10

Achieving Permanency Goal Custody Transfer to Relatives

TABLE OF CONTENTS

10.1 Introduction 5
10.2 Kin First framework 6
10.2.1 Legal citations 6
10.2.2 Outcomes 6
10.3 Benefits of children and youth living permanently with relatives 7
10.4 Services to achieve goal of Transfer of Custody to Relatives 8
10.4.1 Focus of services 8
10.4.2 Informing relatives of options 10
10.4.3 Assessing prospective relative custodian(s) 11
10.4.4 Preparing prospective relative custodian(s) for legal custody 14
10.4.5 Preparing child or youth for transfer of legal custody 15
10.5 Court procedures for transfer of legal custody to relative 17
10.6 Relative assuming custody of child or youth 18
10.7 Achieving permanency with goal of Custody Transfer to Relative 19
10.8 Kinship permanency options 19
10.9 Overview of relatives becoming foster parents 20
10.9.1 Special circumstances for relative foster families 21
10.10 Overview of relative adopting child or youth 21
10.11 Overview of kinship guardianship assistance 22
10.11.1 Responsible Agency 22
10.11.2 Eligibility Requirements 22
10.11.3 Foster care plan requirements 26
10.11.4 Determining that the goal of adoption is not appropriate 26

10.12 Preparing and partnering with prospective relative custodian(s) 27
10.13 Application process for kinship guardianship assistance 29
10.13.1 Initial review and notice of application receipt 30
10.13.2 Timeframe for acting on completed application 31
10.14 Assessing the family and youth's needs for assistance 31
10.14.1 Assessing family circumstances 31
10.14.2 Assessing basic maintenance needs of the youth 33
10.14.3 Assessing additional supervision and support needs of the youth 35
10.14.4 Assessing health insurance needs of the youth 39
10.14.5 Assessing non-recurring expenses for obtaining legal custody 40
10.15 Negotiating kinship guardianship assistance 42
10.15.1 Role of the Negotiator 43
10.15.2 Role of LDSS during the negotiation process 43
10.15.3 Negotiation process 45
10.15.4 Appealing negotiation results 46
10.16 Executing the Kinship Guardianship Assistance Agreement 46
10.16.1 Executing the agreement for the title IV-E youth 46
10.16.2 Executing the agreement for the non-title IV-E youth 48
10.16.3 Successor guardian 50
10.17 Making kinship guardianship assistance payments 50
10.17.1 Maintenance payments 51
10.17.2 Payment for non-recurring expenses for transferring legal custody 52
10.18 Maintaining responsibilities for kinship guardianship assistance 53
10.18.1 Responsibilities of the relative custodian(s) 53
10.18.2 Responsibilities of LDSS responsible for kinship guardianship assistance 55
10.19 Providing services to the relative custodian and youth 56
10.19.1 Role of LDSS that is responsible for the kinship guardianship assistance .56
10.19.2 Role of the LDSS where the family resides 57
10.19.3 Responsibilities of LDSS when abuse or neglect occurs 59
10.20 Annual affidavit 59
10.21 Making changes to agreement 61
10.21.1 Submitting request for addendum 61
10.21.2 Timeframe for acting on request 62
10.21.3 Assessing overall request for addendum 63

10.21.4 Assessing relevant components of kinship guardianship assistance 63
10.21.5 Executing the addendum.....65
10.21.6 Conducting a VEMAT after signing Kinship Guardianship Assistance Agreement.....65
10.21.7 Assessing conditions warranting continuation beyond 18th birthday 66
10.21.8 Extension of kinship guardianship assistance through Fostering Futures..68
10.22 Terminating/suspending payments and/or agreements.....70
10.22.1 Suspending payments.....70
10.22.2 Terminating maintenance payments.....72
10.22.3 Terminating agreements 73
10.22.4 Terminating extended kinship guardianship assistance through Fostering Futures 74
10.22.5 LDSS actions when relative custodian(s) fail to provide financial support..74
10.22.6 LDSS actions when relative custodian(s) die or become incapacitated 76
10.23 Appeals and fair hearings.....76
10.23.1 Grounds for appeal.....77
10.23.2 Request for appeals 78
10.23.3 Validating the appeal.....78
10.23.4 Summary of facts 79
10.23.5 Administrative hearing.....80
10.23.6 Withdrawal statement.....81
10.23.7 Appeal to Circuit Court 81
10.23.8 Filing complaint of discrimination.....82
10.24 Establishing kinship guardianship assistance paper case record 82
10.25 OASIS case record 85
10.26 Required forms and documentation.....88
10.27 Overview of the State-Funded Kinship Subsidy Program 89
10.27.1 Determining eligiblity 89
10.27.2 Exemptions from the foster home approval process for eligibility determination.....91
10.27.3 Application 91
10.27.4 State-Funded Kinship Subsidy Agreement 92
10.27.5 Payments.....92
10.27.6 Ongoing responsibilities and annual affidavit.....93
10.27.7 Services 94

10.27.8 Termination of agreement and/or payments 94
10.27.9 Appeal 96
10.27.10 Case record....97

10

Achieving Permanency Goal: Custody Transfer to Relatives

10.1 Introduction

The permanency goal of Custody Transfer to Relatives establishes permanent, life-long connections for children and youth in foster care. When the child or youth cannot be returned to his parents or previous custodian, the LDSS, through a Family Partnership Team should explore transferring custody of the child or youth to a relative, including relatives living in another state. The service worker, with the assistance of the team, determines whether the permanency goal of adoption or custody transfer to relatives is in the best interests of the child or youth. When adoption by the relatives is not feasible, transferring custody of the child or youth to relatives often allows the child or youth to experience continuity in family relationships and cultural traditions. Relatives may also be willing to accept placement and custody of siblings. Kinship guardianship assistance or state kinship subsidy, which includes financial supports post-custody transfer, may be available to the relative or fictive kin if certain criteria are met.

10.2 Kin First framework

The local department of social services (LDSS) should operate using a Kin First framework in child protective services, in-home, and foster care cases. Kin First framework in foster care means that LDSS consider kinship placements for the first and only placement while youth are in foster care and that kinship families are engaged and explored at every step in the foster care case with a sense of urgency. When exploring kinship options for youth in foster care, LDSS should "start with yes" and assist kinship families in coming up with solutions to barriers or issues that exist such as financial limits, housing or space issues, or concerns with maintaining relationships with the child's parents.

10.2.1 Legal citations

The legal framework for transferring custody to relatives and for providing foster care services and funding to prevent or eliminate the need for foster care placement are delineated in federal and state law. See the law for complete language by clicking on the citation.

10.2.1.1 Permanency goal of custody transfer to relative

- § 63.2-900
- § 63.2-900.1
- § 63.2-906
- § 63.2-1305

10.2.1.2 Transfer of custody to relative or other interested individual

- § 16.1 278.2

10.2.1.3 Providing foster care services

- § 63.2-905

10.2.2 Outcomes

LDSS shall strive to achieve the following permanency outcomes required in the federal Child and Family Services Review, each with specific outcome measures:

- Permanency Outcome 1: Children and youth have permanency and stability in their living situations.
- Permanency Outcome 2: The continuity of family relationships and connections is preserved for children and youth.

The transfer of custody to a relative helps achieve the following child and youth outcomes:

- Increase the number of children and youth who exit foster care and enter permanent family arrangements; decrease the number of children and youth who age out of foster care without connections to a permanent family.
- Increase the number of children and youth placed with prospective relative custodian(s).
- Reduce the number of children and youth who experience subsequent abuse or neglect.
- Reduce rates of re-entry into foster care among children and youth who exit out-of-home placements.
- Reduce the number of children and youth in foster care with the goal of Permanent Foster Care in response to federal requirements.
- Increase the use of appropriate community-based services.

10.3 Benefits of children and youth living permanently with relatives

Relative placement promotes timely reunification, and placement stability, as children and youth placed with relatives experience fewer placement disruptions than children and youth placed with non-related foster parents. Preserving existing connections and relationships with familiar adults for the child or youth is achieved through relative placement. In many instances, relative placement preserves the continuity of care, relationships, culture, and environment that are essential to the overall well-being of the child or youth. Relative placement maintains the family system as day-to-day decisions continue to be made by adults that the child or youth already knows and understands to be their family. The child or youth continues to participate in family celebrations, traditions, vacations, and activities.[1]

Relative placement facilitates the development of positive self-image, self-esteem, identity, and consequently, may help the child or youth to avoid feeling abandoned by both parents and family. The child or youth placed in relative care continue to feel a sense of belonging, worth, history and value to others.[2]

[1] Source: U.S. Department of Health and Human Services Administration for Children and Families, 2001-2004 Children and Family Service Review Findings.
[2] Excerpts from Relatives Raising Children: An Overview of Kinship Care, Joseph Crumbley & Robert L. Little, (1997), Child Welfare League of America.

National research identifies numerous benefits for children and youth who live with relatives permanently.[3] These benefits include:

- More children achieve permanency, especially older youth.
- More youth emancipate from foster care with permanent connections to family and other supports.
- More children and youth are placed with relatives.
- Children and youth are as safe in relative placements as children and youth in other permanency options.
- Children and youth experience fewer placement changes in relative placements as children and youth in other placements.
- Children and youth spend fewer days in out-of-home care than children and youth in other settings.
- Relatives are more likely to accept sibling groups than other placements.
- Fewer children and youth in relative placements report changing schools (63 percent) than do children and youth in non-relative foster care (80 percent) or those in group care (93 percent).
- More children and youth experience continuity of cultural traditions.
- Children and youth placed with relatives early in their care have fewer behavior problems after three years than children and youth placed in non-relative foster care.
- Children and youth fare as well, if not better, in school performance, physical and mental health, and family functioning than their peers in other placements.

10.4 Services to achieve goal of Transfer of Custody to Relatives

10.4.1 Focus of services

Services to maintain the child's or youth's connections to relatives often begins prior to the child or youth entering foster care and may continue until after a permanent family is achieved for the child or youth. If foster care placement cannot be averted through arranging for relatives to care for the child or youth who cannot live with his parents, the service worker shall continue to diligently search and thoroughly

[3] Sources: Summary of Subsidized Guardianship Waiver Demonstrations (James Bell Associates, July 2009); Center for Law and Social Policy.

examine all viable relative options with a sense of urgency throughout the child's or youth's involvement with the child welfare system. (§ 63.2-900). The service worker shall search for relatives at the time the child enters foster care, annually, and prior to any subsequent placement changes for the child (§ 63.2-901.1).

- The service worker shall notify all family members in writing **within 30 days** of the child's or youth's placement in foster care, informing them of their options to provide care and support for the child or youth (see Section 2.3 for required language to be included in the written notice). The notice should be done **within five (5) days** after removing the child when feasible. Documentation of all contacts shall be made in the OASIS diligent search screen, including the date sent, the response from the relative, and the reasons why specific relatives were not notified. Copies of any correspondence sent to relatives shall be placed in the foster care paper case file. The LDSS has discretion in determining if it is not in the best interest of the child or youth to notify relatives involved in family or domestic violence or listed on the Virginia State Policy Sex Offender Registry. Relatives who have barrier crimes as listed in § 63.2-1719 shall not be considered for the placement of the child or youth (§ 63.2-901.1 E) while the child is in foster care.

- When it is determined that placement with relatives is an appropriate permanency goal for the child or youth, the service worker should discuss with any interested relatives, the options available to them for supporting and providing care for the child or youth (see Section 10.4.2).

- Once a relative has been identified for placement of the child or youth, the primary focus of services for the service worker and family may shift from reunification with the parents or prior custodian(s) to preparing the child or youth for placement with the relative willing to assume custody. In the case of a concurrent plan of reunification and transfer of custody to a relative, the relative shall become an approved provider and the child should be placed with the relative as soon as possible. Services to achieve both goals shall be provided until the goal of reunification is ruled out. Refer to section 7.5.2 Concurrent Planning.

- The service worker should assist the parent, child or youth, and prospective relative custodian(s) to adjust to the change in family dynamics by clarifying and reducing role conflicts. This may be accomplished by the service worker discussing new roles and responsibilities with everyone involved, including the child or youth. This may also be achieved by the service worker recommending family counseling and referring the family to community services that would support the child or youth, relative, and extended family in supporting the changing family dynamics.

- The service worker should assist the prospective relative custodian(s) with finding resources to meet the child's or youth's educational, social, physical health, and mental health needs, including accessing independent living services for youth age 14 and over.

10.4.2 Informing relatives of options

The child or youth may be placed in the care of relatives when he cannot stay at home with his parents and a relative placement is the best alternative for the child or youth. When the LDSS decides to remove the child or youth from his home, the LDSS shall prioritize relatives and seek out a relative placement as soon as the child or youth is at risk of removal. The LDSS shall notify relatives of the removal, explore with relatives their interest and ability to become foster parents for the child, and explain opportunities available through kinship guardianship (see Section 2.3). At a minimum, the LDSS shall invite the relatives to discuss ways to be involved in the child's or youth's life and provide support. The LDSS shall inform and discuss with the relatives other roles, resources, and supports (e.g., mentoring, respite care) they may provide the child or youth (see Section 2.4 of this chapter).

When the LDSS determines that the child or youth will not return home to his parents, there are four options for prospective relative providers that the LDSS shall discuss with interested relatives:

- If the relative(s) are approved foster and adoptive parents, the relatives may adopt the child if the court terminates the parental rights. The child or youth may also be eligible for adoption assistance.

- If the relative(s) are approved foster and adoptive parents, the relatives may assume legal custody through the court and receive kinship guardianship assistance payments or state kinship subsidy payments.

- If the relative(s) are NOT approved foster and adoptive parents, the court may transfer custody to the relatives without the child or youth having been placed with the family already. Kinship guardianship assistance is NOT allowable in this situation; however, state kinship subsidy may be available.

- If the relative(s) are NOT approved foster and adoptive parents, they may become approved foster and adoptive parents to have the child placed in their home to receive the support and services to achieve one of the above outcomes.

These options are also outlined in Section 10.8 and in the Kinship Care: Exploring Options for Relatives of Children in Foster Care brochure.

The LDSS must fully inform and discuss with the relatives:

- All known information about the child's or youth's background and needs, including non-identifying information about the birth family on the Full Disclosure of Child Information Form (see Section 9.10.4).

- The long term needs of children and youth who have experienced trauma.

- The services and supports the child or youth currently requires, and to the extent possible, the services the child or youth will need.

When the LDSS determines that the plan for reunification has not been successful, a Family Partnership Meeting (FPM) should be scheduled (see Section 2.9). At this meeting, a change in the permanency goal should be discussed, including the permanency options of Adoption and transfer of legal custody to the relative. This meeting should be scheduled before a change in goal occurs.

10.4.3 Assessing prospective relative custodian(s)

Before a decision is made to file a petition for transfer of custody to the relatives, the service worker should consider the long term safety, permanency, and well-being for the child or youth when assessing the relatives as the potential legal custodian(s) for the child or youth. The LDSS shall document the relatives' appropriateness as the legal custodian(s) for the child or youth in the paper case record and in a narrative summary in the OASIS contacts screen.

- For the relatives who are assuming custody without becoming foster and adoptive parents, the documentation shall be a written format determined by the LDSS.

- For the relatives who are being approved as foster and adoptive parents, the documentation shall be the Mutual Family Assessment Report as defined in the Local Department Foster and Adoptive Family Home Approval Guidance in Chapter D of the Child and Family Services Manual.

Because the court will consider the appropriateness of the relatives as permanent custodian(s), the LDSS shall assess the prospective relative custodian(s) and consider if they are:

- Willing and qualified to receive and care for the child or youth.

- Willing to have a positive, continuous relationship with the child or youth.

- Willing to protect the child or youth from abuse and neglect and the ability to do so.

- Willing to remain in compliance with any protective order entered on behalf of the child or youth.

- Willing to participate in a court review of the child's or youth's placement with the relative.

The service worker should assess the prospective relative custodian(s) regardless of whether the relatives will:

- Adopt the child or youth;
- Assume custody of the child or youth without becoming foster and adoptive parents; or
- Become foster and adoptive parents for the child or youth in order to adopt the child or assume custody.

The assessment should include observation of actions, discussion of concrete plans, and evidence of demonstrated commitment to the child or youth. The assessment of relatives as prospective custodian(s) should address the areas described in the following sections.[4] If there are needs identified in one or more of the areas described below, the LDSS should address them with the kinship family and assist the family in developing concrete solutions or services to address those needs.

10.4.3.1 Motivation

Motivation may differ in a relative caregiver from what is traditionally observed in a non-relative caregiver. While it is not necessary to analyze the motivation of the relatives, it is important to determine whether or not the relative(s) are positively motivated to provide care for the child or youth (e.g., loyal to the family; attached to the child or youth; desire continuity of family relationships and traditions; want to maintain the child's or youth's identity with the family; and/or want to protect and nurture the child or youth).

10.4.3.2 Household configuration

The relatives' home may consist of permanent, temporary, and/or transient family members. The family may be a nuclear family or multigenerational family. Primary and secondary caregivers may be in the relatives' household due to its composition or as surrogate supports to the child or youth and the relatives. Assessment of both primary and secondary caregivers should include whether the caregivers are consistent in their approaches concerning discipline, nurturance, and supervision.

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[4] Adapted from competency-based curriculum developed by the National Resource Center for Family-Centered Practice and Permanency Planning, March 2002. Based on work of Dr. Joseph Crumbley and Robert Little. "Relatives Raising Children: An Overview of Kinship Care," CWLA Press, Washington, DC. 1997 and Dr. Joseph Crumbley's written materials, 2000.

Regardless of family composition and activities, the identified prospective relative custodian(s) should be able to provide the child or youth with consistent routines, schedules, and care.

10.4.3.3 Birth parents' interaction with prospective relative custodian

It is important to determine that the prospective relative custodian(s), given any interaction with the birth parents, will be able to ensure the safety needs of the child or youth. Discussion with the prospective relative custodian(s) should include, but is not limited to, the following family dynamics:

- The type and frequency of their contact with the birth parents.
- Their relationship with the birth parents in the past and present.
- Their ability to keep the child or youth safe, and when necessary, prevent contact with the birth parents.
- Their ability to negotiate roles and relationships with the birth parents when necessary, including who is responsible for decision-making, nurturing, discipline, support, and communication.
- Their willingness to involve both paternal and maternal birth family members in the life of the child or youth as appropriate.

It is especially imperative that service workers provide kinship families support in this area. Kinship families often have established routines, habits, and relationships with the child's biological parents that can be challenging to change. Ensuring that kinship families are well-informed regarding roles and expectations is especially important. This can include talking through potential scenarios that may occur or providing the kinship family a support group or peer mentor.

10.4.3.4 Prospective relative custodian(s)' ability to provide care, safety, and protection

The service worker should assess the ability of the prospective relative custodian(s) to provide a safe and stable environment for the child or youth, including, but not limited to:

- Housing, food, clothing, and education. (In order to pay for these items, the relative custodian could potentially utilize public assistance or financial assistance such as maintenance payments for kinship foster parents).
- Discipline, limit setting, nurturing, and protection.

- Sources of income to support the child or youth and family. (This includes any income of the child that can assist the prospective relative custodian(s) after custody transfer).

- Necessary agency and community supports to provide permanency for the child or youth.

10.4.3.5 Prospective relative custodian(s)' alternative plan for permanency

The prospective relative custodian(s) should be encouraged to identify supports within the family should they become ill or need respite care for the child or youth. Often in families, the decision making is shared throughout the nuclear and extended family during a crisis. The service worker should assist the prospective relative custodian(s) in identifying the family members who should be involved in the planning and development of alternative plans.

10.4.4 Preparing prospective relative custodian(s) for legal custody

To achieve permanency for the child or youth placed with appropriate prospective relative custodian(s), the planning process should be collaborative and begin early on. The LDSS should involve the child or youth, birth parents, prospective relative custodian(s), Family Partnership team, and Family Assessment and Planning Team (FAPT), as appropriate. The service worker should convene a FPM prior to the actual transfer of custody to assist in linking the child and family to available community resources.

The team should plan the transition to ensure permanency for the child or youth after custody has been transferred. The team should build upon the strengths of the child or youth and the family and respond to their unique needs, as identified through the comprehensive assessment process (see Section 5 of this chapter).

To prepare the prospective relative custodian(s) to assume legal custody of the child or youth, the LDSS, the family, and the team should address the following areas, as appropriate:

- Assisting the child or youth and the prospective relative custodian(s) in identifying and addressing feelings of grief and loss and setting appropriate boundaries with the birth parent.

- Developing a plan for visitation. Progressive visitation should be used to facilitate relationship development and provide opportunities for the relative to become comfortable in their new role. LDSS shall not place the child with the relative unless they are an approved provider. Trial home visits with relatives are only allowable if the relative is the child's prior custodian, as outlined in Section 8, since this would qualify under a reunification goal. They may, however, have overnight visitation with the relative in preparation for the transfer of custody.

- Explaining, discussing, and responding to all questions about the legal process for transferring custody of the child or youth from the LDSS to the prospective relative custodian(s) (see Section 10.5).

- Informing the prospective relative custodian(s) who assume custody of the youth who exits foster care within 45 days after reaching his 17th birthday in federal fiscal years 2014, 2017, or any third year thereafter that:

    - The LDSS is required to ask the youth to participate in a survey during the 45 days after the youth's 17th birthday to collect and report baseline information on the youth as part of the National Youth in Transition Database (NYTD).

    - The youth may then be selected to participate in an outcomes survey when the youth turns age 19, and then again when the youth turns age 21.

    - The purpose of the survey is to assess the foster care system with regards to life outcomes for youth (e.g., increasing youth financial self-sufficiency, improving youth educational attainment, increasing youth connections with adults, reducing homelessness among youth, reducing high risk behavior among youth, and improving youth access to health insurance).

  For more information on NYTD, see Section 13.13 of this chapter.

- Informing key parties involved with the child or youth that custody has been transferred (e.g., school, health insurance).

- Developing a plan for visitation and communication between the child or youth, the birth parents, siblings if separated, appropriate family members, and other individuals who are significant to the child or youth. The plan shall take into account the wishes of the child or youth, consistent with the child's or youth's developmental level. The plan shall specify the frequency of visitation or communication, identify who is responsible for ensuring the visits or communication take place, and state any restrictions or limitations to the visits or communications. The communications may include, but are not limited to, face-to-face visits, telephone calls, email correspondence, and video conferencing.

10.4.5 Preparing child or youth for transfer of legal custody

In addition to preparing the prospective relative custodian(s) for the custody transfer, it is important to prepare the child or youth for the change in custody.

The service worker should facilitate open and honest communication between the child or youth, the birth parents, extended family, and the potential relative

custodian(s) to address any issues that may arise as a result of the transfer of custody. The forums for this discussion may include both formal and informal activities, including but not limited to:

- FPMs.
- Visitations with the child or youth.
- Conversations among the birth parents, child or youth, and the potential relative custodian(s).
- Formal family therapy.

To prepare the child or youth for the transfer of custody, the service worker should, in collaboration with the birth parents, the relative custodian, and any other significant individuals (e.g., a therapist), determine how to:

- Explain to the child or youth, consistent with his developmental level, why he will not be returning to his birth family home to live and what he can expect when living with his relative custodian(s).
- Discuss the child's or youth's concerns and feelings about the changes occurring and assist the youth in identifying questions he may want to have answered (e.g., will I be able to see my parents/siblings; how long do I have to live with my relative; what if I don't like living with my relative).
- Discuss with the child or youth the plan to allow continued visits, letters, and phone calls between siblings if the child or youth is not placed with his siblings.
- Discuss the court process with the child or youth; the time frames for the change in placement and/or custody and the possibility that the judge may ask him his wishes regarding living with a relative.
- Developing a plan for visitation. Progressive visitation should be used to facilitate relationship development and provide opportunities for the relative to become comfortable in their new role. LDSS shall not place the child with the relative (including a trial home visit) unless they are an approved provider. They may, however, have overnight visitation with the relative in preparation for the transfer of custody.

Additionally, the child or youth's input should be obtained in order to assess the following decisions:

- The plan for transfer of custody to the prospective relative custodian(s) will meet the child's or youth's needs for a stable and permanent arrangement.

- The expectations of the relative for daily family living, (including but not limited to chores, house rules, curfews, and school expectations) are understood by the child or youth and to determine if the child or youth has any questions or concerns they want to address. This discussion should assist the child or youth in identifying, negotiating, and preparing for placement in the relatives' home.

- The ongoing plan for communication with birth parents, siblings, significant adults, and others important to the child or youth is clear and acceptable. This plan should be with the input of the child or youth and in compliance with his communication needs and wishes.

- The supports and services available to the child or youth to maintain educational success, engage in appropriate extracurricular activities, and meet his physical, social, and mental health needs.

- The plan to assist the youth in developing independence and adult living skills with the support of the prospective relative custodian(s) is feasible and agreed to by all involved.

- The understanding and agreement of the older youth and the prospective relative custodian(s) that the youth participate in the National Youth in Transition Database (NYTD) after leaving custody of LDSS, when applicable.

10.5 Court procedures for transfer of legal custody to relative

LDSS shall follow all procedures for the transfer of legal custody of the child or youth to the prospective relative custodian(s). The LDSS shall:

- Petition the Virginia Juvenile and Domestic Relations District Court to transfer legal custody of the child or youth to the prospective relative custodian(s). Thirty (30) days prior to the hearing, the LDSS shall submit to the court:

    - Permanency Planning Hearing Petition.

    - Foster Care Plan Transmittal Form.

    - New Foster Care Plan Review Form.

- Recommend that custody transfer to the prospective relative custodian(s) is in the best interest of the child or youth.

The court order transferring custody to a relative may provide for, as appropriate, any terms or conditions which would promote:

- The interest and welfare of the child or youth.

- Ongoing provision of social services to the child or youth, and the custodian.

- Court review of the child's or youth's placement (§ 16.1-278.2 A1).

Based upon the finding by the judge of the Virginia Juvenile and Domestic Relations District Court that transfer of custody is in the best interest of the child or youth, the judge may approve the LDSS plan for the child or youth and enter the order transferring the legal custody of the child or youth from the LDSS to the relative custodian(s).

The LDSS shall document the hearing on the Court/Hearing Details screen and the Hearing Detail Results screen in OASIS.

A copy of the petition and signed court order shall be placed in the foster care paper case record, when relevant.

10.6 Relative assuming custody of child or youth

When transfer of custody to a relative is determined to be in the best interest of the child or youth and a relative has been identified who is willing and appropriate to care for the child or youth, the LDSS shall first ensure that the relative's home is safe and that the relative will keep the child or youth safe from any further maltreatment. The LDSS shall complete with the relative's and other adult household members' permission:

- A state name search criminal background check, and a CPS Central Registry search on all adults residing in the home.

- A sworn statement or affirmation disclosing whether or not the individual has a criminal conviction or is the subject of any pending criminal charges within or outside of Virginia and whether or not the individual has been the subject of a founded complaint of child abuse or neglect within or outside of Virginia.

For more information on conducting background checks, see the Office of Background Investigation page on Fusion.

The results of the background check do not prohibit the agency from recommending custody transfer of the child to the relative seeking custody. The standards set in § 63.2-901.1, Code of Virginia, are specific to approving a relative as a kinship care resource home. However, the agency shall notify the court of the results of the completed background checks and inform the court that the agency would not be able to approve the relative as a kinship resource home due to the findings in the criminal background or Central Registry checks.

The LDSS shall document the reasons why they decided to recommend custody transfer of the child or youth to a relative in the OASIS contacts screen and maintain the results of the criminal background check in the prospective relative custodian(s)' file.

The LDSS should discuss with the relative as soon as possible the option of transferring legal custody of the child from the LDSS to the relative. The LDSS should inform, discuss, and examine with the relatives:

- The benefits to the child or youth in leaving foster care to live permanently with the relatives.
- The impact to the child or youth of remaining in foster care. The longer the child or youth spends in foster care, the potential for trauma and difficulty in forming strong relationships increases. The effects of being in foster care can have life-long impact on the child or youth.
- The authority and responsibility of the relatives as legal custodian(s) of the child or youth to ensure his protection and make all decisions for the child or youth (e.g., enrolling in school; approving medical procedures).
- The financial impact of the relatives assuming legal custody of the child or youth regardless of whether the family will receive kinship guardianship assistance or not.
- The availability of family, health insurance, community, government, and other resources to help meet the child's needs.

Prior to transferring legal custody, the service worker should assist the relatives in accessing and initiating services, including filling out forms to establish eligibility for services. The Relative's Guide to Services Post-Custody Transfer should be discussed with and provided to the relative. Reviewing this document with the relative is particularly important when the relative is receiving custody without kinship guardianship, adoption, or kinship subsidy assistance.

10.7 Achieving permanency with goal of Custody Transfer to Relative

The goal of Custody Transfer to Relative is achieved when the child or youth is placed with relatives and legal custody of the child or youth is transferred to a relative. The goal of custody transfer to a relative can also include fictive kin for the purposes of establishing eligibility for the Kinship Guardianship Assistance Program or the State-Funded Kinship Subsidy Program(§ 63.2-1306).

10.8 Kinship permanency options

There are multiple avenues to permanency which can be achieved for a child in foster care with a kinship parent. Kinship parents may:

- Become approved as a foster/adoptive parent and adopt the child (See Section 10.10 and Section 9 of Foster Care Guidance and Section 2 of Adoption Guidance);

- Become approved as a foster parent and receive custody of the child along with continued financial assistance through KinGAP (Section 10.11 through 10.26) or the state kinship subsidy program (Section 10.27);

- Receive custody without becoming a foster parent and receive financial assistance through the kinship subsidy (Section 10.27); or

- Receive custody without becoming a foster parent and receive no continued foster care related financial assistance (Refer to The Relative's Guide to Services Post-Custody Transfer for services the relative may be eligible for outside of permanency related assistance).

10.9 Overview of relatives becoming foster parents

The service worker should discuss with the relatives the differences between assuming custody of a child or youth in foster care and becoming foster parents for that child or youth. Relatives need to understand that being a foster parent includes much more structured involvement from the child welfare system because the LDSS holds legal custody of the child or youth. In order for the relative to be eligible for kinship guardianship assistance, the relative shall become an approved foster parent. The requirements to become a foster parent in Virginia are the same for a relative as a non-relative (see Local Department Foster and Adoptive Family Home Approval Guidance in Chapter D of the Child and Family Services Manual). However, the LDSS may use temporary waivers to approve kinship foster families to allow for immediate placement. The LDSS should review at least the following information with the relative:

- The requirements to be approved as a foster parent (including criminal background checks, training, and the home study process).

- The relative's involvement in service planning and services for the child or youth, participating in at least monthly visits by the service worker with the relatives and child or youth, and attending court hearings, administrative panel reviews, and FAPT meetings.

- The monthly payments available to help meet the needs of the child or youth for basic maintenance and for additional supervision and support when required. The service worker should explain that these funds supplement the resources of the relatives to help them care for the child or youth. These funds are not intended to be a salary for the relative foster parents nor cover the full costs of raising the child or youth.

- The eligibility requirements for kinship guardianship assistance if the relative foster parent provides permanency for the youth by taking custody.

- The LDSS role in assisting in obtaining services and supports needed by the child or youth (e.g., Medicaid eligibility, therapeutic services).

- The relative's role in arranging visitations with the birth parents and siblings, transporting the child or youth, and assisting in carrying out the visits, particularly when the goal for the child or youth is to return home.

- The role of the relatives and health care professionals in meeting the child's or youth's medical, dental, and behavioral health care needs.

If the relative or fictive kin's request to become a foster parent is denied, the local agency must provide the relative or fictive kin information regarding their right to appeal the denial as outlined in Section 1.5.1 of Resource Family guidance.

10.9.1 Special circumstances for relative foster families

The special circumstances related to the rights of relative/kinship foster parents with whom a child in foster care has been placed for six (6) consecutive months are set out in §63.2- 900.1 of the Code of Virginia:

- As long as the home continues to meet foster and adoptive family home approval standards, unless the kinship foster parent consents to the removal, no child shall be removed from the physical custody of the kinship foster parent except by a court order or child abuse and neglect procedures pursuant to § 63.2-1517 of the Code of Virginia; or

- If a change in the placement of the child is the agreed upon outcome of a FPM, then the child can be moved. The outcome of the meeting will not be valid if the relative foster parent and birth parent(s) do not attend. If the child is old enough to participate, the child should also attend. If consensus is not achieved in the FPM, then the LDSS should file a petition to obtain a court order in order to remove the child from the home.

These special circumstances also apply to foster parents who are fictive kin, beginning July 1, 2020 (§ 63.2-900.1).

10.10 Overview of relative adopting child or youth

Relatives may become the adoptive parent of the child or youth if the parental rights of the birth parents have been terminated by the court. Relatives who adopt assume all the rights and responsibilities that once belonged to the birth parents. Adoption is a life-long permanent relationship, entitling a child or youth to all of the benefits and rights of a biological child or youth within the adoptive family. Adoption is a more permanent family connection for the child or youth than the transfer of custody. The service worker should discuss with the relatives some of the changes that occur when they adopt the child or youth, including, but not limited to:

- The relatives have full decision-making authority over the child or youth. The birth parents cannot petition the court for the purpose of custody or visitation with the child or youth.

- The relatives may choose to enter into a Post-Adoption Contact and Communication Agreement (PACCA) with the birth parents if desired and if in the best interest of the child or youth. A PACCA is a mutually developed agreement that allows the child or youth to continue having contact with the birth parents under circumstances developed in the agreement.

- The child or youth who has documented special needs may be eligible to receive adoption assistance. Such assistance may be available to help address the basic maintenance needs and required additional supervision and support needs of the child or youth, non-recurring expenses of the relatives directly related to the legal adoption of the child or youth, and required services and supports directly related to the child's or youth's special needs (e.g., counseling and crisis intervention).

- After termination of parental rights, a biological parent who may have been ordered to pay child support will no longer have this obligation.

For more information about the process of adoption and the child or youth's eligibility requirements for adoption assistance, see the Child and Family Services Manual, Chapter F. Adoption, Section 2, Adoption Assistance, and Section 9 of Foster Care Guidance.

10.11 Overview of kinship guardianship assistance

As of July 1, 2018, kinship guardianship assistance is available to eligible relative custodian(s) as an additional path to permanency for certain youth in foster care. If all of the eligibility criteria are met, the relative custodian(s) are provided financial support from the day the court transfers custody to them until the youth turns 18, or until they turn 21, if eligible. This option provides legal permanence for the youth while ensuring the youth's needs continue to be met, thereby greatly reducing the risk of the youth re-entering foster care. The relative custodian(s) are also eligible to access CSA funding in their community to obtain any additional services the youth may need that are not covered by Medicaid/insurance. As of July 1, 2020, fictive kin are also potentially eligible for kinship guardianship assistance as long as they meet the other eligibility requirements. For kinship guardianship assistance guidance, the terms "relative" and "relative custodian" include fictive kin.

10.11.1 Responsible Agency

All LDSS shall implement kinship guardianship assistance for relatives who take custody of youth from foster care and meet the eligibility criteria. The LDSS holding custody of the youth prior to custody being transferred to the relative is responsible for determining eligibility and providing the kinship guardianship assistance.

10.11.2 Eligibility Requirements

To determine eligibility for kinship guardianship assistance, the LDSS shall evaluate if all of the following requirements are met for both the child or the youth and the

prospective relative custodian(s). The LDSS may also determine a sibling of the eligible youth is eligible for kinship guardianship assistance.

10.11.2.1 Determining eligibility for youth

The youth is eligible for kinship guardianship assistance when the following requirements are met:

- The youth shall be under 18 years of age prior to the transfer of legal custody to the relative.
- The youth shall be in foster care as a result of:
  - Commitment to the LDSS by any court of competent jurisdiction as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child; or
  - A voluntary placement agreement such as an entrustment or noncustodial agreement with the birth parents or guardians.
- The permanency options of Return Home and Adoption are not appropriate for the youth as documented in the youth's foster care plan (Section 10.11.3).
- The youth shall be in the continuous custody of the LDSS for at least six (6) consecutive months.
- The youth shall have been eligible for foster care maintenance payments while residing in the home of the prospective relative custodian for at least six consecutive months.
- The youth shall demonstrate a strong attachment to the prospective relative custodian(s).
- The youth shall be consulted regarding the transfer of custody to the relative if the youth is age 14 or older.

10.11.2.2 Determining eligibility of prospective relative custodian(s)

Prospective relative custodian(s) are eligible if they meet all of the following requirements. The prospective relative custodian(s) shall:

- Be related to the youth by blood, marriage, or adoption.
- Have a strong commitment to permanently care for the youth.

- Be an approved relative foster and adoptive parent for the youth for at least six (6) consecutive months.

- Be willing to obtain legal custody of the youth.

10.11.2.3 Determining placement of at least six (6) consecutive months

The six (6) months of consecutive placement may start on the date the youth is placed in the approved foster home of the prospective relative custodian(s).

When necessary, the LDSS may utilize temporary waivers to approve kinship foster families to allow for immediate placement. The required steps for the process of immediate kinship home placement and subsequent foster home approval are outlined in Section 1.5 of Resource Family Guidance.

The service worker may determine the placement is consecutive for six (6) months even when the youth is temporarily absent from the placement for 14 or fewer consecutive days and the youth's placement continues with the same provider. The absence may include run away, respite care, medical hospitalizations, trips, or vacations. If the absence exceeds 14 days or the youth does not return to the same placement, the placement shall not be determined consecutive.

In addition to considering the length of time the youth is placed outside of the home, the service worker should also assess the stability of the relative placement while the youth is away from home by considering:

- The needs of the youth;

- The reasons for the short term absence from the home;

- The involvement of the prospective relative custodian(s);

- The youth's attachment to the prospective relative custodian(s).

If the youth is placed outside of the home for more than fourteen (14) days or if the service worker determines the youth's placement in the prospective relative custodian(s)' home has not met the criteria for six (6) consecutive months as described above, then kinship guardianship assistance is not an option until the requirement of at least six (6) consecutive months of foster care placement has been met.

10.11.2.4 Siblings of eligible youth placed in the same home

LDSS shall make diligent efforts to place siblings together when this is in the best interests of the children (see section Section 6.4). The siblings of an eligible youth may be placed with the same prospective relative custodian(s) if

the LDSS and the prospective relative custodian(s) agree that the placement is appropriate and in the best interest of the siblings and the eligible youth. A Kinship Guardianship Assistance Agreement may be established and payments may be paid on behalf of each sibling of the eligible youth. Siblings do not have to be placed with the prospective relative custodian(s) simultaneously with the eligible youth to qualify for kinship guardianship assistance.

The sibling does not need to meet the eligibility criteria outlined in Section 10.11.2.1 in order to receive guardianship assistance maintenance payments and non-recurring expenses related to the costs of obtaining legal custody if the agency and the prospective relative custodian(s) agree on the appropriateness of the placement of the sibling with the relative custodian(s).

To qualify as a sibling, the sibling shall have at least one parent in common with the eligible youth by blood, marriage, or adoption. The sibling shall be consulted regarding the relative custody arrangement, if age 14 or older. The sibling does not have to be placed in the home of the prospective relative custodian(s) for at least six consecutive months.

If the sibling is not placed simultaneously with the eligible youth, the prospective relative custodian(s) shall:

- Be an approved foster and adoptive parent at the time the sibling is placed in the home (see Local Department Resource, Foster, and Adoptive Family Home Approval Chapter).
- Have a strong commitment to permanently care for the sibling.
- Be willing to obtain legal custody of the sibling.

If the prospective relative custodian(s) are no longer approved providers, then the prospective relative custodian(s) shall go through an approval process (see Section 1.5 of Resource Family Guidance).

When joint placement of the sibling with the eligible youth is not appropriate or feasible, the service worker shall develop a plan to encourage frequent and regular visitation and communication between the siblings. The plan should be developed within 15 calendar days after placement. The plan shall take into account the wishes of the youth, consistent with the youth's developmental level. It shall specify the frequency of visitation or communication, identify who is responsible for ensuring the visits or communication take place, and state any requirements, restrictions, or limitations to the visits or communications (§ 63.2-900.2). The communications may include, but are not limited to, face-to-face visits, telephone calls, email correspondence, and video conferencing.

If contact is not in the best interest of either youth, the service worker shall document the reasons why frequent visitation and/or communication is contrary

to the safety and well-being of the child(ren). Additionally, the service worker shall consider what steps should be taken in the future to reassess the appropriateness of contact and ensure it is reassessed on a regular basis.

10.11.2.5 Screening the child or youth to determine eligibility

The LDSS should complete the Kinship Guardianship Assistance Screening Tool to ensure that the youth meets all the criteria for eligibility. The LDSS shall maintain documentation to support the eligibility determination in OASIS and the supporting documents in the kinship guardianship assistance case record. The screening tool is also used to document the funding source for the kinship guardianship assistance payments.

10.11.3 Foster care plan requirements

For any youth with the goal of Custody Transfer to a Relative with kinship guardianship assistance, the service worker shall include the following in the youth's foster care plan:

- The steps that the LDSS has taken to determine that the goals of reunification and adoption (See Section 10.11.4) are not appropriate for the youth.
- The reasons for any separation of siblings as a result of the placement.
- The reasons why placement with an appropriate relative through a Kinship Guardianship Assistance Agreement is in the youth's best interests.
- The ways in which the youth meets eligibility requirements for the kinship guardianship assistance payment.
- The efforts the LDSS has made to discuss adoption by the relative custodian as a more permanent alternative to legal guardianship and documentation of the reasons why the relative custodian has chosen not to pursue adoption.
- The efforts made by the LDSS to discuss with the youth's parent(s) the kinship guardianship assistance arrangement. Efforts can include sending letters or conducting person locator searches and using other diligent search tools to locate the parent, if the agency is unable to have a discussion with the parent because they are unable to be located or are not willing to participate in the discussion.

10.11.4 Determining that the goal of adoption is not appropriate

Before the service worker can determine that the goal of adoption is not appropriate, they must first fully explore adoption as a permanency option for the child. The service worker must include documentation of the following in the child's case record:

- The multiple efforts the service worker has made to explore adoption with the relative custodian as a more permanent alternative to legal guardianship and documentation of the reasons why the relative custodian has chosen not to pursue adoption;

- The service worker provided Supporting Your Child's Path to Permanency to the parent(s) and the option of voluntary termination of parental rights was discussed with the parent(s); and

- The services that were provided to the parent(s), relative custodian, and/or child to explore adoption therapeutically and, if no services were provide, the rationale behind not providing the services.

If the relative caregiver does not wish to pursue adoption, the worker should assess whether adoption and termination of parental rights is in the best interest of the child, including:

- The relative caregiver's rationale for not wishing to pursue adoption;

- How long the child has been placed in the relative's home;

- The impact of removing the child from the relative's home to be adopted by another relative or a foster parent; and

- Whether the court would have to approve the child's change in placement in accordance with § 63.2-900.1.

It is important to note that placement with a relative is an exception to the requirement to file for termination of parental rights at 15 months.

10.12 Preparing and partnering with prospective relative custodian(s)

The service worker should continue to strengthen the collaborative partnership with the prospective relative custodian(s) by:

- Creating a supportive environment for conversations and building trust;

- Being open and transparent in communication; and

- Understanding and respecting the prospective relative custodian's strengths, concerns, and family circumstances.

To help prepare the prospective relative custodian(s) assume legal custody of the youth, provide a permanent family for the youth, and prevent or eliminate the youth's need for foster care placement after custody has been transferred, the service worker, in collaboration with the family and the Family Partnership Team, as appropriate, should:

- Prepare the prospective relative custodian(s) for the process of obtaining legal custody of the youth (see Section 10.5).

- Identify the financial assistance, services, and/or supports the youth is currently receiving, including the provider, frequency, and monthly cost when applicable and known.

- Inform the prospective relative custodian(s) of their responsibilities for obtaining ongoing services to address the youth's developmental, medical, dental, and/or behavioral health care needs. Identify resources that may be available to help meet the needs of the youth and/or the family.

    - Brainstorm the support network of extended family, friends, and neighbors.

    - Identify family resources and community organizations (e.g., private health insurance, faith-based organizations, community centers, cultural organizations).

    - Identify community and government agencies (e.g., local health department, the schools).

    - Explain the process for requesting CSA services through the FAPT to prevent or eliminate the need for foster care placement (see Section 13.8).

- Identify whether the youth is currently receiving social security benefits and how that will be addressed once they enter into the Kinship Guardianship Assistance Agreement (see section 10.14.2).

- Identify whether the youth is currently receiving other retirement or disability benefits (e.g. Veterans benefits, Railroad Retirement benefits), life insurance benefits, and/or trust fund payments related to a birth parent.

- Ensure the case has been referred to the Division of Child Support Enforcement (DCSE) to pursue financial support for the youth from the birth parents (see Section 4.7) and revoke any good cause determination that has already been made. The LDSS must notify the DCSE that the case has transitioned to KinGAP and that the child support case needs to remain open, using the Notification to DCSE of Foster Care Case Change to KinGAP Form.

- Inform the prospective relative custodian(s) of their responsibility for ensuring the youth is a full time student or completes secondary school when the youth is of compulsory age for school attendance in Virginia (i.e., the child was age five (5) on or before Sept 30 of the current school year through his or her 18th birthday as defined in § 22.1-254 A).

    - The prospective relative custodian(s) shall report this information on the annual affidavit.

- The Kinship Guardianship Assistance Agreement includes a provision for the prospective relative custodian(s) to authorize the LDSS to use the youth's State Testing Identification (STI) number, when applicable, to document the youth's enrollment in school and to obtain educational outcome information from the Virginia Department of Education on children and youth who receive kinship guardianship assistance funds. Only non-identifying aggregate educational outcome information on youth with kinship guardianship assistance will be reported publicly.

- Inform the prospective relative custodian(s) and the youth of independent living services available for youth age 16 and over who left foster care and are receiving kinship guardianship assistance. Independent living services for youth may be accessed through Project LIFE when needed services are requested by the family or the youth. Independent living services may also be available through the LDSS responsible for providing services to the family, based on the availability of Independent Living funds awarded to the LDSS. Services include a broad range of activities, educational support, job preparation, and training to help the youth prepare for adulthood. For information on types of services, see Section 14.7.

- Inform the prospective relative custodian(s) and the youth of Educational Training Voucher (ETV) program available for youth age 16 and older who left foster care and are receiving kinship guardianship assistance. The ETV Program provides federal and state funding to help eligible youth with expenses associated with college and post-secondary vocational training programs. Funding of up to $5,000 per year OR the total cost of attendance per year (whichever is less), per eligible youth. For information on ETV, see section 13.11.

- For youth age 17 or older, inform the prospective relative custodian(s) and the youth of the LDSS requirement to conduct the National Youth in Transition Database survey. For information about the survey please see section 13.13.

10.13 Application process for kinship guardianship assistance

After the LDSS determines the youth and the prospective relative custodian(s) are eligible for kinship guardianship assistance, the LDSS shall provide the prospective relative custodian(s) with the Virginia Application for Kinship Guardianship Assistance.

This tool helps the prospective relative custodian(s):

- Plan for integrating the youth into their family permanently.

- Evaluate the total resources they have available to address the needs of the youth.

- Identify the financial assistance they may need in order to assume custody and meet the needs of the youth.

The application should be completed by the prospective relative custodian(s) with the LDSS service worker.

The prospective relative custodian(s) shall sign and submit the completed Application for Kinship Guardianship Assistance to the LDSS. Letters, other written requests, and verbal requests for kinship guardianship assistance do not constitute an official request and do not initiate the time frames for processing.

10.13.1 Initial review and notice of application receipt

Within 14 days after receiving the Application for Kinship Guardianship Assistance, the LDSS should:

- Review the application to determine whether the application is complete.
- Notify the prospective relative custodian(s) in writing that the application was received and its status:
  - **The application is complete.** The notification should include the date the application was received. It should state that the LDSS and the prospective relative custodian(s) have 90 days to sign the Kinship Guardianship Assistance Agreement.
  - **Additional information is needed.** The notification shall state the specific information necessary to complete the application. It should advise the prospective relative custodian(s) to submit the information by email, phone, or in person within 30 days from the notice date.
  - **The application is denied** when relatives submit the application and the LDSS determines the youth and/or the prospective relative custodian(s) are not eligible for kinship guardianship assistance. The Family Services Notice of Action shall be used to communicate this is writing and shall clearly state the reason(s) for the denial, provide information on the relatives' right to appeal within 30 days of receiving the notice of denial, and provide information on the fair hearing process. No further action is required by the LDSS on the application.

Note: If Custody is transferred to the relative prior to the six (6) month placement requirement being met and the Kinship Guardianship Assistance Agreement being signed, the family will not be eligible for kinship guardianship assistance.

10.13.2 Timeframe for acting on completed application

Once the LDSS receives the completed Application for Kinship Guardianship Assistance and all required documentation:

- The LDSS and the prospective relative custodian(s) should begin the assessment and negotiation process as quickly as possible.
- The LDSS and the prospective relative custodian(s) should fully discuss the general provisions required for kinship guardianship assistance as delineated in the binding Kinship Guardianship Assistance Agreement. They should complete and sign the agreement within 90 days from the date the LDSS received the completed application and all required documentation.
- **The local board, or its designee, and the prospective relative custodian(s) shall sign the Kinship Guardianship Assistance Agreement prior to the transfer of legal custody of the youth from the LDSS to the relative custodian(s).**
- The effective date of the Kinship Guardianship Assistance Agreement is the date the judge signs the court order transferring legal custody of the youth from the LDSS to the relative custodian(s).

10.14 Assessing the family and youth's needs for assistance

10.14.1 Assessing family circumstances

The LDSS should begin the assessment process by facilitating conversations with the prospective relative custodian(s) about the needs of the youth, the family circumstances of the prospective relative custodian(s), and the types of assistance they feel they need to obtain legal custody of the youth, meet the youth's needs, and prevent the youth from returning to foster care. Family circumstances include the prospective relative custodian(s)' overall ability to meet the immediate and future needs of the youth and to incorporate the youth into their home, in relation to their current lifestyle and standard of living, as well as their future plans.

The prospective relative custodian(s) provide information on their family circumstances in the application for kinship guardianship assistance. The purpose of this information is to assist the prospective relative custodian(s) in:

- Planning for integrating the youth into their family permanently.
- Evaluating:
    - The total funds they have available for the youth, taking into account their financial resources and expenses for the youth.

- Other resources available to help address the needs of the youth (e.g., resources from family, neighbors, faith-based community, private health insurance, schools, and other government programs).

- The financial assistance and/or services they may need in order to assume custody, to meet the needs of the youth, and to prevent the youth from returning to foster care.

- Negotiating with the LDSS the terms for the kinship guardianship assistance for the youth.

- Understanding the type of services they can request from the FAPT.

This information is not used in determining the youth's eligibility for kinship guardianship assistance. It is also not the sole factor to be used in assessing family circumstances or in determining the amount of kinship guardianship payments.

The LDSS should review the information that the prospective relative custodian(s) provide on the Application for Assistance and clarify any information as needed. The LDSS should assure the prospective relative custodian(s) that they will keep the information confidential.

The LDSS should discuss with the prospective relative custodian(s):

- If the prospective relative custodian(s) anticipate any changes in the near future that will increase or decrease the financial resources they have available to support the youth (e.g., different financial resources, different people to support on a regular basis).

- In what ways the prospective relative custodian(s) feel this information reflects their family circumstances.

- What additional information the prospective relative custodian(s) can share to better understand their family circumstances.

- Whether the prospective relative custodian(s) can spend any funds differently to help meet the needs of the youth.

The LDSS makes any adjustments to the application that the prospective relative custodian(s) identify and shares information from the application calculations with the prospective relative custodian(s). This process helps the prospective relative custodian(s) assess and understand the resources they have available to care for the youth. The prospective relative custodian(s) also refer to this information during the negotiation process for kinship guardianship assistance for the youth.

10.14.2 Assessing basic maintenance needs of the youth

After assessing family circumstances, the LDSS shall discuss with the prospective relative custodian(s) the basic maintenance available for the youth. The basic maintenance payment helps the prospective relative custodian(s) address the youth's basic needs for housing, food, clothing, transportation and/or personal incidentals. A supplemental clothing allowance over and above the basic maintenance payment is not an allowable payment in kinship guardianship assistance.

The LDSS should discuss the following factors with the prospective relative custodian(s):

- The basic maintenance payment is based on the youth's age rate for foster care maintenance rates (see Section 18.1.3). The LDSS should explain that at no time shall the payment exceed what would have been paid if the youth had remained in foster care (Social Security Act, Title IV, § 473 (d) (2) [42 U.S.C. 673]).

- Other forms of assistance the youth may receive:

  - Social Security benefits due to the retirement, death, or disability of a birth parent. The youth may continue to be eligible for benefits connected to the birth parents.

  - SSI payments if the youth has a disability. If the youth is currently receiving disability payments while in foster care, once custody is transferred the relative custodian will need to apply to become the payee. The LDSS should inform the prospective relative custodian(s) that they may choose to apply to receive SSI payments for an eligible youth and receive kinship guardianship assistance maintenance payments concurrently, or to obtain payments solely from one program. The LDSS should encourage the prospective relative custodian(s) to contact a Social Security representative at 1-800-772-1213 to discuss their situation. They may also visit the Social Security Administration (SSA) website at http://www.socialsecurity.gov.

  - The prospective relative custodian(s) may choose to:

    - Reduce the basic maintenance payment they receive based on the amount of SSI the youth is entitled to receive and use the SSI funds to help meet the maintenance needs of the youth.

    - Decline the basic maintenance payment and receive only SSI for the youth.

- Receive only the basic maintenance payment and not continue SSI payments for the youth. However, if the youth does not receive SSI benefits for 12 months, the youth is no longer eligible for SSI. The relative custodian(s) may reapply for SSI benefits in the future, or the youth may apply for Social Security Disability Insurance (SSDI) benefits after age 18 as an adult disabled since childhood. The youth will need to meet all eligibility requirements in order to receive benefits.

The LDSS should serve as a resource for the prospective relative custodian(s) on the kinship guardianship assistance program as they make this decision (Federal Child Welfare Policy Manual, Subsection 8.4D.1).

- Other retirement or disability benefits (e.g. Veterans benefits, Railroad Retirement benefits), life insurance benefits, and/or trust fund payments related to a birth parent.

- The amount of funds the prospective relative custodian(s) identify they have available to care for the youth (see Section 10.14.1 and the calculation at the end of Section II on the application for any remaining funds the prospective relative custodian(s) have available for the youth.) For example, the LDSS worker should inform the prospective relative custodian(s) that based on the information they provided, they have "x" dollars available to help care for the youth after subtracting the expenses for the youth from the financial resources they have available for the youth. The LDSS should ask the prospective relative custodian(s) what amount they need on a monthly basis to help address the basic maintenance need of the youth, given the resources they have available. The Worksheet for Assessing and Negotiating Assistance may be used as an additional resource.

- The amount of basic maintenance the prospective relative custodian(s) request, if they choose to receive less than the amount available.

- The length of time the prospective relative custodian(s) choose to receive the basic maintenance payment. They may receive the basic maintenance payment until the youth reaches the age of 18, or age 21 when applicable. For example, the LDSS should ask the prospective relative custodian(s) how long and for what time period they request this payment?

The LDSS shall inform the prospective relative custodian(s):

- The basic maintenance rate shall be automatically increased under two circumstances in the future:

- When the youth reaches a higher age grouping in state foster care policy (see Section 18.1.3), to help address the increased costs of caring for an older youth, or

- When statewide increases are approved to help address increased costs of living.

If the prospective relative custodian(s) choose to receive less basic maintenance than the maximum available rate, the agreed upon payment amount will be increased by the same percentage amount used to calculate the increase in the maximum foster care maintenance payments. The LDSS will notify them in writing when automatic increases occur.

- If the prospective relative custodian(s) request and the LDSS agrees to a time-limited payment, the LDSS shall notify the relative custodian(s) using the Family Services Notice of Action through certified mail **two (2) months** prior to the scheduled end date for the maintenance payment.

- The youth shall continue to receive the basic maintenance payment specified in the Kinship Guardianship Assistance Agreement, or addendum in effect, until one of the following actions occurs:

  - The relative custodian(s) decline the basic maintenance payment in writing.

  - The relative custodian(s) indicate they need a different payment amount. The new amount, up to the maximum allowable amount, is then specified in an addendum to the agreement that is signed and executed by the LDSS and the prospective relative, or

  - The agreement is terminated based on terms in the Kinship Guardianship Assistance Agreement (see Section 10.22.3).

After discussing all relevant factors, the LDSS shall document the prospective relative custodian(s)' decisions about basic maintenance payments and the agreed upon terms in the Kinship Guardianship Assistance Agreement and in any addendum containing basic maintenance payments.

10.14.3 Assessing additional supervision and support needs of the youth

After assessing the basic maintenance needs of the youth, the LDSS and prospective relative custodian(s) should assess the youth's needs for additional supervision and support when appropriate for the youth. An enhanced maintenance payment may be paid when the youth requires additional supervision and support from the prospective relative custodian(s) to ensure the safety and well-being of the youth.

When the LDSS determines there are indications that the youth may require additional supervision and support from the prospective relative custodian(s), the LDSS shall use the Virginia Enhanced Maintenance Assessment Tool (VEMAT) to assess the behavioral, emotional, and physical/personal care needs of the youth. The LDSS shall administer the VEMAT to determine whether an enhanced maintenance payment is appropriate when:

- The youth is receiving an enhanced maintenance payment in foster care based on the VEMAT; or
- The youth is not receiving an enhanced maintenance payment and the LDSS has sufficient reason to believe the youth requires additional supervision and support from the prospective relative custodian(s) based on the frequency, duration, and intensity of the youth's behavioral, emotional, and physical/personal care characteristics consistent with VEMAT guidance.

The LDS must administer the VEMAT within 14 days of receiving the application for assistance, if a VEMAT is required. A VEMAT is required:

- When the current VEMAT will be six months old by the time KinGAP Agreement will be signed;
- When the VEMAT will become due during the negotiation timeframe; or
- When there is no VEMAT and there is reason to believe that the child requires additional supervision and support.

When a VEMAT is not administered, the youth is not eligible for a kinship guardianship assistance enhanced maintenance payment. A re-administration of the VEMAT is not required if the Kinship Guardianship Assistance Agreement is signed within six months of the prior unexpired VEMAT assessment. For procedures on VEMAT, see Section 18.2.

When the LDSS establishes that the youth requires additional supervision and support based on the administration of the VEMAT in accordance with VDSS guidance, the LDSS and the negotiator shall assess and negotiate an enhanced maintenance payment with the prospective relative custodian(s), unless the prospective relative custodian(s) decline this assistance. For guidance on the purpose, goals, and principles when negotiating kinship guardianship assistance, see Section 10.15.

The LDSS should discuss the following factors with the prospective relative custodian(s), during the assessment and negotiation process, as well as any other relevant factors:

- The needs of the youth for additional supervision and support from the prospective relative custodian(s), as documented by the VEMAT for the youth.

- Available resources to help meet the needs of the youth and defray the costs. When the prospective relative custodian(s) plan to add the youth to their health insurance policy, they shall provide a copy of the full explanation of covered benefits to help identify services that are covered by their health insurance.

- The family circumstances of the prospective relative custodian(s).

- The amount of funds the prospective relative custodian(s) have available to care for the youth. (See Section 10.14.1 and the calculation at the end of Section II on the application for any remaining funds the prospective relative custodian(s) have available for the youth.) The LDSS worker should inform the prospective relative custodian(s) that based on the information they provided, they have "x" dollars available to help care for the youth after subtracting the expenses for the youth from the financial resources they have available for the youth. The LDSS should ask the prospective relative custodians how much financial assistance they need to provide supervision and support for the youth given the resources they have available.

- The prospective relative custodian(s)' request for enhanced maintenance and their reasons.

- The length of time for the enhanced maintenance payment. The LDSS should ask the prospective relative custodians how long they need the payment to provide additional supervision and support for the youth. The LDSS should also clarify the length of time they need the payment.

- The enhanced payment amount may range from no payment up to the maximum amount allowed by law. At no time shall the amount of the enhanced maintenance payment exceed what would have been paid if the youth was in foster care (Social Security Act, Title IV, § 473 (d) (2) [42 U.S.C. 673]). The VEMAT score does not determine the final payment for the youth; but rather, it is used during negotiation as the maximum allowable payment amount.

- The maximum allowable amount is based on the VEMAT score for the youth when the LDSS first negotiates a kinship guardianship assistance enhanced maintenance payment with the prospective relative custodian(s). The maximum amount remains the same for any subsequent negotiations on kinship guardianship assistance enhanced maintenance payments for the duration of the Kinship Guardianship Assistance Agreement.

- The only exception is when the LDSS receives a Request for VEMAT Administration Due to a Change in Child Behaviors and a new VEMAT is administered. In this situation, the maximum allowable amount for negotiations is increased, based on the youth's higher VEMAT score, for the duration of the agreement. When the new VEMAT score is lower than the youth's previous score, the payment may be lowered with the concurrence of the relative custodian(s).

- The VEMAT score for the youth provides the LDSS and the prospective relative custodian(s) current information for the assessment and negotiation process on the additional supervision and support the youth requires from the prospective relative custodian(s), based on the frequency, duration, and intensity of the child's behavioral, emotional, and physical/personal care characteristics.

When the prospective relative custodian(s) and the LDSS agree to a time-limited enhanced maintenance payment, the LDSS shall inform the prospective relative custodian(s) that the LDSS will notify the prospective relative custodian(s) in a certified letter 60 days prior to the scheduled end date for the payment.

The youth shall continue to receive the enhanced maintenance payment specified in the Kinship Guardianship Assistance Agreement, or in the addendum in effect, until one of the following actions occurs:

- The relative custodian(s) decline an enhanced maintenance payment in writing;

- The relative custodian(s) and the LDSS negotiate and agree upon a different payment amount, based on the needs of the youth as documented by the VEMAT and the family circumstances of the relative custodian(s). The agreed upon terms are then documented in an addendum to the agreement; or

- The payment or agreement is terminated based on terms in the Kinship Guardianship Assistance Agreement (see Section 10.22.3).

The LDSS shall not reduce the enhanced maintenance payment in the Kinship Guardianship Assistance Agreement unless the relative custodian(s) agree in writing.

After discussing all relevant factors, the LDSS negotiates with the prospective relative custodian(s) to determine the agreed upon enhanced maintenance payment amount to be paid on behalf of the youth. The LDSS shall document the agreed upon payment and terms in the Kinship Guardianship Assistance Agreement and in any addendum to the agreement containing enhanced maintenance payments. The LDSS is responsible for making title IV-E and CSA basic maintenance payments specified in the Kinship Guardianship Assistance Agreement.

10.14.4 Assessing health insurance needs of the youth

After assessing the maintenance needs of the youth, the LDSS and prospective relative custodian(s) should identify health insurance coverage for the youth, regardless of whether or not the youth is eligible for title IV-E funds. The prospective relative custodian(s) may:

- Add the youth to their health insurance policy (e.g., employer-based, TRICARE, CHAMPVA, and self-purchased plans) in accordance with the insurance policy requirements (§ 38.2-3432.3). The youth may be added at the time custody is transferred to the relative custodian(s).

- Add the youth to their health insurance policy and use Medicaid or FAMIS as secondary health insurance if the youth is eligible (Virginia DSS Medicaid Eligibility Manual, M1510.301).

- Use Medicaid or FAMIS if the youth is eligible.

The LDSS shall inform the prospective relative custodian(s) whether the youth is eligible for Medicaid in relation to the Kinship Guardianship Assistance Agreement.

10.14.4.1 Medicaid for the title IV-E eligible youth

The youth who receives title IV-E kinship guardianship assistance maintenance payments is categorically eligible for Medicaid in the state where the youth resides. For the youth to be considered categorically eligible, a title IV-E kinship guardianship assistance payment of any amount shall be made on an ongoing basis (e.g., a dollar each month) (Social Security Act, Title IV, § 473 (b) (3) (C) [42 U.S.C. 673]; and Federal Program Instruction dated July 9, 2010).

When the youth is receiving title IV-E kinship guardianship assistance maintenance payments, Medicaid shall be included in the Kinship Guardianship Assistance Agreement. Medicaid eligibility continues for the youth when custody is legally transferred. The relative custodian(s) are not required to submit a separate Medicaid application for the youth.

When the youth and the prospective relative custodian(s) live outside of Virginia, the relative custodian(s) do not submit a separate application to the Medicaid program in the new state of residence. The LDSS shall send the Title IV-E Foster Care and Medicaid Initial/Redetermination Evaluation to the Medicaid program in the new state which verifies the youth's title IV-E eligibility and categorical eligibility for that state's Medicaid program. The LDSS continues to make the title IV-E maintenance payment.

10.14.4.2 Medicaid for the non-title IV-E eligible youth

When the youth is not eligible for kinship guardianship assistance using title IV-E funds, and only state CSA funds may be used, the youth is **not** automatically eligible for Medicaid.

The LDSS should discuss the youth's situation with the prospective relative custodian(s) and explain that the youth may be eligible for medical coverage under various Medicaid covered groups or under FAMIS.

To determine the youth's eligibility for Virginia medical assistance, the prospective relative custodian(s) submit a Medicaid application to the LDSS with which they entered into the Kinship Guardianship Assistance Agreement. They should submit the application as soon as possible after the Kinship Guardianship Assistance Agreement is executed.

When custody is legally transferred, eligibility for the youth who is currently enrolled in Medicaid will be reevaluated to determine continued eligibility. The income of the relative custodian(s) is not counted when determining the child's eligibility.

If the youth is eligible for Virginia medical assistance, the youth is enrolled in the coverage that is most beneficial (see the Virginia DSS Medicaid Eligibility Manual, M0310.102).

For information on Medicaid covered groups, see the Virginia DSS Medicaid Eligibility Manual, M03 Medicaid Covered Groups.

For information on the FAMIS program, see http://www.famis.org/ or the Virginia DSS Medicaid Eligibility Manual, M21.

10.14.5 Assessing non-recurring expenses for obtaining legal custody

After assessing the health insurance needs of the youth, the LDSS and the prospective relative custodian(s) should assess non-recurring expenses of the prospective relative custodian(s) in obtaining legal custody of the youth, not to exceed $2,000 (Social Security Act, Title IV, § 473 (d) (1) (B) (iv) [42 USC 673]).

Payment and/or reimbursement may be made directly to the service providers or to the prospective relative custodian(s). Payment should be for expenses:

- Incurred by, or on behalf of, prospective relative custodian(s) for which the prospective relative custodian(s) have ultimate liability for payment.
- Not incurred in violation of State or Federal law.
- Not reimbursed from any other sources or funds.

Types of expenses include reasonable and necessary costs of the prospective relative custodian(s) that are directly related to obtaining legal custody of the youth including:

- Attorney fees and other legal service fees directly related to obtaining legal custody of the youth.
- Transportation, lodging, and food for the youth and/or the prospective relative custodian(s) when necessary to complete custody process. These costs may be paid for more than one trip.
- Other costs directly related to the transfer of legal custody.

In estimating and determining payment amounts, the LDSS and prospective relative custodian(s) should meet the following requirements:

- Payment amounts shall be determined through agreement between the prospective relative custodian(s) and the LDSS. The amounts do not need to be negotiated.
- The prospective relative custodian(s)' income shall not be used as an eligibility requirement to determine whether payments shall be made.
- The total payment amount shall not exceed $2,000 per youth per transfer of legal custody.
- For each youth of a sibling group, placed either separately or together, the prospective relative custodian(s) shall be reimbursed up to the $2,000 maximum (Social Security Act, Title IV, § 473 (d) (3) (B) (ii) and (d) (1) (B) (iv) [42 USC 673]).
- Caps or limits shall not be set for any type of non-recurring expenses.
- The prospective relative custodian(s) cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

Reasonable estimates may be used when service costs are not known.

The LDSS shall document the agreed upon payment amount(s) for non-recurring expenses of the prospective relative custodian(s) that are directly related to obtaining legal custody on the Kinship Guardianship Assistance Agreement. Title IV-E funds are used for non-recurring payments on behalf of the title IV-E eligible youth and the non-title IV-E eligible youth.

10.15 Negotiating kinship guardianship assistance

After the Application for Assistance form is complete, the LDSS completes the Referral for KinGAP Negotiation packet, which includes the Referral for Negotiations. The LDSS and the negotiator shall assess and negotiate with the prospective relative custodian(s) to determine agreed upon terms for the maintenance payment to meet the need of the youth.

The purpose of negotiation is to assess the youth's needs and the circumstances of the prospective relative custodian(s) to determine the amount and timing of assistance needed. The goal is not to minimize or maximize the amount of assistance.

The process is designed to provide consistent, fair, and equitable treatment of requests from prospective relative custodian(s) statewide. Assistance is then individually tailored to meet the unique special needs of the youth and the family circumstances of the relative custodian(s), utilizing all available resources in the family and community.

Assistance supplements the resources of the prospective relative custodian(s) to help them care for the youth's needs that they have difficulty providing for without assistance. It is not intended to cover the full cost of raising the youth. The prospective relative custodian(s) must continue to provide financially for their own needs, independent of assistance payments for the youth.

Negotiation focuses on what assistance is needed now and what will be needed in the immediate future to help meet the youth's needs. The future needs of the youth and the family circumstances of the prospective relative custodian(s) are not negotiated. At any time in the future, the relative custodian(s) may request changes in financial assistance to address changes in the needs of the child and the family circumstances of the relative custodian(s).

Decisions are based on:

- The needs of the youth.
- The family circumstances of the prospective relative custodian(s).
- The availability of other resources to meet the youth's needs and help defray costs.
- The legal requirements for kinship guardianship assistance.

Basic maintenance and enhanced maintenance combined is the maintenance payment for kinship guardianship assistance. Negotiations will begin at 70% of the total maintenance rate.

10.15.1 Role of the Negotiator

In leading up to, during, and after the negotiation process, the negotiator:

- Ensures the state-wide kinship guardianship assistance negotiation process is objective, consistent, and supportive of both the LDSS and the prospective relative custodian.
- Reviews the application for kinship guardianship assistance or the request for an addendum.
- Reviews the pertinent and supporting documents that are within the automated system (OASIS) and case record. Specifically:
  - Ensures that the documentation supports the youth's needs; and,
  - Reviews the previous services, history of the case, and effectiveness of outcomes of previous services.
- Interviews the case worker and the family, when necessary.
- Negotiates with the family and LDSS on a case by case basis.
- Provides the LDSS and the family with a report of results of the negotiation within **30 days** of receiving the Referral for Negotiation and supporting documentation.
- Validates that the signed Kinship Guardianship Assistance Agreement matches the negotiated terms and reviews the foster care and kinship guardianship case in OASIS within **30 days** of the negotiation.

10.15.2 Role of LDSS during the negotiation process

The LDSS is a key player in the negotiation process. In leading up to, during, and after the negotiation process, the LDSS:

- Discusses with the family the requested payments and prepares the family for the negotiation process. Reviews the Information Sheet on the Virginia Kinship Guardianship Assistance Program with the family.
- Screens the child (i.e. determining eligibility for kinship guardianship assistance) using the Virginia Kinship Guardianship Assistance Screening Tool.
- Within **14 days** of receipt of the application, or request for addendum collectively referred to as the application, the LDSS:

- Determines if the application is complete.
- Determines if the requested payments are reasonable and **if the application will move forward.** (See Section 10.13.1)
- Gathers documentation which supports any additional daily support and supervision needs that the child may have that are payable through an enhanced maintenance payment. Assess if a new VEMAT needs to be completed (i.e. if the VEMAT is more than six months old at the time of application or if the VEMAT will be due during the negotiation timeframe).
- Submits a Referral for KinGAP Negotiation Packet, which includes the Referral for Kinship Guardianship Negotiation, the Application for Kinship Guardianship Assistance, and the VEMAT, if applicable, with supporting documentation to the negotiator.

- If necessary, executes the VEMAT no later than the **14th day** after receiving the application, and submits a copy of the VEMAT to the negotiator. The LDSS completes the VEMAT prior to submitting the Referral for Negotiation and application. The VEMAT score and the amount are required to be entered on the referral and application.
- The LDSS will submit any additional documentation requested by the Assistance Negotiator within seven calendar days of the request.
- In conjunction with the negotiator, schedules the negotiation date and time with the family, if applicable.
- Retains a copy of the Report of Kinship Guardianship Assistance Negotiation in the supporting case record.
- Obtains the family and LCPA signatures, if applicable, and signs the negotiated Kinship Guardianship Assistance Agreement.
- Provides the negotiator a copy of the signed Kinship Guardianship Assistance Agreement within **ten (10) calendar days** of obtaining all signatures.
- Updates the automated system (OASIS) with kinship guardianship assistance financial information within **five (5) calendar days** from the signing of a Kinship Guardianship Assistance Agreement or addendum.
- Within **five (5) calendar days** of receipt of the order transferring custody to the relative, updates the automated system (OASIS) and supporting kinship guardianship assistance case record.

- Prepares the Family Services Summary of Facts for the Appeals Officer if the family appeals decisions related to kinship guardianship assistance (including negotiations).

- Issues payments per the terms of the negotiated Kinship Guardianship Assistance Agreement.

- Reports expenditures in LASER.

10.15.3 Negotiation process

All applications for kinship guardianship assistance and addendum requests are facilitated by a VDSS negotiator.

The LDSS should submit a copy of the signed Application for Kinship Guardianship Assistance to the negotiator within **14 calendar days** of receipt from the prospective relative custodian(s). The Referral for Kinship Guardianship Assistance Negotiations form and the following documentation relative to the youth's needs and the prospective relative custodian(s)' circumstances should be included:

- The screening tool;

- VEMAT, if required; and,

- Supporting documentation and diagnosis of each of the youth's needs (such as, but not limited to, Full Disclosure Child Information Form, medical reports, IEP, psychological evaluations, etc.).

The following is additional information needed for an addendum negotiation:

- Referral for Kinship Guardianship Assistance Negotiations form;

- Signed copy of the Addendum Request to the Assistance Agreement form;

- Copy of the original Kinship Guardianship Assistance Agreement; and

- Copy of the most recent addendum, if applicable.

Upon receipt of the referral, the negotiator will review the documentation and may request additional supporting documentation. If the supporting documentation is excessive, the LDSS may contact the negotiator to request a site visit to review the case in person.

After reviewing the documentation and discussing the case with the LDSS and the family (when appropriate), the negotiator will determine if the negotiation can be conducted via the phone or if an onsite visit is required. In some cases, the negotiators have the option to conduct a desk review.

The negotiation will be completed and submitted to LDSS no later than **30 days** of receiving the referral and all supporting documentation. The negotiator will submit the Kinship Guardianship Assistance Negotiation Report to the LDSS and the LDSS will provide a copy of the report to the family.

Within **15 days** from the date of the Kinship Guardianship Assistance Negotiation Report, the LDSS should draft and execute a Kinship Guardianship Assistance Agreement. No later than **ten (10) days** following the last signature on the Kinship Guardianship Assistance Agreement, the LDSS will submit a copy of the Kinship Guardianship Assistance Agreement to the negotiator.

10.15.4 Appealing negotiation results

The LDSS shall provide the Family Services Notice of Action and Right to Appeal to the prospective relative custodian(s); documenting the LDSS action on the relative's application for kinship guardianship assistance. This notice should be provided within 60 days from the date the LDSS received the completed Virginia Application for Kinship Guardianship Assistance with all required documentation. The notice includes information about the prospective relative custodian's right to appeal any LDSS decision in granting, denying, changing, or discontinuing kinship guardianship assistance within **30 days** of receiving written notice of the decisions and their right to a fair hearing.

LDSS cannot use the Appeals and Fair Hearings process for appealing the negotiation results. LDSS who disagree or object to the results of the negotiations should contact the Foster Care Program Manager by email. In the event that the LDSS and the Foster Care Program Manager are unable to reach an accord, the LDSS may contact the Director of Family Services.

10.16 Executing the Kinship Guardianship Assistance Agreement

When the LDSS and the prospective relative custodian(s) agree on the terms of kinship guardianship assistance for the youth, the LDSS prepares the written and binding Kinship Guardianship Assistance Agreement. **This agreement shall be signed prior to the legal transfer of custody** (Federal Program Instruction dated February 18, 2010). This agreement shall be approved by the FAPT in accordance with local CPMT policies for the non-IV-E youth.

10.16.1 Executing the agreement for the title IV-E youth

If the youth was title IV-E eligible in foster care, the youth is automatically title IV-E eligible for kinship guardianship assistance. A new title IV-E determination is not required. For the title IV-E eligible youth, the LDSS shall use the Virginia Kinship Guardianship Assistance Agreement. The agreement includes, but is not limited to:

- The agreed upon terms of kinship guardianship assistance for the title IV-E eligible youth for basic maintenance, enhanced maintenance, and/or non-

recurring expense payments, including the type, duration, and amount of assistance to be provided.

- The process for requesting services from the FAPT where the youth and the relative custodian(s) reside (as outlined in Section 10.19). The child is eligible for foster care services (§ 63.2-905), including a full range of case work, treatment, and community services.

- The process for how the payment may be adjusted periodically in consultation with the relative custodian, including requesting changes in kinship guardianship assistance, based on changes in the needs of the youth and/or in the circumstances of the relative custodian(s).

- The requirements that the relative custodian(s) do the following:

  - Document that a school-aged youth is enrolled full-time in school or that the youth has completed secondary school.

  - Participate in FAPT meetings and comply with CSA requirements and CPMT policies when requesting and/or receiving services through the CSA state pool of funds.

  - Participate in annual visits with the LDSS and the youth, when requested by the LDSS.

  - Submit an annual affidavit signed by one relative custodian when the Kinship Guardianship Assistance Agreement is with one relative; and signed by both relative custodian(s) when the agreement is with two relatives (see Section 10.20).

  - Submit written notification of changes when:

    - Their address changes.

    - The youth is incapable of participating in school full-time due to a medical condition documented by a qualified professional.

    - There are changes in the youth's needs and/or family circumstances of the relative custodian(s) that may change the amount of kinship guardianship assistance received.

    - The youth is no longer eligible for kinship guardianship assistance.

- Circumstances for suspending payments.

- Circumstances for terminating services, payments and the agreement.

- Process for appealing decisions through the VDSS fair hearings process.
- Statement that the agreement shall remain in effect when the youth and the relative custodian(s) move to another jurisdiction in Virginia or to another state.
- Effective and expiration dates of the agreement.
- Signatures and dates.

When the local board, or its designee, approves the Kinship Guardianship Assistance Agreement, the local board, or its designee, and the prospective relative custodian(s) sign the legally binding agreement (Social Security Act, Title IV, § 473 (d) (1) (A) (i) [42 U.S.C. 673]). The local board does not have authority to deny a Kinship Guardianship Assistance Agreement for an eligible youth.

The LDSS shall give the relative custodian(s) a copy of the signed agreement. The LDSS shall keep the original agreement and all supporting documents in the youth's kinship guardianship assistance paper case record.

10.16.2 Executing the agreement for the non-title IV-E youth

Once the negotiations have been completed, the LDSS should refer the youth and the prospective relative custodian(s) to the FAPT in the locality that holds custody of the child. The LDSS shall comply with all state and local CPMT policies in referring the youth and the prospective relative custodian(s) to FAPT for approval of the negotiated payments. CSA state pool funds are used for maintenance and enhanced maintenance payments for the non-title IV-E youth when specified in the IFSP and approved by the CPMT in accordance with local policy. Kinship guardianship assistance payments may be exempt from the FAPT process depending on the local CPMT policy.

For the non-title IV-E eligible youth, the LDSS shall use the Virginia Kinship Guardianship Assistance Agreement. The agreement includes, but is not limited to:

- The agreed upon terms of kinship guardianship assistance for the non-title IV-E eligible youth for basic maintenance, enhanced maintenance, and/or non-recurring expense payments, including the type, duration, and amount of assistance to be provided.
- The process for requesting services from the FAPT where the youth and the relative custodian(s) reside.
- The process for requesting changes in kinship guardianship assistance, based on changes in the needs of the youth and/or in the circumstances of the relative custodian(s).

- The requirements that the relative custodian(s):
  - Document that a school-aged youth is enrolled full-time in school or that the youth has completed secondary school.
  - Participate in FAPT meetings and comply with CSA requirements and CPMT policies when requesting and/or receiving services through the CSA state pool of funds.
  - Participate in annual visits with the LDSS and the youth, when requested by the LDSS.
  - Submit an annual affidavit signed by one relative custodian when the Kinship Guardianship Assistance Agreement is with one relative; and signed by both relative custodian(s) when the agreement is with two relatives (see Section 10.20).
  - Submit written notification of changes when:
    - Their address changes.
    - The youth is incapable of participating in school full-time due to a medical condition documented by a qualified professional.
    - There are changes in the youth's needs and/or family circumstances of the relative custodian(s) that may change the amount of kinship guardianship assistance received.
    - The youth is no longer eligible for kinship guardianship assistance.
- Circumstances for suspending payments.
- Circumstances for terminating services, payments and the agreement.
- Process for appealing decisions through the VDSS fair hearings process.
- Statement that the agreement shall remain in effect when the youth and the relative custodian(s) move to another jurisdiction in Virginia or to another state.
- Effective and expiration dates of the agreement.
- Signatures and dates.

When the local board, or its designee, approves the Kinship Guardianship Assistance Agreement, the local board, or its designee, and the prospective relative custodian(s) sign the legally binding agreement (Social Security Act, Title IV, § 473

(d) (1) (A) (i) [42 U.S.C. 673]). The local board does not have authority to deny a Kinship Guardianship Assistance Agreement for an eligible youth.

The LDSS shall give the relative custodian(s) a copy of the signed agreement. The LDSS shall keep the original agreement and all supporting documents in the youth's kinship guardianship assistance paper case record.

10.16.3 Successor guardian

The Kinship Guardianship Assistance Agreement and any addenda may include the name of an appropriate person to act as a successor legal guardian to provide care and guardianship of the youth in the event of death or incapacitation of the relative custodian. The successor guardian must be named in the agreement or addendum prior to the relative custodian's death or incapacitation.

The successor guardian does not need to be a relative or licensed as a foster parent to receive the kinship guardianship assistance payments.

Before the successor guardian may receive the kinship guardianship assistance payments in lieu of the relative custodian:

- A new Kinship Guardianship Assistance Agreement will need to be completed.
  - The Agreement must outline the terms of the kinship guardianship assistance and responsibilities of the successor guardian.
  - The Agreement must specify that the agency will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child to the extent that the total cost does not exceed $2000.
- The successor guardian must complete:
  - A fingerprint based criminal background check on the successor guardian, and
  - A CPS Central Registry search on the successor guardian and all adults residing in the home.
- The successor guardian must obtain legal custody of the child.

10.17 Making kinship guardianship assistance payments

Kinship guardianship assistance payments shall only be provided to relative custodian(s) who have:

- Entered into a written, signed, and dated Kinship Guardianship Assistance Agreement on behalf of the youth with the LDSS prior to the youth's custody being transferred, and

- A signed court order legally transferring custody of the youth from the LDSS to the relative custodian(s) (see Section 10.5).

The Kinship Guardianship Assistance Agreement is effective on the date the court order is signed by the judge transferring legal custody of the youth from the LDSS to the relative custodian(s). Kinship guardianship assistance payments shall be made in accordance with the legally binding Kinship Guardianship Assistance Agreement, consistent with local payment procedures.

Criminal background checks and central registry searches on any adult residing in the home of the relative custodian(s) must be completed before finalization of the kinship guardianship agreement and payments being issued.

Services for the youth and the family are provided through the CSA state pool of funds when designated in the IFSP developed by the LDSS in the locality where the family resides. They are approved by the FAPT, consistent with CPMT policies, and are **not** included in the Kinship Guardianship Assistance Agreement.

It is the LDSS service worker's responsibility to:

- Enter the appropriate funding source and type into the OASIS screens.

- Accurately communicate the appropriate funding source to the individual(s) responsible within the LDSS for entering all funding information into the financial system and LASER.

The three types of kinship guardianship assistance payments are delineated below: basic maintenance payments; enhanced maintenance payments; and non-recurring payments for expenses directly related to the legal transfer of custody.

Additional information regarding kinship guardianship assistance budget lines and cost codes are available in the Finance Guidelines Manual).

10.17.1 Maintenance payments

Maintenance payments shall be made directly to the relative custodian(s) on a monthly basis in accordance with local payment procedures. The LDSS shall not transfer the payments to another person to assume care for the youth.

- Title IV-E maintenance payments for the title IV-E eligible youth shall be paid from federal title IV-E funds. The LDSS shall report maintenance payments for all children eligible for title IV-E kinship guardianship assistance maintenance funds in Budget Line 822.

- Title IV-E **basic** maintenance shall be entered into Cost Code 82201.
- Title IV-E **enhanced** maintenance shall be entered into Cost Code 82202.

- Title IV-E maintenance payments for the title IV-E eligible youth who remains eligible past their 18th birthday shall be paid from federal title IV-E funds (Sections 10.21.7.1 and 10.21.8). The LDSS shall report maintenance payments for all children eligible for title IV-E extended kinship guardianship assistance maintenance funds in Budget Line 823.
  - Title IV-E **extension of KinGAP basic** maintenance shall be entered into Cost Code 82301.
  - Title **IV-E extension of KinGAP enhanced** maintenance shall be entered into Cost Code 82302.
- Maintenance payments for the non-title IV-E eligible youth shall be paid only from CSA state pool of funds, when specified in the IFSP approved by the FAPT in accordance with state and local CPMT policies. These payments shall be documented in OASIS, even though CSA funds are used, in order to capture total payment costs. The LDSS shall not use title IV-E funds to pay for maintenance payments for the non-title IV-E eligible youth.

The LDSS shall increase the basic maintenance payment when the youth reaches a higher age grouping (see Section 18.1.3) and when statewide increases are approved. When the relative custodian(s) have requested to receive less basic maintenance than the maximum available rate, the LDSS increases the agreed upon payment amount by the same percentage amount used to calculate the increase in the maximum foster care maintenance payments, as documented in the signed Kinship Guardianship Assistance Agreement.

There is no need for the LDSS and relative custodian(s) to execute an addendum to the existing agreement for the increased basic maintenance payment amount. The LDSS shall inform the relative custodian(s) in writing of the reason for the increase, the new amount, and the effective date for the increased basic maintenance payment. Both relative custodian(s) on an active Kinship Guardianship Assistance Agreement shall be notified, including parents who are separated or divorced. The LDSS shall place a copy of this notification in the kinship guardianship assistance paper case record.

10.17.2 Payment for non-recurring expenses for transferring legal custody

Payments for non-recurring expenses shall be made directly to service providers or to the relative custodian(s) in accordance with local payment procedures.

Non-recurring expense payment and reimbursement shall:

- Be paid from title IV-E funds for both the title IV-E and non-title IV-E eligible youth. Payments are made from Budget Line 822, Cost Code 82203 (see the Finance Guidelines Manual).

- Cover the total cost of nonrecurring expenses associated with obtaining legal custody of the child, to the extent that the total cost does not exceed $2,000 per youth per custody placement. The sibling of an eligible youth subsequently placed in the same kinship guardianship assistance arrangement is also eligible for non-recurring expenses up to $2,000.

- Be based on actual costs of services, as documented in bills and/or receipts submitted to the LDSS by the relative custodian(s) and/or vendors.

    - The actual costs may differ from reasonably estimated costs in the Kinship Guardianship Assistance Agreement.

    - The relative custodian(s) shall submit copies of bills and/or receipts consistent with local payment policies and procedures.

    - Payments shall be made on behalf of the youth regardless of when bills and receipts are submitted.

LDSS shall maintain bills and receipts submitted by the relative custodian(s) for payment and reimbursement in the youth's kinship guardianship assistance paper record. Bills and receipts may be copies, consistent with local finance procedures.

10.18 Maintaining responsibilities for kinship guardianship assistance

As delineated in the binding Kinship Guardianship Assistance Agreement, the relative custodian(s) and the LDSS maintain ongoing responsibilities.

10.18.1 Responsibilities of the relative custodian(s)

The relative custodian(s) who receive kinship guardianship assistance payments and/or foster care services shall:

- Notify the LDSS when their address changes.

- Inform the Social Security Administration when the youth is receiving both SSI payments and kinship guardianship assistance payments.

- Participate in FAPT meetings and comply with CSA requirements and CPMT policies when requesting and/or receiving foster care services through the CSA state pool of funds.

- Participate in annual reviews of kinship guardianship assistance:

- Submit an annual affidavit to the LDSS no later than the anniversary date that custody was legally transferred. The annual affidavit shall be signed by one (1) relative custodian when the Kinship Guardianship Assistance Agreement is with one relative custodian, and signed by both relative custodian(s) when the Agreement is with two (2) relative custodian(s) (see Section 10.20).

- Provide the youth's school enrollment status when the youth reaches the age of compulsory school attendance (Social Security Act, Title IV, § 471 (a) (30) [42 USC 671]).

- Notify the LDSS if the youth is incapable of participating in school full-time due to a medical condition (Social Security Act, Title IV, § 471 (a) (30) [42 USC 671]). Submit documentation by a qualified professional and submit quarterly updates on the youth's medical condition to the LDSS.

- Notify the LDSS when there are changes in the needs of the youth and/or in the family circumstances of the relative custodian(s) that may change the amount of kinship guardianship assistance or CSA services the youth receives. For example:

  - The youth is receiving Social Security payments.

  - The amount of additional supervision and support the youth requires from the relative custodian(s) changes.

  - One of the relative custodian(s) in a two-parent family becomes disabled or dies or the relative custodians become separated or divorced.

- Notify the LDSS immediately in writing when the youth is no longer eligible for kinship guardianship assistance due to any of the following:

  - The relative custodian(s) are no longer legally responsible for the care of the youth.

  - The relative custodian(s) are not providing financial support for the youth.

  - The youth becomes an emancipated minor, is married, is deceased, or enlists in the military.

  - The relative custodian(s) die or become incapacitated (i.e., two parents die or become incapacitated in a two-parent family, or one parent dies or becomes incapacitated in a one-parent family). The relative custodian(s) should make arrangements for the LDSS to be notified in the event of their death (Federal Program Instruction dated July 9, 2010).

- Submit copies of bills and/or receipts to the LDSS service worker for non-recurring expenses.

10.18.2 Responsibilities of LDSS responsible for kinship guardianship assistance

The LDSS that has custody of the youth is responsible for kinship guardianship assistance regardless of where the family and the youth reside. While the LDSS permanency program is responsible for implementing the permanency option of kinship guardianship assistance, the LDSS may designate specific responsibilities to staff based on the staff skills and expertise required to accomplish specific tasks (e.g., fiscal, negotiation, and care coordination).

The LDSS responsible for kinship guardianship assistance shall:

- Maintain responsibility for title IV-E maintenance payments and the CSA maintenance payments as specified in the Kinship Guardianship Assistance Agreement, regardless of where the relative custodian(s) and the youth reside. When the relative custodian(s) and the youth move to another state, the relative custodian(s) may apply for services on behalf of the youth in their new state of residence.

- Conduct an annual review of kinship guardianship assistance:

  - Manage the annual affidavit process.

  - The LDSS may conduct a face to face visit with the youth and the relative custodian(s), when appropriate. The LDSS may request that the LDSS where the youth resides conduct a courtesy visit for this review.

- Manage requests for changes in kinship guardianship assistance and foster care services from the relative custodian(s). This role may involve assessing and negotiating an addendum to the Kinship Guardianship Assistance Agreement with the relative custodian(s) and/or referring the youth to FAPT for foster care services.

- Readminister the VEMAT, when the LDSS determines it is appropriate.

- Inform relative custodian(s) in writing that they have the right to appeal LDSS decisions within **30 days** of their receiving written notice of LDSS decisions.

- Notify the relative custodian(s) who are receiving kinship guardianship assistance in writing when:

  - The annual affidavit is due (see Section 10.20).

- The youth receiving basic maintenance payments has reached a higher age grouping in foster care policy or there are statewide increases in the basic maintenance kinship guardianship assistance payments and their payment is being increased as delineated in the Kinship Guardianship Assistance Agreement (see Section 10.18.2).

- The youth has a basic and/or enhanced maintenance payment that is time-limited (see Section 10.18.2 and Section 10.18.3 respectively).

- Payments and/or foster care services may be suspended or terminated (see Section 10.22.1 and Section 10.22.2 respectively).

- The Kinship Guardianship Assistance Agreement may be terminated (see Section 10.22.3).

- Maintain the youth's kinship guardianship assistance case in OASIS and the paper record.

- Written notification of services/payments being terminated or suspended shall be communicated using the Family Services Notice of Action.

10.19 Providing services to the relative custodian and youth

Children and youth who are living with a relative custodian participating in the kinship guardianship assistance program are eligible for foster care services (§ 63.2-905) including a fully range of case work, treatment, and community services. For youth receiving services at the time of custody transfer, the services would continue under the regular review process through FAPT. If the relative custodian(s) reside in a different locality, then the youth's current FAPT will transfer the CSA case to the locality of the relative custodian(s) (Section 4.2 of the CSA Policy Manual).

If a need for services arises after KinGAP finalization, the relative custodian may request services through the FAPT process in the locality in which the family lives in accordance with state and local CPMT policies and procedures. The LDSS responsible for the kinship guardianship assistance and the LDSS where the family resides should establish a process for working collaboratively, in conjunction with the family, to meet the needs of the family. This process should include strategies for communicating information, including services being provided, services requested, actions taken, and any issues that need to be resolved. The LDSS worker where the family resides should be added to the OASIS case as a secondary worker so that information can be documented in the kinship guardianship assistance case.

10.19.1 Role of LDSS that is responsible for the kinship guardianship assistance

When services are needed, the LDSS responsible for the kinship guardianship should refer the relative custodian(s) and the youth who meets eligibility

requirements for kinship guardianship assistance to the FAPT where the relative custodian(s) and the youth reside, to request foster care services. For the title IV-E and non-title IV-E youth, services to be approved by FAPT may include family-based, community, and treatment service needs. The LDSS should assist the LDSS where the family resides by:

- Complying with CPMT policies regarding:
  - Providing information and referral for services.
  - Assisting the FAPT and the LDSS where the family resides when the following is requested:
    1. Arranging the team meeting.
    2. Notifying the relative custodian(s) of the date and time and engaging them in the assessment, planning, and implementation of services.
    3. Identifying appropriate services, supports, and/or resources.
    4. Providing information and supporting documents about the youth and the family to the team, in collaboration with the relative custodian(s), including the Child and Adolescent Needs and Strengths (CANS) Assessment.
    5. Presenting the youth and the family to FAPT.
    6. Participating in FAPT meetings.
    7. Assisting in developing an IFSP that delineates appropriate and cost-effective foster care services for a planned period of time that are tailored to meet the unique strengths and needs of the youth and/or the family.
    8. Assisting the relative custodian(s) in accessing and coordinating services when needed.
    9. Helping to monitor and report to the team or responsible agencies on progress being made in fulfilling the IFSP. This may include assisting in utilization reviews to ensure services are appropriate, effective, and necessary, based on the strengths and needs of the youth and the family

10.19.2 Role of the LDSS where the family resides

When requested, the LDSS in the locality where the relative custodian(s) reside should assist the LDSS that has responsibility for kinship guardianship assistance with the following:

- Arranging for a Family Partnership Meeting with appropriate resources available in the community.
- Assisting the FAPT and/or the relative custodian(s), when requested, in reviewing requests for foster care services, in compliance with CPMT policies:
    - Arranging the team meeting.
    - Notifying the relative custodian(s) of the date and time and engaging them in the assessment, planning, and implementation of services.
    - Identifying appropriate services, supports, and/or resources in the community.
    - Providing information and supporting documents about the youth and the family to the team, in collaboration with the relative custodian(s), including the CANS Assessment.
    - Presenting the youth and the family to FAPT.
    - Participating in FAPT meetings.
    - Assisting in developing an IFSP that delineates appropriate and cost-effective foster care services for a planned period of time that are tailored to meet the unique strengths and needs of the youth and/or the family.
    - Assisting the relative custodian(s) in accessing and coordinating services in the community when needed.
    - Helping to monitor and report to the team or responsible agencies on progress being made in community services to fulfill the IFSP.
- Providing LDSS prevention services when appropriate to stabilize and strengthen the family to prevent change in custody, when requested by the relative custodian(s), such as:
    - Crisis intervention.
    - Assessment.
    - Counseling, support, and advocacy.
    - Information and referral to community services and/or providers.

If the youth enters foster care, the LDSS where the relative custodian(s) reside may receive custody of the youth as a result of a judicial determination, entrustment, or

non-custodial foster care agreement. Therefore, it is important that this LDSS work closely with the LDSS that is responsible for kinship guardianship assistance.

10.19.3 Responsibilities of LDSS when abuse or neglect occurs

Allegations of abuse and neglect in the relative custodian(s)' family shall be treated the same as any other such reports, in accordance with the Child Protective Services Chapter C.

10.20 Annual affidavit

Relative custodian(s) agree in the Kinship Guardianship Assistance Agreement to submit an annual affidavit to the LDSS no later than the anniversary date that custody was legally transferred. The LDSS will use the Virginia Annual Affidavit for Kinship Guardianship Assistance.

The LDSS notifies the relative custodian(s) in writing **60 days** before the date the annual affidavit is due.

The relative custodian(s) shall annually certify in the affidavit that:

- The youth continues to be eligible for kinship guardianship assistance.
    - The relative custodian(s) remain legally responsible for the care of the youth.
    - The relative custodian(s) continue to provide financial support for the youth (e.g., the relative custodian(s) can provide documentation such as payment for medical bills, childcare, payment of school and/or sports fees, if requested).
    - The youth is not an emancipated minor, married, deceased, or enlisted in the military.
- The youth is, or will be, in his senior year of high school or last year of vocational/technical school of secondary equivalency when turning age 18 and will complete the school or program by the end of the school or program year.
- The youth is, or will be, 18 years old within the next year and has a mental or physical condition/disability that requires ongoing treatment and/or intervention.
- The school-age youth is a full-time student or has completed secondary school. The youth:
    - Is enrolled in elementary, middle, or high school. The child's State Testing Identification Number, if applicable, should be provided.

- Is instructed at home in elementary or secondary education, in accordance with home schooling laws and requirements.

- Is instructed in an independent study program for elementary or secondary education that is administered by the local school division, in accordance with education laws.

- Is incapable of participating in school full-time due to a medical condition (Social Security Act, Title IV, § 471 (a) (30) [42 USC 671]). Documentation by a qualified professional shall be included with the affidavit.

- Has graduated from high school or earned an equivalent credential.

- Is enrolled in an institute of higher education, technical college, or community college.

- Whether there have been any changes in the youth's private health insurance coverage. When changes have occurred, the relative custodian(s) shall provide copies of the insurance card and the full explanation of benefits.

- Whether or not they request changes in kinship guardianship assistance or foster care services.

The annual affidavit shall be signed by one relative custodian when the Kinship Guardianship Assistance Agreement is with one relative custodian, and signed by both relative custodians when the agreement is with two relative custodians. Relative custodians who are separated or divorced shall both sign the affidavit. One relative custodian may sign the affidavit when:

- A signed court order documents a sole custodian arrangement or the authority of one relative custodian.

- The relative custodian notifies the LDSS in writing the reason why the other relative custodian is not available to sign the affidavit at this time, the plan for obtaining the signed affidavit, and the date the relative custodian will submit the signed affidavit to the LDSS. The LDSS determines there is reasonable justification to continue payments and/or services to the date the relative custodian states that the delayed signed affidavit will be submitted.

The LDSS shall attempt to obtain the affidavit with due diligence. When the relative custodian(s) do not return the annual affidavit, the LDSS:

- Should send a certified letter to the relative custodian(s) advising them to return the signed affidavit by a required date.

- May advise them to come into the office, sign the affidavit, and pick up the check at the same time by the required date. The certified letter shall be sent at least **30**

days prior to holding the check. The LDSS shall issue the check for kinship guardianship assistance maintenance payments on the normal schedule and shall give the check to the relative custodian(s) before they depart the premises.

- After consultation with the FAPT, shall inform the relative custodian(s) that, when applicable, services being provided to the family will be suspended until the signed affidavit is received. The Family Services Notice of Action shall be sent along with information on the relative custodian(s)' right to appeal the LDSS decision within **30 days** of receiving the letter and provide information on the fair hearing process. After diligent efforts by the LDSS to obtain the affidavit and when the relative custodian(s) fail to submit the signed affidavit by the required returned date, the LDSS may suspend the services.

The LDSS shall document in the automated system, OASIS case contacts, when the signed affidavit was returned. The LDSS shall place copies of the written notifications to the relative custodian(s) and the returned annual affidavits in the youth's kinship guardianship assistance case record.

10.21 Making changes to agreement

The relative custodian(s) may request a change to the existing kinship guardianship agreement at any time during the duration of the agreement based on changes in the youth's needs or the family circumstances of the relative custodian(s). Any changes to the agreement will be negotiated by the kinship guardianship assistance negotiator.

After the Kinship Guardianship Assistance Agreement is executed, the terms of the agreement are changed when:

- The terms are assessed, negotiated, and agreed upon by the relative custodian(s) and the LDSS.

- The new terms are documented in the signed, dated, and executed addendum.

An addendum is an attachment to the original Kinship Guardianship Assistance Agreement which specifies additions or deletions to the original terms or conditions of the agreement. The addendum may address a specific item, multiple items, or for the entire document. Unless specified, the terms or conditions specified in the addendum supersede those in the original agreement.

An addendum is not required when terminating a payment based on the terms specified in an agreement or addendum.

10.21.1 Submitting request for addendum

Changes in specific components of kinship guardianship assistance may be requested during the duration of the agreement as follows:

- Basic maintenance may be reassessed at any time upon request of the relative custodian(s).

- Enhanced maintenance may be reassessed and renegotiated at any time upon request of the relative custodian(s).

- Non-recurring expenses are one time only expenses and cannot be reassessed.

The relative custodian(s) submit an Addendum Request to the Assistance Agreement to the LDSS with which they established the agreement. Both relative custodians sign the request when the agreement was with two (2) relatives, including relative custodian(s) who are separated or divorced. One (1) relative custodian signs the request when the agreement was with one (1) relative or when a signed court order documents the sole legal responsibility of one (1) relative for the youth.

10.21.2 Timeframe for acting on request

Within 14 days after receiving the request for an addendum, the LDSS should:

- Review the request to determine whether it is complete with all required documentation.

- Notify the relative custodian(s) in writing that the request was received and its status:

  - **The request is complete.** The notification shall include the date the request was received. It shall state that the LDSS and relative custodian(s) have **60 days** to assess, negotiate, and execute an addendum.

  - **Additional information is needed.** The notification shall state the specific information necessary to complete the request. It should request the relative custodian(s) submit the information by email, phone, or in person within **30 days** from the notice date.

    If the relative custodian(s) do not provide the information within **30 days**, the LDSS should deny the request. The LDSS shall inform the relative custodian(s) in writing the reasons for denying the request and that they may submit a new Addendum Request to the Assistance Agreement.

  - **Request for changes is denied.** The notification shall be communicated using the Family Services Notice of Action and clearly state the reasons for the denial, provide information on the relative custodian(s)' right to appeal within **30 days** of receiving the notice of

denial, and provide information on the fair hearing process. No further action is required by the LDSS on the request.

10.21.3 Assessing overall request for addendum

The LDSS and relative custodian(s) should discuss the information provided in the Addendum Request to the Assistance Agreement. The purpose of this conversation is to fully understand the custodians' reasons for requesting a change to kinship guardianship assistance at this time. The conversation should include, but is not limited to:

- The changes in the youth's needs or the family circumstances of the relative custodian(s), including:
  - The reasons the relative custodian(s) are concerned at this time.
  - The impetus, duration, severity, and impact of the youth's needs and behaviors.
- The specific services, resources, and supports the relative custodian(s) have used, or attempted to use, in their family and community to address the changes.
- The resources and supports the relative custodian(s) are requesting to help meet the youth's needs.

The LDSS should summarize the concerns, needs, interests, and reasons of the relative custodian(s) to ensure accurate understanding.

10.21.4 Assessing relevant components of kinship guardianship assistance

The negotiator shall assess and negotiate relevant components of the kinship guardianship assistance with the LDSS and relative custodian(s) to determine agreed upon terms for the addendum. There is no need to assess components that are not impacted by the request, when the current terms will continue as delineated in the existing Kinship Guardianship Assistance Agreement.

The LDSS should use the information included in the Addendum Request to the Assistance Agreement to assist in the assessment of the financial circumstances of the family and consider this information when negotiating changes to the agreement. This information does not determine the youth's eligibility for kinship guardianship assistance and will not be used as the sole factor in assessing the family circumstances.

The negotiator, LDSS, and the relative custodian(s) should use the same assessment and negotiation process that is used for initial agreements to guide the addendum process, including:

- Negotiating kinship guardianship assistance.
- Assessing:
  - Family circumstance.
  - Basic maintenance needs of youth.
  - Additional supervision and support needs of youth.
  - Services to meet the youth's special needs.
  - Other resources.

When the relative custodian(s) request:

- A reassessment for additional supervision and support being provided by the relative custodian(s), the LDSS determines if there are indications that the youth's requirements for additional supervision and support may have changed based on the frequency, duration, and intensity of the youth's behavioral, emotional, and physical/personal care characteristics. Such change in behavior shall be documented and a request is made using the Addendum Request to the Assistance Agreement. When the LDSS administers the VEMAT and the youth's VEMAT score is higher than the youth's previous score, the new VEMAT score for the youth establishes the maximum rate used during negotiations. When the youth's VEMAT score is lower than the youth's previous score, the maximum allowable amount is the youth's new score with the concurrence of the relative custodian(s).

- To add a new diagnosis or special need factor that was present at the time of the custody transfer, but was not diagnosed, the relative custodian(s) shall submit documentation and relevant reports from qualified professionals as required for documenting special need condition/disability after the transfer of custody, when no more than one year has elapsed from the date of diagnosis.

- To document the youth has a special medical need that existed at the time the initial Kinship Guardianship Assistance Agreement was executed prior to the transfer of custody, then the relative custodian(s) shall submit documentation by qualified professionals of the youth's current special medical need and its existence at the time the initial agreement was executed (whether or not treatment was being received).

The LDSS should use the same procedures used for initial agreements to resolve issues during negotiation.

The LDSS shall send the Family Services Notice of Action and Right to Appeal to the parents documenting the outcome. This notice should be sent within **60 days**

from the date the LDSS received the competed Addendum Request to the Assistance Agreement. The notification shall include information about the relative custodian(s)' right to appeal the decisions within **30 days** of receiving the written notice.

10.21.5 Executing the addendum

The LDSS shall prepare an Addendum to the Virginia Kinship Guardianship Assistance Agreement on behalf of the youth.

When the local board, or its designee, approves the addendum, the parents and the local Board, or designee, shall sign and date it. The local board does not have authority to deny an addendum for an eligible youth. When two (2) relative custodians signed the request for an addendum and agreed to the terms in the addendum, then both relative custodian(s) shall sign and date the addendum.

Payments shall not be effective until all parties have signed and dated the addendum. Changes in payment rates, such as an increase or decrease in enhanced maintenance rate, shall not be implemented until the first day of the month following all signatures. The addendum shall state the effective date of the changes. This date shall not be earlier than the date when all parties signed the addendum. The addendum is executed on behalf of the youth on the effective date stated in the addendum.

The LDSS shall give the relative custodian(s) a copy of the addendum. The LDSS should place the original agreement and all supporting documents in the youth's kinship guardianship assistance case record.

10.21.6 Conducting a VEMAT after signing Kinship Guardianship Assistance Agreement

Within **14 calendar days** of receiving an Addendum Request to the Assistance Agreement that specifies a request for services related to additional daily supervision from the relative custodian(s), the LDSS shall determine if it will conduct a VEMAT due to changes in the youth's needs or behavior.

If the LDSS determines that a VEMAT will not be conducted, the LDSS shall send the Family Services Notice of Action and Right to Appeal to the relative custodian(s) notifying them of the reason for not executing a VEMAT and their right to appeal the decision within **30 calendar days** of receiving the written notice.

If the LDSS determines that a VEMAT will be conducted, then the LDSS shall administer a VEMAT within **25 business days** of the decision to reassess the kinship guardianship assistance maintenance payment. The LDSS shall ensure the VEMAT is executed with sufficient time to ensure that the LDSS is able to completely process, execute, and respond to the family who submitted the

Addendum Request to the Assistance Agreement within **90 calendar days** of its receipt by the LDSS.

The VEMAT is conducted according to the same team process as specified in Chapter E. Foster Care, Section 18.2.2.3 with the following exception:

- If there is no specific case manager for the family, the LDSS shall ensure that the individual at the LDSS who is assigned to manage kinship guardianship assistance requests is included in the VEMAT meeting.

The VEMAT rater shall be an individual as described in Chapter E. Foster Care, Section 18.2.2.5 and shall follow all requirements in administering the VEMAT as identified in all earlier sections of this guidance.

The relative custodian(s) shall cooperate with the LDSS to ensure that all necessary information is available for a comprehensive review of the child's and youth's needs.

If the relative custodian(s) do not provide requested documentation or sign requested releases of information or obtain additional assessments if requested, the LDSS shall not conduct a VEMAT.

If the results of the VEMAT indicate that, due to a change in the youth's need for supervision and support, a change in the enhanced maintenance payment is allowed (e.g., increase, decrease), the LDSS and relative custodian(s) may negotiate a new monthly enhanced maintenance rate. The relative custodian(s) have the option to keep the original, unchanged agreement or proceed with negotiations for a new agreement. The LDSS and the relative custodian(s) shall complete an Addendum to the Kinship Guardianship Assistance Agreement to document the new agreed upon monthly rate. The relative custodian(s)' signature on the addendum shall serve as documentation that the parent agreed to the change in the Kinship Guardianship Assistance Agreement. The new rate shall begin on the first day of the month after the addendum is signed by all parties.

10.21.7 Assessing conditions warranting continuation beyond 18th birthday

Unless the youth has a condition that warrants continuation of kinship guardianship assistance, or meets the criteria for continuation through the Fostering Futures Program, the Kinship Guardianship Assistance Agreement terminates on the youth's 18th birthday. The LDSS, in conjunction with the negotiator, makes the determination if the youth has a documented condition that warrants continuation beyond the youth's 18th birthday or is eligible for Fostering Futures. Consequently, the LDSS shall contact the relative custodian(s) in writing using the Family Services Notice of Action and Right to Appeal, **six months prior to the youth turning age 18,** to advise the relative custodian(s) that the agreement will terminate on the youth's 18th birthday unless they submit, prior to the youth attaining age 18, documentation demonstrating that the youth has a condition that warrants continuation of the Kinship Guardianship Assistance Agreement, or is eligible for Fostering Futures.

After receiving the documentation, the LDSS, along with the Assistance Negotiator, will determine if the youth meets the criteria for continuing the agreement beyond the youth's 18th birthday. If the LDSS determines the youth's circumstances warrant continuation of kinship guardianship assistance, the agreement may be continued by amending the original agreement or entering into an addendum. The terms of the agreement or addendum may be for any period after the youth's 18th birthday up to the youth's 21st birthday.

If the LDSS determines the youth's circumstances do not warrant continuation of the agreement beyond the youth's 18th birthday, the LDSS shall notify the relative custodian(s) in writing with the Family Services Notice of Action and Right to Appeal Form, **60 days** prior to the youth's 18th birthday that the agreement and subsequent payments will terminate.

10.21.7.1 Criteria for continuing beyond 18th birthday

To continue kinship guardianship assistance beyond age 18, the LDSS shall determine if the youth meets both of the following criteria:

1. The LDSS shall establish one of the following that is listed on the original Kinship Guardianship Assistance Agreement:

- The youth has a physical or mental disability that was present at the time of custody transfer; or

- The youth has a physical or mental disability that is related to a hereditary tendency, congenital problem, or birth injury;

AND

2. The LDSS determines the youth requires ongoing treatment and intervention.

- This is defined as requiring treatment, intervention, or additional supervision and support from the relative custodian(s) to ensure the youth's safety and well-being;

Evidence of these two criteria shall be based on the following documentation:

- Statements from qualified professionals documenting the youth's disability or educational delay and the youth's need for ongoing treatment and/or intervention.

- Relevant diagnostic and assessment reports.

- Any other relevant documentation that occurred within one (1) year (e.g.,VEMAT and supporting documentation; school performance reports).

The agreement should continue as long as the LDSS determines the following:

- A physical or mental disability continues to exist.
- The youth continues to require ongoing treatment or intervention.

10.21.8 Extension of kinship guardianship assistance through Fostering Futures

Youth who leave foster care to the custody of a relative after age 16 may qualify for the extension of kinship guardianship assistance under Fostering Futures after reaching 18 and up to age 21.

Other Fostering Futures requirements which apply in extended foster care do not apply in kinship guardianship assistance: there are no voluntary agreements signed by the youth; service plans; biannual reviews; allowable placement settings; visits by a service worker; payments to the youth; court action; or title IV-E determination. Fostering futures payments made under the extended Kinship Guardianship Assistance Agreement shall only be made to the relative custodian(s).

10.21.8.1 Fostering Futures eligibility criteria

When the LDSS determines that the youth is ineligible for continuation of kinship guardianship assistance beyond age 18 based on the special needs criteria, kinship guardianship assistance may continue for the youth when the following **two (2)** criteria are met:

- The youth is subject to a Kinship Guardianship Assistance Agreement that became effective after the youth reached the age of 16; **and**
- The LDSS has determined the youth is ineligible for continuation of kinship guardianship assistance beyond age 18 under existing guidance (i.e. the youth does not have a documented physical or mental disability present at the time of the custody transfer or related to a hereditary tendency, congenital problem, or birth injury requiring ongoing treatment or intervention).

In addition to meeting the two (2) criteria above, the youth shall meet at least **one (1)** of the five (5) participation circumstances. The youth must be:

1. Completing secondary education or GED.

- Examples include enrollment in a secondary school, e.g. public high school, alternative high school, private school, adult education classes, program leading to GED, or special education described in the IEP.

2. Enrolled full-time or part-time (at least half-time) in an institution that provides post-secondary or vocational education.

- Examples include remedial courses, coursework without formal admission to the institution, attendance at multiple institutions, or correspondence or on-line course affiliated with an accredited institution.

3. Participating in a program or activity designed to promote employment or remove barriers to employment.

- Examples include individualized activities based on an assessment of the youth's needs. These may be self-directed, completed on a one-on-one basis with a caregiver, or part of an organized program. They may also include but are not limited to internships, volunteering, vocational rehabilitation, counseling, driver's education, less than half-time secondary education, or participating in a treatment program for a substance use disorder. Qualifying activities should clearly move the youth toward developing skills to help transition to education or employment leading to independence.

4. Employed at least 80 hours per month.

5. Incapable of engaging in any of the above activities due to a medical condition, i.e. a short-term or long-term physical health impairment or a mental/emotional or behavior health, developmental or cognitive disability or impairment that serves as a barrier which prevents the youth from consistently participating in employment and education.

- The youth does not have to be currently receiving or seeking treatment or remediation for the medical condition.

The LDSS, with assistance of the negotiator will make the initial determination whether the youth is eligible to continue the Kinship Guardianship Assistance Agreement under Fostering Futures beyond the youth's 18th birthday.

10.21.8.2 Documentation for Fostering Futures eligibility

To determine initial eligibility, the relative custodian(s)' good faith statement of assurance that the youth will participate in secondary or post-secondary education, vocational program, employment, or job-readiness preparation as described above should be accepted. Therefore, the relative custodian shall certify on the annual affidavit whether the youth is continuing participation,

including the type and status, and submit documentation verifying the youth's involvement in one or more participation conditions.

Initially, the youth's inability to participate due to a medical condition shall be verified by a statement from a medical doctor provided by the relative custodian. Thereafter, the relative custodian shall certify on the annual affidavit whether the youth continues to be unable to participate due to the medical condition, and submit documentation verifying the youth's continued medical condition.

10.21.8.3 Continuing kinship guardianship assistance using Fostering Futures

If the youth is eligible for an extension of kinship guardianship assistance under Fostering Futures, the service worker should prepare an addendum to the Kinship Guardianship Assistance Agreement reflecting the continuation of maintenance payments to the relative custodian(s) and citing the required conditions of participation. If an enhanced maintenance payment is in effect, payment shall be continued at the same level unless the relative custodian agrees to a reduction.

If a youth eligible under Fostering Futures was receiving title IV-E kinship guardianship assistance prior to age 18, title IV-E assistance shall continue without further determination; if the youth was receiving state kinship guardianship assistance, state assistance shall continue with FAPT approval.

Continued eligibility will be determined by the annual affidavit submitted by the relative custodian(s) on the anniversary of the effective date of custody transfer. The affidavit should certify the youth's compliance with one of the participation conditions and provide documentation of the youth's participation throughout the year.

10.22 Terminating/suspending payments and/or agreements

The LDSS may suspend maintenance payments paid through title IV-E funds for the title IV-E eligible youth. The LDSS should notify the CPMT when CSA state pool funds are being used to pay for foster care services for the youth and/or the relative custodian(s) and such payments may be suspended.

10.22.1 Suspending payments

Kinship guardianship assistance payments paid by LDSS and or foster care services by the CPMT may be suspended when:

- The relative custodian(s) do not fulfill the agreed upon terms documented in the binding Kinship Guardianship Assistance Agreement or the addendum to the agreement.

- The youth is placed outside of the home for longer than **14 days**.

- The relative custodian(s) fail to return the signed annual affidavit (Federal Program Instruction dated July 9, 2010).

The LDSS should notify and discuss the potential suspension of payments with the CPMT or its designee when foster care services are being made for the youth or the family with CSA state pool funds. The LDSS and the CPMT should collaborate and discuss their respective actions.

- The LDSS determines whether to negotiate new terms in an addendum to the Kinship Guardianship Assistance Agreement, to suspend the title IV-E payment, or to terminate such payment.

- The CPMT determines whether to negotiate a new IFSP, to suspend foster care services or to terminate foster care services.

Prior to suspending the payments, the LDSS should discuss the situation with the relative custodian(s). The LDSS should collaborate with the CPMT's designee in this conversation when applicable.

The LDSS, in collaboration with the CPMT when appropriate, shall send the relative custodian(s) the Family Services Notice of Action through certified mail to provide **30 days notice** before suspending title IV-E payments or the CPMT suspending CSA payments that states:

- The verified factual information documenting the specific situation.

- The provision in the binding Kinship Guardianship Assistance Agreement that allows the LDSS or CPMT to suspend the payment.

- The date the payment or services are to be suspended.

- The actions to be taken by the relative custodian(s) by a specified date to prevent the suspension of payments when applicable, including the relative custodian(s) immediately contacting the LDSS and CPMT when applicable to discuss.

- The circumstances under which the suspended payments may be reinstated.

The LDSS should collaborate with and keep the CPMT informed of actions taken to suspend payments. The LDSS shall make decisions on suspending title IV-E maintenance payments. The LDSS should discuss with the CPMT its decisions on suspending foster care services.

When the LDSS suspends payments due to failure of the relative custodian(s) to comply with the agreement or addendum, then maintenance payments should not

be retroactive. The LDSS should discuss with the CPMT its decision on whether foster care services will be retroactive.

To reinstate a suspended payment, the LDSS may continue the existing terms on the agreement or addendum. The LDSS should discuss with the CPMT its decision on whether to continue the existing IFSP.

10.22.2 Terminating maintenance payments

The LDSS shall only terminate maintenance payments based on terms specified in the Kinship Guardianship Assistance Agreement, or the addendum in effect, including:

- The agreed upon time period for the maintenance payment to end; or
- The relative custodian(s) request in writing that the maintenance payments end; or
- The relative custodian(s) continue to not comply with the annual review process (i.e., annual affidavit), including failing to respond to suspended payments and diligent efforts by the LDSS; or
- The relative custodian(s) do not fulfill other agreed upon terms documented in the Kinship Guardianship Assistance Agreement or addendum.

When the relative custodian(s) and the LDSS agree to a time-limited maintenance payment, the LDSS shall notify the relative custodian(s) using the Family Services Notice of Action through certified mail **two** (**2) months** prior to the scheduled end date for the payment. When appropriate, the LDSS and negotiator shall assess and negotiate with the relative custodian(s) new terms for maintenance payments to be included in an addendum to the Kinship Guardianship Assistance Agreement.

If the maintenance payments are terminated for the title IV-E eligible youth, the youth shall no longer be eligible for Medicaid in relation to the Kinship Guardianship Assistance Agreement. To determine whether the youth may be eligible for Virginia medical assistance under other Medicaid covered categories or under FAMIS, the relative custodian(s) should submit a Medicaid application to the LDSS where they reside.

If the relative custodian(s) want to reinstate the terminated payment, they should submit an Addendum Request to the Assistance Agreement. The LDSS should assess and negotiate new terms for an addendum to the agreement, as appropriate. Payments should not be retroactive. The LDSS should refer the youth and the relative custodian(s) to the FAPT if they request foster care services. The LDSS should discuss with the CPMT its decision on whether to continue the existing IFSP.

10.22.3 Terminating agreements

The Kinship Guardianship Assistance Agreement shall only be terminated, as specified in the Kinship Guardianship Assistance Agreement, when the LDSS determines that any one of the following circumstances occurs:

- The youth reaches the age of 18 years, unless the LDSS determines the youth has a mental or physical condition that warrants continuation of kinship guardianship assistance beyond the age of 18 years or the youth is eligible under Fostering Futures.
- The youth reaches the age of 21 years, when the LDSS established that the youth had a mental or physical condition which warranted the continuation of assistance (see Section 10.22.4).
- The relative custodian(s):
    - Adopt the youth subsequent to the Kinship Guardianship Assistance Agreement and the transfer of legal custody. (Note: The LDSS and the relative custodian(s) shall negotiate adoption assistance payments independently from any negotiated terms of agreement for kinship guardianship assistance. In determining the eligibility for adoption assistance payments of the youth in a legal custodial arrangement, the placement of the youth with the relative custodian(s) and any title IV-E kinship guardianship assistance payments made on behalf of the youth shall be considered not to have happened. (Social Security Act, Title IV, § 473 (a) (2) (D) [42 USC 673].
    - Request in writing that the agreement ends.
    - Fail to comply with the annual review process (i.e., the annual affidavit) following notification of termination of payments.
    - Are no longer legally responsible for the care of the youth:
        - The transfer of legal custody to the relative is terminated by court order (for one relative when the Kinship Guardianship Assistance Agreement was with one relative custodian; and for both relatives when the agreement was with two relative custodian(s)); or
        - The youth reenters foster care; or
        - The youth becomes an emancipated minor, marries, enlists in the military, or dies.

- Are not providing any financial support for the youth. When the LDSS obtains and documents verifiable information that the relative custodian(s) are providing no financial support for the youth.

- Death or incapacitation of the relative custodian(s) (i.e., both relatives die or become incapacitated when the agreement is with two (2) relative custodian(s); or one relative dies or becomes incapacitated when the agreement was with one (1) relative custodian). The kinship guardianship assistance can continue if a successor guardian was identified in the Kinship Guardianship Assistance Agreement or addendum prior to the death or incapacitation (Section 10.16.3).

- The relative custodian(s) and the LDSS agree in writing to terminate the agreement.

Termination shall be based upon written documentation verifying the circumstances.

The LDSS should collaborate with and keep the CPMT informed of actions taken to terminate the agreement which includes all addendums. The LDSS should discuss with the CPMT its decisions on terminating foster care services.

The LDSS shall provide written notice using the Family Services Notice of Action to the relative custodian(s) prior to termination of the agreements and addendums. Both relative custodian(s) shall be notified when both signed the active Kinship Guardianship Assistance Agreement, including separated or divorced relative custodian(s). The notification shall include information on the relative custodian(s)' right to appeal the LDSS decision to terminate the agreement and addendums.

10.22.4 Terminating extended kinship guardianship assistance through Fostering Futures

If the annual affidavit shows that the youth no longer meets at least one of the participation conditions, the LDSS should take steps to terminate the Kinship Guardianship Assistance Agreement through procedures outlined in Section 10.22.3.

If extended assistance under Fostering Futures is terminated due to the youth's failure to continue to meet one of the participation conditions, kinship guardianship assistance **cannot** be reinstated once it is terminated using Fostering Futures funding.

10.22.5 LDSS actions when relative custodian(s) fail to provide financial support

When the LDSS obtains and documents verifiable information that the relative custodian(s) are providing no financial support for the youth, the LDSS shall

immediately send the relative custodian(s) the Family Services Notice of Action through certified mail that states:

- The verified information documenting that the relative custodian(s) are not providing any financial support for the youth.
- The LDSS is prohibited by law from making kinship guardianship assistance payments when the youth is no longer receiving any financial support from the relative custodian(s) (Social Security Act, Title IV, § 473 (a) (4) (A) (iii) [42 U.S.C. 673] and Federal Child Welfare Policy Manual, Subsection 8.2D.5 #2).
- The binding Kinship Guardianship Assistance Agreement requires that the LDSS terminate the agreement and any addendum.
- If the relative custodian(s) do not immediately reinstate financial support for the youth and provide documentation of such action to the LDSS, the LDSS will terminate all kinship guardianship assistance payments and the kinship guardianship agreement in its entirety, effective **ten (10) days** after the relative custodian(s)' receipt of the certified letter.
- The relative custodian(s) must immediately contact the LDSS within **ten (10) days** of receipt of the certified letter to discuss the situation.
- If the relative custodian(s) do not immediately reinstate financial support for the youth and provide documentation of such action to the LDSS, or if the relative custodian(s) do not contact the LDSS within **ten (10) days** of their receipt of the certified letter to discuss the situation, the LDSS will terminate all kinship guardianship assistance payments and the Kinship Guardianship Assistance Agreement in its entirety, effective **ten (10) days** after the relative custodian(s)' receipt of the certified letter.

The LDSS shall notify both relative custodians when both relative custodians signed the active Kinship Guardianship Assistance Agreement, including separated or divorced parents.

The LDSS shall discuss the situation with the relative custodian(s) and document the discussion in the automated system (OASIS) narrative. The discussion should include:

- The documented lack of financial support by the relative custodian(s).
- The impact on the youth.
- The relative custodian(s)' reasons for not providing any financial support for the youth.

- The relative custodian(s)' decision as to whether or not they will immediately reinstitute their financial support for the youth.

- The LDSS action based on the relative custodian(s)' decision, either to:

  - Continue payments, if the relative custodian(s) reinstate financial support; or

  - End payments and the agreement on the specified date in the certified letter, if the relative custodian(s) do not reinstate financial support of the youth.

The LDSS shall document the relative custodian(s)' decision and the LDSS' action in writing. The LDSS and the relative custodian(s) shall sign the document. If the relative custodian(s) do not sign the document, the LDSS shall write on the document the date of the discussion with the relative custodian(s) and that the relative custodian(s) declined when asked to sign the statement.

If the relative custodian(s) decide to not reinstitute their financial support of the youth, or do not contact the LDSS to discuss their financial support of the youth as the LDSS requested, the LDSS shall provide written notice in a certified letter to the relative custodian(s) that the agreement shall be terminated on a specified date (e.g., the date specified in the first certified letter). The notification shall include information on the relative custodian(s)' right to appeal the decision to terminate the agreement within **30 days** of their receipt of the second written notice. The LDSS shall then terminate the payments and the Kinship Guardianship Assistance Agreement in its entirety.

10.22.6 LDSS actions when relative custodian(s) die or become incapacitated

When both relative custodians are deceased or incapacitated in a two-parent family, or one relative custodian is deceased or incapacitated in a single parent family, the Kinship Guardianship Assistance Agreement shall be terminated unless a successor guardian was identified in the Kinship Guardianship Assistance Agreement or addendum prior to the death or incapacitation. Kinship guardianship assistance can continue through the successor guardian under the requirements outlined in Section 10.16.3 Additionally, relatives may choose to initiate adoption proceedings independent of the LDSS. When the youth is without a custodian, custody may be given to another relative or the youth enters foster care as a result of the relative custodian(s)' death.

10.23 Appeals and fair hearings

Appeals shall be processed in accordance with requirements of federal law and procedures established by the Virginia Board of Social Services (§ 63.2-1304; and 22 VAC 40-260-20 I). For specific information, see Appeals and Fair Hearings Unit Procedure Manual 2011.

10.23.1 Grounds for appeal

The LDSS shall provide an opportunity for a fair hearing to any individual whose claim for kinship guardianship assistance maintenance payments available under title IV-E is denied or is not acted upon with reasonable promptness (Social Security Act, Title IV, § 471 (a) (12) [42 USC 671] and Federal Child Welfare Policy Manual, Subsection 8.5 #2).

Any requestor or recipient of kinship guardianship assistance aggrieved by any decision of the LDSS in granting, denying, changing, or discontinuing kinship guardianship assistance may appeal the decision within **30 days** after receiving written notice of the LDSS decision. The written notice shall inform the requestor or recipient of the **30 day** time limit for the appeal. Any applicant or recipient aggrieved by the failure of LDSS to make a decision within a reasonable time may ask for a review of the process.

While relative custodian(s) may appeal any decision of the LDSS related to kinship guardianship assistance, some allegations that constitute grounds for a fair hearing include:

- LDSS denying the relative custodian's application for kinship guardianship assistance.
- LDSS failure to act on the relative custodian's application for kinship guardianship assistance within **60 days** from the LDSS receiving the completed application and all required documentation.
- The relative custodian(s) not agreeing with the LDSS determination on the youth's eligibility for kinship guardianship assistance.
- LDSS denying the relative custodian(s)' claim that the youth is eligible for title IV-E benefits or not acting upon the claim with reasonable promptness for the title IV-E eligible youth, including:
    - Basic and enhanced maintenance payments.
    - Payments for non-recurring expenses directly related to transferring custody of the youth from the LDSS to the relative custodian(s).
- LDSS denying the relative custodian(s)' request for a change in the amount of title IV-E maintenance payments due to a change in the relative custodian(s)' circumstances.
- LDSS terminating the Kinship Guardianship Assistance Agreement.

10.23.2 Request for appeals

The relative custodian(s) may appeal and request a fair hearing within **30 days** after receiving written notice of the LDSS decision. A person acting on behalf of the relative custodian(s) (e.g., a relative, friend, or an attorney) may act as their authorized representative and request the hearing.

Requests for appeals must be submitted in writing to:

Appeals and Fair Hearings Unit
Virginia Department of Social Services
801 East Main Street
Richmond, VA 23219-2901

The LDSS must not prejudice the relative custodian(s)' right to appeal a decision. The LDSS must assist the relative custodian(s) in submitting an appeal or in preparing the relative custodian(s) case, if necessary. The LDSS has an affirmative duty to provide information and referral services to help the relative custodian(s) make use of available community resources.

10.23.3 Validating the appeal

The LDSS will receive a copy of the relative custodian(s)' appeal request and a validation form from the Appeals and Fair Hearings Unit. The LDSS must specify:

- The action taken by the LDSS.
- The date of the notice of action.
- Whether or not kinship guardianship assistance has been continued during the appeal process.

The LDSS must return the completed validation form and a copy of the Notice of Action within **five (5) business days** to the hearing officer.

When the hearing officer determines the appeal request is valid, the LDSS and relative custodian(s) are notified in writing, at least **ten (10) days** prior to the hearing, of the date for the Administrative Hearing. The notice includes information about the appeal rights of the relative custodian(s). The hearing is scheduled and conducted at a time, date, and place convenient to the relative custodian(s). It is usually conducted by teleconference. The hearing officer will order continuation of kinship guardianship assistance when required, if the LDSS has not already taken such action.

When the hearing officer determines the appeal request is invalid, the LDSS and relative custodian(s) receive written notification with an explanation why an administrative appeal hearing cannot be granted.

A copy of the completed validation form, the Notice of Action, and the written notification from the hearing officer shall be placed in the youth's kinship guardianship assistance paper case record.

10.23.4 Summary of facts

Upon receiving notification of the scheduled administrative hearing, the LDSS must prepare a Summary of Facts on the case. A copy of the summary should be received by the hearing officer and relative custodian(s) at least **five (5) days** before the hearing.

The summary should include:

- Identifying case information.
    - Name of LDSS.
    - Name and address of youth and relative custodian(s).
    - Kinship guardianship assistance case number.
- All relevant information about the action being appealed.
    - Statement of issue (e.g., the specific request of the relative custodian(s) that was denied; the determination by the LDSS; the type, amount, and date of kinship guardianship assistance payment that was denied).
    - Logical, chronological sequence of events which led to the action taken by the LDSS (e.g., specific dates; agency requests for verification; actions that occurred or did not occur; LDSS actions to resolve the issues).
    - Description of specific calculations and policy or guidance used to determine kinship guardianship assistance amounts, if applicable.
    - Relative custodian(s)' request for and date of appeal, including quoted words from relative custodian(s) regarding the issue and their reasons for appealing.
- Specific citation(s) and language quoted from law, policy, and/or the guidance manual on which LDSS action was based.
- Relevant provisions of the Kinship Guardianship Assistance Agreement, if applicable (e.g., dollar amount, period of time authorized, provisions).

- Copies of all other relevant documentation regarding the action being appealed (e.g., documents submitted by relative custodian(s), notices, kinship guardianship assistance forms, letters).

- Signature of LDSS Director and date.

- Signature of relative custodian(s) and/or their authorized representative acknowledging receipt of the summary and all attachments. If they do not sign, the LDSS documents on the summary the date the summary was discussed with the relative custodian(s) and/or their representative and that the relative custodian(s) and/or their representative declined when asked to sign it.

A copy of the Summary of Facts shall be placed in the youth's kinship guardianship assistance paper case record.

10.23.5 Administrative hearing

The formal administrative hearing is conducted by the VDSS hearing officer. The hearing officer is an impartial person charged by the Commissioner to hear appeals and decide if the LDSS followed policy and procedure in making a decision.

At the hearing, the relative custodian(s) and/or their representative will have the opportunity to:

- Examine all documents and records used at the hearing.

- Present the case.

- Bring witnesses.

- Establish pertinent facts and advance arguments.

- Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

The LDSS will have the opportunity to:

- Clarify or modify its statements contained in the Summary of Facts.

- Question the relative custodian(s) and their witnesses on the salient issue(s).

- Examine all documents submitted by the relative custodian(s) or their authorized representative.

Only relevant evidence related to the issue(s) being appealed is admissible at the hearing.

There is a legal presumption that the LDSS acted in accordance with law and policy and the burden of proof is on the relative custodian(s) to demonstrate LDSS error.

The decision of the hearing officer shall be based exclusively on the evidence (i.e., documents or testimony) introduced at the hearing, and on all applicable laws, regulations, policies, and guidance manuals.

The hearing officer shall notify the LDSS and relative custodian(s) in writing of its decision on the appeal within **60 days** following the date the appeal request was received by the VDSS, except when a postponement was requested. If the hearing was postponed, the time limit will be extended for as many days as the hearing was postponed.

The decision of the hearing officer is final and binding when the decision is mailed to the LDSS and relative custodian(s). The decision must be implemented by the LDSS within **ten (10) business days** of the date of the decision, regardless of whether the relative custodian(s) request further review by the Circuit Court. After the LDSS takes corrective action, the LDSS must notify the relative custodian(s) and the hearing officer in writing that the agency has complied with the decision.

All documents from the hearing, the written decision of the hearing officer, and the LDSS written notice documenting compliance with the decision, when applicable, shall be placed in the youth's kinship guardianship assistance paper case record.

10.23.6 Withdrawal statement

If the LDSS and relative custodian(s) resolve the issue at any time after the Appeals and Fair Hearings Unit receives the relative custodian(s)' request for an Administrative Review Hearing, the relative custodian(s) must provide a written statement withdrawing the appeal request. The withdrawal statement is sent to the hearing officer with a copy to the LDSS. The withdrawal statement shall be placed in the youth's kinship guardianship assistance paper case record.

10.23.7 Appeal to Circuit Court

The relative custodian(s) aggrieved by the decision of the hearing officer may seek further review of the decision by the appropriate Circuit Court. The relative custodian(s) have **30 days** from the date of service (the date they actually received the hearing officer's decision or the date it was mailed to the relative custodian(s), whichever occurred first) to provide notice of their intent to file an appeal with the circuit court.

Written notice of intent to appeal the hearing officer's decision must be sent to:

Commissioner
Virginia Department of Social Services
801 East Main Street

Richmond. Virginia 23219-2901

In addition, the relative custodian(s) must file a written petition in Circuit Court in the locality where they live in order to present the appeal. The relative custodian(s) will not receive correspondence nor will their kinship guardianship assistance continue as a result of the relative custodian(s) sending written notice to VDSS of their intent to appeal, as the hearing officer's decision is the final administrative action.

10.23.8 Filing complaint of discrimination

If the relative custodian(s) believe they have been discriminated against by the VDSS or LDSS because of race, color, national origin, sex, age, or disability, the relative custodian(s) have the right to file a complaint of discrimination with the

VDSS Civil Rights Program Administrator
801 E. Main Street, 8th Floor
Richmond, Virginia 23219

and/or

U.S. Department of Health and Human Services
Director, Office of Civil Rights
Region III 150 S. Independence Mall West – Suite 372
Philadelphia, Pennsylvania 19106-3499

For more information, see VDSS Office for Civil Rights.

10.24 Establishing kinship guardianship assistance paper case record

The LDSS shall establish a kinship guardianship assistance paper case record, which is the youth's service record. This record corresponds to the youth's kinship guardianship assistance case in OASIS, and is under the name of the relative custodian(s). It is separate from the youth's foster care record, the record established for the foster/adoptive home approval of the relative, and any eligibility record established by the eligibility unit.

The foster care paper case record shall be closed within **30 days** after legal custody is transferred.

The kinship guardianship assistance paper case record shall include, but is not limited to, the following documentation:

- Youth's foster care service plan (See Section 10.12)
- Youth's eligibility for kinship guardianship assistance:

1. Eligibility determination for title IV-E Foster Care that was applicable at the time the youth entered foster care.

2. History of title IV-E payments made for the youth who entered foster care through a temporary entrustment agreement.

   - If the youth was committed to the LDSS by the court, the initial court order shall contain a statement that continuation in the home would be contrary to the welfare of the youth or that removal was in the best interest of the youth. Reasonable efforts to prevent removal shall be documented in a court order within 60 days of entry into foster care.

   - If the youth entered foster care through an entrustment to the LDSS by the birth parents or guardians, for such youth to be eligible for title IV-E kinship guardianship assistance payments, there shall be:

     - A valid entrustment agreement relinquishing the youth to the LDSS and subsequent court orders.

     - A subsequent court order containing the statement that continuation in the home is contrary to the welfare of the youth.

- Youth demographic and personal information:

  3. Youth's birth certificate (copy).

  4. Social Security Card (copy).

- Basis for youth's kinship guardianship assistance:

  5. Kinship Guardianship Assistance Screening Tool

  6. Application for Virginia Kinship Guardianship Assistance.

  7. Virginia Enhanced Maintenance Assessment Tool (VEMAT) and all required documentation.

  8. CANS assessment.

  9. Title IV-E Eligibility Determination Form (dated and signed).

  10. Health insurance card, full explanation of benefits, when applicable.

  - Virginia Kinship Guardianship Assistance Agreement (fully executed).

  11. IFSP approved by the CPMT, when applicable (all).

  12. LDSS petition for custody transfer to the prospective relative custodian(s).

13. Signed court order transferring legal custody to the relative custodian(s).

14. Virginia Annual Affidavit for Kinship guardianship assistance (all).

15. Addendum Request to the Assistance Agreement (all).

16. Documentation from qualified professionals (when applicable).

17. For the SSI youth, a copy of the award letter from the Social Security Administration or SSI payment stub.

18. Any addenda to the agreement.

19. Appeals documentation, including validation form, notice of action, summary of facts, withdrawal statement, hearing documents, written decision of hearing officer, LDSS written notice documenting compliance with the decision, when applicable.

- Written notifications and correspondence

20. Notice receipt/status of application for kinship guardianship assistance.

21. Notice when time-limited maintenance payments are expiring.

22. Annual notice when annual affidavit due.

23. Documentation when affidavit not returned.

24. Notices when maintenance payments increase.

25. Notices receipt/status of requests for changes in kinship guardianship assistance.

26. Written notices from relative custodian(s).

27. Documentation when relative custodian(s) not providing financial support (e.g., verification, certified letters, relative custodian(s) decision, and LDSS actions).

28. Documentation verifying circumstances for termination.

29. Notices to suspend and terminate payments, services, or entire agreements.

10.25 OASIS case record

The LDSS shall close the OASIS system foster care case record for the youth and correctly document kinship guardianship assistance information in the new OASIS kinship guardianship assistance case record for the youth on a timely basis.

To close the OASIS foster care case record for the youth, the LDSS:

- Ensures all discussions with the prospective relative custodian(s), the birth parents, and the youth regarding the transfer of custody and kinship guardianship assistance are entered in Contacts.
- Completes the Closing Narrative in Contacts.
- Updates the Kinship Guardianship Assistance Agreement History, documenting all dates in the process.
- Verifies that the Court Hearing is entered, documenting the transfer of custody to the relative custodian(s) and the date of the hearing. (This may not be the date the court order was signed).
- Discharges the youth with the reason: Custody to Relative with Kinship Guardianship Assistance. This action will end date the Funding, Removal, Legal Status, and Client Gen Info screens.

    30. If the case will remain open for other children in foster care or other services being provided, the LDSS has completed the case closing process. The end date on the child's gen info screen inactivates the child or youth in the case.

    31. If there are no other children receiving foster care services, the LDSS closes the case.

To open a new OASIS kinship guardianship assistance case record for the youth:

- The OASIS record is opened in the name of the relative custodian(s). The case type is "Kinship guardianship assistance."
- The youth is added to the case using the client id from the foster care case through the Add Client function in OASIS.
- The kinship guardianship assistance part of the case consists of screens located under the "KinGAP" button on the main case navigation bar. The following screens are accessible:
    - Payments

- Services
- KinGap Status
- IL (for applicable youth)
- Appeals

Additional instruction on opening a kinship guardianship assistance case in OASIS can be obtained through the Help Screen in the OASIS system.

In OASIS, LDSS shall include narrative summaries describing how the following requirements were met to provide kinship guardianship assistance on behalf of the youth:

- The ways the youth and the prospective relative custodian(s) met the eligibility requirements for kinship guardianship assistance (see Section 10.15 and the Kinship Guardianship Assistance Screening Tool):

  32. Youth has lived with the approved relative foster parent for at least six (6) consecutive months.

  33. Youth has been in LDSS custody for at least six (6) months.

  34. Youth and relative custodian(s) are related by blood, marriage, or adoption.

  35. Youth has developed a clearly established and documented significant relationship with the relative custodian(s).

- The steps the agency took to determine that it is not appropriate for the youth to have a permanency goal of Return Home and Adoption.

- The efforts the agency made to discuss adoption with the youth's relative foster parent as a more permanent alternative to legal custody, and the reasons why adoption was not pursued.

- The efforts the agency made to discuss the kinship guardianship assistance arrangement with the youth age 14 or older (and that the youth is in agreement with the transfer of custody), or with the child under age 14 who is capable of communicating his wishes.

- The reasons why achieving permanency by placement with relative and transfer of custody from the LDSS to the relative with kinship guardianship assistance was in the best interests of the youth.

- The steps the agency made to place siblings of the youth with the prospective relative custodian(s), when applicable.

- The reasons for any separation of siblings during placement, if the placement with the prospective relative custodian(s) does not include siblings.

- The plan for the youth's visitation and communication with siblings if separated, taking into account the wishes of the children.

The LDSS should also document policies, procedures, and timelines were followed when applicable. Narratives shall include, but are not limited to:

- Selection of the relative placement, including the reasons the placement is in the best interest of the youth.

- Discussion of the kinship guardianship assistance option with the relative custodian(s), including:

    - The types of kinship guardianship assistance that may be available (i.e., basic and enhanced maintenance, Medicaid in relation to the Kinship Guardianship Assistance Agreement; and non-recurring expenses).

    36. The process by which the family can access additional services through CSA.

    37. The process to request changes in kinship guardianship assistance and the decision-making process.

    38. Information on their right to appeal LDSS decisions and the VDSS fair hearing process and their right to appeal FAPT decisions.

- The date relative custodian(s) were notified by LDSS of receipt and status of the Addendum Request to the Assistance Agreement, within **14 days** after receiving the request.

- Exploration of all available health insurance, extended family, community, government, and other resources, including the LDSS determination that these resources can or cannot be used to fully or partially pay for the services and/or supports required to meet the needs of the youth.

- Dates all addenda for kinship guardianship assistance were signed, within **30 days** after the LDSS receives the completed Addendum Request to the Assistance Agreement with all supporting documentation.

- Dates and narratives on all annual affidavits.

- Pertinent information from relative custodian(s) and provider contacts.

10.26 Required forms and documentation

The LDSS is required to use the following state forms for assessing, negotiating, and documenting kinship guardianship assistance. These forms ensure that all necessary information is collected and documented as required by federal law, regulation, policy, and state guidance. They also provide consistent application of these requirements statewide, ensuring kinship guardianship assistance is handled equitably for relative custodian(s), while allowing kinship guardianship assistance to be individually tailored to address unique needs of the youth and family circumstances of the relative custodian(s).

Use of these forms as described in this guidance will ensure that the LDSS meets all federal and state requirements for kinship guardianship assistance. If the LDSS chooses to not use these forms, or to alter them in any substantive manner, the LDSS may be held responsible for any financial pay-backs as a result of lost appeals or unallowable payments discovered during kinship guardianship assistance case reviews.

- Kinship Guardianship Assistance Screening Tool documents that the family and the youth are eligible for kinship guardianship assistance.

- Virginia Enhanced Maintenance Assessment Tool (VEMAT) is the only allowable tool to be used to determine enhanced maintenance for eligible youth. Title IV-E and CSA funds shall be used to fund enhanced maintenance payments for kinship guardianship assistance only when the VEMAT is used to determine the maximum amount of enhanced maintenance allowable for the youth.

- Application for Virginia Kinship Guardianship Assistance is required from all relative custodian(s) requesting kinship guardianship assistance.

- Virginia Kinship Guardianship Assistance Agreement specifies the agreed upon title IV-E kinship guardianship assistance terms for maintenance payments and non-recurring expense payments to be provided for the title IV-E eligible youth. It describes the process for the LDSS to refer the title IV-E and non-title IV-E eligible youth and relative custodian(s) to the FAPT for appropriate foster care services. It stipulates that the agreement shall remain in effect regardless of the state of residence of the title IV-E youth and relative custodian(s) and regardless of the Virginia locality residence of the title IV-E and non-title IV-E youth and relative custodian(s).

- Virginia Annual Affidavit for Kinship Guardianship Assistance is the annual certification by the relative custodian(s) that the youth continues to be eligible for kinship guardianship assistance. It informs the LDSS when the Kinship Guardianship Assistance Agreement needs to be renegotiated. It also documents school enrollment information required by federal law.

- Request for VEMAT Administration Due to Change in Child's Behaviors shall be submitted by the relative custodian(s) according to guidance in Section 17.2.

- Addendum Request to the Assistance Agreement is completed by the relative custodian(s) when there are changes in the needs of the youth and/or their family circumstances and they request changes to their Kinship Guardianship Assistance Agreement or request foster care services.

- Addendum to the Assistance Agreement is completed if the Kinship Guardianship Assistance Agreement has been renegotiated. It specifies the payments and terms for kinship guardianship assistance to be provided on behalf of the youth. It is entered into and binding on the relative custodian(s) and the LDSS.

- Kinship Guardianship Assistance Negotiation Report is completed by the negotiator following the negotiation process. It outlines the final decisions made during the negotiation process and what information was used to make the decision.

10.27 Overview of the State-Funded Kinship Subsidy Program

The State-Funded Kinship Subsidy Program (as outlined in § 63.2-1306 of the Code of Virginia and 22VAC40-201-210 of the Virginia Administrative Code) was established in 2021 in order to facilitate placements with relatives and ensure permanency for children who are ineligible for KinGAP. **This subsidy program must only be used for children in foster care and the subsidy agreement must be completed and approved by the state and local FAPT prior to the court transferring custody of the child to the kinship guardian.**

10.27.1 Determining eligiblity

To determine eligibility for the state kinship subsidy, the LDSS must evaluate if all of the following requirements are met for both the child and the prospective kinship guardian. Siblings of eligible children are also eligible for the state kinship subsidy. A child's funding eligibility for the state kinship subsidy is not dependent on their funding eligibility in foster care. The state kinship subsidy includes children who meet eligibility requirements for the program, regardless of whether they were eligible for either IV-E or CSA funding while in foster care.

A child is eligible for the State-Funded Kinship Subsidy Program if:

- The child is under 18 years of age prior to the transfer of legal custody to the kinship guardian.

- The child is in foster care through a voluntary placement agreement or a commitment to a LDSS by a court of competent jurisdiction as a result of a

judicial determination that continuation in the home would be contrary to the welfare of the child.

- The child has been in the custody of the local department for at least 90 days;
- The child demonstrates a strong attachment to the kinship guardian, and the kinship guardian has a strong commitment to caring permanently for the child;
- The youth, if age 14 or older, has been consulted regarding the kinship subsidy;
- The requirements for a transfer of custody of the child as outlined in Section 10.5 to the kinship guardian for the purpose of establishing eligibility for the State-Funded Kinship Subsidy Program have been met; and
- The child is not eligible for the Kinship Guardianship Assistance Program, as outlined in § 63.2-1305 of the Code of Virginia.

The kinship guardian is eligible for the State-Funded Kinship Subsidy Program if the kinship guardian:

- Is related to the child by blood, marriage, adoption, or through a fictive kin relationship;
- Has a strong commitment to permanently care for the child;
- Is willing to obtain legal custody of the child; and
- Completes a relative foster home approval or qualifies for an exemption from the kinship foster home approval process
    - If qualifying for an exemption, the kinship guardian must complete a home study and background check based on federally established barrier crimes [in 42 USC § 671(a)(20)]. The Office of Background Investigations will continue to process and approve background checks using the Virginia standard for barrier crimes. If the LDSS receives a denied background check for the kinship guardian, the LDSS must assess whether the relative's offenses also meet the definition of a federal barrier crime utilizing the Kinship Subsidy Background Status form. While this form provides assistance in navigating the federal requirements, it is ultimately the responsibility of the LDSS to determine whether the relative's background precludes them from this program. LDSS are encouraged to consult with their attorney, as needed.

The child and kinship guardian's eligibility must be documented using the State-Funded Kinship Subsidy Program Screening Tool.

10.27.2 Exemptions from the foster home approval process for eligibility determination

The kinship guardian becoming a foster parent is preferable as it will allow the child in foster care to be immediately placed with the kinship guardian in an allowable placement. The kinship guardian becoming a foster parent also expands the opportunities for the kinship foster parent, including continued assistance through KinGAP or adoption assistance. LDSS must notify relatives of this option and assist them in their efforts to become a foster parent. A kinship guardian may experience circumstances that pose a barrier to becoming a foster parent. As foster home approval and placement are key requirements of KinGAP and adoption assistance, barriers can preclude some kinship guardians from receiving continued assistance after receiving custody of the child from foster care. In order to address this need, state kinship subsidy allows the kinship guardian to meet an exemption from the foster home approval process in order to establish eligibility for the program. These exemptions include:

- The kinship guardian has made multiple attempts to satisfy the training requirements for foster home approval but is unable to complete all training requirements; or

- The kinship guardian's home is unable to meet the foster parent approval standards and establishing permanency with the kinship guardian through a state-funded kinship subsidy is in the child's best interest, as determined by the Department.

10.27.3 Application

After the LDSS determines the child and the prospective kinship guardian are eligible for the state kinship subsidy, the LDSS must provide the prospective kinship custodian with the Virginia Application for State-Funded Kinship Subsidy. The prospective kinship guardian must sign and submit the completed Virginia Application for State-Funded Kinship Subsidy to the LDSS.

As part of the application process, the LDSS must notify the kinship guardian about the following items:

- The resources of the child that may be available after custody transfer, such as SSI/SSA, worker's compensation, child support, or other income;

- The fact that the state-funded kinship subsidy only includes basic maintenance payments and does **not** include non-recurring expenses, Medicaid, special services or enhanced maintenance payments; and

- The Medicaid application process to support potential continuation of Medicaid benefits after custody transfer.

The LDSS must submit the application, Kinship Subsidy Background Status form (if applicable), screening tool, and draft State-Funded Kinship Subsidy Agreement to the Negotiator (and copy both the permanency practice and resource family consultants) **within 14 days** of receipt of the kinship guardian's application.

10.27.4 State-Funded Kinship Subsidy Agreement

The LDSS must use the State-Funded Kinship Subsidy Agreement, which includes the following:

- Signatures of all parties prior to the legal custody transfer of the child to the kinship guardian; and
- The specific monthly amount to be provided;
    - The agreement becomes effective on the date that the judge signs the court order transferring legal custody of the child to the kinship guardian; and
    - Absent modification or revocation of the kinship subsidy, the agreement remains in effect and governed by the laws of the Commonwealth of Virginia, regardless of the state to which the kinship guardian may relocate.

The Negotiator, in collaboration with the permanency practice consultant, will review the submitted documentation to ensure compliance with the kinship subsidy requirements and will approve or deny the kinship subsidy, including any foster home approval exemptions claimed, **within 14 days** of receipt. The approval of the State-Funded Kinship Subsidy Agreement is dependent on allotted funding from the General Assembly. Based on the available funding, priority will be given to the arrangements that would be least likely to achieve permanency with KinGAP, including kinship guardians who meet an exemption from the foster home approval process.

Within **30 days** of receipt of the Negotiator's approval of the kinship subsidy, the LDSS must present the subsidy agreement for approval by FAPT (under local CPMT policies and procedures). In order to maintain eligibility for the kinship subsidy, the LDSS must have the agreement approved by the state and their local FAPT/CPMT prior to transferring custody. The LDSS executes the agreement upon custody transfer to the kinship guardian.

10.27.5 Payments

State-funded kinship subsidy provides basic maintenance payments **only**. This means that the kinship subsidy will only increase when the child reaches an age at which the foster care maintenance rate would increase or statewide increases are approved for foster care maintenance rates. If a child has significant needs for which

the kinship guardian would need additional assistance (such as an enhanced maintenance payment), the LDSS and kinship guardian must assess if another permanency option such as adoption or custody transfer with KinGAP would be more appropriate or if other avenues such as SSI/SSA could be utilized to meet the child's needs. State-funded kinship subsidy is funded solely through CSA and does not include any federal funding.

10.27.6 Ongoing responsibilities and annual affidavit

The LDSS is responsible for:

- Making payments identified in the State-Funded Kinship Subsidy agreement, regardless of where the family resides;
- Notifying kinship guardians who receive kinship subsidy payments that the annual affidavit is due;
- Assisting the kinship guardian in coordinating services to meet the child's needs upon request; and
- Notifying the kinship guardians of a suspension or termination in payments or foster care services.

The kinship guardian must keep the LDSS informed of any circumstances that would make them ineligible for a maintenance payment, as specified in the State-Funded Kinship Subsidy Agreement.

The kinship guardian is responsible for:

- Reporting changes in circumstances to the LDSS as outlined in the agreement; and
- Submitting an annual affidavit to the LDSS by the date the agreement was effective and certifying the following:
  - The kinship guardian remains legally responsible for the care of the child;
  - The kinship guardian continues to provide financial support for the child; and
  - The child is not an emancipated minor, married, deceased, or enlisted in the military.

The LDSS must notify the kinship guardian in writing **60 days** before the date the annual affidavit is due. The LDSS must attempt to obtain the affidavit with due diligence. If the kinship guardian does not return the annual affidavit, the LDSS must do the following:

- Send a certified letter to the kinship guardian advising them to return the signed affidavit by the required date.

- Consult with FAPT about advising the kinship guardian to come into the office, sign the affidavit, and pick up the check by the required date. The certified letter must be sent at least **30 days** prior to holding the check.

- After consulting with the FAPT, inform the kinship guardian that, when applicable, the payment being provided to the family will be suspended until the signed affidavit is received. The Family Services Notice of Action must be sent along with information on the kinship guardian's right to appeal the LDSS decision within **30 days** of receiving the letter and provide information on the fair hearing process. After diligent efforts by the LDSS to obtain the affidavit and after the kinship guardian fails to submit the signed affidavit by the required date, the LDSS may consult with FAPT regarding the suspension of payments.

The LDSS must document in the automated system when the signed affidavit was returned. The LDSS must place copies of the written notifications to the kinship guardian and the returned annual affidavits in the child's kinship subsidy case record.

10.27.7 Services

Children receiving state-funded kinship subsidy are eligible for foster care services under § 63.2-905 of the Code of Virginia, including a full range of casework, treatment, and community services. The kinship guardian may request services through FAPT in accordance with state and local policies and procedures and the LDSS providing the subsidy may be selected to be the family's FAPT case manager. Additionally, the family may also be eligible for title IV-E prevention services or other services that can be provided as part of an in-home services case to prevent disruption of the kinship arrangement and re-entry into foster care.

Depending on the level of family need and type of services, the LDSS may address service requests through referral, title IV-E prevention services or other funded services in an in-home case, or provide foster care services under the subsidy case. If the LDSS provides the services under the subsidy case, they must follow the procedures for service cases as outlined for KinGAP cases in Section 10.19.

10.27.8 Termination of agreement and/or payments

The State-Funded Kinship Subsidy agreement must be terminated when the child reaches the age of 18. The State-Funded Kinship Subsidy agreement must not be terminated before the child's 18th birthday without the consent of the kinship guardian unless:

- The kinship guardian adopts the child subsequent to the State-Funded Kinship Subsidy agreement and the transfer of legal custody. The kinship guardian and a representative of the department must negotiate adoption assistance payments independently from any terms of the State-Funded Kinship Subsidy Agreement.
- The kinship guardian requests in writing that the agreement ends.
- The kinship guardian fails to comply with the annual review process.
- The kinship guardian is no longer legally responsible for the care of the child.
- The kinship guardian is not providing any financial support for the child.
- The kinship guardian dies or becomes incapacitated.
- The kinship guardian and the local department agree in writing to terminate the agreement.

It is the responsibility of the LDSS to notify FAPT/CPMT when they receive notice that one of these circumstances exists.

10.27.8.1 Suspension of payments

Prior to terminating the agreement and payments, the LDSS may discuss with FAPT the suspension of payments in order to resolve the circumstance that would result in termination. Prior to suspending the payments, the LDSS should discuss the situation with the kinship guardian. The LDSS should collaborate with the FAPT/CPMT's designee in this conversation, when applicable.

The LDSS, in collaboration with the FAPT/CPMT, when appropriate, must send the kinship guardian the Family Services Notice of Action through certified mail to provide **30 days notice** before the CPMT suspends CSA payments. The Family Services Notice of Action must include:

- The verified factual information documenting the specific situation.
- The provision in the State-Funded Kinship Subsidy Agreement that allows the LDSS or CPMT to suspend the payment.
- The date the payment or services are to be suspended.
- The actions to be taken by the kinship guardian by a specified date to prevent the suspension of payments, including the kinship guardian immediately contacting the LDSS and CPMT to discuss.

- The circumstances under which the suspended payments may be reinstated.

The LDSS should collaborate with and keep the CPMT informed of actions taken to suspend payments. When payments are suspended due to the failure of the kinship guardians to comply with the agreement, then maintenance payments should not be retroactive.

10.27.8.2 Termination of payments and the agreement

Termination of the agreement and subsidy payments must be based upon written documentation verifying the existence of one of the circumstances outlined in Section 10.27.8. When the LDSS has temporarily suspended the payments as outlined in Section 10.27.8.1, the LDSS must move forward with termination of the agreement if the issue has not been resolved in a timely manner. The LDSS should collaborate with and keep the CPMT informed of actions taken to terminate the agreement. The LDSS should discuss with the CPMT its decisions on terminating foster care services.

The LDSS must provide written notice using the Family Services Notice of Action to the kinship guardian **30 days** prior to the termination of the agreement. The notification must include information on the kinship guardian's right to appeal the LDSS decision to terminate the agreement.

The agency must notify the kinship guardian **60 days** prior to the youth's 18th birthday that the kinship subsidy will end once the youth turns 18. There is no provision in the State-Funded Kinship Subsidy Program to continue assistance after age 18 and the youth is not eligible for Fostering Futures. The youth may be eligible for time-limited independent living funds through the Chafee Program depending on what age(s) they were in foster care.

10.27.9 Appeal

The LDSS must inform kinship guardians in writing of their right to appeal decisions relating to the child's eligibility for the State-Funded Kinship Subsidy and decisions relating to payments **within 30 days** of receiving written notice of such decisions. In accordance with § 63.2-915 of the Code of Virginia, applicants for and recipients of kinship subsidy have the right to appeal these decisions by the LDSS in granting, denying, changing, or discontinuing subsidy payments.

Appeals must be processed in accordance with requirements of federal law and procedures established by the Virginia Board of Social Services (§ 63.2-1304; and 22 VAC 40-260-20 I). For specific information, see Appeals and Fair Hearings Unit Procedure Manual 2011.

While the kinship guardian may appeal any decision of the LDSS related to kinship subsidy, some allegations that constitute grounds for a fair hearing include:

- LDSS denying the kinship guardian's application for kinship subsidy.
- LDSS failing to act on the kinship guardian's application for kinship subsidy within **60 days** from the LDSS receiving the completed application and all required documentation.
- The kinship guardian not agreeing with the LDSS determination on the child's eligibility for kinship subsidy.
- LDSS terminating the State-Funded Kinship Subsidy Agreement.

For more information on actions to be taken by the kinship guardian and the LDSS regarding appeals, see Section 10.23 and follow the process for KinGAP appeals.

10.27.10 Case record

Once custody has been transferred to the kinship guardian and the kinship subsidy agreement has been executed, the LDSS must close the child's foster care case record. The LDSS should document kinship subsidy information in the new kinship subsidy case record in the child welfare information system.

To close the child's foster care case record in the child welfare information system, the LDSS must:

- Ensure all discussions with the kinship guardian, birth parents, and the child regarding the transfer of custody and kinship subsidy are entered in Contacts.
- Complete the Closing Narrative in Contacts.
- Verify that the Court Hearing is entered, documenting the transfer of custody to the kinship guardian and the date of the hearing. (This may not be the date the court order was signed).
- Discharge the child with the reason: Custody to Relative with State-Funded Kinship Subsidy. This action will end date the Funding, Removal, Legal Status, and Client Gen Info screens.
    - If the case needs to remain open for the child's siblings in foster care or for a case type change to an in-home services case, the LDSS should not close out the foster care case. The end date on the child's gen info screen inactivates the child's participation in the case and the LDSS can proceed to the next step of the kinship subsidy case opening process.
    - If there are no other children receiving foster care services, the LDSS closes the case.

To open the child's new kinship subsidy case in the child welfare information system:

- The new case record is opened in the name of the kinship guardian. The case type is "State-Funded Kinship Subsidy."
- The child is added to the case using the client id from the foster care case through the Add Client function in the child welfare information system.
- The kinship subsidy part of the case consists of screens located under the "KinGAP" button on the main case navigation bar. The following screens are accessible:
  - Payments
  - Services
  - KinGap Status
  - IL (for applicable youth)
  - Appeals

In the child welfare information system, LDSS must include narrative summaries describing how the following requirements were met to provide kinship subsidy on behalf of the child:

- The ways in which the child and the kinship guardian met the eligibility requirements for kinship subsidy (See Section 10.27.1 and the State-Funded Kinship Subsidy Screening Tool).
  - The kinship guardian is an approved kinship foster parent or qualifies for an exemption from the foster home approval process outlined in Section 10.27.2.
  - Child has been in LDSS custody for at least 90 days.
  - Child and kinship guardian are related by blood, marriage, or adoption or through a fictive kin relationship.
  - Child has developed a clearly established and documented relationship with the kinship guardian.
- The reasons why the child and the kinship guardian are ineligible for KinGAP.
- The reasons why achieving permanency by placement with the kinship guardian and transfer of custody from the LDSS to the relative with kinship subsidy is in the best interests of the child.

- The steps the agency made to place siblings of the child with the kinship guardian, when applicable.
- The reasons for any separation of siblings during placement, if the placement with the kinship guardian does not include siblings.
- The plan for the child's visitation and communication with siblings, if separated, taking into account the wishes of the children.

The LDSS should also document that policies, procedures, and timelines were followed, when applicable. Narratives shall include, but are not limited to:

- Selection of the kinship placement, including the reasons the placement is in the best interest of the child.
- Discussion of the kinship subsidy option with the kinship guardian, including:
  - Kinship subsidy provides only basic maintenance payments.
  - The process by which the family can apply for Medicaid for the child.
  - The process by which the family can access services through CSA.
  - Information on their right to appeal LDSS decisions and the VDSS fair hearing process and their right to appeal FAPT decisions.
- Dates and narratives on all annual affidavits.
- Pertinent information from the kinship guardian and provider contacts.

10.27.11 Paper case record

The LDSS shall establish a kinship subsidy paper case record, which is the youth's service record. This record corresponds to the youth's kinship subsidy case in the child welfare information system and is under the name of the kinship guardian(s). It is separate from the youth's foster care record, the record established for foster/adoptive home approval of the relative, and any eligibility record established by the eligibility unit.

The foster care paper case record shall be closed within **30 days** after legal custody is transferred.

The kinship subsidy paper case record shall include, but is not limited to, the following documentation:

- Youth's foster care service plan (See Section 10.12)

- Youth demographic and personal information:
  - Youth's birth certificate (copy).
  - Social Security Card (copy).
- Basis for youth's kinship subsidy assistance:
  - Initial court order granting custody to the LDSS
  - State-Funded Kinship Subsidy Screening Tool
  - Application for State-Funded Kinship Subsidy Assistance.
  - CANS assessment.
  - Virginia State-Funded Kinship Agreement (fully executed).
  - IFSP approved by the CPMT.
  - LDSS petition for custody transfer to the prospective kinship guardian(s).
  - Signed court order transferring legal custody to the kinship guardian(s).
  - State-Funded Kinship Subsidy Background Status Form, if applicable.
  - Annual Affidavit for State-Funded Kinship Subsidy (all).
  - Appeals documentation, including validation form, notice of action, summary of facts, withdrawal statement, hearing documents, written decision of hearing officer, LDSS written notice documenting compliance with the decision, when applicable.
- Written notifications and correspondence
  - Notice receipt/status of application for kinship subsidy.
  - Annual notice when annual affidavit due.
  - Documentation when affidavit not returned.
  - Notices when maintenance payments increase.
  - Written notices from kinship guardian(s).
  - Documentation when kinship guardian(s) not providing financial support (e.g., verification, certified letters, relative custodian(s) decision, and LDSS actions).

- Documentation verifying circumstances for termination.
- Notices to suspend and terminate payments, services, or entire agreements.