



## Kinship Caregiver Support Act

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### Summary

The Kinship Caregiver Support Act, introduced this year in both the House (H.R. 2188) and the Senate (S. 661), would provide assistance to relatives who become the legal guardians of children in foster care. The legislation would:

- Require notice to be given to relatives of children who enter foster care and authorize states to establish separate licensing standards and regulations for relative guardians;
- Establish a Kinship Navigator Program to help relative guardians navigate their way through available programs and services; and
- Maintain existing federal financial assistance for foster children for relatives who choose to become their legal guardians.

The legislation's benefits include:

- Facilitating transfer of custody for up to 20,000 children now in foster care from the state to relatives willing to assume legal guardianship;
- Reducing some administrative costs for federal and state governments, including case management and court-related costs, for children currently in the child welfare system but who could exit it to legal guardianship; and
- Providing the stability needed for these children to progress educationally and develop emotionally.

The Alliance for Children and Families and United Neighborhood Centers of America (UNCA) support these bills as introduced.

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## **BACKGROUND**

Of the estimated 534,000 children currently in foster care in the United States, as many as 19,250 could exit the system, with custody transferred to relatives who would become their legal guardians.<sup>2</sup> Unfortunately, current federal law imposes significant financial hardships on relatives who choose this option.

These children often have been living with relatives for extended periods of time and many are not eligible to be returned to their parents or put up for adoption due to court decisions or other administrative rulings. While legal guardianship can be a viable alternative, choosing this route would force many of these families to give up the public support that is provided for children in the foster care system (including help with health and mental health care provided through Medicaid), something many of them can not afford to do.

### ***Benefits and Barriers for Relative Guardianship***

In cases where a court has determined that a foster child can not be reunified with his or her parents, the child can only leave foster care through adoption or the assumption of legal guardianship. Adoption is a preferred option for some relative caregivers, but not all. Adoption terminates the parental rights of birth parents, something some relatives may not want to do to, often out of hope that custody can eventually be returned to the parent.

Legal guardianship is another option. While preserving the birth parents' parental rights, guardianship grants custody to a third party, including decision making authority for the care, protection, education and control of the child.<sup>3</sup> Guardianship also reduces legal oversight and intrusion by the child welfare system, which otherwise retains legal custody and is the only legally recognized decision maker on such matters. When a child is in foster care, for example, state permission must be sought for such mundane activities as school field trips and overnight stays at friends' homes.<sup>4</sup>

Despite these benefits, relatives may hesitate to pursue legal guardianship because doing so can result in the loss of government assistance. When children remain in the foster care system, relatives who take them in receive payments to help offset the cost of room and board. The threat of losing this assistance is a significant barrier for many relative foster families, who often have low (and, in the case of grandparents, often fixed) incomes, and can not afford to keep these children without such support. Such barriers were addressed for adopted children by the Adoption and Safe Families Act of 1997 and earlier laws, but other than authority given to states under limited federal waivers (explained below), the law provided no assistance for relatives who become legal guardians.

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<sup>2</sup> Children and Family Research Center, "Fostering Results: Family Ties: Supporting Permanence for Children in Safe and Stable Foster Care with Relatives and Other Caregivers," 2004, p. 2. Available online at: [http://www.fosteringresults.org/results/reports/pewreports\\_10-13-04\\_alreadyhome.pdf](http://www.fosteringresults.org/results/reports/pewreports_10-13-04_alreadyhome.pdf).

<sup>3</sup> Home At Last, "Questions & Answers on Subsidized Guardianship." Available online at: <http://fostercarehomeatlast.org/docs/?DocID=23>.

<sup>4</sup> Generations United, Kids are Waiting, "Time for Reform: Support Relatives in Providing Foster Care and Permanent Families for Children", 2007, p. 3. Available online at <http://kidsarewaiting.org/reports/files/timeforreform.pdf>.

## **State Efforts**

Several states have partially addressed this issue on their own. Overall, 39 states and the District of Columbia have developed subsidized legal guardianship programs, but those that exist are generally under-funded and, as a result, participation is limited.<sup>5</sup>

Twelve of these states (Delaware, Illinois, Iowa, Maryland, Minnesota, Montana, New Mexico, North Carolina, Oregon, Tennessee, Virginia, and Wisconsin) implemented or are about to begin such programs under federal waivers authorized under previous law.<sup>6</sup> These waivers allow the affected states to redirect Title IV-E federal child welfare funds to children placed with relative guardians. Some of these waivers have expired, however.<sup>7</sup>

Several other states have implemented more limited programs with Social Service Block Grant (SSBG) funds or TANF money (e.g., California's KinGAP program).<sup>8</sup> These are unreliable sources of funding, however. Many states now use these TANF funds for employment-related activities, leaving less money available for children in the child welfare system. SSBG funds are used for other purposes, and the program has been flat-funded or cut outright over the past decade. Subsidized guardianship programs would fare better if federal law were altered to allow resources currently being spent on children in the child welfare system to continue for families willing to assume legal guardianship.

## **Status of Federal Legislation**

The Kinship Caregiver Support Act was introduced in the House and Senate to address this issue. The Senate bill (S. 661) was introduced on February 16, 2007, by Sens. Hillary Rodham Clinton (D-NY), Olympia Snowe (R-ME), and Thad Cochran (R-MS) and referred to the Senate Finance Committee. The House bill (HR 2188) was introduced by Reps. Danny Davis (D-IL) and Tim Johnson (R-IL) on May 7, 2007, and referred to both the House Ways and Means Committee and Education and Labor Committee. Similar legislation was introduced in the last session of Congress in the House (HR 3380) and Senate (S. 985), but no action was taken.

In addition to the Alliance and UNCA, a number of other organizations also support this legislation, including AARP, Center for Law and Social Policy, Child Welfare League of America, Children's Defense Fund, Generations United, GrandFamilies of America, and the National Committee of Grandparents for Children's Rights. Federal support for legal guardianship has also been endorsed by the bi-partisan Pew Commission on Children in Foster Care.<sup>9</sup>

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<sup>5</sup> Ibid, p. 6.

<sup>6</sup> Several of these state programs are just getting underway, including Iowa, Tennessee, and Virginia. Montana's current waiver is up for renewal in September, 2007.

<sup>7</sup> Federal legislative authority to approve new title IV-E waivers expired on March 31, 2006, but some states with projects approved before that date are being continued under extensions granted by the U.S. Department of Health and Human Services. Programs in four of the 12 waiver states (DE, MD, NM, NC) have ended.

<sup>8</sup> Generations United, Kids are Waiting, "Time for Reform: Support Relatives in Providing Foster Care and Permanent Families for Children", 2007, pp. 6-7. Available online at <http://kidsarewaiting.org/reports/files/timeforreform.pdf>.

<sup>9</sup> Pew Commission on Children in Foster Care. *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care*. (Washington, D.C., May 2004), pp. 21-23. Available online at: <http://pewfostercare.org/research/docs/FinalReport.pdf>.

## **LEGISLATIVE SUMMARY**

### **Title I - Kinship Navigator Program**

Title I of both bills establishes a federal Kinship Navigator Program, which provides funding to states, metropolitan governments, and tribal organizations to help relative guardians navigate their way through available programs and services.

The bills authorize \$25 million for federal fiscal year (FY) 2008, \$50 million for FY 2009, and \$75 million for FY 2010. The federal government covers 100 percent of program costs in the first year, 75 percent in the second, and 50 percent in the third. Funding for the program must be appropriated by Congress annually.

Funds may be used for a variety of education and outreach services, such as toll-free phone lines and live operators providing information on federal, state, and local government program benefits, housing options, respite care, legal assistance, kinship care service providers and kinship support groups. Funds may be used to fund outreach through collaboration with schools, pediatric care clinics, kinship care organizations, senior citizen centers, and agencies with jurisdiction over child welfare or human services. Funds may also be used to create and distribute kinship care resource guides, websites, or other relevant outreach materials. Funds may also be used to educate providers about the special needs of grandparents and other relative caregivers.

A few states – including CT, NJ, NY, OH, and WA – operate or are launching navigator programs, which provide assistance and information about available benefits, rights and services to relative caregivers. Such programs offer information about medical services, housing assistance, school enrollment, affordable legal services, and information about obtaining child custody, among other services. These programs are primarily funded with state dollars, though several also receive assistance from Area Agencies on Aging.

### **Title II – Subsidized Guardianship**

Title II of both bills gives states the option to provide financial assistance and other services to relatives who have assumed legal guardianship of children in foster care and have committed to providing care on a permanent basis.

The program is established under Title IV-E of the Social Security Act, an entitlement program that provides federal funding to states for children in foster care. Major elements of subsidized guardianship program include:

- **Eligibility:** To be eligible for the program, the child must be in foster care and under the care of a state agency for at least the past year. The state agency must determine that being returned home and adoption are not appropriate permanency options for the child. The child must also demonstrate strong attachment to the prospective relative guardian and, in the case of children 14 or older, the child must be consulted on the kinship guardianship arrangement.

For children who are over 18 but not yet 19, payments may be made for a child who is still in school, either as a full-time student in a secondary school or in the equivalent level of a vocational or technical training program. For children with physical or mental disabilities, payments may continue until they are 21.

- **Payments:** Payments are equal to the foster care maintenance payment that would have been made if the child had remained in foster care.

- Siblings: To keep siblings together, the program allows states to make payments to guardians to cover the added cost of siblings who are minors and otherwise do not qualify for guardianship assistance.
- Adoption Assistance: Children who are provided with kinship care under this program shall remain eligible for adoption assistance.
- Eligibility for the Chafee Foster Care Independence Program: The House bill makes children who exit foster care to guardianship or adoption after age 14 eligible for education and training vouchers and independent living services under the John Chafee Foster Care Independence Program. The Senate bill only extends eligibility for educational and training vouchers to children exiting care at age 16 or older.
- Federal Reimbursement of State Costs: The cost of Kinship Guardianship Assistance Payments paid by states under this program is reimbursable by the federal government at the federal medical assistance percentage (FMAP) rate, which starts at 50 percent but varies from state to state. This is the same percentage paid for foster care maintenance and adoption assistance payments, but actual costs in dollar terms may be lower due to reduced administrative costs.
- Demonstration Programs: The bills authorizes demonstration guardianship assistance programs in states that wish to do so on a more limited basis.

### **Budgetary Barriers to Subsidized Guardianship**

New budget rules adopted by Congress on May 17 (S. Con. Res. 21) will make it more difficult to enact changes in entitlement spending, including those in the Kinship Caregiver Support Act, as introduced. These new budget rules include pay-as-you-go (PAYGO) restrictions that require all increases in entitlement spending or tax reductions to be fully paid for with offsetting entitlement spending cuts and/or tax increases. The net cost of such legislation over both the next 5 and 10 year periods must be zero or the legislation will be subject to points of order blocking or hindering passage, including a 60-vote supermajority requirement on the Senate floor.

The subsidized guardianship provisions in Title II of the Kinship Caregiver Support Act would increase entitlement spending under Title IV-E of the Social Security Act. Unless these costs are reduced, or offsetting entitlement cuts are found, the legislation will be subject to a 60-vote supermajority requirement in the Senate. Given the commitment of House and Senate Democrats to restoring fiscal discipline, the legislation may be more challenging to pass in its current form.

The cost of the subsidized guardian proposal in this year's legislation has not been officially estimated. In 2004, the Urban Institute, at the request of the Pew Commission on Children in Foster Care, estimated that a similar proposal would result in federal costs of at least \$70 million in the first year, rising to \$90 million by year five.<sup>10</sup>

<sup>10</sup> Pew Commission on Children in Foster Care. *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care*. (Washington, D.C., May 2004), pp. 54, 58. Available

### Title III – Notice to Relatives, Standards for Kinship Care

- Notice to Relatives: The bills require states to notify all relatives of a child placed in foster care, other than relatives where there has been domestic or family violence, that the child has been removed from the custody of his or her parents and notifies the relative of his or her options under federal, state and local law. (Section 301)
- Separate Kinship Care Standards: Under current federal law, all states must regulate and license foster family homes, but have wide discretion to determine their own regulatory and licensing standards. However, they must include standards on admission, safety, sanitation, and civil rights protections.<sup>11</sup> States may not apply different standards to different categories of foster family homes.<sup>12</sup>

The bills authorize state agencies that regulate foster family homes and child care institutions to establish separate standards for foster family homes where a foster parent is a relative of the foster child. Such standards must at a minimum protect the safety of the child and provide for criminal background checks. (Section 302).

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### About the Alliance for Children and Families and United Neighborhood Centers of America

The Alliance for Children and Families, formed by the 1998 merger of Family Service America and the National Association of Homes and Services for Children, represents over 300 nonprofit organizations across the nation that provide services and economic empowerment to children and families. Alliance agencies cover a wide spectrum of providers, including a diversity of faith-based organizations and nonsectarian agencies. Together, these organizations deliver more than \$2 billion annually in services to more than 8 million people in nearly 6,700 communities across the United States.

United Neighborhood Centers of America (UNCA) is a voluntary, nonprofit, national organization with neighborhood-based member agencies throughout the United States. Formerly known as the National Federation of Settlements and Neighborhood Centers, it was founded in 1911 by Jane Addams and other pioneers of the settlement movement.

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online at: <http://pewfostercare.org/research/docs/FinalReport.pdf>.

<sup>11</sup> U.S. Department of Health and Human Services, Administration on Children and Families, "Foster Family Home Licensing Principles for Compliance with Titles IV-B and IV-E Requirements: Guidance for States," July 3, 2001. Available online at: [http://www.acf.hhs.gov/programs/cb/laws\\_policies/policy/im/2001/im0105.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/2001/im0105.htm).

<sup>12</sup> U.S. Department of Health and Human Services, Administration on Children and Families, Child Welfare Policy Manual. Available online at: [http://www.acf.hhs.gov/j2ee/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=26#182](http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=26#182).