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Policy Article

Policy Update: Federal and State Legislation to Support Grandfamilies

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Abstract

Building on the progress of the last 20 years, helpful federal and state legislation continues to be pursued on behalf of grandfamilies. This update summarizes policy efforts during the last year and looks ahead to what is on the horizon. At the federal level, legislative efforts are focused on grandfamilies who are involved with the child welfare system. States are responding to federal activity by enacting policies to place more children with relatives and better serve grandfamilies who come into contact with the system, including “family finding” laws and including fictive kin as “relatives.” State policymakers are also striving to support the vast majority of grandfamilies who are outside the formal foster care system. States are increasingly collaborating across agencies to support grandfamilies with help from the federal Temporary Assistance for Needy Families (TANF) program, and are creating more educational and health care consent laws. These budget neutral laws respond to the needs of the families by allowing children in the care of their relatives to access public school tuition-free, as well as the array of necessary health care.

Keywords: grandfamilies, policy, federal, state, child welfare

Federal and state laws supporting grandfamilies have increased exponentially in the last 20 years. Reasons for this rise include a growing body of research showing that children fare well in relative care, positive portrayals of the families in the media, increased numbers of children being raised by relatives, and a smaller pool of nonrelated foster parents. One of the most dramatic illustrations of the growth in supportive state laws is with educational and health care consent laws, which allow a relative caregiver without legal custody or guardianship of the child to access health care and educational services on the child's behalf. As recently as 1994, California enacted the first such law, and now more than half the states have either an educational or health care consent law or both. The mid-1990s also saw the growth of state-subsidized guardianship assistance programs, which used their own funds or Temporary Assistance for Needy Families (TANF) monies to allow children to exit foster care into the care of their relative guardians. Eventually, 38 states and the District of Columbia had state-subsidized guardianship assistance programs (www.grandfamilies.org). Due in large part to the success of these state programs, as of 2008, the federal government has allowed all states to take an option to use federal child welfare monies to finance subsidized guardianships. Also, at the federal level in the last 15 years, the first two pieces of legislation specifically for grandfamilies became law:

- (1) National Family Caregiver Support Program -- the first federal program providing supportive

services specifically to older relatives raising children.

- (2) LEGACY -- the first affordable housing program specifically for grandfamilies.

Throughout this past year, we have continued to see growth in supportive laws for grandfamilies, as there are a number of policy trends. Most federal policy work focuses on grandfamilies who are in foster care or have come to the attention of the child welfare system. States are responding using various strategies to place more children with relatives and better serve grandfamilies who come into contact with the system, including “family finding” laws and including fictive kin as “relatives.” In addition, state policy makers are striving to support the millions of grandfamilies outside the formal foster care system by enacting educational and health care consent laws and collaborating across agencies to reach more children and caregivers with help from the block grant funds from the federal TANF program. This article summarizes federal and state policy trends, and looks ahead to what is on the horizon for grandfamilies and professionals working within this field.

Federal Legislation

The Federal Fostering Connections to Success and Increasing Adoptions Act of 2008

The most significant child welfare legislation in recent years is the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Children’s Defense Fund & Child Trends, 2012). Among its many provisions, this federal law does a number of things specifically for grandfamilies:

- ♣ requires states to identify and notify relatives when children enter foster care.
- ♣ gives states the option to use funds through Federal Title IV-E of the Social Security Act to finance Guardianship Assistance Programs (GAPs) that enable children in the care of relatives (who are licensed foster parents) to exit foster care into permanent homes. As of May 2014, the U.S. Department of Health and Human Services Children's Bureau has approved 31 states (Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, and Wisconsin), the District of Columbia, and four tribes (the Keweenaw Bay Indian Community, the Port Gamble S'Klallam Tribe, the Confederated Salish and Kootenai Tribe, and the South Puget Intertribal planning agency) to implement GAPs.
- ♣ requires child welfare agencies to make reasonable efforts to place siblings together, be it in foster care, guardianships, or adoptive placements. Siblings placed in the same home as a child eligible for federal guardianship payments may also receive support even if they are not otherwise eligible.
- ♣ authorizes "Family Connection" grants to establish kinship navigator programs that link relative caregivers to a broad range of services and supports for them and the children they raise. These grants

also fund “family finding” efforts and other programs that benefit grandfamilies.

- ♣ gives states the option to waive non-safety-related foster care licensing standards for relatives.

Pending Federal Legislation

This landmark 2008 law sets the stage for the federal legislation that follows. In spring 2014, there are several pieces of legislation currently pending on Capitol Hill, which build on the Fostering Connections Act and continue to reform the child welfare system. The two provisions being considered that most directly impact grandfamilies concern GAPs. These provisions would:

- (1) provide states with federal financial incentives for exiting children from foster care into permanent families through guardianships, much as they already do for exiting children to adoptions.
- (2) allow relatives who are guardians to name successor guardians in the event of their death and to allow for the successors to continue to receive the monthly subsidies to help meet the needs of the children they raise, similar in practice to the longstanding adoption subsidy program.

These two changes to federal law would be significant for grandfamilies. They would continue to validate the importance of guardianships as a permanency option for children for whom adoption and reunification with the parents are not an option. The pending provisions further acknowledge the tangible benefits that come to children who have someone permanent in their life—someone who

has the authority to make all decisions on the child's behalf, including health care, educational, and often "simple" decisions such as whether a child can go to a sleepover at a friend's house or attend a school field trip. Guardians no longer have to rely on the state for these decisions, and children have much more stability and normalcy in their lives. By also allowing guardians to name successors who could continue to get monthly subsidies, children would no longer be required to return to foster care after a guardian's death. Under current law, children must spend at least six months in foster care with someone else before another guardianship is even considered. This provision would allow children to benefit from continuity in care, rather than suffer further trauma and upheaval compounding the loss of their loved one.

In addition to these provisions specifically impacting grandfamilies, both houses of Congress have pieces of pending legislation that would affect the child welfare system as a whole. Lawmakers are considering reauthorizing the adoption incentives program and combining legislation reauthorizing adoption incentives with provisions to address child sex trafficking. Since foster children are particularly vulnerable to sex trafficking, national advocates support this approach.

Federal Legislation and Policy Reform on the Horizon *Holistic Child Welfare Financing Reform*

The legislation currently pending on Capitol Hill begins to reform some issues with the federal financing of child welfare, but many national organizations are advocating for holistic financing reform. Casey Family Programs has long been recommending overall reform (Casey, 2008). The Annie E. Casey Foundation (AECF) and the Jim Casey Youth Opportunities Initiative are also seeking holistic child welfare financing reform. The joint

Casey proposal, detailed in *When Child Welfare Works: A Proposal to Finance Best Practices* seeks to restructure federal child welfare funds to improve family foster care, reduce the amount of time children are in state care, and end federal spending on shelter and non-treatment group care (Annie E. Casey & Jim Casey, 2013). Simply put, their proposal aims to help more children grow up in families. Interest seems to be building on Capitol Hill around the concepts, but child welfare advocates disagree on some of the specific steps and consensus needs to emerge among advocates before significant reform can happen.

Model Family Foster Care Licensing Standards

Because the Fostering Connections Act requires children to live in licensed homes with relatives prior to being eligible for GAPs, many states are looking at their licensing practices and policies to determine how to license more relatives. One of the primary reasons more relatives are not licensed is due to state licensing standards that go well beyond federal requirements and cause unnecessary barriers to otherwise qualified caregivers. The federal government allows the states a great deal of flexibility in creating licensing standards, and consequently they differ dramatically around the country.

The AECF has spearheaded a multi-partner effort to look at family foster care licensing. Generations United's National Center on Grandfamilies, the American Bar Association Center on Children and the Law, and the National Association for Regulatory Administration have partnered with AECF to create one set of model family foster care licensing standards, with the goal that states eventually adopt them. The work began with extensive research into family foster care licensing standards from all 50 states and the District of Columbia. Findings confirmed wide variation in licensing standards, along with

problematic standards that cause unnecessary barriers and do not promote safe and appropriate foster homes. Some state standards have more to do with cultural bias and wealth, like requirements to own vehicles and have arbitrary square footage in homes, than with ensuring safe and appropriate homes for children (Beltran & Epstein, 2013). This extensive research, along with guiding principles, will inform the creation of the model standards that seek to fulfill the public policy intent behind licensing standards, which is to ensure that foster children have safe and appropriate placements. These improved standards are the first step to facilitating the licensing of additional appropriate relative and non-relative homes, so that children live in safe homes and can access necessary supports to meet their needs. Licensing relatives will also give more children access to the permanency option of guardianship and the accompanying financial assistance available under the GAPs in 36 participating jurisdictions.

State Legislation

State Child Welfare Legislation Impacting Grandfamilies

Fostering Connections Act

Within the first few years after the Fostering Connections Act became law, a flurry of state legislation happened to implement its many provisions. Although the federal law did not require the states to enact laws, many needed to fix inconsistencies between their existing laws and the new federal law. In 2014, there is much less activity, although 19 states still have not adopted the GAP option and will hopefully do so at some point (www.grandfamilies.org).

Fictive Kin

A legislative trend has emerged towards including “fictive kin”—or close family friends and godparents—as part of state definitions of “relative” for purposes of child placement, GAP, and TANF or “welfare.” The inclusion of “fictive kin” acknowledges the important traditions among many cultures, including African American and Native American, of caring for each other’s children, whether or not they are actually related by blood, marriage, or adoption.

Under the federal Fostering Connections Act, GAPs are limited to “relatives” and states have discretion in how they choose to define the term. The majority of states, 23 and the District of Columbia, define “relative” to include “fictive kin” (Children’s Defense Fund & Child Trends, 2012). In 2013, Missouri enacted a law, Senate Bill 47, to join this group of states. It now includes “close nonrelated person” as someone who may become a guardian and obtain monthly subsidies for the care of a child. Missouri defines its term, at Mo St. § 453.0722. (2) as “any nonrelated person whose life is so intermingled with the child such that the relationship is similar to a family relationship.”

In 2013, Arkansas enacted a law, House Bill 1684, to add fictive kin as a placement option for children. This law allows fictive kin in Arkansas to be approved as providing provisional or temporary homes for a specific child until they are fully licensed. It further allows them to apply as a “relative” for benefits under the state’s TANF program. Arkansas defines “fictive kin” at AR Code § 9-28-108(a)(1) as “a person not related to a child by blood or marriage, but who has a strong positive emotional tie to a child and has a positive role in the child’s life, such as godparent, neighbor, or family friend.”

Family Finding

Acknowledging the important role of family in the lives of children, a growing trend has emerged to make comprehensive and ongoing efforts to find family for children who have come to the attention of the child welfare system (Child Trends, 2011). “Family finding” is being implemented in many jurisdictions around the country. Basically, it encompasses a variety of diligent methods, including effective use of technology, to find relatives for children. Pennsylvania passed a law in July 2013 that requires its counties to look for a child’s relatives while a child is receiving preventative services, before a child comes into care. Pennsylvania’s House Bill 1075 is garnering national attention because of this unique timing. Other states that have revamped their policies and systems to find family for children once they come into care include Connecticut, the District of Columbia, and New Jersey. Child Trends, a national nonprofit located in Washington, D.C., will be releasing a report this year on family finding and the various ways it is implemented around the country.

State Non-Child Welfare Legislation for Grandfamilies

Although the bulk of current legislative activity focuses on those families within child welfare, significant state efforts have arisen to help support the families outside the system. Since the vast majority of children raised in grandfamilies are outside of the foster care system, supporting these families is essential to keeping them together and preventing them from having to enter the child welfare system.

For every one child living in foster care with a relative, about 26 children reside with relatives outside the child welfare system. Relative caregivers—extended family members and close family friends—are raising more than 2.7 million children in this country (Annie E. Casey, 2012). Many of these children are being raised by relatives with no

legal relationship, such as legal custody or guardianship. Only about 104,000 are living with relatives in foster care. Although this number represents almost one-fourth of all children in foster care, it is a small percentage of the overall grandfamilies population (Annie E. Casey, 2012).

Without the support of the foster care system or a legal relationship that is formalized by the courts, relative caregivers face enormous challenges enrolling children in school, advocating for educational services, and consenting to health care. Many relative caregivers also lack adequate housing, food, child care or financial resources to take on the expenses of raising children they did not expect to raise. States are responding to some of these challenges by enacting educational and health care consent laws and collaborating across agencies to reach more children and caregivers with help from the federal TANF program.

Educational and Health Care Consent Laws

To ensure children in grandfamilies can obtain health care and a tuition-free public education, 25 states have health care consent laws and 17 have educational consent laws (Generations United, 2013). These laws allow relative caregivers to access services for children they raise without the need for legal custody or guardianship. Caregivers complete an affidavit under penalty of perjury that they are the primary caregiver of the child; then, by presenting the form, the caregiver can consent to treatment or enroll the child in public school tuition-free.

California first enacted one of these budget neutral laws in 1994, and several more states joined it in the years following. Now, 20 years later, seeing the success of these laws, there is increased activity to pass similar laws. In April 2014, Kentucky enacted its first educational and health care consent law, Senate Bill 176, and Missouri enacted Senate Bill 532, which broadens its existing health

care consent and includes educational consent in the same affidavit. In 2013, Oregon enacted a combined educational and health care consent law, Senate Bill 601, and Virginia enacted an educational consent law, Senate Bill 960.

Temporary Assistance for Needy Families

Around the country, both positive and negative trends have emerged with respect to TANF, which is often the only source of financial support for the vast majority of grandfamilies who are outside the foster care system (Generations United, 2014).

On the positive side, several states' TANF agencies, often called economic security, and child welfare agencies are working together to better serve grandfamilies. The U.S. Department of Health and Human Services is encouraging this type of collaboration with its latest round of Fostering Connection Grants for Kinship Navigator Programs, and that effort was promoted in the 2011 Government Accountability Office (GAO) report on TANF and Child Welfare Programs. By working together, these agencies can maximize their resources and provide wraparound services to grandfamilies both inside and outside the foster care system.

On the negative side, several trends may jeopardize grandfamilies, including counting caregiver income for child-only grants and imposing time limits for child-only grants (Generations United, 2014).

Counting Caregiver Income for Child-only Grants

In the West, an emerging trend has arisen of counting caregiver income when determining child-only grants (Generations United, 2014). Washington is the most recent state to impose caregiver income requirements, joining Arizona, Nevada, and Oregon.

Driven by budget considerations, Washington's legislature passed a law in 2011, RCW § 74.12.037, requiring a caregiver to have an income no higher than 300% of the federal poverty guidelines to be able to receive a child-only grant for a child in his or her care, and a sliding scale for caregivers with incomes between 200% and 300%. Since the law went into effect, over 1,500 children have been cut off from assistance (Generations United, 2014).

Historically, only a child's income, such as child support payments, has been considered in determining TANF child-only grants, since these grants are designed only to meet the needs of the child. In 2011, the average child-only grant was about \$8 per day for one child, with only slight increases for additional children (GAO, 2011). Although this number is insufficient to meet all the needs of a child, it is a critical income support for many grandfamilies. These funds can prevent children from having to enter foster care, which would cause financial ramifications for the states. The monthly maintenance payments for foster care are on average double those of TANF grants, and many administrative and court costs are also associated with a child in foster care. In 2011, the national monthly foster care maintenance payment was an average of \$511, whereas the national monthly TANF child-only grant was an average of \$249 (GAO, 2011).

Imposing Time Limits for Child-only Grants

Unlike the vast majority of states, Arizona, Connecticut, North Dakota, and Tennessee subject child-only cases to time limits (GAO, 2011). Imposing arbitrary limits on what is often the sole source of financial assistance for grandfamilies jeopardizes the family's ongoing stability.

State Legislation on the Horizon

Looking ahead in this era of state budget constraints, policymakers will likely continue to pursue laws and policies that save state funds or are cost-neutral. Because educational and health care consent laws help relative caregivers' access critical services for the children in their care and are completely budget-neutral, it is anticipated that more states will enact these laws.

With respect to TANF, state policymakers should assume a long-range view and discontinue making policy changes that limit grandfamilies' ability to access their often sole source of financial assistance. There are serious budgetary and social implications to further restrictive actions, such as time limits on TANF child-only grants. Mandatory limits on these grants can break apart the families and thereby increase the numbers of children entering foster care.

In order to avoid these negative social and economic outcomes, it is likely that state and federal policymakers and advocates will continue to encourage positive collaborations across government and community agencies so that TANF and other supports can keep grandfamilies together.

Conclusion

There is a significant amount of both federal and state policy activity on behalf of grandfamilies. This activity began roughly 20 years ago and continues to grow each year. Increasingly, the media and policymakers acknowledge grandfamilies as heroes who step forward to care for related children whose parents are unable to care for them. National and state advocates will continue to capitalize on these positive portrayals to enact important public policies for grandfamilies.

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