

ADOPTION ADVOCATE

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May 2013

NO.
59

Paths to Permanence: Kin Guardianship and Adoption

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Dominic and Dwayne were repeatedly left alone when their mother disappeared on drug binges. The brothers, aged 11 and 13, often had no money for food. During those difficult times, Grandma Cook stepped in and cared for the siblings. Eventually, Dominic and Dwayne moved in with their grandmother, who later attained guardianship of the boys. This arrangement not only allowed Dominic and Dwayne to receive the care they desperately needed, but also allowed them to remain in the same school and neighborhood, thereby granting them stability they had previously lacked.¹

Dominic and Dwayne's experience is one shared by 2.7 million children living in kinship care in the United States. Kinship care refers to arrangements whereby children are cared for full-time by relatives or close family friends. Children may enter kinship care when a parent faces incarceration; struggles with substance abuse or mental illness; abuses, neglects or abandons a child; or suffers illness or death. In some instances, child welfare agencies place the child with a relative caregiver, a situation referred to as public or formal kinship care. Oftentimes, however, children are placed in private or informal kinship care, an arrangement made by parents or extended family without the involvement of child welfare agencies.²

¹ Testa, M., Salyers, N. S., Shaver, M., & Miller, J. (2004). *Family ties: Supporting permanence for children in safe and stable foster care with relatives and other caregivers*. Urbana, IL: Children and Family Research Center.

² The Annie E. Casey Foundation. (2012). *Stepping up for kids: What government and communities should do to support kinship families*. Baltimore, MD.



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Kinship care can include temporary foster care as well as permanent, formalized care arrangements such as kin guardianship and adoption. These examples of lifelong kinship care have increased over the years. Children in public kinship care are more likely to find permanent homes through guardianship than children who reside with non-relatives.³ Likewise, relative adoptions with public agency involvement increased from 16% in 1998 to 31% in 2011.⁴

As kin guardianship and adoption grew more and more common, NCFCA developed its position on relative placement. Because NCFCA supported the principle that children should remain with their families whenever possible, the organization endorsed kin guardianship as an alternative for relative caregivers willing to accept permanent custody of a child, but uncomfortable with terminating the parental rights of a family member. Kin guardianship often helps to attain the higher goal of keeping children with family and providing them with permanency they might not achieve if placed in non-relative foster care.

This article examines the multiple benefits of kin guardianship and adoption for children, addresses some of the expressed concerns surrounding these formalized care arrangements, and details the common issues relative caregivers face, so that readers will gain a greater understanding of these ever-growing options for permanency. Additionally, the article provides recommendations for both practice and policy that, when implemented, can decrease a child's time in temporary care and improve the overall wellbeing of kinship care families.

Benefits of Placement Stability and Emotional Wellbeing for Children

Children placed in guardianship care or adopted by relatives can experience a multitude of benefits, including placement stability and emotional wellbeing. Children in temporary care, whether residing with kin or non-kin, may be placed in multiple homes, but there is a greater possibility of multiple moves when a child resides with a non-relative. For instance, in Illinois, 66% of children who lived with non-relatives experienced one move or no moves at all during their first full year of care, compared to 85% of children living with relatives.⁵ Multiple placements should be avoided whenever possible, as they increase the likelihood of emotional, behavioral, and academic difficulties for youth as well as homelessness and unemployment.⁶

Kin guardianship often helps to attain the higher goal of keeping children with family and providing them with permanency they might not achieve if placed in non-relative foster care.

³ Gleeson, J. P. (2012). *Kinship care in the United States: What the research tells us*. [PowerPoint slides]

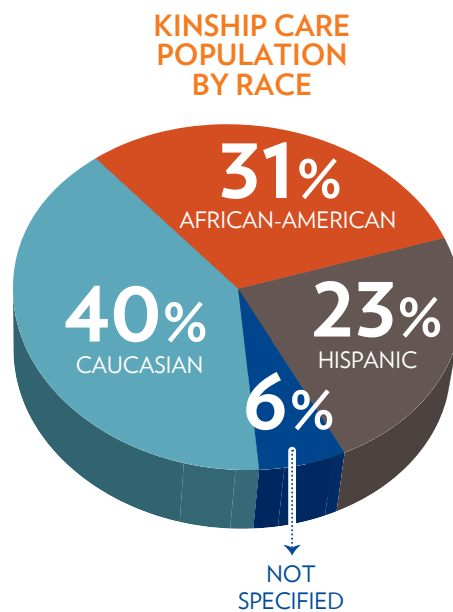
⁴ U.S. Department of Health and Human Services. (2006). *The AFCARS report: Final estimates for FY 1998 through FY 2002* (12). Washington, D.C.: Author; U.S. Department of Health and Human Services. (2012). *The AFCARS report: Preliminary FY 2011 estimates as of July 2012* (19). Washington, D.C. In the AFCARS report, "public agency involvement" includes children who were in the foster care system and those that weren't in system but receive the benefit of adoption subsidies under Title IV-E.

⁵ The Pew Charitable Trust & Generations United. (2007). *Time for reform: Support relatives in providing foster care and permanent families for children*. Philadelphia, PA: The Pew Charitable Trust.

⁶ The Pew Commission on Children in Foster Care. (2007). *Fostering the future: Safety, permanence and well-being for children in foster care*. In Atwood, T.C., Allen, L.A., Ravenel, V.C., & Callahan, N.F. (Eds.), *Adoption Factbook IV* (279-302). Sterling, VA: PMR Printing Company, Inc.

Kin guardianship and adoption can offer greater stability and permanency than is available in temporary care. When a relative caregiver attains guardianship, legal custody transfers from the State or parent to the caregiver, but parental rights are not terminated.⁷ Guardianship gives the caregiver legal authority to make decisions regarding the child's care, education, and health. In contrast, kin adoption terminates a biological parent's rights, and the relative caregiver becomes the permanent legal parent of the child.⁸ In both instances, stability and permanence are achieved. Unlike temporary care, a parent or social worker cannot easily remove the child from the caregiver's home, thereby dramatically reducing the likelihood of multiple placements. Through kin guardianship or adoption, a child's right to a loving, permanent home is protected.

Kin guardianship and adoption not only provide stability and permanence, but also reduce the likelihood of emotional and behavioral problems associated with a child's separation from their parent. Children removed from their original home often suffer trauma and stress, but placement with relatives with whom they have a pre-existing relationship reduces their distress.⁹ Oftentimes, these pre-existing relationships were the result of visits between the child and caregiver prior to placement, or previous instances when the child resided with the caregiver and their parent interchangeably.¹⁰ Therefore, when the child was placed with this caretaker, their pre-existing trust in this person created an immediate comfort level that helped the child transition more easily and thrive in kinship care.



Source: The Annie E. Casey Foundation (2012). Stepping up for kids: What government and communities should do to support kinship families. Baltimore, MD.

Children in temporary care often struggle with behavioral problems, such as conduct disorder. Individuals diagnosed with this disorder exhibit defiance

⁷ Generations United. (2006). All children deserve a permanent home: Subsidized guardianship as a common sense solution for children in long-term relative foster care. Washington, D.C.: Generations United.

⁸ Generations United. (2006). All children deserve a permanent home: Subsidized guardianship as a common sense solution for children in long-term relative foster care. Washington, D.C.: Generations United.

⁹ The Annie E. Casey Foundation. (2012). Stepping up for kids: What government and communities should do to support kinship families. Baltimore, MD.

¹⁰ Messing, J. (2005). From the Child's Perspective: A Qualitative Analysis of Kinship Care Placements. Berkeley, CA: National Abandoned Infants Assistance Resource Center.

to authority figures, impulsive behavior, and sometimes engage in drug use or criminal activity.¹¹ With permanency come higher levels of optimism, self-esteem, and feelings of support from others, as well as lower levels of anxiety and depression.¹² Children who are adopted are less likely to use alcohol, experience depression, or engage in vandalism or theft.¹³ A close pre-existing relationship between the relative caregiver and child may help to explain these positive behavioral outcomes in children placed with kin.

Children in kinship care are also more likely to talk to their caregiver about personal issues, such as school and dating. Because children are able to use their caregiver as a sounding board, they are better able to discuss any negative feelings they may experience as a result of their placement.¹⁴ By having this outlet, children are able to express themselves in a positive manner and are less likely to exhibit behavioral problems.

Opponents' Concerns for Child Safety

Despite the numerous benefits of kin guardianship and adoption, opponents believe that placing children with relatives can be harmful. At a Congressional hearing in 2007, an independent consultant verbalized these concerns. Relaying the old adage, "The apple does not fall far from the tree," he expressed the misgiving that grandparents who raised drug addicts, criminals, and child abusers were incapable of raising healthy children.¹⁵

For some opponents, this concern is further magnified by the fact that relatives do not undergo the same detailed screening as non-relatives in the kin adoption or guardianship process. For example, Mississippi, which has the largest population of children in kinship care, only conducts a criminal background check when a child is initially placed in public or formal kinship care. Additionally, no homestudy or adoption investigation is required for relative adoptions.¹⁶ Therefore, no criminal background check or investigation occurs if the child is privately or informally placed in kinship care and is subsequently adopted. Since 2% of Mississippi children are in public kinship care,¹⁷ the high number of children that could be placed with and adopted by

¹¹ Conduct Disorder. (n.d.). Retrieved November 16, 2012, from PubMed Health website: www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001917/; Foster care crisis. (n.d.). Retrieved November 16, 2012, from Best Kids website: www.bestkids.org/learn/foster-care-crisis/.

¹² Lindsey, M. (2011). Your decision: Suggestions for birthmothers considering an adoption plan. In Rosman, E. A., Johnson, C. E., & Callahan, N. M. (Eds.), *Adoption Factbook V* (369-373). Baltimore, MD: Victor Graphics, Inc.

¹³ Lindsey, M. (2011). Your decision: Suggestions for birthmothers considering an adoption plan. In Rosman, E. A., Johnson, C. E., & Callahan, N. M. (Eds.), *Adoption Factbook V* (369-373). Baltimore, MD: Victor Graphics, Inc.

¹⁴ National Abandoned Infant Assistance Resource Center. (2006). *The psychosocial well-being of substance-affected children in relative care*. Berkeley, CA.

¹⁵ *Challenges Facing the Child Welfare System: Hearing Before the Subcommittee on Income Security and Family Support of the Committee on Ways and Means of the House of Representatives*. 110th Cong. 1 (2007).

¹⁶ Child Welfare Information Gateway. (2010). *Placement of children with relatives*. Washington, D.C.

¹⁷ The Annie E. Casey Foundation. (2012). *Stepping up for kids: What government and communities should do to support kinship families*. Baltimore, MD.

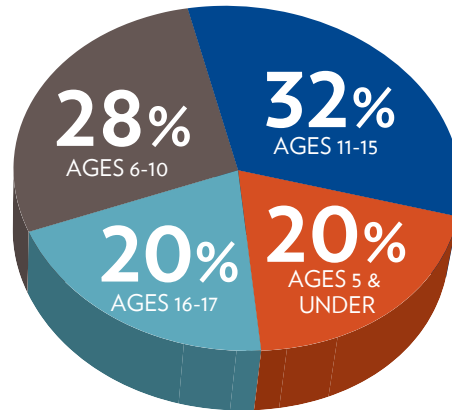
a relative caregiver who undergoes no background check at all is disconcerting.¹⁸

Some opponents of kinship care also believe that biological parents can pose a greater danger to children in relative care arrangements. Children who reside with kin are more likely to have contact with their biological parents than children in non-kin care, and that contact is less likely to be supervised by a child welfare agent. Permitting contact between an abusive parent and a child could increase the likelihood of further maltreatment or trauma, a risk that some opponents believe is too great to ignore.¹⁹

Although these concerns are reasonable, children who reside with relatives are no more likely to experience abuse and neglect than non-kin foster children.²⁰ Researchers found that “[c]aregivers had a profound understanding of children’s safety,” and that the “caregiver’s dedication to the children’s safety did not seem consistent with beliefs that grandparents and relatives are the source of parents’ abusive or neglectful behaviors and are, therefore, unfit to protect and care for children.”²¹ Evidence shows that a child is just as safe or safer with a relative caregiver; therefore, the unfit status of a parent should not be applied to the relative caregiver as well.

Relative care can prove harmful in some cases if the relative placement itself is dangerous or sub-standard. In those instances, that relative placement is no longer a viable or safe option for the child. Although the criteria for relative placement should be more flexible than that for non-relative placements, the child’s safety is paramount, and kin caregivers should be supervised and investigated if there is good cause to be concerned.²²

KINSHIP CARE POPULATION BY AGE



Source: Urban Institute. (2003, October 9). Children in kinship care. Retrieved from <http://www.urban.org/url.cfm?ID=900661>.

¹⁸ Mississippi is not the only state with such laws. Thirty-one states directly place children with relatives and do not require placement assessment or home study unless ordered by court. Twenty-one states require criminal background checks for adopting relatives and any other adult household member. Child Welfare Information Gateway. (2010). *Placement of children with relatives*. Washington, D.C.

¹⁹ Messing, J. (2005). *From the Child’s Perspective: A Qualitative Analysis of Kinship Care Placements*. Berkeley, CA: National Abandoned Infants Assistance Resource Center.

²⁰ Conway, T. & Hutson, R. Q. (2007). *Is kinship care good for kids?* Washington, D.C.: Center for Law and Social Policy.

²¹ Lyons, N. (2006). Natalie’s Notes. *The Roundtable*, 20 (1), 2, 6, 12.

²² Fostering Connections to Success and Increasing Adoptions Act allows states to waive non-safety licensing standards on a case-by-case basis to increase the possibility of relative placement. Non-safety standards that are often waived include minimum square footage and minimum number of bedrooms/bathrooms per person. CLASP & American Bar Association. (2010). *Relative foster care licensing waivers in the states: Policies and possibilities*. Washington, D.C. These exceptions for relative caregivers are warranted and approved by NCFCA.

Challenges Relative Caregivers Face in Pursuit of Permanency

When a relative caregiver decides to attain guardianship or adopt a child, he or she must address a number of issues that can have a great impact on their family unit and pursuit of permanency.

One problem relative caregivers encounter involves the change in family dynamics that accompanies guardianship or adoption. Relative caregivers must take on a parenting role, which affects not only their relationship with the child, but also the relationships between child, caregiver, and parent. Some children feel that consenting to kin adoption is a betrayal of their parent. In turn, a parent may believe that a relative caregiver who seeks guardianship or adoption is conspiring to steal the child; they may even attempt to sabotage the child and caregiver's relationship. The caregivers, on the other hand, may have difficulty transitioning from the role of doting grandparent, aunt or uncle to that of a parent, and may struggle with their own feelings of guilt or anger that they could not "save" the parent.²³

This issue can often be addressed by offering both pre- and post-placement support to children, parents, and caregivers. It can provide a means of discussing their feelings, thoughts, and concerns regarding permanency, which can effectively decrease the emotional strain kin guardianship and adoption place on the family unit. For example, counseling can help children address the sense of loss that accompanies the termination of their parents' rights. Support services may help parents understand that consenting to permanency is an act of love that will give their child a stable and loving home.

Another obstacle relative caregivers must overcome when pursuing permanency for children is the financial cost involved. Thirty-eight percent of children in kinship care live below the poverty line. Many families report food insecurity and do not receive the housing or childcare assistance they require.²⁴ Families often need housing assistance to relocate to a bigger home so that they can comply with state licensing standards or gain additional space for a sibling placement.²⁵ Childcare assistance is particularly important for caregivers who must return to work, and who require financial aid to reduce the high costs of childcare. This need is not surprising given that in 26 states and the District of Columbia, center-based childcare is more expensive than in-state tuition at a public four-year university.²⁶

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²³ Child Focus & North American Council on Adoptable Children. (2010). Kinship adoption: Meeting the unique needs of a growing population. Cincinnati, OH.

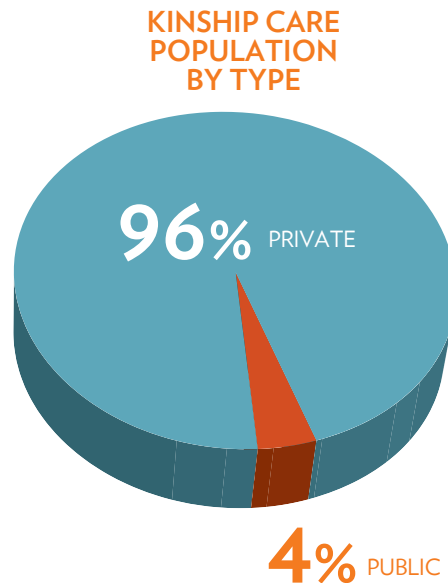
²⁴ The Annie E. Casey Foundation. (2012). *Stepping up for kids: What government and communities should do to support kinship families*. Baltimore, MD.

²⁵ Ehrle, J. & Geen, R. (2006). Children cared for by relatives: What services do they need? *New Federalism*, Series B (No. B-47), 1-7.

²⁶ Children's Defense Fund. (2012). *The state of America's children handbook*. Washington, D.C.

Even though government programs such as Temporary Assistance for Needy Families (TANF) might be available to help alleviate some of the burden felt by relative caregivers, often caregivers do not take advantage of this aid. Some caregivers are simply unaware that TANF is available or are unsure how to apply for it; some refuse to apply because of the stigma associated with accepting TANF benefits.²⁷ Other caregivers do not apply for TANF because doing so can cause financial strain for parents. When a relative caregiver applies for TANF, the government received notification that the child no longer resides with the parent. Upon notification, the government stops payment to the parent, which decreases their available income. Likewise, parents may be forced to reimburse the government for the money given to the caregivers.

When the parent's purse strings are tightened, he or she may be more likely to cause turmoil within the family or make the relative caregiver feel guilty for the increased financial hardship. In some cases, parents may try to regain custody of their children, even if they are not able to care for them at that time. These attempts can jeopardize the emotional wellbeing and expectation of stability the child attained through relative placement. In the end, some caregivers forego TANF benefits because applying for aid is not worth the potentially negative impact it would have on the entire family unit.



Source: The Annie E. Casey Foundation (2012). *Stepping up for kids: What government and communities should do to support kinship families*. Baltimore, MD.

Relative caregivers may also be eligible for the financial benefits offered by the Guardianship Assistance Program (GAP) and Adoption Tax Credit. GAP is a federal program that provides continuous payments to relatives who are legal guardians.²⁸ Not only does it encourage permanency, it also saves the government money by reducing the administrative costs associated with foster care.²⁹ Twenty-nine states and the District of Columbia have opted into the program, providing families with the option of subsidized guardianship.³⁰ Similar to GAP, the Adoption Tax Credit relieves some of

²⁷ The Annie E. Casey Foundation. (2012). *Stepping up for kids: What government and communities should do to support kinship families*. Baltimore, MD.

²⁸ The Annie E. Casey Foundation. (2012). *Stepping up for kids: What government and communities should do to support kinship families*. Baltimore, MD.

²⁹ The Pew Charitable Trust & Generations United. (2007). *Time for reform: Support relatives in providing foster care and permanent families for children*. Philadelphia, PA: The Pew Charitable Trust.

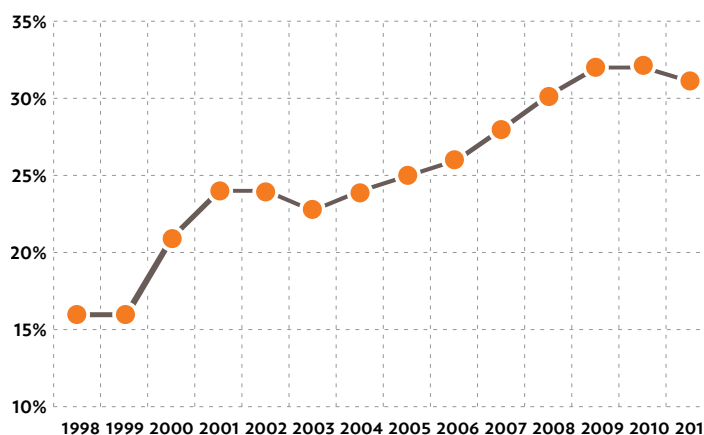
³⁰ The Annie E. Casey Foundation. (2012). *Stepping up for kids: What government and communities should do to support kinship families*. Baltimore, MD.

the financial strain families experience when pursuing permanency for children. Eligible families can claim a one-time tax credit in the year of adoption to help offset the financial burden of adoption.³¹

Families that struggle with the effects of changing family dynamics and financial hardship also encounter a problem posed by the Family and Medical Leave Act (FMLA). FMLA provides twelve weeks of unpaid job-protected leave to parents who experience the placement of a child for adoption or foster care.³² Granting eligibility to adoptive and foster parents provides them with the time necessary to transition into a new family, which is important for the emotional wellbeing of the parents and the child. A recent study of mothers of three-month-old infants showed that women who worked full-time shortly after giving birth suffered greater rates of depression and stress than women who stayed at home on maternity leave or as stay-at-home mothers. Subsequently, this depression negatively impacted their families' health and the cognitive development of their children.³³ Use of parental leave under FMLA allows adoptive and foster parents time to acclimate to their new parenting role, thereby lowering the possibility of psychological harm to families.

While relative caregivers who adopt or foster their kin benefit from FMLA, currently guardians do not. Instead of receiving federally mandated leave and employment protection under FMLA, guardians must rely exclusively on the leave offered by their employer, which may not provide sufficient time for the guardian and child to become accustomed to their new living situation. As a result, guardians may be forced to choose between caring for their family and continuing employment, the very dilemma that FMLA was created to prevent.³⁴

RELATIVE ADOPTIONS WITH PUBLIC AGENCY INVOLVEMENT



Sources: U.S. Department of Health and Human Services (2006). The AFCARS report: Interim estimates as of June 2006 (10). Washington, D.C.; U.S. Department of Health and Human Services. (2006). The AFCARS report: Preliminary FY 2004 estimates as of June 2006 (11). Washington, D.C.; U.S. Department of Health and Human Services. (2006). The AFCARS report: Final estimates for FY 1998 through FY 2002 (12). Washington, D.C.; U.S. Department of Health and Human Services. (2006). The AFCARS report: Preliminary FY 2005 estimates as of September 2006 (13). Washington, D.C.; U.S. Department of Health and Human Services. (2008). The AFCARS report: Preliminary FY 2006 estimates as of January 2008 (14). Washington, D.C.; U.S. Department of Health and Human Services. (2009). The AFCARS report: Preliminary FY 2007 estimates as of October 2009 (15). Washington, D.C.; U.S. Department of Health and Human Services. (2012). The AFCARS report: Preliminary FY 2008 estimates as of October 2009 (16). Washington, D.C.; U.S. Department of Health and Human Services. (2010). The AFCARS report: Preliminary FY 2009 estimates as of July 2010 (17). Washington, D.C.; U.S. Department of Health and Human Services. (2011). The AFCARS report: Preliminary FY 2010 estimates as of June 2011 (18). Washington, D.C.; U.S. Department of Health and Human Services. (2012). The AFCARS report: Preliminary FY 2011 estimates as of July 2012 (19). Washington, D.C.

³¹ Retrieved November 16, 2012, from Save the Adoption Tax Credit website: <http://adoptiontaxcredit.org/faqs/>.

³² Family Medical and Leave Act (n.d.) Retrieved from November 16, 2012, from U.S. Department of Labor website: <http://www.dol.gov/whd/fmla/>.

³³ Melnick, M. (2011, July 21). Study: Why maternity leave is important. *Time*. Retrieved from <http://healthland.time.com/2011/07/21/study-why-maternity-leave-is-important/>.

³⁴ The Family and Medical Leave Act of 1993 29 C.F.R. § 825.101 (2012).

Practice and Policy Recommendations

Kin guardianship and adoption has provided over 178,000 children with the loving, permanent homes they deserve.³⁵ This achievement can be bolstered through changes in practice and policy that will not only propel children towards permanency, but also improve the overall wellbeing of families that pursue kin guardianship and adoption.

First, child welfare agencies should present kin guardianship and adoption as viable options for permanency as soon as children are placed into kinship care.

Concurrent permanency planning is most effective. The sooner these options are presented, the sooner families can engage in an in-depth discussion of the implications involved in order to make a timely and well-informed decision³⁶. If parental reunification becomes impossible, relative caregivers, children, and parents can promptly pursue whichever permanency option best fits their particular circumstances.

Second, families that attain guardianship or adopt kin children must be informed of any available post-permanency services. Services such as counseling and support groups can provide families with the means to address the emotional, behavioral, and mental health issues that often arise after guardianship or adoption is finalized. Although child welfare agencies and community health organizations provide post-permanency services, these resources are underutilized because many families are unaware that such benefits exist.³⁷ If social workers or adoption practitioners increase awareness of all available services, families can choose programs based on their individual needs.

Third, FMLA should be amended to ensure coverage of caregivers who attain guardianship of kin children. This simple change would provide guardians with federally protected leave – a benefit already provided to parents that have adopted or are fostering their kin – so that their families have the additional time they need to adjust to their new living situation.

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³⁵ U.S. Department of Health and Human Services (2006). *The AFCARS report: Interim estimates as of June 2006* (10). Washington, D.C.: Author; U.S. Department of Health and Human Services. (2006). *The AFCARS report: Preliminary FY 2004 estimates as of June 2006* (11). Washington, D.C.; U.S. Department of Health and Human Services. (2006). *The AFCARS report: Final estimates for FY 1998 through FY 2002* (12). Washington, D.C.; U.S. Department of Health and Human Services. (2006). *The AFCARS report: Preliminary FY 2005 estimates as of September 2006* (13). Washington, D.C.; U.S. Department of Health and Human Services. (2008). *The AFCARS report: Preliminary FY 2006 estimates as of January 2008* (14). Washington, D.C.; U.S. Department of Health and Human Services. (2009). *The AFCARS report: Preliminary FY 2007 estimates as of October 2009* (15). Washington, D.C.; U.S. Department of Health and Human Services. (2012). *The AFCARS report: Preliminary FY 2008 estimates as of October 2009* (16). Washington, D.C.; U.S. Department of Health and Human Services. (2010). *The AFCARS report: Preliminary FY 2009 estimates as of July 2010* (17). Washington, D.C.; U.S. Department of Health and Human Services. (2011). *The AFCARS report: Preliminary FY 2010 estimates as of June 2011* (18). Washington, D.C.; U.S. Department of Health and Human Services. (2012). *The AFCARS report: Preliminary FY 2011 estimates as of July 2012* (19). Washington, D.C.

³⁶ Child Focus & North American Council on Adoptable Children. (2010). *Kinship adoption: Meeting the unique needs of a growing population*. Cincinnati, OH.

³⁷ Evan B. Donaldson Adoption Institute. (2012). *Keeping the promise: The critical need for post-adoption services to enable children and families to succeed*. New York, NY.

Conclusion

Within the past thirteen years, kin guardianship and adoption have become increasingly common options for permanency. Despite the safety concerns presented by opponents, relative caregivers clearly offer benefits of both placement stability and emotional wellbeing for children. As families pursue kin guardianship or adoption, they often encounter issues involving changes in family dynamics, financial hardship, and insufficient leave. These challenges, although troublesome, can often be overcome if the families receive the support and services they need to thrive. Kin guardianship and adoption arrangements should continue to be supported as positive options that provide children with the loving and permanent homes they deserve.

ABOUT THE AUTHOR

Jamel Rowe is NCFA's legal fellow. She graduated from William & Mary Law School, where she was the Senior Article Editor for *The Journal of Women and the Law*. Her interest in adoption sprung from her work in family law, which she hopes to practice.



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