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Administrative Directive

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To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning & Policy Development
Date:	April 1, 2011 (Revised July 6, 2011)
Subject:	Kinship Guardianship Assistance Program (KinGAP)
Suggested Distribution:	Directors of Social Services Foster Care Supervisors Child Protective Services Supervisors Adoption Supervisors Home-finding Supervisors Staff Development Coordinators
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Attachments:	Yes (see last page for list)
Attachments Available Online:	www.ocfs.state.ny.us/kinship/

Filing References

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

I. Purpose

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

II. Background

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

The federal Act added section 471(a)(28) to the Social Security Act (SSA), creating an option under Title IV-E of the SSA for states to provide kinship guardianship assistance payments to relatives who assume legal guardianship of children for whom they have cared while foster parents. The federal Act also added a new section 473(d) of the SSA, which established eligibility and other requirements for the Title IV-E Kinship Guardianship Assistance Program. Federal financial participation (FFP), using the applicable federal medical assistance percentage, is available for Title IV-E eligible kinship guardianship assistance payments pursuant to section 474(a)(5) of the SSA. Currently, the percentage reimbursed under Title IV-E in New York State is 50%.

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

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

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

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

As a condition for New York State’s KinGAP law (Chapter 58) to take effect, New York State had to obtain approval from the federal Administration for Children and Families (ACF) of the Department of Health and Human Services of a Title IV-E State Plan Amendment implementing KinGAP. The Office of Children and Family Services (OCFS) filed the required State Plan Amendment with ACF on December 20, 2010, and this plan amendment was approved on April 1, 2011. The effect of the federal approval of the Title IV-E State Plan Amendment is that federal Title IV-E reimbursement is available for otherwise eligible kinship guardianship assistance payments effective on April 1, 2011. It also means that the kinship guardianship assistance and non-recurring guardianship expense programs are in effect in New York State as of April 1, 2011.

OCFS filed implementing regulations on an emergency basis, as authorized by Part F of Chapter 58 of the Laws of 2010, and at the same time filed these regulations for public comment on December 17, 2010. The regulations are effective April 1, 2011. They can be found at the following link: <http://www.ocfs.state.ny.us/main/legal/Regulatory/final/>

III. Program Implications

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

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

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

reunification. Finally, the process required for the involuntary termination of parental rights is time consuming and uncertain.

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

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

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

IV. Required Action

A. Notice and Information about KinGAP

Both federal and state law require that due diligence be exercised to identify and locate a child's relatives within 30 days of the child's removal from the custody of the child's parent(s). The social services district must provide the relatives with notification of the child's removal and explain the options under which the relatives may provide care of the child through foster care or direct legal custody or guardianship, including kinship guardianship assistance, and any options that may be lost by failure to respond timely to the notification [see also 18 NYCRR 430.11(c)(4)]. OCFS permits social services districts to make the notification verbally or in writing and does not prescribe a required format for the written notification. However, it is strongly recommended by OCFS and ACF that written notice be made. OCFS requires that relatives be given a copy of *Having a Voice and a Choice: New York State Handbook for Relatives Raising Children*, if the relative is considering becoming the child's caregiver (see 09 OCFS-ADM-04). As an option, OCFS also developed a brochure *Know Your Options: Relatives Caring for Children* (see 10 OCFS-INF-03). Those policies remain in place.

With this ADM, OCFS has developed a model notification letter that includes a brief description of the KinGAP option [see Attachment A] for relatives (other than a non-custodial parent). Social services districts may use this model or develop their own relative notification letter, as long as it includes information on KinGAP, or verbally share this information with the relative(s). In addition, OCFS has developed a supplementary publication [publication # 5108]

to the handbook and brochure. This new publication, entitled *Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)* must accompany the handbook in situations where the handbook is required, per 09 OCFS-ADM-04. The publication can be found at www.ocfs.state.ny.us/kinship/

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

Social services districts must provide information on the availability and eligibility requirements for KinGAP, including non-recurring guardianship expenses and medical coverage available under KinGAP, to any prospective relative guardian, upon request. The publication *Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)* is to be used for that purpose, augmented by reviewing the information with the prospective relative guardian and responding to any questions the person may have.

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

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

B. Application for KinGAP

Upon request, the prospective relative guardian is also to be provided with an application for KinGAP. The application, OCFS 4430, is an OCFS prescribed form (see 18 NYCRR 436.2) and is an attachment to this ADM [Attachment B]. (Note: Social services districts that wish to create and utilize a local equivalent application must obtain prior written OCFS approval to do so, by submitting the proposed local equivalent to the appropriate OCFS Regional Office.) Prospective relative guardians must apply to the social services district in order to obtain approval to receive kinship guardianship assistance payments. (Note: Applications may be obtained from and submitted to a voluntary authorized agency, where the agency has responsibility for the foster child on whose behalf kinship guardianship assistance is being requested. Although the voluntary authorized agency may make a recommendation, the actual and final determination on the application rests with the social services district, and the social services district must adhere to the 30-day time frame for making the determination.)

The prospective relative guardian(s) must complete and sign the application, and any youth age 18 or over must also sign (as a confirmation of his or her consent). Where a prospective relative guardian is married, both spouses are encouraged to apply together, unless there is a legal separation. If married couples do not wish to jointly apply for kinship guardianship assistance payments, the caseworker should determine and assess the reasons why and the effect this might have on the child's potential permanency. The prospective relative guardians should be made aware of the consequences of not applying jointly. If they do not apply jointly and kinship guardianship assistance payments are awarded to just one relative guardian and that relative guardian dies or otherwise cannot continue as guardian, the right to receive kinship guardianship assistance payments cannot be transferred to the other spouse.

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

Within 30 days of receiving a completed application filed by the prospective relative guardian(s), the social services district must make a determination whether to approve or disapprove the application for KinGAP. The 30-day time period commences when the filed application is complete. In order to be considered complete, certain requirements must have already been met. These specific requirements are detailed below, under: *eligible relative / time in foster care and court hearings*.

Applicants have a right to a fair hearing before OCFS if a determination is not reached within 30 days of the filing of a completed application by the prospective relative guardian(s) (see Section L. Fair Hearings). As previously stated, voluntary authorized agency caseworkers who have case planning responsibility for an applicable foster care case, or voluntary authorized agency caseworkers responsible for a particular foster child, may disseminate the application and make a recommendation as to whether it should be approved or denied, but the social services district has the ultimate responsibility for the final decision whether to approve or deny the application. It is recommended that staff responsible for approving or denying an application complete the application in tandem with Section II of the eligibility checklist (OCFS 4435). The eligibility checklist and instructions for completion can be found in the ***Kinship Guardianship Assistance Practice Guide (Appendices G and H of that Guide)***. This Guide is posted at www.ocfs.state.ny.us/kinship/ (See also Section C. Eligibility and Section L. Fair Hearings.)

C. **Eligibility**

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

- ***Eligible relative / time in foster care*** – the prospective relative guardian(s) must be related to the foster child by blood, marriage or adoption and must have cared for the foster child as a fully certified or fully approved foster parent for ***at least six consecutive months*** before application for KinGAP. This definition of a relative for KinGAP is a broader definition than that of an approved relative foster parent, who must be within the second or third degree by blood or marriage to the child's parent. Any relative, whether an approved foster parent or a certified foster parent, is considered an eligible relative for

KinGAP. 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 in meeting the six months time frame. However, the six months clock may be interrupted by brief, temporary periods of less than 30 days, due to hospitalization, stay(s) in psychiatric facilities, respite and comparable absences of the child from the foster home.

- ***Court Hearings*** – for all children in foster care, prior to being eligible for kinship guardianship assistance payments, the foster child’s *first permanency hearing* must have been completed. First permanency hearings for abused, neglected or voluntarily placed children are generally held at eight months. Usually, the date certain established for the initial permanency hearing is the date of removal from home plus 60 days plus 6 months. The court has the authority to establish a date certain at an earlier date than this time frame. For PINS or juvenile delinquents, the initial permanency hearing is generally held within 12 months of placement. In addition, for children placed into foster care pursuant to Article 10 of the Family Court Act (abuse/neglect), the *fact finding* (FCA §1051) must also have been completed for the child to be eligible.

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

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

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

It is critical that diligent work be undertaken in all foster care cases to attempt to safely reunite the foster child with his or her parent(s). No application for kinship guardianship assistance should be determined until there is compelling reason to believe that:

- the child would not be able to be safely returned home in a reasonable time frame, considering the child’s age and developmental level;
- the parent(s) circumstances and conditions 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.

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. The *Kinship Guardianship Assistance Case Practice Guide* contains additional tools and materials to help with this assessment and determination.

Adoption: Once it is determined that a child cannot be safely returned home, adoption must also be explored and ruled out for the child to be eligible for KinGAP. Although both children freed for adoption and children not freed for adoption are potentially eligible for KinGAP, a number of factors must be considered for children not yet freed. These include: whether the adversarial process of a termination of parental rights (TPR) is the best way of bringing permanency to the child. It is important to consider both the parents' and prospective relative guardian's perspective 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; and the potential grounds for termination. It should be noted that 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. This confirms that federal and state law each recognize the significance of relative placements as permanent placements, regardless of the status of the parents' rights to the child. OCFS has issued guidance in the past about acceptable circumstances for *not* filing a TPR in 18 NYCRR 431.9, 98 OCFS-INF-03, and 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 and older who can refuse consent to adoption, the child's perspective and input into the adoption decision must also be taken into account.

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

- **Attachment to relative and consultation with the child** – the child must demonstrate a strong attachment to the prospective relative guardian. State law requires that age appropriate consultation has been held with the child. For any child age 14 or older, or

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

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

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

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

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

- **Education/Employment/Incapacity Status of Youth Age 18 and Over** – in order to continue to make kinship guardianship assistance payments for youth over the age of 18 who had attained the age of 16 when the Kinship Guardianship and Non-Recurring Expenses Agreement became effective, the youth must meet one of the following criteria. The child is:
 - completing secondary education or a program leading to an equivalent credential; or
 - enrolled in an institution which provides post-secondary or vocational education; or
 - participating in a program or activity designed to promote, or remove barriers to, employment; or
 - employed for at least 80 hours per month; or
 - incapable of doing any of the activities described above due to a medical condition.

Federal Eligibility

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

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

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

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

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

Once the eligibility criteria have been met, it is appropriate to change the child's permanency goal (PPG) on the Permanency Hearing Report to "refer for legal guardianship," if it has not already been changed. In CONNECTIONS, the appropriate PPG is represented as "Relative Legal Guardianship/Custody." It is not necessary to have a permanency hearing and/or court approval to change the goal, unless expressly specified in an existing court order.

D. Case Plan Requirements

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

For each child in foster care placed with related foster parent(s), where the child's permanency plan is placement with such relative(s), and the plan is for a kinship guardianship assistance arrangement, the following must be documented in the case progress notes:

- **the reasons for any separation of siblings during placement**—Federal law requires that reasonable efforts must be made to place siblings and half-siblings who are in foster care in the same kinship guardianship assistance arrangement, unless joint placement

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

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

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

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

- **the ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment-** See Section C, for all eligibility requirements.
- **the efforts made to discuss with the child's parent or parents the kinship guardianship assistance arrangement, or the reasons why the efforts were not made**

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

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

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

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

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

The agreement also specifies, among other things:

- that the payment may be adjusted periodically, in consultation with the relative guardian(s), based on the circumstances of the relative guardian(s) and the needs of the child;
- that independent living services are available to the child in accordance with 18 NYCRR section 436.9;
- the procedures by which the relative guardian may apply for additional services, as needed;
- that the social services district will pay the total cost of nonrecurring expenses directly associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2,000 per child;
- that medical coverage is available to a child in a kinship guardianship assistance arrangement;
- that the relative guardian(s) must notify the social services official of any changes in circumstances that would impact continued eligibility for kinship guardianship assistance payments; and
- that such agreement will remain in effect regardless of the state of residence of the relative guardian throughout the duration of the agreement.

The Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement (OCFS 4431) is a state-prescribed form and is Attachment C to this ADM.

The Amount

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

If the social services district chooses for the kinship guardianship assistance program to apply the income and family size of the relative guardian(s), the amount of the monthly kinship guardianship assistance payment may not be less than 75% of the applicable board rate (foster care board rate, including any special or exceptional rate or an expanded rate 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. The rate chosen by the social services district must be *equal to* the rate used by the social services district for adoption subsidy payments under Section 453 of the SSL. The social services official may consider the financial status and family size of the prospective relative guardian or relative guardian only for the purpose of determining the amount of the payments to be made.

The social services district must use the same option for all kinship guardianship assistance cases. If a social services district wishes to change from one option to another option, the district must inform OCFS in writing of the intended change at least 30 days prior to the effective date of the change. In addition, any such change in option must also apply to the district's adoption subsidy payments. The district must use the newly selected option for all new kinship guardianship assistance agreements entered into on or after the effective date of the change. Kinship

guardianship assistance agreements finalized prior to the effective date of the change will not be affected by the change.

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

For the purpose of the necessary calculations:

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

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

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.

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

KINSHIP GUARDIANSHIP ASSISTANCE PAYMENTS SCHEDULE

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

Over 130% but not more than 140%	80% of Applicable Board Rate
Over 140%	75% of Applicable Board Rate

Note: The Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement is subject only to approval at the local district level. Unlike adoption subsidy agreements, the Kinship Guardianship and Non-recurring Guardianship Expenses Agreement is not submitted to OCFS for approval.

Amendments

Certain circumstances may allow the original Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Agreement to be amended, as described below. The provisions of this section apply when the request for an amendment is made after the issuance of the letters of guardianship. Prior to the issuance of the letters of guardianship, if changes to the agreement are necessary and accepted, a new Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement should be executed.

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

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

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

Lastly, an amendment to the Agreement can be made to change the type of medical coverage that is provided to the child. For example: a guardian who used his or her own health insurance to cover

the child loses coverage, and the child will consequently receive coverage through Child Health Plus or Medical Subsidy.

The amended Agreement form resembles the original agreement. It contains a section to indicate the reason for the Amendment, but only includes applicable sections pertinent to the reason.

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

Duration of Payment

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

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

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

F. Annual Notification

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

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

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

Federal law requires assurances pertinent to the educational status applicable to each child eligible for Title IV-E KinGAP funding who has attained the minimum age for compulsory education under state law, and the education / employment status of each youth over the age of 18 who had attained 16 years of age before the kinship guardianship assistance agreement became effective. In implementing the federal law, the applicable New York State standards will apply to *all* children in receipt of kinship guardianship assistance payments, irrespective of whether or not they are eligible for Title IV-E KinGAP funding.

School-age children

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

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

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

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

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

- enrolled, or in the process of enrolling, in a school which provides elementary or secondary education, in accordance with the laws of the jurisdiction in which the school is located;

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

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

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

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

The relative guardian(s) must certify and provide documentation that the youth meets one of the above statuses. The federal Administration for Children and Families (ACF) allows states flexibility to determine whether and how to document the medical condition and incapability for such youth, as there is no case plan for youth who have entered a kinship guardianship assistance arrangement.

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

Model Letter and Certification Form

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

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

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

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

Discontinuance of kinship guardianship assistance payments

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

In addition, if the social services district cannot obtain a response, or the response is unsatisfactory, the social services district may send a different letter that requires the relative guardian(s) to meet with the social services district staff in person, by telephone or by other means as specified by the district to review the status of the case. In making this request, the social services district must take into consideration where the relative guardian(s) reside, the relative guardian(s)' employment situation, and the care needs of the child, when determining the time, location and means of contact. If the relative guardian(s) is unable to attend the meeting requested in the district's letter for reasons beyond the control of the relative guardian(s), the social services district must provide the relative guardian(s) with one additional opportunity to meet. Failure to provide the requested documentation or to meet with the social services district, as directed, may be a ground for termination of the kinship guardianship agreement and stopping the payment of kinship guardianship assistance. It is important that any follow up letter sent by the social services district indicate the consequences of failure to follow up in the manner prescribed by the social services district. [See 18 NYCRR 436.5(f).]

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

documentation within the period requested or to meet with social services district staff as directed, may be a ground for termination of the kinship guardianship agreement and stopping payments of kinship guardianship assistance.

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

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

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

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

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

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

No Transference of Kinship Guardianship Assistance

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

Adoption following Kinship Guardianship Assistance

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

G. Non-Recurring Guardianship Expenses

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

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

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

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

H. Medical Assistance / Medical Coverage

Chapter 58 provides for a child’s medical coverage, once in a kinship guardianship assistance arrangement, in a number of ways. First, any such child who is federally Title IV-E eligible for kinship guardianship assistance payments, is automatically eligible for Medical Assistance under Title XIX of the SSA. Thus, Medical Assistance is to be authorized as of the first of the month that KinGAP payments are initiated. Medical Assistance may be authorized by the Medical Assistance unit of the social services district or ACS in New York City, or the foster care or other child welfare unit, as local practice dictates. The New York State Department of Health (DOH) will be sending

first a GIS and then an ADM to the Medical Assistance units advising of this program, eligibility criteria, and new category codes, as a companion piece to this ADM.

With the exception of non-qualified immigrant foster children, as confirmed by DOH, Medical Assistance is available for foster children who are not federally Title IV-E eligible.

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

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

Affordable is defined as follows: if the cost of health insurance benefits for the child(ren) does not exceed 3% of the 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 considered affordable if the cost would reduce the guardian(s)' income below 275% of the federal poverty level.

In the case of the medical subsidy, the relative guardian would have to pay for medical services and be reimbursed by the social services district, or the physician or other medical provider would have to agree to bill the social services district and be reimbursed by the district. In either case, reimbursement is limited to the amount of care, services and supplies that would be available under New York State's Medical Assistance Program, 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 Medical Assistance coverage, and after five years as an LPR the child will be eligible for federal Medical Assistance coverage.

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

If the kinship guardianship assistance family moves to another state, and the child is Title IV-E eligible, Medical Assistance is to be provided by the new state of residence. The federal

Department of Health and Human Services Centers for Medicare & Medicaid Services (CMS) has advised all states of such eligibility under KinGAP.

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

New York State will provide coverage in one of the following ways:

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

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

Medical Assistance or Medical Subsidy ends when the kinship guardianship assistance payments ends, except that for children who had been covered by Medical Assistance, pursuant to 366(4)(s) of the SSL, up to 12 months of continuous Medical Assistance is provided for children who exit guardianship. For youth who exit at age 18, Medical Assistance continuous coverage cannot extend beyond the end of the month in which the youth turns 19 years of age. If the youth is age 19 or over, or if the continuous coverage period has ended, a separate eligibility determination must be completed.

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

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

J. Bridges to Health (B2H)

Any foster child who is being served by the Bridges to Health program (B2H) who is discharged to kinship guardianship assistance may continue to be served by B2H and continue participation in the program until it is no longer consistent with the plan of care, or until age 21, whichever occurs earlier, notwithstanding the person's status as having been discharged from the care and custody or custody and guardianship of the local commissioner of the social services district.

K. Claiming

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

L. Fair Hearings

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

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

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

Any person aggrieved by the decision of a social services district official not to provide Medical Assistance for their relative child through New York State's Medical Assistance program may appeal to the Office of Temporary and Disability Assistance (OTDA). OTDA conducts these hearings for the New York State Department of Health. For more information on fair hearings regarding Medical Assistance, refer to the forthcoming DOH ADM.

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

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

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

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

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

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

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

M. Child Support

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

N. Letters of Guardianship

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

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

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

The form, to be used for petitioning the court for letters of guardianship can be viewed at <http://www.courts.state.ny.us/forms/familycourt/guardianship.shtml> 6-1-c (Petition for Appointment of Kinship Guardian [Subsidized Kinship Guardian Program] and/or Permanent Guardian) 4/2011

Once the petition for letters of guardianship is filed, the matter will be scheduled and heard. The court makes the final decision. Note: The execution of the kinship guardianship assistance agreement, in and of itself, does not qualify a prospective relative guardian to receive kinship guardianship assistance payments.

The granting of letters of guardianship by the court is a process that is separate and distinct from the application for kinship guardianship assistance payments and the execution of the kinship guardianship assistance agreement. The determination of whether to grant a petition by a prospective relative guardian for letters of guardianship is solely within the discretion and authority of the court. Should the court grant the petition for guardianship, the child in question is no longer in foster care and is no longer in the custody or guardianship of the social services district.

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

The court order form can be viewed at:

<http://www.courts.state.ny.us/forms/familycourt/guardianship.shtml> 6-5-a (Order Appointing Kinship Guardian [Subsidized Kinship Guardian Program] and/or Permanent Guardian) 4/2011

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

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

V. Systems Implications

General Processing

Children placed with relative guardians with kinship guardianship assistance will be reported as discharged from foster care in CCRS. Direct service and payment authorization in WMS will be similar to adoption subsidy case processing, i.e., a new WMS case (child is to retain same CIN) will be opened with no associated CONNECTIONS component. The child should be end-dated in the CONNECTIONS case, if other children remain tracked in the case, or the CONNECTIONS case should be closed, if no children remain tracked.

WMS

Kinship guardianship assistance cases are to be opened directly in WMS. There is no CONNECTIONS services case component for kinship guardianship assistance cases.

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

- **Release to Relative** – code **571**;
- For children who are freed for adoption, and the relative has been appointed as a “Permanent Guardian,” use **Discharge to Permanent Guardian** - code **591**.

The CCRS discharge must be reported before the WMS closing.

Direct Services (DIR)

The following *new* DIR code is to be used for kinship guardianship assistance cases.

- **KG Kinship-Guardianship**
 - KG cannot be authorized simultaneously with 01 – Adoption Service, 08 – Foster Care-Children, 17 – Protective-Children, 25 – Preventive-Children (Mandated), 26 – Preventive-Children (Non-Mandated), or IL – Independent Living.
 - **Error 520** – DIR "KG" CANNOT OCCUR WITH DIR "01" "08" "IL" "17" "25" "26"
 - Allowed suffix codes are F-FNP and N-NR
 - **Error 314** – ENTER CORRECT SVC TYP SUFFIX CODE FOR THIS SERVICE
 - Services Goal must be 01 – Self Support.
 - **Error code 521**– DIR "KG" MUST HAVE GOAL OF "01"

Purchase of Service (POS)

Four *new* POS codes have been developed for kinship guardianship assistance cases requiring a DIR of KG:

- **KG** – Kinship Guardianship Regular Service and Maintenance

- KG POS lines must be written with a “C” (as contracted) in the “AMT” field
- KG POS lines may be written as recurring or single issue
- KG POS lines may be written with suffix codes of F or N
- The displayed mnemonic for KG is “KGSVCMNT”
- **K1** – Kinship Guardianship Non-Recurring Expense
 - K1 POS lines may be written with either a “C” or a dollar amount in the “AMT” field
 - K1 POS lines must be written as single issue only
 - K1 POS lines may be written with suffix codes of F or N
 - The displayed mnemonic for K1 is “KGNR-EXP”
- **K2** – Kinship Guardianship Additional Per Diem
 - K2 POS lines may be written with either a “C” or a dollar amount in the “AMT” field
 - K2 POS lines may be written as recurring or single issue
 - K2 POS lines may be written with suffix codes of F or N
 - The displayed mnemonic for K2 is “KGAD-PDM”
- **K3** – Kinship Guardianship Fair Hearing
 - K3 POS lines may be written with either a “C” or a dollar amount in the “AMT” field
 - K3 POS lines may be written as recurring or single issue
 - K3 POS lines may be written with suffix codes of F or N
 - The displayed mnemonic for K3 is “KG-HEAR”

The following edits/error messages apply to **all** of the above **new** Kinship-Guardianship POS codes:

- KG required as DIR
 - **Error 522- POS "KG" "K1" "K2" "K3" MUST HAVE DIR "KG"**
- Allowable suffix codes are F-FNP and N-NR. DIR KG must also have the same suffix code.
 - **Error 523- POS KG K1 K2 K3 WITH SUFFIX REQUIRES DIR "KG" WITH SUFFIX**
- New Kinship-Guardianship POS codes cannot be written with a POS “from” date earlier than April 1, 2011.
 - **Error 531- POS "KG" "K1" "K2" "K3" FROM DATE IS BEFORE APRIL 1, 2011**
- Eligibility codes 01-Pending IVE and 04-EAF are not allowed as entries in the “ELIG” field when the POS code is = KG, K1, K2 or K3
 - **Error 524- ELIG "01" AND "04" NOT ALLOWED FOR POS CODES "KG" "K1" "K2" AND "K3"**

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

- 84 - Independent Living
- 85 – Vocational Skills

- 87 – Academic Support Services

CCRS

The following **new** CCRS codes should be used to report events related to the kinship guardianship assistance program.

- **MISCELLANEOUS CODES**

- The following codes should be used for tracking Kinship Guardianship *Application processing*:

- K100 – Kinship Guardianship Application Received
- K200 - Kinship Guardianship Application Denied
 - K100 must be > M910 (current track); child must be In Care/Status 04
 - K200 must be > or = K100 (current track)
- K300 – Kinship Guardianship Application Accepted
 - This code cannot be data entered. It is system generated when Agreement Signed activity is reported (new L600/25 Legal Activity described below)

- No input of L600/25 will be permitted, if no K100 on file (current track)
- The L600/25 must be > or = K100 (current track)
- No input of L600/25 will be permitted, if K200 on file (current track)
- A Contra of L600/25 will system (automatically) contra a K300

- **LEGAL CODES**

- The following codes should be used for reporting Guardianship *Legal events/court proceedings*; all are reportable only for children In Care (Status 04) :

- MODIFIER A: Type of Legal Event **25 – Kinship Guardianship Agreement**
 - Reportable *only* with L600 – Agreement Signed
- MODIFIER A: Type of Legal Event **26 – Kinship Guardianship Hearing**
 - Reportable with L300 – Hearing Held *only if*:
 - L600/25 exists on child’s current CCRS track and L300/26 activity date is > or = L600/25 activity date
- MODIFIER B, C: Disposition **87 – Letters of Kinship Guardianship Granted**
 - Reportable with L300 – Hearing Held *only if*:
 - MODIFIER A *is not* = 01,02, 09, 11, 12 or 17

- **MOVEMENT CODES**

- The following codes should be used for reporting Discharges to Kinship Guardianship:

- MODIFIER B - Reason for Discharge/Track Closed with M990 – Discharge from Foster Care and M999 – Child’s Track Closed:

- **600 - Kinship Guardianship Discharge with Subsidy**
 - Reportable *only if*: L600/25 And L300 with MODB or MODC = 87 exists on current CCRS track and M990/999 activity date is > or = activity date of MODB or MODC = 87 activity date

NYC SERMA

CCRS children discharged with a reason code of 600-Kinship Guardianship Discharge w/Subsidy will have their SERMA coverage ended because of their discharge from foster care. If applicable, a separate Medical Assistance case must be opened (see Section H. Medical Assistance / Medical Coverage). There is no automatic opening of MA on Downstate WMS.

CONNECTIONS

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

* Please note that the new Facility Type of “Kinship Guardianship” and the “KinGAP” checkbox are part of the first version of the transformed CONNECTIONS which is scheduled to finish implementation in summer of 2011. If your social services district has not yet been implemented and a kinship guardianship assistance payment is required, the social services district must still have a CONNECTIONS Foster/Adoptive Resource open and active for the relative guardian. If the only social services district resource that is to be open for the relative guardian is to facilitate kinship guardianship assistance payments, the worker should open a home with the Setting of “Adopt/Guard” and a Facility Type of “Adoptive Home.” Once there is a resource open for the relative guardian, the Kinship Guardianship commodity code of “19” must be entered directly into BICS by appropriate staff (See BICS instructions). Once all social services districts have been implemented, the assigned worker will be contacted and instructed on how to make the necessary changes to record the appropriate information in CONNECTIONS.

BICS and Claiming System Instructions

Purchase of Service (POS) Types

There are four new POS Types for KinGAP:

- KG = KinGAP Regular Service and Maintenance
- K1 = KinGAP Non-Recurring Expenses
- K2 = KinGAP Additional Per Diem
- K3 = KinGAP Fair Hearing

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

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

As previously mentioned, expenses incurred for each KinGAP placement using POS type K1 cannot exceed the \$2,000 limit. Any expense that exceeds the \$2,000 limit for each KinGAP placement is considered Non-Reimbursable (NR) and the excess amount must be authorized with suffix code N (NR).

CONNECTIONS / Commodity Code

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

As of April 1, 2011, CONNECTIONS will be unable to pass the KinGAP commodity code. Until CONNECTIONS can do so, BICS Vendor Operations (Selection 05 from the Main BICS Menu) will temporarily allow the direct entry of the commodity code of 19 if the commodity code of 02 or 17 exists for that vendor, or allow replacement of the commodity code of 17 with a commodity code of 19.

Rate Setting

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

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

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

Roster Generation [BICS Production Request (BPR30)] and Pre-Roster Generation (BPR 37)

A new roster generation request will be available for KinGAP Rosters on April 1, 2011. The format and sort options for the roster will be the same as adoption subsidy. KinGAP will be included in the Pre-Roster Report, BPR 37.

POS type codes KG, K2 and K3 will be included with the single-issue or recurring rosters. POS type code K1 will be included with single issue rosters only.

Voucher Processing

KinGAP rosters may be processed through BICS Selection 1 – Initial Voucher Entry or Selection 6 - SVC FC/ADOPT/KINGAP.

The roster screens will look the same as adoption subsidy rosters, and KinGAP rosters should be selected in the same manner as adoption subsidies.

BPR 33 – Batch Roster Processing will allow for KinGAP.

During roster processing, there will be no review of on-going CCRS legal activity. There is a review of the initial Child Care Review Service (CCRS) to determine if there is proper legal authority. To receive reimbursement, there must be an M990 or M999 with a modifier of 600 (entering KinGAP) in CCRS; otherwise, the payments will be identified as non-reimbursable.

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

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

Absence or legal edits will not be applied.

Check Production

The BICS Category for KinGAP payments will be 51 – Child Care. For KG, K2, and K3, the appropriation account will be Child Care - A6119.0 and the refund account will be A1819.0. For K1, both the appropriation and refund account will be A6010.0.

KinGAP benefits will be produced as paper checks. In the future, KinGAP payments may be part of the direct deposit / debit card process.

Composites Roll Logic

Beginning **April 1, 2011**, additional lines will be added to the Composite Rolls on the Schedule K for POS types KG, K2, and K3 and the Schedule D-2 for POS type K1:

- RF-2, Schedule K, KinGAP-FP
- RF-2, Schedule K, KinGAP-FNP

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

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

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

KinGAP FNP will be determined when the POS Type is KG, K2 or K3, the Eligibility Code is not 02 and the Suffix Code is not N, or KinGAP FNP will be determined when the POS Type is KG, K2, or K3, the claiming category is 02 and the suffix code is F.

KinGAP Non-Recurring FP will be determined when the POS Type is K1, the eligibility for the child is 02 (IV-E) and the Suffix Code is not N or not F.

KinGAP Non-Recurring NR will be determined when the POS Type is K1 and the Suffix Code is N.

KinGAP Non-Recurring FNP will be determined when the POS Type is K1, the eligibility for the child is not 02 (IV-E) and the Suffix Code is not N, or KinGAP Non-Recurring FNP will be determined when the POS Type is K1, the claiming category is 02 and the Suffix Code is F.

POS Types 84, 85, and 87 will be displayed on the RF-4 based on existing Independent Living Program (ILP) logic.

Claiming Instructions

KinGAP changes to the Automated Claiming System (ACS) Schedule K Reimbursement for Foster Care and Adoption Expenditures (LDSS-3479) and Schedule D-2 Allocation for Claiming General Services Administration Expenditures (LDSS-2347-B) will not be available for the April 1, 2011, start date. ACS changes are scheduled for October 1, 2011, claiming. Until the ACS is changed, claiming should be entered on LDSS-3922 Reimbursement Claims for Special Projects.

For KinGAP program costs (POS types KG, K2, and K3) from April 1, 2011 through September 30, 2011, the expenditures that are displayed on the Schedule K, BICS Composite Roll, should be transferred to the LDSS-3922 and reported in line 15 - Other, in the Non Administration Cost column.

For KinGAP non-recurring administration costs (POS type K1) from April 1, 2011 through September 30, 2011, the expenditures that are displayed on the Schedule D-2 BICS Composite Roll should be reported in the F-17 function (Other Reimbursable Programs) on the LDSS-923 Schedule of Administrative Expenditures Other than Salaries, and carried

forward to the F17 function on the Schedule D, DSS Administrative Expenses Allocation and Distribution by Function and Program (LDSS-2347). These costs will carry forward to the Schedule D-17, Distribution of Allocated Costs to Other Reimbursable Programs (LDSS-3274), and be reported in a column labeled KinGAP. These expenditures should then be transferred to the LDSS-3922 and the federal, state, and local shares should be reported in a footnote at the bottom of the form and included with other KinGAP administration costs on line 17 – Total Project Costs.

For other KinGAP administration costs from April 1, 2011, through September 30, 2011, local district staff not working full time on KinGAP must be time studied, and related costs should be charged to F17 KinGAP. The other KinGAP administration costs should be reported in the F-17 function (Other Reimbursable Programs) on the Schedule D, DSS Administrative Expenses Allocation and Distribution by Function and Program (LDSS-2347). The other KinGAP administration costs are carried forward to the Schedule D-17, Distribution of Allocated Costs to Other Reimbursable Programs (LDSS-3274), and reported in a column labeled KinGAP. These expenditures should then be transferred to the LDSS-3922 in the appropriate lines in the Administration Costs column.

The LDSS-3922 project label should be entitled KinGAP.

The federal and state shares of related program and administration costs should be manually identified offline on worksheets before being entered on the LDSS-3922, as follows:

Example:

Non-Administration (Program) Costs

Schedule K (POS types KG, K2, and K3) Composite Roll lists:

KinGAP - FP = \$6,000

KinGAP - FNP = \$9,000

KinGAP – NR = \$17,000

Administration Costs

Non-Recurring (POS type K1) Costs

Schedule D-2 (POS types K1) Composite Roll lists:

Non-Recurring KinGAP Expense – FP = \$5,000

Non-Recurring KinGAP Expense – FNP = \$3,000

Non-Recurring KinGAP Expense – NR = \$6,000

Time Studied Administration Costs

District has identified that workers with costs of \$40,000 are working ¼ of their time on KinGAP - $\$40,000 / 4 = \$10,000$.

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

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

IV-E (FP) is 7/10 for 70% ($\$10,000 * 70\% = \$7,000$)

FNP is 2/10 for 20% ($\$10,000 * 20\% = \$2,000$)
 NR is 1/10 for 10% ($\$10,000 * 10\% = \$1,000$)

The district should report on the LDSS-3922:

Non-Administration Costs

Line 15 – Other = \$32,000 ($\$6,000 + \$9,000 + \$17,000$)
 Line 17 – Total Project Costs = \$32,000
 Line 18 - IV-E Federal Share = \$3,000 ($\$6,000 * 50\%$)
 Line 19 – State Share = \$6,000 ($\$1,500 + \$4,500$)
 Line 20 – Local Share = \$23,000 ($\$17,000 + \$1,500 + \$4,500$)

Administration Costs

Line 3 - Total Salary & Fringe Benefits = \$10,000
 Line 17 – Total Project Costs = \$24,000 ($\$14,000 + \$10,000$)
 Line 18 – IV-E Federal Share Claim = \$6,000 [$(\$5,000 + \$7,000) * 50\%$]
 Line 19 – State Share = \$5,500 ($\$2,750 + \$1,750 + \$1,000$)
 Line 20 – Local Share = \$12,500 ($\$6,000 + \$2,750 + \$1,750 + \$1,000 + \$1,000$)
Footnote – K1 – Federal (\$2,500) State (\$2,750) Local (\$8,750) = \$14,000

The LDSS-3922 for KinGAP should be manually submitted on a monthly basis to the Bureau of Financial Services. Districts must retain the signed LDSS-3922, which supports the claims. Instructions for completing the above noted administration claiming schedules are found in the Fiscal Reference Manual (FRM) Volume 3 (Volume 4 for New York City). Instructions for completing the LDSS-3922 are found in FRM, Volume 2, Chapter 3.

Fiscal Reference Manuals are available at:

FRM Vol. 2 - http://otda.state.nyenet/bfdm/finance/FRM_Vol2_Manual.asp

FRM Vol. 3 - http://otda.state.nyenet/bfdm/finance/FRM_Vol3_Manual.asp

FRM Vol. 4 - http://otda.state.nyenet/bfdm/finance/FRM_Vol4_Manual.asp

For claiming KinGAP administration costs starting October 1, 2011, costs will be determined in two ways. F2 costs will be allocated based on Random Moment Survey (RMS) percentages. Non-Recurring KinGAP expenses will be direct charged on the Schedule D-2.

Further claiming instructions will be provided when the claim forms are revised.

Questions on claiming should be directed to:

Ed Conway (Regions 1 – 5)
 1-800-343-8859, ext 4-7549
Edward.Conway@otda.state.ny.us

Michael Simon (Region 6)
 212-961-8250
Michael.Simon@otda.state.ny.us

Additional Information

Treatment of KinGAP Income for Other Programs

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

- **Temporary Assistance** – Whether a child on whose behalf kinship guardianship assistance payments are received is included in the Temporary Assistance (TA) case depends on if a family benefits financially by including or excluding such child. When such child is included in the TA case, the full kinship guardianship assistance payment must be budgeted as unearned income.
- **Food Stamps** – Kinship guardianship assistance payments should be treated the same as foster care payments for Food Stamp purposes. This gives families the choice of including the child as a member of the household, and counting the kinship guardianship assistance payment as unearned income, or excluding the child and the kinship guardianship assistance payment. The decision to include or exclude a child from a household's Food Stamp case should depend on if the household would benefit financially by including or excluding the child. (See also 08-OTDA-ADM 04, "Treatment of Income From Adoption Subsidy Payments and Foster Care Payments in Determining Food Stamp Program Eligibility and Benefit Amount." The ADM explains expenses that can be excluded as income.)
- **HEAP** – a child on whose behalf kinship guardianship assistance payments are received is included in the household count, but guardianship payments are excluded income in the HEAP eligibility determination.

The Office of Temporary and Disability Assistance plans to issue an ADM to the social services districts' non-services units to address the treatment of kinship guardianship assistance payments in regard to applications for Temporary Assistance, Food Stamps, and/or HEAP programs. The *Practice Guide for Kinship Guardianship Assistance* and the *Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)* each contains a comparison chart for adoption, kinship guardianship assistance and foster care. The above information has been made part of this chart.

Special Immigrant Juvenile Status (SIJS)

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

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

Kinship Guardianship Assistance Practice Guide

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

The Guide contains an appendix specifically for Child Protective Services (CPS) workers. CPS workers need information about KinGAP so they can assist relatives early on when out-of-home placement is being considered and relatives are found. When a CPS worker first determines out-of-home placement is needed, the first priority is a safe placement and child permanency may not be the focus. However, the decision made by the initial placement with the relative may have lasting consequences for the child's eventual permanency. It is essential that the CPS worker understand KinGAP and provide information about this program to any relative considering providing out-of-home care to a child. The information is especially critical to have *before* a relative determines which legal arrangement he/she would like to pursue. Full disclosure of all placement and custody/guardianship options is essential for a relative to make an informed decision about how they want to proceed with the legal arrangement. The Guide is posted at www.ocfs.state.ny.us/kinship/

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

This publication was developed for prospective relative guardians, so they have a resource tailored to their needs for information about KinGAP. Some tools are in the ***Kinship Guardianship Assistance Practice Guide***, as well. Workers should familiarize themselves with the content so that they can respond to questions or clarify information for the prospective relative guardians. The booklet is posted at www.ocfs.state.ny.us/kinship/

Changes to Curricula

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

KinGAP HELP

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

ocfs.sm.sppd.KinGap.Help (through Outlook)

OR to: KinGaphelp@dfa.state.ny.us

OCFS will determine at a later time how long the mailbox will be kept open, and advise you accordingly.

***Attachments:**

- A. KinGAP Relative Notification Letter (Model)
- B. Application for the Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Programs – OCFS 4430 – (Required Form / Local Equivalent must be approved by OCFS)
- C. Kinship Guardianship Assistance and Non-recurring Guardianship Expenses Agreement – OCFS 4431 – (Required Form)
- D. Kinship Guardianship Assistance and Non-recurring Guardianship Expenses Amendment – OCFS 4432 – (Required Form)
- E. Kinship Guardianship Assistance Program Annual Notification Letter (Model)
- F. Kinship Guardianship Assistance Program Certification Form (Model)
- G. KinGAP Fair Hearing Notice: Denial (Required Form)
- H. KinGAP Fair Hearing Notice: Denial of Upgrade (Required Form)
- I. KinGAP Fair Hearing Notice: Discontinuance (Required Form)
- J. Non-Recurring Kinship Guardianship Expenses Reimbursement Form – OCFS 4434 – (Required Form)

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

VI. Effective Date

This ADM is effective April 1, 2011.

/s/ Nancy W. Martinez

Issued By:

Name: Nancy W. Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development