Legal Assistance to Kinship Families: How to Fill the FFPSA Gap in Kinship Navigator Services

Marla Spindel, Executive Director, DC KinCare Alliance
Stephanie McClellan, Deputy Director, DC KinCare Alliance
Co-Director, NYS Kinship Navigator, Public Service Professor, SUNY Albany

Date: Wednesday, April 10
Time: 1:45 pm - 3:15 pm
Child Welfare League of America Annual National Conference
1. Introduction

Marla Spindel, Esq., Executive Director, DC KinCare Alliance (marla@dckincare.org)
Stephanie McClellan, Esq., Deputy Director, DC KinCare Alliance (stephanie@dckincare.org)
Gerard Wallace, Esq., Co-Director, NYS Kinship Navigator, Public Service Professor, SUNY Albany (gwallace@Albany.edu)
Takeaways

- How Kinship Navigators Can Provide Legal Assistance
- Provision, Types, Funding Sources of Legal Assistance
- Legal Issues Faced by Kinship Families
- Development of Kinship Family Rights
- Fundamental Rights
- Statutory Rights
- Right to Counsel
Handouts

- Kinship Navigator Requirements - section 427(a)(1)
- Limited Representation Agreement
- NYS Kinship Navigator Unified System of Care
- DC KinCare Alliance
Provides Legal Education and Information

- Conducts Advocacy for Kinship Caregivers to Change Laws and Policies
- Provides Limited and Full Legal Representation to Kinship Caregivers
- Provides Brief Legal Advice to Kinship Caregivers (Caregiver Raise Me Up Groups)
- Provides Legal Education and Information

Supporting Kin and The Children They Raise

DC Kin Care Alliance
NYS Unified Kinship System of Care

- Statewide NYS Kinship Navigator
- Regional Permanency Centers
- 22 Local Kinship Services
- Local kinship programs
NYS Kinship Navigator
877-454-6463
www.nysnavigator.org

Referral
- Case Management Programs
- Support Groups
- Legal Referral Network

Information
- Legal Fact Sheets
- County Resources
- Helpline
- Benefit Application Guides

Education
- Local and Statewide Presentations
- Online Video Archive
- Legislative education
- Film "The Face of Kinship Care"

Advocacy
- Case by case advocacy
- Statewide advocacy

www.nysnavigator.org
NYS Kinship Navigator

- Started 2006
- Federal Kinship Navigator Demonstration Project – 2012-16
- Collaborations: CWLA, SUNY Albany, Albany Law
- Publications: CWLA Journals; Grandfamilies Journal; Summit Reports; Journal of Family Social Work, Summit Reports, etc.
2. Families First Prevention Services Act

Can Kinship Navigators Provide Legal Help?

Aside from FFPSA, how can Kinship Navigators Provide Legal Help? Can Kinship Navigators Provide Legal Help can access FFPSA Matching Funds?

Purpose: Keeping Kids Out of Foster Care
Section 427(a)(1) of the Act

Kinship Navigators: ACYF-CB-PI-18-11:

(C) shall establish information and referral systems that link via toll-free access kinship caregivers, kinship support group facilitators, and local benefits:

(i) Eligibility and enrollment information for Federal, State, and local benefits;

(ii) Eligibility and enrollment information for Federal, State, and local benefits;

(iii) Relevant training to assist kinship caregivers and kinship service providers to—

(iv) Relevant legal assistance and help in obtaining legal services;
Types of Legal Assistance

Indirect Services (Information and Referral)
- Legal Information (Self-Advocacy Tools, Forms, Cited Fact Sheets)
- Consultations (General and Case Specific)
- Legal Information (Self-Advocacy Tools, Forms, Cited Fact Sheets)

Direct Services
- Class Actions (law firms, legal assistance providers, clinics)
- Representation (Attorney of Record)
- Limited Representation (Signed Agreements)

Indirect Services (Information and Referral)
Legal Assistance Providers

Referrals to and Collaborations with

- State Child Welfare Agency
- Kinship Navigator Programs
- Statutory Assignments of Counsel
- Court Websites
- Law School Clinics
- Private Bar Pro Bono Programs
- Legal Service Providers

Legal Service Providers
Funding Sources for Legal Assistance

- Legal Services Corporation (125% poverty)
- State-based Interest on Lawyers’ Trust Accounts (IOLTA)
- Targeted Federal Funds (ex. Violence Against Women Act, Older Americans Act)
- State and Local Bar
- State Court Administrations
- State, County, and Municipal Governments
- Kinship Guardianship and Adoption Subsidy
- Private Foundations
- Legal Services Corporation (125% poverty)
Question: What are administrative costs?

Costs - Foster Care Maintenance Payments Program

8.1B TITLE IV-E, Administrative Functions/Costs, Allowable

Child Welfare Program Manual Change

FFPSA Change - Abuse/Neglect
Question: May a title IV-E agency claim title IV-E administrative costs for attorneys to provide legal representation for the title IV-E agency, a candidate for title IV-E foster care or a title IV-E eligible child in foster care and the child’s parents to prepare for and participate in all stages of foster care related legal proceedings?

Answer: Yes. The statute at section 474(a)(3) of the Act and regulations at 45 CFR 1356.60(c) specify that representation of a child who is a candidate for title IV-E foster care or in foster care and his/her parent is an allowable administrative cost. Title IV-E agency’s claim of administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent is revised to allow the agency to claim title IV-E administrative costs for legal services provided by an attorney representing a child or parent. This policy is revised to allow the title IV-E agency to claim title IV-E administrative costs for legal services provided by an attorney representing a child or parent.

Previous policy prohibited the agency from claiming title IV-E administrative costs for legal services provided by an attorney representing a child or parent.

Removing CWPM Q/A 8.4B #18 and add the following new Q/A to section 8.4B:

Candidate?

Federal financial participation for administrative costs listed at 45 CFR 1356.60(c) may be claimed regardless of whether the child is actually placed in foster care and becomes a recipient of title IV-E foster care benefits. However, reimbursement is limited to those individuals the State reasonably views as candidates for foster care maintenance payments consistent with section 472(i)(2) of the Social Security Act. The three acceptable methods of documenting that a child is a candidate for foster care benefits are:

1. A defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child,
2. An eligibility determination form which has been completed to establish the child's eligibility under title IV-E, or
3. Evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of court proceedings.

Should the State determine that the child is no longer a candidate for foster care, subsequent activities will not be allowable for reimbursement of costs under title IV-E.
Federal Funding, But There's a Problem

Kinship Navigators - Finally There is

[Image 83x0 to 530x794]
3. Profile of Kinship Families

Kinship care refers to the care of children by relatives, members of their tribe or clan, godparents, stepparents, or other adults who have a family relationship to a child. Kinship care is commonly defined as “the full-time care, nurturing, and protection of a child by relatives, friends (often referred to as fictive kin).”

Kinship care is commonly defined as “the full-time care, nurturing, and protection of a child by relatives, friends (often referred to as fictive kin).”


Kinship Caregivers: How do we describe...

- Extended Family Members (U.S. Supreme Court)
- Consanguinity
- Blood, Marriage, Adoption
- Fictive (proving relationships)
- In loco parentis, "person acting as a parent," case law

Legal Terms:
- Descriptions, etc.
How Do Children End Up In Kinship Care?

- Neglect and Unfitness (Abandonment, Abuse, etc.)
- Parental Substance/Alcohol Abuse
- Parental Mental Health
- Parental Disability, Incapacity, Death
- Other Unfortunate Circumstances
- Mathematics (2 minus one minus one equals 0)
Who Are The Children In Kinship Care?

Age:
- 49% of children are under the age of 6
- 29% are between 6-11
- 22% between 11-17
- 11% of all children will live in a kinship home during childhood
- 1 in 5 black children will live in a kinship home

Prevalence:
1 in 11 of all children will live in a kinship home during childhood
Profiles in Kinship Care: Children

- Trauma
  - Abuse/Neglect
  - Separation from parents
- Often upset and derailed
- Disruptive Behaviors
- Higher rates of ADHD, ODD, PTSD, adjustment and attachment disorders
- ACE scores tend to be higher
Who are the Caregivers?

- 65% of caregivers are grandparents
- Other types include aunts/uncles, siblings, fictive kin
- Average age of caregivers is 56 years old
- Average of households have an income of less than $20K/year (CHSR study)
- 27% Hispanic
- 28% African American
- 45% Caucasian
- 36% of households have an income of less than $20K/year (CHSR study)
Challenges for Kinship Families

- Kin who are asked to care for children typically have not anticipated having to care for children, and quickly experience the financial, health, and social/behavioral challenges associated with children who have experienced trauma.

- Research indicates that kinship caregivers tend to be poorer, older, and less educated compared to families with at least one biological parent present.

- Financial burdens include caregivers on fixed incomes (retirement, disability) or being unprepared for child care expenses due to current job schedules or income levels.

- Children who enter kinship care through foster care tend to have more behavioral and emotional challenges.

- Caregivers have to deal with complex family relationships and must manage their own trauma experiences.

- Not all kin are prepared to care for children and quickly become overwhelmed.

Information retrieved from: aecf.org
4. Need for Legal Support for Kinship Families

Common types of civil legal problems among low-income households with parents or guardians of minor children include:
- Education (25%)
- Employment (26%), and
- Family (26%)
- Children and custody (27%)
- Income maintenance (28%)
- Consumer and finance (45%)
- Health (46%)

Common types of civil legal problems among low-income households with parents or guardians of minor children include:
- Health (46%)
- Employment (26%), and
- Family (26%)
- Children and custody (27%)
- Income maintenance (28%)
- Consumer and finance (45%)
- Education (25%)
Need for Legal Support for Kinship Families

Private Care (no CPS involvement) - 2.6 million

CPS facilitated (N-Docket/Safety Plans) - Unknown

Foster Care - 140,000 Kinship Children

Public Care

How Kin Become Caregivers:
Common Public Legal Issues

- Alternatives to Foster Care
- Diverted from Foster Care, but Abuse/Neglect Proceedings
- Non-Party to Abuse/Neglect Proceedings
- Informed about "Options" - Discussion
- Notice to Relatives
- Upon Removal
- No Pathway into Foster Care
- Privy to Custodial Options
- No Formal Removal (Safety Plans)
Common Public Legal Issues

- Access to records
- Informed about Non-Department Resources
- Informed about Non-Parent (Child Only) Grant
- Problems when Care moves to Private
- Availability and Access to Preventive Services

Defining Imminent Risk = Candidate
Why Do Kin Not Become Foster Parents?

Child Welfare Placements

- Lack of uniform opportunity across county
- Result: Some LDSS's divert from foster care
  - Cost benefit: private-informal vs. public-formal
  - Use of private care
- The policy dilemma
- The "choice"

Why Do Kin Not Become Foster Parents?
Private Caregiver Legal Issues

Custodial Arrangements
- Informal Custody
  - Affidavits
  - Parental Powers of Attorney
- Legal Custody
- Guardianship
- Foster Care
- Quasi Foster Care
- Kinship Guardianship
- Adoption
- Fill out the chart

Elements of Care
- Identification/Recognition
- Authority (schooling, medical, records, etc.)
- Security (keeping children)
- Financial Assistance (access, eligibility)
- Resources/Services (access, eligibility)
- Legal Assistance
Common Private Legal Issues

- Becoming a Caregiver
- No Court Petition (statutory and powers of attorney)
- Petitions on Parent Consent
- Orders
- Procedures
- Standards
- Standing
- Pro Se
- Petitions without Parent Consent
- Enabling Caregivers to Care
- Procedures
- Standards
- Standing
- Pro Se
- Petitions without Parent Consent
- Enabling Caregivers to Care
5. Do Kin Have a “Right to Care”?
Why Talk about a Right to Care?

Parents Have Rights, But Their Behavior Is Cause of Kinship Care and There Is Tension, i.e., Perceived and Actual Wrongs/Disadvantages

Family and Custodial Issues

➢ Money
➢ Threatening
➢ Multiple Court Appearances
➢ Visitation Can Be Disruptive

Three Generations – Dynamics
Why Talk about a Right to Care?

State is Ultimate Decider:

➢ Family and Child Welfare
➢ Court Proceedings
➢ Child Welfare Officials

Perceived Exploitation,
Perceived Unfairness.
6. „Right to Counsel“ of Kinship

- Assignment of Counsel
- Extended Family Fundamental Rights
- Progeny
- Fundamental U. S. Sp. Ct. Parent Right and Caregivers
Right to Counsel?

Right to Counsel?

Kinship Caregiver Petitioner Right to Counsel?

For Parents, but Can Apply for Kin?

State Constitutions/Assigned Counsel Statutes

But State Constitutions may Require Counsel for Indigent Parent?

Can Apply to Kin?

Case by Case Decision


No Absolute Right to Counsel for Parents in Termination Proceedings:

No Absolute Right to Counsel for Parents in Termination Proceedings:
"Right to Counsel"?

NYS Assigned Counsel Statute:
- Parents get assigned counsel
- Judges sometimes assign to petitioning non-parent caregivers?

NYS Parent Representation Commission
Civil Gideon?

Gideon v. Wainwright, 372 U.S. 335 (1963)

U.S. Supreme Court on March 18, 1963, ruled (9-0) that states are required to provide legal counsel to indigent defendants charged with a felony.

Civil Gideon?
Civil Gideon?

American Bar Association: Directory of Law Governing Appointment of Counsel in State Civil Proceedings

2006 ABA Resolution 116A

Civil Gideon?
Civil Gideon?

- Current Legal Assistance
- Non-Parent Representation
- 2019 Court Administration "Parent Legal Representation Commission"
- Statute - Family Court Act Section 262
- History of Assigned Counsel
- New York Family Court Representation

Civil Gideon?
Civil Gideon

– Civil Gideon

– Civil Gideon

– Civil Gideon

– Civil Gideon

– Civil Gideon

– Civil Gideon

– Civil Gideon

– Civil Gideon

Washington D.C.
Civil Gideon?

The DC Access to Justice Act of 2017 allocates funding to legal service organizations to provide pro bono representation to low-income individuals in cases involving fundamental human needs. These needs include preserving liberty, housing, safety, family integrity, child custody, nutrition, education, income, public benefits, wages, and meaningful opportunity to obtain employment.

The Act only applies to individuals with income at or 200% of the federal poverty guidelines and housing issues such as eviction, increased rent, housing code violations, and termination of a housing subsidy. It allocates funding to legal service organizations to provide pro bono representation to individuals with income at or 200% of the federal poverty guidelines and housing issues such as eviction, increased rent, housing code violations, and termination of a housing subsidy.

Low-income individuals in these cases:
- No categorical right to counsel
- Housing subsidy
- Housing issues, such as eviction, increased rent, housing code violations, and termination of a housing subsidy, such as eviction, increased rent, housing code violations, and termination of a housing subsidy.

Only applies to administrative or judicial proceedings involving:
- Individuals with income at or 200% of the federal poverty guidelines
- Housing issues such as eviction, increased rent, housing code violations, and termination of a housing subsidy.
- No categorical right to counsel

The Act mandates that legal service organizations provide pro bono representation to low-income individuals in cases involving fundamental human needs.

Private Right of Action to Seek Foster Care Payments (Grandmother approved)


Glisson v. D.O., 847 F.3d 374 (6th Cir. 2017): Private Right of Action to Seek Foster Care Payments (Grandmother approved)
7. Case Study #1

Isaiah was born premature as a result of his mom’s substance use and he has withdrawal symptoms. Isaiah has multiple complications and requires a feeding tube. Isaiah’s father is unknown. Isaiah’s mother, Carla, is 17-years-old and had been living with friends before Isaiah’s birth. When Isaiah is discharged from the hospital, Carla agrees to move in with her mother, Gwendolyn, so she can help Carla care for Isaiah. A few weeks later, Carla runs away from home and Gwendolyn cannot find her. When Isaiah is discharged from the hospital, Carla agrees to move in with her mother, Gwendolyn, so she can help care for Isaiah.

Questions:

1. What should Gwendolyn do to make sure she can get Isaiah all the medical services he needs?
2. Could Gwendolyn have done something before Carla ran away to ensure she could legally care for the baby?
3. What public benefits can Gwendolyn receive for herself and the child, and what legal documents are required to get them?
Case Study #2

Camille has been the primary caregiver for her six-year old son Raymond.

Camille has a history of mental health problems.

Recently, the police were called to the home when Camille got into an altercation with her neighbor, whom she suspected of poisoning her food.

When the police arrive, they find Raymond in the home alone.

The home is filthy and there is evidence of hoarding.

The police transport Camille to the hospital and Raymond to the child protection agency.

Camille tells the child protection agency that she wants her sister, Linda, to care for Raymond in the meantime.

Questions:

1. What information should the child protection agency provide Camille and Linda regarding the options for Linda to care for Raymond?

2. What legal actions should the agency and/or Linda and Camille take to ensure Raymond can stay safely with Linda?

3. What documents or information will Linda need to care for Raymond?

4. What financial help can Linda get when caring for Raymond?
Case Study #3

Jada is a 13-year-old girl with dyslexia.

- Jada's father is incarcerated (and has never been involved in her life).
- Jada's mother was recently killed by gun violence.
- Jada goes to live with her mother's best friend, Shawna.
- Shawna works a minimum wage job and is barely able to pay for rent or food for herself and the child.

Questions:

1. How can Shawna get legal rights to care for Jada so she can enroll her in school and get help for Jada's dyslexia?
2. Shawna needs to move to a bigger apartment and also needs to get financial help to care for Jada. How does Shawna get this help and what legal documents does she need?
8. Q & A

Please email us!