



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

Date: Wednesday, April 10

Time: 1:45 pm - 3:15 pm

CHILD WELFARE LEAGUE OF AMERICA ANNUAL NATIONAL CONFERENCE

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Outline

1. Introductions
2. Families First: Kinship Navigators
Provision, Types, Funding Sources of Legal Assistance
3. Profile of Kinship Families
4. Need for Legal Support for Kinship Families
Private Kinship Care
Public Kinship Care
5. Do Kin Have a "Right To Care"?
6. Right to Counsel - A Civil Gideon?
7. Hypotheticals
8. Q & A

1. Introduction

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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

- ▶ DC KinCare Alliance
- ▶ NYS Kinship Navigator Unified System of Care
- ▶ Limited Representation Agreement
- ▶ Kinship Navigator Requirements - section 427(a)(1)



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

NYS Unified Kinship System of Care

- Statewide NYS Kinship Navigator
- 22 Local Kinship Services
- Regional Permanency Centers
- Local kinship programs

NYS Kinship Navigator



877-454-6463

www.nysnavigator.org

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"

Referral

- Case Management Programs
- Support Groups
- Legal Referral Network

Advocacy

- Case by case advocacy
- Statewide advocacy



NYS Kinship Navigator

- NYS Kinship Navigator – Started 2006
- Federal Kinship Navigator Demonstration Project – 2012-16
- NYS Kinship Summits – 2001, 2005, 2008, 2011, 2014
- Collaborations: CWLA, SUNY Albany, Albany Law
- Publications: CWLA Journals; Grandfamilies Journal, Summit Reports, Journal of Family Social Work, Summit Reports, etc.



Need Assistance?
Call Today: (877) 454-6463



Helping Non-Parent Caregivers
Achieve Success All Across New York

- HOME
- ABOUT US
- ONLINE EDUCATION
- LEGAL RESOURCES
- COUNTY RESOURCES
- KINSHIP POLICY
- CONTACT US

Help for Kinship Caregivers in all of New York's 62 Counties

The NY's Kinship Navigator is an information, referral and advocacy program for kinship caregivers in New York State. A kinship caregiver is an individual that is caring for a child that is not biologically their own. In New York State, there are an estimated 200,000 caregivers, 131,000 of whom are grandparents. Many others are aunts and uncles.

The Navigator seeks to assist these caregivers by providing information on financial assistance, legal information and

Local
Presentations
Now Available!

Online

Chat live with an agent now!

2. Families First Prevention Services Act Can Kinship Navigators Provide Legal Help?

Purpose: Keeping Kids Out of Foster Care

Legal Help?

**What Kinship Navigator Legal Help Can Access FFPSA
Matching Funds?**

**Aside From FFPSA, How Can Kinship Navigators Provide
Legal Help?**



Kinship Navigators: ACYF-CB-PI-18-11: Section 427(a)(1) of the Act

- ▶ “(C) shall establish **information and referral systems** that link (via toll-free access) kinship caregivers, kinship support group facilitators, and kinship service providers to—
 - ▶ (i) each other;
 - ▶ (ii) eligibility and enrollment information for Federal, State, and local benefits;
 - ▶ (iii) relevant training to assist kinship caregivers in caregiving and in obtaining benefits and services; and
 - ▶ (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)

Direct Services

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



Referrals to and Collaborations with Legal Assistance Providers

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



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 Court Administrations
- ▶ State and Local Bar
- ▶ State, County and Municipal Governments
- ▶ Private Foundations
- ▶ Kinship Guardianship and Adoption Subsidy
- ▶ FFPSA?



FFPSA Change – Abuse/Neglect: Child Welfare Program Manual Change

- ▶ 8.1B TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program
- ▶ Question: What are administrative costs?

Child Welfare Policy Manual

- ▶ Removes CWPM Q/A 8.4B #18 and add the following new Q/A to section 8.4B:
- ▶ **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 Federal financial participation (FFP) is available at the rate of 50% for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The title IV-E agency's representation in judicial determinations continues to be an allowable administrative cost.
- ▶ **Previous policy prohibited the agency from claiming 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 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 to prepare for and participate in all stages of foster care legal proceedings, such as court hearings related to a child's removal from the home. These administrative costs of legal representation must be paid through the title IV-E agency. This change in policy will ensure that, among other things: reasonable efforts are made to prevent removal and finalize the permanency plan; and parents and youth are engaged in and complying with case plans.

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 documentation indicating 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 the court's proceedings.
- ▶ Should the State determine that the child is no longer a candidate for foster care at any point prior to the **removal** of the child from his home, subsequent activities will not be allowable for reimbursement of costs under title IV-E.



Kinship Navigators - Finally There is Federal Funding, But There's A Problem

Consolidated Appropriations Act (2018)

- ▶ Evidence Based Requirement
- ▶ Omnibus Consolidated Appropriations – page 955 (\$20,000,000 for kinship navigators).
- ▶ Refunded 2019-20
- ▶ May Be Refunded 2020-21?

3. Profile of Kinship Families

Kinship care refers to the **care** of children by relatives or, in some jurisdictions, close family friends (often referred to as fictive kin)...

[Kinship Care - Child Welfare Information Gateway,
https://www.childwelfare.gov/topics/outofhome/kinship/](https://www.childwelfare.gov/topics/outofhome/kinship/)

Kinship care is commonly defined as "the **full-time care**, nurturing, and protection of a child by relatives, members of their Tribe or clan, godparents, stepparents, or other adults who have a family relationship to a child."

[About Kinship Care - Child Welfare Information Gateway,
https://www.childwelfare.gov/topics/outofhome/kinship/about/](https://www.childwelfare.gov/topics/outofhome/kinship/about/)



How Do We Describe Kinship Caregivers?

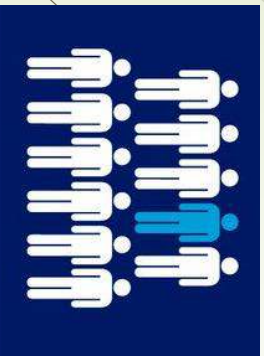
- ▶ Extended Family Members (U. S. Supreme Court)
- ▶ Consanguinity
- ▶ Blood, Marriage, Adoption
- ▶ Fictive (proving relationship?)
- ▶ Legal Terms:
 - ▶ In loco parentis, “person acting as a parent”, case law descriptions, etc.



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
- ▶ Mathematics (2 minus one minus one = 0)
- ▶ Other Unfortunate Circumstances

Who Are The Children In Kinship Care?

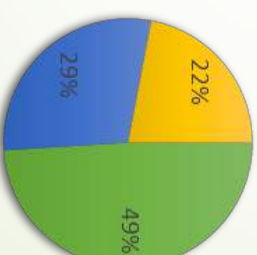


Prevalence:
1 in 11 of all children will live in a kinship home during childhood

1 in 5 black children live in a kinship home

Age:

- 49% of children are under the age of 6
- 29% are between 6-11
- 22% between 11-17



■ Under Six ■ Six to Eleven ■ Twelve to Seventeen

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
- ▶ 36% of households have an income of less than \$20k/year (CHSR study)
- ▶ Race:
 - ▶ 45% Caucasian
 - ▶ 28% African American
 - ▶ 27% Hispanic





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**

Information retrieved from: decf.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:

- health (46%),
- consumer and finance (45%),
- income maintenance (28%),
- **children and custody (27%),**
- family (26%),
- employment (26%), and
- education (25%).”

Legal Services Corporation. 2017. *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*. Prepared by NORC at the University of Chicago for Legal Services, Corporation. Washington, DC.



Need For Legal Support for Kinship Families

- ▶ How kin become caregivers:

Public Care

- ▶ **Foster Care** – 140,000 kinship children)
- ▶ **CPS facilitated** (N-Docket/Safety Plans) – Unknown?

Private Care (no CPS involvement) – 2.6 million

Common Public Legal Issues

No Formal Removal (Safety Plans)

- ▶ Private Custodial Options
- ▶ No Pathway into Foster Care

Upon Removal

- ▶ Notice to Relatives
- ▶ Informed about “Options” - Dissuasion
- ▶ Non-Party to Abuse/Neglect Proceedings
- ▶ Diverted from Foster Care, but Abuse/Neglect Proceeding?
- ▶ Alternatives to Foster Care



Common Public Legal Issues

- ▶ Defining Imminent Risk = Candidate
- ▶ Availability and Access to Preventive Services
- ▶ Problems When Care Moves to Private
 - ▶ Informed about Non-Parent (Child Only) Grant
 - ▶ Informed about Non-Department Resources
 - ▶ Access to records



Why Do Kin Not Become Foster Parents?

Child Welfare Placements

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

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
 - ▶ Petitions without Parent Consent
 - ▶ Pro Se
 - ▶ Standing
 - ▶ Standards
 - ▶ Procedures
 - ▶ Orders
- ▶ Enabling Caregivers to Care



5. Do Kin Have a “Right to Care”?

Kinship Family Rights

- Opportunity to Care
- Caregiving

Thesis from Wallace, G. W. (2016). A FAMILY RIGHT TO CARE: CHARTING THE LEGAL OBSTACLES.

GrandFamilies: The Contemporary

Journal of Research, Practice and Policy, 3 (1).

Available at:

<http://scholarworks.wmich.edu/grandfamilies/vol3/iss1/7>

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

- Visitation Can Be Disruptive
- Multiple Court Appearances
- Threatening
- Money
- Three Generations – Dynamics

Why Talk about a Right to Care?

State is Ultimate Decider:

- Family and Child Welfare Court Proceedings
- Child Welfare Officials
 - Perceived Unfairness
 - Perceived Exploitation.



6. “Right to Counsel” of Kinship Caregivers

- ▶ Fundamental U. S. Sp. Ct. parent right and progeny
- ▶ Extended Family Fundamental Rights
- ▶ Assignment of Counsel

Right to Counsel?

- No Absolute Right to Counsel for Parents in Termination Proceedings:
Lassiter v. Dept. Of Social Services Durham County, North Carolina,
101 S.Ct. 2153 (1981)
Case by Case Decision
Can Apply to Kin?
- But State Constitutions may require counsel for indigent parents!
State Constitutions/Assigned Counsel Statutes
For Parents, but Can Apply for Kin?
- Kinship Caregiver Petitioner Right to Counsel?



“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?

- ▶ 2006 ABA Resolution 116A
- ▶ AMERICAN BAR ASSOCIATION: Directory of Law Governing Appointment of Counsel in State Civil Proceedings



Civil Gideon?

- ▶ New York Family Court Representation
 - ▶ History of Assigned Counsel
 - ▶ Statute – Family Court Ac Section 262
 - ▶ 2019 Court Administration “Parent Legal Representation Commission”
 - ▶ Non-Parent Representation
- ▶ Current Legal Assistance

Civil Gideon?

- ▶ Washington D. C.
- ▶ **Categorical Right to Appointment of Counsel (Court funding to pay attorneys for indigent per “in forma pauperis”)**
 - ▶ Parents, Children (GAL), and Certain Third-Party Caregivers Designated as a Party in Neglect, State Adoption, Guardianship Cases
 - ▶ Juvenile in Delinquency Cases
 - ▶ Ward in Adult Protective Proceedings
 - ▶ Party Charged with Civil Contempt (Prior to Incarceration)
 - ▶ Individual Subject to Civil Mental Health Commitment Proceeding
- ▶ **Discretionary Right to Appointment of Counsel (Court funding to pay attorneys)**
 - ▶ Special Education Attorney for Child in Neglect Proceedings
 - ▶ Certain Petitioners (incl minors) in Civil Protection Order Cases (Domestic Violence)
 - ▶ Minor Respondents in Civil Protection Order Cases
 - ▶ Parents and Children (GAL) in Private Adoption Proceedings
- ▶ **Discretionary Right to Appointment of Counsel (but no funding to pay attorneys)**
 - ▶ Parents, Third Party Caregivers, and Child (GAL) in Custody Cases

Civil Gideon?

- ▶ **DC Access to Justice Act of 2017**
- ▶ Legislation enacted with a broad mandate to provide "a right to counsel to low-income individuals or groups in civil cases involving fundamental human needs"
- ▶ Fundamental human needs defined to include: preservation of liberty (immigration detention and deportation); housing; safety (protection from domestic violence); family integrity (child custody and visitation); health care; nutrition; education; income (access to public benefits and wages); and a meaningful opportunity to obtain employment
- ▶ 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
- ▶ Allocates funding to legal services organizations to provide pro bono representation to low-income individuals in these cases

Civil Gideon?

- ▶ [Glisson v. D. O., 847 F.3d 374 \(6th Cir. 2017\)](#): Private Right of Action to Seek Foster Care Payments (Grandmother approved)
- ▶ Federal Child Welfare Act confers upon foster parents an individually enforceable right to foster care maintenance payments that is enforceable under § 1983; absent resort to § 1983, foster families possess no federal mechanism to ensure compliance. Social Security Act § 472, [42 U.S.C.A. § 672\(a\)\(1\)](#); [42 U.S.C.A. § 1983](#).

7. Case Study #1

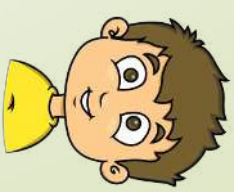


- ▶ Isaiach was born premature as a result of his mom's substance use and he has withdrawal symptoms
- ▶ Isaiach has multiple complications and requires a feeding tube
- ▶ Isaiach's father is unknown. Isaiach's mother, Carla, is 17-years-old and had been living with friends before Isaiach's birth
- ▶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

Questions:

- ▶ (1) What should Gwendolyn do to make sure she can get Isaiach 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?
- ▶ (2) 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 agrees to stay inpatient until she can get her medications adjusted and she is able to manage her daily affairs
- ▶ 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!

