



Office of Children and Family Services

Andrew M. Cuomo
Governor

52 WASHINGTON STREET
RENSSELAER, NY 12144

Sheila J. Poole
Acting Commissioner

Administrative Directive

Transmittal:	15-OCFS-ADM-15
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	August 27, 2015
Subject:	Continuation of the Kinship Guardianship Assistance Program (KinGAP) to a Successor Guardian
Suggested Distribution:	Directors of Social Services Child Protective Services Supervisors Foster Care Supervisors Staff Development Coordinators CONNECTIONS Implementation Coordinators
Contact Person(s):	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 Dana.Whitcomb@ocfs.ny.gov Rochester Regional Office- Karen Buck (585) 238-8201 Karen.Buck@ocfs.ny.gov Syracuse Regional Office- Sara Simon (315) 423-1200 Sara.Simon@ocfs.ny.gov Albany Regional Office- Kerri Barber (518) 486-7078 Kerri.Barber@ocfs.ny.gov Spring Valley Regional Office- Yolanda Désarmé (845) 708-2499 Yolanda.Desarme@ocfs.ny.gov New York City Regional Office- Raymond Toomer (212) 383-1808 Raymond.Toomer@ocfs.ny.gov Native American Services- Heather LaForme (716) 847-3123 Heather.LaForme@ocfs.ny.gov In addition, questions may be emailed to ocfs.sm.sppd.KinGap.Help (through the global address list) or to KinGAPHelp@ocfs.ny.gov
Attachments:	1. Kinship Guardianship Assistance Program (KinGAP) to a Successor Guardian Desk Aid – This desk aid, attached to the end of this ADM, can be printed out separately to be used as a quick reference. The following attachments can be accessed by clicking on their titles or by using the OCFS website links below: 2. Kinship Guardianship Assistance Program and Non-Recurring

	<p>Guardianship Expenses Agreement (OCFS-4431)</p> <p>3. Kinship Guardianship Assistance Program and Non-Recurring Guardianship Expenses Agreement Successor Guardian Amendment (OCFS-4437)</p> <p>4. Notification of Interest to be an Approved Successor Guardian (OCFS-4410)</p> <p>5. Prospective Successor Guardian Criminal History Attestation (OCFS-4409)</p> <p>6. Kinship Guardianship Assistance Program Annual Notification (model Letter)</p> <p>7. Kinship Guardianship Assistance Program Certification Form (OCFS-4433)</p> <p>All the forms listed above can also be accessed online at: OCFS intranet: http://ocfs.state.nyenet/admin/forms/kinship/ OCFS Internet: http://ocfs.ny.gov/main/documents/</p>
--	---

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
11-OCFS-ADM-03	15-OCFS-ADM-02	18 NYCRR Part 436	SSL §§ 458-a through 458-f SSL §§378-a, 422, and 424-a SCPA § 1707 Part L of Chapter 56 of the Laws of 2015 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 New York State Office of Children and Family Services (OCFS) Administrative Directive (ADM) is to provide an update to the information that was provided in 15-OCFS-ADM-02 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.

With the issuance of this policy, the previous policy 15-OCFS-ADM-02 is canceled and this ADM replaces it. This revised policy directive reflects recent federal guidance in regard to screening clearances that must be completed prior to the payment of KinGAP

assistance to a successor guardian. Certain language in this policy directive reflects this new guidance and related information.

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 (SCPA), setting forth standards and procedures relating to the application for and issuance of letters of guardianship to prospective relative guardian(s). OCFS implemented the KinGAP program through a previous administrative directive entitled, "The Kinship Guardianship Assistance Program (KinGAP)" (see 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 federal law have an effective date of September 29, 2015. However, the KinGAP successor guardian provision addressed in this release had 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 had an immediate effective date, New York was required to implement this requirement immediately to retain Title IV-E compliance.

In addition, as part of our implementation of the Act, New York State recently made conforming statutory amendments to sections, 378-a, 422, 424-a 458-a, 458-b, 458-d and 458-f of the SSL, and section 1707 of the SCPA to authorize KinGAP payments to a successor guardian if the KinGAP relative guardian dies or is incapacitated.¹

¹ Part L of Chapter 56 of the Laws of 2015.

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:

1. 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;
2. 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;
3. The successor guardian has been approved by the LDSS to receive KinGAP payments after:
 - a. National and state criminal history checks have been completed on the prospective successor guardian and any person(s) over the age of 18 who resides in the home of the prospective successor guardian; and
 - b. A check has been made of the OCFS Statewide Central Register of Child Abuse and Maltreatment (SCR) for the prospective successor guardian and any person(s) over 18 who resides in the home of the prospective successor guardian; and
 - c. If the prospective successor guardian and/or any person(s) over the age of 18 residing in the home of the prospective successor guardian resided in another state in the five years preceding the inquiry, an inquiry must also be made of the child abuse and maltreatment registry from the applicable child welfare agency in each state of previous residence.²
4. The successor guardian is appointed guardian by the court for the child named in the original KinGAP Agreement with the relative guardian who has died or is incapacitated; and
5. The successor guardian has assumed care of the child.

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, a newly created Successor Guardian Amendment to that Agreement, and a newly created Notification of Interest to be an Approved Successor Guardian. OCFS has revised the current "Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement" to include an optional successor guardian section, developed a form entitled "Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement Successor Guardian Amendment", and created a form entitled "Notification of Interest to be an Approved Successor Guardian" 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).

² § 458-b(2)(d) of the SSL

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, for the purpose of this release, KinGAP payments to a successor guardian must commence after the LDSS is informed in writing by the prospective successor guardian, named in the original KinGAP Agreement or an amendment to the KinGAP Agreement, of the death or incapacity of the relative guardian when: a) the prospective successor guardian has been approved by the LDSS following criminal history and child abuse/maltreatment clearances; b) 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 c) the prospective successor guardian has assumed care of the child. The prospective successor guardian must submit the supporting documentation listed under the required action section below. Payments cannot be made to an approved prospective successor guardian until such time as the court awards guardianship and the prospective successor guardian has assumed custody of the child. If the successor guardian began caring for the child prior to the court's appointment of guardianship of the successor guardian and LDSS approval of the individual as a prospective successor guardian, kinship guardianship assistance payments must 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 prospective successor guardian(s) via the KinGAP Successor Guardian Amendment form at any time (e.g., the person named prospective successor guardian pre-deceases the relative guardian). Naming a prospective 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 prospective 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 the prospective successor guardian to be eligible to apply for KinGAP payments to continue to him or her, the prospective successor guardian must be named in either the KinGAP

Agreement or an amendment to the KinGAP Agreement. If he or she is not so named, KinGAP payments may not be made to a successor guardian.

If a prospective successor guardian is named in either the KinGAP Agreement or an 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 LDSS has information that the prospective successor named is not appropriate. The LDSS may use the attached attestation form that has the prospective successor guardian and other adults residing in the home of the prospective successor guardian state whether he or she has been convicted of a crime in New York or in any jurisdiction and if so, the crime for which the person was convicted. Using the attestation may assist with the vetting of appropriate prospective successor guardians at the point of them being named in the KinGAP Agreement, or amendment to the agreement, before the actual background checks can be made. If the KinGAP Agreement is not approved by the LDSS, fair hearing rights will apply as they would for any other KinGAP case where the LDSS has refused to approve a KinGAP Agreement. An LDSS may refuse to sign an agreement listing a prospective successor guardian for appropriate reasons; such reasons include, but are not limited to, when the relative guardian names a person who has a criminal conviction history that would preclude such person from being a successor guardian, or the person named as the prospective successor guardian states that he or she is unable to take on that responsibility. It is recommended practice that the LDSS confirm that the person named as a prospective 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 KinGAP Agreement or amendment.

It is important to note that signature by the LDSS official of the original KinGAP Agreement, or amendment to the KinGAP Agreement, made with the relative guardian, does not constitute approval of the prospective successor guardian named in the agreement or amendment to the agreement. Approval of the prospective successor guardian can only be made after the relative guardian dies or is incapacitated, the prospective successor guardian informs the LDSS of his or her interest in becoming the successor guardian, and the required clearances are completed.

Following the death or incapacity of the relative guardian, payments to an approved successor guardian must commence and continue to be made when the successor guardian is appointed as the child's guardian and assumes care 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, including a denial of the successor guardian's application for approval to receive KinGAP payments.

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 by written notification by the prospective successor guardian named in the KinGAP Agreement, or an amendment to the KinGAP Agreement.

- a. The LDSS sends the Notification of Interest to be an Approved Successor Guardian form OCFS-4410 to the prospective successor guardian for completion of Part I. This form can also be used by the prospective successor guardian as the written notification of the death or incapacity of the relative guardian.
2. The prospective successor guardian informs the LDSS of the prospective successor guardian's interest in being the approved successor guardian for this child via Part I of the Notification of Interest to be an Approved Successor Guardian OCFS-4410.
3. The prospective successor guardian submits the proof of incapacitation or death of the relative guardian (see examples of proof noted in the paragraph below).
4. The LDSS must start the clearance process within 15 days of receipt of the Notification of Interest form submitted by the prospective successor guardian. This includes providing the prospective successor guardian with the necessary forms and instructions for the completion of the SCR clearance and criminal history check processes.
5. The LDSS makes a decision to approve or deny the prospective successor guardian to receive the KinGAP payments, after:
 - a. National and state criminal history checks have been completed on the prospective successor guardian and any person over the age of 18 who resides in the home of the prospective successor guardian; and
 - b. A check has been made of the OCFS SCR for the prospective successor guardian and any person over 18 who resides in the home of the prospective successor guardian; and
 - c. If the prospective successor guardian and/or any person over the age of 18 residing in the home of the prospective successor guardian resided in another state in the five years preceding the inquiry, an inquiry must also be made of the child abuse and maltreatment registry from the applicable child welfare agency in each state of previous residence.
6. The prospective successor guardian submits the letters of guardianship demonstrating that he or she has been appointed as the legal guardian of the child.
7. The prospective successor guardian has assumed care of the child.
8. The LDSS must approve the prospective successor guardian if he or she has obtained guardianship over the child and the criminal, child abuse/maltreatment clearances have been completed and the LDSS has determined that approval of the prospective successor guardian is authorized and appropriate.
 - a. If the result of the criminal history record check and/or the SCR data base check is that the applicant or household member has a criminal history or an indicated SCR report(s), the following action must be taken. For criminal history records, a safety assessment must be completed and documented. In addition, for both a criminal history record and an indicated SCR report(s), the documentation must explain why it was decided that the prospective successor guardian was appropriate for approval despite the existence of these records. Note the standards for mandatory disqualification of prospective relative guardians based on criminal convictions also apply to prospective successor guardians.
 - b. Where a prospective successor guardian has an open charge or conviction for a discretionary crime, LDSS must use the criteria in 07-OCFS-ADM-01 *State and National Criminal History Checks (for Foster-Adoptive Parents)* for decisions regarding whether or not a crime is a mandatory disqualifier

- or discretionary when making the decision to approve or deny a prospective successor guardian based on the criminal history check.
- c. In addition to the criminal and SCR checks, LDSSs may consider whether approval of a prospective successor guardian would be contrary to the health, safety and/or well-being of the child.
9. KinGAP assistance payments begin to the successor guardian if he or she has been approved by the LDSS, was awarded guardianship of the child, and has assumed care of such child.
 - a. Payments cannot be made to an approved successor guardian until such time as the court awards guardianship and the successor guardian has assumed care of the child. If the successor guardian began caring for the child prior to the court order appointing the successor guardian of the child, the KinGAP payments must 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 relative guardian’s death certificate.

Though not required, an LDSS may make additional efforts to determine if a successor guardian is appropriate to be approved to receive KinGAP payments. For example, an LDSS may conduct a home study or other evaluation of a prospective successor

guardian prior to an approval decision, but OCFS is not mandating that LDSSs take any specific steps in order to determine the appropriateness.

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, 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. It is recommended that the LDSS remind relative guardians of the option to select or change prospective successor guardians when sending out the annual notification and certification paperwork. The model notification letter has been revised to reflect this (see attached).

Kinship guardianship assistance payments must be discontinued if the social services official determines that the child is no longer receiving any support from the successor guardian or that the successor guardian is no longer legally responsible for the support of the child. The term "any support from the successor guardian" is defined as actual documented use of at least 50 percent of such monthly kinship guardianship assistance payments by the successor guardian for the food, clothing, medical, education and/or shelter needs of the child.³ Circumstances where a successor guardian is no longer legally responsible for the support of the child, include, but are 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 successor 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 successor guardian. In addition, the payment can be discontinued for failure of the successor guardian to provide the requested information during the annual certification process.⁴

LDSSs must notify current relative guardians or those prospective relative guardians who have already completed their KinGAP Agreement without the prospective successor guardian information on it but have not yet finalized their guardianship, of the option to name a prospective successor guardian if they wish to do so by completing an amendment to the KinGAP Agreement. This notification may occur in the annual notification and certification letters or through a separate communication to current relative guardians. Those families who have not yet finalized their guardianships may be

³ 18 NYCRR 436.5(f)(2)(ii).

⁴ 11-OCFS-ADM-03 Kinship Guardianship Assistance Program (KinGAP).

notified by their current case manager or through written communication. The LDSS should document how they made these notifications.

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.

OCFS has also provided a desk aid entitled, "Kinship Guardianship Assistance Program (KinGAP) to a Successor Guardian Desk Aid," and recommends that it be given to LDSS and VA staff that will be completing KinGAP Agreements and applications by prospective successor guardians to receive KinGAP payments.

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 the Benefits Issuance Control System (BICS), the new KinGAP successor guardian payment can be authorized.

The LDSS will need to end date the Purchase of Services (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.

Thomas R. Brooks

Issued By:

Name: Thomas R. Brooks

Title: Deputy Commissioner

Division/Office: Strategic Planning and Policy Development

Kinship Guardianship Assistance Program (KinGAP) Successor Guardian Desk Aid

Notification of the Successor Guardian Option to KinGAP Guardians:

When completing KinGAP Agreements with prospective relative guardians, the Local Department of Social Services (LDSS) or Voluntary Authorized Agency (VA) **must notify** the relative that he or she may name a prospective successor guardian in the KinGAP Agreement, or at a later date in an amendment to the KinGAP Agreement. A relative guardian may change prospective successor guardian(s) via the KinGAP Successor Guardian Amendment form at any time (e.g. the person named prospective successor guardian pre-deceases the relative guardian).

The LDSS **may refuse** to sign the KinGAP Agreement if the LDSS has information that the named prospective successor guardian 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.

Continuation of the KinGAP to a Successor 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 by written notification by the prospective successor guardian named in the KinGAP Agreement, or an amendment to the KinGAP Agreement.
 - a. The LDSS sends the Notification of Interest to be an Approved Successor Guardian form OCFS-4410 to the prospective successor guardian for completion of Part I. This form can also be used by the prospective successor guardian as the written notification of the death or incapacity of the relative guardian.
2. The prospective successor guardian informs the LDSS of the prospective successor guardian's interest in being the approved successor guardian for this child via Part I of the Notification of Interest to be an Approved Successor Guardian OCFS-4410.
3. The prospective successor guardian submits the proof of incapacitation or death of the relative guardian (see examples of proof noted in the paragraph below).
4. The LDSS must start the clearance process within 15 days of receipt of the Notification of Interest form submitted by the prospective successor guardian. This includes providing the prospective successor guardian with the necessary forms and instructions for the completion of the SCR clearance and criminal history check processes.
5. The LDSS makes a decision to approve or deny the prospective successor guardian to receive the KinGAP payments, after:
 - a. National and state criminal history checks have been completed on the prospective successor guardian and any person over the age of 18 who resides in the home of the prospective successor guardian; and
 - b. A check has been made of the OCFS SCR for the prospective successor guardian and any person over 18 who resides in the home of the prospective successor guardian; and

- c. If the prospective successor guardian and/or any person over the age of 18 residing in the home of the prospective successor guardian resided in another state in the five years preceding the inquiry, an inquiry must also be made of the child abuse and maltreatment registry from the applicable child welfare agency in each state of previous residence.
6. The prospective successor guardian submits the letters of guardianship demonstrating that he or she has been appointed as the legal guardian of the child.
7. The prospective successor guardian has assumed care of the child.
8. The LDSS must approve the prospective successor guardian if he or she has obtained guardianship over the child and the criminal, child abuse/maltreatment clearances have been completed and the LDSS has determined that approval of the prospective successor guardian is authorized and appropriate.
 - a. If the result of the criminal history record check and/or the SCR data base check is that the applicant or household member has a criminal history or an indicated SCR report(s), the following action must be taken. For criminal history records, a safety assessment must be completed and documented. In addition, for both a criminal history record and an indicated SCR report(s), the documentation must explain why it was decided that the prospective successor guardian was appropriate for approval despite the existence of these records. Note the standards for mandatory disqualification of prospective relative guardians based on criminal convictions also apply to prospective successor guardians.
 - b. Where a prospective successor guardian has an open charge or conviction for a discretionary crime, LDSS must use the criteria in 07-OCFS-ADM-01 *State and National Criminal History Checks (for Foster-Adoptive Parents)* for decisions regarding whether or not a crime is a mandatory disqualifier or discretionary when making the decision to approve or deny a prospective successor guardian based on the criminal history check.
 - c. In addition to the criminal and SCR checks, LDSSs may consider whether approval of a prospective successor guardian would be contrary to the health, safety and/or well-being of the child.
10. KinGAP assistance payments begin to the successor guardian if he or she has been approved by the LDSS, was awarded guardianship of the child, and has assumed care of such child.
 - a. Payments cannot be made to an approved successor guardian until such time as the court awards guardianship and the successor guardian has assumed care of the child. If the successor guardian began caring for the child prior to the court order appointing the successor guardian of the child, the KinGAP payments must 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.

Though not required, an LDSS **may make** additional efforts to determine whether a prospective successor guardian is appropriate to be approved to receive KinGAP payments. For example, an LDSS may conduct a home study or other evaluation of a prospective successor guardian

prior to an approval decision, but OCFS is not mandating that LDSSs take any specific steps in order to determine the appropriateness.

“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 relative guardian is incapacitated as defined above.

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

Fair Hearing Rights

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.

Annual Notification and Certification Requirements

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.

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.