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GOVERNOR

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

March 25, 2014

ALL COUNTY LETTER NO. 14-28

TO: ALL COUNTY WELFARE DIRECTORS
 ALL CHIEF PROBATION OFFICERS
 ALL FOSTER CARE MANAGERS
 ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
 ALL COUNTY ELIGIBILITY SUPERVISORS
 TITLE IV-E AGREEMENT TRIBES
 ALL ADMINISTRATIVE LAW JUDGES
 ALL CONSORTIA PROJECT MANAGERS
 CHILD WELFARE SERVICES NEW SYSTEM

SUBJECT: EXPANSION OF THE DEFINITION OF RELATIVE FOR THE
 FEDERAL KINSHIP GUARDIANSHIP ASSISTANCE PAYMENT
 (KIN-GAP) PROGRAM

REFERENCES: ASSEMBLY BILL (AB) 12 (CHAPTER 559, STATUTES OF 2010),
 AB 212 (CHAPTER 459, STATUTES OF 2011),
 AB 1712 (CHAPTER 846, STATUTES OF 2012); ALL COUNTY
 LETTER (ACL) NO. 12-48, 11-67, and 11-15; UNITED STATES
 CODE (USC) TITLE 25 SECTION 1903(6); WELFARE AND
 INSTITUTIONS CODE (W&IC) SECTIONS 360, 362.7, 366.26,
 10553.1, 11386, 11391, 11403(b), AND 11405; AID TO CHILDREN,
 YOUTH AND FAMILIES – CHILDREN’S BUREAU-PROGRAM
 INSTRUCTIONS (P.I.) 10-11

The purpose of this ACL is to provide counties with information and instructions regarding the expansion of the definition of a relative, established by AB 1712, for the federal Kin-GAP Program.

Please note, there is no change to the definition of relative as it pertains to state-funded Kin-GAP. Additionally, a non-federally eligible dependent living with a Non-Relative Extended Family Member (NREFM), an unrelated tribal member, or an unrelated licensed or certified caregiver continues to be eligible to receive non-federal Aid to Families with Dependent Children-Foster Care (AFDC-FC) payments pursuant to W&IC section 11405 after the legal guardianship is established by the juvenile court.

EXPANSION OF DEFINITION OF RELATIVE FOR FEDERAL KIN-GAP PURPOSES

While AB 1712 became law on January 1, 2013, the expansion of the definition of relative is subject to federal approval (i.e., the approval of an amendment to the Title IV-E State Plan). Please note the expanded definition of relative **cannot** be applied retroactively to convert guardianship cases that are currently receiving non-federal AFDC-FC payments under W&IC section 11405 to the federal Kin-GAP Program, regardless of whether the child was federally eligible while a dependent.

In 2010, the federal Administration of Children and Families issued P.I. 10-11 that states:

“A title IV-E agency has discretion to define the term “relative” for the purposes of the title IV-E GAP. This means that we will accept a title IV-E plan or amendment that contains a reasonable interpretation of a relative, including a plan that limits the term to include biological and legal familial ties or a plan that more broadly includes Tribal kin, extended family and friends, or other “fictive kin.”

California took advantage of this federal flexibility in allowing states to broadly define relatives for federal Kin-GAP purposes. In 2012, AB 1712 amended W&IC section 11391(c), to define a “relative” as any of the following:

- (1) An adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” or “grand” or the spouse of any of those persons even if the marriage was terminated by death or dissolution.
- (2) An adult who meets the definition of an approved, nonrelated extended family member, as described in Section 362.7.
- (3) An adult who is either a member of the Indian child’s tribe, or an Indian custodian, as defined in Section 1903(6) of Title 25 of the United States Code.
- (4) An adult who is the current foster parent of a child under the juvenile court’s jurisdiction, who has established a significant and family-like relationship with the child, and the child and the county child welfare agency, probation department, Indian tribe, consortium of tribes, or tribal organization that has entered into an agreement pursuant to Section 10553.1 identify this adult as the child’s permanent connection.

Number (1) above is the “traditional” relative or kin; numbers (2), (3), and (4) are “fictive” relative or kin. For purposes of this ACL, the terms used to describe such relationships will be “traditional relative” and “fictive relative.” For purposes of determining when a foster caregiver is considered a relative under W&IC section 11391(c)(2)-(4), the county

shall use the date of the permanent plan that identifies guardianship as the permanency option for the dependent child/youth.

Guardianships established by the juvenile court with a fictive relative of a federally eligible dependent or ward on or after the effective date of approval of the state plan amendment (which is expected to be January 1, 2014) are eligible to enter the federal Kin-GAP Program, assuming all other eligibility conditions are met. Eligibility conditions include the execution of the negotiated agreement (SOC 369 and 369A) **prior to** the establishment of the guardianship.

The expanded definition of relative for the federally-funded Kin-GAP Program allows more children/youth to be eligible for a Kin-GAP payment and other associated benefits such as interstate portability of the benefit payment and access to federal Medicaid. Previously, a child who was federally eligible while in foster care was not eligible for the federal Kin-GAP Program when residing with the current caregiver, a NREFM, or a tribal member (both fictive relatives) who became the legal guardian. Rather, the caregiver became a non-related legal guardian. Under that Program, a child living with a non-related legal guardian may not be eligible for continued payments or federal Medicaid when moving to another state.

ELIGIBILITY INFORMATION

The appropriate removal findings must have been made and the child/youth must be eligible for federal AFDC-FC payments. The federal Kin-GAP Program eligibility requirements are the same regardless of whether the guardianship is with a traditional relative or a fictive relative: 1) the removal from the home must be pursuant to a voluntary placement agreement or judicial determination that continuation in the home would be contrary to the welfare of the child; and 2) the child must be eligible for Title IV-E foster care maintenance payments during at least a six-month consecutive period during which the child resided in the home of the approved prospective relative guardian. In addition, the agency must determine that returning home or adoption is not an option for the child/youth and the child/youth must have a strong attachment to the proposed fictive relative guardian. The guardianship must be established pursuant to W&IC sections 360 or 366.26 and dependency or wardship jurisdiction must be terminated. All provisions of W&IC section 11386 must be met and appropriately documented in the Child Welfare Services/Case Management System (CWS/CMS), along with any other required forms. It is important to remember for federal eligibility that the negotiated agreement (SOC 369 and 369A) must be signed prior to the guardianship order. Failure to do so will make the youth ineligible for the federal Kin-GAP Program. In this event, the youth would be eligible to receive AFDC-FC benefits under W&IC section 11405 as a youth living with a non-related legal guardian.

As with a traditional relative, the county is responsible for identifying and documenting the relationship between the fictive relative and the child/youth. The social worker should support the fictive relative determination made for a federally eligible Kin-GAP Program child/youth by documenting the relationship in *CWS/CMS Social Worker Case Notes*, the court report, or the approval documents, as appropriate. This determination documentation must be retained in the child's case file.

To emphasize, the child/youth must reside in the home of the approved fictive relative or licensed or certified foster caregiver for at least six consecutive months while under the jurisdiction of the juvenile court. Because the placement was approved, licensed, or certified prior to placement of the child/youth, a new relative approval does not need to be performed as a condition for Kin-GAP. The county shall use the date of initial foster care placement with the fictive relative to determine the beginning of the consecutive six-month period to meet the federal Kin-GAP criteria in W&IC section 11386(a)(2). See [ACL 11-15](#) for details on Kin-GAP criteria and eligibility.

When a federally eligible child/youth enters the Kin-GAP Program with a legal guardian who is a fictive relative, the child's eligibility for benefits is similar to that of a child/youth who enters a guardianship with a traditional relative. Specifically:

- If the child/youth has a medical or mental health condition that warrants the continuation of assistance, the child/youth is eligible to continue federal Kin-GAP benefits up to age 21, regardless of the age of the child at the time the negotiated agreement became effective.
- If the child/youth was over the age of 16 when the negotiated agreement became effective, the child/youth is eligible for federal Kin-GAP benefits up to age 21, if he/she meets at least one of the continued participation criteria described in W&IC section 11403(b)(1)-(5).

If a child was under the age of 16 when the negotiated agreement was effective and does not have a medical or mental health conditions, the child is eligible to receive federal Kin-GAP benefits until the child/youth turns 18-years-old. Upon turning 18-years-old, this youth loses eligibility for federal Kin-GAP, but is eligible to receive non-federal AFDC-FC benefits pursuant to W&IC section 11405(e)(2). Under that section, the youth may receive non-federal benefits up to age 21, assuming the legal guardian continues to be responsible for the support of the youth and the youth is meeting at least one of the conditions of eligibility described in W&IC section 11403(b)(1)-(5). Please note that this section applies only to a youth who was in receipt of federal Kin-GAP upon reaching the age of 18-years-old and whose legal guardianship was established by the juvenile court with a fictive relative.

CLAIMING

New cases that meet the criteria of a relative under the expanded definition can be claimed to existing federal Kin-GAP claiming codes. For administrative costs, the following Program Codes (PCs) are available on the County Expense Claim: PC 747 (Kin-GAP Title IV-E Case Management), PC 848 (Over 18 Kin-GAP Title IV-E Case Management), PC 858 (Over 18 Kin-GAP Title IV-E Eligibility), and PC 860 (Kin-GAP Title IV-E Eligibility). For maintenance costs, the following aid codes are available on the County Assistance 800 claim: aid code 4T (Fed-GAP) and aid code 4S (Fed-GAP Over 18).

For cases that lose eligibility for federal Kin-GAP but continue to be eligible for a benefit under W&IC section 11405(e)(2), those cases would be deemed NRLG cases and should be claimed to the appropriate claiming codes. For administrative costs, the following PCs are available: PC 863 (NRLG Non-Minor Dependent); PC 864 (NRLG Probate Court); and PC 865 (NRLG Juvenile Court). For maintenance costs, counties should claim these cases to the appropriate non-federal aid code.

QUESTIONS

Questions concerning Kin-GAP Program eligibility requirements should be directed to the Foster Care Funding and Eligibility Unit at (916) 651-9152. Questions concerning Kin-GAP Program policy should be directed to the Kinship Care Policy and Support Unit at (916) 657-7465, or AB12@dss.ca.gov. Questions concerning fiscal claiming, reporting, and aid codes should be directed to fiscal.systems@dss.ca.gov.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division