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## A Tale of Two Grandmothers: Preventive Kinship Care in Tennessee

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## **A Tale of Two Grandmothers: Child Welfare, TANF, and the Need for More Support for Kinship Care in Tennessee**

*Elizabeth S. Black and Susan L. Brooks*

Ms. W., a 58-year-old single woman, raised four children of her own, and then decided to become a foster parent through the state of Tennessee.<sup>1</sup> She was approved as a foster care provider, and the Tennessee Department of Children's Services (DCS) placed five children in her home. Immediately, the family began receiving \$1,300.00 per month in foster care board payments, plus case management, medical, and mental health services, and clothing allotments—all provisions for children in foster care. Without warning, Ms. W.'s daughter in Michigan contacted her to request that Ms. W. take care of the daughter's five children. If Ms. W. could not take her daughter's children, they would end up in foster care in Michigan. Ms. W. informed DCS that she could no longer provide a home to the five foster children, and soon became the legal custodian for her five grandchildren. In seeking to provide for her own grandchildren, she learned that rather than \$1,300.00 per month, the only financial assistance available to her now was \$291.00 per month. Determined to care for her grandchildren, yet \$294 behind on her electric bill, Ms. W. sought additional assistance from community agencies. Everywhere she went she was told that if she could not afford to take care of her grandchildren, she should simply relinquish custody, and allow the children to be split up and cared for by nonrelatives in foster or group homes.

Another grandmother, Ms. M., age 56, petitioned the juvenile court for legal custody of her six grandchildren, who ranged in age from 3 to 11. Both parents of the children were struggling with drug addictions. Ms. M. had a solid 15-year work history with the same organization, and it made sense for her to maintain this job and her hard-earned salary. To keep her job, she needed childcare for her youngest two grandchildren, so she applied for subsidized childcare. She was placed 600th on the waiting list. Unfortunately, after months of waiting and struggling, Ms. M. was forced to relinquish custody of these two young children.

### **Falling Through the Cracks**

These grandmothers' stories illustrate the tragic reality about kinship families in Tennessee: hundreds of children are falling through the cracks between the welfare system and the child welfare system. Two recent federal laws—the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)<sup>2</sup> and the Adoption and Safe Families Act (ASFA)<sup>3</sup>—are exacerbating this problem. PRWORA has replaced the Aid to Families with Dependent Children program, which was somewhat more generous toward economically disadvantaged families, including informal kinship providers.<sup>4</sup> The new law shifts the emphasis from supporting dependent children to moving partici-

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pants from welfare to work. However, providing assistance to needy families to allow children to be cared for within their immediate or extended families remains a stated purpose for the use of Temporary Assistance to Needy Families (TANF) funds.<sup>5</sup> This program is administered through block grants made to the states.

States are given considerable flexibility and discretion as to how to allocate these federal funds. Tennessee established its program, known as Families First, under a waiver approved by the federal government prior to enactment of PRWORA. TANF funds in Tennessee have been dedicated solely to the Families First Program, which has focused almost exclusively on moving participants from welfare to work. Under this program, relatives caring for children are exempt from the work requirements, income eligibility, and time restrictions. However, they are not eligible to receive case management services, transportation, subsidized childcare, and other services made available to the participant group. The main assistance they can receive is known as a child-only grant, a monthly supplement provided to anyone who can demonstrate that he or she is the primary caregiver for a child. Currently, the amount of the child-only grant is \$140.00 for one child.<sup>6</sup> This amount increases in small increments with each additional child, but is capped at \$291.00 regardless of the number of children in the home. Relatives may also receive food stamps based on the number of children and family income. Additionally, the children are supposed to be covered by TennCare, Tennessee's Medicaid waiver program. Without case

management services, many relatives caring for children do not know the other benefits that would be available to them, namely food stamps and TennCare. Moreover, given the minimal amount of the child-only grant and the lack of subsidized childcare, many extended family members cannot afford to keep related children in their homes.

On the child welfare side, ASFA, with financial incentives weighted toward adoption and shortened time frames for achieving permanency, is making it difficult for children to remain with their birth or extended families. The federal law, which has now been incorporated into the states' laws including the state of Tennessee, requires, with limited exceptions, that the state file a petition to terminate the parental rights of every child who is in state custody for 15 months.<sup>7</sup> One of the permissible exceptions, which is listed in Tennessee and many other states, is "placement with a relative." ASFA thus could potentially provide an impetus for providing increased support to extended family members, particularly as a permanency option for children in state custody.<sup>8</sup> However, the federal financial incentives tied to ASFA are linked exclusively with the goal of adoption. Agencies are paid a certain amount per adoption, but receive no compensation if they return a child to his or her birth parents or place the child with a relative.<sup>9</sup>

In addition to financial incentives and shortened time frames, two other ASFA provisions are placing undue pressure on birth families and extended family members: the narrowing of the reasonable efforts requirement, and concurrent planning. Prior to

ASFA, states were accountable for making reasonable efforts to prevent the removal of children from their birth parents and to reunify families, even when removal was deemed necessary. ASFA, in contrast, lists a number of situations in which states do not have to make reasonable efforts, or, indeed, any efforts, toward family preservation.<sup>10</sup> Instead, states must show reasonable efforts toward permanency.<sup>11</sup> Further, states have broad discretion to designate certain cases for "concurrent planning," which means assigning two alternate goals from the outset of the case, such as reunification and adoption.<sup>12</sup> Given the high case-loads of the case managers who are charged with implementing these provisions, and the financial incentives for adoptions and the challenges of working successfully with birth parents, concurrent planning risks becoming a fast track to termination of parental rights and adoption.

Thus, while both TANF and ASFA present opportunities to support relative caregivers, Tennessee has chosen to focus on other priorities. Consequently, these children and families are not receiving adequate support from either system, with the net effect that more children are going into state custody and being placed in strangers' homes and institutions.

### Addressing this Critical Gap

To address this critical gap, for almost three years a grassroots coalition of community agencies and advocates has been trying to get both Tennessee's welfare agency, the Department of Human Services (DHS), and its child welfare agency, the Department of Children's Services (DCS), to

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focus more attention on this issue. This effort was spurred by the 1997 enactment of legislation known as the Kinship Foster Care Program.<sup>13</sup> This legislation clarifies that relatives caring for children who are in the state's custody may be eligible to become foster parents and, if approved, may receive services and financial assistance. The financial assistance given to kinship foster care providers may be significantly higher than what is available for relatives whose children are not in state custody. The foster care board rate is roughly \$300 for each child, regardless of the income of the foster parent. This amount is roughly twice as much as the child-only grant for a relative caregiver with one child. Moreover, the difference increases dramatically as the number of children increases. Additionally, kinship foster care providers receive access to other important services, such as mental health services and respite care services.

The most critical and controversial aspect of this program is that the children must be in the state's custody in order for the relatives to receive any assistance. Since the enactment of this legislation, caregiving relatives who already have legal custody of children in their families have been asking whether they can receive assistance through this program. This situation has become problematic from both a legal and a policy standpoint. Legally, there is a problem with the court taking jurisdiction over petitions in which relatives seek to relinquish custody merely for the purpose of receiving these benefits. Normally, there must be allegations that a child has been abused or neglected before a court hears a

case or considers placing a child in state custody. The argument can certainly be made that these children are in a relative's care for the exact same reasons children enter state custody, and that, in the absence of this relative caregiver, the children would have been neglected or abused. However, this argument does not fully resolve the jurisdictional problem. From a policy standpoint, the legislation presents the problem of creating a potential incentive to place children in state custody, given that so little has been offered on the noncustodial side, that is, to relatives who have legal custody themselves.

### Replicating Needed Programs

A natural response is to do what we have tried to get the state to do anyway: replicate some pieces of the generous services and supports offered to foster families on the noncustodial side. Since 1997, three agencies working together have implemented this approach on a small scale in Davidson County, Tennessee. Our collaborative project involves the Court Appointed Special Advocate (CASA) Program, Family and Children's Service, and Vanderbilt Legal Clinic.<sup>14</sup> We provide kinship families with help in accessing existing public benefits and private resources, individual and family counseling, support groups, legal consultation and representation, and emergency financial assistance.

The goal of this collaborative project has been to strengthen and empower extended family members to enable the family to care for their own children. Initially, our mission was to prevent children from entering foster care. We soon became aware that some

children and their relative caregivers need the level of support, particularly financial assistance, which is available only through the foster care system. We now focus on reaping the full benefits of the support available to these caregivers, given that Tennessee's current kinship care policies and practices are less than ideal. Accordingly, we are trying to help families that have a need for significant financial assistance and services, and that are willing to relinquish legal custody, gain access to the services available through the state's Kinship Foster Care Program.<sup>15</sup>

When we meet families, we inform them about what we have to offer compared with Kinship Foster Care. The overwhelming majority of families have chosen to try to provide for the children in their homes using our limited resources and support, rather than relinquishing custody or pursuing Kinship Foster Care. The high level of interest in our program has led us to believe that if substantial services are made available to relative caregivers on a statewide basis, we could prevent a significant number of children from ever entering state custody. Further, if additional services and support were available, many children placed with nonrelatives in foster or group homes could return to live with their extended families.

The lack of solid information and support available to relative caregivers has not been our only concern. Our experience in meeting and serving over 130 kinship families in Davidson County convinces us that the child welfare system in Tennessee needs to do a much better job of involving

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extended family members in planning and providing for the needs of abused and neglected children. Caseworkers and attorneys, who can help families access appropriate services and supports, must be familiar with the different options available to kinship caregivers. All of these ideas have evolved into the Relative Caregiver Bill, now pending in the Tennessee legislature.

### History of Tennessee's Relative Caregiver Bill

Prior to drafting of the Relative Caregiver Bill, members of our Davidson County collaborative project and other interested individuals, including kinship caregivers, began to have policy meetings. We established as a priority the idea of a program oriented toward prevention; that is, providing services to relatives, without children being in the state's custody. We invited leaders of children's advocacy groups, the local juvenile court judge and court personnel, and representatives of DHS and DCS, to meet with us. At the same time, we developed a contact list to reach out to individuals and groups we thought might be helpful. Included in this list was the Executive Director of the Select Committee on Children and Youth, a caucus of state legislators from both houses who share an interest in issues affecting children and families.

We attended a public hearing on the subject of kinship care held by the committee. Prior to the hearing, we arranged to have significant attendance by kinship caregivers. The committee chair requested that we submit a written proposal, which became our initial preventive kinship care legislation.

In crafting the legislation, we began by exploring the laws of other states that have implemented similar efforts. At that point, we were leaning in the direction of looking to TANF for our funding. We were aware of other possibilities, but quickly came to believe that TANF would be the best avenue. By tapping into TANF funds we could strengthen the coordination and links between welfare and child welfare programs. In addition, TANF funds were being underspent and underused because of the dramatic decreases in the welfare-to-work population. We learned that Tennessee, like other states, has built up a significant reserve fund of unspent TANF dollars. The federal government allows Tennessee and other states to maintain these funds in a separate account. However, because this is federal money, any unspent funds can be recalled by the federal government at any time. Some believe that if the money remains unspent by 2002, it will have to be returned to the federal government.

Our initial idea was to tap directly into this TANF reserve fund, which was estimated to have over \$100 million. Unfortunately, we had to shift gears late in the spring of 1999, when the federal government released new regulations limiting the permissible uses of the reserve funds. This eventually led us back to focusing on the primary TANF budget, which is being used mostly for welfare-to-work-related purposes.

One question that has been posed is whether DCS and DHS needed legislation at all. Why not simply create this program administratively? The answer is that when the Families First Program

was enacted, it included language creating a limit of three pilot programs. It was determined that the Relative Caregiver program would have to be considered a fourth pilot program.<sup>16</sup> Thus, legislation has been deemed necessary to clarify that the limitation on pilot programs under Families First is being removed for the purpose of creating this program.

We looked for models in other states in our efforts to focus on prevention and the use of TANF funding. Our initial proposal for a statewide program was modeled after Florida's new Relative Caregiver Program. Florida's program offers relatives who are approved up to 80 percent of the foster care board rate. We immediately modified Florida's idea to shift the emphasis from simply providing cash assistance to making available a range of services and assistance based on an individualized assessment of each situation. Florida is now focusing on expanding its program to provide other services as well. We also looked at California, Missouri, and Wisconsin, and a unique program in El Paso County (Colorado Springs) Colorado.

In response to the Select Committee's request, we submitted a proposal for a statewide program to prevent children from entering state custody by providing a range of services and financial assistance to capable extended family members who properly obtain legal custody of related children. We mentioned federal funding, but initially did not designate a source. The administration responded to our proposal by submitting a separate proposal for a pilot program to be funded up to \$1 million to serve one urban and

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one or two rural counties. After lengthy negotiations over many months, this eventually was transformed into a bill proposing pilot programs in two major urban and several rural counties, with funding of \$2 million to be drawn from the regular Families First budget. This is the version of the pending bill.

The initial language spelled out in some detail the types of services that needed to be included. The current proposal contains the provision that local communities will assess which agencies are best suited to provide the services, and what services are necessary to meet the needs of kinship providers in those communities. The legislation also proposes that DCS will accept proposals and will contract with the most appropriate community agency or agencies wherever a pilot project is established. The sum of \$250,000 is designated for several rural projects, which may be established in different parts of the state. Those sites have yet to be determined.

The remaining funds are to be divided between Davidson County (Nashville) and Shelby County (Memphis) according to the 1999 foster care population figures. This means that the remaining funds will be split roughly 40/60 between Nashville and Memphis. It should be noted that these pilot programs will serve a significant percentage of the families entangled in the foster care system in Tennessee. Shelby County alone accounts for one-third of the foster care population of the entire state.

The draft legislation states that the General Assembly's intent is to assess the state's ability to assist families in the pilot areas in providing care for related children

so those children need never enter foster care. DHS is "specifically authorized to provide funding assistance from its Title IV-A block grant" to DCS for the development and operation of this program by providing available Families First funds.

Passage of the bill would allow the pilot sites to offer qualified relatives services, which may include financial assistance, child care, counseling, information and referrals, parenting classes, support groups, respite care, homemaker services, and transportation. The relatives must be related through blood, marriage, or adoption, and must have been awarded legal custody by a proper court in Tennessee. To receive financial assistance, relatives must also meet a means test "and shall not have a total family income that exceeds by more than two times the federal poverty level adjusted for family size," and other eligibility criteria to be determined by DCS. The bill states that the program will need to report its results to the legislature by 2002.

### Conclusion

Looking toward the future, we have developed a vision of the wide-ranging supportive services we would like to see made available to vulnerable children and families in Tennessee, and a model of service delivery to those children and families. We would like to see an extensive menu of services accessible to children, birthparents, and extended family members to support and empower families and focus on their strengths. These services and supports would maximize children's ability to maintain the continuity of relationships with their birth parents and with extended family

members, wherever it is safe and appropriate.

The system would allow extended family members a full continuum of options as far as legal arrangements and available, accessible resources. The goal would be to tailor the package of services and support to meet the particular needs of the child and family. These services would include preventive services for relative caregivers and services and supports for relatives caring for children who need to be in state custody, as well as permanency options, such as subsidized guardianship and subsidized adoption.

This ideal model of service delivery would remove the artificial barriers that now exist in our child welfare and welfare systems as a result of categorical services. In other words, a relative caring for a child in that relative's custody would have access to the same services and supports as a foster parent. This model would ensure extended family members early participation in the process of protecting and providing for abused and neglected children. Caregiving relatives would also be able to access information and support regardless of their point of entry into the system.

This system would deemphasize the law enforcement component of the child welfare system and strengthen the service delivery system, including greater availability of crucial services such as mental health services, substance abuse treatment, child care, and respite care. Further, the system would use nonadversarial processes to address concerns about child protection, including mediation and family group conferencing. These processes would

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contribute significantly to the goals of empowering families and focusing on their strengths.

Returning to our two grandmothers, ideally Ms. W. could pursue Kinship Foster Care to provide her five grandchildren with the same resources she gave the five nonrelative foster children. Eventually, if she needed to provide permanency for her grandchildren, she could choose a subsidized guardianship or a subsidized adoption. Ms. M., on the other hand, would need help right now only with subsidized child care, so that her two youngest grandchildren could be reunited with her and with their older siblings. She, too, might eventually want to pursue a subsidized guardianship or a subsidized adoption.

By providing better kinship care services and supports, we will not only help grandmothers and other relative caregivers. We will promote the best interests of children by keeping them within their cultural and kin networks. Tennessee's pending Relative Caregiver Bill represents a small but very significant step in this direction. We hope it can become a model of collaboration between the welfare system and the child welfare system. We also hope it can serve as a model for prevention and for embracing kinship caregivers as a source of strength and stability for vulnerable children.

#### Notes

1. The stories described here are true. The names have been abbreviated to protect the privacy of the individuals and families involved.
2. Pub. L. No. 104-193, 110 Stat 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.).

3. Pub. L. No. 105-89, 111 Stat 2115 (codified as amended in scattered sections of 42 U.S.C.).
4. See Sara Rosenbaum and Kathleen A. Maloy, *The Law of Unintended Consequences: The 1996 Personal Responsibility and Work Opportunity Reconciliation Act and Its Impact on Medicaid for Families With Children*, 60 Ohio State L.J. 1443, 1453 ("unlike AFDC, ... TANF does not create an individual entitlement to cash assistance among eligible persons. Because TANF is not an entitlement, states have the discretion to deny assistance even to families that meet program eligibility requirements.").
5. According to the Department of Health and Human Services, Administration for Children and Families (Office of Family Assistance), TANF had four original purposes: (a) To provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (b) to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (c) to prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual goals for preventing and reducing the incidence of these pregnancies; and (d) to encourage the formation of two-parent families.
6. This amount increased in 1999 from \$95.00 for one child to \$140.00.
7. 42 U.S.C. §675(5)(E) (Supp. III 1997).
8. Other states have addressed this issue by creating "subsidized legal guardianship" programs, and have obtained federal waivers to use federal foster care funding for this purpose.
9. 42 U.S.C. §673b(d)(1)(A),(B) (Supp. III 1997).
10. 42 U.S.C. §671 (a)(15)(D) (Supp. III 1997).
11. 42 U.S.C. §671 (a)(15)(C),(E) (Supp. III 1997).
12. 42 U.S.C. §671(a)(15)(F) (Supp. III 1997).
13. T.C.A. 37-2-414.
14. The CASA program, which is housed at the Davidson County juvenile court, is part of the national network of CASA programs, which train and supervise volunteer advocates for children. Our CASA program received a demonstration grant from the National CASA Organization to focus on kinship care. Family and Children's Service is a nonprofit family services agency that provides a wide range of counseling programs and services to the Nashville community. The Vanderbilt Legal Clinic is part of Vanderbilt Law School, and involves students representing indigent clients under the supervision of licensed attorneys.
- Another critical factor has been that under current federal law, adoption subsidies for children with special needs are available only to caregivers who adopt children out of the state's legal custody. This is another important piece of information that relatives need to know before they decide whether to file for legal custody themselves, or whether to pursue kinship foster care.
15. See Families First Relative Caregiver Pilot Project, Op. Att'y Gen. No. 99-176 (1999).

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