

Spring August 2012

Policy and Custodial Grandparents

Carole B. Cox
Fordham University

Follow this and additional works at: <https://scholarship.law.marquette.edu/elders>



Part of the [Elder Law Commons](#)

Repository Citation

Cox, Carole B. (2012) "Policy and Custodial Grandparents," *Marquette Elder's Advisor*. Vol. 11: Iss. 2, Article 4.

Available at: <https://scholarship.law.marquette.edu/elders/vol11/iss2/4>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Elder's Advisor by an authorized editor of Marquette Law Scholarly Commons. For more information, please contact elana.olson@marquette.edu.

POLICY AND CUSTODIAL GRANDPARENTS

Carole B. Cox*

In recent years there has been a rapid increase in a new type of American family, one in which grandparents have become the sole custodians of their grandchildren, raising them without any parent present.¹ Although grandparents have always played significant but generally peripheral roles in the lives of their grandchildren, these custodial grandparents are responsible for the lives and support of their grandchildren, often without any assistance.²

Data from the 2000 Census show more than 4.5 million children, or 6.3% of all children under the age of eighteen, live in

* Carole B. Cox, MSW, Ph.D., is a professor at the Graduate School of Social Service, Fordham University. She is a Fellow of the Gerontological Society of America and the author of more than fifty journal articles and chapters dealing with various aspects of aging and caregiving. She has done extensive research on caregivers for persons with Alzheimer's disease, their needs, and use of services, with a particular focus on ethnicity. In the last few years, she has expanded her interest in caregiving to that of grandparents raising their grandchildren. She has developed a program and curriculum for empowerment training for grandparents, *Empowering Grandparents Raising Grandchildren: A Training Manual for Group Leaders* (Springer Publishing Company, 2000) and is also the editor of *TO GRANDMOTHER'S HOUSE WE GO AND STAY: PERSPECTIVES ON CUSTODIAL GRANDPARENTS* (Springer Publishing Company, 2000). Her other books include *HOME CARE FOR THE ELDERLY: AN INTERNATIONAL PERSPECTIVE*, co-authored with Abraham Monk (1991); *THE FRAIL ELDERLY: PROBLEMS, NEEDS, AND COMMUNITY RESPONSES* (1993); *ETHNICITY AND SOCIAL WORK PRACTICE*, co-authored with Paul Ephross (1998); and *COMMUNITY CARE FOR AN AGING SOCIETY: POLICIES AND SERVICES* (Springer Publishing Company, 2005).

1. See Carole B. Cox, *Why Grandchildren Are Going to and Staying at Grandmother's House and What Happens When They Get There*, in *TO GRANDMOTHER'S HOUSE WE GO AND STAY: PERSPECTIVES ON CUSTODIAL GRANDPARENTS* 3, 3-4 (Carole B. Cox ed., 2000).

2. *Id.* at 3-5.

households headed by a grandparent.³ This marks a 30% increase from 1990 to 2000 in custodial grandparents.⁴ More than one-third of these grandparent caregivers, 39%, have been responsible for these children for five years or more.⁵ The vast majority of grandparent caregivers, 63%, are female with approximately 64% over the age of fifty.⁶ A larger proportion of these families, slightly over 20%, are living in poverty compared to the 8.7% of all families in the United States.⁷

Recent data from the Census Bureau's American Community Survey, 2005-2007, provides further data on these families.⁸ Approximately one-third, 32%, of the grandparents are over the age of sixty.⁹ Moreover, there are wide variations among the states with the highest proportion of grandparents over the age of sixty in Alaska (44%) and the smallest in Wisconsin and Wyoming (25% each).¹⁰ The percentages of custodial grandparents responsible for their grandchildren range from 31% in Hawaii to 51% in Kentucky.¹¹

Many factors have contributed to the growth of these families including parental substance abuse,¹² incarceration,¹³

3. AM. ASS'N OF RETIRED PERSONS, LEAN ON ME: SUPPORT AND MINORITY OUTREACH GRANDPARENTS RAISING GRANDCHILDREN 1, 7 (2003), available at http://assets.aarp.org/rgcenter/general/gp_2003_a.pdf.

4. *Id.*

5. Tavia Simmons & Jane Lawler Dye, *Grandparents Living With Grandchildren: 2000: Census 2000 Brief 1*, Oct. 2003, available at <http://www.census.gov/prod/2003pubs/c2kbr-31.pdf>.

6. *Id.* at 7-8.

7. *Id.* at 9.

8. See U.S. CENSUS BUREAU, ACS PUBLIC USE MICRODATA SAMPLE (PLUS) (2005-2007), available at http://factfinder.census.gov/home/en/acs_pums_2007_3yr.html (last visited on Apr. 2, 2010).

9. *Id.*

10. *Id.*

11. *Id.*

12. See, e.g., Susan J. Kelley, *Caregiver Stress in Grandparents Raising Grandchildren*, 25 IMAGE: J. NURSING SCHOLARSHIP 331, 334 (1993); Meredith Minkler et al., *The Physical and Emotional Health of Grandmothers Raising Grandchildren in the Crack Cocaine Epidemic*, 32 GERONTOLOGIST 752, 752 (1992); Daphne Joslin & Anne Brouard, *The Prevalence of Grandmothers as Primary Caregivers in a Poor Pediatric Population*, 20 J. CMTY. HEALTH 383, 384-85 (1995).

13. Paula L. Dressel & Sandra K. Branch, *Reframing Gerontological Thought and Practice: The Case of Grandmothers With Daughters in Prison*, 34 GERONTOLOGIST 685,

homicide,¹⁴ mental illness,¹⁵ physical illness, or death of the parent.¹⁶ But whatever the reason, the majority of grandparents heading these new households never anticipated becoming parents again.¹⁷ They find themselves thrust into the role as a result of the loss or incapacity of their child.¹⁸

Financial strains are one of the most frequent concerns among these families.¹⁹ Often grandparents were managing on their pensions and savings or were employed prior to assuming responsibility for their grandchildren. The financial demands associated with raising a grandchild can easily overwhelm their resources and push those, who were previously managing within their budgets, into poverty.

Research studies indicate that poor health and/or emotional stress is common among custodial grandparents, with many compromising their own health as they struggle to provide care.²⁰ Custodial grandparents have been found to be prone to elevated risk for many health problems, including activity limitation, chronic conditions, and coronary heart disease.²¹ Due to their generally low socioeconomic status and the difficult family circumstances that precipitated their involvement in care,

686 (1994).

14. Susan J. Kelley et al., *To Grandmother's House We Go... and Stay: Children Raised in Intergenerational Families*, 23 J. GERONTOLOGICAL NURSING 12, 14 (1997).

15. Elizabeth B. Dowdell, *Caregiver Burden: Grandmothers Raising Their High Risk Grandchildren*, 33 J. PSYCHOL. NURSING 27, 28 (1995).

16. *Id.*

17. Cox, *supra* note 1, at 4.

18. *Id.*

19. Carol M. Musil et al., *Social Support, Stress, and Special Coping Tasks of Grandmother Caregivers*, in *TO GRANDMOTHER'S HOUSE WE GO AND STAY: PERSPECTIVES ON CUSTODIAL GRANDPARENTS*, 56, 59 (Carole B. Cox ed., 2000).

20. See, e.g., Esme Fuller-Thomson & Meredith Minkler, *African American Grandparents Raising Grandchildren: A National Profile of Demographic and Health Characteristics*, 25 HEALTH & SOCIAL WORK 109, 109 (May 2000); Cynthia Gibbons & Teresa Jones, *Kinship Care: Health Profiles of Grandparents Raising Their Grandchildren*, 7 J. FAMILY SOCIAL WORK 1, 2 (2003).

21. See, e.g., Meredith Minkler & Esme Fuller-Thomson, *The Health of Grandparents Raising Grandchildren: Results of a National Study*, 89 AM. J. PUB. HEALTH 1384, 1386-88 (1999) (discussing activity limitations); William J. Strawbridge et al., *New Burdens or More of the Same? Comparing Grandparent, Spouse, and Adult-Child Caregivers*, 37 GERONTOLOGIST 505, 508-09 (1997) (discussing poorer physical and mental health).

they are predisposed to poor health outcomes.²² This predisposition may be influenced by the fact custodial grandparents use less preventive care such as influenza vaccinations, Pap tests, and cholesterol screening.²³

Contributing to the stress experienced by the grandparents are the grandchildren themselves.²⁴ These children are prone to both physical and emotional problems due to the fact that many were born addicted or were abused and neglected before moving to the grandparent's home.²⁵ In comparison to children in the general U.S. population, children being raised by grandparents have a higher prevalence of behavioral and emotional disturbances.²⁶ The special needs of these children further tax the resources and skills of the grandparents.²⁷

The needs of these families can easily overwhelm the informal support systems. Government, through its policies, can therefore play a major role in addressing the challenges that they face. This paper discusses many of the key policies that impact the lives of custodial grandparents.

POLICY AND FINANCIAL SUPPORT

The role of grandparents in providing care to grandchildren is underscored by the federal government in its mandate to states that requires preference be given to them over other blood

22. See Mary E. Hughes et al., *All in the Family: The Impact of Caring for Grandchildren on Grandparents' Health*, 62B J. GERONTOLOGY S108, S115 (2007).

23. Lindsey A. Baker & Merrill Silverstein, *Preventive Health Behaviors Among Grandmothers Raising Grandchildren*, 63B J. GERONTOLOGY S304, S307-08 (2008).

24. Roseann Giarrusso et al., *Psychological Costs and Benefits of Raising Grandchildren: Evidence From a National Survey of Grandparents*, in *TO GRANDMOTHER'S HOUSE WE GO AND STAY: PERSPECTIVES ON CUSTODIAL GRANDPARENTS* 71, 72 (Carole B. Cox ed., 2000).

25. See *id.*; see also Kelley *supra* note 12, at 334; Jonathan Williamson, *Grandmother Raising Grandchildren: An Exploration of Their Experiences and Emotions*, 11 FAMILY J. 23, 30 (2003).

26. See Gregory C. Smith & Patrick A. Palmieri, *Risk of Psychological Difficulties Among Children Raised by Custodial Grandparents*, 58 PSYCHIATRIC SERVS. 1303, 1307 (2007).

27. GENERATIONS UNITED, *GRANDPARENTS AND OTHER RELATIVES RAISING CHILDREN: THE SECOND INTERGENERATIONAL ACTION AGENDA*, 33 (2004), available at http://ipath.gu.org/documents/AO/2004_Action_Agenda_Final.pdf.

relatives when placing a child into foster care.²⁸ States must follow this mandate in order to receive federal payments for foster care and adoption.²⁹ The main requirements for placement are that the relative be “fit and willing,” able to ensure the child’s safety, and able to meet the child’s needs.³⁰ But, although children are being placed with the grandparents, these families are not necessarily receiving any financial assistance.³¹ Only fourteen states and the District of Columbia have established “kinship care” or “relative caregiver” programs by statute to provide relatives with benefits to help offset the cost of caring for the grandchild.³² This gap in federal policy and support means that many custodial grandparents are often left to find their own means of financial assistance.³³ Given the fragmented nature of benefits in this country, this search can be extremely frustrating.³⁴

TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF)

In 1996, Temporary Assistance for Needy Families (TANF) replaced Aid for Dependent Children (AFDC) as a public assistance program for low income families.³⁵ It is financed by federal grants to states with states responsible for administration

28. 42 U.S.C. § 671(a)(19) (2009).

29. *Id.* at § 671(a).

30. *Id.* at § 671(a)(15)(A); see AM. BAR ASS’N, STATUTORY PREFERENCES FOR RELATIVE PLACEMENT, <http://www.abanet.org/child/summary-memo.pdf> (explaining that “fit and willing” is used by most, but not all, state statutes and policies).

31. GENERATIONS UNITED, *supra* note 27, at 24-5.

32. CHILD WELFARE INFO. GATEWAY, PLACEMENT OF CHILDREN WITH RELATIVES (2008), http://www.childwelfare.gov/systemwide/laws_policies/statutes/placement_s.cfm (last visited Apr. 2, 2010).

33. See generally Jennifer Ehrle & Rob Geen, *Children Cared for by Relatives: What Services Do They Need?*, THE URBAN INST. Series B, NO. B-47 1, June 5, 2002 (discussing the many different types of assistance and how many custodial grandparents are eligible for the assistance but do not access the programs), available at http://www.urban.org/UploadPDF/310511_B47.pdf.

34. *Id.*

35. U.S. DEP’T OF HEALTH AND HUMAN SERVS., TEMPORARY ASSISTANCE FOR NEEDY FAMILIES OVERVIEW, available at <http://www.hhs.gov/recovery/programs/tanf/tanf-overview.html> (last visited Oct. 17, 2009).

within certain federal guidelines.³⁶ Each state determines the income eligibility for the program and the amount of assistance to be offered.³⁷ TANF offers two types of grants that might benefit grandparent caregivers; the first is the grant to the entire family, and the second is a "Child-Only" grant.³⁸

The family grant considers the income and assets of the entire family and aims to meet all of their financial needs so that children can be adequately cared for in their homes.³⁹ However, these grants are limited to sixty months and have work requirements attached to them.⁴⁰ These stipulations can limit their applicability to grandparent caregivers.⁴¹

TANF also has a second type of grant; "Child-Only" grants that provide financial support to the children and are based only on the resources of the child.⁴² The resources and income of the grandparent are not considered in these grants.⁴³ With most grandchildren having very little, if any, financial assets or income, these "Child-Only" grants could, hypothetically, be a prime support for these families.⁴⁴ However, the amount of these grants tends to be quite low.⁴⁵ Payments in the year 2000 ranged from \$68 to \$514 per month depending on the state and the number of children in the household.⁴⁶ Children with special or exceptional needs do not receive additional funds.⁴⁷

Additionally, only 6% of eligible children receive these

36. U.S. DEP'T OF HEALTH AND HUMAN SERVS, ADMIN. FOR CHILDREN AND FAMILIES, available at <http://www.acf.hhs.gov/programs/ofa/tanf/about.html> (last visited Oct. 17, 2009).

37. GENERATIONS UNITED, *supra* note 27, at 24.

38. *Id.*

39. 42 U.S.C. § 601(a)(1) (2010); GENERATIONS UNITED, *supra* note 27, at 24.

40. 42 U.S.C. §§ 607(c)(1)(A), 608(a)(7) (2010); GENERATIONS UNITED, *supra* note 27, at 24.

41. *See* GENERATIONS UNITED, *supra* note 27, at 24.

42. *Id.*

43. *See id.*

44. *Id.*

45. *Id.*

46. Julie Murray et al., *Estimating Financial Support for Kinship Caregivers*, THE URBAN INST Series B, NO. B-63 1, Dec. 2, 2004, available at http://www.urban.org/UploadedPDF/311126_B-63.pdf.

47. *Id.*

grants. Possible reasons for this low enrollment in the program are that grandparents are uninformed about the grants; they do not realize that the children are eligible; or untrained workers do not understand the program and deny benefits.⁴⁸ A recent study of kinship caregivers in New York found that workers responsible for the "Child-Only" grants were often not knowledgeable about them, suspicious of the applicants demanding unnecessary documentation, and required the caregivers to participate in work programs declaring many ineligible.⁴⁹ Although grandparents can appeal refusals, many are not aware of their right to do so or the process of the appeal.⁵⁰

FOSTER CARE PAYMENTS

Grandparents who become a part of the foster care system are eligible for foster care payments that tend to be more generous than the TANF grants under Title IV-E of the Social Security Act.⁵¹ Federal law requires that relative caregivers caring for children under Title IV-E receive the same foster care payments as non-relative caregivers.⁵² Foster care payments increase with the number of children in the family with states usually offering higher stipends for children with special needs.⁵³ States may also use local funds to support unlicensed relatives caring for children in foster care.⁵⁴

However, the payments have limited impact on custodial grandparents as the majority are raising the children informally

48. Ehrle & Geen, *supra* note 33, at 5.

49. NEW YORK STATE KINCARE COAL., KINSHIP CARE IN NEW YORK 9 (Gerard Wallace ed., 2008), available at <http://www.nysnavigator.org/sf/documents/2008reportwithchanges.pdf>.

50. *Id.*

51. GENERATIONS UNITED, *supra* note 27, at 25.

52. *Id.*; see *Miller v. Youakim*, 440 U.S. 125, 145-46 (1979) (holding that "Congress designed the AFDC-FC program to include foster children placed with relatives.")

53. GENERATIONS UNITED, *supra* note 27, at 25.

54. *Id.*

and are not in the foster care system.⁵⁵ Only one-fourth of the children being raised by grandparents are in formal foster families.⁵⁶

Many factors act as barriers to grandparents' participation in foster care: children placed by the courts that have not been abused or neglected may not be eligible for foster care; grandparents, themselves, often do not want to submit to the licensing requirements or regulations that are associated with the system; as foster care is considered temporary, the child could be removed from their home and placed for adoption as states are encouraged to make more permanent plans for the child; and many grandparents feel anxious about becoming a foster parent since it could further stress relationships with the child's parent who may hope to eventually have custody of the child.⁵⁷

ADOPTION ASSISTANCE PAYMENTS

Grandparents who adopt a special-needs grandchild from the child welfare system may receive adoption assistance payments from the state.⁵⁸ Title IV-E provides federal reimbursement to the states on behalf of very poor children who fit the category of "special needs."⁵⁹ Each state defines special needs differently but it generally refers to children who are difficult to place in a permanent home without a subsidy.⁶⁰

SUPPLEMENTAL SECURITY INCOME (SSI)

Supplemental Security Income (SSI) is available for children

55. Murray et al., *supra* note 46, at 3.

56. U.S. DEP'T OF HEALTH AND HUMAN SERVS., THE AFCARS REPORT 1 (2006), available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/reprot11.htm (last visited Apr. 2, 2010).

57. See, e.g., Murray et al., *supra* note 46, at 4 (discussing how caregivers may find licensure requirements "complex" and "burdensome"); GENERATIONS UNITED, *supra* note 27, at 24-25 (stating that foster care is temporary).

58. GENERATIONS UNITED, *supra* note 27, at 25.

59. *Id.*

60. *Id.*

diagnosed with specific disabilities.⁶¹ The program is administered through the Social Security system.⁶² In order to qualify, children must be either under eighteen or under twenty-two and attending school and meet income, asset, and disability criteria.⁶³ The disability criteria require that the child have a physical or mental condition that is medically proven and that results in severe functional limitations.⁶⁴ As the criteria for disability are quite rigorous, many grandchildren whose conditions do not meet the criteria, but who still have limited functioning, are ineligible for the support.

OLD AGE SURVIVORS AND DISABILITY INSURANCE (OASDI)

If the child's parent collects retirement or disability payments, or if the parent was receiving social security at the time of his or her death, the child is eligible to receive benefits.⁶⁵ The grandparents can apply for the benefits for the child.⁶⁶ Children may also qualify for benefits based on the grandparent's employment.⁶⁷ In order to be considered a dependent of the grandparent, the grandparent should be raising the child due to the death of the parent; the child should have begun living with the grandparent before turning eighteen years of age; and the child should have received at least one-half of their support from the grandparent during the year prior to the grandparent becoming eligible for benefits.⁶⁸ As with SSI, these regulations limit the programs available to many of the children living with grandparents.

61. *Id.* at 26-27.

62. *Id.* at 27.

63. *Id.*; see 42 U.S.C. § 1382c(c) (2009); SOCIAL SECURITY ADMIN., UNDERSTANDING SUPPLEMENTAL SECURITY INCOME: SSI FOR CHILDREN, available at <http://www.ssa.gov/ssi/text-child-ussi.htm> (last visited Oct. 17, 2009).

64. 42 U.S.C. § 1382c (a)(3)(C)(i) (2003).

65. GENERATIONS UNITED, *supra* note 27, at 27.

66. *Id.*

67. *Id.*

68. *Id.*

SUBSIDIZED GUARDIANSHIP

For grandparents and other kinship caregivers who cannot adopt, either because they do not want to terminate the parents' rights or the parents refuse to give up their rights, subsidized guardianship can provide financial support.⁶⁹ The program is available in thirty-five states, with most states linking the subsidies to the payment levels of foster care, TANF, and adoption assistance payments.⁷⁰ States vary in their regulations with regard to subsidies, with some mandating background and criminal checks, mandating that the child have special needs, or mandating that the caregiver is below a specific income level.⁷¹ In most states, the program is limited to those who have grandchildren that have been in the foster care system.⁷² Federal money is generally not available for guardianship subsidies.⁷³

Subsidized guardianship, as well as giving financial assistance to the grandparents, also gives some stability and permanency to the family.⁷⁴ In contrast to adoptions, parents may at some time regain custody of the children.⁷⁵ In comparison to foster care, the involvement of the state is restricted, which gives the families greater control over their own lives.⁷⁶ The positive impact of the program is demonstrated in Illinois where, over a five-year period, more than 6500 children who had previously been in foster care, found permanent homes through the guardianship subsidies.⁷⁷

69. See GENERATIONS UNITED, *supra* note 27, at 25; see also GENERATIONS UNITED, OHIO SUBSIDIZED GUARDIANSHIP, available at http://www.gu.org/documents/A0/GU_OH.pdf (last visited Feb. 20, 2010) [hereinafter OHIO SUBSIDIZED GUARDIANSHIP].

70. AM. BAR ASS'N, SUBSIDIZED GUARDIANSHIP, available at <http://www.abanet.org/child/subsidized.shtml> (last visited Oct. 17, 2009).

71. GENERATIONS UNITED, *supra* note 27, at 25.

72. *Id.* at 25.

73. *Id.* at 26.

74. *Id.* at 28.

75. *Id.* at 25; OHIO SUBSIDIZED GUARDIANSHIP, *supra* note 69, at 1.

76. See OHIO SUBSIDIZED GUARDIANSHIP, *supra* note 69, at 1.

77. *Id.*

CHILD SUPPORT PAYMENTS

Children living with grandparents are still entitled to be financially supported by their parents unless a court has terminated parental rights.⁷⁸ Every state has an agency that assists caregivers in collecting these payments.⁷⁹ The amount of the support depends upon the income of the parent and the needs of the child.⁸⁰ Grandparents that are receiving TANF grants must cooperate with the state to obtain child support unless they can prove that to do so would be harmful or that their safety would be jeopardized.⁸¹ Because of the concerns related to child support payments, many may choose not to access TANF; as to do so could strain their relationships with the child's parent.⁸²

HOUSING

Data from the 2000 Census shows that more than a quarter of grandparent-headed families were living in overcrowded conditions.⁸³ In addition, almost half of these families were spending 30% or more of their income on rent while 60% of those below the poverty line did not receive any government housing subsidy.⁸⁴ Non-citizens and those without legal custody were the least likely to be receiving such subsidies.⁸⁵

Having adequate housing is frequently a difficult problem for custodial grandparents, particularly for the more than 25% who rent rather than own their homes.⁸⁶ Moreover, for those residing in public housing, occupancy restrictions may force

78. GENERATIONS UNITED, *supra* note 27, at 26.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. Esme Fuller-Thomson & Meredith Minkler, *Housing Issues and Realities Facing Grandparent Caregivers Who Are Renters*, 43 GERONTOLOGIST 92, 96 (2003).

84. *Id.* at 93-94.

85. *Id.* at 94.

86. *Id.* at 93-96.

them to move when the grandchildren become part of the household.⁸⁷ For those residing in senior housing, restrictions may prevent them from having children live in the home.⁸⁸

The issues associated with housing can be critical to the ongoing relationship between the grandparent and grandchild. Without suitable housing, grandparents may have difficulty gaining custody of their grandchildren. Many child welfare services demand that children have separate rooms but, without subsidies, grandparents may not be able to afford this larger housing.⁸⁹ When rentals and subsidies, such as those offered through Section 8 housing, are limited the options for custodial grandparents significantly decline.⁹⁰

The Fair Housing Act, which prohibits housing discrimination, also prohibits giving preferences to any group, thus limiting its role with custodial grandparents.⁹¹ In addition, although grandparents do not have to have legal custody in order to qualify for housing under the Act, landlords are often unaware of this and thus prevent them from renting.⁹² Without knowing their rights, custodial grandparents remain vulnerable in a very scarce housing market.

GOVERNMENT ASSISTED HOUSING FOR GRANDPARENT HEADED FAMILIES

Section 8 housing under the U.S. Department of Housing and Urban Development (HUD) offers two types of programs that can assist grandparent headed families.⁹³ The tenant-based voucher program provides a voucher to the tenant for housing

87. *See id.* at 93-96.

88. GENERATIONS UNITED, *supra* note 27, at 29.

89. Fuller-Thomson & Minkler, *supra* note 83, at 96.

90. Steve Kauffman & Robin S. Goldberg-Glen, *A Comparison of Low-Income Caregivers in Public Housing: Differences in Grandparent and Nongrandparent Needs and Problems*, in GRANDPARENTS RAISING GRANDCHILDREN: THEORETICAL, EMPIRICAL, AND CLINICAL PERSPECTIVES 396, 371 (Springer Publishing Co. 2000).

91. 42 U.S.C. § 3604(a-c) (2009).

92. GENERATIONS UNITED, *supra* note 27, at 30.

93. 24 C.F.R. § 982.1(b)(1) (2009).

in the private rental market.⁹⁴ The project-based voucher program offers assistance with rentals in a specific building.⁹⁵ Both programs require that the rents be below a certain level and that the housing meet specific standards.⁹⁶ HUD pays the difference between 30% of the household's income and the market rent.⁹⁷

The Section 8 Family Unification Program gives priority to families who are at risk of losing custody of their children due to inadequate housing.⁹⁸ This program can potentially be very relevant to grandparents, but often they are not perceived as qualifying families and are turned away as ineligible by untrained staff.⁹⁹

Section 202 Supportive Housing for the Elderly Program funds nonprofit developers to build subsidized rental housing for older persons.¹⁰⁰ Tenants are also given rent subsidies.¹⁰¹ However, there are generally long waiting lists for the housing. For example, recent data from New York City shows the average wait for Section 202 housing is between eight and ten years. Eligibility requirements are usually that the person is at least sixty-two years of age with an income of less than 50% of the area median.¹⁰²

Section 202 housing permits children to reside with otherwise eligible elderly family members.¹⁰³ However, the

94. *Id.*

95. *Id.*

96. *Id.* at §§ 982.1(a)(2), (a)(4)(ii), (b)(2).

97. *Id.* at § 982.1(a)(4)(ii); U.S. DEP'T OF HOUS. AND URBAN DEV., HOUSING CHOICE VOUCHER PROGRAM (SECTION 8), available at <http://www.hud.gov/offices/hsg/mfh/progdesc/eld202.cfm> (last visited Oct. 18, 2009).

98. GENERATIONS UNITED, *supra* note 27, at 30.

99. *Id.*

100. U.S. DEP'T OF HOUS. AND URBAN DEV., SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY PROGRAM, available at http://portal.hud.gov/portal/page/portal/HUD/topics/housing_choice_voucher_program_section_8 (last visited on Oct. 18, 2009).

101. *Id.*

102. U.S. DEP'T OF HOUS. AND URBAN DEV., FISCAL YEAR 2008 HUD INCOME LIMITS BRIEFING MATERIAL 1 (2008), available at, <http://www.huduser.org/datasets/il/il08/IncomeLimitsBriefingMaterial.pdf>.

103. U.S. DEP'T OF HOUS. AND URBAN DEV., HUD HANDBOOK 4350.3:

Housing for Older Persons Act allows individual owners of privately owned senior building to exclude children if at least 80% of the units are occupied by persons fifty-five years or older.¹⁰⁴ This requirement and the scarcity of the housing prevent it from being a major housing resource for grandparents.

SPECIALIZED GRANDPARENT HOUSING

With growing attention to the needs of custodial grandparents and their families, several communities have begun developing specific housing for them. The first housing for grandparent-headed families in the country, GrandFamilies House, was established in Boston in 1998.¹⁰⁵ The complex provides housing for twenty-six families and includes social, educational, and recreational services on site.¹⁰⁶ The housing also has a full-time resident coordinator and arranges social work assistance for the families.¹⁰⁷ GrandFamilies is the product of the coordinated work and involvement of several nonprofit agencies that arranged for its initial financing with funding obtained from HUD, state housing funds, low-income housing tax credits, foundations, and a local bank.

An evaluation of GrandFamilies made after its first four years resulted in several recommendations for future developments.¹⁰⁸ Among these recommendations are the following: staff should have experience working with intergenerational families; case management should be offered; a

OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS 3-59 (2003).

104. Housing for Older Person Act, 42 U.S.C. § 3607 (1995).

105. Alison S. Gottlieb & Nina M. Silverstein, *Growing Pains and Challenges: GrandFamilies House Four-Year Follow-Up Evaluation*, Gerontology Institute, June 2003, at v, available at <http://www.mccormack.umbn.edu/centers/gerontologyinstitute/pubAndStudies/GFHFinal.pdf>.

106. Alison S. Gottlieb et al., *Life at GrandFamilies House: The First Six Months*, Gerontology Institute & Center, Mar. 2000, at 1-2, available at <http://www.mccormack.umb.edu/centers/gerontologyinstitute/pubAndStudeies/GFreport.pdf>.

107. *Id.* at 2.

108. Gottlieb & Silverstein, *supra* note 105, at 1.

budget that covers security, programs, support services, maintenance, and contingency needs should be in place; adequate flexible community space is necessary; an in-depth study of the neighborhood is needed by the developers; goals and policies must be clear; and procedures for the housing should be clearly articulated.¹⁰⁹

Since the program developed in Boston, housing for grandparent families has been developed in other cities across the country including New York City, Baton Rouge, and Buffalo. In addition, housing is also planned for fifteen other areas including Detroit, Phoenix, Chicago, and Cleveland.

LEGACY

In 2003, Congress enacted Living Equitably, Grandparents Aiding Children and Youth (LEGACY) legislation as a program to help ease the housing crisis for grandparents.¹¹⁰ It authorized the development of demonstration programs through HUD's Section 202 program for grandparent headed families.¹¹¹ The program terminated in December 2008.¹¹² LEGACY also called for the training of all HUD personnel so that grandparent-headed families could be adequately served by existing housing programs as well as a study to determine the number of intergenerational families and their housing needs.¹¹³ According to HUD, 265,000 grandparent-headed households would qualify for assistance under the LEGACY Act.¹¹⁴ It is worth noting, however, that Congress appropriated only \$3.96 million for an Intergenerational Families Demonstration Project.¹¹⁵ The funds

109. *Id.* at 21.

110. American Dream Downpayment Act, Pub. L. No. 108-186 (2003).

111. HOME Investment Partnership Act, Pub L. No. 108-186, 117 Stat. 2685, 2688 (2003).

112. *Id.* at 2690.

113. *Id.* at 2691.

114. U.S. DEP'T OF HOUS. AND URBAN DEV., OFFICE OF POLICY DEV. & RESEARCH, INTERGENERATIONAL HOUSING NEEDS AND HUD PROGRAM OPTIONS: REPORT TO CONGRESS 6 (2008).

115. U.S. DEP'T OF HOUS. AND URBAN DEV., DEMONSTRATION PROGRAM FOR ELDERLY HOUSING FOR INTERGENERATIONAL FAMILIES, NOTICE OF FUNDING

were expected to support two to four grants focusing on changing existing projects into intergenerational housing, developing new facilities, or creating an annex to an existing project.¹¹⁶ Rental assistance was also made available to qualifying grandparents.¹¹⁷

LEGAL ISSUES

Custodial grandparents are typically confronted with complicated legal issues with which there is often little assistance.¹¹⁸ Among these issues are dealing with custody arrangements, medical consent, and educational consent as well as assuring for the future protection and care of the grandchildren.¹¹⁹ Many feel frustrated and bewildered as they struggle to understand relevant policies and ways to deal with them.¹²⁰

Custodial grandparents frequently have few links with the legal system and thus have difficulty learning of their rights and options.¹²¹ Usually, legal assistance is essential in order to get temporary or permanent custody or guardianship of their grandchildren.¹²² However, finding legal assistance can be difficult as private attorneys may be expensive while legal aid generally has long waiting periods and is available only to those with very low incomes.¹²³ Many with incomes above the poverty line but with limited resources are thus ineligible for their services.¹²⁴

Thirty-two states and the District of Columbia have policies

OPPORTUNITY FOR FISCAL YEAR 2007 2 (2007).

116. *Id.* at 7.

117. *Id.* at 2.

118. MEREDITH MINKLER, GRANDPARENTS & OTHER RELATIVES RAISING CHILDREN: CHARACTERISTICS, NEEDS, BEST PRACTICES, & IMPLICATIONS FOR THE AGING NETWORK (2001), <http://www.nasua.org/pdf/RBV1B7.pdf>.

119. *Id.* at 14.

120. *Id.* at 13.

121. *See id.*

122. *Id.*

123. *Id.*

124. *Id.*

that enable relative caregivers to consent to a child's medical, dental, surgical, and psychological needs.¹²⁵ Each of these states has different statutes, but they all permit relatives with either formal or informal custody to offer consent.¹²⁶ Some states list an order of priority with regard to who can give consent ranging from highest to lowest priority.¹²⁷

The requirements by most states for medical consent are the minor's name and date of birth; a statement by the caregiver that he or she is over eighteen years of age and that the minor resides with the caregiver; names and signatures of parents, legal custodian, or guardian of the minor indicating the approval of the caregiver's power to consent; the name of the caregiver; relationship of the caregiver; and the dated signature.¹²⁸ The laws are usually for a limited time period and permit parents to rescind them.¹²⁹

EDUCATIONAL CONSENT

Twenty-one states have legislation that permits relative caregivers without formal custody or guardianship to enroll a child in school or consent to extra curricular activities.¹³⁰ However, some of these states necessitate a parent or legal guardian's signature in order for the enrollment to occur. More than half of the states have no policy in place that enables grandparents to deal with the educational needs of the grandchildren.¹³¹ Many states are reluctant to reduce restrictions on school enrollment by grandparents or other relatives, as they are concerned that the child may be using the residency to attend a particular school.¹³² This often makes it

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. AM. BAR ASS'N, EDUCATIONAL CONSENT AND SCHOOL ENROLLMENT LAWS: WHY THEY MATTER (2008), <http://www.abanet.org/child/summary-memo3.pdf>.

131. *Id.* at 4.

132. *Id.* at 1.

difficult for custodial grandparents who are given no exception with regard to enrollment.¹³³ Among those states that require a parent or legal guardian's signature, grandparents without formal custody face further obstacles in accessing the system.¹³⁴

Consequently, as states attempt to safeguard their systems, they are also ignoring the educational needs of an increasingly large population of children. Federal law states that relative caregivers should be included in parental activities at schools; however, this inclusion remains uneven and does not extend to school enrollment.

HEALTH

Children raised by grandparents and other relatives are vulnerable to many physical and mental health problems.¹³⁵ Many of these children are born addicted to drugs, have low birth weight, Fetal Alcohol Syndrome, and HIV/AIDS.¹³⁶ As they develop, they may suffer from Attention Deficit Hyperactivity Disorder (OADHS), adjustment and attachment disorders, learning disabilities, and other mental problems.¹³⁷ In comparison to other children, those in informal caregiving relationships receive less preventive health care, are less likely to have a regular source of care, and are less likely to obtain mental health services even with greater needs.¹³⁸

Thirty-six percent of children living with grandparents lack health insurance.¹³⁹ As private health insurance is usually associated with a parent's employment, children living in kinship care are likely to be without it.¹⁴⁰ Even if grandparents

133. *See id.*

134. *Id.*

135. Academy Health, Findings Brief, *Children in Foster and Kinship care at Risk for Inadequate Health Care Coverage and Access 1* (July 2004).

136. Jaia Peterson Lent, *Grandparents and Other Relatives Raising Children: A Primer for the KIDS COUNT Network 2* (Apr. 2005).

137. *Id.*

138. Academy Health, *supra* note 135, at 3.

139. Rebecca L. Hegar & Maria Scannapieco, *Kinship Care*, in *CHILD WELFARE FOR THE 21ST CENTURY* 518, 519 (Geraold P. Mallon & Peg McCartt Hess eds., 2005).

140. Lent, *supra* note 136, at 2.

are working and have private health insurance, they may be unable to cover their grandchildren in the plan.¹⁴¹

Given the low incomes of many of the grandchildren in kinship care, Medicaid should play a significant role in meeting their health care needs. However, its significance varies between those in formal and informal care relationships. A study by the Urban Institute found that 75% of those in formal care situations were enrolled in Medicaid in comparison to 35% of those in informal kinship care.¹⁴²

One potential reason for this poor use of the health care system by those in informal relationships is that children in formal relationships such as foster care are generally under the legal custody of the state so caseworkers will thus help families to obtain health insurance such as Medicaid as well as health services. In addition, grandparents outside of the formal system may not be as knowledgeable of programs such as Medicaid or the Child Health Insurance Plan (CHIP). Grandparents may also believe that as they do not have legal custody of the children, they are ineligible for the programs.¹⁴³

Complicated applications can further deter caregivers, while untrained staff may not understand the rules regarding eligibility.¹⁴⁴ In addition, grandparents who have never used public support programs may feel a stigma in applying for Medicaid or CHIP for their grandchildren, while also being reluctant to provide personal information.¹⁴⁵ Although only the immigration status of the children is relevant for the receipt of these benefits, immigrant grandparents who are anxious about their own legal status or that of relatives may be apprehensive about entering the system.

141. MINKLER, GRANDPARENTS & OTHER RELATIVES RAISING CHILDREN: CHARACTERISTICS, NEEDS, BEST PRACTICES, & IMPLICATIONS FOR THE AGING NETWORK, *supra* note 118, at 11-12.

142. Jennifer Ehrle & Rob Geen, *Children Cared for by Relatives: What Services Do They Need?*, New Federalism Nat'l Surv. of Am.'s Families, The Urban Institute, June 2002, at 3, available at http://www.urban.org/UploadedPDF/310511_B47.pdf.

143. *Id.* at 5.

144. *Id.*

145. *Id.*

Many states are seeking to improve access to health care by enacting power of attorney or consent laws that permit the caregiver to complete an affidavit stating that they are the primary caregiver and are authorized by the parent to consent to treatment.¹⁴⁶ Some states allow the caregiver to complete the forms without the parent's signature.¹⁴⁷ State laws differ with regard to the treatments that are covered through the power of attorney with some covering only immunizations or physical health care and others including mental health care.¹⁴⁸

Recommendations for increasing access to health care for children living with grandparents include the following: improving informational brochures for these families; making sure that any caregiver can apply for the children, making legal custody or guardianship unnecessary; using only the child's income and asset information in determining eligibility; using only the child's immigration status, not requiring personal information about the caregiver; and not requiring personal interviews of the grandparents.

KINSHIP CARE NAVIGATOR PROGRAMS

Navigating through the system of services with its complex array of laws, requirements, and regulations is a formidable challenge. Many grandparents remain outside of the system either because they do not know how to access it or because they are concerned that once involved, the children may be removed from their care. To promote service use and to ease these problems of access, Kinship Navigator Programs have been initiated in several states.¹⁴⁹ These sites offer information on benefits, services, supports, and programs available to kinship

146. MINKLER, GRANDPARENTS & OTHER RELATIVES RAISING CHILDREN: CHARACTERISTICS, NEEDS, BEST PRACTICES, & IMPLICATIONS FOR THE AGING NETWORK, *supra* note 118, at 14.

147. *Id.*

148. *Id.*

149. Ana Beltran, *Kinship Navigator Programs: Narrative Analysis*, Grandfamilies State Law and Policy Resource Center, 2008, at 1, www.grandfamilies.org/index.cfm?page=topics&topicid=29 (last visited Apr. 20, 2010).

caregivers.¹⁵⁰

New Jersey's program, offered through the Department of Human Services, provides information and referral services on cash assistance, support groups, Medicaid coverage, child support, housing, custody, and other legal services.¹⁵¹ Ohio's program provides the same types of information although it is implemented differently among the counties with some providing primarily information and referral while others provide case management and other direct services.¹⁵²

The program in Washington State, which was evaluated after its first sixteen months of operation, indicates how Navigator Programs can benefit caregivers.¹⁵³ After using the service, caregivers had a better understanding of services, over 690 children were diverted from foster care, and 98% of the caregivers using the services reported that they were very satisfied with the program.¹⁵⁴

New York implemented a navigator program in 2007, which is an interactive website that connects the user to a list of resources in their county.¹⁵⁵ It also offers an interactive chat room for caregivers as well as a link to a kinship specialist.¹⁵⁶ A lawyer who specializes in kinship care supervises the specialists in order to insure that they provide accurate information.¹⁵⁷ The kinship care specialists assess caregiver needs and develop appropriate plans for meeting them.¹⁵⁸ Although they do not meet individually with caregivers, their focus is on improving service access, providing information, and offering appropriate referrals.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. See Catholic Family Center, New York State Kinship Navigator, available at <http://www.nysnavigator.org/> (last visited Apr. 3, 2010).

156. *Id.*

157. *Id.*

158. *Id.*

*FOSTERING CONNECTIONS TO SUCCESS AND INCREASING
ADOPTIONS ACT (H.R. 6893)*

Federal recognition of the importance of relative caregivers in the lives of their grandchildren is given in the Fostering Connections to Success and Increasing Adoptions Act, signed into law in October 2008.¹⁵⁹ The Act focuses on making and maintaining family connections for children in or at risk of entering foster care.¹⁶⁰ It requires that relatives be notified within thirty days when children are removed from their parents' custody; provides funds for Kinship Navigator programs that will help to link caregivers to services; allows states to use federal funds to assist children to exit foster care and live with relatives who become their legal guardians; and permits states to make adjustments in their non-safety licensing standards for relatives under foster care.¹⁶¹ In addition, states are given the option to offer federally supported kinship guardianship payments to relative caregivers. States may also receive federal funding for training of relative guardians, staff of agencies and courts, and attorneys and court advocates working with children in the child welfare system.

Although the Act is a primary resource to those in the formal foster care system, many of its provisions may impact those in informal kinship care. Particularly relevant may be the ability of states to waive certain licensing standards associated with foster care for relatives, a provision that may encourage more informal caregivers to enter the formal system.¹⁶² However, with its focus on the formal child welfare system and the fact that the majority of custodial grandparents are raising grandchildren informally, without any state involvement, its future impact on these families is not clear. At the very least, it is a formal acknowledgement of role and needs of custodial and

159. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949, 3949-50 (2008).

160. *Id.* at 3954-55.

161. *Id.* at 3956.

162. *Id.* at 3957.

relative caregivers.

CONCLUSION

This brief description highlights some of the policies and policy issues affecting grandparent-headed families. With more than 2.4 million grandparents raising their grandchildren, and the majority in informal arrangements, there continues to be a pressing need for services and support.¹⁶³ A majority of grandparents have stepped in to raise children who would otherwise be placed in formal care thus relieving the burden on the formal system itself. These grandparents are the ones most likely to face challenges alone as they continue to be overlooked by the formal childcare systems that they are replacing.

The vast variations among states with regard to eligibility requirements and services and the disparities that exist among them can further impact these families. Grandparents who would like to move their families to other communities where they may have more family and support systems may be hindered from doing so due to state policies that could affect a wide range of issues ranging from educational and medical consent to benefits. The federal government gives states broad discretion in offering programs to grandparent caregivers and, although this permits states to develop programs related to their own priorities, it also contributes to policy and service fragmentation with grandparents vulnerable to falling through the cracks.

Policies can only be implemented through programs that have trained and educated staff. Unfortunately, many services appear to have a staff that is not knowledgeable about the rights of grandparent caregivers for their services. Assuring that all staff is informed about the eligibility criteria for this population and the benefits that may assist them is essential. Equally important is assuring that staff reflects positive and sensitive

163. See LIBBY PERL, CRS REPORT FOR CONGRESS, SECTION 202 AND OTHER HUD RENTAL HOUSING PROGRAMS FOR LOW-INCOME ELDERLY RESIDENTS 25 (2008).

attitudes toward grandparents while not permitting any preconceived biases to influence their interactions with them. Recognition of the needs for trained staff is made in the new Fostering Connections to Success and Increasing Adoptions Act discussed above. Adequate appropriations for this training will be essential to assure that such training is well developed at the state levels.

As discussed in this paper, grandparents require additional financial resources that may be obtained through the expansion of subsidized guardianship programs, the expansion of foster care payments to those outside of the system, and the wider use of "Child-Only" TANF grants. The expansion of housing programs such as LEGACY can help to ameliorate the poor housing situations in which many find themselves. Increasing housing subsidies and resources through Section 8 and 202 programs would give them additional resources. Expanding legal services so that grandparents have greater access to legal advice and assistance is critical if their rights are to be upheld. With so many in poverty but not poor enough to meet the eligibility criteria for legal aid, increasing the availability of legal resources could be a major support.

No problem is more important than the health of these families. Given that they are at risk of both physical and mental health problems, the inaccessibility of preventive as well as routine medical care is particularly troubling. Insurance programs, both public and private, should be extended to include these families so that health care can be obtained before problems become severe. Requiring that grandparents have legal custody of the child in order to get services is a further deterrent to services and again does not reflect the reality of most of these families.

The recently passed Fostering Connections to Success and Adoptions Act recognizes the role that grandparents play in the lives of their grandchildren and the difficulties that they encounter. It is a concerted federal effort to rectify existing disparities by increasing services and resources for these

families. As federal legislation, it also offers the possibility of increased uniformity amongst states in policies and services. By improving service coordination and promoting subsidized guardianship and by recognizing the importance of notifying relatives regarding children entering foster care, it validates the rights of these families. At the same time, it is not clear what its impact will be on the needs of the majority of grandparent-headed families that are outside of the formal system.

Grandparents assume the parenting role because they are “family” and they do not want their grandchildren entering the “system.” But in order to fulfill their new roles, they require critical supports and resources. As more is learned about these families and their concerns, policies and services that can enable them to effectively carry out parenting roles and responsibilities are required at both the federal and state levels.
