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## FISCAL IMPACT REPORT

SPONSOR Lopez ORIGINAL DATE 2/21/2017  
 LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Grandparents Raising Grandchildren SB 446

ANALYST Chenier

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	\$200.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Similar to appropriations in House Bill 2, and House Bill 107

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Aging and Long-Term Services Department (ALTSD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 446 appropriates \$200 thousand from the general fund to ALTSD to create a statewide network of services and supports to grandparents raising grandchildren, including general support services, parent training, support groups, case management, social activities, and enrichment activities for children.

### FISCAL IMPLICATIONS

The appropriation of \$200 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY18 shall revert to the general fund.

### SIGNIFICANT ISSUES

In New Mexico, more than 54,000 grandparents report they are responsible for their grandchildren who are living with them. Children living with kinship caregivers experience fewer changes in living situations, are more likely to live with their siblings, have more positive

perceptions of their homes and exhibit fewer behavioral problems, than do children in foster care. The Aging & Long-Term Services Department contracts with Pegasus Legal Services for the provision of a guardianship legal helpline, education & outreach services and legal representation for kinship caregivers.

There are several federal programs that may provide funding for grandparents raising grandchildren. (Attachment)

EC/jle



Paper originally prepared for Generations United's Second National Symposium on Grandparents and Other Relatives Raising Children July 2004

## Financial Assistance for Grandparents and Other Relatives Raising Children

### NEEDS:

Nationally, approximately six million children live in households headed by grandparents or other relatives. About 2.5 million children live in these households without either parent present, generally putting the relative in the position of raising the child.<sup>1</sup> A little over 20% of relative-headed households live in poverty.<sup>2</sup> Sometimes the grandparent or other relative caregiver is retired and living on a fixed income. Sometimes they are working, but need help finding and paying for quality child care. Kinship caregivers almost never anticipated that they would be raising the children in their care and thus may need financial assistance to meet the needs of the children, at least initially. On the other hand, not all relative caregivers need financial assistance.

### CURRENT RESPONSES:

There are several potential sources of financial assistance for relative caregivers: (1) Temporary Assistance for Needy Families (TANF);<sup>3</sup> (2) foster care; (3) adoption assistance; (4) subsidized guardianships and (5) child support payments. Each of these sources of support has advantages and disadvantages and caregivers, as well as those who work with them, need to evaluate which options are available in a given case and which best meet the needs of a particular family. In addition to these supports, social security benefits or tax credits may be available to help certain kinship care families.

#### *TANF*

As the name suggests, Temporary Assistance for Needy Families provides temporary assistance to families with very low incomes. Each state determines the income eligibility for its TANF program. States also determine the amount of assistance to be provided to families.<sup>4</sup> There are two basic types of grants a relative caregiver can receive under TANF. The first is a "child-only" grant, which considers only the needs and income of the child. Because few children have income or assets of their own, almost all relative caregivers can receive a child-only grant on behalf of the children in their care. Unfortunately, child-only grants are typically quite small and may be insufficient to meet the needs of the child. In 2001, the average grant was about \$7 per day for one child, with only slight increases for additional children.<sup>5</sup>

The second type of TANF grant for which relative caregivers may be eligible is a "family grant." One of the purposes of TANF is "to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives."<sup>6</sup> Thus, relative caregivers who meet the state's income criteria are eligible to receive a grant that addresses their needs, as well as those of the child. Although these grants are larger than the child-only grants, federal law imposes a 60-month time limit and work requirements on such grants.<sup>7</sup> Thus, TANF family

grants may not be appropriate for retired relative caregivers or for caregivers who will need assistance for more than 60 months.

### ***Foster Care Payments***

In addition to TANF, grandparents and other relatives caring for children may be eligible for assistance through the child welfare system. In most states, kinship caregivers can receive foster care payments on behalf of the children in their care if the children are involved in formal foster care. However, some children are ineligible for such help because grandparents or other relatives stepped in before the child was abused or neglected and thus kept the child out of foster care. Additionally, foster care is intended to be *temporary*, while permanent plans are made for the child in accordance with the Adoption and Safe Families Act of 1997 (ASFA).

Foster payments are typically higher than the TANF child-only payment a grandparent or other relative could receive on behalf of the child in their care. In fact, the foster care payment is almost always higher than a TANF family grant. Foster payments also multiply (e.g. double, triple) as the number of children cared for increases. However, many relative caregivers who are caring for children who are eligible to receive foster payments prefer not to be involved with the child welfare system. They are uncomfortable with the oversight of the child welfare agency and the court. Kinship caregivers may not want to be subject to criminal background checks or home studies and they are often fearful that the agency will remove the children from their homes if disagreements arise.

States or counties make foster care payments to foster parents on behalf of children in their care. Sometimes the payments are funded solely with state or county dollars and sometimes the child is eligible for the federal foster care program and states may seek federal funds to cover a portion of the costs associated with those children. Generally, federal foster care payments under Title IV-E of the Social Security Act are available only for very poor children.<sup>8</sup>

Eligibility for the federal foster care program is important because it may impact the amount of financial assistance available to relative caregivers. Under federal law, a relative who is a licensed foster parent for a child who is Title IV-E eligible must receive the same foster care payment as non-kin foster parents.<sup>9</sup> All states except, California and Oregon, use state or local funds to provide foster care payments to licensed, relative foster parents caring for children who do not meet the IV-E income criteria. In addition, states may provide assistance, with state or local funds, to unlicensed relatives caring for children in foster care. In some states, however, unlicensed relative foster parents are simply referred to TANF for assistance.<sup>10</sup>

### ***Adoption Assistance Payments***

Adoption assistance payments may also be available to relative caregivers who choose to adopt the children in their care. All states provide adoption assistance on behalf of certain children who are adopted from the child welfare system.<sup>11</sup> States may receive federal reimbursement, through Title IV-E, for a portion of the adoption assistance payments made on behalf of very poor children who have "special needs."<sup>12</sup> "Special needs" are defined by the state, but generally include characteristics or conditions that make it difficult to place the child with adoptive parents without a subsidy.<sup>13</sup> As with foster care, Title IV-E eligibility can make a difference in the amount of the subsidy available and in whether other benefits, like eligibility for Medicaid, come with the subsidy.

### ***Subsidized Guardianship***

For relative caregivers who do not want to adopt the children in their care, legal guardianship can provide the relative caregiver with the rights and authority needed to properly care for children.<sup>14</sup> Guardianship itself does not address the need for financial assistance,<sup>15</sup> but 35 states and the District of Columbia now offer financial assistance for guardians.<sup>16</sup>

Subsidized guardianship programs vary from state to state. Most are available only for relatives who obtain legal guardianship of children who have been in the foster care system for some period of time. These programs typically require that reunification and adoption be ruled out as options before guardianship assistance is available. Subsidized guardianship programs may require criminal background checks and home studies. In some states, subsidies for guardians are available only when the children are of a certain age. In a few states, subsidized guardianships are available only for children with special needs or for children who meet certain income tests. Typically, subsidized guardianships are subject to only minimal oversight (e.g. an annual report to the court or an annual meeting with the child welfare agency). The amount of the subsidy varies from state to state. Usually, the subsidy amount is somewhere between the amount of a TANF child-only grant and a foster care payment.<sup>17</sup> Federal dollars are generally not available to provide guardianship subsidies, but seven states have gotten waivers from the federal government to use Title IV-E funds to provide such subsidies.<sup>18</sup>

### ***Child Support Payments***

Until a court has terminated parental rights, a parent generally remains financially responsible for his or her children. Every state has a child support enforcement agency that typically helps custodial parents collect child support from non-custodial parents. However, this office can also assist grandparents and other relatives who wish to obtain child support on behalf of the children in their care.<sup>19</sup> The amount of the support is based on the needs of the child and on the resources and abilities of the parent(s) to pay. Some kinship caregivers do not want to pursue child support because they are uncomfortable initiating what can become an adversarial process that might result in the child's parent(s) having their driver's license or business license revoked or being incarcerated for failure to comply with child support orders. Sometimes grandparents and other relative caregivers who are caring for children because the children's parents were violent are fearful that the child support process will lead to additional violence. These relatives may choose not to pursue child support collection.

However, when grandparents or other relatives are receiving TANF benefits on behalf of a child, they must assign their rights to child support to the state. In most states kinship caregivers must cooperate with the child support agency unless they can demonstrate that seeking child support is potentially harmful and they have "good cause" not to cooperate.<sup>20</sup> In such cases, child support collection will not be pursued or will be pursued in ways that protect the safety of the caregiver and the children. Kinship caregivers who receive federally funded foster care payments may be required by the child welfare agency, *where appropriate*, to sign over their rights to child support and to work with the child support agency.<sup>21</sup> Here too, though, "good cause" exceptions may be made. Under current law, most of the child support collected for children receiving TANF or foster care payments is kept by the state to recoup the costs of providing assistance. However, states may pass through to kinship caregivers any or all of the child support collected. Generally, only a modest amount is passed through, often no more than \$50 per month.

### ***Social Security Benefits***

The **Supplemental Security Income (SSI)** program provides benefits for individuals who are elderly, blind or have disabilities and who have limited income and assets. SSI is an important source of assistance for grandparents and other relatives raising children who are blind or who have other serious disabilities. This program, administered by the U.S. Social Security Administration (SSA), provides a cash benefit to the child. To qualify for benefits, the child must be under 18 and meet the SSI disability, income, and asset criteria. Under a recent U.S. Supreme Court decision, *Washington v. Keffler*,<sup>22</sup> child welfare agencies who petition for SSI on behalf of children in their custody can, in certain circumstances, receive and keep all or a portion of the child's SSI payments to cover the costs of providing for the child.

Children being raised by grandparents may be eligible for social security dependent benefits under **Old-Age Survivors and Disability Insurance (OASDI)** if the child's parent is collecting retirement or disability insurance benefits or if the parent was fully insured at the time of his or her death. Generally, these benefits are available for children under the age of 18. Grandparents and other relatives can apply for benefits on behalf of the child based on the work record of the child's parent. If a child is not receiving dependent benefits based on a parent's work record, the child may qualify for dependent benefits based on his or her grandparent's work record. Generally, the grandparent must be raising the child because the child's parents are deceased or disabled. Additionally, the child must have begun living with the grandparent before the age of 18 and have received at least one-half of his or her support during the year prior to the grandparent becoming eligible for benefits. Children raised by relatives other than grandparents may qualify for dependent benefits only if they are legally adopted by that caregiver.

### ***Tax Credits***

The **Earned Income Tax Credit (EITC)** may be available for certain low or moderate income relative caregivers who are working. This tax credit is refundable so that even workers who do not earn enough to pay taxes can get cash from the IRS. The amount of the credit depends upon the income earned and upon the number of qualifying children in the family. Qualifying children include a worker's sons, daughters, stepchildren, grandchildren, brothers, sisters, stepbrothers and stepsisters, (as well as any descendants of these relatives). Such children must have lived with the working relative for more than half the year or have been placed with this relative by a child welfare agency. The children must be under age 19 or under age 24 if they are full-time students, although children of any age who have permanent disabilities are considered qualifying children.

The **Child Tax Credit** of \$1,000 per child may also be available to some grandparents and other relatives raising children. This credit can generally be claimed for sons, daughters, stepchildren, grandchildren, brothers, sisters, stepbrothers, stepsisters, (as well as any descendants of these relatives), who are under age 17 and are dependents of the taxpayer. Unlike, the EITC, the child tax credit is only partially refundable.

The **Child and Dependent Care Tax Credit** may also be available to kinship caregivers who incur child care expenditures in order to work. This credit is generally available for dependent children under age 13 or older children who are not mentally or physically able to care for themselves. The credit is based on actual child care expenditures, up to a certain maximum. This credit is not refundable and thus will be of little use to relative caregivers who do not pay taxes.

## **UNMET NEEDS:**

Although there are several potential funding streams to which grandparents and other relatives can turn for financial assistance in raising children, two of the major programs (TANF and foster care) were not designed with relative caregivers in mind. For example, when the TANF program was created in 1996, the rhetoric was about getting able-bodied parents to work, not requiring a retired grandmother to go back to work so that she can receive financial assistance to care for a child she is keeping out of the foster care system. The notion of offering temporary support in such cases is contrary to the ASFA goals of building safe, loving, *permanent* homes for children.

Similarly, foster care was not designed for grandparents and other relatives raising children. Unlike non-kin foster parents, grandparents and other relatives often have no warning before the children are on their doorstep. While safety concerns are equally important for children living with kin and non-kin, conducting background checks, home studies, training and other licensing requirements can delay access to financial supports for relatives suddenly caring for a child. In addition, as with TANF, foster care is intended to be temporary, not permanent.

Subsidized guardianship programs can often be used to bridge the gap between foster care and TANF. The financial support offered in these programs may create a realistic alternative to TANF, foster care or adoption. Subsidized guardianship provides stability and permanency for the child, while also providing flexibility for the caregivers if the child's parent's situation improves. At the present time, however, most of the subsidized guardianship programs are available only for children who have been in foster care. They do not help grandparents and other relatives who have intervened before abuse and neglect occurred. Finally, even when financial assistance is available through TANF, foster care, adoption assistance, subsidized guardianship, child support, tax credits or social security, kinship caregivers often do not know the supports are available, nor do they know how to access them.

## **RECOMMENDATIONS:**

There are a variety of policy options that could better meet the financial needs of grandparents and other relatives raising children. Modifying existing support programs, at the federal, state, and local levels, would allow these programs to better meet the unique needs of kinship care families. In addition, greater collaboration between social service agencies, particularly TANF and child welfare agencies, could help to provide a package that meets the needs of a broad range of kinship caregivers, whether they are foster parents, legal guardians or simply kin with no other legal relationship to the children in their care.

For example, The Department of Human Services in El Paso County, Colorado has integrated its TANF and child welfare agencies in a way that addresses the needs of individual kinship care families. If a grandmother approaches the agency for help because grandchildren have been left in her care, a specialized kinship care team can immediately assess the family's needs, including safety concerns, and provide the grandmother with financial support, using TANF funds. If the grandmother and the kinship care team determine that it would be beneficial for the child welfare agency and the court to be involved in the case, the team will work with the grandmother to help her become a licensed foster parent and will support her with TANF funds in the interim. If the grandmother and the team determine that such formal involvement is not necessary, the grandmother can still receive financial support (and services). The amount of the financial

assistance is determined according to the needs of the individual family and can be as high as the foster care maintenance payment.<sup>23</sup>

Several steps can facilitate such a seamless approach to serving kinship care families. These steps include:

- Eliminating the federal time limit and work requirements applicable to TANF “family grants” where grandparents and other relatives are caring for a child whose parents are not able to care for the child.
- Increasing TANF “child-only” grants so that relative caregivers who do not meet the TANF “family grant” income criteria can receive adequate resources to meet the child’s needs.
- Expanding subsidized guardianship programs to cover grandparents and other relatives who care for children who are not involved with the child welfare system.
- Expanding Title IV-E to cover subsidized guardianships for all children exiting foster care to legal guardianships, so that state and local funds can be used to help other grandparents and other relatives raising children.
- Providing kinship navigator programs that help grandparents and other relatives access the services, benefits and supports for which they and their children are eligible.

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<sup>1</sup> Terry Lugaila and Julia Overturf, *Children and the Households They Live In: 2000 – Census 2000 Special Reports*, (Washington, DC: United States Census Bureau, February 2004).

<sup>2</sup> *Ibid.*

<sup>3</sup> TANF replaced the former Aid to Families with Dependent Children (AFDC) program or “the welfare program”, as it was more commonly known.

<sup>4</sup> Mark Greenberg and Steve Savner, *The Final TANF Regulations: A Preliminary Analysis* (Washington, DC: Center for Law & Social Policy, May 1999); Administration for Children and Families Office of Family Assistance, *Helping Families Achieve Self-Sufficiency: A Guide on Funding Services for Children and Families Through TANF*, (Washington DC: Department of Health and Human Services, 1999, available at: <http://www.acf.hhs.gov/programs/ofa/funds2.htm>).

<sup>5</sup> Craig W. Abbey, *Welfare Reform: TANF Cash Benefits*, (Washington, DC: Congressional Research Service, March 2001). See also, the Center for Law & Social Policy’s and Center on Budget and Policy Priorities’ State Policy Documentation Project at [www.spdp.org](http://www.spdp.org).

<sup>6</sup> 42 U.S. C. § 601.

<sup>7</sup> Federal law prohibits using federal funds to provide assistance to families in which an adult has received TANF assistance for 60 months. Adult recipients must engage in work activities within 24 months of receiving assistance or sooner if states deem them ready to engage in work. States are required to have 50 percent of their families participating in specified work activities for a certain number of hours per week. The number of hours depends upon the age of the youngest child in the home and upon whether the family is a two-parent family or a single-parent family. 42 U.S. C. §§ 602, 607, 608

<sup>8</sup> Eligibility for Title IV-E requires that (1) the child be removed from his or her home pursuant to a court order or voluntary placement agreement, (2) the state or local child welfare agency is responsible for the child’s placement and care, (3) the child meets the Aid to Families with Dependent Children (AFDC) eligibility criteria at the time of removal or within the six months prior to removal and (4) the child is placed in a licensed or approved foster home or child care institution. The AFDC criteria include a requirement that the child be living with a parent or specified relative and that he or she meet the income and resource limits in place in that state on July 16, 1996. If a voluntary placement agreement is used, the child can be eligible for federal foster care assistance for more than 180 days only if there is a court determination that such placement is in the best interest of the child. 42 U.S.C. § 672.

<sup>9</sup> *Youakim v. Miller*, 440 U.S. 125, 99 S.Ct. 957, 59 L.Ed. 2d 194 (1979).

<sup>10</sup> See Amy Jantz, Rob, Geen, Roseana Bess, Cynthia Andrews, & Victoria Russ, *The Continuing Evolution of State Kinship Care Policies*, (Washington, DC: The Urban Institute, 2002) for a review of state policies regarding foster care payments for relatives.

<sup>11</sup> Jeanette Wiedemeier Bower, *Forever Families: A Policy Analysis of Adoption Subsidy Programs in the United States*, (St. Paul, Minnesota: North American Council on Adoptable Children, July 2002).

<sup>12</sup> The child may either meet the AFDC criteria and removal criteria described in note 8 or the criteria for the Supplemental Security Income program (Title XVI of the Social Security Act).



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<sup>13</sup> 42 U.S.C. § 673

<sup>14</sup> See Ana Beltran, *Legal Options for Grandparents and Other Relatives Raising Children*, prepared for this symposium, for discussion of the rights and responsibilities associated with various legal relationships.

<sup>15</sup> The child's parents generally remain obligated to pay child support while the child is living with a guardian. However, many of the circumstances that lead to kinship care also make it unlikely that the parent can and will provide such support.

<sup>16</sup> MaryLee Allen, Mary Bissell, and Jennifer Miller, *Expanding Permanency Options for Children: A Guide to Subsidized Guardianship Programs*, (Washington, DC: Children's Defense Fund and Cornerstone Consulting, 2003); Children's Defense Fund, *States' Subsidized Guardianship Laws at a Glance*, (Washington, DC: Children's Defense Fund, October 2004).

<sup>17</sup> *Ibid.*

<sup>18</sup> Of the original seven states with waivers, five still have them. Delaware and Maryland have ended their waiver programs and are not accepting new children into the programs. They are using state funds to provide subsidies to children who were receiving them under the waiver. In addition to the original seven waiver programs, two additional states have been granted waivers and six more have applications pending. Children's Defense Fund, *States' Subsidized Guardianship Laws at a Glance*, (Washington, DC: Children's Defense Fund, October 2004).

<sup>19</sup> Federal law does not require that the relative caregiver have legal custody of the child to collect child support. However, some states have imposed that requirement.

<sup>20</sup> 42 U.S.C. § 608.

<sup>21</sup> 42 U.S.C. § 671(a)(17).

<sup>22</sup> *Washington v. Keffler*, 537 U.S. 371, 123 S.Ct. 1017, 154 L.Ed. 2d 972, 2003 Lexis 1735 (2003).

<sup>23</sup> Rutledge Q. Hutson, *A Vision for Eliminating Poverty and Family Violence: Transforming Child Welfare and TANF in El Paso County, Colorado* (Washington, DC: Center for Law & Social Policy, 2003).

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<http://www.childrensdefense.org/childwelfare/> or call 202-662-3568.*