§ 458-b. Kinship guardianship assistance payments. 1. A child is eligible for kinship guardianship assistance payments under this title if the social services official determines the following:

(a) The child has been in foster care for at least six consecutive months in the home of the prospective relative guardian; and

(b) The child being returned home or adopted are not appropriate permanency options for the child; and

(c) The child demonstrates a strong attachment to the prospective relative guardian and the prospective relative guardian has a strong commitment to caring permanently for the child; and

(d) That age appropriate consultation has been held with the child, provided however with respect to a child who has attained fourteen years of age, that the child has been consulted regarding the kinship guardianship arrangement, and with respect to a child who has attained eighteen years of age, that the child has consented to the kinship guardianship arrangement.

(e) (i) If the child has been placed into foster care pursuant to article ten or ten-C of the family court act, that both the fact finding hearing pursuant to section one thousand fifty-one of the family court act or section one thousand ninety-five of the family court act, respectively, and the first permanency hearing pursuant to paragraph two of subdivision (a) of section one thousand eighty-nine of the family court act have been completed; or

(ii) for all the other children, that the first permanency hearing has been completed.

(f) The financial status of the prospective relative guardian shall not be considered in determining eligibility for kinship guardianship assistance payments.

1-a. A child shall remain eligible for kinship guardianship assistance payments under this title when a successor guardian as defined in subdivision six of section four hundred fifty-eight-a of this title assumes care and guardianship of the child.

2. (a) A prospective relative guardian who has been caring for an eligible foster child for at least six consecutive months and who intends to seek guardianship or permanent guardianship of the child may

apply to the social services official who has custody, care and custody, or guardianship and custody of the child to receive kinship guardianship assistance payments, non-recurring guardianship payments, and other applicable services and payments available under this title on behalf of the child.

(b) Applications shall only be accepted prior to issuance of letters of guardianship of the child to the relative guardian pursuant to the provisions of the family court act or the surrogate's court procedure act.

(c) Notwithstanding any other provision of law to the contrary, a prospective relative guardian and any person over the age of eighteen living in the home of the prospective relative guardian who has not already been subject to a national and state criminal history record check pursuant to section three hundred seventy-eight-a of this article as part of the process of the prospective relative guardian becoming a certified or approved foster parent must complete such a record check in accordance with the procedures and standards set forth in such section prior to the social services official acting upon the application. The social services official must inquire of the office of children and family services whether each prospective relative guardian and each person over the age of eighteen living in the home of the prospective relative guardian has been or is currently the subject of an indicated report of child abuse or maltreatment on file with the statewide central register of child abuse and maltreatment and, if the prospective relative guardian or any other person over the age of eighteen residing in the home of the prospective relative guardian resided in another state in the five years preceding the application, request child abuse and maltreatment information maintained by the child abuse and maltreatment registry from the applicable child welfare agency in each such state of previous residence, if such a request has not been made as part of the process of the prospective relative guardian becoming a certified or approved foster parent.

(d) (i) Notwithstanding any other provision of law to the contrary, prior to the social services official approving a prospective successor guardian to receive payments pursuant to this title in accordance with subparagraph (ii) of paragraph (b) of subdivision five of this section: (1) the social services official must complete a national and state

criminal history record check pursuant to subdivision two of section three hundred seventy-eight-a of this article for the prospective successor guardian and any person over the age of eighteen living in the home of the prospective successor guardian, in accordance with the procedures and standards set forth in such subdivision; and (2) the social services official must inquire of the office of children and family services, in accordance with section four hundred twenty-four-a of this article, whether each prospective successor guardian and each person over the age of eighteen living in the home of the prospective successor guardian has been or is currently the subject of an indicated report of child abuse or maltreatment on file with the statewide central register of child abuse and maltreatment and, if the prospective successor guardian or any other person over the age of eighteen residing in the home of the prospective successor guardian resided in another state in the five years preceding the inquiry, request child abuse and maltreatment information maintained by the child abuse and maltreatment registry from the applicable child welfare agency in each such state of previous residence.

(ii) It shall be the duty of the prospective successor guardian to inform the social services official that has entered into an agreement with the relative guardian for payments under this title in writing of the death or incapacity of the relative guardian and of the prospective successor guardian's desire to enforce the provisions in the agreement that authorize payment to him or her in the event of the death or incapacity of the relative guardian.

(iii) The clearances requires by subparagraph (i) of this paragraph shall be conducted following receipt by the social services official of the written communication required by subparagraph (ii) of this paragraph.

3. If the social services official determines that the child is eligible for kinship guardianship assistance payments and it is in the best interests of the child for the relative to become the legal guardian of the child, the social services official shall enter into an agreement with the prospective relative guardian authorizing the provision of kinship guardianship assistance payments, non-recurring guardianship payments, and other services and payments available under

this title subject to the issuance by the court of letters of guardianship of the child to the prospective relative guardian and the child being finally discharged from foster care to such relative. In determining whether it is in the best interests of the child for the relative to become the relative guardian of the child, the social services official must determine and document that compelling reasons exist for determining that the return home of the child and the adoption of the child are not in the best interests of the child and are, therefore, not appropriate permanency options. A copy of the fully executed agreement must be provided by the social services official to the prospective relative guardian.

4. (a) Payments and eligibility for services under this title shall be made pursuant to a written agreement between the social services official and the prospective relative guardian.

(b) The written agreement shall specify, at a minimum: the amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement; the manner in which the payments may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child; the additional services and assistance that the child and the relative guardian will be eligible for under the agreement, which shall be limited to the additional services and assistance set forth in this title; the procedures by which the relative guardian may apply for additional services, as needed; that the social services official will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed two thousand dollars in accordance with section four hundred fifty-eight-c of this title; and, that the agreement will remain in effect regardless of the state of residence of the relative guardian at any time.

(c) The agreement must be fully executed prior to the issuance of letters of guardianship of the child to the relative guardian in order for the child to be eligible for payments and services under this title.

(d) Payments pursuant to this section may be made by direct deposit or debit card, as elected by the recipient, and administered electronically, and in accordance with section twenty-one-a of this

chapter and with such guidelines as may be set forth by regulation of the office of children and family services. The office of children and family services may enter into contracts on behalf of local social services districts for such direct deposit or debit card services in accordance with section twenty-one-a of this chapter.

(e) The original kinship guardianship assistance agreement executed in accordance with this section and any amendments thereto may name an appropriate person to act as a successor guardian for the purpose of providing care and guardianship for a child in the event of death or incapacity of the relative guardian. Nothing herein shall be deemed to require the relative guardian to name a prospective successor guardian as a condition for the approval of a kinship guardianship assistance agreement.

(f) A fully executed agreement between a relative guardian and a social services official may be amended to add or modify terms and conditions mutually agreeable to the relative guardian and the social services official, including the naming of an appropriate person to provide care and guardianship for a child in the event of death or incapacity of the relative guardian.

(g) The social services official shall inform the relative guardian of the right to name an appropriate person to act as a successor guardian in the original kinship guardianship assistance agreement or through an amendment to such agreement.

(h) A fully executed agreement between a relative guardian or a successor guardian and a social services official may be terminated if:

(i) in accordance with paragraph (b) of subdivision seven of this section, a social services official has determined that a relative guardian or a successor guardian is no longer legally responsible for the support of the child; or

(ii) following the death or permanent incapacity of a relative guardian, all prospective successor guardians named in such agreement were not approved by the social services district pursuant to subparagraph (ii) of paragraph (b) of subdivision five of this section.

5. (a) Once the prospective relative guardian with whom a social services official has entered into an agreement under subdivision four of this section has been issued letters of guardianship for the child

and the child has been finally discharged from foster care to such relative, a social services official shall make monthly kinship guardianship assistance payments for the care and maintenance of the child.

(b) (i) In the event of death or incapacity of a relative guardian, a social services district shall make monthly kinship guardianship assistance payments for the care and maintenance of a child to a successor guardian that has been approved pursuant to subparagraph (ii) of this paragraph.

(ii) Following the death or incapacity of the relative guardian, a social services official shall approve a prospective successor guardian that is named in the agreement between the relative guardian and a social services official for payments under this title and that has been awarded guardianship or permanent guardianship of the child by the court unless, based on the results of the clearances required by paragraph (d) of subdivision two of this section, the social services official has determined that approval of the prospective successor guardian is not authorized or appropriate. Provided however, that no approval can be issued pursuant to this paragraph unless the prospective successor guardian has been awarded guardianship or permanent guardianship of the child by the court and the clearances required by paragraph (d) of subdivision two of this section have been conducted.

(iii) Notwithstanding any other provision of law to the contrary, if a prospective successor guardian assumes care of the child prior to being approved pursuant to subparagraph (ii) of this paragraph, payments under this title shall be made once a prospective guardian is approved pursuant to such subparagraph retroactively from: (1) in the event of death of the relative guardian, the date the successor guardian assumed care of the child or the date of death of the relative guardian, whichever is later; or (2) in the event of incapacity of the relative guardian, the date the successor guardian assumed care of the child or the date of incapacity of the relative guardian, whichever is later.

(c) In the event that a successor guardian assumed care and was awarded guardianship or permanent guardianship of a child due to the incapacity of a relative guardian and the relative guardian is subsequently awarded or resumes guardianship or permanent guardianship of such child and assumes care of such child after the incapacity ends,

a social services official shall make monthly kinship guardianship assistance payments for the care and maintenance of the child to the relative guardian, in accordance with the terms of the fully executed written agreement.

6. The amount of the monthly kinship guardianship assistance payment made pursuant to this section shall be determined pursuant to regulations of the office. The amount of the monthly payment shall not be less than seventy-five per centum of the applicable board rate nor more than one hundred per centum of such rate as determined by the social services district in accordance with the regulations of the office; provided, however, that the rate chosen by the social services district shall be equal to the rate used by the district for adoption subsidy payments under section four hundred fifty-three of this article. The social services official shall consider the financial status of the prospective relative guardian or relative guardian only for the purpose of determining the amount of the payments to be made.

7. (a) Kinship guardianship assistance payments shall be made to the relative guardian or guardians until the child's eighteenth birthday or until the child attains twenty-one years of age provided the child consented upon attaining the age of eighteen and is: (i) completing secondary education or a program leading to an equivalent credential; (ii) enrolled in an institution which provides post-secondary or vocational education; (iii) employed for at least eighty hours per month; (iv) participating in a program or activity designed to promote, or remove barriers to, employment; or (v) incapable of any of such activities due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

(b) (i) Notwithstanding paragraph (a) of this subdivision, and except as provided for in paragraph (b) of subdivision five of this section, no kinship guardianship assistance payments may be made pursuant to this title if the social services official determines that the relative guardian is no longer legally responsible for the support of the child, including if the status of the legal guardian is terminated or the child is no longer receiving any support from such guardian. In accordance with the regulations of the office, a relative guardian who has been

receiving kinship guardianship assistance payments on behalf of a child under this title must keep the social services official informed, on an annual basis, of any circumstances that would make the relative guardian ineligible for such payments or eligible for payments in a different amount.

(ii) Notwithstanding paragraph (a) of this subdivision, and except as provided for in paragraph (c) of subdivision five of this section, no kinship guardianship assistance payments may be made pursuant to this title to a successor guardian if the social services official determines that the successor guardian is no longer legally responsible for the support of the child, including if the status of the successor guardian is terminated or the child is no longer receiving any support from such guardian. A successor guardian who has been receiving kinship guardianship assistance payments on behalf of a child under this title must keep the social services official informed, on an annual basis, of any circumstances that would make the successor guardian ineligible for such payments or eligible for payments in a different amount.

8. The placement of the child with the relative guardian or successor guardian and any kinship guardianship assistance payments made on behalf of the child under this section shall be considered never to have been made when determining the eligibility for adoption subsidy payments under title nine of this article of a child in such legal guardianship arrangement.