



Helping Grandparents Raising Grandchildren

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Overview of kinship care

- 7.8 million children live with relatives with or without parents in the home. *(US 2010 Census)*
 - Of those, 2.5 million have no parents in the home.
- Majority of children are outside the foster care system.
 - Children placed with relatives make up over a quarter (26%) of all children in the foster care system.
 - For every child in the foster care system, nearly 25 are being raised by relatives outside the system.
- Any grandparent or relative can unexpectedly find him or herself raising children, transcends socioeconomic groups, geographic areas and ethnicities.



Issues that lead to kinship care

- Substance abuse
- Death of a parent
- Child abuse and/or neglect
- Teenage pregnancy
- HIV/AIDS
- Military Deployment
- Unemployment
- Incarceration
- Divorce
- Mental Health Problems
- Family Violence
- Poverty

The Legal Status of the Caregiver-Child Relationship



Various forms of care and custody

- Continuum of legal relationships between caregiver and child:
 - Informal care
 - Power of Attorney
 - Consent Laws
 - Relative “Formal” Foster Care
 - Legal Custody and Guardianship
 - Subsidized Guardianship
 - Adoption



Informal caregivers

- Many relatives raising children do so “informally” - without a legal relationship.
- Legal process can be emotionally exhausting and damaging to relationships.
- It’s hard to find and afford lawyers.
- Caregivers may hope that child will ultimately return to parents’ care.
- Without a legal relationship, families often face more barriers.



Power of Attorney

- Documents that generally confer all powers over the care of a child, with the notable exceptions of the powers to consent to marriage or adoption.
- Some states specifically allow caregivers to use power of attorney to confer school-related and medical decision-making.
- Generally last six months to a year, so it may not be the best option for long term caregivers.
- Can easily be revoked by parents.
- Typically a power of attorney does not survive parents death (durable power of attorney).
- Parents complete form or document that states what type of authority they are conferring.

Power of Attorney

- Most states have some form of POA law.
 - Approximately 22 are specifically written for minors – AL, AK, AZ, CO, HI, ID, IN, KY, ME, MI, MN, MO, MT, NE, NJ, NM, NY, ND, OH, OR, TN, and UT.
 - Most other states have general POA laws.
- WA has specifically codified POA laws so parents can give relatives power for health care only (not the education) of their children.

Consent laws

- State-level “consent laws” allow a caregiver without legal custody or guardianship to access school enrollment for the children, school services, medical care, dental care, mental health and/or developmental treatment services for children.
- The laws differ in various ways, including:
 - types of treatment
 - whether there must be a written document to give consent authority or whether consent can be oral
 - whether the parent(s) must sign
- Some of these laws allow an informal caregiver to complete an affidavit stating that he or she is the primary caregiver for the child and the child lives with him or her.

Medical Consent

- More than half the states have some form of medical consent law – AZ, AR, CA (includes consent for mental health treatment), CO (immunization consent only), DE, DC (includes consent for developmental screening and mental health examination or treatment), FL, GA, HI, ID, IN, KS (immunization consent only), LA, MD, MA, MS, MO, MT, NV (emergency care consent only), NM, NY, NC, ND, OH (includes consent for psychological treatment), OK, SC, SD, TX (includes consent for psychological treatment), UT, VA, and WA (includes consent for mental health care).
- Cites to all these laws can be found at www.grandfamilies.org

Educational Consent & other ways to access school enrollment

- About 14 states have educational consent laws: CA, CT, DE, HI, LA, MD, MT, NJ, NM, NY, NC, OH, OK, and SC.
- In 5 states – MI, MO, RI, SD, and VA -- where a child lives (rather than where the parent lives) is the child's legal residency for purposes of attending public school tuition-free .
- In IN, the “legal settlement” of a student being supported, cared for and living with another person is the school attendance of that person.
- TX has an innovative provision in its law: A child may attend a school district in which he or she does not reside, but in which the grandparent resides “and provides a substantial amount of after-school care for the person as determined by the board.” Tex. [Ed.] Code Ann. Section 25.001.

Relative “formal” foster care

- More than a 1/4 of children in foster care are with relatives.
- Federal law requires states consider giving preference to a relative when placing a child.
- Each state has its own eligibility and licensing criteria for placing a child with a relative, see www.grandfamilies.org
 - Only some states provide procedural protections for relatives who are denied licensure.
 - States struggle to acknowledge the different needs of relative caregivers, while at the same time holding them to the same standards as non relatives, in order to maintain the safety and stability of the placement .
- Relatives licensed as a foster parent for a child who is title IV-E eligible must receive the same foster care payment as a non-kin foster parent.

Legal custody and guardianship

- Legal Custody and Guardianship - legal responsibility to make decisions, provide care, and access services for a child is transferred from parent to another caregiver.
 - Legal Custody – refers to family or juvenile court.
 - Guardianship – refers to probate courts and codes (except subsidized guardianship).
- Court does not terminate parental rights or responsibilities.
- Parents preference and best interest of the child prevail.
- Parents can go back to court and ask that guardianship or legal custody be terminated.
- Allows caregiver to make decisions for the child and access services.

Subtypes of legal custody & guardianship

- Joint guardianship – caregiver shares custody with parent.
- Short term guardianship or custody – parent appoints person to have temporary control of child.
- Standby guardianship – pre-appointed future guardian steps in after triggering event occurs.
- Limited guardianship – powers of guardian limited to those set forth in order of appointment.
- De facto custody -child's primary caregiver for some period of time in the parents' absence granted custody.
- Guardianship by Probate – clause in will names guardian upon death of parent and court approval/appointment.

Standby guardianship

- Allows terminally ill parent to designate standby guardian to care for child when parent becomes incapacitated or dies.
 - Triggering event (illness, death) must occur first
 - Began after AIDS epidemic
- More than half of the states have these laws: AR, CA, CO, CT, DE, FL, GA, IL, IA, KS, MD, MI, MN, MO, NE, NJ, NY, NC, OH, PA, TN, TX, VA, WA, WV, WI and WY.

De facto custody

- "De facto custodian" defined as primary caregiver and financial support of a child who has resided with that person for at least:
 - 6 months if the child is under age 3; and
 - 1 year if the child is at least age 3
- Some states do not define it this specifically, but do use it to mean someone who is basically acting as the parent.
- After the court makes finding, caregiver usually granted legal custody and has same legal standing as parent.
- Legal custody based on best interests of the child.
- About 11 states have these laws – CA, DC, HI, ID, IN, KS, KY, LA, ME, MN, MT, SC.

Subsidized Guardianship

- Financial support for a child exiting foster care to a permanent home with a relative without requiring termination of parental rights.
- Not all programs can be found in the state codes of law, some programs established by regulations or policies.
- Now also a federally funded option under the Fostering Connections Act.
 - 30 states and 1 tribe have submitted plans to HHS and have been approved: AL, AK, AR, CA, CO, CT, DC, HI, ID, IL, LA, ME, MD, MA, MI, MO, MT, NE, NJ, NY, OK, OR, PA, RI, SD, TN, TX, VT, WA and WI and Port Gamble S'Klallam Tribe.
 - 2 states are awaiting HHS approval: IN and VA.

Adoption

- Birth parent must either be proven unfit and parental rights terminated by the court or voluntarily surrender rights before relative can adopt.
 - Birth parent loses all rights and responsibilities, including right to visit, pay child support and right to later claim custody of the child.
- Some relatives do not feel adoption is right for them; as they do not want to change the nature of their relationship with the child or parent.
- All states provide adoption assistance for children adopted from the child welfare system.
- Open adoption laws exist in some states to allow post-adoption contact between birth parents & child or siblings & child.
 - 30 states have open adoption laws: AR, AZ, CA, CT, DC, FL, IL, IN, LA, MA, MD, ME, MN, MT, ND, NE, NH, NM, NV, NY, OH, OK, OR, PA, RI, SD, TN, VA, WA, WV.

Resources and Services



Resources can be hard to find and vary dramatically

- “Kinship care” is in silos – have to look at services and resources provided through various agencies/systems: children, aging, economic security, health care, agriculture, education, housing, social security, and revenue.
- Not much coordination at federal level, and state level coordination is also often not good.

Starting point

- Fact sheets for each state and DC containing specific state information, including resources and services.
- Available for free down load and dissemination at www.grandfactsheets.org

Support group network

- The Brookdale Foundation's Relatives As Parents Program (RAPP) is a national network of support groups and services for the families. They have grantees in almost all states, Puerto Rico, and the District of Columbia.
- For more information, go to www.brookdalefoundation.org



Kinship navigator programs

- Kinship navigator programs started over 10 years ago as state and county initiatives to provide information, referral, and follow-up to kinship caregivers to link them to the benefits and services that they or the children need.
- Washington and NJ have long standing programs.
- Other programs include Connecticut, Delaware, and NY.
- Because of the past success of these programs, there are several federal grants for more programs around the country.
- To see if one exists in your area, go to <http://www2.grandfamilies.org/KinshipNavigatorPrograms/KinshipNavigatorProgramsSummaryAnalysis.aspx>

Benefits online tool



We might be hungry but we still have the family together – and family is everything.”

– grandparent raising grandchildren

- The AARP Foundation Benefits QuickLINK website www.aarp.org/quicklink helps people find and apply for programs that pay for food, increase income, and cover home and health care for older adults and children.

“Children’s” agencies

- To be in foster care, must have been removed from parent for abuse or neglect. Most grandfamilies do not come together this way.
- About ¼ of the foster care system is made up of relatives caring for children, but most relatives are unlicensed.
- If licensed, national average monthly foster care payment is \$511 per child. These families also get services like child care and other supports.
- Access to services be a challenge for those outside of foster care, especially if the caregiver lacks a legal relationship – such as guardianship – with the child.

Child care

- The Office of Child Care in the U.S. Department of Health and Human Services administers the Child Care and Development Fund (CCDF).
- CCDF helps low-income families obtain child care so they can work or attend training/education.
- To find out if a caregiver qualifies, contact the state's child care subsidy agency. For a list, see <http://www.acf.hhs.gov/programs/ccb/>

“Aging”: National Family Caregiver Support Program (NFCSP)

- Successful program that began in 2000 as part of the Older Americans Act (OAA).
- Provides 5 types of supportive services to family caregivers and relatives age 55 and older who are the primary caregivers of children with or without legal relationships to the children:
 - (1) *Assistance to caregivers about available services*
 - (2) *Assistance to caregivers in gaining access to services*
 - (3) *Individual counseling, organization of support groups, and training caregivers*
 - (4) *Respite care*
 - (5) *Supplemental services on a limited basis*
- Area Agencies on Aging (AAAs) provide these services or contract for their provision.

NFCSP (cont.)

- AAAs sometimes use additional funding sources to try to reach the majority of caregivers who are under age 55.
- Only up to 10% of NFCSP funds can be used for relatives raising children.
- AAAs listed at www.n4a.org/about-n4a/?fa=aaa-title-VI



Lifespan respite

- Lifespan Respite Care Act of 2006 -Coordinated systems of accessible, community-based respite care services for family caregivers of children or adults with special needs.
- In 2010 and 2011, three year grants to 18 states.
- The states with grants are at www.aoa.gov/AoARoot/AoA_Programs/HCLTC/LRCP/index.aspx
- See fact sheet, *Respite Services to Support Grandfamilies* at http://archrespite.org/images/docs/Factsheets/FS_45-Grandparents_Grandchildren.pdf

“Economic Security”: TANF grants

- Child-only grants
 - Usually not sufficient to meet child’s needs
 - National average of \$8 per day (\$249/month) for one child with only slight increases for additional children

- Family grants
 - Larger than child-only grants
 - Subject to federal work requirements and time limits. Some states may exemptions – see <http://anfdata.urban.org/wrd/wrdwelcome.cfm>

“Health Care:” Medicaid and CHIP



- As with children being raised by parents, children being raised by relatives should be able to access public health insurance.
- Varying degrees of difficulty based on the state.

Key Affordable Care Act provisions

- A few key provisions impacting grandfamilies:
 - Children cannot be excluded from private health care coverage based on pre-existing conditions.
 - Kids can stay on their “parent’s” private insurance until age 26.
 - Expands income eligibility to cover more individuals under Medicaid.
- Summary of the law:
<http://kff.org/healthreform/upload/8061.pdf>

“Agriculture”: food and nutrition programs

- **Supplemental Nutrition Assistance Program (SNAP)** – formerly known as “Food Stamps.” Relative caregivers do not need legal custody or guardianship of the children to apply.
www.fns.usda.gov/snap/
- **Women, Infants and Children (WIC) Program** can help eligible relative caregivers meet nutrition needs of children they raise under age 5. Children must have certain types of health conditions to qualify. Again, relative caregivers do not need legal custody or guardianship of the children. www.fns.usda.gov/wic/
- **National School Breakfast and Lunch Programs** provide free or low-cost meals to eligible students. Relative caregivers do not need legal custody or guardianship. Ask the child’s school teacher or principal for an application.

“Education”



- With a legal relationship to the child, caregivers should be able to enroll children tuition free in public school. Without a legal relationship, will depend on state and locality.
- For special education benefits, should not be required to have legal custody or become a “surrogate parent.”
- Generations United has a fact sheet, *Access to Education* at www.gu.org.

“Housing”: Family Unification Program

- The Family Unification Program (FUP) is a U.S. Department of Housing and Urban Development program.
- Provides Public Housing Authorities with funding to provide Section 8 housing vouchers for families who the child welfare agency has "certified" have children at risk of entering foster care because of the lack of adequate housing.
- Some states define “family” as parent-child families and exclude grandfamilies, whereas others like Washington include grandfamilies.

Affordable housing for grandfamilies with services onsite: GrandParent Family Apartments



- Opened in 2005 in the South Bronx, New York
- First ground up high rise for grandparents raising grandchildren
- 50 units of two and three bedrooms
- Wide variety of services on site for all age groups

Affordable housing for grandfamilies with services onsite: Grandparent's House

- Opened in 2004 in Baton Rouge, Louisiana
- Renovation of an existing facility
- Three two story buildings, each with 10 two bedroom units
- Grandparents Raising Grandchildren Information Center is located on-site



LEGACY's provisions

- Law passed in 2003 with three provisions:
 - (1) Report to Congress, *Intergenerational Housing Needs and HUD Program Options* at www.huduser.org/Publications/pdf/intergenerational.pdf
 - (2) Training of HUD staff
 - (3) 2-4 intergenerational housing demonstrations
- \$4 million specifically appropriated in 2005

Two LEGACY grantees

- Roseland Grandfamily Apartments owned by NHS Redevelopment Corporation in **Chicago**
 - 10 units of three and four bedrooms
- Fiddler's Annex owned by Fiddlers Manor, Inc. in **Smithville, Tennessee** (a rural Appalachian area)
 - 9 units of two bedrooms

“Social Security”: Old-Age Survivors and Disability Insurance

- Children being raised by grandparents may be eligible if the child’s parent is collecting retirement or disability insurance benefits or if the parent was fully insured when he or she died.
- Relatives can apply for benefits on behalf of the child based on the work record of the child’s parent.
- The child may qualify based on a grandparent’s work record. www.socialsecurity.gov/kids/parent5.htm
- See also Generations United’s fact sheet, *The Benefits of Social Security for Grandfamilies*, www.gu.org/LinkClick.aspx?fileticket=Vi04p7fvMdl%3d&abid=157&mid=606.

Supplemental Security Income

- Program administered by the U.S. Social Security Administration There's a screening tool to find out if an individual qualifies at www.ssa.gov/d&s1.htm.
- Provides benefits for individuals who are elderly, blind or have disabilities and who have limited income and assets.
- Also provides cash benefits to children who are blind or have other serious disabilities. For children to qualify, they must be under 18 and meet the SSI disability, income, and asset criteria.

“Revenue”: Earned Income Tax Credit (EITC)

- This tax credit is refundable so even workers who don't earn enough to pay taxes can get cash from the IRS.
- Qualifying children:
 - Includes all relatives (and steps)
 - under age 19 (or 24 if a full time student)
 - If the child is permanently and totally disabled, there is no age requirement
 - must have lived with the relative for more than ½ the year
- www.irs.gov/individuals/article/0,,id=96406,00.html

Adoption Tax Credit

- Credit for qualifying expenses to adopt eligible children from in and outside the foster care system.
- The Fostering Connections Act requires states to inform all people who are adopting or considering adoption of a child in state custody about their potential eligibility for this tax credit.
- The Affordable Care Act made the credit refundable for 2010 and 2011.
- For tax year 2012, the credit has reverted to being nonrefundable, with a maximum amount of \$12,650 per child.
- www.irs.gov/taxtopics/tc607.html

Child Tax Credit



- For caregivers with children under 17 who they can claim as dependent on their tax return...they can get up to \$1,000 per child.
- Not a refundable tax credit.
- www.irs.gov/newsroom/article/0%2C%2Cid=106182%2C00.html

Additional Child Tax Credit

- This credit is for people who get less than the full amount of the child tax credit because they do not owe enough taxes to offset.
- Unlike the child tax credit, this tax credit is refundable.
- http://www.irs.gov/publications/p972/ar02.html#en_US_2012_publink100012090
- All of these tax credits are not counted as income and will not jeopardize other benefits.

Kinship Resources

- Grandfamilies State Law and Policy Resource Center - www.grandfamilies.org
- Generations United – www.gu.org
- AARP GrandFacts
 - www.grandfactsheets.org
- ABA Legal Center for Foster Care and Education
 - http://www.americanbar.org/groups/child_law/what_we_do/projects/education.html
- Bridging Refugee Youth and Children's Services (BRYCS), Guardianship Toolkit - <http://www.brycs.org/publications/guardianship-toolkit.cfm>



Contact Information

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