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Ana Beltran

Generations United, abeltran@gu.org

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Policy Brief

Federal Advances to Support Grandfamilies

Ana Beltran,
Generations United

Institutional Affiliation: Ana Beltran, National Center on Grandfamilies, Generations United.

Correspondence concerning this article should be addressed to:
Ana Beltran, Generations United, 25 E Street NW, 3rd Fl,
Washington, DC 20001
Contact: abeltran@gu.org

Abstract

It is the year of grandfamilies in our nation's capital. Not since the mid-1990s has there been so much activity among federal lawmakers and policymakers to try to help all grandfamilies, both those within and outside the foster care system. In August 2015, a major piece of legislation was introduced in Congress, which would make holistic reforms to our nation's child welfare financing system. For the first time, child welfare funds could be used to provide supportive services to parents and grandfamilies outside the system, so children do not have to enter it. For those children who are removed from their parents, a piece of draft legislation strengthens existing provisions requiring the identification and notification of relatives. This draft legislation would further help to ensure that relatives can become licensed foster parents – as one of the many options available to them—and have access to the services and supports that accompany that designation. For the first

time in over 20 years, there will also be significant changes to which data on children in relative and non-relative foster care is collected. All of this activity builds on the momentum of recent federal laws that made significant reforms supporting grandfamilies. After many years of working to raise awareness, 2015 seems to have turned the federal tide towards supporting the heroic grandparents and other relatives who come forward to raise some of our nation's most vulnerable children.

Keywords: Grandfamilies, Kinship Care, Policy, Federal, Child Welfare, Temporary Assistance for Needy Families, Family Foster Home Licensing

It is the year of grandfamilies in our nation's capital. Not since the mid-1990s with the implementation of Temporary Assistance for Needy Families (TANF) and the passage of the Adoption and Safe Families Act has there been so much activity among federal lawmakers and policymakers to try to help all grandfamilies, both those within and outside the foster care system. During the first seven months of 2015 alone, there have been two Congressional kinship care briefings focused on supporting the families, two Senate hearings on reducing reliance on foster care by placing more children with relatives, a House hearing on welfare reform proposals, including improving TANF access for grandfamilies, and a major new bill and draft legislation specifically to further help grandfamilies. That pending legislation seeks to fundamentally restructure the federal child welfare funding system to allow it to be used for preventative services. In addition to the significant Congressional activity, the U.S. Department of Health and Human Services (HHS) released a Notice of Public Rulemaking (NPRM) in spring 2015 regarding proposed changes to the Adoption and Foster Care Automated Reporting System (AFCARS). AFCARS is the primary

data collection source for all children in out-of-home care or foster care, including those with relatives, and these proposed changes would be the first since 1993. All of this activity comes on the heels of the September 2014 passage of the landmark *Preventing Sex Trafficking and Strengthening Families Act*, which among its many provisions, made significant strides for grandfamilies. This policy update is focused on this plethora of important federal activity.

The Preventing Sex Trafficking and Strengthening Families Act of 2014

On September 18, 2014, as one of the very last votes before going out on a long recess for mid-term elections, Congress passed the Preventing Sex Trafficking and Strengthening Families Act (Strengthening Families Act) (Children's Defense Fund, 2015). This law builds on the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act) and makes some important reforms. Among the many provisions, several impact grandfamilies directly.

The most immediate result of the Strengthening Families Act was continuing several ongoing Family Connections Grants, which were due to end abruptly. In 2012, thanks to the Fostering Connections Act, HHS had awarded several groups around the country with three-year grants to run kinship navigator programs to help serve grandfamilies. Congress did not authorize enough funding, and the grantees were told that they might not receive their promised third year of funding. At the last moment, Congress extended the funding to complete the third year. Evaluations of these programs are expected at the end of 2015, and will help make the case for more programs and services to help grandfamilies. In addition, although there is no authorization for another round of grants yet, the new law allows institutions of higher education, including

colleges and universities, to be eligible entities for future grants.

A second major impact for grandfamilies of the Strengthening Families Act builds on the success of the Guardianship Assistance Program (GAP), which is part of the Fostering Connections Act. GAP is an option offered to states and tribes, which for the first time allows them to use federal child welfare monies to finance monthly financial assistance to licensed relative foster parents who become guardians of the children in their care. Now, thanks to the Strengthening Families Act, a guardian may name a successor who can become the child's guardian and continue to receive the monthly assistance on the child's behalf. This is an important step forward so that relatives can plan for future possibilities, just as any responsible parent would do. Prior to this change, a child whose guardian died had to return to foster care to qualify for another GAP. That unfortunate step is no longer necessary.

Thirty-one states, the District of Columbia, and five tribes have implemented GAP, and grandfamilies' advocates hope that all states will eventually take this option, so there is another available permanency choice to children in the care of relatives (Beltran, 2015).

To encourage states to take the GAP option, the Strengthening Families Act renamed The Adoption Incentive Program as the Adoption and Legal Guardianship Incentive Payments Program. Incentive payments to states will now be based on guardianships in addition to adoptions.

Also building on the Fostering Connections Act, the Strengthening Families Act requires the expansion of the identification and notification of relatives. Under the Fostering Connections Act, states are required to identify and notify all relatives when a child is removed from a parent's care. That Act does not define "relative," but rather leaves it up to the states. Although the Strengthening

Families Act does not define ‘relative’, it does require that all parents of a child’s siblings be identified and notified when a child is removed from a parent’s care. This includes individuals considered siblings if not for the termination or other disruption of parental rights.

Finally, the Strengthening Families Act calls for the collection and analysis of information on children who re-enter foster care after placement in adoption or guardianship arrangements.

Notice of Proposed Rulemaking (NPRM) on proposed changes to the Adoption and Foster Care Automated Reporting System (AFCARS)

The data collection requirements in the Strengthening Families Act complement new data elements required by the Fostering Connections Act. Acting on both federal laws, in spring 2015, HHS released a Notice of Public Rulemaking (NPRM) regarding proposed changes to the Adoption and Foster Care Automated Reporting System (AFCARS), which is the primary data collection source for all children in out-of-home care or foster care. The proposed changes, which would be the first since 1993, make many useful and long advocated changes to the AFCARS system.

In April 2015, a few weeks after releasing the NPRM, HHS also released a notice of intent to publish a supplemental notice of proposed rulemaking (SNPRM) that states and tribes collect and report data in AFCARS related to the Indian Child Welfare Act (ICWA). For the first time, collected data will include the many American Indian/Alaska Native families who have a long and proud tradition of stepping up to care for children whose parents cannot provide care. As of August 2015, the SNPRM has not been released, and is much anticipated.

Several of the proposed data collection changes under the NPRM are very important for grandfamilies. The proposed changes will collect longitudinal data on children in out-of-home care, including those with relatives. By knowing more about these children, agencies will be better able to allocate their resources to support them. The changes also call for detailed penalty provisions if states do not comply, which is another long advocated reform. Other laudatory reforms include the proposed collection of:

- data on “fictive” kin or individuals with whom “there is a psychological, cultural or emotional relationship between the child or the child’s family and the foster parent(s)”
- information on prior adoptions and guardianships that were dissolved or disrupted before entering out-of-home care
- the same data on guardianships as adoptions
- data on guardianships and adoptions even if no financial subsidy is provided on the child’s behalf
- information on payment of nonrecurring guardianship and adoption costs
- data on siblings who are living with the child in the adoptive or guardianship home.

All of this data will help states and others better support grandfamilies who raise children in the foster care system, in addition to the relatives and kin who have adopted or taken guardianship of children who were previously part of the system.

Issues with the proposed data collection

There are a few issues with the proposed new data collection, which if rectified could better inform policymakers and programmers about children in the care of relatives, children who have been adopted or are in

guardianships with relatives, and children whose guardianships and adoptions with relatives have disrupted or fallen apart. Generations United submitted comments to HHS and recommended the following changes to the proposed data collection procedures:

Collect longitudinal data for children receiving adoption and guardianship assistance

Under the proposed changes, there will be two data files—one for out-of-home care and a second for adoption and guardianship assistance—with limited data collected for the second file. HHS proposed collecting longitudinal data for the out-of-home care population, whereas it will not be collected for the adoption and guardianship assistance population. The given reason for limiting data for the adoption and guardianship population to a single point in time is that this population is “not likely to change over time.” However, this limitation will not allow researchers to track children from disrupted or dissolved adoption/guardianship arrangements, and the reasons for the occurrences. Significant amounts of data on children, parents/guardians, and children’s relationships with the adoptive parents/guardians are collected for the out-of-home care population. But similar information is not asked for the adoption and guardianship assistance population. Even if the files are cross-referenced, the only longitudinal data that will exist for children with disrupted or dissolved adoptions or guardianships will be for those who reenter out-of-home care. Those not captured in the data are either too old to reenter the system or who go into another guardianship or adoption placement outside the child welfare system. This data is vital to understanding how these children fare.

Collect data on children receiving state adoption and guardianship assistance

Children who are not eligible for federal child welfare support (“Title IV-E eligible”) are included in the first data file, but only Title IV-E eligible children and their federal subsidy agreements are included in the second data file. The second data file on adoptions and guardianships should not be limited to Title IV-E eligible children, because at least 27 of the 31 states and District of Columbia that have taken the GAP option have state programs to serve the many children who cannot be served by GAP (Children’s Defense Fund & Child Trends, 2012). Data is needed for this population, to assess the effectiveness of GAP and determine ways to help states serve the non-Title IV-E eligible populations.

Clarify the definition of “kin”

Although “kin” is included in the proposed data collection, it is defined in such a way that could lead to confusion for the states. AFCARS already uses the term “relative,” so now there will be two categories: kin and relative. Kin is defined as fictive kin, whereas many states and community organizations define kin as including both fictive kin and those related by blood, marriage, or adoption. The definition of “kin” should explicitly not include relatives by blood, marriage, or adoption, and states can continue to report such individuals as “relatives.” This way the same population is not reported in two categories.

Collect data on the diverted population

Many public child welfare agencies are removing children from homes, finding relatives or kin, and then diverting those children from the child welfare system with little or no supports. The numbers of children “diverted” have been estimated at 400,000 (Annie E. Casey Foundation, 2012). States engage in this practice, despite

the fact that they have placement and care responsibilities. These large numbers of children need to be tracked to learn their needs, and to determine whether they eventually enter foster care.

Family Stability and Kinship Care Act

On August 5, 2015, Senator Ron Wyden (D-OR) and seven co-sponsors introduced S.1964, the Family Stability and Kinship Care Act, which would make major changes to our nation's child welfare financing system. Many organizations, including Generations United, submitted comments on the draft before it was introduced and have expressed their support for the bill.

Under the current federal child welfare financing system, there are insufficient resources to fund prevention services that keep children from entering foster care. Title IV-E of the Social Security Act, the nation's largest child welfare funding stream, currently provides states and Indian tribes with a federal funding match for certain children only after they are placed in foster care. Moreover, federal funding for community-based, prevention programs through Title IV-B of the Social Security Act is very limited.

The bill does a great deal to help grandfamilies and has explicit language directed at "kinship caregivers" throughout. It expands federal funding available under both parts B and E of Title IV for prevention and family services to help keep children safe and supported at home with their parents or with their grandparents and other relatives. The bill expands federal reimbursement under Title IV-E for up to 12 months of family services and support, including support groups for kinship caregivers and crisis intervention services, such as transportation, clothing, child care, and other similar services "to facilitate placement of children in kinship care." These services extend to children outside of the foster care system, who are "candidates" for

foster care as well as those children's family members. It increases funding by \$470 million a year for community-based prevention and intervention services through Title IV-B.

Draft Legislation to Improve the Identification and Notification of Relatives and to Remove Barriers to Licensing Relatives as Foster Parents

A piece of draft legislation builds on the identification and notification of relatives required by the Fostering Connections Act. The Act currently requires the states to exercise "due diligence" to identify and notify relatives within 30 days of a child's removal from his/her parent's home. The notification requirement includes that the state "explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice" (42 USC 671(a)(29)).

Leadership and staff of many child welfare agencies seem to know very little about this requirement and do not appear to be providing meaningful information to relatives about their options, including the option to become a licensed foster family. Over 40 states are providing relatives with notice in writing and are documenting this notice in the case files, but there is no data on how many states are providing information about the placement options (GAO, 2014).

The draft legislation would help to ensure that relatives receive meaningful identification and notification. The proposal would require the states to define the steps necessary to constitute "due diligence" in identifying and notifying relatives and to designate a primary kinship ombudsman who provides relatives with information about

placement, visitation, and family resource options and connects them with other local services. Further, consistent with what most states report as their practice, the legislation would explicitly require that notice to relatives is in writing and that efforts and responses in identifying and notifying relatives be documented in the case files.

This draft legislation would also provide guidance to the states on family foster home licensing standards and help to remove barriers caused by state standards. Federal law allows states a great deal of flexibility in creating licensing standards. The Social Security Act only requires states to establish and maintain standards for foster family homes and child care institutions which are “reasonably in accord” with recommended standards of national organizations (42 U.S.C. § 671(a)(10)). Until fall of 2014, however, there were no comprehensive national standards. Due to this lack of guidance, licensing standards vary dramatically among the states and often pose unnecessary barriers to both relatives and non-relatives.

During fall 2014, Generations United, the American Bar Association Center on Children and the Law, The Annie E. Casey Foundation, and the National Association for Regulatory Administration (NARA) released the first set of comprehensive model family foster home licensing standards. NARA, as the nation’s association of human service regulators, took the added step of adopting them as its standards (NARA, 2014). This model does away with artificial barriers, such as requirements to own vehicles, be no older than age 65, have high school degrees, and live in homes with certain square footage. In their place are reasonable standards that lead to safe and appropriate homes and families. For example, functional literacy is required, rather than high school diplomas; capacity standards are based on home studies, and other methods of transportation, including public transportation, may be used.

The draft legislation would direct states to create a task force consisting of a state legislator, a child welfare agency representative, a judge, a kinship caregiver, and youth from foster care, among others, to assess their current family foster home licensing standards for barriers. The task force would then recommend and take action on making any necessary changes to their existing state standards, using the NARA model as a tool.

Grandfamilies in Temporary Assistance for Needy Families (TANF) Reauthorization

Temporary Assistance for Needy Families (TANF) or “welfare” is due for reauthorization in this Congress, and many legislators of both parties are interested in ensuring that access is improved for grandfamilies. One out of every two children being raised solely by a grandmother lives in poverty, and only 14% receive TANF (U.S. Census Bureau, 2014). Although there is no draft legislation as of August 2015, Generations United is in discussions with several Members of Congress and expects to see language to help grandfamilies access TANF. On July 15th, the House of Representatives Ways and Means Committee held a hearing on welfare reform proposals, including improving TANF access for grandfamilies. Among Generations United submitted recommendations to the Committee were the following:

(1) Require states to explain and grant the federal “good cause” exemption to child support assignment.

Generations United conducted a survey in August 2014 of the Brookdale Foundation’s Relatives As Parents Program (RAPP), the nation’s largest network of support groups and services for relatives raising children. The results showed that the most significant barrier to accessing TANF child-only or family grants is the requirement to assign child support collection to the state. Caregivers often

do not want to assign their rights for a couple of reasons. Some fear retaliation that the parents will get angry and physically hurt the child or caregiver or will simply take the child back when it is not in the child's best interest. Other caregivers report that they do not want to pose another challenge for their adult child who is already struggling financially and emotionally.

Federal law allows for a "good cause" exemption to the requirement to assign child support but does not provide much guidance on what this entails and does not require states to provide the exemption. States could use more guidance and direction that requires them to grant it. Most states do not have language on their TANF application form concerning the exemption. Consequently, caregivers do not know about the "good cause" exemption, or how to obtain one.

**(2) Define "relative" and include "fictive kin,"
godparents and close family friends, who raise children
instead of parents.**

The definitions of "relative" vary dramatically among the states, and most states do not include fictive kin in their definitions. Including these adults is best practice, as these family-like adults are a significant population especially among African Americans, Latinos, and Native Americans who have a strong tradition of caring for each other's children. Including these caregivers in TANF is culturally responsive to these populations and ensures that they are supported in their valiant efforts to raise children who cannot live with their parents (Generations United, 2014).

**(3) Reinstate the previous work requirement and time
limit exemption categories of kin applying for family
grants.**

In the past, caregivers who were part of an AFDC assistance unit were exempt from work requirements if they were too ill to work, over age 59, were needed in the home to care for an incapacitated household member or were providing care for young children. These exemptions no longer exist under federal law, although the states have the flexibility to exempt groups from TANF's work requirements and time limits. Depending on the state and the exemptions made, TANF family grants may not be available for retired relative caregivers or for caregivers who will need assistance for more than 60 months (Generations United, 2014).

(4) Increase asset limits for TANF applicants age 60 and older.

A recent trend among states has been to do away with all asset limits for TANF recipients. Such states include Alabama, Colorado, Hawaii, Illinois, Louisiana, Maryland, Ohio, and Virginia (Corporation for Enterprise Development, 2013). For those states that do not exempt all assets, the only asset distinctions made for older recipients are in some states—Alaska, California, New York—and the District of Columbia, which allow the “elderly” or those who are typically age 60 and older to have \$3,000 in assets, whereas other applicants and recipients can only have \$2,000 (Generations United, 2014). In addition to these very limited assets, the majority of states allow TANF recipients to have additional assets for specific purposes like saving for college or purchasing a home, but only the District of Columbia and Hawaii explicitly allow recipients to have assets for retirement (Generations United, 2014). The federal government must tell the states that they need to encourage these middle-aged and older caregivers to continue to save and plan for retirement. The states must not penalize caregivers for stepping up to raise related children and keep them out of foster care.

Conclusion

This is the year of grandfamilies in our nation's capital. For the first time in 20 years, several key pieces of legislation are being pursued that will help grandfamilies both inside and outside the foster care system. Members of Congress are seeking reforms to federal child welfare financing, family foster home licensing, identification and notification of relatives, and TANF access. Generations United and many other organizations, caregivers, and advocates will continue to work to ensure that the reforms pending in 2015 are enacted, and that the appropriate next steps are taken to ensure that grandfamilies are fully supported.

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