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**WELFARE AND INSTITUTIONS CODE - WIC**

**DIVISION 9. PUBLIC SOCIAL SERVICES [10000 - 18999.98]** ( Division 9 added by Stats. 1965, Ch. 1784. )

**PART 3. AID AND MEDICAL ASSISTANCE [11000 - 15771]** ( Part 3 added by Stats. 1965, Ch. 1784. )

**CHAPTER 2. California Work Opportunity and Responsibility to Kids Act [11200 - 11526.5]** ( Heading of Chapter 2 amended by Stats. 1997, Ch. 270, Sec. 49. )

**ARTICLE 4.7. Kinship Guardianship Assistance Payments for Children [11385 - 11393]** ( Article 4.7 added by Stats. 2010, Ch. 559, Sec. 37. )

**11385.** (a) On and after the date that the director executes a declaration pursuant to Section 11217, the State Department of Social Services shall exercise its option under Section 671(a)(28) of Title 42 of the United States Code to enter into kinship guardianship assistance agreements to provide federally funded kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared as approved relative caregivers and for whom they have committed to care on a permanent basis, as provided in Section 673(d) of Title 42 of the United States Code.

(b) A kinship guardianship assistance payment made under this article on behalf of a child shall not exceed the rate for children placed in a licensed or approved home pursuant to Section 11461.

(c) It is the intent of the Legislature to ensure that relative guardians of children in long-term, stable placements who previously were receiving kinship guardianship assistance payments on behalf of those children under Article 4.5 (commencing with Section 11360) shall instead receive assistance under this article to the extent that those children are otherwise eligible under Subtitle IV-E (commencing with Section 470 of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.)).

(d) It is the intent of the Legislature that no county currently participating in the Child Welfare Demonstration Capped Allocation Project be adversely impacted by the department's exercise of its option under Section 671(a)(28) of Title 42 of the United States Code to enter into kinship assistance agreements as provided in Section 673(d) of Title 42 of the United States Code. Therefore, the department shall negotiate with the United States Department of Health and Human Services on behalf of those counties that are currently participating in the demonstration project to ensure that those counties receive reimbursement for these new programs outside of the provisions of those counties' waiver under Subtitle IV-E (commencing with Section 470 of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.)).

(Added by Stats. 2010, Ch. 559, Sec. 37. (AB 12) Effective January 1, 2011.)

**11386.** Aid shall be provided under this article on behalf of a child under 18 years of age, and to any eligible youth under 19 years of age, as provided in Section 11403, under all of the following conditions:

(a) The child satisfies both of the following requirements:

(1) He or she has been removed from his or her home pursuant to a voluntary placement agreement, or as a result of judicial determination, including being adjudged a dependent child of the court, pursuant to Section 300, or a ward of the court, pursuant to Section 601 or 602, to the effect that continuation in the home would be contrary to the welfare of the child.

(2) He or she has been eligible for federal foster care maintenance payments under Article 5 (commencing with Section 11400) while residing for at least six consecutive months in the approved home of the prospective relative guardian while under the jurisdiction of the juvenile court or a voluntary placement agreement.

(b) Being returned to the parental home or being adopted are not appropriate permanency options for the child.

(c) The child demonstrates a strong attachment to the relative guardian, and the relative guardian has a strong commitment to caring permanently for the child and, with respect to the child who has attained 12 years of age, the child has been consulted regarding the kinship guardianship arrangement.

(d) The child has had a kinship guardianship established pursuant to Section 360 or 366.26.

(e) The child has had his or her dependency jurisdiction terminated pursuant to Section 366.3, or his or her wardship terminated pursuant to subdivision (d) of Section 728, concurrently or subsequently to the establishment of the kinship guardianship.

(f) If the conditions specified in subdivisions (a) to (e), inclusive, are met and, subsequent to the termination of dependency jurisdiction, any parent or person having an interest files with the juvenile court a petition pursuant to Section 388 to change, modify, or set aside an order of the court, Kin-GAP payments shall continue unless and until the juvenile court orders the child removed from the home of the guardian, terminates the guardianship, or maintains dependency jurisdiction after the court concludes the hearing on the petition filed under Section 388.

(g) A child or nonminor former dependent or ward shall be eligible for Kin-GAP payments if he or she meets one of the following age criteria:

(1) He or she is under 18 years of age.

(2) He or she is under 21 years of age and has a physical or mental disability that warrants the continuation of assistance.

(3) Through December 31, 2011, he or she satisfies the conditions of Section 11403, and on and after January 1, 2012, he or she satisfies the conditions of Section 11403.01.

(4) He or she satisfies the conditions described in subdivision (h).

(h) Effective January 1, 2012, Kin-GAP payments shall continue for youths who have attained 18 years of age and are under 19 years of age, if they reached 16 years of age before the Kin-GAP negotiated agreement payments commenced, and as described in Section 10103.5. Effective January 1, 2013, Kin-GAP payments shall continue for youths who have attained 18 years of age and are under 20 years of age, if they reached 16 years of age before the Kin-GAP negotiated agreement payments commenced, and as described in Section 10103.5. Effective January 1, 2014, Kin-GAP payments shall continue for youths who have attained 18 years of age and are under 21 years of age, if they reached 16 years of age before the Kin-GAP negotiated agreement payments commenced. To be eligible for continued payments, the youth shall satisfy one or more of the conditions specified in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403.

(i) (1) Termination of the guardianship with a kinship guardian shall terminate eligibility for Kin-GAP, unless the conditions of Section 11403 apply. However, if a successor guardian is appointed pursuant to Section 366.3 who is also a kinship guardian, the successor guardian shall be entitled to receive Kin-GAP on behalf of the child pursuant to this article if the reason for the appointment of the successor guardian is the death or incapacity of the kinship guardian and the successor guardian is named in the kinship guardianship assistance agreement or amendment to the agreement. A new period of six months of placement with the successor guardian shall not be required if that successor guardian has been assessed pursuant to Section 361.3, subdivision (a) of Section 361.4, and paragraph (2), and the court terminates dependency jurisdiction, subject to federal approval of amendments to the state plan.

(2) (A) In addition to the state-level criminal records check described in paragraph (2) of subdivision (a) of Section 361.4, the county welfare department shall require each prospective successor guardian, and any other person over 18 years of age living in the home, to be fingerprinted, and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation.

(B) If the criminal records check indicates that the prospective successor guardian has been convicted of an offense described in subparagraph (A) of paragraph (2) of subdivision (g) of Section 1522 of the Health and Safety Code, the case shall not be eligible for Kin-GAP funding.

(C) If the proposed successor guardian has been convicted of a crime other than a minor traffic violation or arrested for an offense specified in subdivision (e) of Section 1522 of the Health and Safety Code, except for the civil penalty language, the criminal background check provisions specified in subdivisions (d) to (g), inclusive, of Section 1522 of the Health and Safety Code shall apply, and an exemption shall be issued prior to issuance of any Kin-GAP funding. Exemptions from the criminal records clearance requirements set forth in this section may be granted by the county using the exemption criteria specified in subdivision (g) of Section 1522 of the Health and Safety Code and any applicable written directives or regulations adopted by the department.

(3) A prospective successor guardian shall not be required to be approved as a resource family pursuant to Section 16519.5 for the sole purpose of receiving Kin-GAP funding on behalf of an eligible child in the care of the prospective successor guardian.

*(Amended by Stats. 2018, Ch. 910, Sec. 30. (AB 1930) Effective January 1, 2019.)*

**11387.** (a) In order to receive federal financial participation for payments under this article, the county child welfare agency or probation department, Indian tribe, consortium of tribes, or tribal organization that entered into an agreement pursuant to Section 10553.1 shall negotiate and enter into a written, binding, kinship guardianship assistance agreement with the relative guardian of an

eligible child, and provide the relative guardian with a copy of the agreement. The negotiated agreement shall be executed prior to establishment of the guardianship.

(b) The agreement shall specify, at a minimum, all of the following:

- (1) The amount of and manner in which the kinship guardianship assistance payment will be provided under the agreement, that the amount is subject to any applicable increases pursuant to cost-of-living adjustments established by statute and the manner in which the agreement may be adjusted periodically, but no less frequently than every two years, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child.
- (2) Additional services and assistance for which the child and relative guardian will be eligible under the agreement.
- (3) A procedure by which the relative guardian may apply for additional services, as needed, including, but not limited to, the filing of a petition under Section 388 to have dependency jurisdiction resumed pursuant to subdivision (b) of Section 366.3.
- (4) The agreement shall provide that it shall remain in effect regardless of the state of residency of the relative guardian.
- (5) The responsibility of the relative guardian for reporting changes in the needs of the child or the circumstances of the relative guardian that affect payment.
- (6) For a guardianship established on and after January 1, 2012, payment shall be made for reasonable and verified nonrecurring expenses associated with obtaining legal guardianship not to exceed the amount specified in federal law. Reimbursement shall not be made for costs otherwise reimbursed from other sources, including the foster care maintenance payment. The agreement shall indicate the maximum amount, the purpose of the expense, and the process for obtaining reimbursement of the nonrecurring expenses to be paid.

(c) In accordance with the Kin-GAP agreement, the relative guardian shall be paid an amount of aid based on the child's needs otherwise covered in AFDC-FC payments and the circumstances of the relative guardian but that shall not exceed the foster care maintenance payment that would have been paid based on the age-related state-approved foster family home care rate and any applicable specialized care increment for a child placed in a licensed or approved family home pursuant to subdivisions (a) to (d), inclusive, of Section 11461. In addition, the rate paid for a child eligible for a Kin-GAP payment shall include an amount equal to the clothing allowance, as set forth in subdivision (f) of Section 11461, including any applicable rate adjustments. For a child eligible for a Kin-GAP payment who is a teen parent, the rate shall include the two-hundred-dollar (\$200) monthly payment made to the relative caregiver in a whole family foster home pursuant to paragraph (3) of subdivision (d) of Section 11465.

(d) Commencing on the effective date of the act that added this subdivision, and notwithstanding subdivision (c), in accordance with the Kin-GAP agreement the relative guardian shall be paid an amount of aid based on the child's needs otherwise covered in AFDC-FC payments and the circumstances of the relative guardian, as follows:

- (1) For cases in which the dependency has been dismissed pursuant to Section 366.3 or wardship has been terminated pursuant to subdivision (e) of Section 728, concurrently or subsequently to establishment of the guardianship, on or before June 30, 2011, or the date specified in a final order, for which the time to appeal has passed, issued by a court of competent jurisdiction in *California State Foster Parent Association et al. v. William Lightbourne, et al.* (U.S. Dist. Ct. No. C 07-05086 WHA), whichever is earlier, the rate paid shall not exceed the basic foster care maintenance payment rate structure in effect prior to the effective date specified in the order described in this paragraph.
- (2) For cases in which dependency has been dismissed pursuant to Section 366.3 or wardship has been terminated pursuant to subdivision (d) of Section 728, concurrently or subsequently to establishment of the guardianship, on or after July 1, 2011, or the date specified in the order described in paragraph (1), whichever is earlier, and through December 31, 2016, the rate paid shall not exceed the basic foster care maintenance payment rate structure effective and available as of December 31, 2016.
- (3) For cases in which dependency has been dismissed pursuant to Section 366.3 or wardship has been terminated pursuant to Section 728, concurrently or subsequently to establishment of the guardianship, on or after January 1, 2017, and before July 1, 2027, or the effective date specified in paragraph (9) of subdivision (h) of Section 11461, as applicable, the rate paid shall not exceed the home-based family care rate structure developed pursuant to subdivision (g) of Section 11461 and Section 11463.
- (4) (A) For cases in which dependency has been dismissed pursuant to Section 366.3 or wardship has been terminated pursuant to Section 728, concurrently or subsequently to establishment of the guardianship, on and after July 1, 2027, or the date specified in paragraph (9) of subdivision (h) of Section 11461, the rate paid shall not exceed Tier 1 of the Care and Supervision component of the Tiered Rate Structure, as described in subdivision (h) of Section 11461, unless the conditions of subparagraph (B) apply.  
  
(B) Notwithstanding subparagraph (A), the rate paid may exceed Tier 1, but shall not exceed Tier 2, of the Care and Supervision component of the Tiered Rate Structure, as described in subdivision (h) of Section 11461, under specific conditions established by the department and based on assessed needs of the child.

(5) Beginning with the 2011–12 fiscal year, the Kin-GAP benefit payment rate structure shall be adjusted annually by the percentage change in the California Necessities Index, as set forth in paragraph (2) of subdivision (g) of Section 11461, without requiring a new agreement.

(6) In addition to the rate paid for a child eligible for a Kin-GAP payment, a specialized care increment, if applicable, as set forth in subdivision (e) of Section 11461, shall be paid.

(7) In addition to the rate paid for a child eligible for a Kin-GAP payment, a clothing allowance, as set forth in subdivision (f) of Section 11461, shall be paid.

(8) For a child eligible for a Kin-GAP payment who is a teen parent, the rate shall include the two-hundred-dollar (\$200) monthly payment made to the relative caregiver in a whole family foster home pursuant to paragraph (3) of subdivision (d) of Section 11465.

(e) The county child welfare agency or probation department, Indian tribe, consortium of tribes, or tribal organization that entered into an agreement pursuant to Section 10553.1 shall provide the relative guardian with information, in writing, on the availability of the federal Kin-GAP program with an explanation of the difference between these benefits and Adoption Assistance Program benefits and AFDC-FC benefits. The agency shall also provide the relative guardian with information on the availability of mental health services through the Medi-Cal program or other programs.

(f) The county child welfare agency, probation department, or Indian tribe, as appropriate, shall assess the needs of the child and the circumstances of the related guardian and is responsible for determining that the child meets the eligibility criteria for payment.

(g) Payments on behalf of a child who is a recipient of Kin-GAP benefits and who is also a consumer of regional center services shall be based on the rates established by the State Department of Social Services pursuant to Section 11464.

*(Amended by Stats. 2024, Ch. 46, Sec. 16. (AB 161) Effective July 2, 2024.)*

**11388.** If a federally eligible child described in Section 11386 has one or more siblings who are not so described, the child and any sibling of the child may be placed in the same kinship guardianship arrangement, in accordance with Section 671(a)(31) of Title 42 of the United States Code, if the county child welfare department or probation department or Indian tribe that entered into an agreement pursuant to Section 10553.1 and the prospective relative guardian agree on the appropriateness of the arrangement for the siblings. Kinship guardianship assistance payments may be paid on behalf of each sibling, at a per-child rate, placed in accordance with this section.

*(Added by Stats. 2010, Ch. 559, Sec. 37. (AB 12) Effective January 1, 2011.)*

**11389.** A child eligible for a Kin-GAP payment under this article is categorically eligible for Medi-Cal at no share of cost pursuant to Section 473(b)(3) of the federal Social Security Act (42 U.S.C. Sec. 673(b)(3)).

*(Added by Stats. 2010, Ch. 559, Sec. 37. (AB 12) Effective January 1, 2011.)*

**11390.** (a) A person who is a kinship guardian under this article, and who has met the requirements of Section 361.4, is exempt from identity verification requirements for the CalWORKs program. A guardian who is also an applicant for, or a recipient of, benefits under the CalWORKs program shall comply with the identity verification requirements for the CalWORKs program, as those statutory and regulatory requirements existed on October 1, 2018.

(b) Any exemptions exercised pursuant to this section shall be implemented in accordance with Section 11393.

(c) Income to the child, including the Kin-GAP payment, shall not be considered income to the kinship guardian for purposes of determining the kinship guardian's eligibility for any other aid program, unless required by federal law as a condition of the receipt of federal financial participation.

(d) Each county that formally had court-ordered jurisdiction under Section 300 or Section 601 or 602 over a child receiving benefits under the Kin-GAP Program shall be responsible for paying the child's aid regardless of where the child actually resides.

(e) Notwithstanding any other law, when a child receiving benefits under the AFDC-FC program becomes eligible for benefits under the Kin-GAP Program during any month, the child shall continue to receive benefits under the AFDC-FC program, as appropriate, through the day that the juvenile court dismisses the dependency or terminates the wardship, and Kin-GAP payments shall begin the day following the day that the juvenile court dismisses the dependency or terminates the wardship.

(f) Both of the following shall apply to any child or nonminor in receipt of Kin-GAP benefits:

(1) The child or nonminor is eligible to request and receive independent living services pursuant to Section 10609.3.

(2) Income or property received after the beginning date of receipt of Kin-GAP benefits shall be disregarded.

(g) Amendments made to this section by the act that added this subdivision shall become operative on the date that the department notifies the Legislature that the California Statewide Automated Welfare System (CalSAWS) can perform the necessary automation to implement the amendments.

*(Amended by Stats. 2024, Ch. 46, Sec. 17. (AB 161) Effective July 2, 2024. Conditionally operative as prescribed by its own provisions.)*

**11391.** For purposes of this article, the following definitions shall apply:

(a) "Kinship Guardianship Assistance Payments (Kin-GAP)" means the aid provided on behalf of children eligible for federal financial participation under Section 671(a)(28) of Title 42 of the United States Code in kinship care under the terms of this article.

(b) "Kinship guardian" means a person who meets both of the following criteria:

(1) The person has been appointed the legal guardian of a dependent child pursuant to Section 366.26 or Section 360 or a ward of the juvenile court pursuant to subdivision (d) of Section 728.

(2) The person is a relative of the child.

(c) "Relative," subject to federal approval of amendments to the state plan, means any of the following:

(1) An adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand" or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(2) An adult who meets the definition of an approved, nonrelated extended family member, as described in Section 362.7.

(3) An adult who is either a member of the Indian child's tribe, or an Indian custodian, as defined in Section 224.1.

(4) An adult who is the current foster parent of a child under the juvenile court's jurisdiction, who has established a significant and family-like relationship with the child, and the child and the county child welfare agency, probation department, Indian tribe, consortium of tribes, or tribal organization that has entered into an agreement pursuant to Section 10553.1 identify this adult as the child's permanent connection.

(5) An adult who meets the definition of an extended family member as described in Section 224.1.

(d) "Sibling" means a child related to the identified eligible child by blood, adoption, or affinity through a common legal or biological parent.

(e) "Approved home of the prospective relative guardian" means either of the following:

(1) The home of a relative who has been approved as a resource family home pursuant to Section 16519.5 of this code, or Section 1517 of the Health and Safety Code.

(2) The home of a relative who has been approved as a tribally approved home, as defined in subdivision (r) of Section 224.1.

*(Amended by Stats. 2024, Ch. 656, Sec. 27. (AB 81) Effective September 27, 2024.)*

**11392.** On and after the date that the director executes a declaration pursuant to Section 11217, for purposes of eligibility under this article, children who are currently receiving Kin-GAP pursuant to Article 4.5 (commencing with Section 11360) and who were determined eligible under Subtitle IV-E (commencing with Section 470 of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.)) as dependent children of the juvenile court placed in foster care with an approved relative and who remain under the court's jurisdiction pursuant to Section 366.4 shall be deemed to meet the eligibility criteria as described in Section 673(d) of Title 42 of the United States Code. On and after the date that the director executes a declaration pursuant to Section 11217, the county child welfare department, probation department, or Indian tribe, as appropriate, at the time of each Subtitle IV-E eligible child's Kin-GAP annual redetermination, shall meet with the relative guardian and child and enter into the written negotiated agreement as described in Section 11387.

*(Added by Stats. 2010, Ch. 559, Sec. 37. (AB 12) Effective January 1, 2011.)*

**11393.** (a) Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) the department may implement the applicable provisions of the federally funded Kin-GAP Program through all-county letters or similar instructions from the director.

(b) The department shall develop both the all-county letter instructions and regulations in consultation with concerned stakeholders, including, but not limited to, the County Welfare Directors Association, the Chief Probation Officers of California, representatives of

California Indian tribes, the California Youth Connection, former foster youth, child advocacy organizations, labor organizations, foster caregiver organizations, and researchers.

(c) The director shall adopt regulations as otherwise necessary, to implement the applicable provisions of the federally funded Kin-GAP Program. Emergency regulations to implement the applicable provisions of this act may be adopted by the director in accordance with the Administrative Procedure Act. The initial adoption of the emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the first readoption of those emergency regulations shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days.

*(Added by Stats. 2010, Ch. 559, Sec. 37. (AB 12) Effective January 1, 2011.)*