

KinGAP Expansion FAQ
(Chapter 384 of the Laws of 2017)

Relationship Determination

1. In terms of eligibility for KinGAP, does the law recognize fictive kin?

Yes. KinGAP Expansion creates eligibility for two kinds of fictive kin. They are:

- Person(s) related by blood, marriage or adoption to a half sibling of a child, who is also the prospective or appointed relative guardian of such half-sibling, and
- Person(s) who have a positive relationship with the child that was established prior to the child's current placement in foster care. Examples include a godparent, neighbor, family friend or stepparent.

2. Is a birth father of a half sibling considered a relative for the purposes of KinGAP and can he be eligible for this program?

Unless related by blood, marriage or adoption to the child, the birth father of a half sibling would only qualify for KinGAP if he had a positive relationship that was established with the child prior to the child's current foster care placement.

However, if the birth father of the sibling is also the birth father of the child, the birth father would not qualify under the provision that allows relatives of the child to be eligible for KinGAP. This is because the birth (or adoptive) parent of a foster child may not be the child's foster parent.

Additionally, the birth father of the half sibling would not qualify under the provision that allows relatives of half siblings to be eligible for KinGAP. This is because as the birth (or adoptive) parent of the half sibling, he cannot be a prospective or appointed relative guardian of the half sibling as would be required.

3. If the foster parent is unrelated to the child, but has adopted the child's siblings, would the foster parent qualify as a relative for KinGAP?

Not based on the half-sibling standard for who may be considered as a prospective relative guardian. The adoptive parent of a half sibling, as the half-sibling's adoptive parent, could not also be the prospective or appointed relative guardian of the adopted half sibling and therefore would not be eligible to become the relative guardian under the half sibling provision.

However, if the adoptive parent had a positive relationship with the unrelated child prior to the child's current foster care placement with him or her, then the adoptive parent could be eligible.

4. Can a foster parent pursue KinGAP for an unrelated child if the foster parent is related to a half sibling of the child, but is not pursuing KinGAP for such related half sibling?

KinGAP eligibility. Therefore, if they did not have a prior positive relationship, KinGAP is not an option in this case.

10. How does the caseworker determine whether a prior positive relationship existed?

The caseworker will need to confirm that a relationship preceded the child's current placement in foster care with the prospective relative guardian and analyze whether this relationship would support the conclusion that KinGAP is in the best interests of the child. The ADM gives several examples of characteristics to look for in a positive relationship. These are:

- 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

These are suggested factors. It is not required that each factor be considered or confirmed, and the caseworker may look to other factors as well to support the conclusion that a positive relationship existed prior to the child's current foster care placement. This conclusion and supporting reasons must be documented in the case progress notes.

11. What if the prospective relative guardian built a relationship with the child during a previous foster care stay? What about a previous direct placement? Does this count towards establishing a prior positive relationship?

Yes. Any period during which the prospective relative guardian built a relationship with the child prior to the current foster care placement with the prospective relative guardian counts towards establishing a prior positive relationship. This includes a previous foster care placement with the prospective relative guardian. The child did not have to be discharged from foster care before the current placement. A period of direct placement in the legal custody of the prospective relative guardian immediately preceding the current foster care placement would also count.

12. What documentation should the caseworker include to demonstrate a prior positive relationship existed?

The caseworker must use the Affidavit of Relationship form (OCFS-4435C) **and** the case progress notes to demonstrate that a positive relationship existed between the prospective relative guardian and child prior to the child's current placement in foster care.

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.”

15. Will a IV-E eligible child continue to be IV-E eligible after they turn 18 if the agreement was effective prior to the age of 16?

No. Pursuant to the federal law that enacted the KinGAP program, IV-E eligibility does not continue past the child's 18th birthday if the agreement was effective prior to the child turning 16 years old. After the 18th birthday there will be no federal share for KinGAP payments in these cases.

16. What is the point in time that the KinGAP agreement becomes effective?

The KinGAP agreement is effective after it is signed by the local social services district and the prospective relative guardian, and letters of guardianship have been issued. The agreement is effective on the date the letters of guardianship are issued.

Local Social Services District (LDSS) and Voluntary Agency (VA) Responsibilities

17. For agreements that have not been made effective as of March 12, 2018, which forms need to be redone and for which cases?

Only the application (OCFS-4430 or OCFS-4430NYC) and the agreement (OCFS-4431) need to be redone with the prospective relative guardian, and only in cases where the child is under the age of 16. Only children under the age of 16 are impacted by the changes in the new forms extending the duration of payment to 21.

18. Is there a new KinGAP Eligibility Checklist that must be used?

Yes. OCFS has issued a new KinGAP Eligibility Checklist (OCFS-4435a), Checklist Instructions (OCFS-4435b) and Affidavit of Relationship form (OCFS-4435c). These are attached to 18-OCFS-ADM-06, *Eligibility Forms for the Kinship Guardianship Assistance Program*. The Checklist and Checklist Instructions contain new documentation requirements to demonstrate child/caregiver relationship, and the Affidavit of Relationship form must now be notarized.

19. The ADM requires caseworkers to review their current caseloads to determine whether any foster parents are potentially eligible for KinGAP. How will caseworkers do this; is there a report that can be generated?

Currently, there is not the ability to run a report to identify potentially eligible families. Caseworkers will need to review each case and determine if:

- the foster home is certified,
- adoption and reunification have been ruled out,
- the child has been in foster care for 6 consecutive months; and,

	<i>Having a Voice & a Choice: Relatives Caring for Children (pub.5080)</i>	<i>Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP) (pub.5108)</i>	<i>Know Your Options: Relatives Caring for Children (pub. 5120)</i>	<i>Know Your Options: Kin Caring For Children (pub. 5175)</i>
	09-OCFS-ADM-04	11-OCFS-ADM-03 18-OCFS-ADM-03	10-OCFS-INF-03	18-OCFS-ADM-03
Relatives at time of removal of a child	Required	Required	Optional	Optional
Non-relatives at time of removal of a child		Required		Optional
Foster parents identified as potentially eligible for KinGAP		Required		

23. Are there additional materials that may be used to provide an explanation to potential placement resources and caregivers about their options?

Yes. OCFS has issued 3 model notification letters that may be used to fulfill the requirement to notify relatives and non-relatives of a child's removal. All 3 contain information about KinGAP and are attached to 18-OCFS-ADM-03.

- The "Relative Notification letter" may be used to notify relatives of a child's removal.
- The "Parent of Sibling Notification Letter" may be used to notify the non-common parent of a half sibling of a child's removal.
- The "Non-Relative Notification Letter" may be used to notify nonrelatives of a child's removal. This would include persons with a positive relationship to the child.

After Guardianship is Transferred

24. A relative guardian has become incapacitated and we are in the process of approving a successor guardian. The original agreement was effective when the child was 10. Will payments be made to the successor guardian until the child is 18 or 21?

Children with a Kinship Guardianship Assistance and Non-Recurring Guardianship Expenses Agreement will have some form of medical assistance or coverage. Services such as counseling and mental health treatment often are covered by the medical assistance or coverage. In addition, the relative guardian could apply for other assistance programs in the relative guardian's community. If otherwise eligible, the family may be eligible for preventive services in the county in which they reside.

In addition, if the youth was age 16 or older at the time that he/she left foster care for guardianship, he/ she may be eligible for independent living services and eligible to apply for the Education and Training Voucher (ETV) program. See question 38 (in "Other Benefits" section) for more information on this.

If the family is located outside of New York State, the relative guardian should consult with the local social services agency in the state of residence of the relative guardian to see what services are offered in their area.