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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 4.5. Kinship Guardianship Assistance Payment Program [11360 - 11379] (Article 4.5 repealed (in Sec. 36) and added by Stats. 2010, Ch. 559, Sec. 34.)

11360. Effective on the date that the director executes a declaration pursuant to Section 11217, the department shall establish a state-funded Kinship Guardianship Assistance Payment Program as specified in this article.

(Repealed and added by Stats. 2010, Ch. 559, Sec. 34. (AB 12) Effective January 1, 2011. This section also became operative on January 1, 2011, pursuant to Section 11379.)

11361. The Legislature finds and declares that the continuation of the state-funded Kinship Guardianship Assistance Payment Program is intended to enhance family preservation and stability by recognizing that some dependent children and wards of the juvenile court who are not otherwise eligible under Subtitle IV-E (commencing with Section 470) of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.) are in long-term, stable placements with relatives, that these placements are the permanent plan for the child, that dependencies can be dismissed pursuant to Section 366.3 with legal guardianship granted to the relative, and that there is no need for continued governmental intervention in the family life through ongoing, scheduled court and social services supervision of the placement. Continuation of the state-funded Kin-GAP Program is necessary to ensure that wards and dependent children of the juvenile court whose placement in the home of an approved relative are equally eligible for the benefits derived from legal permanency with the related guardian and that the state can maximize improvements to federal permanency outcome measures by exiting nonfederally eligible youth to the state's subsidized kinship guardianship program.

(Amended by Stats. 2023, Ch. 43, Sec. 45. (AB 120) Effective July 10, 2023.)

11362. For purposes of this article, the following definitions shall apply:

(a) "Kinship Guardianship Assistance Payments (Kin-GAP)" means the state-funded aid provided under the terms of this article on behalf of children in kinship care who are not eligible for federally funded Kin-GAP pursuant to Section 11385.

(b) "Kinship guardian" means a person who (1) has been appointed the legal guardian of a dependent child pursuant to Section 360 or 366.26, or a ward of the juvenile court pursuant to subdivision (d) of Section 728 and (2) is a relative of the child.

(c) "Relative" means 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.

(d) "Approved home of the prospective relative guardian" means any 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.

(3) The home of a relative who has been assessed pursuant to subdivision (a) of Section 361.3 and Section 361.4, and into which the juvenile court has authorized placement.

(Amended by Stats. 2023, Ch. 43, Sec. 46. (AB 120) Effective July 10, 2023.)

11363. (a) Aid in the form of state-funded Kin-GAP shall be provided under this article on behalf of any child under 18 years of age and to any eligible youth under 19 years of age, as provided in Section 11403, who satisfies all of the following conditions:

(1) Has been adjudged a dependent child of the juvenile court pursuant to Section 300, or, effective October 1, 2006, a ward of the juvenile court pursuant to Section 601 or 602.

(2) Has been residing for at least six consecutive months in the approved home of the prospective relative guardian, as defined in subdivision (d) of Section 11362, while under the jurisdiction of the juvenile court or a voluntary placement agreement.

(3) Has had a kinship guardianship established pursuant to Section 360 or 366.26.

(4) Has had their dependency jurisdiction terminated after January 1, 2000, pursuant to Section 366.3, or their wardship terminated pursuant to subdivision (e) of Section 728, concurrently or subsequently to the establishment of the kinship guardianship.

(b) If the conditions specified in subdivision (a) 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, after holding a hearing, orders the child removed from the home of the guardian, terminates the guardianship, or resumes dependency jurisdiction after the court concludes the hearing on the petition filed under Section 388.

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

(1) The person is under 18 years of age.

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

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

(4) The person satisfies the conditions as described in subdivision (d).

(d) Commencing January 1, 2012, state-funded Kin-GAP payments shall continue for youths who have attained 18 years of age and who 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.

(e) (1) Termination of the guardianship with a kinship guardian shall terminate eligibility for Kin-GAP unless the conditions in Section 11403 apply. However, an alternate guardian or coguardian is appointed pursuant to Section 366.3 who is also a kinship guardian, the alternate or coguardian shall be entitled to receive Kin-GAP on behalf of the child pursuant to this article. A new period of six months of placement with the alternate guardian or coguardian shall not be required if that alternate guardian or coguardian has been assessed pursuant to Section 361.3, subdivision (a) of Section 361.4, and paragraph (2), and the court terminates dependency jurisdiction. If a nonminor former dependent is receiving Kin-GAP after 18 years of age and the nonminor former dependent's former guardian dies, the nonminor former dependent may petition the court for a hearing pursuant to Section 388.1.

(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 alternate guardian or coguardian, 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 alternate guardian or coguardian 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 prospective alternate guardian or coguardian 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 alternate guardian or coguardian 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 alternate guardian or coguardian.

(Amended by Stats. 2023, Ch. 43, Sec. 47. (AB 120) Effective July 10, 2023.)

11364. (a) In order to receive payments under this article, 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, 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.

(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, and 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 the filing of a petition under Section 388 to have dependency jurisdiction resumed pursuant to subdivision (b) of Section 366.3.

(4) That the agreement 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 guardianships 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 or Approved Relative Caregiver 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 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 (d) 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 payments 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, also 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, also 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, 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 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, Indian tribe, consortium of tribes, or tribal organization, 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. 14. (AB 161) Effective July 2, 2024.)

11366. A child who is eligible to receive Medi-Cal benefits with no share of cost shall maintain that eligibility notwithstanding the receipt of state-funded Kin-GAP by his or her kinship guardian.

(Repealed and added by Stats. 2010, Ch. 559, Sec. 34. (AB 12) Effective January 1, 2011. This section also became operative on January 1, 2011, pursuant to Section 11379.)

11367. The supplemental clothing allowance shall be paid pursuant to paragraph (5) of subdivision (f) of Section 11461.

(Repealed and added by Stats. 2010, Ch. 559, Sec. 34. (AB 12) Effective January 1, 2011. This section also became operative on January 1, 2011, pursuant to Section 11379.)

11369. (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 state-funded Kin-GAP Program through all-county letters or similar instructions from the director.

(b) The director shall adopt regulations as otherwise necessary, to implement the applicable provisions of the 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.

(Repealed and added by Stats. 2010, Ch. 559, Sec. 34. (AB 12) Effective January 1, 2011. This section also became operative on January 1, 2011, pursuant to Section 11379.)

11370. The county welfare department or probation department or Indian tribe, as appropriate, at the time of the Kin-GAP annual redetermination, shall meet with the relative guardian and the nonfederally eligible child and enter into a written agreement for the state-funded Kin-GAP program as described in Section 11364. This process shall continue for at least 12 calendar months or until all state-funded Kin-GAP cases as of the effective date described have been processed.

(Repealed and added by Stats. 2010, Ch. 559, Sec. 34. (AB 12) Effective January 1, 2011. This section also became operative on January 1, 2011, pursuant to Section 11379.)

11371. Income to the child, including the state-funded 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.

(Repealed and added by Stats. 2010, Ch. 559, Sec. 34. (AB 12) Effective January 1, 2011. This section also became operative on January 1, 2011, pursuant to Section 11379.)

11372. (a) Notwithstanding any other provision of law, the state-funded Kinship Guardianship Assistance Payment Program implemented under this article is exempt from the provisions of Chapter 2 (commencing with Section 11200) of Part 3.

(b) Any exemptions exercised pursuant to this section shall be implemented in accordance with Section 11369.

(Amended (as added by Stats. 2010, Ch. 559) by Stats. 2011, Ch. 501, Sec. 12. (AB 6) Effective January 1, 2012.)

11374. (a) Each county that formally had court ordered jurisdiction under Section 300, 601, or 602 over a child receiving benefits under the state-funded Kin-GAP Program shall be responsible for paying the child's aid regardless of where the child actually resides.

(b) Notwithstanding any other law, when a child receiving benefits under the Approved Relative Caregiver Funding Program (ARC) pursuant to Section 11461.3 becomes eligible for benefits under the state-funded Kin-GAP Program during any month, the child shall continue to receive benefits under the ARC 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.

(Amended by Stats. 2020, Ch. 370, Sec. 273. (SB 1371) Effective January 1, 2021.)

11375. (a) Both of the following shall apply to any child or nonminor in receipt of state-funded 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.

(b) 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. 15. (AB 161) Effective July 2, 2024. Conditionally operative as prescribed by its own provisions.)

11376. A foster child who has become the subject of a legal guardianship, who is receiving assistance under the Kin-GAP Program under this article or under Article 4.7 (commencing with Section 11385), including Medi-Cal, and whose foster care court supervision has been terminated, shall be provided medically necessary specialty mental health services by the local mental health plan in the county of residence of his or her legal guardian, pursuant to all of the following:

(a) The host county mental health plan shall be responsible for submitting the treatment authorization request (TAR) to the mental health plan in the county of origin.

(b) The requesting public or private service provider shall prepare the TAR.

(c) The county of origin shall retain responsibility for authorization and reauthorization of services utilizing an expedited TAR process.

(Repealed and added by Stats. 2010, Ch. 559, Sec. 34. (AB 12) Effective January 1, 2011. This section also became operative on January 1, 2011, pursuant to Section 11379.)

11378. (a) It is the intent of the Legislature to provide a seamless and minimally intrusive process to allow an otherwise federally eligible child who is receiving assistance payments under this article to access the benefits of federally funded Kin-GAP pursuant to

Article 4.7 (commencing with Section 11385). The transition to federally funded Kin-GAP shall be accomplished with minimal disruption to the existing relative guardian and the child, and with no break in the continuity of assistance payments.

(b) Effective on the date that the director executes the declaration described in Section 11379, at the time of the annual redetermination of the state-funded Kin-GAP benefits, the county shall determine whether the child was receiving federal AFDC-FC payments prior to receiving Kin-GAP, while a dependent child or ward of the juvenile court. Those children determined to have previously received AFDC-FC payments shall be reassigned to the county social worker, who shall inform the relative guardian, and the child if over 12 years of age, of the benefits of transitioning to federal Kin-GAP and the process for making the transition. The process described in this subdivision shall continue for at least 12 calendar months, or until all state-funded Kin-GAP cases as of the effective date described in this subdivision have been processed.

(c) Upon completion of the negotiated Kin-GAP agreement and confirmation that the child satisfies the conditions for federal financial participation, the child shall be eligible for federally funded Kin-GAP pursuant to Article 4.7 (commencing with Section 11385).

(d) The county shall terminate the state-funded Kin-GAP payment made pursuant to the former Article 4.5 (commencing with Section 11360), and with no break in the continuity of aid, shall commence payments under the federal Kin-GAP program pursuant to Article 4.7 (commencing with Section 11385).

(Added by Stats. 2010, Ch. 559, Sec. 34. (AB 12) Effective January 1, 2011. This section also became operative on January 1, 2011, pursuant to Section 11379.)

11379. This article shall become operative on the date that the Director of Social Services executes the declaration required pursuant to Section 11217, stating that increased federal financial participation from the Emergency Contingency Fund for State Temporary Assistance for Needy Families (TANF) Programs is no longer available pursuant to the federal American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5) or subsequent federal legislation, including an amendment to the ARRA, that maintains or extends increased federal financial participation.

(Added by Stats. 2010, Ch. 559, Sec. 34. (AB 12) Effective January 1, 2011. Note: Pursuant to this section, Article 4.5 (commencing with Section 11360), as added by Stats. 2010, Ch. 559, became operative on January 1, 2011.)