



The Alliance *for*
Children's Rights



John Burton Foundation
for Children Without Homes



Children's Law Center
of California

California Fostering Connections to Success Act Assembly Bill 12 Primer

March 20, 2013

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Foster Care After Age 18 – QUICK FACTS

Q1: What is the Federal Fostering Connections to Success Act?

A: The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 made extensive policy and program changes to improve the well-being and outcomes for children in the foster care system including changes related to the extension of federal funding for foster care services for non-minors from ages 18-21 if they meet certain participation criteria. Participation by states is optional.¹

Q2: What are AB 12 and AB 212 and AB 1712 (known as the California Fostering Connections to Success Act)?

A: California chose to participate in the optional federal program described in the previous answer and enacted Assembly Bill 12 (“AB 12”), which was amended by Assembly Bill 212 (in 2011) and further amended by SB 1013 (in 2012) and AB 1712 (in 2012). AB 12 was authored by Assembly Member Jim Beall, Jr. and Speaker-Emeritus Karen Bass, and is also known as the **California Fostering Connections to Success Act**. AB 12 was signed into law by Governor Arnold Schwarzenegger on September 30, 2010 and AB 212 was signed on October 4, 2011 and was an urgency measure (meaning its provisions took immediate effect).² Senate Bill 1013, which is also known as the child welfare budget trailer bill, was approved by the Governor on June 27, 2012 and took effect on July 1, 2012.³ AB 1712 was chaptered on September 30, 2012 and went into effect on January 1, 2013.⁴

Q3: What does the California Fostering Connections to Success Act do?

A: The California Fostering Connections to Success Act allows California to take advantage of several components of the federal Fostering Connections to Success and Increasing Adoptions Act to:

- (1) Convert California's Kinship Guardianship Assistance Program (Kin-GAP) into a federally subsidized program. By doing so, the federal government will now pay a 50% share of cost for federally-eligible participants, saving the state tens of millions of dollars of state general funds (NOTE: if the youth is not federally-eligible, there is also a new state-only Kin-GAP program that mirrors the new federal Kin-GAP program);⁵

¹ P.L. 110-351

² Assembly Bill 12, Chapter 559 (stat. 2010); Assembly Bill 212, Chapter 459 (stat. 2011).

³ Senate Bill No. 1013, Chapter 35, June 27, 2012

⁴ Assembly Bill 1712, Chapter 846 (stat. 2012)

⁵ Welf. & Inst. Code § 11360, et seq.; All County Letter 11-15

(2) Provide foster care benefits (also known as AFDC-FC benefits) for eligible youth beyond age 18 and, at full implementation, up until the age of 21;⁶

(3) Provide extended Kin-GAP assistance or AAP assistance to eligible youth up until age 21, provided the Kin-GAP payments began or the initial AAP agreement was signed when the youth was age 16 or older;⁷

(4) Provide CalWORKs benefits to eligible foster youth beyond age 18 and, at full implementation, up until the age of 21 when the foster youth is placed with an approved relative and is not eligible for federal AFDC-FC benefits.⁸

(5) Provide extended foster care benefits up to age 21 to youth living with a nonrelated legal guardian when the guardianship was created by the juvenile court (regardless of the age of the youth when guardianship was ordered).⁹

Q4: Which youth are eligible to participate in extended foster care after age 18?

A: Beginning January 1, 2012, youth could participate in extended foster care until age 19. Beginning on January 1, 2013, youth can continue to participate in extended foster care until age 20. Beginning January 1, 2014, youth can participate in extended foster care until age 21.

This includes all youth who:

- Turn 18 in 2011 and are in a foster care placement or under a foster care placement order under the jurisdiction of the juvenile court on January 1, 2012;
- Turn 18 in 2012 (and thereafter) while under an order for foster care placement.

Beginning January 1, 2012, any youth who turned 18 and who had an order for foster care placement on his/her 18th birthday is eligible to participate in extended foster care until they reached the age limit. This includes youth who not physically in placement, including but not limited to, youth who are awaiting placement or are on runaway status. As long as there is an order for foster care placement on the youth's 18th birthday, s/he is eligible to participate in extended foster care.¹⁰

If the youth **turned 18 in 2011**, they may be able to participate in EFC if:

⁶ Welf. & Inst. Code §§ 11400(v)(1); § 11403(b); Senate Bill No. §1013

⁷ Welf. & Inst. Code § 11403(b); Senate Bill § 1013

⁸ Welf. & Inst. Code § 11403(b); All County Letter 11-78; Senate Bill § 1013

⁹ Welf. & Inst. Code §§ 11403(b); 11405(e); Senate Bill § 1013

¹⁰ Welf. & Inst. Code § 11400(v)(1); All County Letter 11-61; All County Letter 11-69

(1) There was an order for foster care placement on the youth's 18th birthday (in 2011) - AND -

(2) The case was still open on or after January 1, 2012 (either because the youth was expected to complete high school or an equivalent program OR simply because the court kept the case open to ensure the youth continued to have support OR because the court allowed the youth to re-enter after January 1, 2012).

If both of these conditions are met, then the youth **who turned 18 during 2011** was permitted to participate in EFC in 2012. Further, as long as a youth was receiving AB 12 immediately prior to turning 19, the youth could continue to receive benefits in 2012 after turning 19.¹¹ The same goes for when a youth turns 20 in 2013.¹²

Some youth who turned 19 during 2012 may have had to exit extended foster care due to the fact that the youth turned 19. However, a change in law that took effect on July 1, 2012 allows these youth to immediately re-enter foster care and begin to receive benefits and services once again.¹³

Q5: What must a youth do to maintain their eligibility for extended foster care?

If the youth falls in any of the above categories listed in Q4, they are eligible to participate in extended foster care. In order to receive benefits and services of extended foster care, the youth must meet one of the following participation criteria:

(1) Completing high school or equivalent program (i.e. GED) (enrollment is defined according to the definition employed by the school or program); OR

(2) Enrolled in college, community college or a vocational education program (half-time enrollment, as the college, community college or vocational program defines half-time enrollment); OR

(3) Employed at least 80 hours a month (this must be paid employment); OR

(4) Participating in a program or activity designed to remove barriers to employment (this is the "safety net" category which is intended to capture all youth who are not eligible under the employment or education conditions); OR

(5) Unable to do one of the above requirements because of a medical condition (short- or long-term medical or mental health condition as verified by a health practitioner but youth does not have to be currently seeking treatment).¹⁴

¹¹ Senate Bill § 1013

¹² Welf. & Inst. Code §§ 11400(v), 11403(b); All County Letters 11-61 and 11-69; Senate Bill § 1013

¹³ Senate Bill § 1013

¹⁴Welf. & Inst. Code § 11403(b)(5); All County Letters 11-61 and 11-69

Q6: When will the California Fostering Connections Act be fully implemented?

A: The new Kin-GAP program rules became effective on January 1, 2011. This means that the conversion of existing Kin-GAP cases into the new federal or state Kin-GAP program started in January 1, 2011. Additionally, all youth entering Kin-GAP after January 1, 2011 have been subject to the new Kin-GAP eligibility rules.¹⁵

The extension of foster care benefits up to age 21 and the extension of Kin-GAP and AAP benefits (for youth whose Kin-GAP payments begin or whose AAP agreement is signed after the youth turns 16 years old) will be phased-in over 3 years starting January 1, 2012 as follows:

- Beginning January 1, 2012, extended foster care benefits, Kin-GAP and AAP are available up to age 19 (youth who are receiving benefits prior to turning 19 in 2012 can continue to receive benefits after they turn 20 as long as they continue to meet all applicable eligibility requirements. In addition, youth who lost benefits in 2012 solely because they turned 19 years old can re-enter extended foster care or resume Kin-GAP and AAP benefits immediately)
- Beginning January 1, 2013, extended foster care benefits, Kin-GAP and AAP are available up to age 20 (youth who are receiving benefits prior to turning 20 in 2013 can continue to receive benefits after they turn 20 as long as they continue to meet all applicable eligibility requirements. In addition, if any youth loses benefits in 2013 solely because they turn 20 years old – which would be a county error – that youth can re-enter extended foster care or resume Kin-GAP and AAP benefits immediately) and
- Beginning January 1, 2014, extended foster care benefits, Kin-GAP and AAP are available up to age 21.¹⁶

NOTE: For youth who turn 20 in 2013, these youth are **not** permitted to re-enter or resume *after* turning 20 UNLESS they were re-entering or resuming benefits due to the fact that they lost eligibility for benefits solely because they turned 20 years old (which would be a county error). If the youth exited for any reason other than turning 20, and is seeking to re-enter or resume benefits *after* turning 20, then the youth will have to wait and re-enter after January 1, 2014 – when the age limit extended to age 21.¹⁷

Q7: Are foster youth ages 18-21 required to continue in foster care? May an exited youth re-enter care?

¹⁵ Welf. & Inst. Code § 11360, et seq.; All County Letter 11-15

¹⁶ Welf. & Inst. Code § 11403(a) and (b); Senate Bill § 1013

¹⁷ Senate Bill § 1013

A: Participation in foster care after age 18 under the California Fostering Connections to Success Act is voluntary. Foster youth can decide to opt-out and exit at age 18, or any time before they turn age 19/20/21. However, foster youth who have exited will have the option to re-enter foster care before they turn 19/20/21 by signing a Voluntary Re-Entry Agreement (SOC 163). There is no limit on the number of times a youth can opt-out and re-enter foster care as long as the youth is still under the maximum age limits.¹⁸

NOTE: For youth who turn 20 in 2013, these youth are **not** permitted to re-enter or resume *after* turning 20 UNLESS they were re-entering or resuming benefits due to the fact that they lost eligibility for benefits solely because they turned 20 years old (which would be a county error). If the youth exited for any reason other than turning 20, and is seeking to re-enter or resume benefits *after* turning 20, then the youth will have to wait and re-enter after January 1, 2014 – when the age limit extended to age 21.¹⁹

To be eligible to re-enter foster care and be eligible for extended foster care benefits, a youth must have had a court order for foster care placement on his or her 18th birthday.²⁰ The youth must sign a Voluntary Re-Entry Agreement (SOC 163) with the county of jurisdiction which specifies his/her intention to re-enter foster care, agreement to meet education and employment participation conditions, and to live in an eligible placement.²¹

NOTE: It is also possible for a youth to suspend and then resume extended Kin-GAP or extended AAP benefits. See questions 50 and 55 for additional information about these programs.

Q8: Where can I get more information on the California Fostering Connections to Success Act?

A: The California Department of Social Services has issued several All County Letters and there will be more All County Letters forthcoming, which provide useful information on the implementation of the California Fostering Connections to Success Act. The ACLs are available at: <http://www.dss.cahwnet.gov/lettersnotices/PG931.htm>.

You can also visit the California Fostering Connections project website at <http://www.cafosteringconnections.org> or contact representatives of the bill’s sponsor organizations, who are listed on the front cover. Additionally, there is a section on the California Fostering Connections to Success Act and the state’s “After 18 Campaign” on the Federal Fostering Connections to Success and Increasing Adoptions Act website at <http://www.fosteringconnections.org/california>.

¹⁸ Welf. & Inst. Code §§§11400(z), 388(e); 366.31(c); All County Letter 12-12

¹⁹ Senate Bill § 1013

²⁰ Welf. & Inst. Code § 388(e); All County Letter 12-12

²¹ All County Letter 12-12

Foster Care After Age 18 – ELIGIBILITY

Q9: What are the basic eligibility requirements for a foster youth to receive foster care benefits after age 18 under the California Fostering Connections to Success Act?

A: There are four basic eligibility requirements for a youth to continue to receive support after the age of 18 under the California Fostering Connections to Success Act. The youth must (1) have an order for foster care placement on his/her 18th birthday;²² (2) continue under the jurisdiction of the juvenile court as a dependent, under transitional jurisdiction or as a ward;²³ (3) meet one of the five participation conditions;²⁴ and (4) agree to live in a supervised placement that is licensed or approved under new standards for 18 to 21 year olds.²⁵ In addition, a youth has to sign a mutual agreement (note: this is not a condition of payment),²⁶ meet with his/her social worker or probation officer every month,²⁷ and participate in six-month review hearings.²⁸

Q10: What is the process for a youth to voluntarily remain in foster care after age 18? Is it an “opt-in” process or an “opt-out” process?

A: The California Fostering Connections to Success Act is an “opt-out” program, providing a process for youth to voluntarily elect to exit foster care after age 18. This means that a youth’s foster care will be extended past age 18 unless s/he elects to exit care. The court must hold a hearing prior to terminating a youth’s dependency, delinquency or transition jurisdiction and the county must submit a detailed report of information and documents provided to the youth and status of the case. In addition, the court must find that a youth who wants to opt-out of extended foster care was informed of their right to remain in care, the benefits of extended foster care and their right to re-enter if under the age limits.²⁹

Q11: What does it mean for a youth over 18 to be in foster care under the jurisdiction of the juvenile court?

A: To receive foster care benefits after the age of 18, a youth must remain under the jurisdiction of the juvenile court (this can be under the court’s dependency, delinquency or transition jurisdiction). This means that the youth continues to have a six-month review hearing in court or an administrative review. During that hearing, the court will ensure the youth continues to meet one of the participation conditions for foster care benefits and that the social worker or probation officer is continuing to assist the youth in meeting these eligibility conditions. The court will

²² Welf. & Inst. Code § 11400(v)

²³ Welf. & Inst. Code § 11400(v)

²⁴ Welf. & Inst. Code § 11403(b)

²⁵ Welf. & Inst. Code § 11402 et seq.

²⁶ Welf. & Inst. Code §§ 303(d), 11400(u); All County Letter 11-61

²⁷ 42 U.S.C. § 622(b)(17); ACYF-CB-PI-10-11 (p. 11)

²⁸ Welf. & Inst. Code §366.3(m)

²⁹ Welf. & Inst. Code §§ 366.3 (n); 391(c)(2)

also assess the youth's progress in meeting the goals in his or her Transitional Independent Living case Plan (TILP) and case plan efforts made by the placing worker to assist the youth to obtain permanent connections with caring and committed adults. California Fostering Connections to Success Act specifies that these case reviews shall be conducted in a manner that respects the youth's status as a legal adult. After age 18, the California Fostering Connections to Success Act uses the term "nonminor dependents" to refer to these youths who remain under the jurisdiction of the court.³⁰

Q12: What are the goals of the Transitional Independent Living Case Plan (TILCP) for youth age 18 to 21?

A: The goals of the TILCP for youth 18 to 21 are: (1) to develop permanent connections with caring and committed adults (2) to develop independent living skills and have opportunities for incremental responsibility and (3) to live in the least restrictive placement. Note, each TILCP has a Transitional Independent Living Plan (TILP) attached.³¹ Note that a NMD's caregiver should receive a copy of the NMD's TILP.³²

Q13: What does a youth have to do to meet the participation conditions for extended foster care?

A: In order to receive benefits after the age of 18, a youth must meet ONE of the following participating requirements:

- (1) Completing high school or equivalent program (i.e. GED) (enrollment is defined according to the definition employed by the school or program); OR
- (2) Enrolled in college, community college or a vocational education program (half-time enrollment, as the college, community college or vocational program defines half-time enrollment); OR
- (3) Employed at least 80 hours a month (this must be paid employment); OR
- (4) Participating in a program or activity designed to remove barriers to employment (this is the "safety net" category which is intended to capture all youth who are not eligible under the employment or education conditions); OR
- (5) Unable to do one of the above requirements because of a medical condition (short- or long-term medical or mental health condition as verified by a health practitioner but youth does not have to be currently seeking treatment).³³

³⁰ Welf. & Inst. Code §§ 366.3 (l) and (m). 11403(c)

³¹ Welf. & Inst. Code § 11400 (y); All County Letter 11-69

³² Welf. & Inst. Code § 16501.1(j)

³³ Welf. & Inst. Code § 11403(b)(5); All County Letters 11-61 and 11-69

Q14: What happens if a youth has a temporary break in participation in one of the conditions?

A: It is likely that a NMD may transition between participation activities during the six-month certification period that occurs between each case review hearing. However, temporarily not participating in one criteria (i.e. if the youth loses a job) does not make the youth ineligible for EFC. As long as the NMD continues to work toward the goals set out in their TILP, then they will not lose eligibility. Participation criteria Number 3 “Removing Barriers to Employment” is intended to bridge the gaps in eligibility.³⁴

In addition, the Six-Month Certification of Participation should specify both a primary participation condition that the NMD will satisfy as well as a “back-up” plan as detailed in the NMD’s TILP, in order to ensure that a NMD has multiple paths to eligibility during any six-month period.³⁵

Q15: What is the “mutual agreement” that a youth must sign?

A: A youth must sign a mutual agreement (SOC 162) with the child welfare agency within six months of turning 18 in order to participate in extended foster care. The mutual agreement is *not* a condition of payment. This means that the mutual agreement does not have to be signed in order to continue to receive foster care benefits after turning 18 and failure to sign the mutual agreement is not a basis to terminate foster care benefits. However, the mutual agreement signifies the NMD’s willingness to participate in extended foster care and thus must be signed within six months of turning 18 to avoid having a court hearing set to terminate the court’s jurisdiction (NOTE: if the court does terminate jurisdiction because the NMD refuses to sign the mutual agreement, the NMD has the right to re-enter at any time prior to turning 21).³⁶

There are two categories of NMDs that do not need to complete the mutual agreement at age 18 who remain eligible for extended foster care:

- (1) A NMD who remains under delinquency jurisdiction after the age of 18 in order to complete his/her rehabilitative goals (note, these youth must have an order for foster care placement on his/her 18th birthday to be eligible for extended foster care. If there is a suitable placement order on the youth’s 18th birthday, the NMD who continues under delinquency jurisdiction does not have to sign a mutual agreement until the terms of his/her probation are complete and the NMD is choosing to remain in extended foster care under the transition jurisdiction of the court);
- (2) A NMD who is incapable of making an informed agreement. This determination is made by the court.³⁷

³⁴ Welf. & Inst. Code § 11403(b); All County Letter 11-69

³⁵ Welf. & Inst. Code § 11403(i); All County Letter 11-69

³⁶ Welf. & Inst. Code § 11400(u); All County Letter 11-61; Senate Bill § 1013

³⁷ Welf. & Inst. Code § 303(d), 11400(u)

Note: For information on the mutual agreement requirements for youth eligible for extended AFDC-FC benefits residing with non-related legal guardians see Q42. For information on the mutual agreement requirements for extended Kin-GAP benefits see Q44. There is not mutual agreement required for extended AAP benefits, see Q52.

Q16: What about youth who are non-federally eligible? How does the California Fostering Connections to Success Act extend foster care for them?

A: The California Fostering Connections to Success Act extends foster care for youth in the state-only foster care benefits program as well as the federal foster care benefits program. In most placements, if the NMD is not eligible for federal foster care benefits they are eligible to receive the same amount of support through state foster care benefits. The only exception is placements with approved relative caregivers because a NMD who is **placed** with an approved relative is **never** eligible for state-only foster care benefits. Thus, a NMD placed with an approved relative will qualify for an extended CalWORKs payment if the NMD does not meet the federal eligibility rules.³⁸ NOTE: A NMD who is renting a room from a relative as a SILP **is** eligible for state-only foster care benefits.³⁹

For youth participating in extended Kin-GAP, see questions 45-51. For youth participating in extended AAP, see questions 52-56.

Q17: What about youth who are turned 18 before January 1, 2012? Do they benefit from extended foster care in any way?

A: Youth who turned age 19, 20, or 21 in 2011 are not eligible for extended foster care. These youth were never under the age limits imposed by AB 12 and are not eligible for extended foster care. However, the juvenile court in California has always had the ability to retain court jurisdiction and order all appropriate services for youth up until age 21 under WIC 303. Therefore, these youth may still be in foster care with an active dependency/delinquency case, and they can remain in that status – at the court’s discretion – until age 21 (placements in these types of cases are funded with county-only dollars).

Youth who turned 18 years old during 2011 may be eligible for extended foster care if they had an open case in juvenile court on or after January 1, 2012. If the youth turned 18 in 2011, they may be able to participate in EFC if: (1) there was an order for foster care placement on the youth’s 18th birthday (in 2011) AND (2) the case was still open on or after January 1, 2012 (either because the youth was expected to complete high school or an equivalent program OR simply because the court kept the case open to ensure the youth continued to have support OR because the court allowed the youth to re-enter after January 1, 2012). If both of these conditions were met, then the youth who turned 18 during 2011 could participate in EFC in

³⁸ Welf. & Inst. Code § 11253.3; All County Letter 11-78

³⁹ Welf. & Inst. Code § 11402; See CDSS FAQ #3 at <http://www.childsworld.ca.gov/PG2916.htm>

2012. Further, due to Senate Bill 1013 (2012), which is also known as the child welfare budget trailer bill, youth who are receiving extended foster care benefits prior to turning 19 years old (in 2012) or prior to turning 20 years old (in 2013), s/he can continue to receive benefits after s/he turns 19 with no gaps in foster care benefit eligibility. The same goes for when a youth turns 20 in 2013.⁴⁰

Some youth who turned 19 during 2012 may have had to exit extended foster care due to the fact that the youth turned 19. However, the 2012 budget trailer bill that took effect on July 1, 2012 allowed these youth to immediately re-enter foster care and begin to receive benefits and services once again.⁴¹

Q18: How can a youth re-enter foster care?

A: A NMD who has opted out of extended foster care has the option to re-enter foster care at a later date prior to reaching the maximum age limit. A NMD can re-enter by signing a Voluntary Reentry Agreement (SOC 163) with the county child welfare agency or by petitioning the juvenile court (through a 388(e) petition) to have the court resume dependency or transition jurisdiction. The NMD is eligible for benefits and services again as of the date that the Voluntary Reentry Agreement (SOC 163) is signed and the NMD is placed in an eligible facility. In order to re-enter, the NMD must agree to meet one of the participation criteria, agree to be placed in a supervised setting, and be under the maximum age for foster care.⁴² NOTE: signing the Voluntary Reentry Agreement is sufficient to indicate the NMD's willingness to meet a participation condition and satisfies that requirement pending the NMD's completion of the TILP, which documents the NMD's continuing participation.

Note: For information on the re-entry process for nonminor former dependents and/or wards see Q42.

Q19: When does eligibility for foster care benefits end for youth over age 18?

A: There are certain categories of youth over the age of 18 who are not eligible for extended foster care benefits including youth who join the military or who get married.⁴³

For youth who are eligible to receive benefits, eligibility continues until a NMD reaches age 19/ 20/21, however benefits can be suspended if any of the following occurs (1) the NMD requests to be discharged from foster care; (2) the juvenile court makes a finding that the NMD is not in compliance with a reasonable plan to meet one of the five participation conditions; or (3) the NMD is not living in an approved foster care setting. In these instances, the court may terminate dependency or transition jurisdiction and assume general jurisdiction.⁴⁴ A youth under the court's general jurisdiction is not eligible for foster care benefits or case

⁴⁰ Welf. & Inst. Code §§ 11400(v), 11403(b); All County Letters 11-61 and 11-69; Senate Bill § 1013

⁴¹ Senate Bill § 1013

⁴² Welf. & Inst. Code §§ 11400(z), § 388(e), 366.31(c); All County Letter 12-12

⁴³ All County Letter 11-69

⁴⁴ Welf. & Inst. Code §§ 11403(e), 391(c)

management services but can elect to “re-enter” foster care and resume receiving benefits as long as the youth is under the maximum age limits, opts to return, agrees to meet the participation requirements, and lives in a supervised setting. Once a youth reaches the maximum age, eligibility for extended foster care benefits ends.⁴⁵

⁴⁵ Welf. & Inst. Code §§ 388(e), 11403(e); All County Letter 11-69

Foster Care After Age 18 – PLACEMENT

Q20: Are there any limitations on where a youth can live in order to receive extended foster care benefits under the California Fostering Connections to Success Act?

A: The placements available to youth participating in extended foster care after age 18 include:

- (1) Home of a relative or NREFM (approved);
- (2) Foster family home (licensed) – including whole family foster homes and regional center homes;
- (3) Foster Family Agency certified home (licensed);
- (4) Home of a non-related legal guardian (approved by the juvenile court);
- (5) Group home, (licensed) subject to new limitations discussed further below;
- (6) THP-Plus Foster Care (licensed);
- (7) Supervised Independent Living setting (SILP) (approved).

Except for group home placements, there are no explicit limitations on where a NMD can live.⁴⁶

Q21: Does a youth have to remain in the same foster care placement when s/he turns age 18?

A: No. In general, a youth may continue living in the same setting that s/he was living in prior to turning 18 or the NMD can live in another placement. The goal is for the NMD to transition to the least restrictive placement in preparation for exiting foster care. As was true before the youth turned 18, the setting where the youth lives must continue to be either an approved or licensed foster care setting, depending on the type of placement or facility.⁴⁷

Q22: How does the California Fostering Connections to Success Act affect group home placements for youth age 18 to 21?

A: The California Fostering Connections to Success Act allows a youth to remain in a group home placement after age 18 and up to age 19 in order to promote educational stability. After the youth graduates from high school or an equivalent program (i.e. GED) or turns age 19, continuation in a group home is prohibited unless it is necessary due to a medical condition.⁴⁸ There are limited circumstances where a youth can remain in a group home after either completing high school or

⁴⁶ Welf. & Inst. Code § 11402; All County Letter 11-77

⁴⁷ Welf. & Inst. Code § 16501.1 (c)(1); All County Letter 11-77

⁴⁸ Welf. & Inst. Code § 16501.1 (c)(1); All County Letter 11-77

turning 19. First, if the NMD has a medical or mental health condition and remaining in that home serves as a short-term placement until a more long-term housing option is found. Second, if a youth is getting treatment services to alleviate a medical condition and qualifies for extended foster care under the removing barriers to employment participation condition, s/he can still continue in a group home under condition #5, "medical condition." The fact that a youth qualifies by doing an activity to remove a barrier to employment, like seeking treatment through a substance abuse program, does not mean that they cannot be eligible for group home placement after age 19 and graduation due to a medical condition. Lastly treatment strategies at the group home should prepare the youth for independent or less restrictive living to prepare for life after exiting foster care. Even if the youth has a medical condition, remaining in a group home should be a short-term option until a more appropriate and permanent placement can be found.

Q23: What is THP-Plus Foster Care (THP+FC) and how is it different that the current THP-Plus program?

A: THP+FC is a licensed supervised placement available to youth in extended foster care, ages 18 to 21. THP+FC became available on July 1, 2012.⁴⁹ It is modeled after the exiting THP-Plus program for non-dependents, and provides youth with housing and supportive services in an age-appropriate setting. THP+FC differs from the current THP-Plus program in three ways: (1) participating youth are under the supervision of the county placing agency, meaning that they will have contact with a social worker; (2) participating youth are under the jurisdiction of the juvenile court, meaning that they will have review hearings every six months; and (3) THP+FC is a licensed federally-eligible foster care placement.⁵⁰

Q24: What does a provider have to do to become a licensed THP+FC provider?

There are two different processes for becoming a licensed THP+FC provider. One process applies to *new* providers. The other process applies to *currently* licensed transitional housing placement providers.

The first process applies to **new** THP+FC providers for NMDs, which includes prospective providers who do not have any existing license with CCL (e.g. existing THP-Plus providers that are unlicensed) as well as to existing providers who are licensed to operate another type of facility and who would like to become a THP+FC provider under the new transitional housing placement licensing category (e.g. existing Foster Family Agencies or Group Homes). It is a two-step process: First, the provider must obtain certification from the applicable county. Second, the provider must obtain a license from Community Care Licensing:

The county certification process is as follows:

⁴⁹ All County Letter 12-44.

⁵⁰ Welf. & Inst. Code §§11400(x), 11403.2(a)(3); All County Letter 11-77

- (1) New providers first need a certification from ONE county for the THP+FC Program from the child welfare director of the applicable county. Only one certification is needed even if the provider plans to operate in more than one county (visit <http://www.cwda.org/about/membership/php>).
- (2) Next, the provider creates a Plan of Operation in accordance with the AB 12 Interim Licensing Standards which contains a current, written, definitive Plan of Operation.
- (3) Third, a provider should disclose to the applicable county in writing any revocation or disciplinary action in any Community Care Licensed (CCL) program.
- (4) Lastly, the provider submits its request to the applicable county for certification including a completed Plan of Operation and other relevant information, as required by the applicable county.⁵¹

The CCL licensing process is as follows and can take approximately 90 days (or longer) before a license is issued:

- (1) Provider should first submit a new Application for a Community Care Facility License (LIC 200 and all other required forms) to the appropriate CCL Regional Office, indicating it will serve NMDs.
- (2) Then the provider attaches a Plan of Operation and the county certification, along with the other relevant information, to the application for licensure to serve NMDs.⁵²

For a full description of the process of becoming a licensed THP+FC provider, refer to the THP+FC section at www.thpplus.org.

NOTE: there is a shorter approval process that applies to currently **licensed** transitional housing placement providers that serve foster youth ages 16 to 18 in a Transitional Housing Placement Program (THPP) who are seeking to expand services to include NMDs under a THP+FC program. This process is detailed in All-County Letter 12-44 at page Six.

Q25: Can a youth who was living in a Transitional Housing Placement Program (THPP) prior to turning 18 remain in the THPP program after turning 18?

In general, the THPP is a foster care program for minor dependents ages 16 – 18, and once the THP+FC program is fully implemented, THPP will not be a placement option for youth after age 18. However, in this transition period while the THP+FC placement is ramping up, a minor who would otherwise age out of THPP at age 18 may remain with the a THPP provider whose license has not yet been updated to include NMDs if the licensed transitional housing placement provider meets the

⁵¹ All County Letter 12-44

⁵² All County Letter 12-44

following conditions: (1) has submitted an updated Plan of Operation to serve NMDs to the appropriate CCL Regional Office, (2) has requested a county THP+FC certification from the applicable county, and (3) intends to apply for the THP+FC rate.

The provider may continue to serve these youth while these actions are pending. The provider will still receive the THPP rate, and these youth will still be considered as participating in THPP, until the THP+FC rate is obtained. However, the provider cannot accept a new NMD placement until the county certification and the rate have been issued.⁵³

Q26: What is a Supervised Independent Living Placement (SILP) and how is it different from the other placement options available to youth 18 to 21?

A: The Supervised Independent Living Placement (SILP) is a new placement option for youth age 18 to 21. A SILP is a supervised setting as specified in a NMD's Transitional Independent Living Plan (TILP). This may include apartment living, room and board arrangements, college dorms and shared roommate settings.

There are two steps in approving a SILP placement for an individual NMD. First, the NMD must undergo a readiness assessment prior to being approved to live in a SILP. Second, the actual SILP placement itself must be approved by the county as meeting health and safety standards appropriate for legal adults using the SILP inspection checklist (the SOC 157B).

A youth placed in a SILP may receive the foster care benefit directly. The payment for a youth living in a Supervised Independent Living Placement is the equal to the basic foster care rate for 15 – 21 year olds, currently \$799 per month (rate goes up annually on July 1). NMDs in a SILP setting are not eligible for a specialized care increment; however, a NMD who is parenting can receive the infant supplement in addition to the basic rate.⁵⁴

Q27: If a youth moves from one SILP to another, will the benefits continue while the new setting is being approved?

A: In general, a youth must live in an approved placement to receive payment and the beginning date of payment is when the SILP is approved. Thus moving unexpectedly could disrupt continued receipt of a youth's foster care payment. However, in order to ensure the continuity of payment and in recognition of the fact that sometimes events occur that force a NMD to move quickly and unexpectedly, NMDs are allowed to live in an unapproved SILP temporarily while awaiting approval of the new SILP. In a situation where a NMD moves unexpectedly, the NMD must immediately inform the county of the move and, once informed, the county has 10 calendar days in which to inspect the new SILP site for approval.⁵⁵ It

⁵³ ACL 12-44

⁵⁴ Welf. & Inst. Code § 11400(w); All County Letter 11-77; All County Letter 11-43; SOC 157B

⁵⁵ Welf. & Inst. Code § 11402.2; All County Letter 11-77

is important that NMDs who are living in SILPs are informed that living in an unapproved SILP for longer than 10 days could result in the disruption of benefits.

Q28: Are there any categories of NMDs that cannot be approved to live in a Supervised Independent Living Placement?

A: There are not any categories of NMDs that are prohibited from being approved to live in a SILP. In general, placement in a SILP is based on an assessment of the developmental readiness of the young adult.⁵⁶

Youth receiving extended AAP benefits as well as Nonminor Former Dependents, who are receiving either extended Kin-GAP benefits or extended AFDC-FC benefits, are not eligible to live in a SILP or THP-Plus Foster care (or any other kind of foster care placement) because these youth are not in foster care. However, these categories of youth are permitted to live in a college dorm as long as the former guardian(s) or adoptive parent(s) continues to provide care and support to the young person. In most cases, these youth cannot receive the payment directly. The payment continues to go to the former guardian or adoptive parent.⁵⁷

Q29: What is a Shared Living Agreement?

A: A Shared Living Agreement is an agreement that a NMD can enter into with a provider or caregiver. It is not required, but is considered a best practice. The agreement documents a written understanding between the caregiver and the NMD on the various expectations for placement in a household and conditions for shared daily living (such as house rules, curfews, chores etc). The agreement is individualized as it should reflect the NMD's continued transition to adulthood. The agreement will be updated as needed and appropriate. Counties can choose to implement this as a requirement and it can be a useful tool to facilitate discussions between caregivers and NMDs.⁵⁸

Q 30: Can a NMD reside out of county or out of state and still qualify for EFC?

A: Yes, a NMD has the right to reside out of county or out of state and still qualify for EFC benefits. For NMDs who reside in a different county or state, the county of jurisdiction retains case management and financial responsibility for the NMDs, but the county of jurisdiction may request that the host county provide courtesy supervision or the host state provides supervision under the Interstate Compact for the Placement of Children. The host counties or states are not required to provide such supervision. Monthly visits still need to occur between the social worker and the NMD (even if the host county or state of residence refuses to provide supervision).⁵⁹ Youth receiving extended Kin-GAP benefits, extended AAP benefits or extended AFDC-FC benefits as a nondependent with a non-related legal

⁵⁶ All County Letter 11-77

⁵⁷ All County Letter 11-69; All County Letter 11-77

⁵⁸ All County Letter 11-69, Attachment B; All County Letter 11-77, Attachment A

⁵⁹ Welf. & Inst. Code §§ 11403(f)(1), 16501.1(f)(4); All County Letter 11-69

guardian, can reside out of the guardian's home as long as the guardian or adoptive parent remains financially responsible.⁶⁰

⁶⁰ All County Letter 11-86

Foster Care After Age 18 – BENEFITS

Q31: What are the foster care rates paid for youth age 18 to 21?

A: Youth (or their caregiver) are eligible to receive the foster care rate that is set according to the youth's type of placement and, in some cases, the youth's special needs. The amount of the benefit depends on where the youth is living. There are different rates available for relatives, guardians, foster family homes, group homes, and foster family agencies. The same rules that currently govern the amount of the benefit for these different placements continues in effect for those youth who remain in these placements after the age 18 as NMDs. If a youth remains in one of these placements, his or her benefit will remain unchanged as a result of turning 18 and continuing in extended foster care as a NMD.⁶¹

A parenting NMD continues to be eligible to receive the Infant Supplement in his/her placement and also continues to be eligible for the \$200 supplement if the NMD and the caregiver have completed a Shared Responsibility Plan.⁶²

NMDs in SILP placements are eligible for the basic foster care rate for 15 – 21 year olds, currently \$799 a month (goes up annually on July 1). NMDs in SILPs are not eligible for specialized care increments. However, a parenting NMD is eligible to receive the Infant Supplement in the SILP.⁶³

The rate for the THP+FC program is based on whether the site is a single, remote or a host family site. For a single or remote site the rate is \$2,787 per youth per month. For a host family site, the rate is \$2,225 per youth per month.⁶⁴ The California Fostering Connections to Success Act authorizes for approval, renewal and per site fee which is calculated into the rate.

Youth participating in extended foster care are also eligible to receive Medi-Cal and a county clothing allowance (if available), just like they were receiving prior to turning 18.⁶⁵

Q32: Can a youth receive the foster care benefits directly?

A: A youth living in a Supervised Independent Living placement can receive the payment directly. Youth in all other types of placements (like group homes, THP+FC, or a foster family home) do not receive the benefit directly, but a provider may agree to give part of the benefit to the NMD to manage in order to help the NMD to develop financial skills and greater levels of responsibility.⁶⁶ Payments cannot be split. Note: An NMD participating in extended foster care who is receiving

⁶¹ All County Letter 11-69, All County Letter 11-77

⁶² Welf. & Inst. Code § 11465(d)(2)

⁶³ Welf. & Inst. Code § 11461(e); All County Letter 11-77; All County Letter 11-43

⁶⁴ All County Letter 12-44

⁶⁵ Welf. & Inst. Code § 11461(f)(1)

⁶⁶ Welf. & Inst. Code § 11403(d); All County Letter 11-69; All County Letter 11-77

CalWORKS, instead of foster care benefits, will receive the CalWORKS payment directly after the age of 18.⁶⁷

Q33: What placement types are eligible for the specialized care increment rate, provided to youth with additional needs?

A: Youth ages 18 to 21 living in a foster family home, with a nonrelated legal guardian, NREFM or with an AFDC-FC funded relative caregiver may be eligible for a specialized care increment rate based on their assessed needs.⁶⁸

Q34: Does a youth have to be continuing in foster care in order to receive services like Medi-Cal and Independent Living Program Services?

A: No. A youth who elects to exit foster care at any time after age 18 and to forego the extended foster care benefits remains eligible for Medi-Cal up to age 21 under the Medi-Cal for Former Foster Youth program.⁶⁹ It is important that a youth who exits foster care continue to keep the agency responsible for Medi-Cal benefits informed of their current address. When the Medi-Cal redetermination occurs, forms are mailed to the last known address and if the forms are not returned, benefits may be terminated.

In addition, these youth remain eligible for Aftercare Independent Living Program Services and non-federally funded THP-Plus up to age 24; although, space in the program is not guaranteed.⁷⁰

Q35: What happened to the Completion Rule?

A: As of January 1, 2012 there is no longer a completion rule for NMDs participating in extended foster care (the completion rule was the rule that required that a youth have a reasonable expectation of completing high school or an equivalent program before age 19 in order to receive benefits after the age of 18). This means a NMD participating in extended foster care can continue to receive benefits beyond age 18 regardless of whether they are expected to complete a high school or an equivalent program prior to turning 19.⁷¹ Additionally, a NMD can continue to reside in a group home up until age 19 in order to promote the educational stability of the NMD.⁷²

The completion rule continues to exist for certain groups that do not have access to extended benefits. This includes youth who receive Kin-GAP who entered Kin-GAP prior to age 16 and youth in non-related guardianships created through the probate court.⁷³

⁶⁷ All County Letter 11-78.

⁶⁸ Welf. & Inst. Code § 11461(e); All County Letter 11-69; All County Letter 11-77

⁶⁹ Welf. & Inst. Code §14005.28; ACWDL 00-41, 00-61, 01-41

⁷⁰ Welf. & Inst. Code §§ 10609.4, 11403.2(a)(2)

⁷¹ Welf. & Inst. Code § 11403(b)

⁷² Welf. & Inst. Code § 16501.1(c)(1)

⁷³ All County Letter 11-69

Foster Care After Age 18 – SPECIAL TOPICS

Q36: How does the California Fostering Connections to Success Act impact youth on probation or youth who are under the supervision of the delinquency court? Will these youth be eligible for extended foster care benefits under the California Fostering Connections to Success Act?

A: Youth who are on probation and supervised by the delinquency court (also known as “wards” of the court) who have an order for foster care placement on their 18th birthday are eligible for extended foster care services in the same manner as dependent youth.⁷⁴ In addition, the California Fostering Connections to Success Act creates a new jurisdictional status – known as “transition jurisdiction” – in order to allow former wards who meet certain requirements to participate in extended foster care without having to remain under delinquency jurisdiction.⁷⁵

Wards who are under an order for foster care placement on their 18th birthday are eligible for extended foster care and enter transition jurisdiction once they have finished the terms of their probation.⁷⁶

In addition, wards who are under 18 are eligible for transition jurisdiction if: (1) the youth is subject to an order for foster care placement; (2) the youth is between 17 years old and 5 months and under 18 years; (3) the youth no longer requires the supervision of the delinquency court because they have achieved their rehabilitative goals; (4) the youth is at risk of abuse and neglect and cannot be returned to the parental home safely; and (5) the youth intends to meet the nonminor dependent participation requirements.⁷⁷

In order to ensure that all eligible wards have this opportunity, the delinquency court is required to consider whether to modify the youth’s jurisdiction to either dependency or transition jurisdiction over the youth at the status review hearing closest to the time when the youth turns 18, and at any hearing to terminate delinquency jurisdiction.⁷⁸

Note: A NMD who has an order for foster care placement on their 18th birthday but remains under delinquency jurisdiction in order to complete his/her rehabilitative goals is not required to complete the mutual agreement and their terms of probation may trump some rights that other NMDs have upon reaching their 18th birthday.⁷⁹

Q37: Who provides the supervision for a ward who elects to participate in extended foster care?

⁷⁴ Welf. & Inst. Code § 14000(v)

⁷⁵ Welf. & Inst. Code § 450 et seq.

⁷⁶ Welf. & Inst. Code § 607.2 et seq.

⁷⁷ Welf. & Inst. Code § 450 et seq.

⁷⁸ Welf. & Inst. Code §451; 607.2

⁷⁹ Welf. & Inst. Code §303(d)(2)

A: The county protocols established by WIC 241.1 must address which agency and court will supervise (1) a youth whose jurisdiction is modified from delinquency to dependency; (2) a NMD who is under the court's transition jurisdiction; and (3) a NMD who becomes subject to adult probation supervision.⁸⁰

Q38: What about the case of youth who are custodial parents--How does the California Fostering Connections to Success Act provide for them?

A: Youth who are custodial parents have the same rights to participate in foster care after age 18 as all other youth. Under current law, a provider who is caring for a minor parent and her child is paid a foster care benefit that includes an amount for the care of both the minor parent and the child. This rate structure continues for nonminor parents after they turn 18. The caregiver of nonminor parent will continue to receive an "infant supplement" as part of the foster care rate for the NMD. If the nonminor parent lives in a Whole Family Home, the caregiver may be eligible for the \$200 for the Shared Responsibility Plan.⁸¹

If a nonminor parent elects to live in a Supervised Independent Living setting with her child, s/he would receive the basic rate for his/her own support plus the infant supplement for the care of his/her child.⁸²

Note, if the nonminor parent is not federally eligible for foster care benefits and is placed with an approved relative under the court's jurisdiction, the NMD can continue to receive CalWORKs benefits. CalWORKs benefits can be paid for a NMD placed with an approved relative living out of state.⁸³ CalWORKs is available for NMDs until age 20 beginning January 1, 2013 and until age 21 beginning January 1, 2014. There is no infant supplement to the CalWORKs benefit. All pregnant or parenting youth have the option of establishing their own CalWORKs case at age 18 or remaining in extended foster care and receiving CalWORKs while living in the home of an approved relative. The nonminor parent is not subject to the CalWORKs program rules if s/he chooses to remain in extended foster care.⁸⁴

Q39: If the youth is a consumer of Regional Center Services, will the youth continue to receive dual agency rates and the supplemental rate for extraordinary care and supervision?

A: Yes, the dual agency and supplemental rates will apply to youth otherwise eligible for extended foster care who remain a dual agency Regional Center consumer.⁸⁵

⁸⁰ Welf. & Inst. Code §§ 241.1(b)(3), 451(c)

⁸¹ Welf. & Inst. Code § 11364(c); All County Letter 11-69

⁸² All County Letter 11-69; All County Letter 11-77

⁸³ Welf. & Inst. Code § 11253

⁸⁴ All County Letter 11-78

⁸⁵ All County Letter 11-61

Q40: Can a youth receive both extended foster care benefits under the California Fostering Connections to Success Act and Supplemental Security Income (SSI)?

A: A youth who meets the eligibility requirements for both extended foster care and SSI may be eligible to receive both at the same time, although, there are offsetting rules that apply which means the total benefit received will be equivalent to the higher benefit amount, regardless of whether it is paid from SSI, foster care benefits, or a combination of the two. SSI payments are reduced dollar-for-dollar by the amount of federal foster care benefits. A youth can receive both SSI and federal foster care payments only if the SSI benefit is higher than the foster care payment. If the federal foster care benefit exceeds the SSI benefit, then the youth would receive only the foster care benefit and the SSI benefits will be placed in suspense.⁸⁶

Because a youth will lose their SSI eligibility if they do not receive a SSI payment for 12 consecutive months, AB 12 requires that county welfare agency, during at least one month of every 12-month period, beginning with the date that the SSI benefit is placed in suspense, forego the federally funded AFDC-FC benefits and instead use state AFDC-FC resources to supplement the SSI benefit that the youth receives during that month. This will ensure that the NMD actually receives a SSI payment during at least one month of every 12 month period and will ensure the NMD retains eligibility for SSI.⁸⁷

In the case of youth who are eligible for state-only foster care benefits, it is the foster care payment that is offset dollar-for-dollar by the amount of the SSI received. Thus, a youth receiving state-only benefits can receive both SSI and foster care benefits if the foster care payment exceeds the SSI payment.

Youth who receive a SSI benefit that exceeds their foster care maintenance payment may remain in extended foster care, even though they do not receive any foster care payment. These youth will receive all the services, including case management, ILP, and court supervision that all youth in extended care receive. However, many of these SSI eligible youth may choose to exit out of extended care because of the services and supports available in the community to SSI recipients.⁸⁸

Q41: Under the California Fostering Connections to Success Act, the extension from age 20 to 21 is subject to budget appropriation by the state legislature. When would it happen and how can we plan for this?

A: On June 27, 2012, Governor Jerry Brown signed the California State Budget Bill for 2012-2013 which guaranteed the extension of foster care to age 21. Prior to the budget bill being passed, the final extension to 21 required additional legislative appropriation, but because of this bill that legislative action has now occurred and

⁸⁶ Administration for Children and Families, Child Welfare Policy Manual, Section 8.4D, Question 1

⁸⁷ Welf. & Inst. Code § 13757(d)

⁸⁸ Welf. & Inst. Code § 13754 et seq.; All County Letter 11-69

the extension to 21 is guaranteed. The extension to age 21 takes effect on January 1, 2014.⁸⁹

Q42: Are youth who are residing with non-related legal guardians eligible for extended benefits past the age of 18?

A: Youth with a non-related legal guardian established by the juvenile court are eligible for AFDC-FC benefits until the youth turns 19 (beginning January 1, 2012), until 20 (beginning January 1, 2013) and 21 (beginning January 1, 2014). Extended benefits will be paid regardless of how old the youth was when the guardianship was established as long, as the youth meets certain requirements described below.⁹⁰ These youth are referred to as “nonminor former dependents.”⁹¹

A nonminor former dependent who wants to remain eligible for AFDC-FC benefits beyond the age of 18 must complete and sign the mutual agreement (SOC 162) prior to or within the month of turning 18 years old. It is the responsibility of the guardian to request the extension of AFDC-FC benefits after the age of 18 and provide documentation that the nonminor former dependent meets one participation condition as illustrated in Q5. The guardian is also responsible for notifying the county of changes in participation. In most cases, AFDC-FC benefits are paid directly to the guardian. However, a nonminor former dependent does not have to be residing in the guardian’s home in order for the guardian to receive benefits as long as the guardian remains financially responsible for the care of the nonminor former dependent.

If the nonminor former dependent stops participating, leaves the care and support of the guardian, or is otherwise ineligible for benefits then benefits will be suspended. If the nonminor former dependent later wishes to return to the guardian’s care and support, the youth must sign the Voluntary Re-Entry Agreement (SOC 163) before benefits can resume. The nonminor former dependent does not have to live with the former NRLG in order for benefits to resume. This process of re-entry does not involve court supervision or the appointment of an attorney for the NMD.⁹²

NOTE: if the guardianship was established by the probate court, benefits can only continue beyond the age of 18 if the youth satisfies the school completion rule (see Q 35 for more information on the Completion Rule).

Q43: Is the child welfare agency required to provide foster youth with any assistance with credit report checks?

A: The county welfare department is required to request yearly consumer credit report checks for youth in foster care starting at age 16 at no

⁸⁹ Welf. & Inst. Code § 11403(k); All County Letter 11-69; Senate Bill § 1013

⁹⁰ All County Letter 12-48

⁹¹ Welf. & Inst. Code § 11400(2)(aa)

⁹² Welf. & Inst. Code § 11400(z); All County Letter 12-48

charge to the youth, and to assist the youth with resolving any inaccuracies that are identified. These yearly credit report checks should continue for NMDs who are participating in extended foster care. The NMD's case plan should contain documentation of the yearly checks and detail what type of assistance is being provided to the youth.⁹³

⁹³ Welf. & Inst. Code § 16501.1(e)(17)

Kin-GAP – ELIGIBILITY

Q44: How does the California Fostering Connections to Success Act change California’s current Kin-GAP program?

A: The California Fostering Connections to Success Act made several important changes to the Kin-GAP program. First, under the California Fostering Connections to Success Act there are now two different subsidized guardianship programs. California will have a new Kin-GAP program funded with state-only dollars, for those non-federally eligible youth who, as dependents, were placed by juvenile court in an approved home of a CalWORKs funded relative.⁹⁴ Youth who are eligible to receive federal foster care benefits while in foster care will participate in the federally-subsidized Kin-GAP program.⁹⁵

The five big changes to the Kin-GAP eligibility rules are: (1) youth must be residing with the relative while in foster care or under a Voluntary Placement Agreement for 6 consecutive months prior to exiting foster care to Kin-GAP (previously it was 12 months); (2) Kin-GAP benefits are determined and adjusted periodically based on changed needs pursuant to a negotiated agreement (previously, Kin-GAP benefits were frozen at the same amount of what the youth was receiving in foster care the month before exiting to Kin-GAP); (3) youth can continue to receive Kin-GAP beyond age 18 and up to age 19/20/21 if certain conditions are met as discussed in Q45 (previously, Kin-GAP only went to age 18 or 19); (4) Kin-GAP now can be paid out of state; and (5) a child can enter Kin-GAP via the voluntary placement agreement process if juvenile court orders a guardianship at the WIC 360 hearing.⁹⁶

In order to be eligible for federal Kin-GAP benefits, the prospective guardian and the child welfare agency must execute the negotiated agreement *prior* to the date when the court orders the guardianship. If a relative guardian fails to negotiate a written binding Kin-GAP agreement PRIOR to the establishment of the guardianship and the child still meets all other eligibility criteria, the child is eligible for non-federal Kin-GAP benefits.

Q45: What are the basic eligibility requirements for a youth to receive Kin-GAP under the California Fostering Connections to Success Act?

A: There are four basic eligibility requirements for a youth to receive Kin-GAP benefits. The youth must (1) Has been declared a dependent of the juvenile (2) reside with an approved relative guardian for at least 6 consecutive months or a voluntary placement agreement (3) have a kinship guardianship established with that relative by juvenile court and (4) have his or her court case dismissed by either

⁹⁴ Welf. & Inst. Code § 11360 et seq.

⁹⁵ Welf. & Inst. Code § 11385 et seq.

⁹⁶ Welf. & Inst. Code §§ 11360 et seq, 11385, et seq ;All County Letter 11-15; All County Letter 11-67

the dependency court or the delinquency court at the same time or subsequent to the establishment of the guardianship.⁹⁷

In addition, in order to receive Kin-GAP payments, the relative guardian and the county agency (or Indian tribe) must negotiate and enter into a written, Kin-GAP agreement setting forth the amount of the payment. This agreement does **not** have to be completed prior to the court ordering guardianship for purposes of eligibility for the state Kin-GAP program.⁹⁸

Q46: Do all youth who are eligible for Kin-GAP benefits remain eligible after age 18 and up until age 21?

A: No. Kin-GAP benefits terminate at different times depending on what age the youth was when the negotiated Kin-GAP benefits commenced and the special needs of the youth, as explained below.

A youth, regardless of age of entry into Kin-GAP, may continue to receive Kin-GAP up until age 21 if s/he has a physical or mental disability that warrants continuing assistance beyond age 18 and up until 21.⁹⁹

Youth who do not have a physical or mental disability and who began to receive the negotiated Kin-GAP payment **before** reaching 16 years of age are eligible for Kin-GAP benefits after age 18 if they are expected to complete high school or an equivalent program before they turn 19. If they have are reasonably expected to complete high school or the equivalent, they can continue to receive Kin-GAP until they graduate or turn 19, whichever happens first. If they do not have the expectation of completion by age 19, Kin-GAP benefits terminate at age 18.¹⁰⁰

NOTE: There is one exception to this rule: Nonminor former dependents who began receiving federal Kin-GAP benefits before age 16 who have guardianship with a non-related extended family member (see below for detailed explanation).

Effective January 1, 2012, youth who turned 16 after the negotiated Kin-GAP payments commenced may be eligible for extended Kin-GAP benefits beyond age 18, and up until age 21, as long as the youth meets one of participation conditions described in Q3 and signs a mutual agreement.¹⁰¹

The mutual agreement is a condition of continued payment of Kin-GAP payments beyond the age of 18 and must be signed by the youth before or in the month of the youth's 18th birthday. If a young person is receiving Kin-GAP after the age of 18 because s/he is reasonably expected to complete high school or the equivalent by age 18, then the form that must be signed is the KG 1. If a youth is receiving extended Kin-GAP up until age 21 either due to the presence of a mental or physical

⁹⁷ Welf. & Inst. Code §§ 11363, 11386

⁹⁸ Welf. & Inst. Code §§ 11364, 11387

⁹⁹ Welf. & Inst. Code §§ 11363(c)(2), 11386(g)(2)

¹⁰⁰ Welf. & Inst. Code § 11363(c)(3), 11386(g)(3); All County Letter 11-15; All County Letter 11-86

¹⁰¹ Welf. & Inst. Code §§ 11363(d), 11386(h); All County Letter 11-86; Senate Bill §1013

disability or because the negotiated Kin-GAP payments started at age 16 or older, then the mutual agreement that needs to be signed is the KG3.

AB 1712 expanded the definition of “relative” solely for the purposes of accessing federal Kin-GAP. In addition to the relatives that are within the fifth degree of kinship, a relative for federal Kin-GAP purposes also includes:

- (1) an adult who meets the definition of an approved, nonrelated extended family member;
- (2) an adult who is the current foster parent of a child under the juvenile court’s jurisdiction who has established a significant family-like relationship to the child;
- (3) an adult who is either a member of the Indian child’s tribe, or an Indian custodian.

Because of this new expansive definition of relative, AB 1712 allows “nonminor former dependents” who started receiving Kin-GAP before turning 16 years old and who are in guardianship with one of the three categories of individuals listed above, to then transfer from the federal Kin-GAP program and begin receiving AFDC-FC benefits as a non-related guardian once the “non-minor former dependent” turns 18.¹⁰²

Q47: Do the participation conditions apply to youth in the Kin-GAP program who wish to receive Kin-GAP after age 18?

A: As with youth in foster care, a youth who entered the Kin-GAP program after age 16 can continue to receive Kin-GAP assistance until age 21 as long as the youth is doing ONE of the following¹⁰³:

- (1) Completing high school or equivalent program (i.e. GED) (enrollment is defined according to the definition employed by the school or program); OR
- (2) Enrolled in college, community college or a vocational education program (half-time enrollment, as the college, community college or vocational program defines half-time enrollment); OR
- (3) Employed at least 80 hours a month (this must be paid employment); OR
- (4) Participating in a program or activity designed to remove barriers to employment (this is the “safety net” category which is intended to capture all youth who are not eligible under the employment or education conditions); OR
- (5) Unable to do one of the above requirements because of a medical condition (short- or long-term medical or mental health condition as verified by a health practitioner but youth does not have to be currently seeking treatment).¹⁰⁴

¹⁰² Welf. & Inst. Code §§ 11391(c), 11405(e)(2)

¹⁰³ Welf. & Inst. Code §§ 11363(d), 11386(h)

Q48: Kin-GAP doesn't include ongoing case management and agency supervision. How will it be determined that youth age 18 to 21 in Kin-GAP are meeting one of the five participation conditions?

A: The relative guardian is responsible for requesting the Kin-GAP benefit extension beyond the age of 18, and providing documentation to the responsible public agency supporting that the youth meets one of the five participation criteria.¹⁰⁵ Further, the relative guardian is also responsible for reporting any changes to the responsible public agency when the nonminor former dependent is no longer meeting one of the five participation criteria.¹⁰⁶

Q49: How is the amount of the Kin-GAP benefit determined?

A: The amount of the Kin-GAP benefit, as well as the other services and assistance the youth is entitled to receive, is determined through a negotiation between the relative guardian and the county child welfare agency, probation department or Indian tribe. The benefit amount, as well as the additional services and assistance the child will receive, is set forth in a written Guardianship Agreement that can be adjusted periodically, but no less than once every two years, as the needs of the child and the circumstances of the guardian change. The negotiated Kin-GAP benefit cannot exceed the amount of the age- related, state-approved basic foster care maintenance payment and any applicable special care increment that the youth would have received if s/he had remained in foster care. If the youth is a parent of a child placed in the same home, the teen parent rates apply. If the youth is a regional center consumer, the dual agency rates apply.¹⁰⁷

Also, the nonminor former ward or dependent in receipt of federal or state Kin GAP may have the aid payments suspended and resumed based on changes or circumstances.¹⁰⁸

Q50: Can a youth who is participating in Kin-GAP and is over age 18 receive the Kin-GAP payment directly?

A: No, the Kin-GAP payment is paid directly to the former relative guardian.¹⁰⁹

¹⁰⁴Welf. & Inst. Code § 11403(b)(5); All County Letters 11-61 and 11-69

¹⁰⁵ All County Letter 11-86

¹⁰⁶ All County Letter 11-86

¹⁰⁷ Welf. & Inst. Code §§ 11364, 11387; All County Letter 11-15

¹⁰⁸ Welf. & Inst. Code §§ 11403(c)

¹⁰⁹ All County Letter 11-86

Adoption Assistance Payments (AAP) Program

Q51: How does the Federal Fostering Connections Act and the California Fostering Connections to Success Act change California's current Adoption Assistance Payment (AAP) program?

A: The AAP program went through changes in 2008 and in 2012. In 2008, due to passage of "The Fostering Connections to Success and Increasing Adoptions Act of 2008," AAP was revised by expanding the availability of federal funding for certain foster and adopted children. Specifically, it de-linked a child's eligibility for federal AAP from the 1996 AFDC income requirements. Before this change, a child in foster care was only eligible for federal AAP if the home the child was removed from had an income that met the state's AFDC eligibility standard which was in placed on July 16, 1996. The result of this change was that more children with special needs can be adopted with federal support.

In 2012, due to the passage of California Fostering Connections to Success Act there were some additional changes. First, there are new requirements for when AAP terminates for certain categories of youth:¹¹⁰

- A youth, regardless of age of entry into the AAP program, may continue to receive AAP up until age 21 if s/he has a physical or mental disability that warrants continuing assistance beyond age 18 and up until 21.
- Youth who do not have a physical or mental disability and who began to receive the negotiated AAP payment **before** reaching 16 years of age will receive AAP until age 18.
- Effective January 1, 2012, youth who turned 16 after the negotiated AAP payments commenced may be eligible for extended AAP benefits beyond age 18, and up until age 21, as long as the youth meets one of participation conditions described in Q3. *There is no mutual agreement requirement for youth to receive AAP after the age of 18.*

Second, California Fostering Connections changed the availability of AAP to youth adopted after the age of 18. See Q53 for more details.

Q52: Can a NMD be adopted after the age of 18?

A: Under prior law, an adult adoption was governed by the Family Code and it was unclear whether a NMD adopted after age 18 could qualify for Adoption Assistance Payments (AAP). AB 1712 created a new type of adoption – "nonminor dependent adoption" -- governed by the Welfare and Institution Code (i.e. adoption of a NMD through juvenile court) as a permanency plan option for a NMD and creates a juvenile court process for the NMD and prospective adoptive parent to finalize the adoption in juvenile court and then dismiss dependency jurisdiction. AB

¹¹⁰ Welf. & Inst. Code §§ 16120(d); 16123

1712 further clarifies that this process will enable the NMD to qualify for AAP payments. The reimbursement of reasonable nonrecurring expenses incurred as the result of the adoption extends to NMDs being adopted.¹¹¹

Q53: Do the participation conditions apply to youth in the AAP program who wish to receive AAP after age 18?

A: As with youth in foster care, a youth who entered the AAP program after age 16 can continue to receive AAP until age 21 as long as the youth is doing ONE of the following¹¹²:

- (1) Completing high school or equivalent program (i.e. GED) (enrollment is defined according to the definition employed by the school or program); OR
- (2) Enrolled in college, community college or a vocational education program (half-time enrollment, as the college, community college or vocational program defines half-time enrollment); OR
- (3) Employed at least 80 hours a month (this must be paid employment); OR
- (4) Participating in a program or activity designed to remove barriers to employment (this is the “safety net” category which is intended to capture all youth who are not eligible under the employment or education conditions); OR
- (5) Unable to do one of the above requirements because of a medical condition (short- or long-term medical or mental health condition as verified by a health practitioner but youth does not have to be currently seeking treatment).¹¹³

Q54: AAP doesn’t include ongoing case management and agency supervision. How will it be determined that youth age 18 to 21 in AAP are meeting one of the five participation conditions?

A: The adoptive parent is responsible for requesting the AAP extension beyond the age of 18, and providing documentation to the responsible public agency supporting that the youth meets one of the five participation criteria.¹¹⁴ Further, the adoptive parent is also responsible for reporting any changes to the responsible public agency when the youth is no longer meeting one of the five participation criteria.¹¹⁵

Additionally, the nonminor former ward or dependent in receipt of AAP may have the aid payments suspended and resumed based on changed circumstances.¹¹⁶

¹¹¹ Welf. & Inst. Code §§ 366.3, 366.3(f), 366.32, 16120 et seq

¹¹² Welf. & Inst. Code §§ 16120(d)(3); 11403(b)

¹¹³ Welf. & Inst. Code § 11403(b)(5); All County Letters 11-61 and 11-69

¹¹⁴ All County Letter 11-86

¹¹⁵ All County Letter 11-86

¹¹⁶ Welf. & Inst. Code §§ 11403(c)

Q55: How is the amount of the AAP payment determined?

A: The amount of the AAP benefit, as well as the other services and assistance the youth is entitled to receive, is determined through a negotiation between the adoptive parent and the county child welfare agency, probation department or Indian tribe. The benefit amount, as well as the additional services and assistance the child will receive, is set forth in a written Adoption Assistance Payment Agreement and stipulates the amount of AAP. This agreement must be entered into before the adoption is finalized. The negotiated AAP benefit cannot exceed the amount of the age- related, state-approved basic foster care maintenance payment and any applicable special care increment that the youth would have received if s/he had remained in foster care. If the youth is a parent of a child placed in the same home, the teen parent rates apply. If the youth is a regional center consumer, the dual agency rates apply.¹¹⁷

¹¹⁷ Welf. & Inst. Code §§ 16120; All County Letter 11-86

Foster Care After Age 18 – Court Process

Q56: How does the role of the minor’s attorney change for a NMD?

A: Just like when a youth was a minor, when the youth turns 18 and becomes a NMD, s/he is entitled to an attorney to represent his/her interests. This attorney can be the same or different one after turning 18. The attorney is charged with representing the wishes of the NMD, except when advocating for those wishes conflicts with the protection or safety of the NMD.¹¹⁸

Q57: Can family reunification services continue when a youth turns 18 and becomes a NMD?

A: Yes, after the youth turns 18 family reunification services can continue for the NMD when:

- (1) the court determines that it is in the best interest of the NMD; and
- (2) the NMD and parent/legal guardian are in agreement, and
- (3) the court finds that there is a substantial probability that the NMD will be able to safely reside in the home of the parent or guardian by the next review hearing.

If the judge cannot make these findings, then family reunification services are terminated.¹¹⁹ The continuation of FR past a NMD’s 18th birthday will **NOT** impact the eligibility of the NMD for extended foster care benefits, including housing and other case management services.

Q58: What happens if a NMD is deemed incompetent to make educational or developmental services decisions?

A: If a NMD is deemed incompetent, the court can appoint an educational or developmental decisionmaker, if it is in the NMD’s best interest. A decisionmaker can be any “responsible adult:” such as a caretaker, relative, CASA, etc. The decisionmaker will be authorized to make educational or developmental services decisions” for the NMD.¹²⁰ Additionally, the educational or developmental decisionmaker who was appointed prior to the youth turning 18, can continue to act on behalf of the same NMD after the age of 18 if either the NMD chooses not to make educational or developmental services decisions for him/herself or if deemed incompetent as described above.¹²¹

¹¹⁸ Welf. & Inst. Code § 317(e)(1)

¹¹⁹ Welf. & Inst. Code §§361.6, 366.31(d), 361.5, 727.3

¹²⁰ Welf. & Inst. Code §361

¹²¹ Welf. & Inst. Code §361

Q59: Can the juvenile court still order the administration of psychotropic medication of a NMD?

A: Once a youth becomes a NMD, the juvenile court no longer has this authority to order the administration of psychotropic medication. ¹²²

¹²² Welf. & Inst. Code §369.5(f)