

2011

Kinship Guardianship Assistance Practice Guide



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Preface

This manual is intended primarily as a resource for caseworkers who are assisting related foster parents in determining whether legal guardianship with support from the New York Kinship Guardianship Assistance Program (KinGAP) is an appropriate permanency option for children under their foster care. The KinGAP program went into effect in New York State on April 1, 2011. This program implements key provisions of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, which authorizes the spending of federal funds on state KinGAP programs that are approved by the federal government.

Kinship guardianship assistance with matching federal dollars fills an important niche in the permanency planning continuum. It establishes a new subsidized permanency option that child welfare professionals in New York State and elsewhere have sought to create for families for decades. The federal legislation was based, in large part, on the results from state Child Welfare Waiver Demonstrations that showed kinship guardianship assistance to be a cost-effective and safe alternative to maintaining children in long-term foster care.

Much of the material in this manual draws on lessons learned from the implementation and evaluation of kinship guardianship assistance programs in demonstration states, particularly Illinois, Tennessee, and Wisconsin. After witnessing and documenting the benefits that these demonstrations have been able to bring to thousands of children who otherwise would have grown up in long-term foster care, I am hopeful that practitioners, administrators, and the elected officials responsible for the law will experience similar success in bringing stability and permanence to the lives of children and families in the State of New York.

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Chapter 1: Kinship Guardianship Assistance Background and Overview

Learning Highlights From This Chapter:

- ✓ Gain a general understanding of the Kinship Guardianship Assistance Program in New York State.
- ✓ Become familiar with the federal and state origins of the program.
- ✓ Identify how kinship guardianship fits within New York State's permanency landscape.
- ✓ Learn about the benefits of legal guardianship and kinship guardianship assistance.

Kinship Guardianship Assistance Program Overview

The Kinship Guardianship Assistance Program (KinGAP) is a federally supported program for children in kinship foster care. It was implemented in New York State on April 1, 2011. The program provides financial assistance to related caregivers who assume legal guardianship of children formerly under their care as foster children. As the legal guardian, the relative is responsible for the day-to-day care and supervision of the children and makes all the necessary decisions related to the children's health, education, discipline, and upbringing. The social services district¹ no longer has legal custody of the child and no longer supervises the child and family. KinGAP provides relative guardians a monthly payment that is comparable to the children's foster care board rate or no less than what the guardians would

¹ The term *social services district* is used throughout this practice guide as a broad term referring to both the social services districts and the Administration for Children's Services in New York City.

receive if they adopted the child. The prospective relative guardians², the children’s caseworker³, and the caseworker’s supervisor all have roles in assessing and determining the appropriate permanency plan for the foster child, but the social services district must make the final determination as to whether kinship guardianship assistance best meets the needs of the child. Ultimately, the court is responsible for the transfer of guardianship, which is accomplished by the court’s awarding letters of guardianship to the designated related foster parents.

Legal guardianship is a permanency option for children for whom the goals of reunification and adoption are deemed not appropriate. This option is available to foster children who are legally freed for adoption as well as those who are not legally freed for adoption. For this reason, the program is an appealing permanency alternative for related foster parents because legal guardianship does not require termination of parental rights. If children are not legally freed, transfer of legal guardianship to the related foster parents allows existing family connections to remain intact, including the children’s rights of association with their siblings, grandparents, and other extended family members. Legal guardianship also leaves open the possibility that children might someday return home to their biological parents should the issues that brought them into foster care be ameliorated.

Origins of Guardianship Assistance in the United States

Although the legal relationship of guardian and ward dates back centuries, the acknowledgement of legal guardianship as a federally recognized permanency option was first contained in the federal Adoption Assistance and Child Welfare Act (AACWA) of 1980. Subsequently, legal guardianship was defined in the federal Adoption and Safe Families Act (ASFA) of 1997 (see sidebar for AFSA definition).

Although AACWA and ASFA recognized legal guardianship as a permanency status, many families’ were constrained from taking full advantage of this option because of the limited financial assistance available to them at the time. Until the passage of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (The Fostering Connection Act [P.L. 110-351]), federal financial assistance, in the form of a payment or subsidy, was available only for a child who remained in foster care or who was adopted out of care. Some public assistance was available under the federal Temporary Assistance to Needy Families (TANF) program to families who assumed

“The term ‘legal guardianship’ means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making” (Social Security Act, Sec. 475. [42 U.S.C. 675]).

² The terms *related foster parents*, *relative guardians*, and *caregivers* are referred to in the plural throughout this guide; however, a single foster parent may become a legal guardian.

³ The term *caseworker* is used throughout this guide as a broad term referring to all staff working directly with the child, including case managers and case planners.

guardianship. However, the amounts available through TANF were far less than the financial assistance that guardians could receive as foster or adoptive parents. Predictably, legal guardianship became a seldom-used permanency option for those children already in foster care.

Thus, many children who were placed with relatives after the passage of AACWA simply remained in the foster care system until they aged-out of care. This situation eventually resulted in a backlog of children in long-term kinship foster care. This phenomenon was first observed in the mid-1980s in the nation's largest metropolitan areas. In New York City, Chicago, and Los Angeles, the build-up in kinship foster care sharply elevated the size of the in-care population of foster children. Eventually, local imbalances between entries into care and exits from care put upward pressure on caseload growth at the national level. In response, child welfare professionals and policy makers began turning their attention to the issue of kinship foster care and the unique permanency needs of foster children living with relatives.

Fostering Connections to Success and Increasing Adoptions Act of 2008

The passage of The Fostering Connections Act was a significant step forward in helping children and youth at risk of long-term foster care. The legislation in its entirety promotes finding permanent families for foster children by supporting subsidized relative guardianships and older-child adoptions. In addition, provisions of the legislation allows for the extension of federal support for selected groups of foster, adoptive, and guardianship youth to age 21, as well as the direct administration of federal funds by tribal governments.

The establishment of a federally supported Kinship Guardianship Assistance Program came after years of federal- and state-level child welfare demonstrations that affirmed the effectiveness and cost-neutrality of subsidized guardianship. The new federal KinGAP program fills an important niche in the permanency planning continuum and facilitates the timely achievement of legal permanence once a court has affirmed that reunification and adoption are not in the best interests of the child.

The KinGAP program gives states the option of using federal Title IV-E funds to support kinship guardianship assistance payments for children living in the homes of related foster parents who become the children's legal guardians. Once a state opts to enact a Kinship Guardianship Assistance Program and the federal government approves the necessary Title IV-E State Plan Amendment, KinGAP becomes another source of federal funding under Title IV-E of the Social Security Act along with foster care and adoption assistance.

How KinGAP Fits Within New York's Permanency Landscape

Contemporary child welfare policy and practice are predicated on the assumption that the well-being of foster children who cannot be reunited with their birth parents is best assured by finding these children safe and permanent homes. Even though children can develop stable relationships with caregivers while under the legal custody of the social services district, these long-term placements lack many of the qualities that are thought to be essential for healthy child development and growth.

Children in foster care are often treated differently than children in permanent family homes. Although the foster parents can consent to some activities, many activities require the permission of the caseworker, judge, and/or social services official. Examples of activities that might require permission from an entity other than the foster parent include hunting, overnight trips, trips out of county or state, changing hair styles, and piercing ears or other body parts. Standing out in this way not only can cause embarrassment but also can be stigmatizing for children. Even though these foster children might be loved in their foster home, the children and their caregiver(s) remain aware that the placement can be disrupted at any time if a caseworker or judge decides that another placement is in the best interests of the children. Because foster parents have not legally committed to the children's permanent care, even the kindest of foster families may decide to end the placement because of a family hardship, the offer of employment elsewhere, or a caregiver's impaired health. It is because of the temporary and uncertain nature of foster care that practitioners and policy makers are strongly committed to converting long-term foster placements into legal, permanent homes when reunification is no longer a permanency goal.

For decades, adoption and the financial assistance available to eligible homes was the only permanency path open to related foster parents who wished to convert their temporary status into a permanent commitment *and* continue to receive the financial assistance that they counted on as foster parents. Even though adoption is the legal mechanism by which persons who are unrelated by blood or marriage can become related under law, some extended family members might wish to firm up their legal relationship by adopting the children. However, other family members might prefer to retain their identities as the children's grandparents, aunts, uncles, or adult siblings rather than becoming their moms or dads. Adoption and the termination/surrender of parental rights, which is a prerequisite to adoption, are sometimes perceived by kin as unnecessary and disrupting to existing family relationships. Older children may also harbor reservations and refuse to consent to the adoption because they do not want to terminate their relationship with their birth parents. Further, in cases when a parent refuses to voluntarily surrender his or her parental rights, grounds for terminating parental rights may be lacking. For these reasons, kinship guardianship assistance fills an important niche in the permanency planning landscape.

In a strict sense, adoption is considered a more legally permanent arrangement than guardianship because adoption is less vulnerable to challenge by birth parents. For this reason, state and federal laws require that the appropriateness of adoption also be assessed after the goal of reunification has been deemed not appropriate. As with reunification, federal and state laws require a determination that the permanency option of adoption is also not an appropriate option. If the assessment shows that the caregivers have a lasting commitment based on kinship ties and/or wish to preserve a supportive role for the birth parents in the upbringing of the children, guardianship may be the appropriate choice.

Because making the appropriate permanency choice can improve with the input and support from multiple stakeholders, it is important that caseworkers not only engage the caregivers in the decision but also engage other family members and sometimes participants from the larger support network. When appropriate, the birth parents should also be involved and, depending on their age and maturity, the children. By becoming knowledgeable about who and when others should be engaged, child welfare

agencies can better help families weigh the comparative benefits of alternative permanency options and make the decision that is appropriate and in the best interests of the children.

Benefits of Legal Guardianship and KinGAP

Experience has shown that many related foster parents will choose to pursue adoption instead of kinship guardianship because safety considerations necessitate that they guarantee their rights to be the sole parent of the children. When termination of parental rights is not a necessity, however, relatives may feel that guardianship is the appropriate choice because it offers benefits that are more in keeping with cultural norms and extended family traditions.

Kinship guardianship builds on extended family traditions and respects existing family ties.

Benefits for Related Foster Parents

- Legal guardianship is a legally recognized relationship that does not require the recasting of existing family relationships into the parent–child mold.
- Legal guardianship allows the birth parents to remain part of the child’s life (if the child is not legally freed) and allows the birth parents to retain rights to visit and to consent to adoption.
- Legal guardianship eliminates monthly caseworker visits and regularly scheduled court appearances.
- Legal guardianship allows relative guardians to manage birth parent–child interactions without agency oversight.
- Legal guardianship provides guardians with the authority to consent to medical treatment, educational plans, and other daily decisions that typically require parental permission.
- Legal guardianship with the receipt of kinship guardianship assistance allows the family to continue receiving Medical Assistance or other medical coverage for the child.
- Legal guardianship with the receipt of kinship guardianship assistance enables relative guardians to receive an ongoing monthly payment from the social services district, which is equivalent to the amount the guardians would have received if they adopted the child.

Tom* was 8 years old when his mother had a mental break down. The child welfare agency placed Tom and his two siblings with an aunt. Although Tom’s mother was not able to provide daily care, she continued to be involved in all aspects of the children’s lives. The aunt wanted the children out of the child welfare system but did not want her sister’s parental rights terminated. Kinship guardianship provided the family with a permanency option that enabled the mother to maintain her identity as “mom” while giving the aunt the right to consent and make daily decisions for Tom and his siblings.

*All case stories provided for illustration are based on real cases but use pseudonyms to protect client confidentiality.

Benefits for Children

- Legal guardianship increases children’s sense of family stability without requiring the termination of parental rights (unless parental rights have already been terminated).
- Legal guardianship allows children to retain rights of association with their siblings, grandparents, and other extended family members.

- Legal guardianship provides a permanency option for children who might otherwise remain in the foster care system.

What Is the Evidence That KinGAP Can Work?

KinGAP was modeled after the experiences of states that conducted child welfare demonstrations (under Title IV-E waiver authority) that tested the efficacy and cost-neutrality of guardianship assistance in bringing permanence to the lives of children who otherwise would have grown up in long-term foster care. Many of these demonstrations used a randomized controlled trial (RCT) research design, which is the most rigorous research design available in the medical and social sciences. Random assignment helps ensure that the intervention and comparison groups are statistically equivalent on most important characteristics—such as average age, family background, reason for out-of-home placement—before implementing the intervention. Therefore, if significant differences emerge in the findings, you can be reasonably confident that the result was caused by the intervention—in this case, the availability of guardianship assistance—and not by any pre-existing differences between the two groups. The RCT design can also be used to approximate what would have happened in the absence of the intervention—what scientists call the counterfactual—to figure out differences in overall costs, the effects on reunifications and adoptions, and the effects on placement stability, child safety, and child well-being.

Demonstrations of guardianship assistance (also known as subsidized guardianship) in the states of Illinois, Tennessee, and Wisconsin showed that the offer of subsidized guardianship significantly boosted permanency rates over and above the rates achieved in the comparison groups. Overall, approximately one-quarter of eligible children in Illinois and Wisconsin were discharged to subsidized guardianship, with a higher proportion in Tennessee. Simulations conducted for New York State suggest that similar levels of guardianship assistance could be obtained without increasing costs while potentially yielding administrative savings, as was the experience in the demonstration states. Transfer of legal guardianship eliminates monthly caseworker visits and regularly scheduled court appearances that are required if the children remain in foster care. Even though the demonstration findings showed that the boost in guardianships was accompanied by a drop in adoptions, there was no adverse impact on reunification rates. Follow-up studies that examined the stability of placements, child safety, and child well-being revealed no important differences between the groups that were offered subsidized guardianship compared with the groups whose permanency options were restricted to reunification and adoption.

References

For more information on the origins of guardianship assistance and the results of the subsidized guardianship waiver demonstrations, see the following publications:

Center for Law and Social Policy et al. (2009). *New help for children raised by grandparents and other relatives: Questions and answers about the Fostering Connections to Success and Increasing Adoptions Act of 2008*. Available at <http://www.childrensdefense.org/child-research-data-publications/data/FCSIAA-new-help-children-raised-by-grandparents-full-report.pdf>

Testa, M., & Cohen, L. (2010). *Pursuing permanence for children in foster care: Issues and options for establishing a federal guardianship program in New York State*. Report prepared for the New York State

Office of Children and Family Services. Available at
<http://www.ocfs.state.ny.us/main/reports/Pursuing%20Permanence%20for%20Children%20in%20Foster%20Care%20June%202010.pdf>

Testa, M., & Miller, J. (2005). The evolution of guardianship as a child welfare resource. In G. Mallon & P. McCartt Hess (Eds.), *Child welfare for the 21st century: A handbook of practices, policies & programs* (pp. 405-422). New York, NY: Columbia University Press.

U.S. Department of Health and Human Services, Administration for Children and Families. (2005). *Synthesis of findings: Assisted guardianship child welfare waiver demonstrations*. Washington, DC: U.S. Government Printing Office. Available at
http://www.jbassoc.com/reports/documents/agissuepaperfinalacfverson_8-30.pdf

Chapter 2: Eligibility Criteria for the Kinship Guardianship Assistance Program

Learning Highlights From This Chapter:

- ✓ Become familiar with differences between New York State’s eligibility criteria and the federal criteria
 - ✓ Ascertain the definition of *relative* used by the KinGAP program
 - ✓ Become familiar with case situations in which guardianship may be the most appropriate option for a child
 - ✓ Learn the eligibility requirements for the kinship guardianship assistance
-

New York Kinship Guardianship Assistance Program

The federal government has developed eligibility requirements for a federally supported Kinship Guardianship Assistance Program. Eligibility for this program is delineated in Title IV-E of the U.S. Social Security Act. The federal government provides Title IV-E reimbursement for the expenses of KinGAP if the state opts to amend its Title IV-E State Plan to provide kinship guardianship assistance payments for eligible children who have been in foster care with relatives. Even though states have flexibility in how they implement the program, only payments for children who meet the federally defined eligibility requirements can be claimed for Title IV-E reimbursement. States must pay for the entire assistance payment for a non-Title IV-E eligible child out of state or local funds. New York State has decided to expand its eligibility criteria and to allow both children who are eligible for the Title IV-E and children who are not eligible for Title IV-E kinship guardianship assistance reimbursement to exit foster care through the New York KinGAP.

Definition of a Relative

The federal government allows each state to define who is a *relative* for the purposes of the federal Kinship Guardianship Assistance Program. In New York State, to be eligible for kinship guardianship assistance, the prospective relative guardian must be related to the foster child by blood, marriage, or adoption. There is no limit set to the degree to which the child and caregiver must be related. It is important to note that this description differs from the definition of *relative* that New York State uses to distinguish relatives for the purpose of approval as kinship foster parents. As a result, relatives who are eligible for KinGAP can be fully certified or fully approved as foster parents. However, non-related foster parents and fictive kin **ARE NOT** eligible for the Kinship Guardianship Assistance Program.

For the purpose of KinGAP, a ***relative*** is defined as a caregiver related by blood, marriage, or adoption.

When Kinship Guardianship Assistance May Be the Appropriate Option for the Child

Caseworkers work with many families for whom legal guardianship with the payment of kinship guardianship assistance appears to be the most appropriate permanency option for the child. However, it is important to remember that the specific circumstance of each family must be carefully considered before making a final permanency decision. In addition, according to both federal and state eligibility standards for kinship guardianship assistance, there must be a finding that the permanency goals of *return home* or *adoption* are not appropriate. Further, both the social services district and the court must make a determination that it is in the best interests of the child to enter into the kinship guardianship arrangement, with findings that compelling reasons exist why return home or adoption are not in the best interests of the child.

No simple set of guidelines can substitute for a thorough assessment of family strengths and needs, the full-disclosure of all permanency options, and the engagement of all relevant stakeholders in the team decision-making process. The following examples illustrate some circumstances in which kinship guardianship may be an appropriate permanency option:

Larry* was 4 years old when he was taken from his mother's care due to her substance abuse issues. Within days of placement, Larry's great-grandmother came forward and indicated a desire to care for him. Although Larry's mother maintained regular contact with the boy, she continued abusing drugs and cycled in and out of treatment. Her parental rights were eventually terminated. The mother continued contact with Larry during periods of sobriety, and after the TPR, she did in fact, get sober. Neither the great-grandmother nor Larry wanted to pursue adoption; both felt strongly that the mother's continued contact, her long-term sobriety, and issues of family loyalty did not support an adoption. Larry remained in foster care with his great-grandmother until he aged out of care. KinGAP would have been a great alternative for this family.

*All case stories provided for illustration are based on real cases but use pseudonyms to protect client confidentiality.

- The social services district has no viable grounds for the termination of parental rights. Without kinship guardianship as an alternative, the child would remain in foster care.
- A child, 14 years of age or older, with a full understanding of adoption, refuses to consent to his or her adoption.
- A child or family member is reluctant to legally alter existing family relationships. For example, the grandmother does not want to become the legal mother of her grandchild.
- The prospective relative guardian anticipates that one or both of the birth parents will be able to care for the child at a later date. The birth parents might not be prepared to safely resume these responsibilities in the foreseeable future, but keeping the option open is an important part of the related foster parents' motivation for agreeing to become the child's legal guardian.
- One or both birth parents continue to be an integral part of the child's life. Even though the birth parents may never be able to care for the child on a full-time basis, the parents have a significant presence in the child's life. Terminating parental rights or seeking a surrender, which is necessary for adoption, would extinguish all legal rights of the parents to associate with the child and socially estrange the parents from the child and family.
- The birth parents are incarcerated or in a residential substance abuse treatment program for an extended period of time, and are not able to provide for the daily care of the child. The transfer of guardianship enables the child to leave foster care but also leaves the door open for reunification, if appropriate, after the parent serves his or her time or completes the program. *The safety of the child must be carefully considered in such a case.*
- The birth parents and family members agree that kinship guardianship is the best alternative for the child, and the birth parents are willing to consent to the arrangement.

Eligibility for Kinship Guardianship Assistance

Because New York State has decided to expand its eligibility criteria for kinship guardianship assistance beyond the federal requirements, it is necessary for caseworkers to first determine whether the child is eligible for the New York KinGAP. If the child qualifies, then the next step is to determine whether the child and family meet the eligibility requirements for Title IV-E kinship guardianship assistance reimbursement. This chapter contains an overview of the eligibility criteria. Detailed information about eligibility criteria, along with specific information about the documentation that is needed for each of the eligibility criterion, can be found by reviewing the Kinship Guardianship Assistance Eligibility Checklist (see Appendix G) and the instructions for completing the checklist (see Appendix H).

The circumstances in which the child entered foster care have an impact on the child's eligibility for kinship guardianship assistance. A child is eligible for KinGAP if he or she was adjudicated as abused and neglected; adjudicated as a Person in Need of Supervision (PINS); adjudicated as a juvenile delinquent (JD); or voluntarily placed in foster care; and the child otherwise meets the eligibility criteria for the program.

New York State Eligibility Requirements for KinGAP

The child and the prospective relative guardian must meet all of the New York State eligibility requirements to qualify for KinGAP.

| Eligibility Requirements for the New York State Kinship Guardianship Assistance Program |
|--|
| 1. Child is related to the prospective relative guardian(s) by blood, marriage, or adoption. |
| 2. Child entered the care and custody or the custody and guardianship of the social services district before his or her 18th birthday and is currently under the age of 21. |
| 3. Child has been in foster care with the prospective relative guardian(s) for at least 6 consecutive* months prior to the date of application for the kinship guardianship assistance, during which time the relative(s) was fully approved or fully certified during the entire period as a foster parent(s). |
| 4. The initial permanency hearing for the foster child has been completed. |
| 5. If the child was placed into foster care pursuant to Article 10 of the Family Court Act, the fact-finding has been completed. |
| 6. Being returned home or adopted are not appropriate permanency options for the child. |
| 7. Prospective relative guardian(s) and all other adults 18 years of age or older who reside in the home have completed a national and state criminal history record check pursuant to Section 378-a of the Social Services Law.** |
| 8. Prospective relative guardian(s) and all other adults 18 years of age or older who reside in the home have completed a child abuse and maltreatment database check through the OCFS Statewide Central Register of Child Abuse and Maltreatment (SCR). ** |
| 9. If the prospective relative guardian(s) or another adult 18 years of age or older residing in the home lived outside of New York State within the past 5 years of the application for kinship guardianship assistance, the applicable child welfare agency in each of the previous state(s) was contacted to obtain child abuse and maltreatment information maintained by the child abuse and maltreatment registry in each of those states.** |
| 10. Prospective relative guardian(s) has a strong commitment to caring permanently for the child. |
| 11. Child has demonstrated a strong attachment to the prospective relative guardian(s). |
| 12. Age appropriate consultation has been done with the child regarding the kinship guardianship arrangement. If the child is 14 years of age or older, consultation is mandatory. |
| 13. If the youth is 18 years of age or older, he or she has consented to the kinship guardianship arrangement. |

**Consecutive* is defined as follows: Any period in which the child resided with the foster parents on an emergency basis while the full certification or approval was still underway cannot be counted in meeting the 6-months time frame. However, the 6-months clock may be interrupted by brief, temporary periods due to hospitalization, stay(s) in psychiatric facilities, respite, and comparable absences from the foster home.

**If the prospective relative guardian(s) and/or adults in the home age 18 or older had these checks completed as part of the certification/approval process, then the checks do not have to be done again for kinship guardianship assistance.

Best Interests Determination

In addition to the eligibility criteria, the caseworker must determine it is in the best interests of the child for the prospective relative guardian(s) to become the legal guardian(s) of the child. This determination includes determining that compelling reasons exist why the return home or adoption of the child are not in the best interests of the child, and therefore, are not appropriate. These compelling reasons must be documented in the Uniform Case Record.

Title IV-E Reimbursement

After a child has been determined eligible for KinGAP, the next step is to determine if the child is eligible for Title IV-E reimbursement. Even though this determination is important and will need to be documented, the child and prospective relative guardians do not need to meet all of the Title IV-E reimbursement eligibility requirements to be eligible for guardianship assistance. The child and guardian will receive a kinship assistance payment *regardless* of Title IV-E eligibility *if* all state eligibility criteria are met.

| Title IV-E Reimbursement |
|---|
| 1. Child has been removed from the child's home pursuant to a voluntary placement agreement (VPA; 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 (CTW); or that the removal of the child from the child's home is in the best interests of the child (BE). |
| AND |
| 2. Child was eligible for Title IV-E foster care maintenance while residing for at least 6 consecutive months in the home of the prospective relative guardian prior to the application for kinship guardianship assistance. |

Sibling Exceptions

Children who meet all New York State eligibility criteria for kinship guardianship assistance but do not meet the Title IV-E eligibility criteria for the federal program (noted above) might still be eligible for Title IV-E kinship guardianship assistance reimbursement *if* they have a sibling who is Title IV-E eligible for kinship guardianship assistance **and** the siblings are or will be placed in the same kinship guardianship arrangement.

| Sibling Exception for Title IV-E Eligibility |
|---|
| 1. The child is a sibling of a child who is eligible to receive Title IV-E reimbursable kinship guardianship assistance payments and is going to the same guardianship arrangement. |
| OR |
| 2. The child is a sibling of a child who is currently receiving Title IV-E reimbursable kinship guardianship assistance payments and is joining the sibling in the same kinship guardianship arrangement. |

Chapter 3:

Engaging the Family in

Making a Permanency

Decision

Learning Highlights From This Chapter:

- ✓ Gain an overview of the steps to be followed when determining the best permanency plan for foster children
- ✓ Understand the importance of engaging families in permanency planning
- ✓ Learn how to effectively prepare for the permanency meetings
- ✓ Learn factors to assess to determine if reunification is an appropriate permanency option for the child
- ✓ Learn how to assess related foster parents' desire and capacity to become a permanency resource
- ✓ Identify issues with siblings that should be taken into consideration when discussing permanency options
- ✓ Learn how to discuss available permanency options
- ✓ Identify ways to obtain the child's perspective on permanence
- ✓ Identify reasons why adoption may not be the appropriate permanency goal
- ✓ Gain awareness of tools for facilitating permanency discussions

“The challenge for child welfare practitioners is to bring the resources of the formal child welfare system to strengthen and support, not replace the informal helping system, including the extended family/kinship networks of children coming into contact with the child welfare system.”
James Gleeson, Professor, Jane Addams College of Social Work, University of Illinois at Chicago.

Overview of the Permanency Planning Process

One of the most significant decisions that related foster parents must consider is whether to make a lasting commitment to care for children in the event that the birth parents are unable to resume this responsibility. Even though most related foster parents see themselves as the last resort for caring permanently for the children, after all necessary efforts at reunification have been exhausted, the process of preparing for this possibility ideally begins the moment there is discussion about placing the children into the related foster parents' home. Families and caseworkers are encouraged to

concurrently consider other permanency plans, including adoption and kinship guardianship, in the event that reunification cannot be achieved in a timely fashion. The actions below outline some of the steps that caseworkers should follow when determining the appropriate permanency plan for children living with related foster parents:

1. Engage the family (related foster parents, birth parents, children, and any extended family identified by the related foster parents and/or child as crucial) early in the permanency planning process.
2. Determine the viability of reunification as a permanency goal.
3. Assess the related foster parents' desire and capacity to become a permanency resource.
4. Discuss the available permanency alternatives of adoption and guardianship.
5. Choose the most appropriate permanency plan in consultation with the family, other important stakeholders, and the child (depending on his or her age and maturity).

Engage the Family in the Permanency Planning Process

Regardless of the goal, engaging the family is the most critical aspect of permanency planning with relatives. Although engagement needs to occur throughout the life of a case, it is particularly crucial to engage the family early on in the permanency planning process. Without the family's involvement and "buy-in," achieving a permanent home in a timely fashion can easily be jeopardized. The lack of family involvement in the decision-making process is one of the biggest barriers to successful permanency planning with kin. To get "buy-in" from the family, caseworkers must have a clear understanding of how foster care with related foster parents differs from the care provided by non-related foster parents.

- Relatives typically have a history with the child and birth parents that pre-dates involvement with the child welfare system unlike foster care by non-relatives who are typically strangers to the child;
- Relatives have existing family identities as grandparents, aunts, uncles, cousins or adult siblings that are defined by cultural norms and confer status and authority that may be in tension with bureaucratic rules and processes; and
- Relatives typically become involved with the child welfare system to care for a child at a time of family crisis unlike non-related foster parents who typically plan to become foster parents before a child is placed in their home.

These differences affect the way that relatives engage with the child welfare system, how they care for the child, the ways they interact with the birth parents, and how they perceive the benefits and/or necessity of legal permanence. Caseworkers need to be sensitive to these differences as they work to facilitate permanency discussions. Chart 3-1, on the next page, further delineates the differences between related and non-related foster parents.

Chart 3-1: How Foster Care by Relatives Differs From Care by Non-Relatives

| Relatives | Non-Relatives |
|--|---|
| Relatives usually receive the placement in an unplanned way: in a time of crisis or by birth parents' default. There is little or no preparation, and the relatives may have never planned to raise another child. | Non-relatives decide to become foster parents. They involve their family in the decision and preparation, and are trained before the actual placement of the child. |
| Relatives are often part of an intergenerational household. | Non-relatives are usually part of a single-family household. |
| Relatives' first bond is with the child's birth parents; that is, relatives and birth parents have an attachment or bond (either positive or negative) before the child's birth. | Non-relatives' initial attachment and loyalty are to the child; there is no pre-existing attachment or bond with the birth parents. |
| Relatives who receive the child on an emergency basis must meet foster home approval requirements while the child is already in the home. | Non-relatives are required to meet foster home certification requirements before any placement. |
| Relatives may be on fixed income, elderly, or retired. | Non-relatives are generally in earning years, not on a fixed income, and not elderly. |
| Relatives get the child they get. | Non-relatives choose the type of child they want. |
| It might be personal or embarrassing for relatives to talk about their family to others (i.e., caseworker, court, therapist, school, etc). | It is comfortable for non-relatives to seek assistance for the foster child (it's their job). |
| The child and birth parents share the relatives' ancestry and history because of their biological relationship. | The child and birth parents have no biological connection or shared history with non-relatives. |
| Relatives might not be motivated to be approved as foster parents because the child is already in the home; relatives might feel they are providing a "service" to the agency (i.e., the agency came to them). | Non-relative foster parents are motivated to be certified so they can receive a child. |
| Relatives might feel they have the right to make decisions about the child. | Non-relatives might be more apt to rely on the agency for child-related decisions. |
| Relatives might be co-dependent with birth parents (i.e., would not turn birth parents in or cut them off). | Non-relatives might feel free to share information with the agency about the birth parents' behavior. |
| Relatives might have difficulty accepting the rules, especially limitations on birth parents visitation. | Non-relatives can more easily follow rules and any limitations on birth parents visitation. |
| Relatives might feel they have rights and entitlement to the child by birth, biology, or affinity. | Non-relatives are less likely to feel they have rights and entitlement to the child. |
| Relatives: Why shouldn't we let you foster? | Non-relatives: Why should we let you foster? |

Prepare for the Permanency Meeting with the Family

Before the caseworker engages the family in a meeting to discuss permanency options, it is important to do some advance preparations. The amount of time the caseworker puts into preparing the family will affect the quality of the formal meeting. There are several tasks that a worker can undertake to conduct a successful meeting:

- Get a sense of each family member’s agenda for the meeting.
- Find out if there are any concerns about issues such as the child’s health, safety, or education that family members want to address.
- Provide family members with tips on how to voice their opinions without alienating others at the meeting.
- Discuss expectations family members may have regarding the care of the child.
- Obtain “buy-in” from family members regarding the need to discuss the best interests of the child and the desire to maintain the child within the family unit. This “buy-in” becomes particularly important when there is hostility or tension within the family.

Chart 3-2, which can be found on the next page, lists tips for caseworkers on how to engage relatives in the permanency planning process.

Determine Whether Reunification is an Appropriate Permanency Option

One of the first steps in the permanency planning process is determining the viability and appropriateness of reunification. Although the court ultimately makes this decision—with input from the social services district or voluntary authorized agency—the family should also be engaged in the discussions about the appropriateness of reunification as a permanency plan.

Reunification is the preferred permanency goal and should always be considered first. Birth parents must be given ample time and opportunity to engage in the services that are deemed necessary to have their children returned to them. The Adoption and Safe Families Act (ASFA) of 1997 and comparable New York State legislation in 1999 set parameters for how long reunification should be pursued before moving on to an alternative permanency option. As set forth in New York State law, in making reasonable efforts for reunification, the safety of the child is the paramount concern.

In New York State, for children entering foster care as abused and/or neglected or for voluntarily placed children, the initial permanency hearing is generally held 8 months after the date the children entered foster care. Usually, the date certain established for the initial permanency hearing is the date of removal from the home, plus 60 days, plus 6 months. However, the court has the authority to establish a date for the permanency hearing at an earlier date than this timeframe. For children adjudicated as a Person in Need of Supervision (PINS) or juvenile delinquents in New York State, the initial permanency hearing is generally held within 12 months of placement. ASFA requires that a petition be initiated to terminate parental rights when children have been in foster care for 15 of the previous 22 months, unless there are compelling reasons or other circumstances for not filing the termination petition.

Chart 3-2: Ten Principles for Successful Family Engagement

1. **Work with the family to determine critical players.** The family plays a critical role in deciding whom they want to participate in the permanency discussion. Discussions that include all the relevant decision makers will be more productive. Critical players do not need to be limited to just family members.
2. **Designate specific time(s) to discuss permanence.** The caseworker should set aside specific time(s) to discuss permanence. Permanence can be discussed as part of an already planned meeting or event such as the Service Plan Review or Case Consultation prior to the development of the Permanency Hearing Report or at a separate meeting that is scheduled specifically to discuss permanence.
3. **Make meetings manageable.** The caseworker should inform all invited members about the primary goal of the meeting prior to its commencement, and set one or two clear objectives. For example, the goal could be to determine the best permanent arrangement for the child. An objective would be to determine the related foster parent's comfort level in managing on his or her own the visits between the birth parent and child.
4. **Choose a neutral meeting place.** Conducting the meeting in the family's environment can be beneficial. However, it is important that the location does not exclude key family members, either due to transportation needs or problematic relations among family members.
5. **Designate a meeting facilitator.** The caseworker or another professional should act as the meeting facilitator, guiding the discussion and keeping the focus on the needs of the triad (child, birth parents and related foster parents) in the permanency planning process. An agenda can help to keep the meeting on track.
6. **Know your facts.** The caseworker and/or facilitator should be able to accurately discuss the permanency options available to the child and the implications each will have for all of the participants. Assist the family in developing criteria for selecting possible permanency options.
7. **Allow all participants to have a voice.** The caseworker should see that each participant has the opportunity to voice his or her opinions and/or questions. This opportunity should be given to the birth parents, as well as the child, if present. All parties need to feel that they were included in the discussion and ultimately, that they contributed to the permanency decision.
8. **Respect the family unit.** The caseworker needs to show the family respect and treat them with dignity. The process should be a collaborative one to determine the best plan for the child.
9. **Balance the child's sense of time with the family's need to make an informed decision.** The caseworker needs to be sensitive to both the amount of time that a child is in the foster care system, as well as the family's need to gain a comprehensive understanding of the options and the impact on their family.
10. **Be aware of family history.** There are lots of family dynamics that must be taken into account due to the related foster parents' connections, relationships, and loyalties to the birth parents.

Federal and state law provide that before pursuing a kinship guardianship assistance arrangement, return of the child to his or her home must be determined to not be an appropriate permanency goal. Determination as “not appropriate” must also be made in regard to the appropriateness of the permanency option of adoption, which is addressed later in this chapter.

In addition, state standards provide that the social services district must determine that it is in the best interests of the child for the relative(s) to become the guardian(s) 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. 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). In making the determination of compelling reasons and the appropriateness of the goal of reunification, the social services district should consider whether:

- the child cannot be safely returned home in a reasonable time frame, 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; and 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.

Caseworkers need to document diligent efforts to engage both birth parents in the service planning, visitation schedules, and case meetings. If the parents’ whereabouts are unknown, then the efforts made to locate each parent must be documented.

Information that should be documented in case progress notes to justify why reunification is not an appropriate goal include

- The amount of time that the child has been in foster care.
- Summary of the caseworker’s contacts (phone, written, and in person) with the birth parents. If whereabouts of the parents are unknown, document all efforts that have been made to locate the parents, including use of federal and state parent locator services, diligent searches, contacts with relatives, and contacts with former jobs/associates of the birth parents.
- Status (i.e., frequency and quality) of the parents’ visits with the child.

SUPERVISORS:

Permission to move forward with guardianship should not be granted until sufficient documentation is provided in the case progress notes as to why reunification is not an appropriate permanency option for the child.

- Lists of the services that have been offered to the birth parents since the child entered care.
- Evaluations of the progress birth parents have made, evident through necessary changes in behavior or circumstances; and in completing each of the service requirements.
- Overall assessment of the parents' compliance and progress.
- Actions taken by the caseworker regarding the parents' non-compliance.
- Clear statement that reunification has been determined to no longer be an appropriate permanency goal for the child; along with a brief explanation that supports this decision.

Assess Related Foster Parents' Desire and Capacity to be a Permanency Resource

If reunification is determined not to be a viable permanency option, the caseworker will need to establish alternative permanency plans. In many instances, children may be able to remain permanently with the related foster parents with whom they have been living. Therefore, the next step in the process is making a clear determination that the related foster parents are truly committed to caring for the children until adulthood. The assessment tool ***Factors for Related Foster Parents to Consider When Reviewing Permanency Options*** (Appendix C) can be used to start the permanency conversation with related foster parents. Detailed information about this tool can be found at the end of this chapter.

“Facilitating permanency requires child welfare practitioners to engage members of the child’s family in a process of assessment, planning, and decision-making...” James Gleeson, Professor, Jane Addams College of Social Work, University of Illinois at Chicago.



Before a caseworker discusses the specifics of a particular permanency option, it is important to gain an understanding of the related foster parents' general sentiments and interest in becoming a permanent resource for the child. This conversation will help the caseworker to assess the related foster parents' capability and willingness to care for the child. In addition, this discussion can lay the foundation for future permanency discussions and provide insight into the strengths, weaknesses, and concerns of the related foster parents. The following components should be addressed with the related foster parents:

1. Intent to care for the child until adulthood
2. Need for ongoing support from the formal child welfare system
3. Ability to provide a safe, permanent home for the child
4. Awareness on how decisions will impact family relationships

1. Intent to care for the child until adulthood

The caseworker needs to have a frank discussion with related foster parents about their intent to care for the child until he or she reaches the age of majority. If the relatives' stated intent is to provide long-term care for the child, then the caseworker needs to gain an understanding of the related foster parents' perception of long-term care. Asking a series of questions such as those listed below can assist with this assessment:

- Do the related foster parents want the social service district/court to stay involved in the care of the child and in the supervision of their home on an ongoing basis?
- Do the related foster parents want the authority to make all the decisions about the child without permission/intervention from the social services district?
- Do the related foster parents want a caseworker available to make routine visits and to provide or arrange for services for the child when necessary?
- If the related foster parents express a desire to get the child out of the formal child welfare system, what is their primary motivation?
- What role, if any, do the related foster parents envision for the birth parents in the future care of the child?

2. Need for ongoing support from the formal child welfare system

To determine the need for ongoing support, the caseworker, in concert with the related foster parents, must consider the following:

- What is the child's level of need?
- What is the related foster parents' capacity to meet the child's needs with his or her own resources now and in the future?
- What type of assistance and support would the related foster parents want from the social services district if the child displayed increased behavioral, emotional, and/or medical needs in the future that the family may not be able to manage on its own?

The first question requires that caseworkers acquire a comprehensive understanding of the child's needs in all domains: social, educational, physical, mental, and emotional. The caseworker must identify existing needs along with risk factors that might suggest future needs. During a face-to-face meeting, the caseworker should have a candid discussion about the child's current and potential future needs and share documentation about the nature of these needs that the agency is authorized by law to share. In addition, the caseworker needs to give the related foster parents an opportunity to share their perceptions of the child's needs. The related foster parents may be aware of unmet needs that have not been brought to the caseworker's attention.

The second and third questions require that the caseworker assess the related foster parents' capacity to meet the child's needs both now and in the future. To conduct this assessment, the caseworker needs to ask the related foster parents questions regarding their understanding of

- the nature of the child's needs,
- the family's ability to meet those needs on its own,
- the extent and strength of the informal and formal support network in helping to meet the child's needs, and
- the family dynamics that might interfere with its capacity to meet the child's needs now or in the future.

3. Ability to provide a safe, permanent home for the child

Safety is of utmost concern when considering a permanent arrangement for any child. The caseworker needs to assess the related foster parents' current ability to provide a safe, nurturing environment for the child as well as the family's capacity to provide a safe environment in the future. One factor that should always be considered when discussing permanence with related foster parents is the degree of loyalty they have to the birth parents, and how this loyalty might influence their ability to effectively manage contact between the child and his or her parents. Although there is no way to predict all of the problems that related foster parents might encounter in the future, there are questions that caseworkers can ask to help anticipate future concerns.

Kinship Guardianship Discussion Questions (Appendix A) lists specific questions along with indicators that can help guide a conversation around these topics. There is a Notes Section where caseworkers can record key points from the conversation. The ***Ecomap KinGAP Tool*** (Appendix B) can be used to help the caseworker develop a sense of the related foster parents' formal and informal support networks. It is recommended that the caseworker print a copy of these tools for use during their discussions with the related foster parents. If completed, the forms should become a part of the child's Uniform Case Record. A more thorough description of these tools can be found at the end of this chapter.

4. Awareness on how decisions will impact family relationships

It is important for related foster parents to understand how the permanency decision may impact their lives and the family unit at large. The effects can include a change in pre-existing relationships within the family unit, hostility within the family unit due to the permanency plan for the child, and divided loyalties between family members. The caseworker needs to discuss the potential impact with the related foster parents and gain a sense of how they would cope with these types of situations.

In addition, the caseworker needs to discuss the impact permanency is likely to have on the child's relationship with his or her siblings. OCFS regulation and policy clearly states that children entering foster care or adoption must be placed together with their siblings unless contrary to the health, safety, or welfare of one or more of the children. The caseworker will ultimately need to document reasons for any separation of siblings. The conversation with the related foster parents will vary depending on the current living arrangement of all the children in the family unit:

- **Siblings are placed together in the related foster parents' home:**

The caseworker should not assume that the related foster parents will have the same permanency plan for all of the siblings. The caseworker should have a conversation about permanency for each child in the related foster parents' home. If the related foster parents are not willing and/or interested in being the permanency resource for all of the siblings, the reasoning behind this decision should be discussed in depth. The impact that decision will have on the siblings should be weighed into the caseworker's recommendations regarding permanency. If the related foster parents are willing to be the permanency resource for all of the siblings but not all of the siblings meet the eligibility criteria for KinGAP or adoption, the timing of the permanency decisions should be discussed. In some situations, it may make the most sense for the related foster parents to wait until all of the siblings meet the criteria before they pursue permanency. In other situations, it may make the most sense to pursue permanency with the child or children who are currently eligible, and then make plans to pursue permanency for the remainder of the siblings.

- **Siblings are not placed together in the related foster parents' home:**

The child's relationship with his or her siblings must be assessed when considering permanency options. The caseworker should get a sense of the related foster parents' intent and level of commitment at maintaining sibling bonds after permanency is achieved. The caseworker should also gauge the related foster parents' interest in being a permanency resource for the child's siblings who do not currently live in their home. This discussion should include consideration of siblings who may be born later as well as siblings who are in other placements. The impact permanency might have on the sibling relationships should be assessed and taken into account as permanency options are pursued.

Discuss Available Permanency Options

After the determination has been made that (a) reunification is not an appropriate option, and (b) the related foster parents have the capacity and willingness to be a permanent resource for the child, discussions about different permanency options should take place. Both adoption and guardianship are paths to legal permanence; however, there are many differences between these two options.

The *New York State's Permanency Comparison Chart* (Appendix D) summarizes the key differences between adoption, kinship guardianship, and long-term foster care. It is recommended that the caseworker use this information to fully explain the options to the related foster parents. If the birth parents' rights are not terminated/surrendered, it is crucial that they, along with the related foster parents and children, understand the following differences between kinship guardianship and adoption:

- **Kinship guardianship does not require termination of parental rights.**

- Birth parents may still exercise a limited role in their child's upbringing. Parents, whose rights have not been terminated/surrendered, hold on to certain residual rights and obligations, such as the right to visit and consent to adoption, as well as the obligation for child support. If circumstances change, the birth parents may petition the court to vacate the letters of guardianship and return the child to their custody.

- Kinship guardianship differs from adoption; adoption is consummated only after the birth parents' rights to regain custody are permanently extinguished.
- **Kinship guardianship does not recast kinship relations into the nuclear family mold of parent and child.**
 - Adoption changes identities as well as the roles within the extended family, which can impact family dynamics. Kinship guardianship allows families to maintain their existing family identities. The birth parents are able to maintain a role in the child's upbringing and the family has the ability to shape how this role is defined. Under kinship guardianship, children retain the right of sibling visitation and association as well as the right to keep their family name. In contrast, termination of parental rights may legally estrange children from their birth parents and may result in estrangement from their siblings.
 - Relative guardians retain their extended family identities as grandparents, aunts, uncles, cousins, adult siblings, and distant kin.
 - Family identities remain intact. Related foster parents can commit to care for the child on a permanent basis without having to confront the loyalty issues that sometime arise with adoption.

It is important that the permanency conversation with each party be tailored to the person's level of interest, maturity, and cognitive capacity. There are several tools described at the end of this chapter that have been designed to help caseworkers provide family members with information on kinship guardianship assistance and how that option differs from adoption. Caseworkers should use clinical discretion to determine which tools or sections of tools are appropriate for each of the following stakeholders.

Related Foster Parents

Related foster parents cannot make a fully informed permanency decision until the caseworker has disclosed all of the details about adoption assistance and kinship guardianship assistance. It is important for related foster parents to understand the details of both of these options and the different implications for caregiving. It is critical that related foster parents understand how each option affects the child's future relationship with birth parents and siblings, monetary support, medical care, other support services, and the caregiver's decision-making authority and responsibilities.

The booklet ***Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)*** provides detailed information about this option that the related foster parents need to know before making a permanency decision. The booklet can be downloaded and printed from the Web at <http://www.ocfs.state.ny.us/kinship/kingap.asp>. The related foster parents should have been given a copy prior to placement of the child. If the relative guardians do not already have a copy of this booklet, the caseworkers should give them a copy of the booklet. Caseworkers should review this booklet with the related foster parents.

Birth Parents

If the parental rights of the birth parents have been terminated or surrendered, the caseworker is not obligated to discuss permanency options with the birth parents or engage them in permanency meetings. Likewise, if the caseworker does not know the birth parents' whereabouts or the birth parents are unwilling to participate after repeated attempts to engage them, then they may be left out of the process.

If the rights of birth parents have not been terminated or surrendered, they should be informed, at a minimum, of the permanency options. Birth parents should have the permanency options explained to them, including specific details about the fundamental differences between adoption assistance and kinship guardianship assistance. One of the most important facts to convey is that kinship guardianship assistance does not require parental rights to be terminated or surrendered, which allows the parent to continue to play a role in the child's life. Kinship guardianship even leaves the possibility open that the child could be reunified with the birth parents in the future if circumstances change and the court determines return to the birth parents is in the child's best interests.

The decision to involve birth parents in the permanency meetings with the relative and/or child needs to be made on a case-by-case basis. Unless the birth parents pose a serious risk to the safety of the child or others, or would greatly impede the permanency planning process due to mental health or emotional problems, they should be invited to participate in the permanency meetings. Even though parents may not be able to provide for the daily care of the child, they may continue to play an integral role in the child's life. For birth parents who are less involved, helping them feel that they are a respected part of the family unit may help to minimize potential conflicts that could derail a permanency plan. In addition, related foster parents who have a relationship with the birth parents most likely will feel some loyalty to the parents. Involving parents in the permanency discussion with the related foster parents can help to mitigate any reluctance or unwillingness on the part of the related foster parents to move forward with a permanency decision. Getting the "buy-in" of parents may help to limit the child's defiance and testing of the related foster parents' authority.

Related foster parents can assist to get this "buy-in" from the birth parents during joint meetings by:

- Openly discussing the future plans they would like for the child.
- Honestly discussing how they would like the birth parents to be involved with the child's life.
- Acknowledging the birth parents' past role and continued influence on the child.

Rose* was removed from her mother's care at the age of 13 years old due to her mother's substance abuse issues. Rose was placed with a maternal aunt. Neither Rose, nor the aunt wanted the mother's rights to be terminated. Rose is now older than 14 years and indicating she will not consent to adoption. KinGAP would allow Rose to remain with her aunt and preserve the legal and emotional bond between mother and child.

*All case stories provided for illustration are based on real cases but use pseudonyms to protect client confidentiality.

It is important for the birth parents to understand that both adoption and guardianship can be pursued without their expressed consent; however, the process can be more empowering for birth parents if an

agreement can be reached with the related foster parents on which option to pursue. Birth parents might be willing to surrender their rights voluntarily or consent to the kinship guardianship arrangement, sparing everyone the difficult process of terminating parental rights or contesting the transfer of guardianship.

Children:

Permanence is not only a big decision for the related foster parents, but it is also a life-changing event for the children. It is crucial that the caseworker take the time to explain the different permanency options to the child. Although best practice indicates that children of most all ages should be involved in the permanency discussion to some degree, the discussion regarding permanence becomes especially important when considering KinGAP for children who are 14 years and older:

- **State law requires age-appropriate consultation with the child regardless of the child's age.**
- **State and federal law requires a child who is 14 years or older to be consulted regarding the kinship guardianship arrangement.**
- **State law requires a child 18 years or older to consent to the kinship guardianship arrangement.**

All children deserve to have a basic understanding of their permanency plan. Although children do not need to know all of the intricacies, they should have a basic understanding of how each option would impact their future life. It is important to tailor conversations with children in accordance with their age, maturity, and cognitive abilities. It is also important to engage children in the permanency decision, as age appropriate, so that they feel a part of the decision. Older children may be able to participate in family meetings or one-on-one discussions with the caseworker. For children younger than 10 years old



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 the child's actions and reactions while with the prospective relative guardian(s). In addition, discussion may need to take place through art or structured play. Listed below are some general guidelines for discussing permanence with children:

- Permanence can be described in many ways and is usually not a term with which children are familiar. Instead of using the word *permanence*, the caseworker might want to use phrases such as *a forever family* or *stay with the family until he or she is all grown up*.
- Ask the children to explain the type of relationship that they would like to have with their current related foster parents in the future.

- Ask children with whom they would want to be living with several years from now. Explore their answers. If the children respond by stating “their birth parents,” ask them to identify another person if this were not possible.
- Explain the different permanency options in terms that relate to a child’s perspective. For example:
 - Your last name can change to that of the adoptive parents if you are adopted.
 - You can maintain some type of contact with your birth parents with kinship guardianship. (Please note: This statement would not be accurate if the child was legally freed, unless a conditional surrender is involved);
 - The rights of your birth parents don’t have to be ended to pursue kinship guardianship; on the other hand, the rights of your birth parents have to be ended before adoption can be pursued.
- Ask the children how much of a role they would like the birth parents to play in their life in the future.
- Encourage the related foster parents to communicate with the children regarding their own thoughts on permanence. The caseworker may need to facilitate this discussion.
- Provide children with ample time to ask questions.

The birth parents may also be able to help the child feel more comfortable with the permanency planning process. The caseworker can engage the birth parents during meetings to help the child accept the permanency plan. Examples of parents’ actions and suggestions for language that parents might use with their children are shown below.

| Parents’ Helpful Action | Examples of Language to Use With Children |
|---|--|
| Validating the related foster parents’ ability to parent the child | “They are going to care for you and love you as I would do.” |
| Deferring their authority to the related foster parents. | “When they speak, they speak for me.” |
| Giving the child permission to accept the related foster parents’ authority. | “I want you to listen to them as you would listen to me.” |
| Giving the child permission to establish a parental relationship with the related foster parents. | “It is okay to love and trust them.” |

Certain topics regarding kinship guardianship and adoption may be of specific interest to children, including legal status, parental rights, decision making, relationship with birth parents and siblings, child’s legal name, post-secondary education, and independent living services. ***New York State’s Child Permanency Comparison Chart*** (Appendix E) is designed to help caseworkers explain these topics to children who are

SUPERVISORS:

Caseworkers need to document in the progress notes that they have done age appropriate consultation with the child regardless of the child’s age. Please note that consultation is mandatory with a child 14 years of age or older.

between 10 and 18 years old. A thorough description of this tool can be found at the end of this chapter.

The caseworker must clearly document in the progress notes that he or she discussed the kinship guardianship arrangement with a child who is 14 years or older, along with the key points from the conversation. Age-appropriate consultation must be done with children younger than 14 years old; the caseworker must also document this discussion in the progress notes. A youth who is 18 years or older must consent to the kinship guardianship arrangement. Although the consent is obtained in court, the caseworker needs to discuss the kinship guardianship assistance arrangement with the youth in advance and confirm that he or she wants to

move forward with this permanency option. There is a place on the application for a youth who is 18 years old or older to sign stating that he or she is in agreement with the pursuit of the kinship guardianship arrangement. The consent must also be documented in the progress notes.

Zach* was removed from his mother's home due to her mental health and anger-management issues. Zach was placed with his maternal grandmother who lived in another state. Zach's mother has since had a second child who remains in her care with intensive in-home services. Due to Zach's living out-of-state, the mother does not have regular contact, and a petition to terminate parental rights has been filed. However, the mother is vigorously contesting this petition and wants to maintain parental rights. The grandmother does not want to alienate her daughter by pursuing adoption. KinGAP would allow the family bonds to remain intact and provide permanency for Zach.

*All case stories provided for illustration are based on real cases but use pseudonyms to protect client confidentiality.

Discuss the Appropriateness of Adoption and Guardianship

Careful exploration of different permanency options should help the family make a final determination about which option, adoption with a subsidy or kinship guardianship with the relative receiving kinship guardianship assistance payments, is the most appropriate to pursue for the child in their care. Information about kinship guardianship assistance and how it compares to adoption subsidy can be found in ***New York State's Permanency Comparison Chart*** (Appendix D).

According to federal and New York State statutes, even if the family chooses kinship guardianship over adoption, the social services district must determine that return home or adoption are not appropriate in order for the child to be eligible for kinship guardianship assistance payments.

In addition, the social services district must determine that the kinship guardianship arrangement is in the child's best interests and, in doing so, that there are compelling reasons why return home and adoption are not in the best interests of the child. In making this determination, the social services district should consider one or more of the following:

- A child 14 years or older does not want to be adopted.

SUPERVISORS:

Permission to move forward with guardianship should not be granted until sufficient documentation is provided in the progress notes as to why adoption is not an appropriate permanency option.

- There are no viable grounds for the termination of parental rights and the parents refuse to surrender their rights.
- Related foster parents are opposed to altering family relationships through adoption.
- The birth parents are currently involved and can play an important role in the child's life.

If the decision is made that compelling reasons exist and that adoption is not appropriate, the justification must be clearly documented in the Uniform Case Record, including the Family Assessment and Service Plan (FASP), pertinent court documents, and progress notes.

Examples of additional information that should be documented in progress notes include the following:

- The amount of time the child has been in care.
- Dates and key points from conversations with the related foster parents and child regarding adoption as a permanency option.
- A clear, explicit statement that adoption has been determined to not be an appropriate goal, with a brief explanation that supports this decision. This statement should include the foster parents' and child's perspective on adoption and the determination.
- Statement of the reasons why a permanent placement with a related foster parent through a kinship guardianship assistance arrangement is in the best interests of the child.

Tools to Facilitate the Permanency Discussion

The tools described below are designed to facilitate the permanency planning process with related foster parents. The first two tools provide information about the different permanency options for the related foster parents. Printed copies of these tools should be provided to the relatives at the time of initial placement.

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

This booklet provides an overview of kinship guardianship assistance for related foster parents. The booklet supplements information that can be found in the *Handbook for Relatives Raising Children*. This KinGAP booklet is designed to supplement information that is verbally shared with the relatives, and a copy should be left with them as a reference if they do not already have one. This tool can be found online at <http://www.ocfs.state.ny.us/kinship/kingap.asp>

New York State's Permanency Comparison Chart

This chart provides a comparison between adoption assistance, kinship guardianship assistance and foster care. The tool provides a brief summary of how the different placement options impact key areas, such as parental rights and decision making. The caseworker should review this chart with the related foster parents so that questions and concerns can be addressed. This chart can be found in Appendix D and also as part of the *Know your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP) booklet*.

The next three tools are designed to assist the caseworker in conducting an assessment and gaining an understanding of the related foster parents' perspective through permanency option discussions.

Kinship Guardianship Discussion Questions

This tool contains questions, along with indicators, designed to help the caseworker determine the related foster parents' need for ongoing support from the child welfare system, and to assess the related foster parents' ability to provide a safe, permanent home for the child. Part of this assessment is determining the child's current needs, potential future needs, and the family's ability to meet these needs without ongoing support and supervision from the agency. The caseworker can use the tool's list of questions to guide the discussion. Key information shared by the related foster parents can be recorded in the Notes Section. If the tool is used to record responses from the related foster parents, the form should be included in the Uniform Case Record. This tool is located in Appendix A.

Ecomap KinGAP Tool

The ecomap tool can be used by the caseworker to develop a sense of the related foster parents' formal and informal support networks. This is a crucial aspect of assessing the related foster parents' need for the child welfare system to stay formally involved with the family. The ecomap tool is referenced in the ***Kinship Guardianship Discussion Questions*** (Appendix A). The ecomap should be completed by the caseworker while in the presence of the related foster parents. The caseworker should ask the related foster parents to name all of their support networks that fall into each of the circles. The diversity and accessibility of the related foster parents' support networks may have implications for their ability to meet the child's needs in the future without the formal assistance of the child welfare agency. The ecomap tool can be found in Appendix B.

Factors for Related Foster Parents to Consider When Reviewing Permanency Options

This tool can be used to help related foster parents consider their interests and ability to make a permanent commitment to the child. The related foster parents' answers to the questions will also help the caseworker tailor the permanency discussion to address specific concerns and issues identified by the related foster parents. The answers can be used to help related foster parents make a more informed choice as to whether adoption assistance or kinship guardianship assistance is the more appropriate option for their family to pursue. While the related foster parents are completing the tool, the caseworker should be present to answer questions and provide clarification, as necessary. If used, the completed tool should be filed in the Uniform Case Record and key points from the conversation(s) with the related foster parents should be documented in the progress notes. This tool can be found in Appendix C as well as the ***Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)*** booklet.

The final tool is designed for caseworkers to use in discussions with children who are between 10 and 18 years old to ensure the children understand the various permanency options.

New York State's Child Permanency Comparison Chart

It is important that children have an understanding of kinship guardianship assistance, adoption assistance, and foster care as well as how each option could impact their lives. This tool reviews different topics that are of interest to children, including questions such as, *Who takes care of me? Who gets to make decisions about my care? Will a caseworker still come to visit me?* The chart also explains how the answers to each of these questions differ with adoption assistance, kinship guardianship assistance, and foster care. Although the tool is designed for children ages 10 to 18, not all of the topics will be of interest to younger children. The caseworker should review this chart in person with the child, adding information as necessary. This tool can be found in Appendix E.

Chapter 4:

Workflow for the

Kinship Guardianship

Assistance Program

Learning Highlights from this Chapter:

- ✓ Gain an understanding of the Application for Kinship Guardianship Assistance Program
- ✓ Gain an understanding of the Kinship Guardianship Assistance Eligibility Checklist
- ✓ Become acquainted with the Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement
- ✓ Learn the basics of filing the petition for guardianship
- ✓ Become familiar with the Non-Recurring Kinship Guardianship Expenses Reimbursement Form
- ✓ See how the activities fit together on a KinGAP Timeline

If the related foster parents want to pursue kinship guardianship after all the permanency options have been presented (see Chapter 3), there are four steps that must be completed for a child to exit foster care into the Kinship Guardianship Assistance Program, and one step that follows the exit from foster care. The four steps are critical to successfully completing the transfer of guardianship. The steps are completed in partnership with the caseworker and the related foster parents. The caseworker is responsible for assisting the related foster parents with gaining a full understanding of the Kinship Guardianship Assistance Program, as well as the process by which guardianship is transferred. The steps for participating in the Kinship Guardianship Assistance Program are delineated below. Please make a special note of the *Key Points* demarcated under each step. These points summarize crucial information the caseworker needs to know. Under each step there is also a box that highlights critical information that should be shared with related foster parents. It is recommended that this chapter be reviewed in

conjunction with Kinship Guardianship Assistance Administrative Directive (11-OCFS-ADM-03), which can be found at <http://www.ocfs.state.ny.us/kinship/kingap.asp>.

Step 1: Application for Kinship Guardianship Assistance Program

The purpose of the Application is to provide related foster parents with an opportunity to document their desire to pursue kinship guardianship assistance for the related foster child in their care. It also provides relative foster parents with a means to understand basic program qualifications and criteria. The Application provides the social services district and voluntary authorized agencies a place to document that the child and family meet basic and time sensitive eligibility criteria related to certification/approval; completion of the permanency hearing; completion of the fact-finding hearing, where applicable, and; length of time in care. This form can be found as Attachment B of the Kinship Guardianship Assistance Administrative Directive (11-OCFS-ADM-03) found at <http://www.ocfs.state.ny.us/kinship/kingap.asp>. The Application has an introduction (directed at the related foster parent) and two parts (part 1 to be completed by the related foster parent, and part 2 to be completed by the social services district or the voluntary authorized agency). The Application must be signed by the related foster parents, as well as the youth if he/she is 18 years of age or older.



Key Points for the Caseworker



- Review “*Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)*” with the related foster parent prior to completion of the Application. This booklet can be found at <http://www.ocfs.state.ny.us/kinship/kingap.asp>
- Youth 18 years of age or older must consent to the guardianship arrangement which is shown by his/her signature on the Application. Prior to the youth signing the Application, the caseworker should review with them the New York State’s Child Permanency Comparison Chart (Appendix E)
- The Application must be completed in tandem with Section I, Section II and corresponding pieces of Section VII of the Kinship Guardianship Assistance Eligibility Checklist (see Appendix G).

- The Application cannot be signed and submitted by the related foster parents until the events listed in part 2 of the application have occurred. The “Date of Application” is the date when the related foster parents sign and submit the Application. The 30 day clock for approving or denying the Application starts at the point that the related foster parents sign and submit the Application. Related foster parents have a right to a fair hearing if an Application is not determined by day 30.
- The caseworker from a voluntary authorized agency can disseminate the Application and make a recommendation to the social services district with legal custody of the foster child as to whether it should be approved or denied; however, the social services district is responsible for the final approval or denial of the Application.
- The social services official must notify the related foster parents in writing if the Application is denied. Included in the letter will be the reasons for denial and the related foster parents’ right to a fair hearing. The related foster parents can be informed verbally or in writing if the Application is approved.

Key Times Related Foster Parents have Rights to a Fair Hearing:

- ❖ If a determination is not made within 30 days of the filing of a complete Application.
- ❖ If the Application is denied.
- ❖ If the kinship guardianship assistance payment is discontinued.
- ❖ If a request for an upgrade is denied.
- ❖ If the request for Medical Assistance coverage is denied.

The request for a fair hearing must be made in writing within 60 days after notice of the district’s decision or the failure to make a timely determination. With the exception of the Medical Assistance, the request for a fair hearing must be made to:

*The New York State Office of Children and Family Services, Bureau of Special Hearings
52 Washington Street
Room 322 North Building
Rensselaer, New York 12144-2796*

Fair hearing requests related to Medical Assistance are made to the New York State Office of Temporary and Disability Assistance.

Critical Information to Share with the Related Foster Parents

- ❖ Before completing the Application, the related foster parents should read “*Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGap)*” and have a general familiarity with KinGAP.
- ❖ An Application must be completed for each child for whom the related foster parents are interested in pursuing kinship guardianship assistance.
- ❖ An Application cannot be submitted until the child has completed specific milestones related to eligibility for kinship guardianship assistance:
 - 1) the initial permanency hearing has been completed; and
 - 2) if the child was placed into foster care pursuant to Article 10 of the Family Court Act, the fact-finding has been completed; and
 - 3) the 6 month time in the related foster parent’s home requirement has been met.
- ❖ The Application is not complete unless the related foster parents have signed and submitted the document. If the child is 18 years of age or older, the child must also sign the Application.
- ❖ A designated official from the social services district must approve or deny the Application within 30 days of the filing of a complete Application.
- ❖ If a decision about the Application is not made within 30 days of the filing of a complete application, the related foster parents have the right to request a fair hearing.
- ❖ A decision by the social services district to deny the application can be appealed.

Step 2: Kinship Guardianship Assistance Eligibility Checklist

The purpose of the Kinship Guardianship Eligibility Checklist is to determine and document a child's eligibility for the Kinship Guardianship Assistance Program and to determine if a child's kinship guardianship assistance payment is Title IV-E or Non-Title IV-E reimbursable. The Checklist is located in Appendix G of the KinGAP Practice Guide and instructions for completion are located in Appendix H. These appendices are not part of the Kinship Guardianship Assistance Administrative Directive (11-OCFS-ADM-03). In the future, the Checklist will be incorporated into the Eligibility Manual for Child Welfare Programs, along with the instructions for completion. The Checklist is comprised of seven sections that must be completed by the caseworker or the person designated by the social services district to complete the form. The Checklist must be signed by the caseworker and the caseworker's supervisor. All documentation that backs up the eligibility decision for each factor must be kept with the Checklist, or the Checklist must be annotated with the location of the relevant documentation.

Key Points for the Caseworker



- The caseworker, or other person designated by the social services district, completes the Checklist for each child being considered for KinGAP.
- The Checklist is not completed at one time. Sections of the Checklist are completed at different times in the kinship guardianship assistance process:
 - Section I: Case Information; Section II: Kinship Guardianship Assistance Program Eligibility and; corresponding parts of Section VII: Documentation of the Checklist should be completed in tandem with the Application.
 - Section III: Eligibility for Title IV-E Reimbursement; Section IV: Sibling Exception for Title IV-E Eligibility; Section V: Medical Assistance/Medical Coverage and; corresponding parts of Section VII: Documentation of the Checklist should be completed prior to petitioning the court for letters of guardianship.
 - System Instructions, including system coding, are included as part of Section VI: Eligibility Summary and Signature/Supervisory Review. This Section must be completed after letters of guardianship have been issued.

Critical Information to Share with the Related Foster Parents

- ❖ The related foster parent can find the eligibility criteria for the Kinship Guardianship Assistance Program in "*Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGap)*".
- ❖ The Eligibility Checklist walks through a series of questions that determines whether the child is eligible for the Kinship Guardianship Assistance Program.

Step 3: Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement

The Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement govern the relationship between the social services district and the relative guardians. The Agreement can be found as Attachment C of the KinGAP ADM 11-OCFS-ADM-03 found at <http://www.ocfs.state.ny.us/kinship/kingap.asp>. Both federal and state law requires that payments for kinship guardianship assistance and non-recurring kinship guardianship expenses be made in accordance with a written agreement. There are a number of factors that determine the extent and type of benefits that will be provided. These factors are explained in the Agreement and in Appendix A of the Agreement: the Summary of the New York State Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Programs. The Agreement delineates the benefits to be provided to the child and identifies the provisions affecting the benefits. The Agreement also specifies the circumstances under which the benefits may change or be terminated and whether such changes require a new or amended Agreement. In addition, the Agreement addresses the additional services and assistance for which relative guardians and children are eligible and how relative guardians can apply for such services or assistance. The Agreement is comprised of ten sections and an appendix, the content of which are summarized below:

Section I:

Section I of the Agreement contains child demographic information. It should be completed by the caseworker.

Section II, "Purpose of this Agreement":

Section II explains the purpose of the Agreement and should be reviewed by prospective relative guardians and caseworker.

Section III (A, B and C), "Eligibility for Kinship Guardianship Assistance Payments":

In section III, the caseworker must indicate by checking the appropriate boxes that the child for whom the Agreement is being completed meets all of the eligibility criteria for the Kinship Guardianship Assistance Program. Section III should reflect findings from the Eligibility Checklist and therefore, the caseworker does not need to provide any additional supporting documentation. Please note that the eligibility criteria in the Agreement do not appear in the same order as on the Checklist. As a result, the caseworker should carefully read the criteria before indicating that the criteria are met. The caseworker should use the completion of this form as an opportunity to verify that all necessary supporting documentation has been gathered and appropriately filed.

Section IV, “Eligibility for Federal Kinship Guardianship Assistance Payments”:

In Section IV-A, the caseworker must indicate by checking the appropriate boxes which, if any, of the eligibility criteria for Title IV-E reimbursement is met. Section IV should reflect findings from the Eligibility Checklist and Application and therefore, the caseworker does not need to provide any additional supporting documentation. In Section IV-B, the caseworker must indicate if the child is eligible for Title IV-E reimbursement.

Section V, “Medical Assistance/Medical Subsidy”:

Section V explains medical coverage options for children in the Kinship Guardianship Assistance Program. This section also provides information on how medical coverage is handled if the relative guardians and their families move out-of-state. One of the medical coverage options must be checked on the Agreement. The option should be consistent with the medical coverage option checked on the Eligibility Checklist.

Section VI, “Guardianship Assistance Calculations”:

Section VI is where the caseworker documents the amount of monetary support that the relative guardians will receive for the child. The caseworker must confirm the rate formula used by the social services district before completing this section. The options for calculating the formula are clearly defined on page 15 of the Kinship Guardianship Assistance Administrative Directive (11-OCFS-ADM-03) found at <http://www.ocfs.state.ny.us/kinship/kingap.asp>.

NOTE: Consistent with the adoption subsidy program, when a person assuming guardianship is 62 years old or older, or will be subject to mandatory retirement from present employment within five years of the date of kinship guardianship placement, such person's income must be disregarded in computing annual income.

Section VII, “Adjustment of Kinship Guardianship Assistance Payment”:

Section VII provides an explanation as to how and when a rate might change. There is one blank in the first sentence where the caseworker must insert the name of the county that is responsible for the subsidy payment.

Section VIII, “Non-Recurring Guardianship Expenses”:

Section VIII provides an explanation of the expenses associated with obtaining the letters of guardianship that qualify as non-recurring expenses. The caseworker must indicate by checking one of the three boxes, the status of the relative guardians’ eligibility and/or desire for reimbursement.

Section IX, “Prospective Relative Guardian(s) Signature”:

Section IX informs the prospective relative guardians as to when they need to notify the social services district of any change in status. This section must be read and signed by the prospective relative guardians prior to the transfer of guardianship. When the prospective relative guardians sign the form

they are attesting to the fact that they have received and read “The Summary of the New York State Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Program.”

Section X, “Social Services District Signature”:

The Commissioner or designated social services official must sign the Agreement.

Appendix A, “The Summary of the New York State Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Program”:

Appendix A is a summary of the Kinship Guardianship Assistance Program. Caseworkers should review the summary with prospective relative guardians before they sign the Agreement. The summary provides the prospective relative guardians with critical information related to the legal authority of the program, general provisions governing the Agreement, available monetary supports and services, medical benefits, obligations of the relative guardians to the child and state, the conditions under which an agreement can be terminated, information on the non-recurring guardianship expenses program and the process for fair hearings.

Key Points for the Caseworker



- The Agreement constitutes a contract between the prospective relative guardians and the social services district, subject to federal law, the laws of the State of New York and the regulations of the Office of Children and Family Services (OCFS).
- Related foster parents cannot be denied kinship guardianship assistance payment based on their household income, but depending upon the rate decision made by the social services district, the amount of income and family size may be factored into the amount of the payment.
- Adoption subsidy and kinship guardianship assistance payments must be calculated using the same formula as determined by the social services district. NOTE: As with the calculation of the monthly payment for adoption subsidy, when a person assuming guardianship is 62 years old or older, or will be subject to mandatory retirement from present employment within five years of the date of kinship guardianship placement, such person's income must be disregarded in computing annual income.
- Detailed information about the medical assistance/medical coverage available to children who are receiving kinship guardianship assistance payments can be found in Appendix H of this guide or in the Kinship Guardianship Assistance Administrative Directive (11-OCFS-ADM-03) found at <http://www.ocfs.state.ny.us/kinship/kingap.asp>.
- The caseworker should inform the prospective relative guardians of the duration of the Agreement.
- The caseworker should review Appendix A of the Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement with the prospective relative guardians including the

following: legal authority, monetary and monthly support, medical benefits, obligations of the guardian, termination of the subsidy, and the right to request a fair hearing.

- The caseworker should complete the Agreement and review the content with the prospective relative guardians.
- The prospective relative guardians have a right to consult with an attorney to review the Agreement. The caseworker should notify the prospective relative guardians of this right before they sign the Agreement.
- The Agreement must be signed by all parties prior to the issuance of the letters of guardianship by the court. Therefore, the Agreement should be signed by all parties before petitioning the court for guardianship under KinGAP law.
- This Agreement will take effect when:
 - it is completed and signed by the prospective relative guardians and the appropriate social services district official AND
 - the court issues letters of guardianship to the prospective relative guardians on behalf of the child named in the Agreement.
- The caseworker should inform the prospective relative guardians about the need to respond timely to the annual request for information from the social services district, by fully completing the certification form, signing it and providing all necessary documentation.
- The caseworker should explain to the prospective relative guardians their right to request an amendment and the process by which an amendment to the Agreement is requested.
- Caseworkers should inform prospective relative guardians of their rights to a fair hearing in relation to the initial rate, subsequent requests for amendments, and the termination of the Agreement.
- The prospective relative guardians must be given a signed copy of the final Agreement.

Critical Information to Share with the Related Foster Parents

- ❖ The Agreement is the contract that governs the relationship between the relative guardians and the social services district.
- ❖ Although related foster parents won't be denied kinship guardianship assistance payments based on their income, the amount of their income, along with their household size, may impact the amount of assistance payment that the child is eligible to receive. When a person assuming guardianship is 62 years old or older, or will be subject to mandatory retirement from present employment within five years of the date of kinship guardianship placement, such person's income must be disregarded in computing annual income.
- ❖ Prospective relative guardians have the right to consult with an attorney to review the Agreement.
- ❖ Prospective relative guardians should not sign the Agreement until they have a comprehensive understanding of their rights and responsibilities as defined in Appendix A of the Agreement called, "The Summary of the New York State Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Program".
- ❖ The Agreement does not go into effect until it is signed by all parties and the letters of guardianship are issued by the court.
- ❖ Prospective relative guardians must receive a copy of the final signed Agreement and should store it in a safe place for future reference.
- ❖ If related guardians are not satisfied with the initial rate determination, subsequent requests for upgrades or termination of the Agreement, they have the right to a fair hearing.
- ❖ The Agreement will remain in effect regardless of the state of residence of the relative guardians throughout the duration of the Agreement.
- ❖ The prospective relative guardians should understand the duration of the kinship guardianship assistance payments. A child is eligible for kinship guardianship assistance payments up to the age of 18, or up to the age of 21 where the child attained the age of 16 before the KinGAP Agreement became effective and the child is either:
 - (1) completing secondary education or a program leading to an equivalent credential;
 - (2) enrolled in an institution that provides post-secondary or vocational education;
 - (3) participating in a program or activity designed to promote, or remove barriers to employment;
 - (4) employed for at least 80 hours per month; or
 - (5) incapable of doing any of the activities described in items 1–4 due to a medical condition, which incapacity is supported by regularly updated information provided by the relative guardian(s) and recorded in the child's eligibility file.
- ❖ The prospective relative guardians will need to respond timely to the annual request for information from the social services district, by fully completing the certification form, signing it and providing all necessary documentation.

Step 4: Filing the Petition

The legal process for transfer of guardianship should not be initiated until Steps 1-3 have been completed. It is the responsibility of the prospective relative guardians or their attorneys to file the petition for guardianship. Prospective relative guardians can file the petition pro se (on their own) or they can hire a private attorney to file the petition. Locating and hiring an attorney is the prospective relative guardians' responsibility.

Key Points for the Caseworker



- The decision by the prospective relative guardians and the social services district to enter into the KinGAP Agreement does not mean that the prospective relative guardians have assumed legal guardianship of the child. The prospective relative guardians do not become guardians until the court issues the letters of guardianship.
- The court is not required to grant guardianship because there is an Agreement. The determination and decision of whether to grant a petition for guardianship is solely within the discretion and authority of the court.
- The caseworker should not recommend a particular attorney, but can direct prospective relative guardians to offices and associations for legal referrals.
- Where the foster child has a proceeding before the Family Court pursuant to Article 10 or 10-A of the Family Court Act, the petition for guardianship must be filed with that Family Court. For other categories of foster children, the guardianship petition may be filed in either the Family Court or the Surrogate's Court.
- The court may approve the petition for guardianship whether or not the birth parents consent to the court transferring guardianship of their child to the prospective relative guardians.
- The court is charged with the responsibility of determining whether appointing the related foster parents as guardians is in the child's best interests.
- Once court proceedings are complete and the petition is granted, the relative guardians should receive a copy of the letters of guardianship.
- If the relative guardians seek to modify the terms and conditions of the court order that granted the letters of guardianship or vacate the letters of guardianship, the relative guardians should return to the court that originally granted the letters of guardianship.
- In any subsequent court proceeding involving the issue of the custody or guardianship of the child, the social services district named in the KinGAP Agreement and the child's attorney must be given notice and are a party to such proceeding.

Critical Information to Share with the Related Foster Parents

- ❖ The related foster parents are responsible for filing the petition for guardianship. They can do it pro se or hire a private attorney.
- ❖ The court makes the final decision as to whether letters of guardianship will be issued.
- ❖ If the relative guardians seek to modify the terms and conditions of the court order that granted the letters of guardianship or vacate the letters of guardianship, the relative guardians should return to the court that originally granted the letters of guardianship.
- ❖ The social services district and attorney for the child will be given notice of any future court proceeding involving the custody or guardianship of the child and are parties to the proceeding.

Step 5: Non-Recurring Kinship Guardianship Expenses Reimbursement Form

Prospective relative guardians who have been approved by the social services district to receive kinship guardianship assistance payments are also eligible to receive funding to cover non-recurring guardianship expenses once the letters of guardianship are issued. Non-recurring guardianship expenses include costs, up to a maximum of \$2,000 per child, that are directly associated with the transfer of guardianship of a foster child such as attorney's fees and court costs. The Non-Recurring Kinship Guardianship Expenses Reimbursement Form can be found in Attachment J of the Kinship Guardianship Assistance Administrative Directive (11-OCFS-ADM-03), which can be found at <http://www.ocfs.state.ny.us/kinship/kingap.asp>.

Key Points for the Caseworker



- To be approved by the social services district expenses must be:
 - Non-recurring
 - Reasonable and necessary
 - Not reimbursable by other sources
 - Not in violation of federal law or the laws of New York State or any other state
- Non-recurring guardianship expenses will be processed similarly to non-recurring adoption expenses. The payments must be made by the social services district either to the relative guardians

or to an attorney on behalf of the relative guardians for the allowable amount of non-recurring guardianship expenses incurred directly in connection with obtaining guardianship.

- Claims must be submitted to the social services district using the Non-Recurring Kinship Guardianship Expenses Reimbursement Form and attaching necessary documentation (see Attachment J in the Kinship Guardianship Assistance Administrative Directive (11-OCFS-ADM-03) found at <http://www.ocfs.state.ny.us/kinship/kingap.asp>).
- The terms and conditions for payment of these expenses must be reflected in the Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement.
- Non-recurring guardianship expenses must be submitted within **two years** of the issuance of the letters of guardianship to be reimbursed.
- Relative guardians are responsible for submitting documentation of the expenses.
- Payment is made on a one-time basis.
- Payment will not be made if letters of guardianship are not issued.
- The social services district is responsible for review, approval and reimbursement of non-recurring guardianship expenses.
- Prospective relative guardians can check on the KinGAP Agreement that they do not want to apply for non-recurring guardianship expenses.
- Regardless of whether the child is IV-E eligible, the approved non-recurring guardianship expenses can be paid.
- The case must be open/active on WMS so that the appropriate program and administrative costs are authorized and reimbursed by the federal government.
- Authorize purchase of service (POS) code type “ K1 “ for all non-recurring kinship guardianship assistance expenses.

Critical Information to Share with the Related Foster Parents

- ❖ The attorney fees along with other non-recurring costs associated with obtaining guardianship can be reimbursed up to \$2,000 per child.
- ❖ Expenses for non-recurring fees must be claimed by the relative guardians within **two years** of letters of guardianship being issued.
- ❖ Supporting documentation must be attached along with the Non-Recurring Kinship Guardianship Reimbursement form in order to receive reimbursement.
- ❖ With proper documentation the money for the attorney can be reimbursed to either the relative guardians or directly to the attorney.

KinGAP Timeline

This timeline is meant as a general guide for the LDSS or voluntary agency to the key steps in the KinGAP process. The timeline gives a visual outline of the steps and when they occur in the workflow of a KinGAP case. Steps apply to the LDSS unless otherwise noted. Some steps may be taken by the voluntary agency under direction of the LDSS with custody of the child. For more detail on the steps represented on this timeline, please consult other sections of this Practice Guide and KinGAP ADM (11-OCFS-ADM-03).

Notification to relatives of removal of child and care options

- Provide relatives with notification of child's removal within 30 days.
- Give relatives "Having a Voice and Having A Choice" and "Know Your Permanency Options: The Kinship Guardianship Assistance Program."
- Have a discussion with relatives about placement options (review booklets listed above).

Child is placed in a fully certified or approved foster home with a person(s) to whom they are related by blood, marriage or adoption

Engage family in permanency discussions

- Focus on reunification with birth parents first.
- Familiarize family members with all permanency options in the event that reunification cannot be achieved.
- If reunification is determined not to be an appropriate permanency goal for the child, document the decision and reasons.

Engage family in discussions after reunification has been determined not to be appropriate

Once reunification is determined not to be appropriate, have discussions with the related foster parents, birth parents, if appropriate, and child (age-appropriate). The following discussions can be done together, concurrently or sequentially, depending on case circumstances.

Discussions with related foster parents

- Assess the related foster parents' desire and capacity to be a permanency resource.
- Related foster parents should understand the permanency options and differences between adoption and KinGAP.
- Document conversations with related foster parents regarding permanency options.

Discussions with birth parents, if appropriate

- Birth parents should understand the permanency options and differences between adoption and KinGAP.
- Getting the birth parents to participate in decisions about permanency can help facilitate the entire process.
- Document conversations with birth parents regarding permanency options.

Discussions with child, as age appropriate

- Age appropriate consultation should take place with child on adoption and KinGAP.
- For KinGAP, consultation is mandatory for children 14 years of age or older.
- For KinGAP, youth 18 years of age or older must consent to the kinship guardianship assistance arrangement.
- For adoption, children 14 years of age or older must consent.
- Document conversations with child regarding permanency options.
- Have a discussion with the child using, "A Permanency Option for Youth Living with a Related Foster Parent: Kinship Guardianship Assistance Program (KinGAP)".

If return home is not appropriate and related foster parents want to be a permanency resource

- Explore further with the related foster parents both adoption and guardianship (see Chapter 3).
- The assessment tool *Factors for Related Foster Parents to Consider When Reviewing Permanency Options* can help to facilitate this conversation.
- Engage key stakeholders in permanency decisions, such as therapists, medical providers, etc.
- If Kinship Guardianship Assistance is the desired option, document compelling reasons why reunification and adoption are not in child's best interest.
- Continue to document conversations with related foster parents.



Make sibling placement determination for KinGAP

- Have conversation with related foster parents about accommodating siblings in a kinship guardianship arrangement, if applicable.
- Document reasons for any separation of siblings.



The related foster parents make the decision to become a kinship guardian through KinGAP



Key timeframes must be met before the prospective relative guardians submit an application for KinGAP

- The child has been in foster care with the prospective relative guardians for at least 6 consecutive months, during which time the relative was fully approved or fully certified as a foster parent during the entire period; AND
- The fact finding hearing has been completed for a child who was placed into foster care pursuant to Article 10 of the Family Court Act ; AND
- The child's initial permanency hearing has been completed for any child in foster care.



The prospective relative guardians meet timeframes and submit KinGAP application

- Within 30 days of receiving a completed application filed by the prospective relative guardians, make a determination as to whether to approve or disapprove the application for KinGAP.
- Complete Section I, II and the corresponding sections of section VII of the Eligibility Checklist in tandem with the Application.



Make the eligibility determination



Make the decision to approve or deny the KinGAP application

- If the application is approved, complete the Kinship Guardianship Assistance Eligibility Checklist for each child being considered for KinGAP, except for section VI.
- If the application is denied, the prospective relative guardians must be notified of the denial in writing.



If the application is approved, complete the Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement with the prospective relative guardians

- Prospective relative guardians and/or their attorney should review Agreement prior to signing.
- The Agreement must be signed by the prospective relative guardians and the designated social services official within the LDSS before the letters of guardianship are issued.



The prospective relative guardians or their attorney petitions the court for letters of guardianship

- The court makes a decision as to whether to issue letters of guardianship to the prospective relative guardians.



If petition is approved, letters of guardianship are awarded by the court to the relative guardians

- The child is discharged from foster care and the LDSS is relieved of all responsibility for supervision of the child.
- Complete section VI of the Kinship Guardianship Assistance Eligibility Checklist.
- Close the services case (or end-date the child) – CONNECTIONS, CCRS, WMS.
- Open assistance (payment) case to initiate kinship guardianship assistance monthly check and open the MA case, if applicable.



The relative guardians submit non-recurring guardianship expenses reimbursement

- The request must be submitted within two years of being issued letters of guardianship.
- The request is submitted to the designated LDSS, along with documentation to verify the expenses.
- Review and reimburse approved non-recurring expenses.



Send the relative guardians the annual notification and certification form until such time that the youth is age 18, or if he/she moves to guardianship at age 16 or older, to age 21

- Review certification form for acceptability; follow up on unacceptable certification or non-receipt of certification.
- At age 18 or 21, guardianship ends; close the assistance (payment) case.
- Notify the relative guardians of the end of kinship guardianship assistance payments.

Chapter 5: Administrative Readiness Steps to Implement KinGAP

Learning Highlights From This Chapter:

- ✓ Identify critical decision points for implementation of KinGAP in social services districts and voluntary authorized agencies
- ✓ Identify components of the program for which local policy and procedures need to be developed

Although the KinGAP Administrative Directive (11-OCFS-ADM-03) provides comprehensive information and guidance to social services districts and voluntary authorized agencies about the Kinship Guardianship Assistance Program, there are several administrative decisions that must be made at the local level to ensure the successful implementation of KinGAP. This chapter delineates critical decision points that administrators must consider when developing local KinGAP policies and procedures.

Notice and Information about KinGAP

Social services districts are responsible for notifying all related foster parents about KinGAP. This includes relatives currently caring for foster children, as well as relatives who are identified as potential caregivers after a child is removed from his/her home. The critical decision points listed below should be considered by social services districts to assist in making this process run smoothly.

- Develop and implement a process for identifying and notifying adult relatives within 30 days of a child's removal and presenting them with the placement options. Verbal or written notification is acceptable, although written notification is strongly encouraged.

- Determine whether the social services district will use the model KinGAP relative notification letter found at www.ocfs.state.ny.us/kinship/kingap.asp or create a letter unique to their district.
- Develop a plan to disseminate information on KinGAP to related foster parents, including the distribution of “*Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)*”; also found at www.ocfs.state.ny.us/kinship/kingap.asp. This should be given to the related foster parents in tandem with “*Having a Voice and a Choice: NYS Handbook for Relatives Raising Children.*” This handbook is found at <http://www.ocfs.state.ny.us/kinship/Resources.asp>
- Modify the foster parent training curriculum to incorporate information on the availability and eligibility of requirements for KinGAP.
- Develop a plan for reviewing foster care caseloads to identify all children currently placed with related foster parents and to present them in person with information on KinGAP.

Application for Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Program

Social services districts or voluntary authorized agencies must provide information to the related foster parents on how to access the Application for Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Program; found at

www.ocfs.state.ny.us/kinship/kingap.asp. The social services districts and



voluntary authorized agencies are integral in the process associated with the completion and review of the Application. The critical decision points listed below should be considered by social services districts and voluntary agencies to assist in making this process run smoothly.

- Determine whether the social services district will use the State Application or whether the district will create its own Application. If the decision is made to create a unique form, it must be approved by OCFS prior to implementation. Voluntary agencies should check with the social services district with which they have a contract, about this form.
- Determine the process by which relatives will access the Application.
- Identify staff who are responsible and have the authority to complete part II of the Application.
- *If applicable*, identify the voluntary agency representative who will be responsible for making a recommendation to the social services district with legal custody of the child as to whether to approve or deny the Application.

- Identify the social services district representative who will be responsible for reviewing and approving/denying the Application. The representative will also be responsible for reviewing Section II: Kinship Guardianship Assistance Program Eligibility of the Eligibility Checklist, which should be completed in tandem with the Application.
- The review and determination of the Application must be completed within 30 days of receiving a completed Application filed by the prospective relative guardians. A process will need to be developed to track the time period so decisions are made timely.
- Develop a process for the social services district to notify the caseworker and/or voluntary agency (if applicable) of the approval or denial of the Application.
- Develop a process for the social services district or voluntary authorized agency to notify the related foster parent of the approval of the Application.
- Identify the process for notifying the related foster parents of the denial of the Application including sending and signing the KinGAP Fair Hearing Notice: Denial, which includes information on the related foster parents' right to a fair hearing. This denial notice can be found at www.ocfs.state.ny.us/kinship/kingap.asp.

Eligibility

The social services districts assume full responsibility for determining eligibility for the Kinship Guardianship Assistance Program. However, if a voluntary agency has responsibility for the case, the agency serves a key role in gathering / documenting and sharing the information with the social services district that serves to verify that the eligibility criteria have been met. OCFS release 11-OCFS-ADM-03 contains specific information about eligibility. It is critical that the social services districts adhere to the eligibility criteria as they develop local processes for review and approval of the eligibility checklist. The critical decision points listed below should be considered by social services districts as they develop a process for determining eligibility.

- Determine staff responsible for completing each section of the eligibility checklist.
- Determine which staff are responsible for worker and supervisory sign off in Section VI.
- Determine process for creating a separate eligibility file for each KinGAP child with supporting documentation.
- Designate a staff person to determine, for non-qualified immigrant children, the availability of affordable health insurance.

- Determine what staff will have access to child’s initial foster care eligibility file (necessary to support IV-E for KinGAP).
- Determine staff that will have access to the related foster parents’ files (including CONNECTIONS FAD record) to verify criminal history record check results, SCR/out-of-state database check results, and certification / approval history.

Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement

Because the Agreement is a legal document between the social services district and the relative guardians, it is critical that social services districts and voluntary authorized agencies implement the Agreement in a planned process. The critical decision points listed below should be considered by social services districts and voluntary authorized agencies as they develop a process for reviewing and approving the Agreement.

- Designate staff responsible for completing and reviewing the Agreement with the prospective relative guardians. This may include staff from voluntary agencies if they have responsibility for the case.
- Determine whether the Agreement will be signed by Commissioner of the social services district or a designee. If designee, specify the person.
- Determine which formula option (100% of foster board rate -“A” counties- or 75%-100% -“B” counties) will be used by the social services district to determine kinship guardianship assistance payments. The option chosen must be the same as is in effect for adoption subsidies.
- Develop the capacity to make rate determinations for kinship guardianship assistance. For “B” counties, consider calling upon adoption staff with that responsibility to serve in making the KinGAP calculation, or coaching new workers about the process.
- Develop procedures with the social service district’s Medical Assistance unit for continuing the child’s Medical Assistance.
- Establish links with the Medical Assistance unit to determine if a non-qualified immigrant foster child is covered by Child Health Plus (CHP).
- Designate staff responsible for determining medical assistance options for non-IV-E children placed out of state.

Systems Implications after the Letters of Guardianship have been Issued

Once the letters of guardianship have been issued, it is critical for the social services districts to update the data systems to reflect the change in case status. The critical decision points listed below should be considered by social services districts as they review system implications after guardianship is transferred.

- Determine who will enter relevant data into the data systems, including closing the WMS/CCRS/CONNECTIONS service case, or end dating the child; and opening the Kinship Guardianship Assistance payment case in WMS, once the letters of guardianship have been issued (including encoding eligibility, and direct and POS service code entries).
- Develop a process for reviewing and approving nonrecurring guardianship expenses in the social services district and authorizing the payments.

Requests for Upgrades and Amendments to the Agreement

Certain circumstances may allow the original Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement to be amended. Relative guardians may apply for an upgrade to the Agreement or for a change in the type of medical coverage that is provided to the child. (For example: A relative guardian who used his or her own health insurance to cover the child loses coverage, and the child will consequently receive coverage through Child Health Plus or Medical Subsidy.) The critical decision points listed below should be considered by social services districts as they develop local processes for handling upgrade requests and amendments to the Agreement.

- Designate the personnel to whom the relative guardians can apply for an upgrade to the amount of kinship assistance payment they receive or to change the child's medical coverage. The relatives need to be informed of how and to whom to apply.
- Determine the process social services districts will use to evaluate the child's needs for an upgrade of the amount of the kinship guardianship assistance payment, keeping in mind the standards provided in 18 NYCRR 427.6 (c) and (d) are to be used in order to make the determination whether an upgrade is warranted.
- Determine the process the social services district will use in evaluating a request to change the child's medical coverage.
- Designate the process and personnel for approving or denying the requests for upgrades to the kinship guardianship assistance payment or a change to the child's medical coverage.

- Determine the process for notifying relative guardians about the status of the request for an upgrade of the kinship guardianship assistance payment or a change to the child’s medical coverage as approved or denied.
- Determine who will sign and send the KinGAP Fair Hearing Notice: Denial of Upgrade to the relative guardian.
- Determine the process for amending the Agreement and making system changes when an upgrade is approved, or there is a change in medical coverage.

Kinship Guardianship Annual Notification Letter



The social services district is responsible for sending out an annual notification to relative guardians reminding them of their continued obligation to support the child for whom they receive kinship guardianship assistance payments and that they must notify the social services district if they no longer provide any support, as defined in OCFS regulations or are no longer legally responsible for the support of the child. In addition, the relative guardians, depending on the child’s age, must provide annual certification and documentation of the child’s educational and/or employment status. The critical decision points listed below should be considered by social services districts as they develop a process for sending and tracking annual notification letters, and receipt of the certification and documentation.

- Develop a process for the annual notification including, but not limited to creating an annual notification letter or using the OCFS model letter that can be found at <http://www.ocfs.state.ny.us/kinship/kingap.asp>, sending the letter, tracking the return, and recording certification and documentation sent by the relative guardians.
- Designate a person within the social services district responsible for entering an Anticipated Future Action code in WMS to assist with the annual notification process.
- Designate a person to follow up with the relative guardians when they do not reply to the annual notification after several attempts by mail or do not provide the certification and documentation information as requested.
- Identify staff that will be responsible for meeting with relative guardians when an in-person meeting has been requested or is warranted.
- Determine a process for handling late submission of documentation, including starting, suspending or stopping the guardianship assistance payments.

- Determine a process for recording changes in status identified by the relative guardians in the certification form.
- Designate a person to follow up with relative guardians when the certification form has information that may impact kinship guardianship assistance payments.
- Determine process for sending KinGAP Fair Hearing Notice: Discontinuance if the child no longer qualifies for the kinship guardianship assistance payments.

Fair Hearings



Fair hearings can be requested by the related foster parents for the denial of an Application and the failure to approve a completed Application within 30 days of filing with the social services district. Furthermore, relative guardians can request a fair hearing for the discontinuance of payment or the denial of a request for upgrade. The critical decision points listed below should be considered by social services districts as they develop a process for fair hearings related to KinGAP.

- Determine which staff will be required to attend the fair hearings.
- Inform OCFS of the location where the hearings will be held on their premises.
- Inform OCFS of a local district contact name, email and phone number to which scheduling information should be sent.
- Determine relevant documentation needed to justify a denial.
- Determine who will produce documents for the fair hearing.

Independent Living Services and Education and Training Vouchers

Children who leave foster care and enter guardianship at 16 years of age or older are eligible for independent living services and education and training vouchers. The critical decision points listed below should be considered by social services districts to provide this information to eligible youth so they are aware and able to access these services.



- Determine how eligible children in kinship guardianship arrangement will be informed of independent living services and invited to participate.
- Determine the process for youth to request and receive independent living services.
- Determine how eligible children in kinship guardianship will be informed of education and training vouchers.
- Determine the process for youth to apply for and receive education and training vouchers.

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 (IV-D) is to be notified of the discharge. Orders of child support and/or medical support payable to social services district 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 guardians 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 guardians' income, including the guardianship assistance payments, has no bearing on any order made to award the relative guardians such support. The critical decision points listed below should be considered by social services districts as they communicate with Child Support Enforcement and with the relative guardians about this subject.

- Determine the process for notifying the Child Support Enforcement Unit when a child with an existing child support or medical support is discharged to a kinship guardianship arrangement.
- Notify the relative guardians about their options regarding seeking support from the child's parents.

Terminating the Kinship Guardianship Assistance Due to the Child's Age

The kinship guardianship assistance payments will continue until the youth reaches the age of 18 or 21. The duration of the assistance payments depends on the age of the child when the KinGAP Agreement became effective, if the relative guardian is still legally responsible for the support of the child and is supporting the child, and whether the child meets certain educational/employment criteria (criteria listed in Chapter 4). The critical decision points listed below should be considered by social services districts as they develop a process for tracking existing kinship guardianship assistance payments.

- Determine the process for tracking the ages of the children receiving kinship guardianship assistance payments so that they can be terminated, as appropriate.
- Determine the process for recording the end date of the kinship guardianship assistance and the reason for the termination of the kinship guardianship assistance payments in the appropriate systems.
- Develop the process for notifying the relative guardians of the termination of the kinship guardianship assistance payments due to the child's age.
- Develop the process for closing the kinship guardianship assistance case.

APPENDIX A

Kinship Guardianship Discussion Questions

| Assessment Questions | Indicators | Caseworker Notes |
|---|--|------------------|
| <p>1. What is the foster parent’s understanding of the child’s needs? Is the foster parent prepared to meet those needs in the absence of agency support?</p> | <p>List all of the needs that were identified for the child. If the child has, for example, ongoing counseling needs, is the foster parent prepared to drive the child to the appointment and work with the therapist? If, for example, the child has special educational needs, is the foster parent prepared to advocate for the child’s needs with the school, attend regular teacher parent meetings and see that the child has the services in place that will help him/her succeed? The foster parent must be able to express that he/she is willing and able to meet the child’s needs without agency support. Indicators could be the foster parent’s cooperation with service providers and their ability to identify the child’s needs and seek appropriate interventions.</p> | |
| <p>2. Does the foster parent have access to supports that strengthen the family unit?</p> | <p>Foster parent can identify and access formal and informal support networks. Indicators would be the foster parent knowing where to obtain services within the community and/or having a robust informal support network. An ecomap found in the Appendix B of this Practice</p> | |

APPENDIX A

| Assessment Questions | Indicators | Caseworker Notes |
|--|---|-------------------------|
| | <p>Guide can be used by the caseworker as a tool to obtain this information.</p> | |
| <p>3. Has the foster parent already done a good job at addressing the child's needs?</p> | <p>Review the uniform case record to determine if the foster parent has been able to identify and meet the child's needs over time. Assess how much the foster parent relies on the caseworker to identify resources for the child, handle the logistics related to connecting the child with services and following up on recommendations related to the child's needs. This will be particularly important for children with high risk behaviors such as aggression, sexual reactivity and truancy.</p> | |

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| Assessment Questions | Indicators | Caseworker Notes |
|---|---|-------------------------|
| <p>4. Do the family dynamics in the home support the child's continued recovery from the situation(s) that brought him/her into care?</p> | <p>The growth and improvement that the child has shown while in the placement support a conclusion that it is meeting the child's need for support in recovery.</p> | |
| <p>5. Is the foster parent providing a nurturing environment for the child?</p> | <p>Look at the manner in which the foster parent interacts with the child and the level of caring/nurturing that he/she provides both verbally and behaviorally. Assess the growth that the child has experienced socially, emotionally, physically and educationally since being placed in the home.</p> | |

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| Assessment Questions | Indicators | Caseworker Notes |
|---|---|------------------|
| <p>6. Is the foster parent willing and able to protect the child from abuse/maltreatment?</p> | <p>The foster parent is aware of the issues that brought the child into the formal child welfare system and is cognizant of the risks associated with the birth parent(s) care of the child. Foster parent does not blame child for abuse/maltreatment that he/she may have received from the birth parent(s) and is able to provide appropriate boundaries to protect the child. If there is a visiting plan with the birth parent(s) the foster parent feels confident in his/her ability to adequately supervise the visits.</p> | |
| <p>7. Any multi-generational risk factors that exist within the family do not impede the foster parent's ability to provide a safe, permanent home for the child.</p> | <p>Review any multigenerational risk factors that exist within the family and assess the foster parent's role. Confirm that the foster parent is aware of these risk factors and has stated that they will not impact his/her ability to care for the child.</p> | |

APPENDIX A

| Assessment Questions | Indicators | Caseworker Notes |
|---|--|------------------|
| <p>8. Will the foster parent's health status permit him/her to care for the child for the foreseeable future?</p> | <p>Discuss the foster parent's relevant health issues and observe their current ability to meet the needs of the child. Rely on the foster parent's self report except if there are health conditions that may impact the placement. If there are significant health issues it might be beneficial to get additional information from the foster parent's doctor.</p> | |
| <p>9. Does the foster parent have a plan for the child in the event that he/she is no longer able to care for the child due to health related issues?</p> | <p>This issue will be especially important if the foster parent is older and/or if the foster parent already has significant health issues. The caseworker needs to discuss this issue and see if the foster parent is able to develop a solid plan to care for the child long term in the event that he/she is no longer able to do so. This issue will be important when looking at the differences between adoption and KinGAP.</p> | |

APPENDIX B

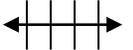
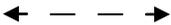
ECOMAP KinGAP Tool

Directions:

The ecomap helps to obtain a visual picture of the related foster parent's formal and informal connections/supports along with tensions with systems outside of the nuclear family. The ecomap should be completed with the related foster parent. The caseworker will need to provide a brief explanation of the intent of the tool along with examples of items that could fit within each of the circles. Additional circles can be added to the ecomap as needed.

The circle at the center of the page should include the names and ages of everybody in the related foster parent's nuclear family. All the other circles contain systems to which the family may have a connection. Brief information about each of the systems should be written inside the circle. A line is then drawn, using the legend below, between the foster parent circle and all other circles containing systems.

Legend:

-  Reflects a positive connection
-  Reflects a strained connection
-  Reflects a negative connection
-  Reflects a connection that only goes one way

Work

Health Care

School

Extended Family

Church

FAMILY

Birth Family

Recreation

Friends

Neighborhood

Other

ECO-MAP

Name: _____

Date: _____

LEGEND:

-  Positive Connection
-  Strained Connection
-  Negative Connection
-  Connection goes one way

APPENDIX C

Factors for Related Foster Parents to Consider
When Reviewing Permanency Options

Directions for the Related Foster Parent:

Please complete this tool in the presence of the child’s caseworker so your response to each statement can be discussed with and clarified by the caseworker. Use this tool when a determination has been made to focus on a permanency option for the child other than reunification.

The tool is designed to help both you and the caseworker think about permanency options that best meet the needs and circumstances of both your family and the child. Give the completed tool to the caseworker so it can be included in the child’s uniform case record. You also should have a copy for your own records.

Table with 3 columns: Statement, YES, NO. Contains 13 numbered statements for evaluation.

If you responded “Yes” to all statements, you should discuss adoption with the child’s caseworker.

If several of your answers are “No,” discuss other permanency options for the child with the child’s caseworker.

If your answer to Statement 13 is “No,” discuss your reasons with the child’s caseworker. If you answered “No,” but still want to achieve

permanency for the child, discuss the Kinship Guardianship Assistance Program (KinGAP) with the child’s caseworker.

With your input, the child’s caseworker, his/her supervisor, and the local social services district or the New York City Administration for Children’s Services will determine whether adoption or kinship guardianship assistance will best meet the child’s needs.

APPENDIX D

NEW YORK STATE'S PERMANENCY COMPARISON CHART

Adoption Assistance, Kinship Guardianship Assistance, and Foster Care

Relatives who adopt or assume guardianship under the kinship guardianship assistance program are making strong commitments to children. Adopting a child is a commitment that lasts for a lifetime. Although guardianship legally ends when the child reaches adulthood, guardians should enter into this commitment intending it to be a lifelong relationship as well. This tool is designed to help caseworkers and prospective relative guardians compare the options of adoption assistance, kinship guardianship assistance, and foster care.

| NEW YORK STATE COMPARISON CHART | | | |
|---|--|---|--|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| Legal Rights and Responsibilities of the Caregiver | <p>The adoptive parents are given all the rights and responsibilities that once belonged to the birth parents.</p> <p>When the adoptive parents are married, both spouses must adopt, unless they are legally separated or have been physically separated for three years. Adoptive parents may also be single parents or unmarried partners adopting together.</p> <p>Adoption is expected to be a permanent, lifelong, legal relationship.</p> | <p>The relative guardians are given legal responsibility for the child and assume the rights of care, control, and supervision of the child.</p> <p>When the guardians are married, either one or both spouses may be named as a guardian. Relative guardians may also be single parents. If guardians are unmarried partners, both must be related to the child for both partners to be eligible for kinship guardianship assistance payments.</p> <p>Though guardianship often results in a lifetime relationship, the letters of guardianship end when the child turns 18 or 21, depending on whether the child consents to continuation of the kinship guardianship arrangement until he/she reaches 21 years of age.</p> <p>Relative guardians who have been appointed as “permanent” guardians may consent to the child’s adoption by someone else. (Permanent guardianship may be granted by the court for a child who is freed for adoption or orphaned).</p> | <p>The foster parents share some parenting rights with DSS/ACS/ Voluntary Agency (VA); however, the Commissioner of DSS/ACS retains the care and custody or custody and guardianship of the child. Foster parents may not consent to medical care for the foster child and must obtain DSS/ACS permission for certain other activities such as out of state travel with the child.</p> <p>Foster parents can be married, single parents or unmarried partners.</p> <p>Though foster care can result in a lifetime relationship, the relationship usually ends or significantly diminishes when the child is no longer in the foster home. DSS/ACS can remove the child from the foster parents’ home with prior notice or without prior notice, if the health or safety of the child requires immediate removal.</p> |

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| NEW YORK STATE COMPARISON CHART | | | |
|--|---|--|---|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| Birth Parents' Parental Rights | The birth parents' rights must be voluntarily relinquished (surrendered) or involuntarily terminated for the child to be adopted. | <p>The birth parents' rights may or may not be voluntarily relinquished (surrendered) or involuntarily terminated prior to a kinship guardianship arrangement.</p> <p>Birth parents whose rights have not been terminated have the right to request of the court that the letters of guardianship be vacated (ended) so that the child can be returned to their care. It is the burden on the birth parents to prove to the court that circumstances have changed significantly, that they are able to provide proper care for their child, and that the change is in the child's best interests. In this sense, legal guardianship is less permanent than adoption.</p> | The birth parents' rights may or may not be voluntarily relinquished (surrendered) or involuntarily terminated when a child is in foster care. |
| Right of Decision – Making and Consents | Parental rights are assumed by the adoptive parents and therefore, all decisions are made by the adoptive parents. | <p>Major decisions regarding education, medical treatment and consent for most other major life decisions for the child are made by the relative guardians.</p> <p>The birth parents may still be involved in the child's life and some decisions, though the degree of involvement may be impacted by whether or not the birth parents' parental rights have been terminated/surrendered and their relationship with the child.</p> | <p>The DSS/ACS commissioner consents to medical care, educational decisions, and other major life decisions for children in foster care.</p> <p>If the birth parents' parental rights have not been terminated or surrendered, the birth parents may be involved in some of the decision making.</p> <p>The foster parents can consent to routine activities such as joining a school club or dating, but should check with DSS/ACS regarding other consent issues.</p> |

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|---|---|---|---|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| Relationships with the Birth Parents and Siblings or Half-Siblings | <p>Adoptive parents usually take the lead role in determining the relationship the child will have with the birth parents and sibling(s). In many cases connections with birth parents or sibling(s) are important to the child. Adoptive parents can determine whether they want to maintain these connections and how they will be maintained.</p> <p>Under some circumstances, such as a conditional surrender, visitation/contact with birthparents and sibling(s) will be guided by a post-adoption contact agreement that is incorporated into the written court order.</p> | <p>Many children exit foster care to guardianship so their relationships with birth parents and/or sibling(s) can be maintained. If the child has not been freed for adoption, in most cases birth parents have the right to visit the child, unless the letters of guardianship prohibit contact and/or visitation. The relative guardians are responsible for keeping the child safe while in the presence of the birth parents and consequently, will have input into how the visits are structured.</p> <p>If the relative guardians and the parents cannot work out visitation, the court may specify details of visitation and/or contact in the letters of guardianship. If an issue occurs after the letters of guardianship have been issued, the relative guardians could request that the court modify the contact/visiting plan in the letters of guardianship.</p> | <p>DSS/ACS and courts determine the child's relationship with birth parents and sibling(s). Parent visitation is to be expected, unless a court orders otherwise. If siblings are not placed together, sibling visitation is also to be expected, unless such contact would be contrary to the health, safety or welfare of one of the siblings. The foster parent may be asked to assist with visitation and cannot change visitation plans without the expressed consent of the caseworker.</p> |
| Child's Legal Name | <p>The adoptive parent(s) determine the child's legal name at the time of the adoption.</p> | <p>The child generally retains his/her own legal name; however, the child's name can be changed through a court process.</p> | <p>The child retains his/her own legal name. Foster parents cannot change the child's name.</p> |

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|---|--|---|--|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| Consent of/ Consultation With the Child for Legal Status | <p>A child who is 14 years of age or older must consent to his/her own adoption, unless the court rules otherwise.</p> | <p>There must be age appropriate consultation with the child regarding the kinship guardianship arrangement.</p> <p>The caseworker and the court must consult with a child 14 years of age or older regarding the kinship guardianship arrangement.</p> <p>A youth 18 years of age or older must consent to the kinship guardianship arrangement.</p> | <p>Children under 18 do not consent to placement in foster care.</p> <p>A youth 18 years of age or older must consent to remaining in foster care.</p> |
| Availability of Financial Assistance | <p>Financial assistance is available for eligible children through an adoption subsidy at an amount comparable to the child's foster care rate.</p> <p>Additional payments will not be made by DSS/ACS for items such as school related expenses, activity fees, lessons, camp fees, day care, and transportation.</p> <p>Adoptive parents are financially responsible for the support of the child, whether or not they are receiving financial assistance through an adoption subsidy.</p> | <p>Financial assistance is available for eligible children through the Kinship Guardianship Assistance Program at an amount comparable to the child's foster boarding home rate.</p> <p>Additional payments will not be made by DSS/ACS for items such as school related expenses, activity fees, lessons, camp fees, day care and transportation.</p> <p>A guardian who does not qualify for kinship guardianship assistance payments may apply to the DSS or to the Human Resources Administration (in New York City) for a child-only grant through the Temporary Assistance (TA) program. The amount of the grant is generally less than the foster board rate and is reduced for each additional child.</p> <p>The guardian is financially responsible for the support of the child until guardianship ends, whether or not the guardian is receiving kinship guardianship assistance.</p> | <p>Foster parents receive a foster board rate which is intended to reimburse for the costs of caring for the foster child.</p> <p>Children in foster care may also receive assistance for other expenses, such as special clothing, lessons, gifts, babysitting, day camp, and overnight camp. Policies on reimbursement for such items vary from county to county.</p> <p>The LDSS/ACS is ultimately financially responsible for the support of the child while he/she is in foster care.</p> |

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| NEW YORK STATE COMPARISON CHART | | | |
|--|--|--|---|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| Amount of Financial Assistance | <p>The adoption subsidy payment will not be more than the foster care board rate received while the child was in foster care (basic, special, or exceptional). The adoption subsidy payment ranges from between 75% to 100% of the foster care board rate, but it can never be less than 75% of the foster care board rate. The subsidy will increase with COLAs and the child's age, as in foster care.</p> | <p>The kinship guardianship assistance payment will not be more than the foster care board rate received while the child was in foster care (basic, special, or exceptional). The amount of the kinship guardianship assistance payment ranges from 75% to 100% of the foster care board rate, but it can never be less than 75% of the foster care board rate. The assistance payment will increase with COLAs and the child's age, as in foster care.</p> <p>The kinship guardianship assistance payment will not be less than the amount a family would have received if the child had been adopted with an adoption subsidy.</p> | <p>The annual foster care board rate is set according to the child's age and special needs (basic, special and exceptional). Each DSS/ACS sets their own foster care board rates, up to the maximum allowed by the OCFS. The foster care board rate payment will increase with COLAs and the child's age.</p> |
| Duration of Assistance/ Subsidy and Payment Termination | <p>The adoption subsidy will be provided until the child turns 21, as long as the adoptive parents remain legally responsible for the support of the child and provide any support for the child.</p> <p>Adoptive parents receiving adoption subsidies are required to notify DSS/ACS of any changes in circumstances that would affect their continued eligibility for adoption subsidy payments.</p> <p>Annually, adoptive parents will receive a notice requesting certification and documentation of the education status of a</p> | <p>The kinship guardianship assistance payment will be provided until the child is age 18 or 21, in some circumstances.</p> <p>For a child for whom a Kinship Guardianship Assistance Agreement became effective prior to the child's 16th birthday, kinship guardianship assistance payments will end when the youth turns 18.</p> <p>For a child for whom a Kinship Guardianship Assistance Agreement became effective when the child was age 16 or older, kinship guardianship assistance payments will end when the child turns 21 years, as long as the child is:</p> <ol style="list-style-type: none"> 1) enrolled in secondary education or a program leading to an equivalent credential; or | <p>The foster care board rate will continue as long as the child remains a foster child in the foster parents' home.</p> |

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|---------------------------------|---|--|-------------|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| | <p>school-age child and certification and documentation of the education/employment/disability status of the youth age 18 or over.</p> <p>Regardless of the child's age, adoption subsidy payments will end if the adoptive parents are no longer legally responsible for the support of the child, or no longer providing any support for the child.</p> | <p>2) attending an institution that provides post-secondary or vocational education; or</p> <p>3) participating in a program or activity designed to promote, or remove barriers to employment; or</p> <p>4) employed for at least 80 hours per month; or</p> <p>5) has a medical condition that makes him or her incapable of engaging in any of these activities.</p> <p>Relative guardians receiving kinship guardianship assistance must notify DSS/ACS of any changes in circumstances that would affect continued eligibility for guardianship assistance payments.</p> <p>Relative guardians must comply with the requirements listed in the annual notice from DSS/ACS including certification and documentation of the education status of a school age child and certification and documentation of the education/employment/disability status of qualified children age 18 and over.</p> <p>Regardless of the child's age, kinship guardianship assistance payments will end if the relative guardians are no longer legally responsible for the support of the child, or no longer providing any support for the child. This includes where the status of a legal guardian is revoked, terminated, suspended, or surrendered. It also includes certain situations where the child re-enters foster care and the Family</p> | |

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| NEW YORK STATE COMPARISON CHART | | | |
|---|---|---|---|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| | | Court approves a permanency goal of other than return to the relative guardians. | |
| Medical Assistance (Medicaid) and Medical Coverage | <p>Virtually all children who are adopted with subsidy get Medical Assistance (Medicaid) for as long as the subsidy continues.</p> <p>State Adoption Medical Subsidy may provide medical benefits to those few children not qualified for Medical Assistance.</p> <p>Medical coverage will last for as long as the adoption subsidy, which is up to age 21 if the adoptive parents remain legally responsible for the child and provide support to the child.</p> | <p>Children in a kinship guardianship assistance arrangement are eligible for Medical Assistance (Medicaid) unless they are non-qualified immigrants.</p> <p>Children receiving Medical Assistance while in a kinship guardianship assistance arrangement are eligible for continuous Medical Assistance coverage for a period of up to 12 months after discontinuance of kinship guardianship assistance payments or until the end of the month in which the youth turns 19, whichever occurs first. If the child is age 19 or over, or if the continuous coverage period has ended, a separate eligibility determination must be completed.</p> <p>Child Health Plus or State KinGAP Medical Subsidy will provide medical benefits to non-qualified immigrant children. Medical coverage will last for as long as kinship guardianship assistance. At age 19, if kinship guardianship assistance payments are still being made, Child Health Plus coverage ends, but medical subsidy will be provided until the child reaches age 21 or until kinship guardianship assistance payments are discontinued whichever occurs earlier.</p> | <p>All children in foster care are automatically eligible for Medical Assistance (Medicaid) or DSS/ACS pays for their medical care.</p> <p>Children who are discharged from foster care at age 18 or older are eligible for continuous Medical Assistance coverage for a period of up to 12 months after final discharge or until the end of the month in which the youth turns age 21, whichever occurs first.</p> |

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|--|--|---|---|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| Non-Recurring Expenses | Adoptive parents may receive a one-time payment for non-recurring expenses directly related to the adoption of a child with special needs, not to exceed \$2,000 per child. | Relative guardians may receive a one-time payment for non-recurring expenses directly related to receiving guardianship of the child, not to exceed \$2,000 per child. | N/A |
| Accessing Services | <p>Adoptive parents are the primary advocates for accessing services (school, mental/physical health, etc.) for their adopted child.</p> <p>There are some post-adoption support services available through DSS/ACS, and in the community.</p> | <p>The relative guardians are the primary advocates for accessing services (school, mental/physical health, etc) for a child in their guardianship.</p> <p>The relative guardians can request services and assistance from the DSS/ACS, including preventive services if the child is at risk of returning to foster care.</p> <p>Some services are available in the community and can be found through the Kinship Navigator website at: http://www.nysnavigator.org</p> | <p>The DSS/ACS/VA are the primary advocate for accessing services (school, mental/physical health, etc) for a child in foster care.</p> <p>The DSS/ACS/VA will assess the child, make decisions about service needs, and refer the child to programs, as appropriate.</p> |
| Bridges to Health (B2H): a program that provides services to youth currently or formerly in foster care who have certain special needs. | Any foster child who is being served by the Bridges to Health program (B2H) at the time of his/her adoption, 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 21, whichever occurs earlier. | Any foster child who is being served by the Bridges to Health program (B2H) when he/she enters a kinship guardianship arrangement, 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 21, whichever occurs earlier. | Any foster child who is being served by the Bridges to Health program (B2H) continues to be served and to participate in the B2H program, including upon discharge from foster care, until it is no longer consistent with the plan of care, or until age 21, whichever occurs earlier. |
| Independent Living Services and Education and Training Voucher (ETV) | Children adopted at age 16 or older remain eligible for some independent living services; such as vocational training, independent living skills training, and academic support services. An adopted youth who meets | Children who enter a kinship guardianship arrangement at age 16 or older, remain eligible for some independent living services; such as vocational training, independent living skills training, and academic support services. A youth in a kinship guardianship arrangement who meets the above age | Children in foster care age 14 or older are eligible for Independent Living Services offered by DSS/ACS, including independent living skills, academic support services, and assessment services and case planning. A foster child may apply for |

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|---|---|---|---|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| | the above age requirement may apply for the Education and Training Voucher (ETV), which provides up to \$5,000 towards attending post-secondary education or a vocational training program. | requirement may apply for the Education and Training Voucher (ETV), which provides up to \$5,000 towards attending post-secondary education or a vocational training. | the Education and Training Voucher (ETV), which provides up to \$5,000 towards attending post-secondary education or a vocational training. In addition, the child may be eligible for after care services, including room and board services. At age 16 or older, most youth in foster care are eligible for independent living stipends, which are small monthly payments to assist the youth in the development of independent living skills. |
| Post-Secondary Education Financial Aid | The adoptive parents' income is considered when determining the Expected Family Contribution (EFC) unless the child was adopted at age 13 or older. If adopted at age 13 or older, the child is considered "independent" for the receipt of federal financial aid. When a child is classified as independent, the adoptive parent's income is not considered when the EFC is determined. | A child in a guardianship arrangement is considered "independent" for the receipt of federal financial aid. When a child is classified as independent, the guardians' income is not considered when the Expected Family Contribution (EFC) is determined. | A child in a foster care arrangement is considered "independent" for the receipt of federal financial aid. Neither the foster parents nor the birth parents' income is considered when the Expected Family Contribution (EFC) is determined. |
| Eligibility for Free School Meals | An adopted child would qualify for free school meals only if the adoptive parents meet the income eligibility guidelines. | A child in a kinship guardianship arrangement is categorically eligible for free school meals, without the necessity of an application. | A child in foster care is categorically eligible for free school meals, without the necessity of an application. |
| Food Stamps- | A child who is adopted | The treatment of kinship | The treatment of foster care |

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|--|---|---|--|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| treatment of assistance (subsidy) payment and household inclusion of child | must be included in the food stamp household. Adoption subsidy payments in excess of allowable expenses are counted as income and are considered to be unearned income to the food stamp household. Income from adoption subsidy payments must be budgeted in determining the household's food stamp eligibility and benefit amount. | guardianship assistance payments depends on whether or not the child, for whom payments are received, is included in the food stamp household. If a child is included in the food stamp household, then the kinship assistance payments for that child are included as income when determining the eligibility for that household. If a child is not included in the food stamp household, kinship guardianship assistance payments are excluded. | payments depends on whether or not the child, for whom payments are received, is included in the food stamp household. If a child is included in the food stamp household, then the foster care payments for that child are included as income when determining the eligibility for that household. If a child is not included in the food stamp household, foster care payments are excluded. |
| Temporary Assistance (TA) for Needy Families- treatment of assistance (subsidy) payment and household inclusion of the child. | Whether to include a child in a temporary Assistance (TA) case for whom the adoptive parent receives an adoption subsidy depends on whether the family will benefit financially by including or excluding that child. When a child receiving an adoption subsidy is included in the TA case, the full adoption subsidy must be budgeted as unearned income. | Whether to include a child in a temporary Assistance (TA) case for whom the kinship guardian is receiving assistance payments depends on whether the family will benefit financially by including or excluding that child. When a child receiving kinship guardianship assistance payments is included in the TA case, the full assistance payments must be budgeted as unearned income. | A foster care child is not considered to be a member of the household of the foster parent(s) for the purposes of temporary assistance (TA). This means that the foster care child is not included in the TA case and the foster care income is exempt for TA. |
| Home Energy Assistance Program (HEAP)- treatment of assistance (subsidy) payment and household inclusion of the child. | When determining Home Energy Assistance Program (HEAP) eligibility, adopted children are included in the household count, but the adoption subsidy is considered excluded income. | When determining Home Energy Assistance Program (HEAP) eligibility, children in a kinship guardianship assistance arrangement are included in the household count, but kinship assistance payments are considered excluded income. | When determining Home Energy Assistance Program (HEAP) eligibility, the inclusion of the child in the household count depends on whether or not the child is related to the foster parent. If the child is related to the foster parent, he/she is included in the household count. If the child is not related to the foster parent he/she is not included in the |

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| NEW YORK STATE COMPARISON CHART | | | |
|--|---|--|--|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| | | | house hold count. Foster care income is always considered excluded income, regardless of the child's relationship to the foster parent. |
| Tax Credit¹ | <p>A federal tax credit may be available for the expenses involved in adopting a child.</p> <p>A tax professional would need to be consulted regarding the eligibility and specific amount.</p> <p>For additional information refer to the Internal Revenue Service website (www.IRS.gov) and search for adoption tax credit.</p> | <p>There is no tax credit available for the expenses involved in assuming guardianship of a child.</p> <p>The relative guardians should consult with a tax professional regarding the tax ramifications of entering into a kinship guardianship arrangement.</p> | N/A |
| Death of Adoptive Parents/ Relative Guardians | <p>If adoption subsidy payments are being received on behalf of a child and the adoptive parents die before the child reaches the age of 18, the adoption subsidy may continue to be paid to a person who has assumed guardianship or legal custody of the child until the child is 21 years of age.</p> <p>If adoption subsidy payments are being received on behalf of a child and the adoptive parents die after the child</p> | <p>A child for whom kinship guardianship assistance payments were received does not receive such assistance payments upon the death of the relative guardians.</p> <p>The person assuming caregiver responsibility for the child after a relative guardian's death, will not receive the kinship assistance payments, but may apply for a child-only grant through the TA program at the DSS or Human Resources Administration in New York City, if the child is below age 18. The amount of this grant generally will be less than the kinship guardianship assistance payment.</p> | N/A |

¹ For information on other child related tax credits (CTC, EIC, etc.) that may be available to adoptive parents, relative guardians, or foster parents a tax professional should be consulted and/or the IRS website at www.IRS.gov

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| NEW YORK STATE COMPARISON CHART | | | |
|--|---|---|--|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| | is 18 years of age, the adoption subsidy may continue to be paid until the child reaches the age of 21 to either a person appointed guardian of the child, a representative payee or directly to the adopted child. | | |
| Inheritance Rights and Survivor Benefits | <p>An adopted child has the same rights as the adoptive parents' birth children when the adoptive parents do not have a will. Otherwise, inheritance rights are established through a will as they are for birth children.</p> <p>An adopted child is also entitled to survivor benefits, such as pension or Social Security in the event of an adoptive parent's death.</p> <p>As a general rule, the right to inherit from and through the birth parents ended with the issuance of the order of adoption.</p> <p>An adopted child is entitled to continue to receive survivor benefits due to the death of his or her birth parents.</p> | <p>A child in a kinship guardianship arrangement has no rights of inheritance from the relative guardians, unless the child has been included in the relative guardians' will.</p> <p>The child continues to have the right to inherit from his/her birth parents regardless of whether or not that child has been freed for adoption.</p> <p>A child who is in a guardianship arrangement is entitled to continue to receive survivor benefits due to the death of his or her birth parents, including after the letters of guardianship are issued.</p> | <p>A child in a foster care placement has no rights of inheritance from the foster parents, unless the child has been included in the foster parents' will.</p> <p>The child continues to have the right to inherit from his/her birth parents regardless of whether or not that child has been freed for adoption.</p> <p>A child who is in a foster care placement is entitled to continue to receive survivor benefits due to the death of his or her birth parents, but DSS is able to use those benefits to offset the cost of care for that child.</p> |
| Returning a Child to the Foster Care System | An adoptive child may enter foster care from the adoptive parents' home for the same reasons and through the same legal means as a child who is removed from his/her birth parents. These reasons | A child in a kinship guardianship arrangement may enter foster care from the relative guardians' home for the same reasons and through the same legal means as a child who is removed from his/her birth parents. These reasons can include abuse, neglect, voluntary placement, PINS, | N/A |

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| NEW YORK STATE COMPARISON CHART | | | |
|--|--|---|--------------------|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| | can include abuse, neglect, voluntary placement, PINS, juvenile delinquency or surrender of the child. | or juvenile delinquency. In addition, the relative guardian can directly petition the court to have the guardianship revoked, terminated, suspended or surrendered. | |

APPENDIX E

NEW YORK STATE'S CHILD PERMANENCY COMPARISON CHART

Adoption Assistance, Kinship Guardianship Assistance, and Foster Care

This tool is designed to provide a child between the ages of 10-18 with a basic understanding of the differences between adoption assistance, kinship guardianship assistance and foster care. This chart is not meant to be a comprehensive description of each permanency option, but instead a summary of elements that are likely to be of interest to the child. Depending on the child's age, some of the information below will not be relevant. The caseworker should walk through the chart with the child in person, adding clarification as necessary. It may be beneficial for the related foster parents to be part of this discussion.

| NEW YORK STATE'S CHILD PERMANENCY COMPARISON CHART | | | |
|---|--|---|--|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| Who Takes Care of Me? | Your related foster parents become your adoptive parents. As your adoptive parents, they will make a permanent, lifelong commitment to care for you as if you were their birth child. Your adoptive parents will make all decisions about your care. | Your related foster parents become your guardians. As your guardians, they will make the majority of the decisions about your care. If your birth parents' parental rights have not been terminated, they may still be involved at some level in your care and legally remain your parents. | Your related foster parents provide daily care for you, but the child welfare agency and court would stay involved and be responsible for making the majority of decisions about your care. If your birth parents' parental rights have not been terminated, they may still be involved at some level in your care and legally remain your parents. |
| What Happens to My Birth Parents' Parental Rights? | With adoption, your birth parents' parental rights are terminated, which means that they no longer have any rights related to your care. | With guardianship, your birth parents may or may not still have their parental rights. Your birth parents do not have to give up their parental rights for the related foster parent to become your guardian; however, sometimes the court has already terminated their parental rights before your relative becomes your guardian. | With foster care, your birth parents may or may not still have their parental rights. Your birth parents do not have to give up their rights just because you are in foster care. However, the court may decide to terminate your parents' parental rights based on your specific family situation. |

APPENDIX E

| NEW YORK STATE'S CHILD PERMANENCY COMPARISON CHART | | | |
|--|--|---|---|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| Will a Case Worker Still Come to Visit Me? | No- once your adoption is finalized you will no longer have a caseworker coming to the home to visit you. | No-once guardianship is transferred to your relative guardians you will no longer have a caseworker coming to the home to visit you. | Yes- in foster care you continue to have regular contact with a caseworker, including visits at your home. |
| Who Gets to Make Decisions About My Care? | <p>All decisions about your care are made by your adoptive parents.</p> <p>You have the right to consent to certain health related services/procedures if you have the capacity to consent, which takes into account your age and level of understanding of the health issues and benefits and risks of treatment.</p> | <p>Major decisions related to your education, medical treatment, and consent for most other major life decisions are made by your guardians. (For example, the relative guardian can consent to your surgery and provide consent for you to get your driver's license before the age of 18.)</p> <p>You have the right to consent to certain health related services/procedures if you have the capacity to consent, which takes into account your age and level of understanding of the health issues and benefits and risks of treatment.</p> | <p>Major decisions related to your education, medical treatment, and major life decisions are made by your child welfare agency. (For example, the child welfare agency must consent to your surgery and provide consent for you to get your driver's license before the age of 18.)</p> <p>Your related foster parents can make decisions about routine activities, such as joining a club, dating, or playing a sport.</p> <p>If your birth parents' parental rights have not been terminated, they may also be involved in some of the decision making.</p> <p>You have the right to consent to certain health related services/procedures if you have the capacity to consent, which takes into account your age and level of understanding of the health issues and benefits and risks of treatment.</p> |

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| NEW YORK STATE'S CHILD PERMANENCY COMPARISON CHART | | | |
|---|---|---|---|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| How Does This Change My Visits and Contact With My Birth Parents and Siblings? | <p>For the most part, your adoptive parents take the lead role in determining the relationship you will have with your birth parents and siblings. The adoptive parents will decide if you get to visit them, and how often. Sometimes when a child is freed for adoption there may be a visiting or contact plan in place with your birth parents.</p> | <p>In many cases, your relationship with your birth parents and/or siblings is maintained through contacts and/or visits; however this will depend on your family relationships. Your relative guardians are responsible for arranging the visits, unless a visiting plan is part of your guardianship order.</p> | <p>The child welfare agency and courts determine the contact/visitation you have with your birth parents and siblings. Unless there is a court order stating otherwise, you will have regular visits with your parents. In most cases, if your siblings are placed in a different home, your caseworker will arrange for you to have visits with your siblings.</p> |
| What Happens to My Name? | <p>There is no requirement that your name be changed if you are adopted; however, children being adopted often have their name changed at the time of the adoption. Name changes are less common for children being adopted by relatives. This is a decision that you will make with your adoptive parents.</p> <p>Even if you choose not to change your name, you will get a new birth certificate that will show your adoptive parents' names instead of your birth parents' names.</p> | <p>When your relatives become your guardians you will most likely keep your name, which means you may have a different last name than your relative guardians.</p> <p>Your birth certificate does not change with guardianship.</p> | <p>In foster care you keep your name, which means you may have a different last name than your related foster parents.</p> <p>Your birth certificate does not change due to you being in foster care.</p> |

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| NEW YORK STATE'S CHILD PERMANENCY COMPARISON CHART | | | |
|--|---|--|---|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| Do I Have a Say in the Decision About My Plan- Adoption, Guardianship or Foster Care? | <p>If you are age 14 or older, your case worker must get your approval (consent) to being adopted.</p> <p>If you are under age 14, your caseworker may involve you in the decision to be adopted, but is not required to do so.</p> | <p>If you are age 18 or older, your case worker and the court must get your approval (consent) to move forward with kinship guardianship as your permanency plan.</p> <p>If you are age 14 or older, you must be consulted regarding guardianship, which means your caseworker will discuss the guardianship plan with you and how it would impact your life. In addition, your case worker will ask about your feelings about moving forward with this plan.</p> <p>If you are under age 14, your caseworker may discuss the guardianship plan with you to some degree because the law requires age appropriate consultation on kinship guardianship.</p> | <p>If you are age 18 or older, the court must get your approval (consent) to remain in foster care.</p> <p>If you are under age 18, your caseworker may discuss your foster care plan with you and may ask about your feelings about foster care, but there is no requirement to do so.</p> |
| How Long Will This Placement Last? | <p>Adoption is considered a lifelong commitment. Although you will be able to make your own decisions when you reach adulthood, your adoptive parents will remain your parents.</p> | <p>Kinship guardianship legally ends when you turn age 18, or in some circumstances when you turn 21. This means that after 18 or 21, you will be responsible to make your own decisions. Though the legal guardianship ends at age 18 or 21, guardianship can result in a lifelong relationship and your relative may continue to be a support to you.</p> | <p>Foster care is not intended to be a lifelong commitment and it legally ends when you are either discharged, or age out of foster care between the ages of 18 to 21. When you turn age 18, you can make the decision as to whether you want to remain in foster care (the longest you can stay in foster care is until age 21).</p> |

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| NEW YORK STATE'S CHILD PERMANENCY COMPARISON CHART | | | |
|---|---|--|--|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| How are My Chances of Getting Financial Aid for Education After High School Impacted? | <p>If you were under age 13 when you were adopted, your adoptive parents' income is taken into consideration when applying for financial aid. This means that if your adoptive parents' household income is too high, you may not qualify for financial aid or may qualify for less.</p> <p>If you were age 13 or older when you were adopted, your adoptive parents' income is not considered when applying for financial aid. This means that you are considered "independent" and do not have to list any information about your adoptive parents' income on your financial forms.</p> | <p>Your guardians' household income is not taken into consideration when applying for financial aid. This means that you are considered "independent" and do not have to list any information about your relative guardians' income on your financial forms.</p> | <p>Your foster parents' household income is not taken into consideration when applying for financial aid. This means that you are considered "independent" and do not have to list any information about your foster parents' income on your financial forms.</p> |
| Can I still Get Independent Living Services and ETV Funds Offered by the Child Welfare Agency? | <p>If you were adopted when you were age 16 or older, you remain eligible for some independent living services; such as vocational training, independent living skills training, and academic support services. You may also apply for the Education and Training Voucher (ETV), which provides up to \$5,000 towards attending post-</p> | <p>If your relatives became your guardians when you were age 16 or older, you remain eligible for some independent living services; such as vocational training, independent living skills training, and academic support services. You may also apply for the Education and Training Voucher (ETV), which provides up to \$5,000 towards attending post-secondary education or a vocational training.</p> | <p>If you are age 14 or older, you are eligible for the Independent Living Services offered by your child welfare agency, which can include independent living skills, academic support services, and assessment services and case planning. You may also apply for the Education and Training Voucher (ETV), which provides up to \$5,000 towards</p> |

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| NEW YORK STATE'S CHILD PERMANENCY COMPARISON CHART | | | |
|--|---|------------------------------------|--|
| | Adoption Assistance (Subsidy) | Kinship Guardianship Assistance | Foster Care |
| | secondary education or a vocational training. | | <p>attending post-secondary education or a vocational training. In addition, you may be eligible for after care services upon discharge, including room and board services.</p> <p>If you are age 16 or older, you will probably be eligible for independent living stipends, which are small monthly payments to assist you in the development of your independent living skills.</p> |

Appendix F

Overview of the Kinship Guardianship Assistance Program for Child Protective Services Workers

The Kinship Guardianship Assistance Program (KinGAP) is a federally supported program that went into effect in New York State on April 1, 2011. KinGAP is designed to support permanent placements for foster children with relatives. KinGAP can be an appealing alternative for related foster parents because it affords true permanency, allows existing family ties to remain intact, provides financial support comparable to that which the child would receive through an adoption subsidy, and includes medical coverage (in almost all cases).

Why Child Protective Services (CPS) Workers Need to Know about KinGAP

When a CPS worker first determines out-of-home placement is needed, the first priority is a safe placement. Although permanency may not be the initial focus, it is important for CPS workers and relatives to understand how decisions made during the initial placement can have lasting consequences on a child's future permanency options. Full disclosure of all placement and custody/guardianship options is essential for a relative to make an informed decision about how he or she wants to proceed with the legal arrangement. Therefore, 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.

Upon initial contact from CPS, relatives may be asked to provide informal, temporary care for the children. However, if the children are removed from the home by CPS and a petition was filed, or is going to be filed, relatives may have the following two options:

- **direct custody/placement with the relative with supervision** from the social services district;
OR
- **foster care with the relative** if the relative is fully certified or fully approved to provide foster care (emergency certification and approval can be authorized, but full approval and full certification must occur within 90 days).

Before a decision is made, relatives should be informed that kinship guardianship assistance is available **only** to those relatives who are **fully certified** or **fully approved to provide foster care**. For those in direct placements, "traditional" guardianship can be obtained, but the social services district will not provide financial or medical benefits through KinGAP. Instead, relatives can apply for a child-only grant through Temporary Assistance, which offers some financial benefits and Medical Assistance for the children.

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Overview of KinGAP

Process for Participating in KinGAP

A relative who is caring for a child in foster care can apply for KinGAP with the social services district that has custody or guardianship of the child. The child's caseworker will work with the relative to determine if the child meets the eligibility for KinGAP and if the social services district determines that the arrangement is in the best interests of the child. If the decision is made to pursue kinship guardianship assistance, the Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement will be completed. This Agreement is a contract between the prospective relative guardian(s) and the social services district. The Agreement must be reviewed and signed by the prospective relative guardian(s) and the designated official within the social services district **before** the issuance of the letters of guardianship by the court.

Eligibility for KinGAP

All of the following factors must be met:

- The child is related to the prospective relative guardian by blood, marriage, or adoption.
- The child entered the care and custody or the custody and guardianship of the LDSS/ACS before his or her 18th birthday and is currently younger than 21 years of age.
- The child has been in foster care with the prospective relative guardian for at least 6 consecutive months prior to the date of application for the Kinship Guardianship Assistance Program, during which time the relative was fully approved or fully certified as a foster parent during the entire period.
- The initial permanency hearing for the foster child has been completed.
- If the child was placed into foster care pursuant to Article 10 of the Family Court Act, the fact finding has been completed.
- Being returned home or adopted are not appropriate permanency options for the child.
- The prospective relative guardian and all other adults 18 years of age and older who reside in the home of the prospective relative guardian(s) have completed a national and state criminal history record check pursuant to section 378-a of the Social Services Law.
- The prospective relative guardian(s) and all other adults 18 years of age and older who reside in the home of the prospective relative guardian(s) have completed a child abuse and maltreatment data base check through the OCFS Statewide Central Register of Child Abuse and Maltreatment (SCR).
- If the prospective relative guardian(s) or another adult 18 years or older residing in the home of the prospective relative guardian(s) lived outside of New York State within the past 5 years of the application for kinship guardianship assistance, the applicable child welfare agency in each of the previous state(s) was contacted to obtain child abuse and maltreatment information maintained by the child abuse and maltreatment registry in each of those states.

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- The prospective relative guardian(s) has a strong commitment to caring permanently for the child.
- The child has demonstrated a strong attachment to the prospective relative guardian(s).
- The social services district has provided age-appropriate consultation with the child regarding the kinship guardianship arrangement. If the child is 14 years of age or older consultation is mandatory.
- If the youth is 18 years of age or older, he or she has consented to the kinship guardianship arrangement.

Best Interests

In determining whether it is in the best interests of the child for the relative(s) to become the relative guardian(s) of the child, the social services district must determine and document that compelling reasons exist that the return home of the child and the adoption of the child are not in the best interests of the child and therefore, are not appropriate permanency options.

Legal Authority

The relative guardian(s) is given legal responsibility for the child and assumes the rights of care, control, and supervision of the child. Major decisions regarding education, medical treatment, and consent for most other major life decisions are made by the guardian. The legal relationship ends when the child turns 18 or 21 years old, depending on the provisions of the Agreement and the age of the child at the time when the Agreement became effective. When the letters of guardianship are issued, the child is no longer in foster care.

Birth Parents' Rights

Birth parents' rights do not have to be voluntarily relinquished or involuntarily terminated for a child to enter a kinship guardianship arrangement. Birth parents whose rights have not been terminated/surrendered have the right to maintain contact with the child and to visit with the child. Birth parents can also request of the court that the letters of guardianship be vacated so that the child can be returned to their care. It is the burden of the birth parents to prove to the court that their circumstances have changed significantly, that they are able to provide proper care for their child, and that the change is in the child's best interests.

Financial Assistance

Financial assistance is available through KinGAP for eligible children. This monthly payment is comparable to the foster care board rate and equal to the rate that the child would receive if adopted. The amount of the monthly kinship guardianship assistance payment may not be less than 75% of the applicable foster care board rate (foster care board rate, including any special or exceptional rate or an expanded rate provided 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. Additional payment (i.e., special payments) **WILL NOT** be made for items such as school-related expenses, activity fees, lessons, camp fees, day care and transportation. The relative guardian(s) is responsible for financially supporting the

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child with kinship guardianship assistance dollars until the social services district stops the kinship guardianship payments, and/or the court vacates or terminates the letters of guardianship.

Relative guardians may receive a one-time payment for non-recurring expenses directly related to assuming guardianship of the child, such as court costs and attorney's fees, not to exceed \$2,000 per child.

Medical Coverage

- **A child who is Title IV-E eligible** for kinship guardianship assistance payments is automatically eligible for Medical Assistance under Title XIX of the Social Security Act. Medical Assistance will continue for the child up until the age of 18 years or up to age 21, per the terms in the KinGAP Agreement. All children are eligible for continuous Medical Assistance coverage for a period of up to 12 months after discontinuance of kinship guardianship assistance payments, except that continuous coverage does not extend beyond the end of the month in which the child turns 19 years of age. If the child is age 19 years or older, or if the continuous coverage period has ended, a separate eligibility determination must be completed.
- **A child who is not Title IV-E eligible** for kinship guardianship assistance and is not a non-qualified immigrant will be covered by Medical Assistance up until the age of 18 years or up to age 21, per the terms in the KinGAP Agreement. All children are eligible for continuous Medical Assistance coverage for a period of up to 12 months after discontinuance of kinship guardianship assistance payments, except that continuous coverage does not extend beyond the end of the month in which the child turns 19 years of age. If the child is age 19 years or older, or if the continuous coverage period has ended, a separate eligibility determination must be completed
- **A child who is a non-qualified immigrant** foster child may be provided medical coverage in one of several ways:
 - Prospective relative guardian(s) has available and affordable medical coverage for the child, and agrees to provide such coverage for the child; or
 - The child will be covered by either Child Health Plus or New York State Medical Subsidy for as long as kinship guardianship assistance payments continue to be made pursuant to the KinGap Agreement. At age 19 years, if kinship guardianship assistance payments are still being made, medical subsidy will be provided until the child reaches age 21 or until kinship guardianship assistance payments are discontinued, whichever occurs earlier.

KinGAP Materials for Relatives

- A model letter CPS workers may use to comply with the notification of relatives requirement when a child is removed:
 - KinGAP Relative Notification Letter (in English and Spanish) is located at

<http://www.ocfs.state.ny.us/kinship/kingap.asp>

as Attachment A to 11-OCFS-ADM-03 Kinship Guardianship Assistance Program (KinGAP).

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CPS workers should give relatives copies of the following documents to provide them with detailed information about KinGAP and other options:

- The relative handbook titled ***Having a Voice & a Choice: New York State Handbook for Relatives Raising Children***, available at <http://www.ocfs.state.ny.us/main/publications/Pub5080.pdf>

AND

- The booklet titled ***Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)***, available at <http://www.ocfs.state.ny.us/main/publications/pub5108.pdf>

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Kinship Guardianship Assistance Eligibility Checklist (OCFS-4435)

Instructions: This checklist is used to determine and document a child’s eligibility for the Kinship Guardianship Assistance Program. The checklist will also help determine if the child’s kinship guardianship assistance payment is Title IV-E or Non-Title IV-E reimbursable.

Sections I–V and corresponding documentation in **Section VII** must be completed prior to the issuance of the letters of guardianship. **Section II** and corresponding documentation from **Section VII** should be completed **in tandem with the Application for the Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Programs**. Without these sections, the Application **cannot be signed** by the authorized signatory. **Section VI** must be completed **after** the letters of guardianship are issued. The eligibility checklist should be a part of the child’s Uniform Case Record. The eligibility standards for the New York Kinship Guardianship Assistance Program are set forth in Sections 458-a-458-f of the Social Services Law and OCFS regulations 18 NYCRR Part 436.

Complete a separate checklist for each child being considered for the Kinship Guardianship Assistance Program.

SECTION I. CASE INFORMATION

| | | |
|--|--------------------------|--------------------|
| Child’s Name (Last, First, Middle Initial) | Social Services District | Unit/Worker Number |
| Child’s DOB ____/____/____ | Child’s CIN | Case Number |

SECTION II. KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM ELIGIBILITY

CHILD MUST MEET **ALL** REQUIREMENTS IN THIS SECTION TO BE ELIGIBLE FOR THE NEW YORK STATE KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM.

1. Child is related to the prospective relative guardian by blood, marriage, or adoption.

YES – Nature of prospective relative guardian’s relationship to the child: _____

NO

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2. Child entered the care and custody or the custody and guardianship of the LDSS/ACS before his or her 18th birthday and is currently under the age of 21.

YES

NO

3. The child has been in foster care with the prospective relative guardian for at least 6 consecutive months* prior to the date of application for the Kinship Guardianship Assistance Program, during which time the relative was fully approved or fully certified as a foster parent during that entire period.

YES – Date fully certified or fully approved: ____/____/____

NO

* Any period during which the child resided with the foster parent on an emergency basis while the full certification or approval was underway (i.e., pending) **cannot be counted toward** meeting the 6-month time frame. In addition, any period during which the certification or approval lapsed, or was otherwise not in effect, **cannot be counted** in meeting the 6-month time frame. However, the 6-month 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 certified or approved foster home.

4. The initial permanency hearing for the foster child has been completed.

YES – Date the initial permanency hearing was completed: ____/____/____

NO

5. If the child was placed into foster care as an abused or neglected child pursuant to Article 10 of the Family Court Act, the fact-finding has been completed.

YES – Date fact finding was completed: ____/____/____

NO

N/A Child was not placed pursuant to Article 10.

Child Placed: (Complete if N/A is selected above)

Voluntary Placement (section 384-a of the SSL) Surrender (section 384 of the SSL)

PINS (Article 7 of the FCA) JD (Article 3 of the FCA)

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6. Being returned home and adopted are not appropriate permanency options for the child.

YES

NO

7. Prospective relative guardian and all other adults 18 years of age or older who reside in the home of the prospective relative guardian have **completed a national and state criminal history record check** pursuant to section 378-a of the Social Services Law either as part of the foster home certification or approval process or in regard to the application for kinship guardianship assistance.

YES

NO

8. Prospective relative guardian and all other adults 18 years of age or older who reside in the home of the prospective relative guardian have **completed a child abuse and maltreatment data base check** through the OCFS Statewide Central Register of Child Abuse and Maltreatment (SCR) either as part of the foster home certification or approval process or in regard to the application for kinship guardianship assistance.

YES

NO

9. If the prospective relative guardian or another adult 18 years of age or older residing in the home of the prospective relative guardian **lived outside of New York State within the past 5 years** of the application for kinship guardianship assistance, the applicable child welfare agency in each of the previous state(s) was contacted to obtain child abuse and maltreatment information maintained by the child abuse and maltreatment registry in each of those states either as part of the foster home certification or approval process or in regard to application for kinship guardianship assistance.

YES

NO

N/A No adults living in the home lived outside of New York State within the past 5 years.

10. Prospective relative guardian has a strong commitment to caring permanently for the child.

YES

NO

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11. Child has demonstrated a strong attachment to the prospective relative guardian.

- YES
 NO

12. Age-appropriate consultation has been done with the child regarding the kinship guardianship arrangement. Please note: If the child is 14 years or older, consultation is mandatory.

- YES
 NO
 N/A The child is under the age of 14 and consultation is not appropriate.

13. The youth is 18 years of age or older, and has consented to the kinship guardianship arrangement.

- YES
 NO
 N/A The child is not 18 years of age or older.

If the answer to any of the questions above (1-13) is "NO," then currently the child is **NOT eligible** for the Kinship Guardianship Assistance Program. **Go to Section VI, Eligibility Summary** and check "INELIGIBLE FOR KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM." **The caseworker and supervisor should sign the form and file in the child's Uniform Case Record.**

BEST INTERESTS DETERMINATION

If the answer to **all** of the questions above are "**YES**" or "**N/A**," then the child is **eligible** for the Kinship Guardianship Assistance Program **only after** the social service official determines that it is in the best interests of the child for the relative to become the relative guardian of the child. In determining whether it is in the best interests of the child for the relative to become the relative guardian of the child, the social services district must determine and document that **compelling reasons** exist for determining that the return home of the child and the adoption of the child *are not* in the best interests of the child, and therefore, are not appropriate permanency options for the child.

Indicate below if the social service official has determined that it is in the best interests of the child for the relative to become his/her relative guardian.

- YES
 NO

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If the answer is “**YES**,” then go to **Section III** to determine if the child qualifies for Title IV-E reimbursement. **Record all supporting documentation for Eligibility Criteria 1-13 and “Best Interests” in Section VII.**

If the answer is “**NO**,” then go to **Section VI, Eligibility Summary** and check “**INELIGIBLE FOR KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM.**” **The caseworker and supervisor should sign the form and file in the child’s Uniform Case Record.**

SECTION III: TITLE IV-E REIMBURSEMENT

A CHILD WHO MEETS **ALL** OF THE ELIGIBILITY CRITERIA IN SECTION II **WILL BE ELIGIBLE FOR TITLE IV-E REIMBURSEMENT** FOR KINSHIP GUARDIANSHIP ASSISTANCE **IF BOTH** OF THE FOLLOWING CONDITIONS ARE MET:

1. Child has been removed from the child’s home pursuant to a **voluntary placement agreement (VPA; 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 (CTW)** **OR** that the removal of the child from the child’s home is in the **best interests of the child (BE)**.

YES – **Indicate type of removal:** **Voluntary (VPA)** **COURT ORDER (CTW/BE)**

NO

AND

2. Child was eligible for Title IV-E foster care maintenance while residing for at least 6 consecutive months in the home of the prospective relative guardian prior to application for kinship guardianship assistance.

YES

NO

If the answers to **BOTH** 1 and 2 are “**YES**,” the child **will be eligible** for Title IV-E funded kinship guardianship assistance payments. **Go to Section V to determine Medicaid/Medical Coverage.**

If the answer to 1 **and/or** 2 is “**NO**,” **continue to Section IV: Sibling Exception** for Title IV-E eligibility for kinship guardianship assistance payments.

Record all supporting documentation for Title IV-E foster care in Section VII.

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SECTION IV. SIBLING EXCEPTION FOR TITLE IV-E ELIGIBILITY

A CHILD WHO MEETS **ALL OF THE ELIGIBILITY CRITERIA IN SECTION II BUT DOES NOT MEET THE CRITERIA IN SECTION III, WILL BE ELIGIBLE** FOR TITLE IV-E REIMBURSEMENT FOR KINSHIP GUARDIANSHIP ASSISTANCE PAYMENTS **IF ONE** OF THE FOLLOWING CONDITIONS IS MET:

1. The child is a sibling of a child who is eligible to receive Title IV-E reimbursable kinship guardianship assistance payments and is going to the same kinship guardianship arrangement.

YES – **Name of sibling who is eligible for Title IV-E reimbursable kinship guardianship assistance payments:** _____

NO

OR

2. The child is a sibling of a child who is currently receiving Title IV-E reimbursable kinship guardianship payments and is joining that sibling in the same kinship guardianship arrangement.

YES – **Name of sibling who is receiving a Title IV-E reimbursable kinship guardianship assistance payments:** _____

Date letters of guardianship were issued for the sibling: ____/____/____

NO

If the answer to 1 **or** 2 is “**YES**,” then the child is eligible to receive Title IV-E reimbursable kinship guardianship assistance payments.

If the answers to **BOTH 1 and 2** are “**NO**,” then the child is not eligible for the Title IV-E kinship guardianship assistance program. **However, the child is still eligible for the New York State kinship guardianship assistance program, but any payments made are not federally reimbursable.**

Record all documents that support sibling exception for Title IV-E eligibility for kinship guardianship assistance.

Go to Section V: Medical Assistance/Medical Coverage.

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SECTION V. MEDICAL ASSISTANCE/MEDICAL COVERAGE

MEDICAL ASSISTANCE IS AVAILABLE FOR A CHILD WHO IS TITLE IV-E ELIGIBLE. MEDICAL ASSISTANCE PROVIDES COVERAGE FOR ELIGIBLE MEDICAL CARE, SERVICES, OR SUPPLIES OBTAINED FROM A PROVIDER ENROLLED IN THE MEDICAL ASSISTANCE PROGRAM. NO PAYMENT MAY BE MADE FOR SERVICES OTHERWISE COVERED BY INSURANCE OR OTHER THIRD PARTY PAYMENTS. MEDICAL ASSISTANCE IS ALSO AVAILABLE IN NEW YORK STATE FOR ANY CHILD WHO IS NOT TITLE IV-E ELIGIBLE, EXCEPT FOR NON-QUALIFIED IMMIGRANTS.

Indicate below the type of medical coverage for which the child qualifies:

1. Child is Title IV-E eligible for kinship guardianship assistance, and will be covered by Medical Assistance up to the age of 18 or up to the age of 21, per the terms in the KinGAP Agreement. All children are eligible for continuous Medical Assistance coverage for a period of up to 12 months after discontinuance of kinship guardianship assistance payments, except that continuous coverage does not extend beyond the end of the month in which the child turns 19 years of age. If the child is age 19 or older, or if the continuous coverage period has ended, a separate Medical Assistance eligibility determination must be completed.

YES—***STOP! Record all supporting documentation in Section VII.**
Complete Section VI **after** the letters of guardianship have been issued.

NO – *Go to Question 2 below*

2. Child is not Title IV-E eligible for kinship guardianship assistance (and is not a non-qualified immigrant), and will be covered by Medical Assistance up to the age of 18 or up to the age of 21, per the terms in the KinGAP Agreement. All children are eligible for continuous Medical Assistance coverage for a period of up to 12 months after discontinuance of kinship guardianship assistance payments, except that continuous coverage does not extend beyond the end of the month in which the child turns 19 years of age. If the child is age 19 or older, or if the continuous coverage period has ended, a separate Medical Assistance eligibility determination must be completed.

YES—***STOP! Record all supporting documentation in Section VII.**
Complete Section VI **after** the letters of guardianship have been issued)

NO—*Go to Question 3 below*

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3. Child is a **non-qualified immigrant foster child** and will be provided medical coverage:

YES—Check a or b (below)

a. Prospective relative guardian has available and affordable medical coverage for the child, and agrees to provide such coverage for the child; or

b. If coverage is not available and affordable to the relative guardian, the child will be covered by either Child Health Plus or New York State Medical Subsidy for as long as kinship guardianship assistance payments continue to be made pursuant to the KinGAP Agreement. At age 19, if kinship guardianship assistance payments are still being made, medical subsidy will be provided until the child reaches age 21 or until kinship guardianship assistance payments are discontinued, whichever occurs earlier.

Record all supporting documentation for Medical Assistance/Medical Coverage in Section VII.

STOP!

***DO NOT complete Section VI until the letters of guardianship have been issued.**

SECTION VI. ELIGIBILITY SUMMARY AND SIGNATURE/SUPEVISORY REVIEW

*** THIS SECTION TO BE COMPLETED BY LDSS/ACS *AFTER* THE LETTERS OF GUARDIANSHIP HAVE BEEN ISSUED**

1. KINSHIP GUARDIANSHIP ASSISTANCE AND NON-RECURRING GUARDIANSHIP EXPENSES AGREEMENT.

Was the Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement signed by all parties **before** the letters of guardianship were issued?

YES

Date Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses

Agreement signed by all parties: ____/____/____

Date letters of guardianship were Issued : ____/____/____

NO – Go to Question 2 (below) and check “ Ineligible for Kinship Guardianship Assistance Payment Program”

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2. ELIGIBILITY AND SYSTEMS INFORMATION: AFTER ISSUANCE OF LETTERS GUARDIANSHIP

Any child who is eligible for the Kinship Guardianship Assistance Program, regardless of Title IV-E eligibility, will receive medical coverage through Medical Assistance, except for a child who is a non-qualified immigrant.

Check the appropriate box below to indicate the type of assistance for which a child is eligible.

- ELIGIBLE FOR KINSHIP GUARDIANSHIP ASSISTANCE PAYMENT AND MEDICAL ASSISTANCE.**
- TITLE IV-E ELIGIBLE:** Code child 02 (eligibility code); KG (direct service code), KG (POS); and open non-services MA case using case type 20.
- NOT TITLE IV-E ELIGIBLE (and not a non-qualified immigrant):** Code child 08 or 14 (eligibility code); KG (direct service code), KG (POS); and open non-services MA case using case type 20.
- NON-QUALIFIED IMMIGRANT AND ELIGIBLE for KINSHIP GUARDIANSHIP ASSISTANCE PAYMENT and MEDICAL COVERAGE** through the RELATIVE GUARDIAN. Code child 14 (eligibility code); KG (direct service code), KG (POS).
- NON-QUALIFIED IMMIGRANT AND ELIGIBLE for KINSHIP GUARDIANSHIP ASSISTANCE PAYMENT and MEDICAL COVERAGE** through CHILD HEALTH PLUS or NEW YORK STATE MEDICAL SUSIDY. Code child 14 (eligibility code); KG (direct service code), KG (POS). Code 77 (POS) is to be used for State Medical Subsidy, when applicable.
- INELIGIBLE** for KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM.

Worker's
Signature _____ Date ___/___/___

Supervisor's
Signature _____ Date ___/___/___

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SECTION VII. DOCUMENTATION

Indicate the documentation used to verify each item of eligibility. State where documentation is located in the child's uniform case record or attach it to this form

| Kinship Guardianship Assistance Eligibility | Documentation | Location in the Uniform Case Record | Attached |
|---|---------------|-------------------------------------|--------------------------|
| 1. Caregiver/Child Relationship | | | <input type="checkbox"/> |
| 2. Age /Custody | | | <input type="checkbox"/> |
| 3. Certification/Approval | | | <input type="checkbox"/> |
| 4. Initial Permanency Hearing | | | <input type="checkbox"/> |
| 5. Fact Finding | | | <input type="checkbox"/> |
| 6. Adoption and Reunification is not an appropriate plan | | | <input type="checkbox"/> |
| 7. Criminal History Record Check | | | <input type="checkbox"/> |
| 8. Child Abuse Maltreatment data base check (In State) | | | <input type="checkbox"/> |
| 9. Child Abuse Maltreatment Inquiry (Out of State), if applicable | | | <input type="checkbox"/> |
| 10. Prospective Relative Guardian Commitment | | | <input type="checkbox"/> |
| 11. Child Attachment to Prospective Relative Guardian | | | <input type="checkbox"/> |
| 12. Child Consultation, if applicable | | | <input type="checkbox"/> |
| 13. Youth Consent, if applicable | | | <input type="checkbox"/> |

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| | | | |
|--|----------------------|--|--------------------------|
| Best Interests of Child | Documentation | Location in the Uniform Case Record | Attached |
| 1. Best Interests of Child/ Compelling Reasons | | | <input type="checkbox"/> |
| IV-E Eligibility | Documentation | Location in the Uniform Case Record | Attached |
| 1. Removal | | | <input type="checkbox"/> |
| 2. IV-E Foster Care Eligibility | | | <input type="checkbox"/> |
| Sibling Eligibility | Documentation | Location in the Uniform Case Record | Attached |
| 1. Sibling Exception | | | <input type="checkbox"/> |
| Medical Assistance/Medical Coverage | Documentation | Location in the Uniform Case Record | Attached |
| 1. Proof of Citizenship or Qualified Immigrant Status | | | <input type="checkbox"/> |
| Kinship Guardianship Assistance and Non-Recurring Expenses Agreement/ Letters of Guardianship | Documentation | Location in the Uniform Case Record | Attached |
| 1. Kinship Guardianship Assistance and Non-Recurring Expenses Agreement | | | <input type="checkbox"/> |
| 2. Letters of Guardianship | | | <input type="checkbox"/> |

APPENDIX H

Kinship Guardianship Assistance Eligibility Checklist Instructions

Instructions: This checklist is used to determine and document a child’s eligibility for the Kinship Guardianship Assistance Program. The checklist will also help determine if the child’s kinship guardianship assistance payment is Title IV-E or Non-Title IV-E reimbursable.

Sections I–V and corresponding documentation in **Section VII must be completed prior to** the issuance of the letters of guardianship. **Section II** and corresponding documentation from **Section VII** should be completed **in tandem with the Application for the Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Programs**. Without these sections, the Application **cannot be signed** by the authorized signatory. **Section VI must be completed after** the letters of guardianship are issued. The eligibility checklist should be a part of the child’s Uniform Case Record.

The eligibility standards for the New York Kinship Guardianship Assistance Program are set forth in Sections 458-a-458-f of the Social Services Law and OCFS regulations 18 NYCRR Part 436.

Complete a separate checklist for each child being considered for the Kinship Guardianship Assistance Program.

Section I. Case Information

Enter Child’s Name (Last, First, Middle Initial); Social Services District; Unit/Worker Number; Child’s Date of Birth (DOB); Child’s Client Identification Number (CIN); and Case Number.

Explanation: Use the most accurate data available for entering information. The Welfare Management System (WMS) Family Assistance/Safety Net (FA/SN) clearance (if available) contains reliable demographic data. See also court documents for child’s date of birth.

Section II. Kinship Guardianship Assistance Program Eligibility

Child must meet **ALL** requirements in this section to be eligible for the New York State Kinship Guardianship Assistance Program.

- 1. Child/Caregiver Relationship:** Child is related to the prospective relative guardian by blood, marriage, or adoption.
 - Check **Yes**, if the child is related to the prospective relative guardian by blood, marriage, or adoption. Document the caregiver’s relationship to the child in the space provided.
 - Check **No**, if the child is not related to the prospective relative guardian by blood, marriage, or adoption.

Explanation: State law requires a child to be related to the prospective relative guardian by blood, marriage, or adoption to be eligible for Kinship Guardianship Assistance. The relationship can be to any degree of infinity and is not limited by the OCFS definition of relative that is used for the approval of relative foster parents.

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Documentation for Child/Caregiver Relationship:

- Birth Certificate; or
- Family Bible records; or
- CONNECTIONS /FAD screen documenting approval status; or
- Affidavit (attestation) of Relationship - see Appendix I for Model Form.

2. **Age/Custody:** Child entered the care and custody or the custody and guardianship of the LDSS/ACS before his/her 18th birthday **and** is currently under the age of 21.

- Check **Yes**, if the child entered the care and custody or the custody and guardianship of LDSS/ACS before his/her 18th birthday and the child is currently under the age of 21.
- Check **No**, if the child did not enter the care and custody or the custody and guardianship of the LDSS/ACS prior to his/her 18th birthday or the child is not currently under the age of 21.

Explanation: State law requires that the child be in the care and custody, or the custody and guardianship of the LDSS/ACS before his or her 18th birthday. Federal and state law provides that a child over the age of 21 cannot participate in the Kinship Guardianship Assistance Program.

Documentation for Age:

- Non-services WMS screen reflecting the child's date of birth; or
- Birth Certificate (see *10 OCFS-INF-10* for details regarding birth certificates from Puerto Rico); or
- Baptismal certificates; *or*
- Hospital records; *or*
- U.S. Passport; *or*
- FASP/progress notes that substantiate that a certificate was seen by the caseworker and the note contains the child's name, date of birth, parents' names, and certificate number;

AND

Documentation for Care and Custody or Custody and Guardianship:

- Court order granting care and custody of the child to LDSS/ACS; *or*
- Court order granting custody and guardianship of the child to LDSS/ACS; *or*
- Voluntary placement agreement transferring care and custody of the child to LDSS/ACS.

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3. Approval/Certification: The child has been in foster care with the prospective relative guardian for at least 6 consecutive months prior to the date of application for the Kinship Guardianship Assistance Program, during which time the relative was fully approved or fully certified as a foster parent during that entire period.

- Check **Yes**, if the child has been in foster care with the prospective relative guardian for at least 6 consecutive months prior to the date of application for the Kinship Guardianship Assistance Program, during which time the relative was fully approved or fully certified as a foster parent during that entire period.
- Check **No**, if the child has not been in foster care with the prospective relative guardian for at least 6 consecutive months prior to the date of application for the Kinship Guardianship Assistance Program, or the relative was not fully approved or not fully certified as foster parent during that entire period.

Explanation: Federal and state law requires the prospective relative guardian to have cared for the foster child as a fully certified or fully approved foster parent for a period of 6 consecutive months **prior to** the application for kinship guardianship assistance. The approval or certification must be full certification or full approval, with no lapses in certification or approval 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 toward** meeting the 6-months time frame. However, the 6-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 of the foster child from the certified or approved foster home.

Documentation of Approval/Certification:

- **CONNECTIONS/FAD screen indicating approval/certification status; and**
 - **In the event that the most recent/certification has an effective date less than 6 months from the date of application for KinGAP, the CONNECTIONS/FAD screen indicating the approval/certification status for the period prior to the most recent such status;**
- OR**
- **Most recent certificate to board children or approval letter; and**
 - **In the event that the most recent certificate to board or most recent approval letter is dated less than 6 months from the date of application for KinGAP, the certificate to board children or approval letter prior to the most recent certificate to board children or approval letter.**

Documentation of Placement for 6 Consecutive Months :

- **CCRS placement /movement and/or legal history documenting time in foster care; or**
- **WMS POS history authorizing foster care payments for the required period of time to the prospective relative guardian; or**

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- **The FASP/progress notes providing case history indicating that the child has been in the care of the prospective relative guardian for at least 6 consecutive months during the period of time that the relative was fully approved or fully certified as a foster parent.**

4. **Initial Permanency Hearing:** The initial permanency hearing for the foster child has been completed.

- Check **Yes**, if the child's initial permanency hearing has been completed. Insert the date that the initial permanency hearing was completed.
- Check **No**, if the child's initial permanency hearing has not been completed.

Explanation: State law requires that the initial permanency hearing take place in order for the child to be eligible for the Kinship Guardianship Assistance Program. This helps to confirm that the Social Services District has given ample time and attention to pursue reunification with the parent or caregiver from whom the child was removed before pursuing a kinship guardianship arrangement.

Documentation for Initial Permanency Hearing:

- **Court order documenting the completion of the Initial Permanency Hearing**

5. **Fact-Finding:** If the child was placed into foster care as an abused or neglected child pursuant to Article 10 of the Family Court Act, the fact-finding hearing has been completed.

- Check **Yes**, if the child was placed in foster care pursuant to Article 10 of the Family Court Act and the fact finding hearing has been completed. Insert the date that the fact-finding hearing was completed.
- Check **No**, if the child was placed in foster care pursuant to Article 10 of the Family Court Act and the fact finding hearing has not been completed.
- Check **N/A**, if the child was not placed pursuant to Article 10 of the Family Court Act. Indicate whether the child was placed under section 384-a of the SSL, under section 384 of the SSL, under Article 7 of the Family Court Act, or under Article 3 of the Family Court Act.

Explanation: State Law requires that the fact finding hearing be completed before applying for kinship guardianship assistance for any child placed in foster care under Article 10 of the Family Court Act.

Documentation for Fact Finding:

- **Court Order documenting the completion of the Fact-Finding Hearing**

6. **Reunification and Adoption:** Being returned home and adopted are **not** appropriate permanency options for the child.

- Check **Yes**, if reunification and adoption are not appropriate permanency options for the child.

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- Check **No**, if reunification and/or adoption may be appropriate permanency options for the child.

Explanation:

Reunification. Federal and state law provide that before pursuing a kinship guardianship assistance arrangement return of the child to his/her home must be determined to not be an appropriate permanency goal. It is critical that diligent work be undertaken in all foster care cases to attempt to safely reunite the foster child with his or her parent(s). The work must be done in a reasonable time frame considering the child's age and developmental level.

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. Consider whether the parent(s) circumstances and condition can be sufficiently ameliorated with direct services and supports and/or referral for services and supports; and whether the reason(s) for the removal have been thoroughly considered and whether the circumstances and conditions that led to the removal still exist.

Consistent with 18 NYCRR 428.5, the steps taken to determine that it is **not** appropriate for the child to return home must be documented in the case progress notes. This **guide** contains additional tools and materials to help with this assessment and determination.

Adoption. Once it is determined that reunification is not an appropriate permanency option, adoption must be determined not appropriate as well. Both children who are free for adoption and children who are not free for adoption are potentially eligible for KinGAP; however, for children who are not yet free for adoption, a number of factors should be considered. These factors include whether the adversarial process of bringing a termination of parental rights (TPR) is the 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 interests to have his or her parents' rights severed; the potential available grounds for termination; and the possibility of the birth parent voluntarily surrendering the foster child.

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. A forthcoming ADM regarding incarcerated parents and parents in residential drug treatment, and the applicability of TPR in those situations, will implement Chapter 113 of the Laws of 2010.

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

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Consistent with 18 NYCRR 428.5, the steps taken to determine that it is not appropriate for the child to be adopted must be documented in the case progress notes. In addition, the efforts made to discuss adoption by the child's related 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. This **guide** contains additional tools and materials to help with this assessment and determination.

Documentation for Determining Reunification and Adoption Are Not Appropriate Permanency Options:

- **FASP/ progress notes documenting the steps the agency has taken to determine that reunification and adoption are not appropriate.**

7. Criminal History Record Check: Prospective relative guardian and all other adults 18 years of age or older who reside in the home of the prospective relative guardian have completed a national and state criminal history record check pursuant to section 378-a of the Social Services Law.

- Check **Yes**, if the prospective relative guardian and all other adults 18 years of age or older who reside in the home of the prospective relative guardian have completed a national and state criminal history record check pursuant to section 378-a of the Social Services Law.
- Check **No**, if the prospective relative guardian and all other adults 18 years of age or older who reside in the home of the prospective relative guardian have not completed a national and state criminal record check pursuant to a section 378-a of the Social Service Law.

Explanation: Federal law requires that a prospective relative guardian must undergo a criminal record check, including fingerprint-based checks of national (FBI) crime information databases. New York State law requires that in addition to the prospective relative guardian who must undergo a national and state criminal history record check, all other adults in the home of the prospective guardian, 18 years of age or older, must undergo a national and state criminal record check as well. The requirement for a national and state criminal history record check for kinship guardianship assistance purposes is deemed satisfied for a person if such check was completed as part of the foster home certification or approval process. If not completed at the time of certification or approval, such national and state criminal history record check must be completed as part of the application process for kinship guardianship assistance.

Documentation for Criminal Record Check:

- **Copy of the criminal history record results summary issued by OCFs for each prospective relative guardian and any other adult 18 years of age or older in the household of the prospective relative guardian.**

8. Child Abuse and Maltreatment Record Check: In-State: Prospective relative guardian and all other adults 18 years of age or older who reside in the home of the prospective kinship guardian have

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completed a child abuse and maltreatment data base check through OCFS Statewide Central Register of Child Abuse and Maltreatment (SCR).

- Check **Yes**, if the prospective relative guardian and all other adults 18 years of age or older who reside in the home have completed a child abuse and maltreatment data base check through the OCFS Statewide Central Register of Child Abuse and Maltreatment (SCR).
- Check **No**, if the prospective relative guardian and all other adults 18 years of age or older who reside in the home of the prospective relative guardian(s) have not completed a child abuse and maltreatment data base check through the OCFS Statewide Central Register of Child Abuse and Maltreatment (SCR).

Explanation: Federal and state laws require that the prospective guardian and all adults in the home of the prospective relative guardian 18 years of age or older must undergo a child abuse and maltreatment registry check. This helps to identify who resides in the home of the prospective kinship guardian with a previous history of causing harm to a child. This child abuse and maltreatment registry check does not have to be completed again on the prospective relative guardian or other adults in the home if it was previously completed as part of the process for certification or approval of the prospective relative guardian as a foster parent. Indicated reports should be treated in the same way that they are treated for the certification or approval of a foster parent or the approval of an adoptive parent.

Documentation for Child Abuse and Maltreatment Record Check:

- **Results letter from the SCR on each prospective relative guardian and any other adult 18 years of age or older residing in the home of the prospective relative guardian.**

9. Child Abuse and Maltreatment Record Inquiry: Out of State: If the prospective relative guardian or another adult 18 years of age or older residing in the home of the prospective relative guardian lived outside of New York State within the past 5 years of the application for kinship guardianship assistance, the applicable child welfare agency in each of the previous state(s) was contacted to obtain child abuse and maltreatment information maintained by the child abuse and maltreatment registry in each of those states.

- Check **Yes**, if the prospective relative guardian or another adult 18 years of age or older residing in the home of the prospective relative guardian lived outside of New York State within the past 5 years of the application for kinship guardianship assistance and the applicable child welfare agency in each of the previous state(s) was/were contacted to obtain child abuse and maltreatment information maintained by the child abuse and maltreatment registry of such state(s).
- Check **No**, if the prospective relative guardian or another adult 18 years of age or older residing in the home of the prospective relative guardian lived outside of New York State within the past 5 years of the application for kinship guardianship and the applicable child

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welfare agency in each of the previous state(s) was/were not contacted to obtain child abuse and maltreatment information maintained by the child abuse and maltreatment registry of such state(s).

- Check **N/A**, if neither the prospective relative guardian nor any other adults living in the home of the prospective relative guardian lived out of New York State within 5 years of the filing by the prospective relative guardian of an application for kinship guardianship assistance.

Explanation: Federal and state laws require that the prospective relative guardian and all adults in the home who are 18 years of age or older undergo a child abuse and maltreatment registry check that includes getting child abuse and maltreatment information maintained by the child abuse and maltreatment registry in each state where the adult lived within 5 years of the application by the prospective relative guardian for kinship guardianship assistance. This helps to identify persons who reside in the home of the prospective kinship guardian with a previous history of causing harm to a child. This child abuse and maltreatment registry check does not have to be completed again on the prospective relative guardian or other adults in the home if it was previously completed as part of the process for certification or approval of the prospective relative guardian as a foster parent. Indicated reports should be treated the same way that they are treated for the certification or approval of a foster parent or the approval of an adoptive parent.

Documentation for Child Abuse and Maltreatment Inquiry:

- **FASP/progress notes indicating that the prospective relative guardian and other adults in the home have not lived out of state within the past 5 years, or**
- **Letters requesting an out-of-state registry check for persons living outside of New York State over the last 5 years; and documentation indicating the results of the child abuse and maltreatment registry check.**

10. Prospective Relative Guardian's Commitment: Prospective relative guardian has a strong commitment to caring permanently for the child.

- Check **Yes**, if the prospective relative guardian has a strong commitment to caring permanently for the child.
- Check **No**, if the prospective relative guardian does not have a strong commitment to caring permanently for the child.

Explanation: Federal and state laws require that the caregiver has a strong commitment to the child. The hope is that the caregiver not only plans to raise the child until he/she reaches adulthood but that emotional connections will last well into adulthood. Federal and state laws require that discussions and assessments completed with the caregiver regarding commitment must be documented in the child's Uniform Case Record.

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Documentation of Caregiver Commitment:

- **FASP/progress notes documenting that the caregiver is committed to raising the child to adulthood, and**
- **If completed, attach the Checklist entitled “Factors for Related Foster Parents to Consider When Reviewing Permanency Options” (see Appendix C).**

11. Child Attachment: Child has demonstrated a strong attachment to the prospective relative guardian.

- Check **Yes**, if the child has demonstrated a strong attachment to the prospective relative guardian.
- Check **No**, if the child has not demonstrated a strong attachment to the prospective relative guardian.

Explanation: Federal and state laws require a determination that the child demonstrates a strong attachment to the prospective relative guardian. The LDSS or ACS must document in the child’s Uniform Case Record the process that has been used to make this assessment (e.g., questions asked, discussion with the child, observations).

Documentation of Child’s Attachment:

- **FASP/progress notes indicating that the child demonstrates a strong attachment to the prospective relative guardian.**

12. Child Consultation: Age-appropriate consultation has been done with the child regarding the kinship guardianship arrangement. Please note: If the child is 14 years of age or older, consultation is mandatory.

- Check **Yes**, if age appropriate consultation has been done with a child regarding the kinship guardianship arrangement.
- Check **No**, if age appropriate consultation has not been done with a child regarding the kinship guardianship arrangement.
- Check **N/A**, if the child is under the age of 14 **and** consultation is not appropriate.

Explanation: State law requires age appropriate consultation. This would apply to children under the age of 14 based on the child’s ability to comprehend the proposed arrangement. Federal and state law require that children 14 years of age or older must be consulted prior to entering into the kinship guardianship arrangement. The caseworker should arrange for the child to be included in permanency discussions so that the child fully understands the implications of the kinship guardianship arrangement and is in agreement. Both federal and state laws require documentation to support that the discussions with the child have taken place. If a child 14 years of age or older lacks the physical and/or mental capacity to have a discussion regarding the kinship guardianship

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arrangement, the caseworker should check Yes for this question on the checklist and must provide documentation of the reason they came to that conclusion that the child lacked the physical and/or mental capacity to be consulted with regarding the guardianship, including the professionals consulted and the diagnosis that supports this decision.

Documentation of Child Consultation:

- **FASP/progress notes indicating, for children under 14 years of age, the age-appropriate consultation that the caseworker has had with the child, and for a child who is 14 years of age or older, that the child has been consulted about the kinship guardianship arrangement, including the date that the worker reviewed the KinGAP Child Comparison Chart (see Appendix E).**
- **If a child 14 years of age or older is determined to lack the physical and/or mental capacity to be consulted with regarding the kinship guardianship arrangement, the caseworker must have documentation from a professional, including diagnoses that supports the conclusion that they lack the physical and/or mental capacity to be consulted with, where applicable, in the uniform case record. In addition, the progress notes should document any conversations with professionals and/or the caseworker's supervisor that led to the conclusion that the child lacks the physical and/or mental capacity to be consulted.**

13. Youth Consent: The youth is 18 years of age or older and the youth has consented to the kinship guardianship arrangement:

- Check **Yes**, if a youth 18 years of age or older has consented to the kinship guardianship arrangement.
- Check **No**, if a youth 18 years of age or older has not consented to the kinship guardianship arrangement
- Check **N/A**, if a child is not 18 years of age or older.

Explanation: New York State Law requires that, as a condition for entering into the kinship guardianship arrangement, youth who are 18 years of age or older must consent to such arrangement. If a caseworker attempts to obtain consent from a youth 18 years of age or older, but the youth lacks the physical and/or mental capacity to consent to the kinship guardianship arrangement, the caseworker should select Yes for this question on the checklist and must provide documentation of the reason they came to the conclusion that the child lacks the physical and/or mental capacity to consent, including the professionals consulted and the diagnosis that supports this decision.

Documentation of Youth Consent:

- **FASP/progress notes indicating that the youth has consented to the kinship guardianship assistance arrangement, including the date the worker reviewed the KinGAP Child Comparison Chart; and**

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- A copy of the Kinship Guardianship Assistance Program Application signed by the youth who is 18 or older consenting to the kinship guardianship arrangement.
- If a youth 18 years of age or older lacks the physical and/or mental capacity to consent to the kinship guardianship arrangement, the caseworker must have documentation from a professional, including diagnoses that supports the conclusion that they lack the physical and/or mental capacity to consent, where applicable, in the uniform case record. In addition, the progress notes should document any conversations with professionals and/or the caseworker's supervisor that led to the conclusion that the child lacks the physical and/or mental capacity to consent.

Instructions: If the answer to any of the questions 1-13 is "No" then currently the child is **NOT eligible** for the Kinship Guardianship Assistance Program. **Go to Section VI, Eligibility Summary**, and check "*Ineligible for Kinship Guardianship Assistance Program.*" **The caseworker and supervisor should sign the form and file in the child's Uniform Case Record.**

Best Interests Determination

If the answer to **ALL** of the questions 1-13 are "Yes" or "N/A" then the child is **eligible** for the Kinship Guardianship Assistance Program **only after** the social service official determines that it is in the best interests of the child for the relative to become the relative guardian of the child. In determining whether it is in the best interests of the child for the relative to become the relative guardian of the child, the social services district must determine and document that **compelling reasons** exist for determining that the return home of the child and the adoption of the child are not in the best interests of the child, and therefore, are not appropriate permanency options for the child.

Indicate below if the social service official has determined that it is in the best interests of the child for the relative to become his/her relative guardian.

- Check **Yes**, if the social service official has determined that it is the best interests of the child.
- Check **No**, if the social service official has determined that it is not in the best interests of the child.

If the answer is "Yes," then go to **Section III** to determine if the child qualifies for Title IV-E reimbursement. **Record all supporting documentation for Eligibility Criteria 1–13 and "Best Interests" in Section VII.**

If the answer is "No," go to **Section VI, Eligibility Summary** and check "*Ineligible For Kinship Guardianship Assistance Program.*" **The caseworker and supervisor should sign the form and file in the child's Uniform Case Record.**

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Documentation of Best Interests:

Document that compelling reasons exist for determining that the **return home** of the child are not in the best interests of the child. As part of this determination the social services district should consider whether:

- **The child cannot 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 circumstances and conditions that led to the removal still exist.**

Document that compelling reasons exist for determining that the **adoption** of the child are not in the best interests of the child. As part of this determination the social services district should consider:

- **Whether the adversarial process of bringing a termination of parental rights (TPR) is the 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;**
- **The potential available grounds for termination; and**
- **The possibility of the birth parent voluntarily surrendering the foster child.**

The caseworker must document in the FASP/progress notes the reasons that it is in the best interests of the child to pursue guardianship. Some best interests reasons include the following:

- **The social services district has no viable ground for the termination of parental rights. Without kinship guardianship as an alternative, the child would remain in foster care.**
- **A child, 14 years of age or older, with a full understanding of adoption, refuses to consent to his/her adoption.**
- **A child or family member is reluctant to legally alter existing family relationships. For example, the grandmother does not want to become the legal mother of her grandchild.**
- **The prospective relative guardian anticipates that one or both of the birth parents will be able to care for the child at a later date. The birth parents may not be prepared to safely resume these responsibilities in the foreseeable future, but keeping the option open is an important part of the related foster parents' motivation for agreeing to become the child's legal guardian.**

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- **One or both of the birth parents is an integral part of the child’s life. Even though the birth parents may never be able to care for the child on full-time basis, the parents have a significant presence in the child’s life. Terminating parental rights or seeking a surrender, which is necessary for adoption, would extinguish all legal rights of the parents to associate with the child and socially estrange the parents from the child and family.**
- **The birth parents are incarcerated or in a residential substance abuse treatment program for an extended period of time and are not able to provide for the daily care of the child. The transfer of guardianship enables the child to leave foster care but leaves the door open for reunification, if appropriate, after the parent serves his or her time or completes the program. *The safety of the child must be carefully considered in such a case.***
- **The birth parents and family members are in agreement that kinship guardianship is the best alternative for the child, and the birth parents are willing to consent to the arrangement.**

Section III. Eligibility for Title IV-E Reimbursement

A child who meets **all** of the eligibility criteria in Section II **will be eligible for Title IV-E reimbursement** for kinship guardianship assistance **if both** of the following conditions are met:

- 1. Removal:** Child has been removed from the child’s home pursuant to a voluntary placement agreement (VPA) executed by the child’s parent or guardian (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 (CTW), **or** that the removal of the child from the child’s home is in the best interests of the child (BE) .
 - Check **Yes**, if the child has been removed from his/her home pursuant to a voluntary placement agreement (VPA) executed by the child’s parent or guardian(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 (CTW), **or** that the removal of the child from the child’s home is in the best interests of the child (BE). Indicate whether removal was voluntary (VPA) or due to court order (CTW/BE).
 - Check **No**, if the child was not removed from his/her home pursuant to a voluntary placement agreement (VPA) executed by the child’s parent or guardian (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 (CTW), **or** that the removal of the child from the child’s home is in the best interests of the child (BE).

Explanation: To be eligible for Title IV-E reimbursable kinship guardianship assistance payments, federal law states that the child must have been removed from his/her home pursuant to a voluntary placement agreement (VPA) executed by the child’s parent of guardian (section 384-a of the SSL) **or** by a court determination that continuation of the child in the child’s home would be

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contrary to the welfare of the child (CTW), or that the removal of the child from the child's home is in the best interests of the child (BE).

Documentation for Removal:

- A copy of the voluntary placement agreement; or
- The removal order indicating that it was contrary to the welfare of the child to remain in the child's home or that removal from the child's home was in the best interests of the child, and that the child is in the legal custody of the LDSS/ACS;

AND

2. **Title IV-E Foster Care Eligibility:** Child was eligible for Title IV-E foster care maintenance while residing for at least 6 consecutive months in the home of the prospective relative guardian prior to the application for kinship guardianship assistance.

- Check **Yes**, if the child was eligible for Title IV-E foster care maintenance while residing for at least 6 consecutive months in the home of the prospective relative guardian prior to the application for kinship guardianship assistance.
- Check **No**, if the child was not eligible for Title IV-E foster care maintenance while residing for at least 6 consecutive months in the home of the prospective relative guardian.

Explanation: Federal law states that only foster children in related foster homes who have resided with their prospective relative guardian for at least 6 consecutive months while eligible for Title IV-E foster care maintenance payments are eligible for Title IV-E reimbursable kinship guardianship assistance payments. This means that a foster child must meet **all** eligibility requirements for Title IV-E foster care, including, but not limited to, the requirement that the child was removed from an AFDC-eligible home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the 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 placed in a fully certified or fully approved foster home. However, the child does not have to actually be *receiving* those payments while in the relative guardian's home. In this case, the distinction between being "eligible for" and "receiving" Title IV-E foster care assistance may be a distinction with no real meaning. Federal law requires that the child be in foster care for at least 6 consecutive months with the prospective relative guardian. Therefore, it is likely that foster care payments will be paid and, since the child is eligible for Title IV-E foster care, it is likely that the child will receive federally reimbursable foster care maintenance payments.

Documentation for Title IV-E Foster Care Eligibility:

- Most current Title IV-E eligibility re-determination that shows child has been eligible for Title IV-E foster care maintenance payments while in the home of the prospective relative

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guardian for 6 consecutive months prior to the application for kinship guardianship assistance (must be eligible, but not necessarily receiving).

Instructions: If the answers to **both 1 AND 2** are “**Yes**” the child will be eligible for a Title IV-E funded kinship guardianship assistance payments. **Go to Section V** to determine Medicaid/Medical Coverage.

If the answer to **1 AND/OR 2** is “**No**,” continue to **Section IV**, Sibling Exception for Title IV-E Eligibility for kinship guardianship assistance payments.

Record all supporting documentation for Title IV-E foster care in Section VII.

Section IV: Sibling Exception for Title IV-E Eligibility

A child who meets **all** of the eligibility criteria in Section II but **does not** meet the criteria in Section III, **will be eligible** for Title IV-E reimbursement for kinship guardianship assistance payments **if one** of the following conditions is met:

1. **Sibling Exception in Same Arrangement:** The child is a sibling of a child who is eligible to receive Title IV-E reimbursable kinship guardianship assistance payments and is going to the same kinship guardianship arrangement.
 - Check **Yes**, if the child is a sibling of a child who is eligible to receive Title IV-E kinship guardianship assistance payments **and** is going to the same kinship guardianship arrangement. Indicate the name of the sibling who is Title IV-E kinship guardianship assistance eligible.
 - Check **No**, if the child is a sibling of a child who is eligible to receive Title IV-E kinship guardianship assistance payments, and is not going to the same kinship guardianship arrangement OR the child is not a sibling of a child who is eligible to receive Title IV-E kinship guardianship assistance payments.

Explanation: Federal law allows a state to claim Title IV-E kinship guardianship assistance reimbursement for children who have siblings who individually qualify for Title IV-E eligible kinship guardianship assistance payments, as long as they are going to the same kinship guardianship arrangement.

Documentation Sibling Exception (Going to Same Kinship Guardianship Arrangement):

- **Birth certificates of both children that indicate children share at least one biological parent; or**
- **Baptismal certificate that indicate children share at least one biological parent; or**
- **Hospital records that indicate children share at least one biological parent; or**
- **Court records; or**

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- FASP/progress notes that substantiate that the children are siblings;

AND

- Sibling's approved KinGAP application or Kinship Guardianship Assistance and Non-Recurring Expenses Agreement.

OR

2. **Sibling Exception (Joining the Kinship Guardianship Arrangement):** The child is a sibling of a child who is currently receiving Title IV-E eligible kinship guardianship assistance payments and is *joining* that sibling in the same kinship guardianship living arrangement.

- Check **Yes**, if the child is a sibling of a child who is currently receiving Title IV-E kinship guardianship assistance payments **and** is *joining* the sibling in the same kinship guardianship living arrangement. Indicate the name of the sibling, and the date the letters of guardianship were issued for the sibling.
- Check **No**, if the child is not a sibling of a child who is currently receiving Title IV-E kinship guardianship assistance payments, **and/or is not joining** a sibling in the same kinship guardianship living arrangement.

Explanation: Federal law allows a state to claim Title IV-E reimbursement for kinship guardianship assistance for children who have siblings who are receiving Title IV-E eligible kinship guardianship assistance payments as long as the applicant child is joining a sibling in the same kinship guardianship arrangement.

Documentation Sibling Exception (Joining a Sibling)

- Birth certificates of both children that indicate children share at least one biological parent; or
- Baptismal certificate that indicate children share at least one biological parent; or
- Hospital records that indicate children share at least one biological parent; or
- Court records; or
- FASP/progress notes that substantiate that the children are siblings; and
- CCRS placement history documenting current legal status/living arrangement; and
- WMS placement history authorizing IV-E kinship guardianship assistance payment to caregiver on behalf of the sibling; and
- Sibling's Kinship Guardianship Assistance and Non-Recurring Expenses Agreement.

Instructions: If the answer to 1 or 2 is "Yes," then the child is **eligible** to receive Title IV-E reimbursable kinship guardianship assistance payments.

If the answers to **both 1 and 2** are "**No**" then the child is not eligible for the Title IV-E kinship guardianship assistance program. **However, the child is still eligible for the New York State kinship guardianship assistance program, but any payments made are not federally reimbursable.**

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Record all documents that support sibling exception for Title IV-E eligibility for kinship guardianship assistance. **Go to Section V**, Medical Assistance/Medical Coverage.

Section V: Medical Assistance/Medical Coverage

Medical Assistance is available for a child who is Title IV-E eligible. Medical Assistance provides coverage for eligible medical care, services, or supplies obtained from a provider enrolled in the Medical Assistance program. No payment may be made for services otherwise covered by insurance or other third party payments. Medical Assistance is also available in New York State for any child who is not Title IV-E eligible, except for non-qualified immigrants. Indicate below the type of medical coverage for which the child qualifies.

- 1. Title IV-E Kinship Guardianship Assistance Eligible:** Child is **Title IV-E eligible for kinship guardianship assistance**, and will be covered by Medical Assistance up to the age of 18, or up to the age of 21, per the terms in the KinGAP Agreement. All children are eligible for continuous Medical Assistance coverage for a period of up to 12 months after discontinuance of Kinship Guardianship Assistance payments, except that continuous coverage does not extend beyond the end of the month in which the child turns 19 years of age. If the child is age 19 or older, or if the continuous coverage period has ended, a separate Medical Assistance eligibility determination must be completed.
 - Check **Yes**, if the child is **Title IV-E eligible** for kinship guardianship assistance payments **and** will be covered by Medical Assistance up to the age of 18, or up to the age of 21, per the terms of the KinGAP Agreement (**STOP; Record all supporting documentation in Section VII**, Complete Section VI **after** the letters of guardianship have been issued).
 - Check **No**, if the child is **not Title IV-E eligible** for kinship guardianship assistance payments **and** will be covered by Medical Assistance up to the age of 18, or up to the age of 21, per the terms of the KinGAP Agreement (**GO to Question 2 below**).

Explanation: Medical Assistance is available for a child who is Title IV-E eligible for kinship guardianship assistance payments. Medical Assistance provides coverage for eligible medical care, services, or supplies obtained from a provider enrolled in the Medical Assistance program.

A child who is **Title IV-E eligible for kinship guardianship assistance** will be covered by Medical Assistance up to the age of 18, or up to the age of 21 where the child attained the age of 16 before the KinGap Agreement became effective and the child is either: (1) completing secondary education or a program leading to an equivalent credential; (2) enrolled in an institution that provides post-secondary or vocational education; (3) participating in a program or activity designed to promote, or remove barriers to employment; (4) employed for at least 80 hours per month; or (5) incapable of doing any of the activities described in items 1–4 due to a medical condition, which incapacity is supported by regularly updated information provided by the relative guardian and recorded in the child’s eligibility file. All children are eligible for continuous Medical Assistance coverage for a period of up to 12 months after discontinuance of kinship guardianship assistance payments, except that continuous coverage does not extend beyond the end of the month in which the child turns 19 years

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of age. If the child is age 19 or over, or if the continuous coverage period has ended, a separate Medical Assistance eligibility determination must be completed.

Until issuance of the letters of guardianship by the court, the medical expenses of the foster child will continue to be paid through foster care.

Documentation:

- **U.S. Citizen**
 - **Birth certificate; or**
 - **U.S. Passport; or**
 - **Court Records; or**
 - **Naturalization certificate;**

OR

- **Qualified Immigrant**
 - **WMS Case Composition screen showing child received Family Assistance (FA), Medical Assistance (MA); or**
 - **Documents from the United States Citizen and Immigration Services (USCIS), Home Energy Assistance Program (HEAP) or Food Stamps (FS); or**
 - **Court Records; and**
 - **Required documentation as delineated in Appendix B, “Immigration Status List,” in the Eligibility Manual for Child Welfare Programs.**

No documentation is needed to prove Title IV-E eligibility because it has been provided for in Sections III or IV of this form.

- 2. Not Title IV-E Kinship Guardianship Assistance Eligible:** Child is **not Title IV-E eligible for kinship guardianship assistance (and is not a non-qualified immigrant)**, and will be covered by Medical Assistance up to the age of 18 or up to the age of 21, per terms in the KinGAP Agreement. All children are eligible for continuous Medical Assistance coverage for a period of up to 12 months after discontinuance of kinship guardianship assistance payments, except that continuous coverage does not extend beyond the end of the month in which the child turns 19 years of age. If the child is age 19 or over, or if the continuous coverage period has ended, a separate Medical Assistance eligibility determination must be completed.

- Check **Yes**, if the child **is not Title IV-E eligible for kinship guardianship assistance and is not a non-qualified immigrant**, and will be covered by Medical Assistance up to the age of 18, or up to the age of 21, per the terms of the KinGap Agreement (**STOP; Record all supporting documentation in Section VII.** Complete Section VI *after* the letters of guardianship have been issued).
- Check **No**, if the child **is** Title IV-E eligible, **or** a non-qualified immigrant (**Go to Question 3 below**).

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Explanation: Medical Assistance is available for a child who **is not** Title IV-E eligible for kinship guardianship assistance and who **is not a non-qualified immigrant**. For such a child, continuous coverage does not extend beyond the end of the month in which the child turns 19 years of age. If the child is age 19 or over, or if the continuous coverage period has ended, a separate Medical Assistance eligibility determination must be completed.

Medical Assistance provides coverage for eligible medical care, services, or supplies obtained from a provider enrolled in the Medical Assistance program.

A child who is **not Title IV-E eligible for kinship guardianship assistance** and is not a non-qualified immigrant will be covered by Medical Assistance up to the age of 18; or up to the age of 21, where the child attained the age of 16 before the KinGap Agreement became effective and the child is either: (1) completing secondary education or a program leading to an equivalent credential; (2) enrolled in an institution which provides post-secondary or vocational education; (3) participating in a program or activity designed to promote, or remove barriers to employment; (4) employed for at least 80 hours per month; or (5) incapable of doing any of the activities described in items 1–4 due to a medical condition, which incapacity is supported by regularly updated information provided by the relative guardian and recorded in the child’s eligibility file. All children are eligible for continuous Medical Assistance coverage for a period of up to 12 months after discontinuance of kinship guardianship assistance payments, except that continuous coverage does not extend beyond the end of the month in which the child turns 19 years of age. If the child is age 19 or over, or if the continuous coverage period has ended, a separate eligibility determination must be completed.

Until issuance of the letters of guardianship by the court, the medical expenses of the foster child will continue to be paid through foster care.

Documentation:

- **U.S. Citizen**
 - **Birth certificate; or**
 - **U.S. Passport; or**
 - **Court Records; or**
 - **Naturalization certificate;**

OR

- **Qualified Immigrant**
 - **WMS Case Composition screen showing child receives Family Assistance (FA), Medical Assistance (MA); or**
 - **Documents from the United States Citizen and Immigration Services (USCIS), Home Energy Assistance Program (HEAP) or Food Stamps (FS); or**
 - **Court Records; and**
 - **Required documentation as delineated in Appendix B, “Immigration Status List,” in the Eligibility Manual for Child Welfare Programs.**

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No documentation is needed to prove Title IV-E eligibility because it has been provided for in section III or IV of this form.

3. Child is a **non-qualified immigrant** foster child and may be provided medical coverage:
- **Check YES, if the child is a non-qualified immigrant. Check a or b to indicate the type of medical coverage to be provided to the child.**
 - a. Prospective relative guardian has available and affordable medical coverage for the child, and agrees to provide such coverage for the child; **or**
 - b. If coverage is not available and affordable to the relative guardian, the child will be covered by either Child Health Plus or New York State Medical Subsidy for as long as kinship guardianship assistance payments continue to be made pursuant to the KinGAP Agreement. At age 19, if kinship guardianship assistance payments are still being made, medical subsidy will be provided until the child reaches age 21 or until kinship guardianship assistance payments are discontinued, whichever occurs earlier.

Explanation: 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:

- a. Prospective relative guardian has available and affordable medical coverage for the child, and agrees to provide such coverage for the child.
- b. The child will be covered by either Child Health Plus or New York State Medical Subsidy for as long as kinship guardianship assistance payments continue to be made pursuant to the KinGap Agreement. At age 19, if kinship guardianship assistance payments are still being made, medical subsidy will be provided until the child reaches age 21 or until kinship guardianship assistance payments are discontinued, whichever occurs earlier.

Affordable is defined as follows: If the cost of health insurance benefits for the child(ren) does not exceed 3% of the relative 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 relative 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

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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 5 years as a LPR the child will be eligible for federal Medicaid coverage.

Documentation for Medical Assistance/Medical Coverage:

Child has no documentation to support citizenship or qualified immigrant status as noted above.

- **Option A:**
 - A letter from the relative's insurance company indicating that a child under the guardianship of the primary insured party can/cannot be covered under the existing policy.
 - Documentation from employer or insurance company, indicating cost for insuring the child.

- **Option B:**
 - Documentation indicating that that the child meets or does not meet the basic qualifications for Child Health Plus or any successor program or plan of state medical coverage. If the child does not qualify for Child Health Plus, the child will receive New York State Medical Subsidy.

Instructions: Record all supporting documentation for Medical Assistance/Medical Coverage in Section VII.

STOP: DO NOT complete Section VI until *after* the letters of guardianship have been issued.

Section VI: Eligibility Summary and Signature/Supervisory Review

SECTION TO BE COMPLETED BY LDSS/ACS AFTER THE LETTERS OF GUARDIANSHIP ARE ISSUED

1. KINSHIP GUARDIANSHIP ASSISTANCE AND NON-RECURRING GUARDIANSHIP EXPENSES AGREEMENT.

Was the Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement signed by all parties **before** the letters of guardianship were issued?

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- Check **Yes**, if the KinGap Agreement was signed by all parties (prospective relative guardian and LDSS/ACS) prior to the date the letters of guardianship were issued. Enter the date the Agreement was signed by all parties (or last party), as well as the date the letters of guardianship were issued.
- Check **No**, if the KinGap Agreement was not signed by all parties (prospective relative guardian and LDSS/ACS) prior to the date of the issuance of the letters of guardianship (go to question 2 below and check ineligible for Kinship Guardianship Assistance Program).

To be eligible for kinship guardianship assistance regardless of Title IV-E reimbursement eligibility—the Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement ***must be completed and signed (fully executed) prior to the issuance of the letters of guardianship.***

Explanation: The Kinship Guardianship Assistance and Non-Recurring Expenses Agreement is a written agreement between the relative guardian and the Social Service District with custody or guardianship of the foster child. The Kinship Guardianship Agreement must specify the nature and amount of kinship guardianship assistance to be provided. It must be signed by the prospective relative guardian and a duly authorized representative of the Social Services District with custody or guardianship of the foster child **prior to** the issuance of the letters of guardianship by the court. The Agreement is an OCFS prescribed form.

The amount of the payment is based on the circumstances and conditions of the child and determined through the Agreement. No means test can be used to determine eligibility of the prospective relative guardian for payment. However, the prospective relative guardian's income can be considered in determining the amount of the payment. Social Services Districts have the option of either paying 100% of the applicable foster board rate for all kinship guardianship cases or can choose to pay between 75%–100% of the applicable board rate based on the income and family size of the prospective relative guardians. The rate chosen must be equal to the rate used for adoption subsidy payments. Kinship guardianship assistance payment amounts may be adjusted periodically if circumstances change, with the concurrence of the relative guardian, and the Social Service District that executed the Agreement. The rate of payment must be increased whenever the applicable foster board rate increases or whenever the change in age of the child qualifies for an increased rate.

- The kinship guardianship assistance payment may not exceed the foster care maintenance payments that would have been paid in the child had remained in foster care.
- The Agreement, including the requirement to make kinship guardianship assistance payments, does not become effective unless and until the letters of guardianship have been issued by the court.

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Documentation for Kinship Guardianship Assistance and Non-Recurring Expenses Agreement:

- Kinship Guardianship and Non-Recurring Expense Agreement signed by all parties.

Documentation for Letters of Guardianship:

- Letters of Guardianship issued by the court.

Instructions: Record all supporting documentation for **Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement** in Section VII.

2. Eligibility and System Information: After Issuance of Letters of Guardianship

Any child who is eligible for the Kinship Guardianship Assistance Program— regardless of Title IV-E eligibility— will receive medical coverage through Medical Assistance, except for a child who is a non-qualified immigrant. Check the appropriate box below to indicate the type of assistance for which a child is eligible.

- Check “Eligible for Kinship Guardianship Assistance Payment and Medical Assistance” box if the child is eligible for the kinship guardianship assistance payments and Medical Assistance. Indicate below whether the child **is Title IV-E eligible** or **is Not Title IV-E eligible** for kinship guardianship assistance by checking the appropriate box below;
- Check “Eligible for Kinship Guardianship Assistance Payment and Medical Coverage through the relative guardian” if the child is a non-qualified immigrant and the relative guardians has available and affordable medical coverage and agrees to provide such coverage for the child;

OR

- Check “Eligible for Kinship Guardianship Assistance Payment and Medical Coverage through Child Health Plus or New York State Medical Subsidy” if the child is a non-qualified immigrant and is not otherwise eligible for Medical Assistance or coverage is not available and affordable to the relative guardian.
- Check “Ineligible for Kinship Guardianship Assistance Payment Program “ if the child does not meet the eligibility requirements in Section II.

Explanation: If the child meets the eligibility criteria in Section II **and** the child **is not** a non-qualified immigrant, then the child will qualify for a kinship guardianship assistance payment and Medical Assistance. If the child meets one of the criteria in Section III or Section IV, the kinship guardianship assistance payment is Title IV-E reimbursable. If the child does not meet any of the criteria in Sections III or IV, then the kinship guardianship assistance payment is not Title IV-E reimbursable.

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If the child meets the eligibility criteria in Section II but is a non-qualified immigrant, the child will be eligible for a kinship guardianship assistance payment and Medical Coverage as described in Section V.

It is of ***upmost importance that accurate entries*** be made in all associated child welfare systems to reduce claiming disallowances and maximize federal reimbursement. These systems include CONNECTIONS (CONX), the Welfare Management System (WMS), the Child Care Review Service (CCRS), and the Benefits Issuance and Control System (BICS).

WMS is the system of record for recording the child's eligibility category and authorizing the kinship guardianship assistance payments and services. CCRS is the database for legal activities, placement and movement activities, and certain other Kinship Guardianship Assistance activities. Entries into CCRS record the child's discharge to the relative guardian's home as part of the child's permanency plan. BICS maintains a record of all payments; it operates based on information the local social services district enters into WMS, CCRS, and CONX.

As indicated above, kinship guardianship assistance and services must be authorized in WMS. WMS will produce the Services Authorization Form; this authorization is generated initially for a 12-month period. The case must be reauthorized on WMS every 12 months thereafter.

There is no required annual review of the relative guardian's or the child's income in order to continue kinship guardianship assistance payments. Once eligibility has been established, there is no need to re-determine eligibility until a child reaches 18. Re-determination once the child turns 18 is only necessary in the event that the KinGAP Agreement became effective on or after the child's 16th birthday.

Instructions: When all sections of the form have been completed, the **caseworker** and **supervisor** should **sign and date the checklist**. The checklist should be placed in the appropriate section of the child's Uniform Case Record.

Section VII. Documentation

This section of the checklist is designed to serve as a record of the documentation that was obtained to support the information provided in the other sections of the checklist.

List the documentation used to support each item in Sections II, III, IV, and V. The acceptable documentation for all items is listed under the **Documentation** heading for each item.

Please attach all documentation to the checklist. It is recommended that that the checklist, with all the attached documentation, is to be kept in a separate, identified section of the case record that is maintained for eligibility purposes.

APPENDIX I

Kinship Guardianship Assistance Program (OCFS-4436)

AFFIDAVIT OF RELATIONSHIP

I, _____ affirm that I am related by blood, marriage or
(print name(s) of relative(s))

adoption to _____ placed in my home on _____ as described below.
(name of child) (date)

I am related to the child's mother.

I am related to the child's father.

The child's father and mother were married to each other when the child was born.

The child's father and mother were not married to each other when the child was born.

Circle the words which best describe your relationship to the child placed in your home. Circle all that apply.

Grandfather

Uncle

Adult Brother

Grandmother

Aunt

Adult Sister

Great-grandfather

Great-uncle

Adult Step-brother

Great-grandmother

Great-aunt

Adult Step-sister

Step-father

Nephew

First Cousin

Step-mother

Niece

Second Cousin

Spouse of one of the above.

Other (explain) _____

Signature of Relative

Signature of Relative

Signature of Witness

Date

If needed, the worker may ask you to draw a family tree on the back of this affidavit which shows all marriages and births necessary to demonstrate the relationships described above. If the worker does, please give complete names and approximate birth and marriage dates to the best of your ability.

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Programa de Asistencia para los Familiares como Tutores de Menores (OCFS-4436)

AFIDÁVIT O DECLARACIÓN JURADA DE PARENTESCO

Yo, _____ afirmo que tengo parentesco sanguíneo, por
(Nombre de Pariente en Letras de Imprenta)

matrimonio o por adopción con _____ colocado(a) en mi hogar el
(Nombre del Niño(a))

_____ de la manera descrita abajo:
(Fecha)

Soy pariente de la madre del niño(a).

Soy pariente del padre del niño(a).

Los padres del niño(a) se casaron cuando el niño(a) nació.

Los padres del niño(a) no se casaron cuando el niño(a) nació.

Encierre en un círculo las palabras que mejor describen su parentesco con el niño(a) colocado en su hogar.
Marque todo lo que se aplique.

Abuelo

Tío

Hermano Adulto

Abuela

Tía

Hermana Adulta

Bisabuelo

Tío abuelo

Hermanastro Adulto

Bisabuela

Tía abuela

Hermanastra Adulta

Padrastro

Sobrino

Primo(a) hermano(a)

Madrastra

Sobrino

Primo de Segundo Grado

Esposo(a) de uno de los parientes listados arriba.

Otro (explique) _____

Firma del Pariente

Firma del Pariente

Firma del Testigo(a)

Fecha

Si es necesario, el trabajador(a) puede preguntarle que ilustre un árbol familiar en el reverso de esta declaración, que demuestre todos los casamientos y nacimientos necesarios para demostrar la relación descrita arriba. Si es así, complete los nombres y fechas aproximadas de matrimonio y nacimientos.