

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 4, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 985

Introduced by Assembly Member Cooley

February 22, 2013

An act to amend Sections 11363 and ~~16120~~ 11386 of, and to repeal Section 11403.01 of, the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 985, as amended, Cooley. Guardianship and adoption assistance.

Existing law, through the Kinship Guardianship Assistance Payment Program (state-funded Kin-GAP), which is a part of the CalWORKs program, provides state-funded assistance on behalf of eligible children who are placed in the home of a relative caretaker. Under existing law, state-funded Kin-GAP aid is provided on behalf of any eligible youth under 21 years of age who meets specified requirements, including that his or her Kin-GAP payments began after his or her 16th birthday and he or she is completing secondary education or a program leading to an equivalent credential. Existing law also allows a nonminor whose state-funded Kin-GAP payments began before his or her 16th birthday to continue to receive Kin-GAP aid after his or her 18th birthday if ~~the child~~ *he or she* continues to reside in the relative's home, remains otherwise eligible for Kin-GAP payments, and continues to attend high school or the equivalent level of vocational or technical training on a full-time basis, or continues to pursue a high school equivalency certificate, and ~~the child may~~ *is* reasonably ~~be~~ expected to complete the

educational or training program or to receive a high school equivalency certificate before his or her 19th birthday.

Existing law, through the Kinship Guardianship Assistance Payments for Children program (federally funded Kin-GAP), provides federally funded assistance on behalf of eligible children who are placed in the home of a relative caretaker. Under federal law, a child who is between 18 and 21 years of age is eligible for federally funded Kin-GAP assistance if he or she meets specified requirements, including that his or her federally funded Kin-GAP payments commenced after his or her 16th birthday.

This bill would instead authorize a nonminor whose state-funded Kin-GAP payments began prior to his or her 16th birthday to receive state-funded Kin-GAP benefits if he or she is 21 years of age or younger and meets any of certain criteria, including, among others, that he or she attends a postsecondary institution of higher education or is employed at least 80 hours per month. The bill would also authorize a youth who has attained 18 years of age while receiving federally funded Kin-GAP benefits and is no longer eligible for those federally funded benefits to receive Kin-GAP payments under the state program if the youth meets specified requirements. *The bill would also require a county social worker, in redetermining the eligibility of a child receiving state or federally funded Kin-GAP, to determine whether the child has a mental or physical disability that warrants the continuation of assistance beyond the child's 18th birthday.* By expanding eligibility for state-funded Kin-GAP and increasing county responsibilities in administering the program, this bill would impose a state-mandated local program.

~~Existing law establishes the Adoption Assistance Program for the purpose of benefitting children residing in foster homes by providing the stability and security of permanent homes. Under existing law, a child who is between 18 and 21 years of age is eligible for the program if he or she was 16 years of age or older when the adoption assistance agreement became effective. Federal law similarly authorizes a child who is between 18 and 21 years of age to receive adoption assistance if adoption assistance began after the child reached 16 years of age.~~

~~This bill would authorize a child whose adoption assistance benefits began prior to his or her 16th birthday to receive state-funded adoption assistance until he or she is 21 years of age, if the child meets specified criteria.~~

Existing law continuously appropriates moneys from the General Fund to defray a portion of county aid grant costs under the CalWORKs program.

This bill would declare that no appropriation would be made for purposes of the bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11363 of the Welfare and Institutions
2 Code is amended to read:
3 11363. (a) Aid in the form of state-funded Kin-GAP shall be
4 provided under this article on behalf of any child under 18 years
5 of age and to any eligible youth under 21 years of age as provided
6 in Section 11403, who satisfies all of the following conditions:
7 (1) Has been adjudged a dependent child of the juvenile court
8 pursuant to Section 300 or a ward of the juvenile court pursuant
9 to Section 601 or 602.
10 (2) Has been residing for at least six consecutive months in the
11 approved home of the prospective relative guardian while under
12 the jurisdiction of the juvenile court or a voluntary placement
13 agreement.
14 (3) Has had a kinship guardianship established pursuant to
15 Section 360 or 366.26.
16 (4) Has had his or her dependency jurisdiction terminated after
17 January 1, 2000, pursuant to Section 366.3, or his or her wardship
18 terminated pursuant to subdivision (d) of Section 728, concurrently
19 or subsequently to the establishment of the kinship guardianship.
20 (b) If the conditions specified in subdivision (a) are met and,
21 subsequent to the termination of dependency jurisdiction, any
22 parent or person having an interest files with the juvenile court a
23 petition pursuant to Section 388 to change, modify, or set aside an

1 order of the court, Kin-GAP payments shall continue unless and
2 until the juvenile court, after holding a hearing, orders the child
3 removed from the home of the guardian, terminates the
4 guardianship, or maintains dependency jurisdiction after the court
5 concludes the hearing on the petition filed under Section 388.

6 (c) A child or nonminor former dependent or ward shall be
7 eligible for Kin-GAP payments if he or she meets one of the
8 following age criteria:

9 (1) He or she is under 18 years of age.

10 (2) He or she is under 21 years of age and has a physical or
11 mental disability that warrants the continuation of assistance.

12 (3) He or she satisfies the conditions described in either
13 paragraph (1) or (2) of subdivision (d).

14 (d) (1) Kin-GAP payments shall continue for youths who have
15 attained 18 years of age and are under 21 years of age, if the
16 relative guardian continues to be responsible for the support of the
17 youth and the youth meets one or more of the conditions specified
18 in paragraphs (1) to (5), inclusive, of subdivision (b) of Section
19 11403.

20 (2) A youth who has attained 18 years of age while receiving
21 federally funded Kin-GAP benefits pursuant to Article 4.7
22 (commencing with Section 11385), but is no longer eligible for
23 benefits under that program, shall be eligible for benefits under
24 this section until the youth attains 21 years of age if all of the
25 following conditions are met:

26 (A) The youth's relationship to the kinship guardian is defined
27 in paragraph (1) of subdivision (c) of Section 11391.

28 (B) The youth was under 16 years of age at the commencement
29 of the Kin-GAP payments under Article 4.7 (commencing with
30 Section 11385) and does not have a mental or physical disability
31 that warrants the continuation of assistance.

32 (C) The guardian continues to be responsible for the support of
33 the youth.

34 (D) The youth meets one or more of the conditions of eligibility
35 described in paragraphs (1) to (5), inclusive, of subdivision (b) of
36 Section 11403.

37 (e) Termination of the guardianship with a kinship guardian
38 shall terminate eligibility for Kin-GAP unless the conditions in
39 Section 11403 apply; provided, however, that if an alternate
40 guardian or co-guardian is appointed pursuant to Section 366.3 who

1 is also a kinship guardian, the alternate or coguardian shall be
2 entitled to receive Kin-GAP on behalf of the child pursuant to this
3 article. A new period of six months of placement with the alternate
4 guardian or coguardian shall not be required if that alternate
5 guardian or coguardian has been assessed pursuant to Sections
6 361.3 and 361.4 and the court terminates dependency jurisdiction.

7 (f) *At the time of redetermination of eligibility closest to the*
8 *child's 18th birthday, the county social worker shall determine*
9 *whether the child has a mental or physical disability that warrants*
10 *continuation of assistance pursuant to paragraph (2) of subdivision*
11 *(c).*

12 *SEC. 2. Section 11386 of the Welfare and Institutions Code is*
13 *amended to read:*

14 11386. Aid shall be provided under this article on behalf of a
15 child under 18 years of age, and to any eligible youth under 19
16 years of age, as provided in Section 11403, under all of the
17 following conditions:

18 (a) The child satisfies both of the following requirements:

19 (1) He or she has been removed from his or her home pursuant
20 to a voluntary placement agreement, or as a result of judicial
21 determination, including being adjudged a dependent child of the
22 court, pursuant to Section 300, or a ward of the court, pursuant to
23 Section 601 or 602, to the effect that continuation in the home
24 would be contrary to the welfare of the child.

25 (2) He or she has been eligible for federal foster care
26 maintenance payments under Article 5 (commencing with Section
27 11400) while residing for at least six consecutive months in the
28 approved home of the prospective relative guardian while under
29 the jurisdiction of the juvenile court or a voluntary placement
30 agreement.

31 (b) Being returned to the parental home or adopted are not
32 appropriate permanency options for the child.

33 (c) The child demonstrates a strong attachment to the relative
34 guardian, and the relative guardian has a strong commitment to
35 caring permanently for the child and, with respect to the child who
36 has attained 12 years of age, the child has been consulted regarding
37 the kinship guardianship arrangement.

38 (d) The child has had a kinship guardianship established
39 pursuant to Section 360 or 366.26.

1 (e) The child has had his or her dependency jurisdiction
2 terminated pursuant to Section 366.3, or his or her wardship
3 terminated pursuant to subdivision (d) of Section 728, concurrently
4 or subsequently to the establishment of the kinship guardianship.

5 (f) If the conditions specified in subdivisions (a) through (e),
6 inclusive, are met and, subsequent to the termination of dependency
7 jurisdiction, any parent or person having an interest files with the
8 juvenile court a petition pursuant to Section 388 to change, modify,
9 or set aside an order of the court, Kin-GAP payments shall continue
10 unless and until the juvenile court orders the child removed from
11 the home of the guardian, terminates the guardianship, or maintains
12 dependency jurisdiction after the court concludes the hearing on
13 the petition filed under Section 388.

14 (g) A child or nonminor former dependent or ward shall be
15 eligible for Kin-GAP payments if he or she meets one of the
16 following age criteria:

17 (1) He or she is under 18 years of age.

18 (2) He or she is under 21 years of age and has a physical or
19 mental disability that warrants the continuation of assistance.

20 ~~(3) Through December 31, 2011, he or she satisfies the~~
21 ~~conditions of Section 11403, and on and after January 1, 2012, he~~
22 ~~or she satisfies the conditions of Section 11403.01.~~

23 ~~(4)~~

24 (3) He or she satisfies the conditions as described in subdivision
25 (h).

26 (h) Effective January 1, 2012, Kin-GAP payments shall continue
27 for youths who have attained 18 years of age and are under 19
28 years of age, if they reached 16 years of age before the Kin-GAP
29 negotiated agreement payments commenced, and as described in
30 Section 10103.5. Effective January 1, 2013, Kin-GAP payments
31 shall continue for youths who have attained 18 years of age and
32 are under 20 years of age, if they reached 16 years of age before
33 the Kin-GAP negotiated agreement payments commenced, and as
34 described in Section 10103.5. Effective January 1, 2014, Kin-GAP
35 payments shall continue for youths who have attained 18 years of
36 age and are under 21 years of age, if they reached 16 years of age
37 before the Kin-GAP negotiated agreement payments commenced.
38 To be eligible for continued payments, the youth shall satisfy one
39 or more of the conditions specified in paragraphs (1) to (5),
40 inclusive, of subdivision (b) of Section 11403.

1 (i) Termination of the guardianship with a kinship guardian
2 shall terminate eligibility for Kin-GAP, unless the conditions of
3 Section 11403 apply, provided, however, that if an alternate
4 guardian or coguardian is appointed pursuant to Section 366.3 who
5 is also a kinship guardian, the alternate or coguardian shall be
6 entitled to receive Kin-GAP on behalf of the child pursuant to this
7 article. A new period of six months of placement with the alternate
8 guardian or coguardian shall not be required if that alternate
9 guardian or coguardian has been assessed pursuant to Section 361.3
10 and Section 361.4 and the court terminates dependency jurisdiction,
11 subject to federal approval of amendments to the state plan.

12 (j) *At the time of redetermination of eligibility closest to the*
13 *child's 18th birthday, the county social worker shall determine*
14 *whether the child has a mental or physical disability that warrants*
15 *continuation of assistance pursuant to paragraph (2) of subdivision*
16 *(g).*

17 ~~SEC. 2.~~

18 ~~SEC. 3.~~ Section 11403.01 of the Welfare and Institutions Code
19 is repealed.

20 ~~SEC. 3.~~ Section 16120 of the Welfare and Institutions Code is
21 amended to read:

22 ~~16120. A child shall be eligible for Adoption Assistance~~
23 ~~Program benefits if all of the conditions specified in subdivisions~~
24 ~~(a) to (l), inclusive, are met or if the conditions specified in~~
25 ~~subdivision (m) are met.~~

26 ~~(a) It has been determined that the child cannot or should not~~
27 ~~be returned to the home of his or her parents as evidenced by a~~
28 ~~petition for termination of parental rights, a court order terminating~~
29 ~~parental rights, or a signed relinquishment, or, in the case of a~~
30 ~~tribal customary adoption, if the court has given full faith and~~
31 ~~credit to a tribal customary adoption order as provided for pursuant~~
32 ~~to paragraph (2) of subdivision (e) of Section 366.26, or, in the~~
33 ~~case of a nonminor dependent the court has dismissed dependency~~
34 ~~or transitional jurisdiction subsequent to the approval of the~~
35 ~~nonminor dependent, adoption petition pursuant to subdivision (f)~~
36 ~~of Section 366.31.~~

37 ~~(b) The child has at least one of the following characteristics~~
38 ~~that are barriers to his or her adoption:~~

39 ~~(1) Adoptive placement without financial assistance is unlikely~~
40 ~~because of membership in a sibling group that should remain intact~~

1 or by virtue of race, ethnicity, color, language, age of three years
2 or older, or parental background of a medical or behavioral nature
3 that can be determined to adversely affect the development of the
4 child.

5 (2) Adoptive placement without financial assistance is unlikely
6 because the child has a mental, physical, emotional, or medical
7 disability that has been certified by a licensed professional
8 competent to make an assessment and operating within the scope
9 of his or her profession. This paragraph shall also apply to children
10 with a developmental disability, as defined in subdivision (a) of
11 Section 4512, including those determined to require out-of-home
12 nonmedical care, as described in Section 11464.

13 (e) The need for an adoption subsidy is evidenced by an
14 unsuccessful search for an adoptive home to take the child without
15 financial assistance, as documented in the case file of the
16 prospective adoptive child. The requirement for this search shall
17 be waived when it would be against the best interest of the child
18 because of the existence of significant emotional ties with
19 prospective adoptive parents while in the care of these persons as
20 a foster child.

21 (d) The child satisfies any of the following criteria:

22 (1) He or she is under 18 years of age.

23 (2) He or she is under 21 years of age and has a mental or
24 physical handicap that warrants the continuation of assistance.

25 (3) For federally funded Adoption Assistance Program benefits,
26 he or she has attained 18 years of age and is under 21 years of age,
27 attained 16 years of age before the adoption assistance agreement
28 became effective, and meets one or more of the conditions of
29 eligibility described in paragraphs (1) to (5), inclusive, of
30 subdivision (b) of Section 11403.

31 (4) For state-funded Adoption Assistance Program benefits, he
32 or she has attained 18 years of age and is under 21 years of age,
33 and meets one or more of the conditions of eligibility described
34 in paragraphs (1) to (5), inclusive, of subdivision (b) of Section
35 11403.

36 (e) The adoptive family is responsible for the child pursuant to
37 the terms of an adoptive placement agreement or a final decree of
38 adoption and has signed an adoption assistance agreement.

1 ~~(f) The adoptive family is legally responsible for the support of~~
2 ~~the child and the child is receiving support from the adoptive~~
3 ~~parent.~~

4 ~~(g) The department or the county responsible for determining~~
5 ~~the child's Adoption Assistance Program eligibility status and for~~
6 ~~providing financial aid, and the prospective adoptive parent, prior~~
7 ~~to or at the time the adoption decree is issued by the court, have~~
8 ~~signed an adoption assistance agreement that stipulates the need~~
9 ~~for, and the amount of, Adoption Assistance Program benefits.~~

10 ~~(h) The prospective adoptive parent or any adult living in the~~
11 ~~prospective adoptive home has completed the criminal background~~
12 ~~check requirements pursuant to Section 671(a)(20)(A) and (C) of~~
13 ~~Title 42 of the United States Code.~~

14 ~~(i) To be eligible for state funding, the child is the subject of an~~
15 ~~agency adoption, as defined in Section 8506 of the Family Code,~~
16 ~~and was any of the following:~~

17 ~~(1) Under the supervision of a county welfare department as~~
18 ~~the subject of a legal guardianship or juvenile court dependency.~~

19 ~~(2) Relinquished for adoption to a licensed California private~~
20 ~~or public adoption agency, or another public agency operating a~~
21 ~~Title IV-E program on behalf of the state, and would have~~
22 ~~otherwise been at risk of dependency as certified by the responsible~~
23 ~~public child welfare agency.~~

24 ~~(3) Committed to the care of the department pursuant to Section~~
25 ~~8805 or 8918 of the Family Code.~~

26 ~~(4) The child is an Indian child and the subject of an order of~~
27 ~~adoption based on tribal customary adoption of an Indian child,~~
28 ~~as described in Section 366.24. Notwithstanding Section 8600.5~~
29 ~~of the Family Code, for purposes of this subdivision a tribal~~
30 ~~customary adoption shall be considered an agency adoption.~~

31 ~~(j) To be eligible for federal funding, in the case of a child who~~
32 ~~is not an applicable child for the federal fiscal year as defined in~~
33 ~~subdivision (n), the child satisfies any of the following criteria:~~

34 ~~(1) Prior to the finalization of an agency adoption, as defined~~
35 ~~in Section 8506 of the Family Code, or an independent adoption,~~
36 ~~as defined in Section 8524 of the Family Code, is filed, the child~~
37 ~~has met the requirements to receive federal supplemental security~~
38 ~~income benefits pursuant to Subchapter 16 (commencing with~~
39 ~~Section 1381) of Chapter 7 of Title 42 of the United States Code,~~

1 as determined and documented by the federal Social Security
2 Administration.

3 (2) The child was removed from the home of a specified relative
4 and the child would have been AFDC eligible in the home of
5 removal according to Section 606(a) or 607 of Title 42 of the
6 United States Code, as those sections were in effect on July 16,
7 1996, in the month of the voluntary placement agreement or in the
8 month court proceedings are initiated to remove the child, resulting
9 in a judicial determination that continuation in the home would be
10 contrary to the child's welfare. The child must have been living
11 with the specified relative from whom he or she was removed
12 within six months of the month the voluntary placement agreement
13 was signed or the petition to remove was filed.

14 (3) The child was voluntarily relinquished to a licensed public
15 or private adoption agency, or another public agency operating a
16 Title IV-E program on behalf of the state, and there is a petition
17 to the court to remove the child from the home within six months
18 of the time the child lived with a specified relative and a subsequent
19 judicial determination that remaining in the home would be
20 contrary to the child's welfare.

21 (4) Title IV-E foster care maintenance was paid on behalf of
22 the child's minor parent and covered the cost of the minor parent's
23 child while the child was in the foster family home or child care
24 institution with the minor parent.

25 (5) The child is an Indian child and the subject of an order of
26 adoption based on tribal customary adoption of an Indian child,
27 as described in Section 366.24.

28 (k) To be eligible for federal funding, in the case of a child who
29 is an applicable child for the federal fiscal year, as defined in
30 subdivision (n), the child meets any of the following criteria:

31 (1) At the time of initiation of adoptive proceedings was in the
32 care of a public or licensed private child placement agency or
33 Indian tribal organization pursuant to either of the following:

34 (A) An involuntary removal of the child from the home in
35 accordance with a judicial determination to the effect that
36 continuation in the home would be contrary to the welfare of the
37 child.

38 (B) A voluntary placement agreement or a voluntary
39 relinquishment.

1 ~~(2) He or she meets all medical or disability requirements of~~
2 ~~Title XVI with respect to eligibility for supplemental security~~
3 ~~income benefits.~~

4 ~~(3) He or she was residing in a foster family home or a child~~
5 ~~care institution with the child's minor parent, and the child's minor~~
6 ~~parent was in the foster family home or child care institution~~
7 ~~pursuant to either of the following:~~

8 ~~(A) An involuntary removal of the child from the home in~~
9 ~~accordance with a judicial determination to the effect that~~
10 ~~continuation in the home would be contrary to the welfare of the~~
11 ~~child.~~

12 ~~(B) A voluntary placement agreement or voluntary~~
13 ~~relinquishment.~~

14 ~~(4) The child is an Indian child and the subject of an order of~~
15 ~~adoption based on tribal customary adoption of an Indian child,~~
16 ~~as described in Section 366.24.~~

17 ~~(5) The nonminor dependent, as described in subdivision (v) of~~
18 ~~Section 11400, is the subject of an adoption pursuant to subdivision~~
19 ~~(f) of Section 366.31.~~

20 ~~(l) The child is a citizen of the United States or a qualified alien~~
21 ~~as defined in Section 1641 of Title 8 of the United States Code. If~~
22 ~~the child is a qualified alien who entered the United States on or~~
23 ~~after August 22, 1996, and is placed with an unqualified alien, the~~
24 ~~child must meet the five-year residency requirement pursuant to~~
25 ~~Section 673(a)(2)(B) of Title 42 of the United States Code, unless~~
26 ~~the child is a member of one of the excepted groups pursuant to~~
27 ~~Section 1612(b) of Title 8 of the United States Code.~~

28 ~~(m) A child shall be eligible for Adoption Assistance Program~~
29 ~~benefits if the following conditions are met:~~

30 ~~(1) The child received Adoption Assistance Program benefits~~
31 ~~with respect to a prior adoption and the child is again available for~~
32 ~~adoption because the prior adoption was dissolved and the parental~~
33 ~~rights of the adoptive parents were terminated or because the~~
34 ~~child's adoptive parents died and the child meets the special needs~~
35 ~~criteria described in subdivisions (a) to (c), inclusive.~~

36 ~~(2) To receive federal funding, the citizenship requirements in~~
37 ~~subdivision (l).~~

38 ~~(n) (1) Except as provided in this subdivision, "applicable child"~~
39 ~~means a child for whom an adoption assistance agreement is~~
40 ~~entered into under this section during any federal fiscal year~~

1 described in this subdivision if the child attained the applicable
2 age for that federal fiscal year before the end of that federal fiscal
3 year.

- 4 (A) For federal fiscal year 2010, the applicable age is 16 years.
- 5 (B) For federal fiscal year 2011, the applicable age is 14 years.
- 6 (C) For federal fiscal year 2012, the applicable age is 12 years.
- 7 (D) For federal fiscal year 2013, the applicable age is 10 years.
- 8 (E) For federal fiscal year 2014, the applicable age is eight years.
- 9 (F) For federal fiscal year 2015, the applicable age is six years.
- 10 (G) For federal fiscal year 2016, the applicable age is four years.
- 11 (H) For federal fiscal year 2017, the applicable age is two years.
- 12 (I) For federal fiscal year 2018 and thereafter, any age.

13 (2) Beginning with the 2010 federal fiscal year, the term
14 “applicable child” shall include a child of any age on the date on
15 which an adoption assistance agreement is entered into on behalf
16 of the child under this section if the child meets both of the
17 following criteria:

- 18 (A) He or she has been in foster care under the responsibility
19 of the state for at least 60 consecutive months.
 - 20 (B) He or she meets the requirements of subdivision (k).
- 21 (3) Beginning with the 2010 federal fiscal year, an applicable
22 child shall include a child of any age on the date that an adoption
23 assistance agreement is entered into on behalf of the child under
24 this section, without regard to whether the child is described in
25 paragraph (2), if the child meets all of the following criteria:

- 26 (A) He or she is a sibling of a child who is an applicable child
27 for the federal fiscal year, under subdivision (n) or paragraph (2).
- 28 (B) He or she is to be placed in the same adoption placement
29 as an “applicable child” for the federal fiscal year who is their
30 sibling.
- 31 (C) He or she meets the requirements of subdivision (k).

32 SEC. 4. No appropriation pursuant to Section 15200 of the
33 Welfare and Institutions Code shall be made for the purposes of
34 this act.

35 SEC. 5. If the Commission on State Mandates determines that
36 this act contains costs mandated by the state, reimbursement to
37 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O