18th, 19th and 20th birthdays.

Discontinuance of kinship guardianship assistance payments

A time for the return of the certification form and associated documentation must be indicated in the letter or on the certification form. That time period should be a reasonable period of time to enable the relative guardian(s) to gather necessary documentation and to respond to the social services district. In the event the form and associated documentation are not returned by the suggested due date, a second request should be sent with a specified date for the return of the form/documentation. If there is no response to the second inquiry, where possible, a phone call is recommended.

In addition, if the social services district cannot obtain a response, or the response is unsatisfactory, the social services district may send a different letter that requires the relative guardian(s) to meet with the social services district staff in person, by telephone or by other means as specified by the district to review the status of the case. In making this request, the social services district must take into consideration where the relative guardian(s) reside, the relative guardian(s)' employment

situation, and the care needs of the child when determining the time, location and means of contact. If the relative guardian(s) is unable to attend the meeting requested in the district's letter for reasons beyond the control of the relative guardian(s), the social services district must provide the relative guardian(s) with one additional opportunity to meet. Failure to provide the requested documentation or to meet with the social services district, as directed, may be a ground for termination of the kinship guardianship agreement and stopping the payment of kinship guardianship assistance. It is important that any follow up letter sent by the social services district indicate the consequences of failure to follow up in the manner prescribed by the social services district.

In addition, if a social services district has reasonable cause to suspect that the relative guardian is either no longer legally responsible for the support of the child or is no longer providing any support for the child, discontinuance may also be considered. In such a case, the social services district may require the relative guardian(s) to submit documentation, as specified by the social services district that addresses and verifies the continuing responsibility of the relative guardian to support the child and the provision of support of the child by the relative guardian(s). The relative guardian is required to provide the required documentation in the time period established by the social services district and to cooperate with the district. In addition, the social district may also require the relative guardian(s) to meet with district staff in person, by telephone or by other means of communication, as specified by the social services district, to review the status of the case. As referenced above, the social services district must take into consideration where the relative guardian resides, the relative guardian(s)' employment situation, and the care needs of the child when determining the time, and location of, and the means of communication for such meeting. If the relative guardian is unable to make the scheduled meeting for reasons beyond the guardian's control, the district must provide the relative guardian with one additional opportunity to meet in accordance with the standards set forth in this section. In addition, failure to provide the requested documentation within the period requested or to meet with social services district staff as directed may be a ground for termination of the kinship guardianship agreement and stopping payments of kinship guardianship assistance.

Pursuant to OCFS regulation, 18 NYCRR 436.5(f)(2)(ii), when determining whether the relative guardian is providing the child with any support for this purpose, the term, *any support from the relative guardian*, means actual documented use at least 50% of such monthly kinship guardianship assistance payments by the relative guardian for the food, clothing, medical, education and/or shelter needs of the child.

As per the signed Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Agreement, the relative guardian who has been receiving kinship guardianship assistance payments on behalf of a child must keep the social services official informed of any circumstances that would make the relative guardian ineligible for such payments or eligible for payments in a different amount. The relative kinship guardian must notify the social services official in writing within 30 days of any circumstance or event that would impact the continued eligibility of the child for kinship guardianship assistance payments. Such circumstances or events include, but are not limited to, the child's marriage, the child's enlistment in the military, the child's death or any other circumstance whereby relative guardian(s) is not providing any support to the child.

Based on a response to the annual notification, if the social services district is advised that the relative guardian(s) are no longer legally responsible for the support of the child, or that the relative guardian(s) do not provide any support for the child, or for any other reason, at any time a decision is made to discontinue kinship guardianship assistance payments, the WMS case must be closed and kinship guardianship assistance payments must cease as of the date of the change of circumstance, in accordance with OCFS regulation 18 NYCRR 436.5. Follow-up inquiry may be necessary to determine the precise date to terminate kinship guardianship assistance payments and/or arrange for any necessary recovery of over payments.

Note: Once kinship guardianship assistance payments are terminated because of the failure by the relative guardian(s) to produce appropriate documentation if such documentation is successfully and adequately produced and the child otherwise remains eligible for kinship guardianship assistance payments, the social services district has the discretion to resume kinship guardianship assistance payments retroactive to the date such payments were terminated. However, the social services district may choose in the alternative not to resume kinship guardianship assistance payments upon the late submission of documentation.

If reasonable efforts to secure the necessary documentation fail, federal Title IV-E claiming for KinGap must cease. Federal Title IV-E eligibility for KinGap may be reinstated and retroactive, if a satisfactory and adequate reply is received after the claiming change.

The relative guardian(s) must be given written notice of the termination of kinship guardianship assistance payments and their right to a fair hearing to challenge termination.

Transference of Kinship Guardianship Assistance

The Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Agreement may not be transferred or assigned by the relative guardian(s) to anyone.

Adoption following Kinship Guardianship Assistance

The placement of the child with the relative guardian and any kinship guardianship assistance payments made on behalf of the child must be considered never to have been made when determining the eligibility for adoption subsidy payments under title 9 of article 6 of the Social Services Law and OCFS regulation 18 NYCRR 421.24 or adoption assistance under Title IV-E of the SSA of a child in such legal guardianship arrangement.

G. Non-Recurring Guardianship Expenses

The social services district must make payments for non-recurring guardianship expenses incurred by or on behalf of the relative guardian(s) who have been approved to receive kinship guardianship assistance payments for expenses incurred directly in connection with assuming the guardianship of the related foster child, including reasonable and necessary fees, court costs, attorney fees, and other expenses which are directly related to obtaining legal guardianship of an eligible child and which are not incurred in violation of federal or state law. The OCFS mandated Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Agreement reflect these conditions and limitations. The non-recurring guardianship expense payment must be made by the social services district either to the relative guardian(s) directly or to an attorney on behalf of the

relative guardian(s) for the allowable amount of non-recurring guardianship expenses incurred directly in connection with obtaining such guardianship.

The amount of the payment made may not exceed \$2,000 for each foster child for whom the prospective relative guardian seeks kinship guardianship.

The prospective relative guardian is to be provided with the "Non-Recurring Kinship Guardianship Expenses Reimbursement Form" (OCFS 4434) Attachment J for submitting expenses. The form must be submitted no later than two years from the date letters of guardianship were awarded by the court.

Payments for non-recurring guardianship expenses must be treated as administrative expenditures under Title IV-E.

H. Medical Assistance / Medical Coverage

Chapter 58 provides for a child's medical coverage, once in a KinGAP arrangement in a number of ways. First, any such child who is federally Title IV-E eligible, is automatically eligible for Medical Assistance under Title XIX of the SSA. Thus, a Medical Assistance case is to be opened as of the first of the month that KinGAP payments are initiated. Such cases may be opened by the Medical Assistance unit of the social service district or ACS/HRA in New York City, or the foster care or other child welfare unit, as local practice dictates. The social services district may wish to follow the same process and procedures that are used to provide Medical Assistance to a foster child who is adopted. The New York State Department of Health (DOH) will be sending a directive to the Medical Assistance units advising of this program and eligibility criteria as a companion piece to this ADM.

With the exception of non-qualified immigrant foster children, DOH has submitted a federal Title XIX State Plan Amendment to provide Medical Assistance for foster children who are not federally Title IV-E eligible. These children will likewise be covered as described above.

Non-qualified immigrant foster children may be provided medical coverage in one of several ways. The sequence is prescribed, and each option must be explored prior to moving to the next:

- by any private coverage the relative guardian has available, where the child can be added to the coverage, provided that such coverage is affordable;
- by the relative guardian(s) applying on behalf of the child, and being found eligible for Child Health Plus or any successor program or plan of state medical coverage that does not consider the immigration status of the applicant in determining eligibility, unless the relative has good cause for not applying, and such reason for not applying includes coverage is not affordable;
- by the relative guardian(s) availing themselves of the state's medical subsidy program.

Affordable is defined as follows: if the cost of health insurance benefits for the child(ren) does not exceed 3% of the guardian(s) gross income, including the cost of the premium and deductible attributable to adding the child(ren) to existing coverage, or the difference between such costs for self-only and family coverage. The presumption that the cost of the health insurance costs are

affordable may be rebutted upon a finding that the cost is unjust or inappropriate based upon case circumstances, the cost and comprehensiveness of the health insurance benefits for which the child(ren) may otherwise be eligible, and the best interests of the child(ren), including any special health needs of the child. In no instance is the cost affordable, if the cost would reduce the guardian(s)' income below 275% of the federal poverty level.

In the case of the medical subsidy, the relative guardian would have to pay for medical services and be reimbursed by the social services district, or the physician or other medical provider would have to agree to bill the social services district and be reimbursed by the district. In either case, reimbursement is limited to the amount of care, services and supplies that would be available under New York State's Medical Assistance if the child was indeed eligible for Medical Assistance.

Note: if the child becomes a Legal Permanent Resident (LPR) through a Special Immigrant Juvenile Status (SIJS) application, the child will be eligible for state Medicaid coverage, and after five years as a LPR they will be eligible for federal Medicaid coverage.

Relative guardians are entitled to a fair hearing on the denial of Medical Assistance coverage and such hearings are conducted through the New York State Office of Temporary and Disability Assistance (OTDA).

If the KinGAP family moves to another state, and the child is Title IV-E eligible, Medical Assistance is to be provided by the new state of residence. The federal Department of Health and Human Services Centers for Medicare & Medicaid Services (CMS) has advised all states of such eligibility under KinGAP.

If the KinGAP family moves to another state, and the child is *not* Title IV-E eligible, Medical Assistance for the child in the kinship guardianship assistance arrangement is to be continued by New York State, unless the relative guardian(s) makes application for Medical Assistance for the child in the new state of residence and the child is found eligible for coverage. New York State will provide coverage in one of the following ways:

- by the relative guardian(s) submitting the medical bills to the local district for payment; or
- by the medical provider submitting medical bills to the social services district for payment;
- or
- by the by the medical provider being or becoming an approved MA provider in New York State and billing Medicaid.

Note: the reciprocity provided by the Interstate Compact on Medical Assistance (ICAMA) for other programs does not include KinGap at this time.

Medical Assistance or Medical Subsidy ends when the kinship guardianship assistance payments ends, except that for children who had been covered by Medical Assistance, pursuant to 366(4)(s) of the SSL, 12 months of continuous Medical Assistance is provided for children who exit guardianship. For youth who exit at age 18, Medical Assistance continuous coverage remains in effect until the child reaches his or her 19th birthday.

I. Independent Living Services and Educational and Training Vouchers (ETV)

For a youth who leaves foster care at age 16 or older for guardianship with a relative guardian who is receiving kinship guardianship assistance payments, the youth remains eligible for the following independent living services: independent living skills; vocational training, independent living skills training, and academic support services. These services are defined in 02-OCFS-LCM-05. (Also see systems instructions – WMS for authorization instructions). In addition, the youth is eligible to apply for Education and Training Vouchers (ETV). The LCM for Federal Fiscal Year 2011-2012 Education and Training Voucher Program will clarify the eligibility for this population for ETV.

J. Bridges to Health (B2H)

Any foster child who is being served by the Bridges to Health program (B2H), who is discharged to kinship guardianship assistance may continue to be served by B2H and continue participation in the program until it is no longer consistent with the plan of care, or until age twenty-one, whichever occurs earlier, notwithstanding the person's status as having been discharged from the care and custody or custody and guardianship of the local commissioner of the social services district.

K. Claiming

Assuming all other eligibility criteria are met, federal Title IV-E claiming for children in a KinGAP arrangement is limited to children who were initially determined as Title IV-E eligible when they entered foster care for the episode of foster care from which they exited to KinGAP. (See also Systems Implications, Section V: BICS and Claiming System Instructions)

L. Fair Hearings

Any person aggrieved by the decision of a social services district to deny an application for KinGap, or to discontinue kinship guardianship assistance payments, or by a decision to make such payment in an inadequate or inappropriate amount, or by the failure of such district to determine a complete application within 30 days after it is filed, may appeal to OCFS by making a written request for a fair hearing. The request must be made within 60 days after notice of the district's decision or the failure or make a timely determination.

The prospective relative guardian(s) or the relative guardian(s), as applicable, may request a fair hearing by writing to the New York State Office of Children and Family Services, Bureau of Special Hearings, Room 322 North Building 52 Washington Street, Rensselaer, NY 12144-2796.

OCFS will provide an opportunity for a fair hearing and render its decision within 30 days of the completion of the fair hearing. All OCFS decisions are binding upon the social services district involved and the social services district must comply with the decision.

Any person aggrieved by the decision of a social services district official not to provide Medical Assistance for their relative child through New York State's Medical Assistance program may appeal to the Office of Temporary and Disability Assistance (OTDA). OTDA conducts these

hearings for the New York State Department of Health. For more information on fair hearings regarding Medical Assistance, refer to [DOH ADM]

This ADM provides three required notice letters, copies of which are attached to this ADM [attachments G, H, and I]: Notice of Denial; Notice of Denial of Upgrade; Notice of Discontinuance. The language in these letters explains the reason(s) for the decision, provides information about legal assistance and information pertaining to need for an interpreter, and rights regarding access to documents. The letters must be sent by certified mail. The application for kinship guardianship assistance also contains fair hearing information explaining that decisions on applications for kinship guardianship assistance payments must be made within 30 days of the filing by the prospective relative guardian(s) of a complete application.

Any documents the social services district intends to introduce at the fair hearing must be made available to the person(s) requesting the hearing. These documents should be made available in advance of the date of the scheduled hearing. This will help cut down on adjournments that may be sought to give time to the requestor to review the documents presented by the social services district.

In order to implement the process for scheduling and conducting fair hearings for the KinGAP, social services districts are being asked upon the issuance of this ADM to provide the following information:

- the location / facility complete address where the hearings will be held on their premises; and
- a contact name, e-mail and phone number to which scheduling information should go.

The above information is to be sent as soon as possible to Steve.Connolly@ocfs.state.ny.us

OCFS will compile a list of foster care managers in order to initially create the contact list.

Social services districts will be notified of the details of each scheduled hearing.

M. Child Support

Where there is an existing order of child support or medical support, for any foster child who will be discharged from foster care to a kinship guardianship assistance arrangement, the child support enforcement unit is to be notified of the discharge [see 18 NYCRR 422.5(d)(6)]. Orders of child support and/or medical support payable to DSS are terminated. Once the child is in the kinship guardianship assistance arrangement, the social services district can no longer collect such support on behalf of the child and the IV-D case should be closed. However, the relative guardian may make application (petition) for child support services against the child's parent or parents and a new IV-D case can be opened. The relative's income, including the guardianship assistance payments, has no bearing on any order made to award the relative such support.

N. Letters of Guardianship

In order to be eligible for kinship guardianship assistance payments, the Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Agreement must be fully executed by the social services district and the prospective relative guardian(s) before letters of guardianship are issued by the court. Once the Agreement has been executed, the court must be petitioned for letters of guardianship. It is the responsibility of the prospective relative guardian(s) or his or her attorney to file the petition.

If the foster child was placed into foster care as an abused, neglected or voluntarily placed child or is completely freed for adoption, the petition for guardianship must be filed in the Family Court before which the most recent proceeding under Article 10 and 10-A of the Family Court Act is pending. The hearing on the petition for guardianship may be consolidated with a dispositional hearing under Article 10 or a permanency hearing under Article 10-A of the Family Court Act. For a non-freed foster child placed into foster care as a PINS or a juvenile delinquent, a petition for guardianship may be filed by the prospective relative guardian(s) in either Family Court or Surrogate's Court. The option of having the prospective relative guardian(s) appointed permanent guardian(s) is also possible in accordance with section 661 of the FCA. For information on Permanent Guardianship see 09-OCFS-ADM-05 New Statutes Affecting Kinship Care: Chapters 404 and 519 of the Laws of 2008.

Social services district staff should make every effort to provide the prospective relative guardian(s) with information about available legal services. Social services district staff should remind the prospective relative guardian(s) that the Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Agreement includes payment for non-recurring expenses, and that these include payment for attorney fees, any other legal fees, and other costs directly related to obtaining letters of guardianship.

The form to be used for petitioning the court for letters of guardianship can be viewed at www.courts.....

Once the petition for letters of guardianship is filed, the matter will be scheduled and heard. The court makes the final decision. Note: The execution of the kinship guardianship assistance agreement, in and of itself, does not qualify a prospective relative guardian to receive kinship guardianship assistance payments. The granting of letters of guardianship by the court is a process that is separate and distinct from the application for kinship guardianship assistance payments and the execution of the kinship guardianship assistance agreement. The determination of whether to grant a petition by a prospective relative guardian for letters of guardianship is solely within the discretion and authority of the court. Should the court grant the petition for guardianship, the child in question is no longer in foster care and is no longer in the custody or guardianship of the social services district.

If the court awards letters of guardianship where there was a Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Agreement in place, the social services district must begin kinship guardianship assistance payments on the effective date of the court order granting the letters of guardianship.

The court order form can be viewed at www.court...

See system instructions, section V., regarding closing the child's foster care case, opening the kinship guardianship assistance case, authorizing payment, and other necessary system procedures.

Under the statute, the social services district and the child's attorney will be advised and made a party to any future matters regarding the child's custody or guardianship, including a petition brought by the child's parent to regain custody, and a petition brought by the relative guardian(s) to have the guardianship revoked, terminated or surrendered.

V. Systems Implications

WMS

Kinship-Guardianship cases are to be opened directly in WMS. There is no CONNECTIONS component for Kinship Guardianship cases. All existing age limit edits in WMS apply to Kinship Guardianship cases. All existing PSS code edits in WMS apply to Kinship Guardianship cases.

Direct Services (DIR)

New Direct Services code KG-Kinship Guardianship is to be used for Kinship-Guardianship cases. KG is the only DIR code allowed for Kinship-Guardianship cases.

Allowable suffix codes for DIR KG are F-FNP and N-NR

Error messages related to the KG DIR are:

Error code 314

Screen error message: 314 ENTER CORRECT SVC TYP SUFFIX CODE FOR THIS SERVICE

Error Guide entry is:

314	The value entered for Services Type Suffix was not appropriate for the Direct Service Type.	Enter the appropriate value for Service Type Suffix for the Direct Service Type or do not use a suffix code for IL
-----	---	--

Error code 520

Screen error message: 520 DIR "KG" CANNOT OCCUR WITH DIR "01" "08" "IL" "17" "25" "26"

Error Guide entry is:

520	DIR entry "KG" cannot occur with DIR entries of "01", "08" "17" "25" "26" OR "IL"	Remove the DIR "KG" entry or remove the "01", "08" "17" "25" "26" OR "IL" entry(ies).
-----	---	---

Services Goal (GL)

When a DIR of KG exists, Services Goal must be = 01. Any other Services Goal will create an error condition

Error message related to KG DIR and Services Goal is:

Error code 521

Screen error message 521 is: 521 DIR "KG" MUST HAVE GOAL OF "01"

Error Guide entry is:

521	DIR entry "KG" must have a Services Goal of "01"	Remove the DIR "KG" or change the Services Goal to "01"
-----	--	---

Purchase of Service (POS)

Four new POS codes have been developed for the Kinship-Guardianship Program and require a DIR of KG:

KG – Kinship Guardianship Regular Service and Maintenance

KG POS lines must be written with a "C" in the "AMT" field

KG POS lines may be written as recurring or single issue

KG POS lines may be written with suffix codes of F or N

The displayed mnemonic for KG is "KGSVCMNT"

K1 – Kinship Guardianship Non-Recurring Expense

K1 POS lines may be written with either a "C" or a dollar amount in the "AMT" field

K1 POS lines must be written as single issue only

K1 POS lines may be written with suffix codes of F or N

The displayed mnemonic for K1 is "KGNR-EXP"

K2 – Kinship Guardianship Additional Per Diem

K2 POS lines may be written with either a "C" or a dollar amount in the "AMT" field

K2 POS lines may be written as recurring or single issue

K2 POS lines may be written with suffix codes of F or N

The displayed mnemonic for K1 is "KGAD-PDM"

K3 – Kinship Guardianship Fair Hearing

K2 POS lines may be written with either a "C" or a dollar amount in the "AMT" field

K2 POS lines may be written as recurring or single issue

K2 POS lines may be written with suffix codes of F or N

The displayed mnemonic for K1 is "KG-HEAR"

Error message related to Kinship-Guardianship POS codes is:

Error code 522

Screen error message 522 is: 522 POS "KG" "K1" "K2" "K3" MUST HAVE DIR "KG"

Error Guide entry is:

522	POS entry was "KG" "K1" "K2" or "K3" and Direct SVC "KG" was not entered.	Enter DIR "KG" or remove the POS "KG" "K1" "K2" or "K3"
-----	---	---

Allowable suffix codes for POS codes KG, K1, K2 and K3 are F-FNP and N-NR. DIR KG must also have the same suffix code when using a suffix code with KG, K1, K2 and K3. Error message related to KG, K1, K2 and K3 suffix codes is:

Error Code 523

Screen error message is: 523 POS KG K1 K2 K3 WITH SUFFIX REQUIRES DIR "KG" WITH SUFFIX

Error Guide entry is:

523	POS entry was "KG" "K1" "K2" or "K3" with a suffix of "F" or "N" and Direct SVC "KG" did not have a suffix	Enter suffix "F" or "N" for DIR "KG" or remove the POS suffix.
-----	--	--

The following already existent POS codes are also allowable for Kinship-Guardianship cases when the DIR is KG:

- 84 - Independent Living
- 85 - Vocational Skills
- 87 - Academic Support Services

None of the new Kinship-Guardianship POS codes may be written on a POS line with a "From" date earlier than April 1, 2011. Error message related to POS "From" date is:

Error message 531

Screen error message is: 531 POS "KG" "K1" "K2" "K3" FROM DATE IS BEFORE APRIL 1, 2011

Error Guide entry is:

531	POS entry was "KG" "K1" "K2" or "K3" and FROM date was prior to April 1, 2011	Do not authorize POS for before April 1, 2011
-----	---	---

Eligibility

Eligibility codes 01-Pending IVE and 04-EAF are not allowed as entries in the "ELIG" field when the POS code is = KG, K1, K2 or K3. Error message related to 01 or 04 "ELIG" entry is:

Error Code 524

Screen error message is: 524 ELIG "01" AND "04" NOT ALLOWED FOR POS CODES "KG" "K1" "K2" AND "K3"

Error Guide entry is:

524	POS entry was "KG" "K1" "K2" or "K3" and the Eligibility Code was "01" or "04"	Enter change the Eligibility Code or remove the POS code(s)
-----	--	---

If WMS is closing, then it must be closed separately from the CCRS closing (see below) using existing codes:

Use "**Release to Relative**" code **571**; or for children who are free for adoption and the relative has been appointed as a "Permanent Guardian," use code **591** "**Discharged to Permanent Guardian.**"

CCRS

The following **new** CCRS codes should be used to report events related to the Kinship Guardianship Program.

• MISCELLANEOUS CODES

- The following codes should be used for tracking Kinship Guardianship *Application processing*:
 - K100 – Kinship Guardianship Application Received
 - K200 - Kinship Guardianship Application Denied
 - K100 must be > M910 (current track); child must be In Care/Status 04
 - K200 must be > or = K100 (current track)
 - K300 – Kinship Guardianship Application Accepted
 - This code cannot be data entered. It is system generated when Agreement Signed activity is reported (new L600/25 Legal Activity described below)
- No input of L600/25 will be permitted, if no K100 on file (current track)
- The L600/25 must be > or = K100 (current track)
- No input of L600/25 will be permitted, if K200 on file (current track)
- A Contra of L600/25 will system (automatically) contra a K300

• LEGAL CODES

- The following codes should be used for reporting Guardianship *Legal events/court proceedings*; all are reportable only for children In Care (Status 04) :
 - MODIFIER A: Type of Legal Event **25 – Kinship Guardianship Agreement**
 - Reportable *only* with L600 – Agreement Signed
 - MODIFIER A: Type of Legal Event **26 – Kinship Guardianship Hearing**
 - Reportable with L300 – Hearing Held *only if*:
 - L600/25 exists on child's current CCRS track and L300/26 activity date is > or = L600/25 activity date
 - MODIFIER B, C: Disposition **87 – Letters of Kinship Guardianship Granted**

- Reportable with L300 – Hearing Held *only if*:
 - MODIFIER A *is not* = 01,02, 09, 11, 12 or 17
- MODIFIER B, C: Disposition **88 – Direct Custody Transferred to Relative**
 - Reportable with L300 – Hearing Held *only if*:
 - MODIFIER A *is* = 04
- **MOVEMENT CODES**
 - The following codes should be used for reporting Discharges to Kinship Guardianship:
 - MODIFIER B - Reason for Discharge/Track Closed with M990 – Discharge from Foster Care and M999 – Child’s Track Closed:
 - **600 - Kinship Guardianship Discharge with Subsidy**
 - Reportable *only if*: L600/25 And L300 with MODB or MODC = 88 exists on current CCRS track and M990/999 activity date is > or = activity date of MODB or MODC = 88 activity date

NYC SERMA

CCRS children discharged with a reason code of 600-Kinship Guardianship Discharge w/Subsidy should be **excluded** from automatic (Downstate/NYProd) MA coverage processing (CCR670). Records with discharge reason code 600 should be written to exception file (CC670REVIEW) as record type 2 – “discharged from care with an excluded discharge reason”.

CONNECTIONS

In order to make kinship guardianship assistance payments, the responsible social services district must have an open active Foster/Adoptive resource for them in CONNECTIONS. As it is permissible for a single resource to receive kinship guardian assistance, adoption subsidy and/or foster care payments at the same time there are multiple ways a resource can be coded to send the appropriate commodity code(s) to BICS. For a resource that is only open to make kinship guardian assistance payments, the social services district worker should select a Setting of “Adopt/Guard” (Adoption/Guardianship) and a Facility Type of “Kinship Guardianship”. Once this type of resource is approved by the supervisor it will remain open until actively closed by the worker. If a social services district decides to make kinship guardian assistance payments through an Adoptive or Foster Home they already have open, the worker would select the newly created “KinGAP” checkbox on the CONNECTIONS Home License window. Selecting this checkbox and having the change approved by the supervisor will also send the appropriate commodity code to BICS to allow payment through WMS. When the “KinGAP” checkbox is selected the resource remains open for as long as the resource’s Setting and Facility Type dictates. If other parts of the resource do close the resource will automatically convert to the Setting of “Adopt/Guard” and Facility Type of “Kinship Guardianship” and remain open until closed by the worker.

* Please Note that the new Facility Type of “Kinship Guardianship” and the “KinGAP” checkbox are part of the 1st version of the transformed CONNECTIONS which is scheduled to finish implementation in the early summer of 2011. If your social services district has not yet been implemented and a kinship guardianship assistance payment is required, the social services district must still have a CONNECTIONS Foster/Adoptive Resource open and active for the relative guardian. If the only social services district resource that is to be open for the relative guardian is to

facilitate kinship guardianship assistance payments the worker should open a home with the Setting of "Adopt/Guard" and a Facility Type of "Adoptive Home". Once there is a resource open for the relative guardian, the Kinship Guardianship commodity code of "19" must be entered directly into BICS by appropriate staff (See BICS instructions). Once all social services districts have been implemented, the assigned worker will be contacted and instructed on how to make the necessary changes to record the appropriate information in CONNECTIONS.

BICS and Claiming System Instructions

Service Types

There are four new Service Types for KinGAP:

- KG = KinGAP - Room & Board
- K1 = Non-Recurring Kin-GAP Expenses
- K2 = Additional per diem for KinGAP
- K3 = KinGAP Fair Hearing

A File Maintenance edit will ensure, for purchase of service lines of KG, K1, K2 and K3, that the vendor will have a commodity code of 19.

The amount for KG must be authorized as a "C." This will access the BICS rate tables. Service Types K1, K2 and K3 may be authorized with an amount or as "C" but will not use the rate tables.

CONNECTIONS / Commodity Code

CONNECTIONS will send a new commodity code of 19 (KinGAP) for a vendor identified in CONNECTIONS as KinGAP.

CONNECTIONS may not be ready by April 1, 2011 to pass the commodity code. Until CONNECTIONS is ready to pass the commodity code, BICS vendor operations will temporarily allow the direct entry of the commodity code of 19 into BICS vendor operations, selection 05 from the Main BICS Menu.

Rate Setting

Screen LAC021 (accessed from selection 15 from the Accounts Menu) will be enhanced to allow entry of the Level of Difficulty (LOD) for KinGAP.

Service Type KG will not be an allowed entry into the BICS rate tables. The rates will be based on the rate for Service Type 52 (Adoption Subsidy).

It is important that districts remember that there must be a Service Type 52 rate for each LOD/modifier and age for which your district will pay for a KinGAP child.

Roster Generation

A new roster generation request will be available for KinGAP Rosters on April 1, 2011.

The format and sort options for the roster will be the same as adoption subsidy. KinGAP will be included in the Pre-Roster.

Service Types K1, K2 and K3 should be included with the single-issue rosters. K2 and K3 could be included in recurring rosters.

Voucher Processing

KinGAP roster may be processed through selection 1 – Initial Voucher Entry or selection 6 SVC Family Foster Care/Adopt/KinGAP.

The roster screens will look the same as adoption subsidy rosters.

KinGAP is an option on BICS Production Request (BPR) 33 – Batch Roster Processing.

Initially, there is a review of Child Care Review Service (CCRS) to determine if there is proper legal authority. To receive reimbursement there must be an M990 or M999 with a modifier of 600 (entering KinGAP) in CCRS; otherwise the payments will be identified as non-reimbursable.

During roster processing, there will be no review of CONNECTIONS home certification or approval.

Any amount over the Maximum State Aid Rate (MSAR) will be identified as Non-Reimbursable.

Check Production

The BICS Category for KinGAP payments will be 51 – Child Care. The appropriation account will be Child Care - A6119.0.

At this point in time, KinGAP benefits will be produced as paper checks. In the future, KinGAP payments could be part of the direct deposit / debit card process.

Composites Roll Logic

Additional lines will be added to the Composite Rolls on the Schedule K and D-2:

- RF-2, Schedule K, KinGAP-FP
- RF-2, Schedule K, KinGAP-FNP
- RF-2, Schedule K, KinGAP-NR
- RF-2A Schedule D-2 KinGAP Non-Recurring-FP
- RF-2A Schedule D-2 KinGAP Non-Recurring-FNP
- RF-2A Schedule D-2 KinGAP Non-Recurring-NR

KinGAP FP will be determined when the Service Type is KG, K2 or K3 and the eligibility for the child is 02 (IV-E) and the suffix code is not N.

KinGAP NR will be determined when the Service Type is KG, K2 or K3 and the Suffix Code is NR or FNP.

KinGAP FNP will be determined when the Service Type is KG, K2 or K3 and the suffix code is not N or FNP.

KinGAP Non-Recurring will be determined when the Service Type is K1 with the same logic to determine FP/FNP/NR as above.

Special Claiming

The Automated Claiming System (ACS) Schedule K will not be able to be available for the April 1, 2011 start date for KinGAP. ACS is schedule to be available on **October 1, 2011**. Until ACS is available, claiming should be entered on an RF-17 – Special Projects.

For administrative costs **before October 1, 2011**, costs must be determined by identifying through a time study the amount of time that a worker is spending on KinGAP. Those costs should then be claimed on the DSS-3922 with the FP/FNP/NR portions based on the percentages determined from the number of KinGAP cases which are FP, FNP and NR.

For administrative costs beginning October 1, 2011, costs will be determined in two ways. F2 costs will be allocated based on the percentages for the Random Moment Survey and reported on KinGAP IV-E and KinGAP Non-IV-E. The portion of monies identified on each line will be based on the districts IV-E saturation rate for KinGAP. Non-Recurring KinGAP expenses will be direct charged on the Schedule D-2.

For program costs, the expenditures that are displayed on the BICS Composite Roll under KinGAP under the Schedule K or D-2 before October 1, 2011 should be reported as FP/FNP/NR on the DSS-3922.

Example:

District has identified that workers with costs of \$40,000 are working $\frac{1}{4}$ of their time on KinGAP - $\$40,000 / 4 = \$10,000$.

\$10,000 is moved from the F2 to the F17 function.

The district has 10 KinGAP cases: 7 are IV-E, 2 are FNP and 1 is NR.

IV-E is 7/10 for 70%

FNP is 2/10 for 20%

NR is 1/10 for 10%

On the DSS-3299 the district would claim \$7,000 as IV-E, \$2,000 as FNP and \$1,000 as NR.

Effective October 1, 2011 a new line for KinGAP will added to the Schedule K. Payments would then be reported as FP, FNP or NR based on the BICS Composite Rolls.

VI. Additional Information

Treatment of KinGAP Income for Other Programs

If a relative guardian in receipt of kinship guardianship assistance payments applies for other social services district programs, the kinship guardianship assistance payments are treated in the following manner:

- **Temporary Assistance** – Whether a child on whose behalf kinship guardianship assistance payments are received is included in the Temporary Assistance (TA) case depends on if a family benefits financially by including or excluding such child. When such child is included in the TA case, the full kinship guardianship assistance payment must be budgeted as unearned income.
- **Food Stamps** – Guardianship payments should be treated the same as foster care payments for food stamp purposes. This gives families the choice of including the child as a member of the household, and counting the kinship guardianship assistance payment as unearned income, or excluding the child and the kinship guardianship assistance payment. The decision to include or exclude a child from a household's Food Stamp case should depend on if the household would benefit financially by including or excluding the child.

The Office of Temporary and Disability Assistance plans to issue a GIS to the social services district's non-services units to address this matter. The **Practice Guide for Kinship Guardianship Assistance** and the *Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGap)* each contain a comparison chart for adoption, kinship guardianship assistance and foster care. The above information has been made part of this chart.

SIJS

Children in a kinship guardianship assistance arrangement may be eligible to apply for Special Immigrant Juvenile Status (SIJS) if they meet the other requirements for SIJS status: they are 21 or under at the time of the application for SIJS and not married; there is a judicial finding that they were abused, neglected or abandoned; reunification with one or more parent is not a viable option; and returning to the country of origin is not in their best interests. [See also 11-OCFS-ADM-01 Special Immigrant Juvenile Status (SIJS) issued February 7, 2011 at the following link

[http://www.ocfs.state.ny.us/main/policies/external/OCFS_2011/ADMs/11-OCFS-ADM-01%20Special%20Immigrant%20Juvenile%20Status%20\(SIJS\).pdf](http://www.ocfs.state.ny.us/main/policies/external/OCFS_2011/ADMs/11-OCFS-ADM-01%20Special%20Immigrant%20Juvenile%20Status%20(SIJS).pdf)

Kinship Guardianship Assistance Practice Guide

This Guide was developed to primarily assist foster care caseworkers with the assessment and clinical considerations necessary to determine eligibility for kinship guardianship assistance payments and to achieve permanency for the child.

The Guide contains an appendix specifically for Child Protective Services (CPS) workers. CPS workers need information about KinGAP so they can assist relatives early on when out-of-home placement is being considered and relatives are found. When a CPS worker first determines out-of-home placement is needed, the first priority is a safe placement and child permanency may not be the focus. However, the decision made by the initial placement with the relative may have lasting consequences for the child's eventual permanency. It is

essential that the CPS worker understand KinGap and provide information about this program to any relative considering providing out-of-home care to a child. The information is especially critical to have *before* a relative determines which legal arrangement he/she would like to pursue. Full disclosure of all placement and custody/guardianship options is essential for a relative to make an informed decision about how they want to proceed with the legal arrangement. The Guide is posted at [].

Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGap)

This booklet was developed for prospective relative guardians, so they have a resource tailored to their needs for information about KinGAP. Some tools are in the **Kinship Guardianship Assistance Practice Guide**, as well. Workers should familiarize themselves with the content so that they can respond to questions or clarify information for the prospective relative guardians.

Changes to curricula

All relevant training courses for caseworkers will be modified, as necessary, to include information about the kinship guardianship assistance and non-recurring guardianship expense programs. The level of detail will vary, depending upon the curriculum being modified.

KinGAP HELP

A special mailbox has been set up for questions regarding the Kinship Guardianship Assistance Program. Questions are to be sent to:

ocfs.sm.sppd.KinGap.Help

OCFS will determine at a later time how long we will keep the mailbox in operation, and advise you accordingly.

***Attachments:**

- A. KinGAP Notification Letter for Relatives (Model)
- B. KinGAP Application (Required Form / Local Equivalent must be approved by OCFS)
- C. Kinship Guardianship Assistance and Non-recurring Guardianship Expenses Agreement (Required Form)
- D. Amendment: Kinship Guardianship Assistance and Non-recurring Guardianship Expenses Agreement (Required Form)
- E. KinGAP Annual Notification Letter (Model)
- F. KinGAP Annual Certification Form (Parental Certification of Continued Support and KinGAP Educational Status of Child for children under age 18, and for children age 18 and over) (Model)
- G. KinGAP Fair Hearing Notice: Denial (Required Form)

- H. KinGAP Fair Hearing Notice: Denial of Upgrade (Required Form)
- I. KinGAP Fair Hearing Notice: Discontinuance (Required Form)
- J. Kingap Non-recurring Kinship Guardianship Expenses Reimbursement Form (Required Form)

*Spanish translations to be made available at a later date.

VII. Effective Date

This ADM is effective April 1, 2011.

Issued By:

Name: Nancy W. Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development