

November 2017

Federal and State Advances to Support Grandfamilies

Ana Beltran

Follow this and additional works at: <https://scholarworks.wmich.edu/grandfamilies>

Recommended Citation

Beltran, A. (2017). Federal and State Advances to Support Grandfamilies. *GrandFamilies: The Contemporary Journal of Research, Practice and Policy*, 4 (2).

Available at: <https://scholarworks.wmich.edu/grandfamilies/vol4/iss2/8>

This Policy Brief is brought to you for free and open access by the National Research Center on Grandparents Raising Grandchildren at ScholarWorks at WMU. It has been accepted for inclusion in GrandFamilies: The Contemporary Journal of Research, Practice and Policy by an authorized editor of ScholarWorks at WMU. For more information, please contact wmu-scholarworks@wmich.edu.



*Policy Brief***Federal and State Advances to Support Grandfamilies**

Ana Beltran

Generations United's National Center on Grandfamilies

Correspondence can be directed to: Ana Beltran, abeltran@gu.org,
Generations United, 25 E Street NW, 3rd Floor Washington, DC

Abstract

GrAND Voices have been front and center at the nation's Capitol inspiring law makers to enact reform during an uncertain time. Activity has been frenetic in Washington, with a new Administration, repeated efforts to repeal the Affordable Care Act and several natural disasters demanding attention. Despite distracted law makers, several committed members of Congress have forged ahead on reforms specifically for grandfamilies, thanks in significant part to a new initiative of Generations United and Casey Family Programs, called GrAND Voices. GrAND Voices are caregiver advocates from around the country who elevate their voices, bringing their personal experience raising relatives, in addition to those they work with, to the attention of lawmakers. GrAND Voices were an integral part of the 5th national GrandRally in Washington, D.C., and have inspired new legislation. They have helped elevate the need for supports and services to grandfamilies in light of the opioid crisis and the increased numbers of children they are raising. The crisis has provided an urgent platform for pursuing reforms such as providing preventative services to grandfamilies and implementing the Model Family Foster Home Licensing Standards. Improved foster care data collection and a 2016 federal court case also have implications for those grandfamilies who have child welfare involvement. On the state level, many jurisdictions continue to try to make inroads for grandfamilies by implementing policy changes, such as new guardianship assistance programs. Grandfamilies support is moving in the right direction, albeit slowly.

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

GrAND Voices have been front and center at the nation's Capitol inspiring law makers to enact reforms during a particularly frenetic time with many new challenges to address. Thanks to the GrAND Voices' efforts at the 5th National GrandRally, meetings

with members of Congress, and their staff, and testimony during a Congressional hearing, legislation to help the families both inside and outside the foster care system is being pursued. In addition to legislation in Congress, the other two branches of government also have significant activity that could help many grandfamilies. There is an important federal circuit case that should result in equity between relatives caring for children in the foster care system and non-relative foster parents in Kentucky and Ohio. New federal data collection will also give us important new information about grandfamilies inside the child welfare system. The states are busy enacting reforms to help all grandfamilies. More jurisdictions are taking the option to use federal child welfare monies to provide guardianship assistance programs for those children exiting foster care with a loving relative, and caregiver means-testing for TANF child-only grants in Washington State has finally been repealed. The states, in addition to the federal government, are responding to the opioid crisis and the resulting increase in number of grandfamilies with important supports. Although much remains to be done, progress is happening, thanks in large part to the elevated voices of the caregivers themselves.

GrAND Voices

A few years ago, Generations United and the Casey Family Programs launched the Grandfamilies Advocacy Network Demonstration (GrAND). GrAND Voices consist of a select group of kinship caregivers with wide expertise and personal experience as relatives who have raised children when their parents have been unable to raise them. GrAND Voices currently represent 35 states, with plans to expand to include all states. A complementary initiative supported by the W.K. Kellogg Foundation will further expand the network with an additional 25 caregivers specifically focused on elevating issues impacting African American and Native American grandfamilies.

GrAND Voices have been instrumental in recent federal advances for grandfamilies. They have helped Generations United in all its work on behalf of the families. They have eloquently spoke about their need for support during the 5th National GrandRally, testified at a Congressional hearing, met with individual members of Congress and their staff about the families' strengths and challenges, and inspired legislation to help the families.

Federal Response to Grandfamilies and the Opioid Crisis

Generations United released its 2016 State of Grandfamilies Report on *Raising the Children of the Opioid Epidemic: Solutions and Supports for Grandfamilies*. That report, in turn, provided the background and inspiration for a Senate Aging Committee hearing in March 2017 called *Grandparents to the Rescue: Raising Grandchildren in the Opioid Crisis and Beyond*. The hearing, which featured testimony from Generations United's Deputy Director and two members of GrAND Voices, helped motivate members of Congress and others to support the children and caregivers in these families. A direct result of that hearing was new bipartisan legislation.

FEDERAL**Supporting Grandparents Raising Grandchildren Act**

After the opioid hearing, Senators Susan Collins (R-ME) and Bob Casey (D-PA) introduced the Supporting Grandparents Raising Grandchildren Act, S. 1091. A companion House bill, H.R. 3105, was also introduced by Representatives James McGovern (D-MA) and Peter King (R-NY). This legislation would create a federal task force charged with developing and disseminating information to help grandparents and other relatives raising children. The task force would also be responsible for producing two reports to Congress on best practices to support these caregivers and any identified gaps in their resource needs. This legislation, if enacted, would help coordinate federal resources for grandfamilies.

Family First Prevention Services Act

GrAND Voices have also spoken of the need for preventative services and supports, which are addressed in The Family First Prevention Services Act. That bill is landmark child welfare legislation with six titles addressing an array of services and programs. In 2016, it (H.R. 5456) passed the House of Representatives, but the Senate failed to enact it after significant opposition from a few states and primarily their group foster care home providers.

The bill in its entirety was reintroduced in the House in 2017, known as H.R. 253, but it has stalled. Several pieces of the legislation are specifically important for grandfamilies:

- *Allows for federal reimbursement for prevention services and programs*

For the first time, this Act will allow federal child welfare dollars to be used on services and programs to prevent children from entering foster care by supporting the triad of generations in grandfamilies -children, kinship caregivers and parents. The children can get services if they are “candidates” for foster care who are at imminent risk of entering care and can safely remain at home with parents or with kinship caregivers. Kinship caregivers or parents of these children can also get services if they are needed to prevent the children’s entry into care. These prevention services and programs include mental health treatment, substance abuse prevention and treatment, in-home parent skill-based supports, and kinship navigator services. Getting these services does not affect the child, caregiver or parent’s eligibility for any other assistance.

- *Seeks to improve licensing standards for relative foster family homes*

The Act seeks to improve state licensing standards for relative foster family homes by identifying a Model that states can use to compare and align their standards. It also strives to encourage states to use their authority to waive non-safety licensing standards for relatives.

- *Works to ensure that each child in foster care gets a family*

If children need to come into the custody of the child welfare system, the Act encourages the placement of children in foster care in the least restrictive, most family-like settings appropriate to their needs by restricting the use of federal funds for group placements that are inappropriate. The Act aligns with the principle that children do best in families.

- *Extends child and family services programs*

The Act extends funding for five years for two critical service programs for children and families in the child welfare system-- The Stephanie Tubbs Jones Child Welfare Services Program and The Promoting Safe and Stable Families Program.

- *Improves the John H. Chafee Foster Care Independence Program*

The Act extends to age 23 the financial, housing, counseling, employment, education, and other appropriate supports and services to former foster care youth. It further extends eligibility to age 26 for Education and Training Vouchers.

- *Reauthorizes the Adoption and Legal Guardianship Incentive Program*

The Act reauthorizes for five years the Adoption and Legal Guardianship Incentive Payment program, which allows states to receive incentive payments based on improvements in increasing exits from foster care to adoption or kinship guardianship.

A few of these provisions – not the major section calling for preventative services – were introduced in 2017 in the House of Representatives as smaller, stand-alone bills. Among those bills is the Reducing Barriers for Relative Foster Parents Act.

Reducing Barriers for Relative Foster Parents Act

In June 2017, the House passed the Reducing Barriers for Relative Foster Parents Act, H.R. 2866, in a landslide victory 382 to 19. The legislation helps address barriers to licensing grandparents and other relatives raising children as foster parents. It requires states to report to the U.S. Department of Health and Human Services (HHS) about their state licensing standards, which are individually created by each state and often cause unnecessary barriers for licensing relatives. States must specifically indicate if their standards are “in accord with HHS-identified model standards”, and if not, why not. States must further report if they use federal authority to waive non-safety standards for relative foster family homes, and essentially how that process works. Although the legislation does not directly reference the Model Family Foster Home Licensing Standards that Generations United created in partnership with the American Bar Association Center on Children and the Law, the Annie E. Casey Foundation (AECF) and the National Association for Regulatory Administration (NARA), Rep. Sewell (D-AL) and Rep. King (R-PA) did a colloquy on the House floor that highlighted these Model Standards.

The Model Family Foster Home Licensing Standards are the first set of comprehensive national model 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.

Improve Support for Kinship Caregivers Act

Another piece of legislation, which GrAND Voices have helped influence, is the Improve Support for Kinship Caregivers Act, which Rep. Danny Davis (D-IL) introduced in 2016 (HR 5354). This legislation was not enacted, and Rep. Davis hopes to reintroduce it in 2017. This bill does several critical things to help grandfamilies both inside and outside the foster care system. It calls for important reforms to the Temporary Assistance for Needy Families (TANF) or "welfare" program, which would help grandfamilies. The legislation would exempt caregivers aged 60+ from work requirements, time limits and asset tests, so these caregivers can get on TANF family grants and receive more assistance to help meet the needs of their new family. The legislation would also allow each child on a TANF child-only grant to receive the same amount of financial assistance as all the other children on a TANF child-only grant in the home. Unlike with monthly maintenance assistance payments for children in foster care, the amount each child receives of TANF only goes up incrementally for additional children. In foster care, the amount is the same for any additional foster children in the home. This bill would remedy that disparity.

The bill also calls for several other reforms to help the families, in addition to specifically calling for states to compare and align their foster care licensing standards with the Model Family Foster Home Licensing Standards, created by Generations United, AECF, NARA and the ABA.

Child Welfare Oversight and Accountability Act of 2017

In October 2017, a significant piece of child welfare legislation was unexpectedly introduced in the Senate, the Child Welfare Oversight and Accountability Act of 2017 (S. 1964). This legislation would make several reforms to the child welfare system, including significant changes to the requirements for children to be eligible for the Guardianship Assistance Program (GAP). For a child's GAP eligibility, this legislation provides:

- (1) The relative no longer has to be a licensed foster parent. Instead, the relative must pass the criminal and child abuse background checks required by the federal Adam Walsh Child Protection and Safety Act of 2006.
- (2) The child must live in the relative's home for a total of only three months prior to obtaining guardianship assistance, as opposed to now waiting for six months after the relative is licensed to obtain assistance.
- (3) The child no longer has to meet strict income requirements under the outdated Aid to Families with Dependent Children (AFDC) guidelines. Like adoption assistance, GAP would now be delinked from AFDC.

If this legislation is enacted, federal child welfare monies could be used to pay for GAP for many more children exiting the foster care system to live permanently with relative guardians. This would help the many states who use their own limited funds to provide monthly guardianship assistance for non-IV-E eligible children to exit foster care to live with relative guardians. It would also help those children in states that have the federal GAP option, but do not offer a similar program for non-IV-E eligible children.

Federal Court Ruling for “Approved” Kinship Placements – D.O. v. Glisson

In addition to activity on Capitol Hill, an important federal court decision was recently decided -and in effect upheld by the U.S. Supreme Court- that could help many grandfamilies. On October 10, 2017, the U.S. Supreme Court refused to hear an appeal from the Kentucky Cabinet for Health and Family Services seeking to overturn a ruling that the state must pay relatives "approved" to care for children in foster care, just as they do “licensed” foster parents. Because the U.S. Supreme Court refused the appeal, the Sixth Circuit decision is now the law for the states it covers: Kentucky, Ohio, Michigan and Tennessee.

According to the decision, Kentucky must now provide monthly foster care maintenance payments to any relative “approved” by the state to provide foster services for a child in the legal custody of the Cabinet. In Kentucky, approval means that the relative has gone through a home study and a background check, but has not been formally licensed as a foster parent. Kentucky must pay maintenance payments, according to the Court, until the state no longer has legal custody, because the child has been reunified with his/her parents or the child's case is closed through adoption or permanent legal custody.

The decision should also impact Ohio and its similarly “approved” relative caregivers of children in foster care. The other Sixth Circuit states - Michigan and Tennessee - do not engage in a similar approval practice, so grandfamilies in those states will probably not be impacted.

Had the U.S. Supreme Court taken the appeal and upheld the Sixth Circuit decision, it would have impacted grandfamilies around the country. Despite its lack of national applicability, this case is very significant and goes well beyond the U.S.

Supreme Court ruling in *Miller v. Youakim*, which requires that "licensed" relative foster parents receive the same monthly support as "licensed" non-relative foster parents.

Although the U.S. Supreme Court will never hear an appeal of this particular case, it could hear another case in the future with the same core issue. The U.S. Supreme Court likes to hear cases when several of the Circuit Courts do not agree. Although there was one case from the 8th Circuit that had ruled differently than the Sixth Circuit on this issue, the Supreme Court did not take this appeal. Perhaps if there are other cases in the future, and there is a conflict among more Circuits, the U.S. Supreme Court will rule on this issue one day.

The Adoption and Foster Care Automated Reporting System (AFCARS) Final Rule

The third branch of the federal government, the executive branch, has also made policy advances to help grandfamilies. In December 2016, a final rule was published that provides the first update to the Adoption and Foster Care Automated Reporting System (AFCARS) data collection and reporting requirements in over twenty years. It includes numerous changes called for in recent federal law. It also requires for the first-time that states report information related to the Indian Child Welfare Act of 1978 (ICWA).

In 2014 and 2015, Generations United, and numerous other national nonprofits, commented on the proposed changes that eventually became this Final Rule. While commenting, Generations United applauded HHS for many of the proposed changes, which have now become final, to collect:

- longitudinal data on children in out-of-home care, including those with relatives, and detailed penalty provisions if states do not comply
- 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

- data related to American Indian/Alaska Native children and ICWA

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.

In addition to supporting the many reforms in the proposed rule, Generations United also suggested a number of changes, including collecting longitudinal data for children receiving adoption and guardianship assistance and data on children diverted from foster care. Although these suggestions and a suggestion concerning successor guardians were not taken, HHS did agree to modify its definition of “kin” so as not to cause confusion among the states. AFCARS already uses the term “relative”; the term “kin” is an addition. “Kin” was used in the proposed rule as solely meaning fictive kin or those with a close or family-like relationship, whereas many states and community organizations define kin as including both fictive kin and those related by blood, marriage, or adoption. HHS agreed to change the definition of “kin” to explicitly exclude relatives by blood, marriage, or adoption, so states can continue to report such individuals as “relatives” and will not get the categories confused or report the same population in two categories.

Although the suggestion asking that data concerning successor guardians be collected was not accepted, HHS did state in its final rule that “We encourage states to consider collecting data that helps states identify how to ensure successors are named in the agreements whenever possible, and to evaluate how to prevent unnecessary re-entry into foster care, but we do not require that they report those data to AFCARS” (Federal Register, 2016).

STATE

States Respond to Grandfamilies and the Opioid Crisis

Like the federal government, many states are concerned about what the opioid crisis is doing to families in general, and grandfamilies specifically. In Ohio, which is one of the states hardest hit by this epidemic, the number of children in foster care placed with relatives has gone up 62 percent since 2010 (PCSAO, 2017). Attorney General Mike DeWine has creatively responded to this crisis by allocating a significant portion of Ohio’s federal Victims of Crime Act (VOCA) monies to support families impacted by the crisis in the Appalachian part of the state. Casey Family Programs also made an investment in the program.

Ohio START (Sobriety, Treatment, and Reducing Trauma) will bring together child protective services, peer mentors, the courts, and behavioral health and treatment providers to work closely with families, and provide specialized victim services, such as intensive trauma counseling, to children who have suffered victimization due to parental drug use. The program will also provide drug treatment for parents of children referred to the program. By supporting the children and parents, the relative caregivers who are

raising many of these children, also get much needed assistance.

In June, New Hampshire became the first state in the nation to pass a law, H.B. 629, which gives legal preference to grandparents in guardianship cases involving parental substance abuse or dependence. The law also requires the state department of human services to provide benefit eligibility information on its website and to grandparents applying for guardianship. The bill will go into effect in January 2018.

Washington State repealed Caregiver Means-Testing for TANF child-only

Another advance for grandfamilies came in 2017 when Washington State repealed its 2011 provision calling for means testing of caregiver income for its TANF child-only grants (S.B. 5890). The 2011 policy was contrary to what Congress envisioned and how the majority of states determine eligibility for child-only grants. The overwhelming number of states only test child-income since the grant is only intended for the child and is typically much smaller than a family TANF grant, for which caregiver income is tested.

TANF child-only grants are often the only source of financial support to meet the needs of children in kinship families, and this 2011 policy had some profoundly negative effects on the families. Over 1,500 children were cut off from assistance in the first couple of years after the provision went into effect. This cut was generally due to the fact that caregivers did not want to submit their personal financial information, not because they had too much income (Beltran, 2014). By repealing this provision, Washington has taken a step forward in improving support for grandfamilies. The change is expected to go into effect July 2018.

State Interest in Model Family Foster Home Licensing Standards Growing

For those grandfamilies involved with the child welfare system, states are also making efforts to better support them. Several states have shown interest in removing barriers to licensing relatives as foster parents. These barriers are often caused by their own family foster home licensing standards, so they are looking to the Model Family Foster Home Licensing Standards as a tool for reform. In May 2016, South Carolina passed legislation, SC Act 187, with home capacity language from our Model Standards. Other states that have expressed an interest in the Model include Kansas, Louisiana, Mississippi, Rhode Island, Virginia, Vermont, Washington and West Virginia. In Massachusetts, the Child Welfare League of America (CWLA) used the draft Model standards and the research done to develop those standards when consulting with the state on a critical case and a review of some of its family foster home licensing standards. In its report to Massachusetts, CWLA recommended that Massachusetts consider adopting the Model Standards (CWLA, 2014).

More Jurisdictions Take the Guardianship Assistance Program (GAP) Option

When licensed as foster parents, grandparents and other relatives may be able to exit foster care with their related children into guardianships and receive monthly assistance through the Guardianship Assistance Program (GAP). Thanks to the 2008 Fostering Connections to Success and Increasing Adoptions 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. Since the last policy update in this Journal in 2015, 4 more states -- Minnesota, Nevada, New Mexico, and North Carolina -- and three more tribes -- Eastern Band of Cherokee Indians, Navajo Nation, Pascua Yaqui Tribe -- have taken the GAP option. This brings the total number of jurisdictions with GAP to 35 states, the District of Columbia and eight tribes (Beltran, 2017). This is a great advance for children and youth who wish to exit the foster care system into the permanent care of their loving relative.

Conclusion

With each policy update in this Journal, there have been encouraging reforms to report. Grandfamilies are better supported both inside and outside the foster care system than they were even just five years ago. This is encouraging. Much, however, remains to be done. With GrAND Voices elevated and speaking their truths and experiences to policymakers, it is expected that the next policy update will have even more good news.

References

- Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. § 671(a)(20)(A) and (B). Retrieved from <https://www.law.cornell.edu/uscode/text/42/671>
- Adoption and Foster Care Analysis and Reporting System, 81 Fed. Reg.240 (December 14, 2016). Retrieved from: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-29366.pdf>
- Beltran, A. (2014). *Policy Brief: Improving grandfamilies' access to temporary assistance for needy families*. Retrieved from: <http://www.grandfamilies.org/Portals/0/documents/Home%20page/GU%20Policy%20Brief%20-%20TANF%20Assistance%20Final%202.pdf>
- Beltran, A. (2017). *Subsidized Guardianship: summary and analysis*. Retrieved from: <http://www2.grandfamilies.org/SubsidizedGuardianship/SubsidizedGuardianshipSummaryAnalysis.aspx>
- Child Welfare League of America, Quality Improvement Report (2014). Retrieved from: http://extras.mnginteractive.com/live/media/site106/2014/0529/20140529_100645_CWLA%20report.pdf
- Child Welfare Oversight and Accountability Act of 2017, S. 1964 (2017). Retrieved from

- <https://www.finance.senate.gov/imo/media/doc/S.%201964%20CW%20Oversight%20and%20Accountability%20Act.pdf>
- D.O. v. Glisson, No. 16-5461 (6th Cir. 2017). Retrieved from:
<http://law.justia.com/cases/federal/appellate-courts/ca6/16-5461/16-5461-2017-01-27.html>
- Family First Prevention Services Act, H.R. 253, 115th Congress (2017). Retrieved from:
<https://www.congress.gov/bill/115th-congress/house-bill/253/text>
- Generations United. (2016). State of Grandfamilies Report - *Raising the Children of the Opioid Epidemic: Solutions and Supports for Grandfamilies*. Retrieved from:
http://www.grandfamilies.org/Portals/0/2016%20State%20of%20Grandfamilies%20Report%20FINAL_1.pdf
- House Bill 629, New Hampshire State Legislature (2017). Retrieved from:
<https://legiscan.com/NH/text/HB629/id/1477073>
- Improve Support for Kinship Caregivers Act, H.R. 5354, 114th Congress (2016). Retrieved from: <https://www.congress.gov/bill/114th-congress/house-bill/5354/text>
- Miller v. Youakim, 440 U.S. 125 (1979). Retrieved from:
<https://supreme.justia.com/cases/federal/us/440/125/case.html>
- National Association for Regulatory Administration. (2014). *Model Family Foster Home Licensing Standards*. Retrieved from:
<http://www.grandfamilies.org/Portals/0/Model%20Licensing%20Standards%20FINAL.pdf>
- Public Children Services Association of Ohio (PCSAO), *The Opioid Epidemic's Impact on Children Services in Ohio*, (2017). Retrieved from:
http://www.ipacohio.org/Websites/ipacohio/images/conference/3_IPAC_Sausser_FINAL.pdf
- Reducing Barriers for Relative Foster Parents Act, H.R. 2866, 115th Congress (2017). Retrieved from: <https://www.congress.gov/bill/115th-congress/house-bill/2866/text>
- Senate Bill 5890, Washington State Legislature (2017). Retrieved from:
<http://app.leg.wa.gov/billsummary?BillNumber=5890&Year=2017>
- Supporting Grandparents Raising Grandchildren Act, S. 1091, 115th Congress (2017). Retrieved from: <https://www.congress.gov/bill/115th-congress/senate-bill/1091/text>