

Grandparents as Kinship Guardians: Legal Aspects

Description/Etiology

In recent decades there has been a dramatic increase in the number of grandparents raising grandchildren. This arrangement is often referred to as “kinship care.” Kinship guardians usually fall into one of three categories: informal kinship care, voluntary kinship care, and formal kinship care (Child Welfare Information Gateway, 2016; National Kinship Alliance for Children, n.d.). Informal kinship care refers to arrangements made by parents, grandparents, or caregivers on a voluntary basis. This arrangement does not involve the child welfare system or juvenile court (Child Welfare Information Gateway, 2016). Voluntary kinship care refers to children placed in the care of their grandparents and the child welfare system is involved, but the state does not take legal custody of the child. This arrangement usually involves the parents voluntarily placing their children with grandparents, often to avoid juvenile court intervention. For instance, if a parent is incarcerated or entering substance use treatment program a grandparent may agree to take placement of the child until the parent is available to resume care of the their child. Parents may be required to sign a voluntary placement agreement with the child welfare agency when the child is placed with his or her grandparents. Formal kinship refers to children placed with his or her grandparent and the state takes legal custody of the child (Child Welfare Information Gateway, 2016).

In the United States and other countries, it is often anticipated that grandparents will provide care for grandchildren when their adult children are unable to do so. This cultural expectation is reflected in a growing preference worldwide within the child welfare system for kinship care rather than foster care or other state care facilities and services. As a result, many countries have seen exponential increases in the number of children being placed in the care of their grandparents. In some countries, such as China, adults may leave their children in the care of grandparents because they must migrate from rural areas to seek work in urban areas in which it is too expensive for their family to live. In addition, grandparents frequently take custody of grandchildren when there are severe emotional or mental health problems, drug and alcohol abuse, and/or incarceration within the grandchild’s immediate family.

The circumstances that result in grandparents caring for grandchildren are often problematic and traumatic for those involved; grandparents’ relationships with their adult children may have broken down. Grandparents who care for their grandchildren by informal arrangement have few legal rights and may fear having their grandchild returned to harmful conditions. In such cases, formal kinship care may be initiated and the state or province takes legal custody of the child. Although the state has legal custody the grandparents may have the right to make any necessary medical or educational decisions on behalf of their grandchild. When grandparents care for grandchildren, parents may have relinquished their rights or a court may have terminated the parents’ rights. Once parental rights have been terminated the grandparents can take legal guardianship or legally adopt the child. It is important to note that custody and guardianship may have different definitions in different states and countries. Adoption transfers full legal rights to the grandparent with responsibility for the grandchild. In the United States, depending on their state of residence, grandparents may have the right to make some medical and educational decisions for grandchildren without formal legal custody or guardianship.

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For many grandparents, obtaining custody of their grandchild is their first encounter with the legal system, and it can be bewildering. In the United States, legislation funds kinship navigator programs that help grandparents better understand the system and the resources available to them. Finding legal assistance can be difficult and it can be prohibitively expensive. For those with very low incomes, legal aid is available but there are often waiting lists for services. Legal aid is not available to all, and those with a small income may be ineligible for legal aid services. Social workers need to assess the needs of each family and refer accordingly. An important practice goal may be to help grandparents repair damaged relationships with their adult children. Support groups with peers are especially helpful to grandparents raising grandchildren.

Facts and Figures

In the United States, an estimated 7.3 million grandchildren under 18 years old lived with their grandparents in 2015 (United States Census Bureau, 2015). In the same year 2.6 million grandparents were responsible for the basic needs of their grandchildren (i.e., food, shelter, and clothing) (United States Census Bureau, 2017). According to the 2015 census, 509,922 grandparents responsible for grandchildren under the age of 18 had income below the poverty level (United States Census Bureau, 2017). In 2018 approximately 52% of children in Australia in out-of-home care were in kinship homes and the majority of placements were with one or more grandparents (Australian Institute of Health and Welfare, 2019).

Risk Factors

Grandparents taking on responsibilities for their grandchildren are at risk for increased stress, anxiety, and depression (Whitley et al., 2016; Young & Sharpe, 2016). Many grandparents take on the custodial role of their grandchildren unexpectedly due to substance abuse, mental health issues, disability, incarceration, or death of the biological parents. Added to this may be financial difficulties, conflicts over parenting styles, challenging behaviors of the grandchildren, and disability or other limitations for both the grandchild and the grandparents. Grandparents residing in rural areas may be challenged by problems with transportation, poverty, lack of childcare options, limited job opportunities, and few support services. Grandparents can become socially isolated from their peers who are not raising grandchildren, which can lead to an increased risk for depression and suicide. Dysfunctional and negative relationships with family members increase the risk of negative outcomes for children (e.g., delinquency, poor school performance).

Signs and Symptoms/Clinical Presentation

Grandparents who are caring for their grandchildren may feel isolated from their support networks of family, friends, and religious institutions. They may display depressive symptoms, which in some cases may include suicidal ideation. There can be anxiety disorders or signs of dementia. Grandparents might turn anger inward or project it onto their child or grandchildren. They may experience sleep disturbances. Medical problems may worsen with the stresses associated with the caretaking role. The grandparent may also withdraw from his or her support network of friends, family, and religious institutions.

Social Work Assessment

› **Client History**

- Complete a comprehensive biopsychosocial-spiritual assessment to include information on physical, mental, environmental, social, financial, and medical factors as they relate to the grandparents, children, and family, including the following:
 - Explore cultural beliefs about childrearing and parental responsibilities with the client
 - Identify stressors: financial and other responsibilities; single grandparenting role; concerns about the parent and the relationship between parent and grandparent
 - Determine how the grandchild's behavior and school adjustment contribute to the caregiver's functioning
 - Ask about the relationship between the child and the biological parent(s)
 - Assess the grandparents' medical history and whether they are receiving adequate healthcare services
 - Explore the history of the relationship with the grandparents' adult children
 - Explore mental health history and treatment
 - Ask about any history of suicide or suicide attempts in the family
 - Identify any symptoms of confusion or cognitive dysfunction
 - Identify other social service systems in which the grandparent might be involved because of his or her parenting role, such as the criminal justice system or child protective services
 - Genograms are a helpful tool to evaluate and assess client service needs

› **Relevant Diagnostic Assessments and Screening Tools**

- The Beck Depression Inventory is a 21-item self-report diagnostic and assessment tool. It also helps determine if depression is severe enough to require treatment
- The Geriatric Depression Rating Scale, comprising 30 questions, is a reliable geriatric screening test for depression
- Hamilton Anxiety Rating Scale (HAM-A), comprising 14 items, is a reliable screening test to measure the severity of anxiety symptoms
- The Parenting Stress Inventory (PSI) is a 120-item inventory to evaluate the magnitude of stress in three major domains: child characteristics, parent characteristics, and situation/demographic life stress

› **Laboratory and Diagnostic Tests of Interest to the Social Worker**

- No laboratory tests are applicable

Social Work Treatment Summary

Social workers should be aware of their own cultural values, beliefs, and biases and develop specialized knowledge about the histories, traditions, and values of their clients. Social workers should adopt treatment methodologies that reflect their knowledge of the cultural diversity of the communities in which they practice (National Association of Social Workers [NASW], 2015).

Culture influences the ways older adults fulfill grandparent responsibilities and the expectations they have of parents. A child-centered, culturally responsive, relationship-supportive, strengths-based approach is recommended for both clinical practice and service delivery (Zuchowski et al., 2019). Genograms are considered an essential tool in collecting and assessing client information and planning interventions. Generally, grandparents benefit from help with accessing support systems (e.g., help with social service program eligibility and other requirements), legal assistance (e.g., custody), medical insurance, emotional well-being, assisting the parent(s) of the grandchildren they are caring for, and structured activities for the grandchildren. Assisting grandparents in restoring their broken relationships with their adult children may be an important clinical goal, if there are relational issues. Support groups can enhance interpersonal learning, provide a safe environment for grandparents to share issues, and provide information that links grandparents to other services. Cognitive therapy can assist the client to identify distortions in thinking to help change thoughts, feelings, and actions. School counseling can help the children of grandparents with educational and support system referrals. Grief and loss support groups can provide an environment in which individuals, couples, and families can process their feelings. Trauma-informed parenting is an approach that can help grandparents recognize the effect of trauma on a child and help to ensure that they don't misinterpret the child's behavior. Children that have experienced trauma may exhibit behaviors such as increased aggression or acting out as a survival response used to adapt to their environment (National Kinship Alliance for Children, n.d.). Treatment goals include establishing a therapeutic relationship, improving immediate safety (e.g., health, relationships, environment), identifying how the trauma affects the child's current functioning, and helping the child develop adaptive ways of coping (e.g., relaxation, meditation, exercise).

Social workers should practice with awareness of and adherence to the social work principles of respect for human rights and human dignity, social justice, and professional conduct as described in the International Federation of Social Workers (IFSW) Statement of Ethical Principles, as well as the national code of ethics that applies in the country in which they practice (IFSW, 2018). For example, in the United States, social workers should adhere to the NASW Code of Ethics core values of service, social justice, dignity and worth of the person, importance of human relationships, integrity, and competence; and become knowledgeable of the NASW ethical standards as they apply to grandparents as kinship guardians and practice accordingly (NASW, 2015).

| Problem | Goal | Intervention |
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| Grandparent/s considering custody, guardianship, or adoption of a grandchild or grandchildren | Fully informed decision | Ask about the client's cultural background; about how he or she thinks children should be raised, about his or her expectations of parents, and what he or she believes to be parental responsibilities; identify stressors; explore legal issues; discuss physical and mental health problems within the family. Refer for legal advice |
| Grandparent raising a grandchild has feelings of helplessness, hopelessness, worthlessness; withdrawal from social support; lack of spiritual or religious connection | Provide support and assist in developing new coping skills | Provide interventions that aim to alleviate the feelings of hopelessness and helplessness. Determine how the client perceives his or her circumstances. Decrease isolation; connect with support groups for grandparents raising grandchildren; encourage reaching out to spiritual institutions if appropriate |
| Grandchild in the care of his or her grandparents is exhibiting maladaptive and/or disruptive behaviors | Reduce problem behaviors, teach and reinforce prosocial skills and behaviors | Individualized behavioral strategies focused on reinforcing positive behaviors, individual and group skills coaching for the grandchild |

Applicable Laws and Regulations

- › In the United Kingdom the Children's Act of 1989 introduced the concept of "parental responsibility," defined as "all the rights, duties, powers, responsibilities and authority which, by law, a parent has in relation to a child and his property." This act sets out how adults other than parents, such as grandparents, can obtain parental responsibility and how they can become guardians (legislation.gov.uk, n.d.)
- › In the United States, Temporary Assistance for Needy Families (TANF) is a federally funded cash assistance program for low-income families. TANF is also used to support kinship programs and to provide monthly stipends for kinship caregivers. TANF supports available to grandparents may include Medicaid and childcare assistance. Grandparents should check with their state TANF office to determine state-specific eligibility requirements
- › In the United States, the Fostering Connections to Success and Increasing Adoptions Act of 2008 requires relatives be notified once a child is removed from the custody of his or her parents and provides funds for kinship navigator programs for grandparents. This legislation also promotes permanent placement of children with relatives, supports maintaining connections with siblings and family, improves outcomes and transitions for older youth, and improves education stability and coordination of care for children in foster care (North American Council on Adoptable Children, 2017)
- › In the United States, the Indian Child Welfare Act states that Native American children are to be placed with family members or tribal members before being placed in a foster home. Social workers should educate Native American grandparents about their rights under this law
- › A 2010 court ruling in Great Britain requires that custodial grandparents receive the same state wages as foster parents. The 2008 U.S. Fostering Connections to Success and Increasing Adoptions Act extends a range of federal support to grandparents raising grandchildren

- › Each country has its own standards for cultural competency and diversity in social work practice. Social workers must be aware of the standards of practice set forth by their governing body (National Association of Social Workers, British Association of Social Workers, etc.), and practice accordingly

Available Services and Resources

- › U.S. Legal, Inc., <http://legalaid.uslegal.com>
- › Legal Information for Families Today (LIFT), <http://www.liftonline.org>
- › Legal Services Commission UK, www.gov.uk/legal-aid
- › AARP, “Grandparents Raising Grandchildren,” <https://www.aarp.org/relationships/friends-family/info-08-2011/grandfamilies-guide-getting-started.html>
- › Grandparents Plus, <http://www.grandparentsplus.org.uk>
- › Generations United, <http://www.gu.org>
- › Grandfamilies.org, <http://www.grandfamilies.org/Resources>
- › Raising Children Network, <https://raisingchildren.net.au/grown-ups/grandparents>

Food for Thought

- › In the United Kingdom, financial support for grandparents may match that of foster parents under certain circumstances. Grandparents should contact the local authority for more information
- › In the United States, grandparents can become licensed foster parents, making them eligible for foster care payments while caring for a grandchild. Many choose not to become licensed, because their grandchild may not be eligible for foster care; they may be reluctant to engage with the child welfare system; fostering may further strain the grandparents’ relationship with their adult child; or they may have concerns about the temporary status of the arrangement and fear having the child removed from their care
- › Social support for grandparents can act as a buffer against stress and help improve quality of life for grandparents raising grandchildren (Whitley et al., 2016; Chan et al., 2018; Shovali et al., 2019)
- › Intergenerational services promoting a healthy lifestyle (e.g., exercise, healthy eating) may help mitigate health issues of grandparents and grandchildren (Young & Sharpe, 2016) Grandparents without legally recognized custody may have difficulty accessing services and information about the child(ren) they are raising, particularly from schools (Lee, 2017)

Red Flags

- › If a grandparent is informally caring for a grandchild and fears the child will be returned to an unsafe environment, it is recommended that a legal relationship between the grandparent and grandchild be established
- › Grandparents may not be aware of the government benefits for which they are eligible
- › The unanticipated role of surrogate parent or primary caregiver disrupts the normal life cycle for an older adult. A considerable number of cross-cultural studies have found higher levels of depression and anxiety among grandparents who take on these new roles (Whitley et al., 2016)
- › Housing is a critical need for grandparents caring for their grandchildren
- › Grandparents often neglect their own health and well-being in favor of supporting their grandchildren
- › Stigma can deter some grandparents from seeking support from public programs

Discharge Planning

- › Ensure that grandparents have an understanding of their legal rights and are connected to a local legal agency. Encourage grandparents to access local resources through social services for grandchildren (e.g., health insurance, food stamps) if eligible
- › Grandparents who are caring for their grandchildren may require ongoing support. The social worker should assess the cultural and familial supports of the grandparent and encourage the grandparent to draw upon existing informal supports
- › Encourage grandparents to connect with other grandparents in similar situations

DSM 5 Codes

- › 309.24 – Adjustment Disorder, With Anxiety
- › 309.0 – Adjustment Disorder, With Depression
- › 296.20 – Major Depressive Disorder, Single episode, Unspecified