



# Office of Children and Family Services

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## Administrative Directive

<b>Transmittal:</b>	15-OCFS-ADM-02
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	January 16, 2015
<b>Subject:</b>	<b>Continuation of the Kinship Guardianship Assistance Program (KinGAP) to a Successor Guardian</b>
<b>Suggested Distribution:</b>	Directors of Social Services Child Protective Services Supervisors Foster Care Supervisors Staff Development Coordinators CONNECTIONS Implementation Coordinators
<b>Contact Person(s):</b>	Questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services: Buffalo Regional Office- Dana Whitcomb (716) 847-3145 <a href="mailto:Dana.Whitcomb@ocfs.ny.gov">Dana.Whitcomb@ocfs.ny.gov</a> Rochester Regional Office- Karen Buck (585) 238-8201 <a href="mailto:Karen.Buck@ocfs.ny.gov">Karen.Buck@ocfs.ny.gov</a> Syracuse Regional Office- Sara Simon (315) 423-1200 <a href="mailto:Sara.Simon@ocfs.ny.gov">Sara.Simon@ocfs.ny.gov</a> Albany Regional Office- Kerri Barber (518) 486-7078 <a href="mailto:Kerri.Barber@ocfs.ny.gov">Kerri.Barber@ocfs.ny.gov</a> Spring Valley Regional Office- Yolanda Désarmé (845) 708-2499 <a href="mailto:Yolanda.Desarme@ocfs.ny.gov">Yolanda.Desarme@ocfs.ny.gov</a> New York City Regional Office- Raymond Toomer (212) 383-1808 <a href="mailto:Raymond.Toomer@ocfs.ny.gov">Raymond.Toomer@ocfs.ny.gov</a> Native American Services- Heather LaForme (716) 847-3123 <a href="mailto:Heather.LaForme@ocfs.ny.gov">Heather.LaForme@ocfs.ny.gov</a> <b>In addition, questions may be emailed to <a href="mailto:ocfs.sm.sppd.KinGap.Help">ocfs.sm.sppd.KinGap.Help</a> (through the global address list) or to <a href="mailto:KinGAPHelp@ocfs.ny.gov">KinGAPHelp@ocfs.ny.gov</a></b>
<b>Attachments:</b>	(1) <a href="#">Kinship Guardianship Assistance Program and Non-Recurring Guardianship Expenses Agreement (OCFS-4431)</a> (2) <a href="#">Kinship Guardianship Assistance Program and Non-Recurring Guardianship Expenses Agreement Successor Guardian Amendment (OCFS-4435)</a>
<b>All OCFS Forms Available Online:</b>	OCFS intranet: <a href="http://ocfs.state.nyenet/admin/forms/kinship/">http://ocfs.state.nyenet/admin/forms/kinship/</a> OCFS Internet: <a href="http://ocfs.ny.gov/main/documents/">http://ocfs.ny.gov/main/documents/</a>

**Filing References**

<b>Previous ADMs/INFs</b>	<b>Releases Cancelled</b>	<b>Dept. Regs.</b>	<b>Soc. Serv. Law &amp; Other Legal Ref.</b>	<b>Manual Ref.</b>	<b>Misc. Ref.</b>
11-OCFS-ADM-03		18 NYCRR Part 436	SSL §§ 458-a through 458-f  SSA § 473(d)(3)  [42 U.S.C. §673(d)(3)]		Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183)  ACYF-CB-PI-14-06

**I. Purpose**

The purpose of this Administrative Directive (ADM) is to address the implementation of a provision recently enacted by the federal Preventing Sex Trafficking and Strengthening Families Act (the Act) [P.L.113-183]. This provision relates to the continuation of Kinship Guardianship Assistance Program (KinGAP) payments to a successor guardian if the original KinGAP relative guardian receiving KinGAP payments dies or is incapacitated. Implementation of this provision is necessary for New York State to continue to maintain a compliant Title IV-E State Plan, which is a condition for New York State and a local department of social services (LDSS) to receive federal funding for foster care, adoption assistance and KinGAP payments.

This release only addresses the KinGAP continuation to a successor guardian provision of the Act. Other policy releases will address other requirements of the Act.

**II. Background**

New York State's subsidized guardianship program was implemented on April 1, 2011, as a result of Part F of Chapter 58 of the Laws of 2010 (Chapter 58) entitled "Kinship Guardianship Assistance Program" (KinGAP) [see §§458-a--458-f of the Social Services Law (SSL)]. Chapter 58 also 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 Office of Children and Family Services (OCFS) also implemented the KinGAP program through a release entitled "The Kinship Guardianship Assistance Program (KinGAP)" (11-OCFS-ADM-03) found at [http://ocfs.ny.gov/main/policies/external/OCFS\\_2011/](http://ocfs.ny.gov/main/policies/external/OCFS_2011/). That policy remains in effect, except for the changes allowing for a successor guardian as described in this policy release.

On September 29, 2014, President Obama signed the Act [P.L. 113-183] into law, which amended various provisions of Title IV-E of the Social Security Act (SSA). Most of the provisions of this new federal law have an effective date of September 29, 2015. However, the KinGAP successor guardian provision addressed in this release has a September 29, 2014 effective date.

Section 207 of the Act amended section 473(d)(3) of the SSA [42 U.S.C. §673(d)(3)] on the subject of preservation of eligibility for KinGAP payments with a successor

guardian. The amendment provides that eligibility for KinGAP is not affected by replacement of a relative guardian with a successor guardian in the event of the death or incapacity of the relative guardian who is named in the Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement (KinGAP Agreement) or an amendment of the KinGAP Agreement. On November 21, 2014, the Administration on Children, Youth and Families (ACYF) of the federal Department of Health and Human Services (DHHS) notified the states in Program Instruction ACYF-CB-PI-14-06 that states had to amend their Title IV-E State Plan and document compliance with the above referenced requirement. OCFS specifically inquired of Region II of the Administration for Children and Families (ACF) of DHHS whether New York had to implement this requirement immediately prior to enactment of applicable New York statutory or regulatory changes. OCFS was informed that because the successor guardianship amendment to the Title IV-E KinGAP program has an immediate effective date, New York must implement this requirement immediately to retain Title IV-E compliance.

### III. Program Implications

Through this policy release New York State is amending its KinGAP program to be compliant with P.L. 113-183. KinGAP payments must continue to a successor guardian upon the death or incapacity of the original KinGAP relative guardian under the conditions noted in this release. Those conditions include:

- a) The prospective successor guardian is named in either the original KinGAP Agreement or in an amendment to the original KinGAP Agreement prior to death or incapacitation of the relative guardian;
- b) The relative guardian of the child named in the original KinGAP Agreement has died or is incapacitated to the extent that he or she can no longer adequately care for the child; and
- c) The successor guardian is appointed by the court for the child named in the original KinGAP Agreement with the relative guardian who has died or is incapacitated.

In 2011, when the KinGAP program was first implemented, the program did not allow for a transfer of guardianship from the relative guardian; therefore, the current KinGAP Agreement and other program materials do not reflect the inclusion of a successor guardian. Implementation of this federal requirement will initially be done through this administrative directive, revisions to the KinGAP Agreement, and a newly created Successor Guardian Amendment to that Agreement. OCFS has revised the current "Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement" to include an optional successor guardian section and developed a form entitled "Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement Successor Guardian Amendment" for this purpose, copies of which are attached to this release and can also be found at

<http://ocfs.state.nyenet/admin/forms/kinship/> (intranet) or  
<http://ocfs.ny.gov/main/documents/forms.asp> (Internet).

In the new federal law the successor guardian is not required to be related to the child named in the original KinGAP Agreement. In addition, the federal law does not address when KinGAP payments must start when a successor guardian is appointed. Pending further guidance from DHHS and state statutory changes, for the purpose of this release, KinGAP payments to a successor guardian must commence when the LDSS is informed

by the successor guardian, named in the original KinGAP Agreement or an amendment to the KinGAP Agreement, that the court has appointed him or her as the guardian to the child due to the death or incapacity of the relative guardian named in the KinGAP Agreement and has submitted supporting documentation listed under the required action section below. Payments cannot be made to the successor guardian until such time as the court awards guardianship; however, if the successor guardian began caring for the child prior to the court's appointment of guardianship of the successor guardian, kinship guardianship assistance payments can be made retroactively to either the date of the death, or the incapacity (as applicable) of the relative guardian, or the date the successor guardian assumed care of the child, whichever is later.

The conditions for continuation of KinGAP payments will also apply to payments made to a successor guardian, including, but not limited to, annual notification, certification, and documentation requirements. In addition, the age at which the child entered the original KinGAP arrangement will be used to determine the length of the KinGAP assistance period. For example, children who were discharged to the KinGAP arrangement at age 16 or older may continue in the KinGAP program until age 21 if the other requirements for continuation are met. The terms and condition of the KinGAP Agreement executed by the relative guardian will otherwise apply to the successor guardian.

Neither the federal law nor this release extends a requirement to make non-recurring guardianship expenses payments to the successor guardian.

#### **IV. Required Action**

When completing KinGAP Agreements with prospective relative guardians, the LDSS or Voluntary Authorized Agency (VA) must notify the relative that he or she may name a successor guardian in the KinGAP Agreement, or at a later date in an amendment to the KinGAP Agreement. In addition, a relative guardian may change successor guardian(s) via the KinGAP Successor Guardian Amendment form at any time (e.g. the person named successor guardian pre-deceases the relative guardian). Naming a successor guardian is not a requirement and LDSSs and VAs must inform prospective relative guardians that it is their decision as to whether they wish to name a successor guardian; however, this practice is recommended to promote support of permanency for the child should the relative guardian die or become incapacitated. The LDSS or VA must tell the prospective relative guardian that, for payments to continue to a successor guardian, the successor guardian must be named in either the KinGAP Agreement or an amendment to the KinGAP Agreement. If they are not, KinGAP payments may not be made to a successor guardian.

If a successor guardian is named in either the KinGAP Agreement or amendment to the KinGAP Agreement, the KinGAP eligibility criteria for the child does not apply to the successor guardian. The LDSS may refuse to sign the KinGAP Agreement if the successor named is not appropriate. If the KinGAP Agreement is not approved by the LDSS, fair hearing rights will apply as would for any other KinGAP case where the LDSS has refused to approve a KinGAP Agreement. It is recommended practice that the LDSS confirm that the person named as successor guardian is aware and willing to take that role should the relative guardian no longer be able to care for the child due to death or incapacity. The relative guardian should notify the prospective successor guardian that he or she has been named in the Agreement or amendment.

When a relative guardian dies or is determined to be incapacitated, the LDSS that was a party to the original KinGAP Agreement with the relative guardian must continue to make KinGAP payments to the successor guardian named in the original KinGAP Agreement or in an amendment to the KinGAP Agreement by the relative guardian who has been appointed by the court as legal guardian of the child. Such payments must reflect the amounts set forth in the original KinGAP Agreement and any increases thereto for which the relative guardian would have been entitled. The successor guardian would be entitled to the same notice of termination and hearing rights that would apply to a KinGAP relative guardian.

The process for a transfer of KinGAP assistance payments to a successor guardian is the following:

1. The LDSS is made aware of the death or incapacity of a KinGAP relative guardian and has received information that the successor guardian named in the KinGAP Agreement, or an amendment to the KinGAP Agreement, has been appointed the legal guardian of the child.
2. The successor guardian submits the letters of guardianship demonstrating that he or she has been appointed as the legal guardian of the child and proof of incapacitation or death of the relative guardian (see examples of proof noted in the paragraph below).
3. KinGAP assistance payments begin to the successor guardian when the LDSS receives the request to transfer the KinGAP payments to the successor guardian with the documentation listed in number two above.
  - a. Payments cannot be made to the successor guardian until such time as the court awards guardianship; however, if the successor guardian began caring for the child prior to the court order appointing the successor guardian of the child, the KinGAP payments can be made retroactively to either the date of the death or the incapacity (as applicable), or the date the successor guardian assumed care of the child, whichever is later.

For the purposes of this policy release, “incapacity” is defined as where the relative guardian is not able to carry out the duties of a legal guardian of the child named in the original KinGAP agreement due to a substantial inability to care as a result of: (a) a physically debilitating illness, disease, or injury; or (b) a mental impairment that results in a substantial inability to understand the nature and consequences of decisions concerning the care of the child. In order to begin KinGAP payments to the successor guardian due to incapacity of the relative guardian, the LDSS must receive a statement from a physician (e.g. a psychiatrist) or a psychologist that the original KinGAP guardian is incapacitated as defined above.

The relative guardian may or may not retain legal guardianship of the child after the successor guardian is named legal guardian on the basis of incapacity of the relative guardian. If the relative guardian has been relieved of his or her duties as legal guardian of the child, the court order demonstrating this must be produced. Such order may be issued at the same time as the issuance of the letters of guardianship to the successor guardian. If the relative guardian who is incapacitated retains or reassumes legal guardianship of the child after the successor guardian is named, he or she may request that KinGAP payments be resumed to him or her at such time the child is returned to the relative guardian’s care if:

1. A statement is produced from a physician (e.g. a psychiatrist) or psychologist that the relative guardian is no longer incapacitated and is able to adequately care for the child;
2. The relative guardian produces a court order documenting that he or she retains or reassumed legal guardianship over the child and the relative attests that the court order has not been modified or terminated; and
3. The relative guardian has resumed physical care of the child.

Proof of death of the original KinGAP relative guardian is documented by a copy of the Death Certificate for the relative guardian.

Successor guardian KinGAP cases carry the same fair hearing rights as other KinGAP cases. Any person aggrieved by the decision of an LDSS to deny an application for KinGAP, or to discontinue KinGAP payments, or by a decision to make such payment in an inadequate or inappropriate amount, or by the failure of such LDSS 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 LDSS's decision, or the failure to make a timely determination.

The prospective successor guardian(s) or the successor 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 225 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 LDSS involved, and the LDSS must comply with the decision.

These successor guardianship cases follow the same annual notification and certification requirements that cover all children in KinGAP arrangements, including the requirements specific to the educational status of school-age children and the educational/employment verification requirements that exist for youth ages 18-21.

Given that continuation of KinGAP assistance payments to a successor guardian is expected to be a rare circumstance, OCFS recommends that, should an LDSS be approached by a potential successor guardian, the LDSS contact its Child Welfare and Community Services (CWCS) Regional Office at OCFS for further guidance. The CWCS regional directors are listed as contact persons on the first page of this policy.

## **V. Systems Implications**

### **CONNECTIONS**

The new successor guardian's case will need to be opened in CONNECTIONS to enable the KinGAP payment to be set up in the Welfare Management System (WMS). The LDSS will need to create a new KinGAP case in CONNECTIONS using the standard instructions for creating a new home:

1. When creating a new KinGAP case:
  - a. Use a setting of Adopt/Guard.
  - b. Use a Facility Type of Kinship Guardianship.
  - c. There must be at least one person in the home.

- d. A program type must be selected, and capacity must also be completed, including male and female ranges.
  - e. Medicals, fingerprint and SCR clearances are not required for KinGAP-only homes.
2. After the case has been approved and is in Accepted Active Status, the KinGAP checkbox will automatically be selected.

No entry in the Activities Window in CONNECTIONS is necessary.

If the relative guardian's KinGAP payment case needs to resume, in the case of the end of incapacitation, the same steps should be taken to re-open the original KinGAP relative's case in CONNECTIONS.

### **Welfare Management System (WMS)**

The KinGAP payment to the new successor guardian must be authorized in WMS. Once the new vendor ID is established in CONNECTIONS and has been updated in BICS, the new KinGAP successor guardian payment can be authorized.

The LDSS will need to end date the POS line for the original KinGAP relative guardian assistance payment and enter a new POS line for the successor guardian using the new vendor ID established in CONNECTIONS.

If the relative guardian's KinGAP payment needs to resume, in the case of the end of incapacitation, the same steps should be taken. The POS line for the successor guardian should be end dated, and a new POS line for the original KinGAP relative should be entered into WMS.

## **VI. Effective Date**

This directive is effective immediately upon release of this directive.

*/s/ Thomas R. Brooks*

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### **Issued By:**

Name: Thomas R. Brooks

Title: Deputy Commissioner

Division/Office: Strategic Planning and Policy Development