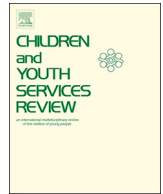




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Contents lists available at ScienceDirect

Children and Youth Services Review

journal homepage: www.elsevier.com/locate/childyouth

A national analysis of guardianship assistance policy and implementation

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1. Introduction

1.1. Who is placed in foster care?

Despite a recent upward trend, the number of children in foster care has declined by approximately 25% since the 1990's – with total number of children in care (under age 18) at just over 424,000 (Conn et al., 2013; USDHHS, 2016, 2017a,b). Altogether, 437,465 children were living in out-of-home care as of September 31, 2016 (a 2.3% increase since 2015). (See the U.S. Children's Bureau website for state and national AFCARS data: www.acf.dhhs.gov/programs/cb/stats/afcars).

Relative care, a key feature of the child welfare system, is a centuries-old practice, wherein children without parents to rear them became permanent members of a relative's household (Slingerland, 1919). Today, children from every culture continue to be raised by relatives when their parents are unable to meet their responsibilities. Relative care is used, in part, because kin appear to have greater personal commitments and investments in their children when compared with non-kinship foster family placements (López, del Valle, Montserrat, & Bravo, 2011).

In the U.S., when children are placed into foster care because they cannot safely remain with their parents, placement with relatives has become a preferred option for many state child welfare systems and under federal law (Children's Defense Fund, Child Trends, American Bar Association Center on Children and the Law, Casey Family Programs, Child Focus, & Generations United, 2012; Generations United, 2016). In fact, 10% of the approximately 250,248 children discharged to the care of a legal guardian in 2016 were released to permanent care with a relative guardian. Similarly, exit to guardianship was a case plan goal for 3% of all children in care in 2016. For another 3%, the goal was identified as “live with other relative(s);” however, it should be noted that these children and their caregivers were not receiving the legal or financial benefits of subsidy (U.S. DHHS, 2017a).

One of the reasons relative guardianship has become integrated into child welfare practice is that it fills the need for permanency when neither parental reunification nor adoption are appropriate

(Generations United, 2016). Research findings indicate that children in relative kinship care or relative guardianship generally experience improved outcomes over children living in non-kinship foster care (Winokur, Holtan, & Batchelder, 2014). These benefits often include greater placement stability, fewer school changes (Helton, 2011; Park & Helton, 2010; Testa, Bruhn, & Helton, 2010), higher levels of permanency (Falconnier et al., 2010; Zinn, Decoursey, Goerge, & Courtney, 2006), and better behavioral and mental health outcomes (Cheung, Goodman, Leckie, & Jenkins, 2011; Garcia et al., 2014; Rubin et al., 2008).

While research identifies many strengths of relative care, there are also notable gaps in our understanding. For instance, recent meta-analyses of a wide range of studies have highlighted the methodological limitations of much of the existing research in this area. More specifically, we do not yet have strong evidence of whether the benefits and positive outcomes of relative placement are consistent for children and youth of all ages and across different family situations (Lutman, Hunt, & Waterhouse, 2009; Wu, White, & Coleman, 2015). We also do not know which guardianship policies are associated with the most positive outcomes for children and families. Furthermore, there are indications that relatives provide care for less difficult and younger children (Winokur et al., 2014) and we do not understand how to best match family caregivers with supportive services (Koh & Testa, 2011). In addition, findings for child safety outcomes have been mixed (Bell & Romano, 2015). Nevertheless, on the whole, the research on kinship care and guardianship is congruent with the social commitment to and policy value of reinforcing family ties (Bell & Romano, 2017).

While the research on relative care is generally supportive, relative placement – and guardianship in particular – has a unique place in American law sitting betwixt and between more typically understood caregiving relationships. For example, guardians – despite not possessing the same level of legal rights as parents – are generally viewed as a child's permanent caregiver by the courts (Schwartz, 1996). The guardianship relationship is viewed as more secure than that of foster parents and the relationship can only be set aside through legal action. Guardians – like biological and adoptive parents – are also always

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Received 1 June 2018; Received in revised form 12 September 2018; Accepted 12 September 2018

Available online 13 September 2018

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subject to custody actions that may seek to remove children from their caregivers. In these ways, guardians sit in a somewhat liminal legal state situated between parents and foster care providers.

1.2. Guardianship fulfills a vital role in the United States

One of the most pressing goals of public child welfare services is to ensure that children rapidly and safely achieve permanency; in other words, that children live with a safe and loving family until adulthood. For the majority of children, reunification with their parents is the primary goal. However, when reunification is determined to be unsafe or not in a child's best interest, adoption, kinship care, or legal guardianship with a caring adult are the primary alternatives. In these situations, the child becomes a permanent member of the household of other relatives who rear them through adult life (Grandfamilies.org, 2018). Today, relative kinship care or guardianship has become a preferred option for many child welfare systems; at the same time, federal law has been clear that when children cannot safely remain with their biological parents, the preferred placement is with relatives (Children's Defense Fund, Child Trends, American Bar Association Center on Children and the Law, Casey Family Programs, Child Focus, & Generations United, 2012).

Multiple terms are used to refer to state guardianship assistance programs. In this article, we refer to federal IV-E Guardianship Assistance Program (GAP) as Federal GAP or Title IV-E GAP. We define *state-funded guardianship* or *state guardianship assistance* as state-funded programs that are separate from Title IV-E GAP and may have child and guardianship eligibility criteria that differ from federal requirements. The terms *subsidized guardianship* and *guardianship assistance* are used interchangeably as more general terms for these overall guardianship programs.

As an important step in understanding the state policy framework governing guardianship assistance, this article summarizes differences in state statutes and administrative codes pertaining to guardianship. It draws upon interviews with state guardianship administrators in 49 states and the District of Columbia (D.C.) to shed light on how state guardianship programs are implemented.

Given that relative guardianship has grown in use, it is imperative that states conduct a rigorous evaluation of the benefits and potential risks of the policies we describe. In other words, the success of guardianship must be gauged not by how quickly and how many children are placed in permanent guardianship, but rather by how many children remain in these placements over time and how their developmental needs are met in these homes. At the same time, states must understand the impact they have on relative guardianship through their policy choices. Our research helps set the stage for this work and underscores that states make different choices when establishing guardianship programs. It is hoped that our findings will benefit state and federal policymakers, including legislators and child welfare leaders, as they consider guardianship policies or assistance programs, particularly Title IV-E GAP.

2. Guardianship as a legal permanency option

In 2008, Congress passed the *Fostering Connections to Success and Increasing Adoptions Act* (or *Fostering Connections Act*). In part, the Act incentivized the use of relative guardianships to help children in foster care achieve permanency (Children's Defense Fund, Child Trends, American Bar Association Center on Children and the Law, Casey Family Programs, Child Focus, & Generations United, 2012). The *Fostering Connections Act* established the Title IV-E Guardianship Assistance Program (GAP), which allows states to use federal funds to support state subsidies for relative guardians who are committed to caring permanently for their children. GAP is rooted in state-level innovation in child

welfare delivery. In fact, at the time the federal legislation was passed, 10 states were already operating subsidized guardianship programs through IV-E demonstration waivers (Grandfamilies.org, 2018). Thus, the Fostering Connections Act helped "lift up" a state level approach and spur its wider adoption.

To qualify for a subsidy, the Act requires that relative guardians meet the following eligibility requirements:

- The guardian is a relative of the child (although the law does not define *relative*).
- The guardian has a strong commitment to caring permanently for the child, is a licensed foster parent, and has cared for the child in a licensed foster care home for at least six consecutive months (Annie E. Casey Foundation et al., 2012).
- The child meets eligibility requirements for receipt of Title IV-E foster care maintenance payments.
- Neither reunification nor adoption are appropriate permanency options for the child.
- The state will match federal funds with state dollars at the Medicaid matching rate (Public Law 110–351).
- If the child is 14 years or older, he or she must be consulted about the guardianship.

If states are not willing or able to meet the age and other requirements, or they choose not to operate a Title IV-E GAP program, they may subsidize a relative guardianship assistance program with state funds. Thus, they need not adhere to all of the federal requirements.

The federal law's requirement that children 14 or older be consulted about the guardianship decision is interesting. Through it, the Act implicitly recognizes children's rights as well as their legal capacity to play a role in determining their own fate. Overall, giving voice to youth who are at least 14 aligns with other child welfare policies. For example, the Foster Care Bill of Rights (adopted by 15 states) sets the age for children's involvement in case planning at 14 (National Conference of State Legislatures, 2016). Similarly, in criminal proceedings, 16 states allow youth who are 14 to be transferred to adult court for serious crimes (OJJDP, 2016). It is also worth noting that younger children can be recognized as adults in criminal proceedings. In fact, 25 states allow youth below 14 to be transferred with at least one state allowing children as young as 10 years old to be transferred (OJJDP, 2016).

Since state law generally determines the scope of a guardian's rights and responsibilities, definitions of *guardianship* and the terms of guardianship agreements vary from state to state. Across all states, guardians are granted care and custody of a child and are responsible for providing the child with a safe and stable home, food, clothing and basic health care. Guardians also have the right to make certain decisions regarding the child, including consent to school enrollment and routine medical care.

With the general federal requirements in mind, we examined variation in guardianship laws and practices in four broad areas: (1) payment sources and levels, (2) guardianship eligibility, (3) guardianship management and monitoring, and (4) parental relationships under the terms of guardianship. We present our findings – and the relevant context – for each of these four areas in the following sections.

2.1. Guardianship payment sources and levels

The primary means for supporting families who become guardians is through financial assistance. States may choose to allocate Title IV-E funds to guardianship cases where children and their adult guardians meet Title IV-E qualifications. Alternately, the states may use their own (non-federal) funds to subsidize guardianship in cases where the child or adult does not meet Title IV-E qualifications.

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