Caregiver Support Webinar: Types of Guardianships/Kin-GAP

California Department of Social Services (CDSS)

Youth and Caregiver Support Bureau

Logistics

This webinar is being recorded and will be available at:

- **CDSS-Caregiver Support Webinars**
- **CAC-Webinars**

Closed Captioning is available, look for the CC icon in the bottom left corner of your screen

Participants will not have the ability to speak. Please submit questions to the Q&A section of the toolbar. The icon with 3 dots should give you this option.

If you would like a certificate of attendance, please email your request to **info@cacaregivers.org**.

Agenda

Types Of Guardianships

- *Saleema Ali*, CDSS

The Caregiver Perspective

- *Jennifer Rexroad*, Executive Director of the California Alliance of Caregivers
- *Brenda Checklenis*, Kinship Caregiver

Kin-GAP

- *Charm Lee*, CDSS

Question & Answers

- *CDSS and CAC staff*

Types of Guardianship

Legal Guardianship



- **Legal Guardianship** – Legal guardianship is a court order that says someone who is not the child's parent is in charge of taking care of the child. Legal guardians have many of the same rights and responsibilities as parents.
- **NOTE:** There are 2 kinds of guardianships in California. Most guardianship cases are in **probate court**. If Child Protective Services (CPS) is involved in the case or the child is a dependent of the juvenile court, the guardianship case will probably be in **juvenile court**.

Caregivers

Foster Parent/Resource Families

Relative/Kin

Non-Related Extended Family Member/Fictive Kin

Concurrent Parent/Resource Family

Adoptive Parent

Legal Guardianship

Options Other than Guardianship

1

Caregiver's Authorization Affidavit

Parent's do not need to sign, but they cancel it. School, Medical care, must be signed Annually

2

Written Child Care Agreement

Parental signature, agreed upon decision-making rights, noncustodial

3

Safety Concerns

4

Health Insurance

5

Legalities and Nuisance's

Rights & Duties of Different Types of Caregivers

Caregiver's Fundamental Responsibilities & General Duties

Resource Families

- Works with child welfare agency social workers to provide care, supervision, and housing for the child
- Receives foster care funds for the needs of the child
- Works with the social worker to make sure the child receives available resources and services
- Can attend hearings and give information to the court
- Must be invited to attend the CFT
- Viewed as temporary

Guardianship

- Can have the same general rights & duties toward the child as a parent
- Responsible for providing all the needs of the child including appropriate services
- Must provide for the safety, protection, physical, and emotional growth of the child
- May have to complete classes & counseling
- Viewed as permanent

Custody & Visitation

Resource Families

- Physical custody of the child
- Parents retain legal custody
- Must make sure that the child takes part in visits and phone calls with parents and others that are authorized by the social worker or court ordered
- Cannot directly ask the court to terminate parental rights and adopt the child. However, they can inform the SW that they would like to be considered as an adoptive home for the child.

Guardianship

- Has legal and physical custody of the child
- Parental rights are suspended but not terminated if guardianship remains in effect
- Can decide who visits the child unless otherwise is ordered by the court
- Can petition the court directly to terminate parental rights and adopt the child after a specific time of custody is held

Residence

Resource Families

- The county social worker, child's tribe, and/or the court decides who the child will live with

Guardianship

- Can decide where the child lives. Usually, it is with them unless that is not in the best interest of the child
- Mandatory reporting of an address change
- Must get permission to move outside of California but can move to another city within California and give proper notice to all necessary parties

Health Care

Resource Families

- The social worker arranges care and treatment, but the resource parent will be responsible for scheduling and transportation to and from the appointments
- Parents keep health care decisions rights except for in the case of an emergency or court order

Guardianship

- Has the authority to consent to the child's medical treatment in most cases
- Cannot place a child in a mental health treatment facility against their wishes. A separate legal process is required for that.
- Cannot go against certain state laws that allow children to consent to certain types of treatment

Education

Resource Families

- Parents hold the educational & developmental-services decisions right; unless the court orders them to someone else or the resource family
- Cannot attend an IEP unless invited by the person holding educational rights
- Is responsible for making sure that the child attends school
- Works with the school district and service providers to ensure that the supports in the IEP are given

Guardianship

- Holds the child 's educational & developmental-services decision making rights; unless the court appoints them to someone else
- Must advocate for the child with the school district to make sure the appropriate arrangements and services are given

Consent to Changes to the Child's Status

Resource Families

- Cannot consent to the child 's marriage, military enlistment, or drivers license application (the juvenile court can consent)

Guardianship

- A guardian and the court must give permission for the child to get married
- Can consent to military enlistment, obtaining a driver 's license, and passport

Financial Obligations

Resource Families

- Receives foster care funds to pay for the child 's needs

Guardianship

- Is responsible for the day-to-day financial support. Although the parents are still obligated to support the child
- Can receive child support, AFDC–FC, Social Security benefits, VA benefits, Indian child welfare benefits, and support from other public or private sources

Legal Liability

Foster Parents/Resource Families

- Are immune from liability in a civil action to recover damages for injury death are lost to person or property caused by the act of a child placed in their home except in limited circumstances (W&IC section 362.06(b)(2).)

Guardianship

- A guardian, like a parent, is liable for the harm and damage caused by the willful misconduct of a child (Civil Code 1714 1(a).).
- There is usually a limit on how much a guardian may be required to pay. There are rules concerning harm caused by the use of a firearm.

If you believe any of the information you hear or see in this webinar might pertain to you, please contact the county social worker or probation officer on your case. There are certain state laws involved while also considering certain information and allowances are county specific. Every case is unique to its own circumstances.

“


A Family
Is a gift that
lasts forever

”

KINSHIP GUARDIANSHIP ASSISTANCE PAYMENT (KIN-GAP) PROGRAM

CDSS

Charm Lee, Foster Caregiver Policy & Support

Eligibility for Kin-GAP

- Child must be a dependent or ward of the juvenile court.
- Child needs to be living with an approved relative for six consecutive months *after* the home is approved.
- Agreement (SOC 369A) must be signed prior to the guardianship order.
- Dependency or wardship must be dismissed in juvenile court.

Eligibility for Kin-GAP after 18

Once enrolled in Kin-GAP, a youth may continue to receive Kin-GAP payments following their 18th birthday up to age 19 under the following circumstances:

- The Kin-GAP payments began before the youth's 16th birthday; and
- The youth is attending high school, vocational or technical training school on a full-time basis or pursuing a high school equivalency certificate.

Eligibility for Extended Kin-GAP

The youth is completing secondary education or a program leading to an equivalent credential.

The youth is participating in a program or activity designed to promote or remove barriers to employment.

The youth is enrolled in an institution that provides postsecondary or vocational education.

The youth is employed for at least 80 hours per month.

The youth is incapable of doing any of the listed activities due to a medical condition.

The youth reached 16 years of age before the Kin-GAP negotiated agreement payments commenced.

DOCUMENTED DISABILITY

If the youth is under 21 years of age and has a physical or mental disability that warrants the continuation of assistance, they would be able to continue receiving Kin-GAP benefits, after age 18 until the age 21, regardless of the age that the legal guardianship was established.

Tribally Approved Homes

- A home that is approved by an Indian child's Tribe, or a tribal organization designated by the Tribe, as a tribally approved home (TAH)
  - (Added at **WIC 11362(d)(2)** and **WIC 11391(e)(2).)**
- A TAH shall not be required to complete the resource family approval (RFA) process for the sole purpose of transitioning an Indian child or youth to guardianship under the Kin-GAP program.

Federal Kin-GAP

- IV-E Eligibility. Must be eligible for title IV-E foster care maintenance payments while under the jurisdiction of the juvenile court or a voluntary placement agreement.
- Siblings. The federally funded Kin-GAP program allows the county agency to make a federal Kin-GAP payment on behalf of each sibling of a title IV-E eligible child. (Federal funding can be issued regardless of the federal eligibility status of the siblings as long as one child is title IV-E eligible pursuant to **WIC section 11388**.)
- Fictive Kin. The definition of "relative" includes individuals not related to the child pursuant to **WIC section11391(c)**.

Fictive Kin – Fed-GAP

- 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.
- An adult who meets the definition of an approved, nonrelative extended family member, as described in **WIC section 362.7**.
- An adult who is either a member of the Indian child’s tribe, or an Indian custodian, as defined in **Section 1903 of Title 25 of the United States Code**.
- 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 **WIC section 10553.1** identify this adult as the child’s permanent connection.

Fictive Kin – Fed-GAP, Cont'd

- An adult who meets the definition of an extended family member as described in Section 1903 of the federal Indian Child Welfare Act of 1978 (**25 U.S.C. Sec. 1901 et seq**.).

Added at **WIC section 11391(c)(5)**

Subsequent Guardians

- A subsequent guardian includes an alternate guardian, a successor guardian or a coguardian.
  - A new period of six months of placement with a subsequent guardian shall not be required if that guardian has been assessed pursuant to **WIC section 361.3** and **WIC section 361.4.**
  - Approval as a resource family shall not be required for a subsequent guardian.
  - All guardians must receive payment from the day they began providing 24-hour care to a child or youth once Kin-GAP payments resume to the new guardian.

Subsequent Guardians, Cont'd

- Alternate or Coguardian (State Kin-GAP). In circumstances when a change in guardian is necessary, an alternate guardian or coguardian may be appointed. (**WIC section 11363**.)
- Successor Guardian (Federal Kin-GAP). If a current guardian dies or is incapacitated and a successor guardian is named in the agreement (**SOC 369**) or any amendments to the agreement (**SOC 369A**), federal Kin-GAP can resume to the new guardian. (WIC section 11386.)
- Successor Guardian (State Kin-GAP). If a successor guardian was not named in the Kin-GAP agreement, eligibility will continue under state-funded Kin-GAP as an alternate/coguardian. **(WIC section 11363.)**

NONRELATED LEGAL GUARDIAN (NRLG)

A child or youth may be eligible for the NRLG program under the following circumstances as outlined in MPP section 45-203:

- A non-federally eligible dependent or ward is placed with a nonrelative (e.g. fictive kin with a court order or a services
determination of the need for foster care;
- A child or youth is living with a nonrelated legal guardian.
- In the case of a federally ineligible Indian child, the child may be placed with an extended family member pursuant to section 1903 of the Indian Child Welfare Act (ICWA).

Reassessment

A “reassessment” is the review of the needs of the Kin-GAP recipient child and/or circumstances of the relative guardian.

Required to be performed no less frequently than every two years following initial participation in the Kin-GAP program pursuant to **WIC section 11364(b)(1)** and **WIC section 11387(b)(1)**.

The **KG 2** form is also required for reassessment purposes.

If the needs of the child or circumstances of the relative guardian change, the agency and relative guardian may negotiate an adjustment to a payment amount more frequently than every two years and document on the **SOC 369A**.

Payment Responsibility/Transfers

The agency that had court-ordered jurisdiction of the child or youth shall be responsible for paying the Kin-GAP benefits regardless of where the child or youth resides.

- Under both the state and federally funded programs, Kin-GAP payments and benefits continue regardless of the state of residency in which the relative guardian and child or youth reside pursuant to **WIC section 11364(b)(4)** and **WIC section 11387(b)(4)**.

- If a family moves to California from a state outside of California, the financial responsibility lies with the sending state.

Beginning Date of Aid

When a child or youth becomes eligible for either federal or state Kin-GAP during the month, AFDC-FC payments must cease as of the date the dependency or wardship is terminated. Kin-GAP payments shall begin on the following day pursuant to **WIC section 11390(e)**.

Last Date of Aid

Kin-GAP payments shall be terminated under the following circumstances:

- Date of termination of the guardianship with a kinship guardian.
- Date the youth does not meet age requirements.
- Date the youth does not meet participation criteria if receiving extended benefits.

Suspension of Payments

A Kin-GAP payment shall be suspended due to any of the following reasons:

The guardian fails to complete and return the Statement of Facts Supporting Eligibility for Kinship Guardianship Assistance Payment (Kin-GAP) Program (KG 2) form within two weeks of the date it was mailed.

The guardian is no longer providing support and care to the child or nonminor former dependent.

The nonminor former dependent is no longer completing one of the extended Kin-GAP requirements pursuant to MPP section 45-606.12.

The child or nonminor former dependent is subsequently incarcerated and wardship is established. However, the child remains eligible for Kin-GAP payments if the child returns to the care of the relative guardian and all other eligibility conditions are met. (Refer to ACL 11-28.)

A Kin-GAP payment can be resumed if the condition #s: 1 – 4 listed above are no longer applicable.

Suspension vs. Termination of Payments

Kin-GAP payments should be suspended, rather than terminated, under the circumstances listed in the previous slide.

- Once terminated, payments **cannot** be reinstated.

Questions:

Kin-GAP Policy:

CaregiversForYouth@dss.ca.gov

Kin-GAP Funding Eligibility:

FC-KGEligibility@dss.ca.gov

The Caregiver Perspective

Jennifer Rexroad & Brenda Checklenis



SEEK SUPPORT



Find a mentor or another caregiver who has gone through this before and can offer you advice and wisdom on how to navigate systems to find the support that you need.

Various state and federally funded resources made available:

- Funding through the Kin-GAP Program
- IHSS - In Home Supportive Services
- HCBA - Home Care Base Agency (Waiver Program)
- Medical - CalViva
- Respite Care (through Maxim Home Health)
- Regional Center
- IEP - Individualized Education Plan





Questions & Answers

Webinar Resource Materials

- **Copy of this PowerPoint**
- **Caregiver FAQs**
- **Reasonable and Prudent Parent Standard Website**
- **Caregivers Website**

Foster Youth Ombudsman

- https://fosteryouthhelp.ca.gov/youth-resources/

Legal Resource for Foster Youth and Families

- https://advokids.org/contact-us/

Free online therapy for current & former foster youth all ages

- https://www.ahomewithin.org/

Family Urgent Response System (FURS)

- https://www.cal-furs.org/

California Kinship Navigator

- https://www.getvirtualsupport.org/app/ca/

- **Options other than a guardianship**
- https://selfhelp.courts.ca.gov/guardianship/other-options

- **Comparison of Guardians with Other Nonparent Caregivers**
- https://www.courts.ca.gov/documents/gc207info.pdf

Webinar Resource Materials Juvenile Court

- **Caregivers and the Courts 2016(1-16 pages)**
- https://www.courts.ca.gov/documents/caregivers.pdf
- **Special Education Rights**
- https://selfhelp.courts.ca.gov/special-education-rights
- **Regional Centers**
- https://www.dds.ca.gov/rc/
- **California Children Services County Offices**
- https://www.dhcs.ca.gov/services/ccs/Pages/CountyOffices.aspx
- **Adoption Assistance Program**
- https://www.cdss.ca.gov/inforesources/adoptions/adoption-assistance-program
- **Information on Juvenile Court Guardianship (JV-350-INFO)**
- https://www.courts.ca.gov/documents/jv350info.pdf
- **Letters of Guardianship**
- https://www.courts.ca.gov/documents/jv330.pdf

Webinar Resource Materials Probate Court

- **Probate Court Guardianship**
- https://selfhelp.courts.ca.gov/guardianship
- **Information on Probate Guardianship of the Person**
- https://www.courts.ca.gov/documents/gc205info.pdf
- **GC-248 Duties of Guardian (Probate)**
- https://www.courts.ca.gov/documents/gc248.pdf
- **Caregiver's Authorization Affidavit**
- https://www.courts.ca.gov/documents/caregiver.pdf
- **Start a Guardianship case**
- https://selfhelp.courts.ca.gov/guardianship/start-case
- **Notify Family Members**
- https://selfhelp.courts.ca.gov/guardianship/notify-family
- **Investigation**
- https://selfhelp.courts.ca.gov/guardianship/investigation
- **Prepare for and Attend Court**
- https://selfhelp.courts.ca.gov/guardianship/prepare-for-hearing
- **Guardianship FAQ's**
- https://www.courts.ca.gov/1215.htm

Webinar Resource Materials Kin-GAP

- **Federal/Fictive kin**

WIC section 11388 and WIC section11391(c), WIC section 362.7,, Section 1903 of Title 25 of the United States Code, WIC section 10553.1, Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.), and WIC section 11391(c)(5)

- **Tribally Approved Homes**

(Added at WIC 11362(d)(2) and WIC 11391(e)(2).)

- **Subsequent guardians**

WIC section 361.3, WIC section 361.4, WIC section 11363, SOC 369, SOC 369A, and WIC section 11386

- **Reassessment**

KG 2 form, WIC section 11364(b)(1) and WIC section 11387(b)(1).

- **Payment Responsibility/Transfers**

WIC section 11364(b)(4) and WIC section 11387(b)(4).

- **Aid**

WIC section 11390(e).

- **Suspension of payments**

(Refer to ACL 11-28.)



CAREGIVER PANDEMIC ASSISTANCE INFO

If you fostered youth between March 19, 2020-June 15, 2021, you should have received a Caregiver Pandemic Stipend. If you have not received your card, you may request a replacement card. Contact ***Blackhawk customer service at 833.683.4910*** which is available 24/7. When contacting Blackhawk, you will need to share the following information for verification: the first and last name of all caregivers in the home and the address you lived at between March 19, 2020-June 15, 2021, the eligibility period for the program.

If you have any questions, please do not hesitate to contact the Foster Caregiver Policy and Support unit at: **CPApayments@dss.ca.gov**

Caregiver Support Webinar Series

For specific Caregiver Support Webinar questions or to be added to future Caregiver Support Webinars, please contact:

Caregiver Support Webinar

CaregiverWebinar@dss.ca.gov

Caregiver Support Webinar Website: https://www.cdss.ca.gov/inforesources/cdss-programs/foster-care/caregiver-support-webinars-resources

For specific foster caregiver policy and support questions:

Foster Caregiver Policy and Support Unit

744 P Street, MS 8-13-78

Sacramento, CA 95814

(916) 651-7465

CaregiversForYouth@dss.ca.gov

Thank you for joining us today!

Next Caregiver Support Webinar

Tentative Date:

Thursday September 21st, 2023

1:00pm – 3:00pm

Link to Register Coming Soon!

Saleema Ali & Jaylena Miller(CDSS)