



## POLICY BRIEF SUMMARY

# State Educational and Health Care Consent Laws: Ensure that children in grandfamilies can access fundamental services

Ana Beltran, Special Advisor, Generations United's  
National Center on Grandfamilies

Children across the United States are being denied access to education and health care solely because they are being raised by someone other than their parents. About 2.7 million children in the United States are being raised by kinship caregivers – grandparents, other extended family members, and close family friends. These children are raised by kin because their parents may be addicted to substances, deployed in the military, incarcerated, in another state for a job or have severe psychological, cognitive or physical challenges that render them incapable of raising children.

Of these millions of children, many of these children are being raised by kinship caregivers with no legal relationship -- such as legal custody or guardianship. Furthermore, only about 104,000 are living with kin in foster care. Although this number represents almost one-fourth of all children in foster care, it is less than one-twenty-sixth of children being raised by kinship caregivers.

Without the support of the foster care system or a legal relationship that is formalized by the courts, kin caregivers face enormous challenges enrolling children in school, advocating for educational services or consenting to health care.

To ensure that children in kinship families or “grandfamilies” can obtain health care and a tuition-free public education, many states have consent laws that allow kinship caregivers to access these services for the children they raise without the need for legal custody or guardianship. The May 2012, Annie E. Casey Foundation Kids Count essay, *Stepping Up for Kids*, recommends that states without these laws enact them to support kinship families.

In a policy brief that accompanies this summary, using examples from the 23 states with health care consent laws

and the 14 with educational consent laws, state policymakers and advocates are provided with the tools to enact their own consent laws and to perhaps amend existing laws to make them more responsive.

### Consent Laws

Health care and educational consent laws allow a caregiver to complete an affidavit under penalty of perjury that they are the primary caregiver of the child; then, by presenting the form, the caregiver can consent to treatment or enroll the child in public school tuition-free. Consent laws are notably different than power of attorney laws, which require the parent, rather than the caregiver, to take action. Under power of attorney laws, the parent must designate the caregiver and convey consent authority. This requirement can pose a significant obstacle to grandfamilies who often cannot locate the parents to ask them to complete a legal document.

Although consent laws do not require action by the parents, they do not limit the parents' legal rights and responsibilities.

*Without educational consent laws, children in grandfamilies are often not allowed to go to school, may start later than they should or be homeschooled without the proper school district approved curriculum. The same schools that do not allow the children to enroll, then may tell the families they are violating truancy laws when the children miss school.*



Because of malpractice, liability, and confidentiality issues, health care providers often refuse to treat children without the consent of a parent, legal custodian or guardian. This is true even when a child has insurance to cover the cost of treatment. Health care consent laws allow providers to treat children, regardless of who is raising them.

The laws and affidavit forms often explicitly state that the parents can rescind the affidavits at any time and that the affidavits do not give the caregiver legal custody.

The content of the existing state educational and health care consent laws vary significantly. The accompanying brief analyzes these laws, and explores certain key elements to include in these laws and certain elements to avoid. It also examines reasons why states may lack these consent laws and gives policymakers and advocates some practical tools for enacting them. For each element of the laws listed here, the brief has an extensive discussion with concrete state examples and language that can be replicated.

### **Elements to be included in consent laws**

- put the form for the affidavit in the law itself, so that caregivers can easily complete it without needing to consult an attorney
- cover comprehensive health care and educational services
- allow the caregiver to complete the form without the parents' signatures
- address parents' rights in the notice section of the affidavit
- shield providers from criminal and civil liability, and professional discipline
- specify the penalties for giving a fraudulent consent in the notice section of the affidavit
- allow for the consent to be valid until rescinded by the parent or caregiver
- permit all full time caregivers to complete consent affidavits, and do not restrict them to relatives by blood, marriage or adoption

### **Elements to be avoided in consent laws**

- do not allow local school districts to decide whether to accept affidavits to enroll children in school
- do not require sworn statements from the parents
- minimize onerous documentation requirements
- do not require that the affidavit be filed with a court

*Braden was living with his mom and attending high school in Oregon. His mom couldn't take care of him any longer because of her substance addiction. With a month left in the school year, she put Braden on the Greyhound bus to Yakima, Washington to live with his sister. His sister was not prepared to care for him, but she picked him up at the bus station anyway and began trying to find him supports. Fortunately, Washington has full-time "kinship navigators" who help the families gain access to services. The sister knew to call the navigator, and they spoke. Although the navigator was helpful, there wasn't much she could do to help get Braden in school, since Washington lacks an educational consent law. Both of the local high schools had turned Braden away because his sister was not his guardian or legal custodian. Even though Braden's sister immediately went to court to get legal custody, the process always takes time, and he missed the rest of the school year. Stories like these have propelled Washington's kinship advocates to take action and start pursuing a state educational consent law.*



## Reasons some states may lack consent laws

- states may have alternative methods to enroll children in school
  - (1) some states provide that residency is based on where caregivers live, so children are able to enroll in school
  - (2) in the vast majority of states, children living with relatives whose parents are in the military can access educational services
  - (3) some states may think their power of attorney laws are enough, even though they require the parents to convey authority
  - (4) some states may believe their open enrollment laws are enough, even though they too require parental involvement to enroll children
- advocates may have concerns that consent laws could infringe parental rights
- schools may object because of concerns that families will abuse the system and shop for their favorite school

## Tools and strategies to enact consent laws

- educate that existing alternatives like power of attorney laws and open enrollment laws are not sufficient
- protect parents' rights
- involve educational stakeholders and respond to their concerns
- make clear that these laws are cost neutral
- protect school officials and health care providers from liability
- use community partners to help advocate for the laws
- separate educational from health care consent if the educational consent is posing a barrier to passage
- share personal stories from impacted families

Please consider this summary and the accompanying brief a call to action and a tool to start pursuing health care and educational consent for your state or to amend an existing law to make it more responsive. In your advocacy efforts, remember that these laws are about the children - children who should not be denied basic services solely because of who is raising them. All children need an education and health care.

*Generations United gratefully acknowledges the Annie E. Casey Foundation for their support of this publication.*

Some available Internet resources:

[www.gu.org](http://www.gu.org) – The Generations United website contains free fact sheets and publications concerning grandfamilies, and the latest federal public policy activity impacting the families.

[www.grandfamilies.org](http://www.grandfamilies.org) – The Grandfamilies State Law and Policy Resource Center contains a database of laws and legislation impacting grandfamilies both inside and outside the foster care system for all 50 states and the District of Columbia, in addition to analyses of these laws and legislation.

[www.grandfactsheets.org](http://www.grandfactsheets.org) – This website contains fact sheets for each state and the District of Columbia with state-specific data, services, and programs for grandfamilies.

[www.aecf.org](http://www.aecf.org) – The Annie E. Casey Foundation website contains publications and resources concerning grandfamilies, including the May 2012 Kids County essay, *Stepping Up for Kids: what government and communities should do to support kinship families.*

**generations  
united**

Because we're stronger together™

Generations United is the national membership organization focused solely on improving the lives of children, youth, and older people through intergenerational strategies, programs, and public policies. Generations United represents more than 100 national, state, and local organizations and individuals representing more than 70 million Americans. Since 1986, Generations United has served as a resource for educating policymakers and the public about the economic, social, and personal imperatives of intergenerational cooperation. Generations United acts as a catalyst for stimulating collaboration between again, children, and youth organizations providing a forum to explore areas of common ground while celebrating the richness of each generation.

For further information, please contact:

Generations United  
1331 H Street, NW, Suite 900  
Washington, DC 20005  
Phone: (202) 289-3979; fax: (202) 289-3952  
email: [gu@gu.org](mailto:gu@gu.org)  
[www.gu.org](http://www.gu.org)

©2013, Generations United

Reprinting permissible provided "Generations United" is credited and no profits are made.