



# Office of Children and Family Services

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Acting Commissioner

## Administrative Directive

<b>Transmittal:</b>	18-OCFS-ADM-03
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Child Welfare and Community Services
<b>Date:</b>	March 2, 2018
<b>Subject:</b>	<b>Expansion of the Kinship Guardianship Assistance Program (KinGAP)</b>
<b>Suggested Distribution:</b>	Commissioners of Social Services Directors of Social Services Child Protective Services Supervisors Child Welfare Supervisors Foster Care Supervisors CONNECTIONS Implementation Coordinators
<b>Contact Person(s):</b>	Please see Section VI.
<b>Attachments:</b>	<a href="#">Relative Notification Letter (Model Letter)</a> <a href="#">Relative Notification Letter (Spanish)</a> <a href="#">Kinship Guardianship Assistance Program Annual Notification (Model Letter)</a> <a href="#">Non-Relative Notification Letter (Model Letter)</a> <a href="#">Sibling Parent Notification Letter (Model Letter)</a>
<b>Attachments Available Online:</b>	<a href="#">Pub. 5108, Know Your Permanency Options: The Kinship Guardianship Assistance Program</a> <a href="#">OCFS-4409, Prospective Successor Guardian Criminal History Attestation</a> <a href="#">OCFS-4410, Notification of Interest To Be an Approved Successor Guardian</a> <a href="#">OCFS-4430, Application for the Kinship Guardianship Assistance and Nonrecurring Guardianship Expenses Programs (KinGAP)</a> <a href="#">OCFS-4430NYC, Application for the Kinship Guardianship Assistance and Nonrecurring Guardianship Expenses Programs (KinGAP)</a> <a href="#">OCFS-4431, Kinship Guardianship Assistance Program and Nonrecurring Guardianship Expenses Agreement</a> <a href="#">OCFS-4432, Kinship Guardianship Assistance and Nonrecurring Guardianship Expenses Amendment</a> <a href="#">OCFS-4433, Kinship Guardianship Assistance Program Certification Form</a> <a href="#">OCFS-4434, Nonrecurring Kinship Guardianship Expenses Reimbursement Form</a>

<a href="#">OCFS-4434, Nonrecurring Kinship Guardianship Expenses Reimbursement Form (Spanish)</a> <a href="#">OCFS-4437, Kinship Guardianship Assistance Program and Nonrecurring Guardianship Expenses Agreement Successor Guardian Amendment</a> <a href="#">KinGAP Fair Hearing Notice Denial</a> <a href="#">KinGAP Fair Hearing Notice Denial (Spanish)</a> <a href="#">KinGAP Fair Hearing Notice Denial of Upgrade</a> <a href="#">KinGAP Fair Hearing Notice Denial of Upgrade (Spanish)</a> <a href="#">KinGAP Fair Hearing Notice Discontinuance</a> <a href="#">KinGAP Fair Hearing Notice Discontinuance (Spanish)</a>
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### Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
11-OCFS-ADM-03 16-OCFS-ADM-10		18 NYCRR 430.11(c)(4) 18 NYCRR Part 436 18 NYCRR 443.7(a)(2)	Chapter 58 of the Laws of 2010 Chapter 384 of the Laws of 2017 FCA §1017 SSL §§458-a-458-f	Kinship Guardianship Assistance Practice Guide	Preventing Sex Trafficking and Strengthening Families Act [P.L 113-183]

## I. Purpose

The purpose of this Administrative Directive (ADM) is to advise local departments of social services (LDSSs) and voluntary authorized agencies (VAs) of the provisions of Chapter 384 of the Laws of 2017 (Chapter 384). Chapter 384 was signed by Governor Andrew Cuomo on October 23, 2017, and it expands the Kinship Guardianship Assistance Program (KinGAP) related to who may be eligible to receive KinGAP payments, and extends the duration of certain KinGAP payments until the child reaches 21 years of age. The changes made by Chapter 384 are referred to as “KinGAP Expansion.” With this ADM, the New York State Office of Children and Family Service (OCFS) is also releasing updated forms, an updated version of the publication titled ***Know Your Permanency Options: The Kinship Guardianship Assistance Program*** (Pub-5108), and new and updated model notification letters.

## II. Background

### Kinship Guardianship Assistance Program (KinGAP) Timeline:

**2011:** New York State’s subsidized guardianship program entitled “Kinship Guardianship Assistance Program” (KinGAP) was implemented on April 1, 2011, as a result of Chapter 58 of the Laws of 2010 (Chapter 58). Chapter 58 added Title 10 of Article 6 of the Social Services Law (SSL).<sup>1</sup> Chapter 58 also amended the Family Court Act (FCA) and the Surrogate’s Court Procedure Act, setting forth standards and procedures related to the application for the issuance of letters of guardianship to prospective relative guardian(s). OCFS implemented KinGAP through an ADM titled *The Kinship Guardianship Assistance Program (KinGAP)* ([11-OCFS-ADM-03](#)).

<sup>1</sup> SSL §§458-a through 458-f.

**2015:** The federal Preventing Sex Trafficking and Strengthening Families Act [P.L. 113-183] authorized the continuation of KinGAP payments and non-recurring guardianship expense payments to a successor guardian upon the death or incapacity of the relative guardian. New York State made conforming statutory and regulatory amendments to KinGAP in 2015 and 2016. The ADM addressing these changes is titled *Continuation of the Kinship Guardianship Assistance Program (KinGAP) to a Successor Guardian* ([16-OCFS-ADM-10](#)).

**Note:** 11-OCFS-ADM-03 and 16-OCFS-ADM-10 remain in effect, **except for** the changes related to the definition of a prospective relative guardian and duration of KinGAP payments, as described in this ADM.

**2017:** Chapter 384 of Laws of 2017 was signed into law by Governor Andrew Cuomo on October 23, 2017. Chapter 384 makes two significant changes to New York State's KinGAP. The first change, as set forth by an amendment to §458-a of the SSL, expands KinGAP eligibility by eliminating the need for the prospective relative guardian to be related by blood, marriage or adoption to a child or to all siblings in a sibling group. The second change, as set forth by an amendment to §458-b of the SSL, eliminates the statutory requirement that KinGAP payments automatically terminate upon the child's 18<sup>th</sup> birthday if the KinGAP agreement became effective prior to the child attaining the age of 16. These changes increase permanency options for children who would otherwise remain in foster care and provide committed foster parents the supports necessary to care for the child after transitioning to guardianship.

For the provisions of Chapter 384 to take effect, New York State had to obtain an approval from the federal Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services of a Title IV-E State Plan Amendment. The plan amendment was approved on January 11, 2018. Chapter 384 set an effective date of 60 days from federal approval of the plan amendment; therefore, the provisions of Chapter 384 are effective on March 12, 2018. Chapter 384 does not extend these expanded provisions to existing KinGAP agreements where the court issued letters of guardianship of the child to the relative guardian prior to March 12, 2018.

To implement the provisions of Chapter 384, OCFS is in the process of promulgating necessary amendments to 18 NYCRR Part 436. The regulations will reflect the statutory changes to expand who may be eligible to become a "prospective relative guardian" and extend how long payments may be made under a KinGAP agreement.

### III. Program Implications

Chapter 384 of the Laws of 2017 (known throughout this ADM as KinGAP Expansion) amended the SSL in relation to eligibility of children for KinGAP. KinGAP Expansion is New York State's effort to expedite permanency for children and youth for whom adoption and reunification have been ruled out.

Please note that the term “prospective relative guardian” now includes both relatives and certain specified non-relatives under KinGAP.

#### **A. Definition of Prospective Relative Guardian**

Prior to KinGAP Expansion, a prospective relative guardian(s) was restricted to someone related to the child through blood, marriage or adoption. KinGAP Expansion acknowledges that some non-relatives had prior family-like relationships with the children in their care and enables such non-relatives to be eligible to enter into a KinGAP agreement, thus, increasing permanency options for children who would otherwise remain in foster care because adoption and reunification have been ruled out.

KinGAP Expansion expands who may be a prospective relative guardian(s) to include persons in two additional types of relationships:

1. **A person who is related to a half sibling of the child in foster care with the prospective relative guardian by blood, marriage, or adoption where such person or persons is also the prospective or appointed relative guardian(s) of such half sibling; or**

This provision enables half siblings placed with the same prospective relative guardian(s) to participate in KinGAP together, even if such prospective relative guardian(s) is unrelated to one of the siblings.

An example of how the new definition could apply: Half siblings A and B have been in foster care for more than six consecutive months with sibling B’s biological aunt, who is not related by blood, marriage, or adoption to sibling A. Adoption and reunification have been ruled out for both siblings. Sibling B’s aunt is applying for a KinGAP agreement on behalf of sibling B. Due to KinGAP Expansion, the aunt will also be eligible to apply for a KinGAP agreement on behalf of sibling A despite being unrelated by blood, marriage or adoption to sibling A.

Half siblings may be part of the same KinGAP agreement or different agreements. Each half sibling must be in foster care with the prospective relative guardian(s) for a minimum of six consecutive months. Additionally, adoption and reunification must have been ruled out as appropriate permanency goals for each child independent of the other. Therefore, KinGAP agreements may be made at separate times if one half sibling reaches the six-month requirement before the other, or if more time is needed to rule out adoption and reunification for one of the siblings.

2. **A person who has a positive relationship with the child, including, but not limited to a stepparent, godparent, neighbor, or family friend.**

Consistent with the intent underlying Chapter 384, the term “positive relationship” refers to an **established positive relationship** with the child **prior** to the child’s current foster care placement with the prospective relative guardian(s).

The LDSS or VA must determine that a positive relationship existed between the child and prospective relative guardian(s) prior to the current foster care placement with the prospective relative guardian. A positive relationship is a relationship that supports the conclusion that a KinGAP arrangement would be in the best interests of the child. Therefore, consideration should be given to the following factors:

- Support for the child’s healthy emotional and psychological development
- Understanding of the child’s family dynamics
- Understanding of the child’s strengths and needs
- The ability and willingness to meet the child’s specific needs both in the short and long term
- A strong desire to commit to the care of the child
- The child’s level of attachment

The basis for concluding that a positive relationship existed prior to the child’s foster care placement with the prospective relative guardian must be documented in the progress notes of the child’s case record.

**A prior positive relationship is only required for non-relative foster parents under KinGAP Expansion who are also unrelated to the child’s half siblings.** A prior positive relationship is **not** required if the foster parent is related by blood, marriage or adoption to the child or the child’s half sibling.

The new categories of prospective relative guardians continue to be subject to all other eligibility requirements.<sup>2</sup> These requirements include the following:

- The prospective relative guardian has been caring for the child as a fully certified foster parent for at least six consecutive months.
- The child being returned home or adopted are not appropriate permanency options for the child.
- The child demonstrates a current strong attachment to the certified foster parent.
- The foster parent has a strong commitment to caring permanently for the child.
- For an abused, neglected, or destitute child, the fact-finding and initial permanency hearing (PH) has been completed and for all other categories of foster children, the initial PH has been completed.
- Age appropriate consultation has been held with the child.
- It is in the child’s best interest for the foster parent to become the legal guardian of the child.

In determining whether it is in the best interests of the child for the prospective relative guardian to become the child’s relative guardian, the applicable LDSS must determine

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<sup>2</sup> See 11-OCFS-ADM-03, *The Kinship Guardianship Assistance Program (KinGAP)*, for a full description of eligibility requirements.

and document that compelling reasons exist that adoption and reunification **are not** appropriate permanency goals for the child.

## **B. Duration of Kinship Guardianship Assistance**

KinGAP Expansion also eliminates the automatic termination of KinGAP payments upon the child's 18<sup>th</sup> birthday for children who had not yet attained the age of 16 when a KinGAP agreement goes into effect. The new provision aligns support for children who are under the age of 16 when a KinGAP agreement goes into effect with the support afforded to children who are 16 or older when a KinGAP agreement goes into effect.

For agreements effective on or after March 12, 2018, payments must be made until the child reaches the age of 21 **if** the child consents to the continuation of the appointment of the guardian upon reaching the age of 18, the court grants the continuation, **and** the child is:

- completing secondary education or a program leading to an equivalent credential;
- enrolled in an institution that provides post-secondary or vocational education;
- employed at least 80 hours per month;
- participating in a program or activity designed to promote or remove barriers to employment; or
- incapable of any of such activities due to a medical condition, which incapacity is supported by regularly updated information in the case record of the child.

For any agreements in effect prior to March 12, 2018, an LDSS may, in its discretion, agree to amend the agreement to provide for continuation of payments to a relative guardian for a child who was under age 16 when the agreement went into effect, subject to the same condition set forth above.<sup>3</sup>

## **IV. Required Action**

### **A. Notice and Information About KinGAP Expansion**

#### Child's initial placement into foster care:

Within 30 days of a child's removal, or earlier if directed by a court, LDSSs must exercise due diligence in identifying relatives, notifying them of the child's removal and providing information on options for taking custody. Persons requiring such notification are:<sup>4</sup>

- the child's grandparents,
- all parents of a sibling of the child with legal custody of such sibling, and
- other adult relatives, including adult relatives suggested by the child's parent or parents.

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<sup>3</sup> §458-b(4)(f).

<sup>4</sup> 18 NYCRR 430.11(c)(4).

During a child protective proceeding under Article 10 of the Family Court Act, the court will also require LDSSs to notify

- any non-respondent parent of the child,
- all relatives or suitable persons identified by the child's parent(s), and
- any relative identified by a child over the age of five as a relative with a significant positive role in the child's life.<sup>5</sup>

OCFS has developed new and updated model notification letters that LDSSs or VAs may use to meet these notification requirements. LDSSs should use the letter appropriate for the type of relationship the notified person has with the child. The letters are included with the ADM for each of the following:

- Relatives of the child
- Parents of a sibling of the child
- Non-relatives of the child

LDSSs or VAs must also provide these identified and notified relatives with a copy of the publication titled ***Know Your Permanency Options: The Kinship Guardianship Assistance Program*** (Pub-5108), and respond to any questions they may have regarding KinGAP.

Additionally, in accordance with this ADM, if the parent or child identifies any other person(s) as a placement resource for the child, who hasn't already been notified, the LDSS must

- provide notice of the child's removal and options for providing care of the child,
- provide such persons with a copy of ***Know Your Permanency Options: The Kinship Guardianship Assistance Program*** (KinGAP),<sup>8</sup> and
- respond to any questions they may have regarding KinGAP.

After child's initial placement into foster care

LDSSs or VAs should note any person identified after the initial placement with whom the child has a significant connection. It is recommended that LDSSs or VAs notify such persons of the options for providing care should the child's placement need to change. Upon notification, the LDSSs or VAs should provide such persons with a copy of ***Know Your Permanency Options: The Kinship Guardianship Assistance Program*** (KinGAP).<sup>8</sup>

After issuance of this ADM LDSSs or VAs must:

- review their foster care caseloads and identify all children in certified foster homes:
- for whom adoption and reunification have been ruled out as appropriate permanency goals,
- who have been in placement with the certified foster parent for at least six consecutive months, and
- who had a prior relationship with the foster parent **or** where the foster parent is the prospective relative guardian or relative guardian of a half sibling.

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<sup>5</sup> §FCA 1017.

For all foster parents who meet the above criteria, LDSSs or VAs must

- discuss KinGAP as a potential permanency option at the next required casework contact,
- provide the foster parent(s) with a copy of ***Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)*** (OCFS-4431); and,
- record the placement type in the Activities Window in CONNECTIONS to indicate whether the foster parent is a relative, related to a half sibling, or had a prior positive relationship with the child in foster care (see Section V. Systems Implication).

## **B. Re-Issuance of Agreements**

The provisions of KinGAP Expansion are applicable to all Kinship Guardianship Assistance and Nonrecurring Guardianship Expenses Agreements in effect on or after March 12, 2018. A KinGAP agreement is considered in effect

- a) when it is executive (completed and signed by the prospective relative guardian(s) and the appropriate LDSS), and
- b) when, following the execution of the agreement, the court issues letters of guardianship to the prospective relative guardian(s) named in the agreement.

As of March 12, 2018, any KinGAP agreement for a foster child who is under 16 years of age that is not in effect by the issuance of letters of guardianship must be rescinded and re-issued using the updated Kinship Guardianship Assistance and Nonrecurring Guardianship Expenses Agreement (OCFS-4431).

However, the LDSS, may, solely in its discretion, approve an amendment to a KinGAP agreement that was in effect prior to March 12, 2018, when the child was under 16 years of age, where a relative guardian(s) requests extension of KinGAP payments until the child attains the age of 21 and the child otherwise meets the requirements for such continued payments.<sup>6</sup>

The LDSS may **not** re-issue KinGAP agreements that were terminated or expired prior to March 12, 2018.

## **C. Model Notification Letter and Form Updates**

OCFS has developed a new model notification letter that includes a brief description of the KinGAP option for non-relatives included under KinGAP Expansion. The letter is attached to this ADM, along with a model notification letter to the parent of a sibling and a model notification letter to relatives of the child. LDSSs may use these models or develop their own letters, so long as they include information on KinGAP.

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<sup>6</sup> SSL §458-b(4)(f).



Also included with this ADM are links to all necessary forms, including those that have been updated to incorporate the changes required by KinGAP Expansion.

LDSSs should verify that all KinGAP applications and agreements submitted by a prospective relative guardian(s) to the LDSS on or after March 12, 2018, where letters of guardianship have not yet been received, and the child is under the age of 16, are the correct and updated versions. The LDSS must rescind and re-issue any such non-finalized KinGAP applications and non-effective agreements that were distributed to foster parents prior to March 12, 2018, where the children in care are under the age of 16.

## V. Systems Implications

### CONNECTIONS

Workers must record all movements of a child in foster care. This is done with in the Activities Window.

The Activities Window in CONNECTIONS will be updated to reflect the additional types of placements that may be possible for use when determining whether a foster parent subsequently will be eligible to apply for KinGAP. Workers must retroactively record the movements of a child placed with a foster parent prior to March 12, 2018, where such foster parent has been identified as potentially eligible for KinGAP under KinGAP Expansion (see Section IV. Required Actions). These new types will replace the existing “relative” and “non-relative” placement types. The new placement types are as follows:

- Child’s Paternal Grandparents
- Child’s Maternal Grandparents
- Child’s Other Paternal Relative
- Child’s Other Maternal Relative
- Child’s Sibling
- Related to Child’s Half Sibling
- Not related/prior positive relationship with child
- Not related/no prior positive relationship with child

When recording a movement of a child in foster care in the Activities Window, the worker must do the following:

1. In the “Date of Activity” field, record the date of the activity.
2. Click the drop-down arrow for the “Type of Activity” field and select “Movement.”
3. Click the drop-down arrow for the “Event” field and select the corresponding event.
4. In the “Modifiers” section, enter the vendor ID in the “Facility ID” field.
5. Click the drop-down arrow for the “Type” field and select one of the following:
  - Child’s Paternal Grandparents
  - Child’s Maternal Grandparents
  - Child’s Other Paternal Relative
  - Child’s Other Maternal Relative
  - Child’s Sibling
  - Related to Child’s Half Sibling
  - Not related/prior positive relationship with child
  - Not related/no prior positive relationship with child

6. Click the Save button.

Please refer to *Getting to Know the CONNECTIONS Activities Window Build Job Aid* at [http://ocfs.ny.gov/connect/imp/CCRS/Activities%20Build%20Job%20Aid\\_OCFS-Approved%20v1.0%20\(10-06-14\).pdf](http://ocfs.ny.gov/connect/imp/CCRS/Activities%20Build%20Job%20Aid_OCFS-Approved%20v1.0%20(10-06-14).pdf) for more information.

## VI. Contacts

Any questions concerning this release should be directed to the appropriate regional office, Division of Child Welfare and Community Services:

Buffalo Regional Office – Amanda Darling (716) 847-3145

[Amanda.Darling@ocfs.ny.gov](mailto:Amanda.Darling@ocfs.ny.gov)

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Native American Services – Heather LaForme (716) 847-3123

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## VII. Effective Date

This policy directive is effective on March 12, 2018.

*/S/ Laura M. Velez*

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### Issued By:

Name: Laura M. Velez

Title: Deputy Commissioner

Division/Office: Child Welfare and Community Services