

# COMPARISON OF ADOPTION AND LEGAL GUARDIANSHIP

Children, youth and Non-Minor Dependents (NMD) in out of home care deserve permanency when reunification with their birth parent(s) is not possible. They deserve to be safe, secure, and loved. A permanent plan provides life-long connections, relationships and support as they continue to grow and develop. Permanent connections can mean knowing someone is proud of your accomplishments; someone will stand by you, someone to trust, someone to guide you and listen to you. Permanent connections can mean knowing you are not alone. We are here to guide you and support you as you determine which path to permanency is best suitable for the child, youth or NMD and your family. If you have question, please contact the assigned Social Worker.



## ABOUT ADOPTION

- Adoption provides the highest level of legal permanence for children, youth and non-minor dependents (NMD) who cannot return home.
- All (children/youth/NMDs) are adoptable.
- Children 12 and over must agree to adoption.
- Adoptive families can be relatives or nonrelatives who may be single, couples, and of any sexual orientation or gender identity/expression. They must be at least 18 years of age and at least 10 years older than the child/youth to be adopted. The 10-year difference does not apply if the adoptive parent is a sibling, stepparent, aunt, uncle or first cousin.
- Adoptive parents must undergo an assessment through the Resource Family Assessment (RFA) process, resulting in an approved RFA Family Assessment, which can be used for adoption.
- Adoption ends all legal rights and responsibilities of birth parents and adoptive parents assume all of these rights and responsibilities.
- After adoption, the agency is only involved in the provision of Adoption Assistance Program (AAP) benefits or post adoption services, if requested.
- Child/youth/NMD's name after adoption can remain the same or be legally changed.
- Adoptive families may determine the level of birth family relationships and contact after adoption.
- Youth adopted after their 16th birthday may participate in the Independent Living Program (ILP), except for Transitional Housing Program (THP) or NMD housing assistance programs.
- Adoptive parents should designate in their will who is to raise the child/youth in the event of their death.
- In the event that the adoptive parent/s die and the adopted child/youth is under the age of 18, the child/youth may be eligible to collect Social Security benefits for the adoptive parents. Any subsequent adoptive parents may be able to apply for AAP.

## ABOUT LEGAL GUARDIANSHIP

- Legal Guardianship (LG) is a viable permanency option, though it is not as legally secure as adoption.
- The court can terminate a guardianship, or birth parents can petition the court to dismiss a guardianship at any time.
- The LG has parental responsibility for the care, control, and conduct of the child.
- LG suspends the legal rights of the birth parent; however, birth parents may have the right to visit and the right to be involved in school and planning.
- Although LG legally ends at age 18, benefits may be extended up to age 21 if conditions are met. Relationships continue on for a lifetime.
- All prospective LGs must meet state guidelines and requirements. (Please refer to CDSS website at [www.CDSS.ca.gov](http://www.CDSS.ca.gov))
- Relative Legal Guardians may obtain support from kinship support services programs available through Kids and Families Together.
- The LG may move within California but needs a Juvenile Court order to move out of state. Relative LG's receiving Kin-Gap payments will continue to receive Ventura County funding rates. Ventura County funding rates will stop for Non-Related LG's moving out of state; the case must be transferred to the new state for their funding rates. LG funding varies from county to county and state to state.
- Youth in non-related LG on or after their 8th birthday may participate in Independent Living Program (ILP). Housing assistance is limited.
- Youth in Kin-GAP LG may participate in ILP regardless of their age at the time the LG is ordered.
- Guardianship ends in the event of the death of the LG The birth parent may petition the court to regain custody, or the court may place the child in out of home care.

## REGARDING ADOPTION

- Agency adoption fees are low cost or can be waived. Up to \$400 can be reimbursed to families for adoption related expenses.
- Adoptive families are entitled to adoption state and/or federal tax credits for the year the adoption was finalized. Follow up with your tax professional to determine specific credits that may apply.
- Family income is not considered in determining Adoption Assistance Program (AAP) eligibility, rate will be determined based on level of care assessment. Most children/youth in out of home care are eligible for AAP.
- AAP rates are negotiated. They are based on the basic out of home care rate or level of care (LOC) rate and may include a special care increment, based on the child/youth's needs and what the adoptive parent does to meet those needs.
- Children/youth receiving AAP are eligible for full scope Medi-Cal health coverage, and can apply for Medicaid if they live in or move to another state. Most states offer reciprocal benefits to adopted children/youth through ICAMA (Interstate Compact on Adoption and Medical Assistance).
- AAP funding continues regardless of where the family lives. The rate is based on the rate of the responsible public agency or the county or state of residence, whichever is greater.
- AAP can cover room and board for approved residential treatment, if needed, for up to 18 months per episode.
- AAP generally ends at age 18, regardless if the child/ youth/NMD is still in high school. AAP may continue until age 21 per AB12 if the child/youth/NMD was adopted on or after their 16th birthday and criteria are met, or if the child/ youth/NMD has a documented disability that warrants the continuation of funding. AAP benefits can only go to an adoptive parent.



## REGARDING LEGAL GUARDIANSHIP

- Some funding differs for relative and non-relative Legal Guardians (see below). To access funds for residential treatment, the guardianship may need to be rescinded and/or dependency reinstated.
- Funding terminates in the event of death of the LG; however, payments may continue in the event of appointment of a successor Guardian.
- Youth under LG are eligible for "independent" student status, and the LG's income is not considered for state or federal financial aid.
- Youth who are court dependents or wards of the court on or after their 16th birthday are eligible for Chafee funding for college.
- Funding for non-related LG may continue past age 18 until age 21 if the guardianship was established in juvenile court and the youth meets one of the 5 participation criteria\*\* under California Assembly Bill (AB) 12.
- Funding for Kin-GAP LG may continue past age 18 until age 21 if the guardianship was established on or after their 16th birthday and the youth meets one of the 5 participation criteria\*\* under AB 12, or if the child/youth/NMD has a documented disability that warrants the continuation of funding.
- Guardianships established through probate court do not qualify for extended funding under AB12 or level of care rates.
- A child/youth in LG who is developmentally disabled and a client of a California Regional Center may qualify for the dual agency rate and supplement to the rate.



## RELATIVE LEGAL GUARDIANS:

- Some relative Legal Guardians are eligible for Kin-GAP funding.
- The Kin-GAP payments equal the rate the child/youth would be eligible for out of home care. It may include a special care rate if the child/youth has documented needs.
- If a special care rate is in place, it is reassessed at the time of recertification. A Kin-GAP special care rate can also be reassessed upon the request of the family, if the needs of the child/youth change.
- Kin-GAP is recertified every 2 years.
- Eligibility for clothing allowances for relative LG depends on the policy of the financially responsible county and the rate in the residence county.

•• AB 12 Participant Conditions: 1. Attending/completing school or an equivalent program, 2. Enrolling in post-secondary or vocational program; 3. Participating in a program or activity that promotes or removes barriers to employment, 4. Employed at least 80 hours per month, 5. Youth is incapable of participating

## NON-RELATED LEGAL GUARDIANS:

- Funding comes from the county or state in which the Legal Guardian resides. Payments and procedures differ between counties and states.
- Non relative LG receive out of home funding which include basic out of home care rate or level of care rate; it may include any special care increments the child/youth is eligible for based on the child/youth needs and what the caregiver does to meet those needs.
- Rates for non-relative Legal Guardians are reassessed annually.
- Payments and procedures differ between counties and states.



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additional  
resources!



**COUNTY of VENTURA**  
Human Services Agency

STRENGTHENING   
**VC Families**  
Ventura County Children & Family Services

**YOUTH WITH LIFE-LONG CONNECTIONS, HAVE BETTER OUTCOMES AND SUCCESS IN THEIR LIVES,  
THAN THOSE YOUTH, THAT REACH THE AGE OF MAJORITY WHILE IN OUT OF HOME CARE.**