

# **Kinship Families in Idaho: Legal Relationships and Public Benefits**

# Introduction

- Purpose today – to empower staff or families with basic information about legal relationship options and public benefit programs for grandparents, other relatives, and close family friends who raise children when parents cannot – we refer to this families interchangeably as kinship families or grandfamilies
- Please ask questions throughout the training

# GrandFacts Caregiver Resources

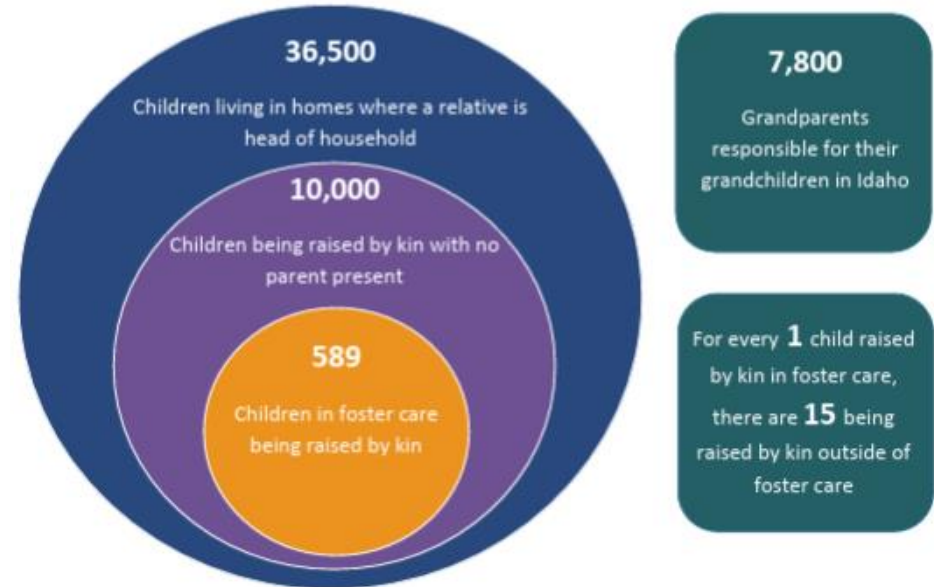
Available [here](#)



The GrandFacts state fact sheets for grandfamilies include state-specific data and programs as well as information about public benefits, educational assistance, legal relationship options and state laws. Visit [www.grandfamilies.org](http://www.grandfamilies.org) to find this and all GrandFacts state fact sheets.

## Idaho

### Grandfamilies Data



# Legal Relationships



# Legal Obstacles

- Unlike parents, grandparents and other kin lack an automatic legal relationship to the children they raise
- Getting such a legal relationship can be very costly and take a long time
- Without it, grandfamily/kin caregivers may not be able to access services and supports for the child
- If the child is in foster care with the kin providing the care, the agency has legal custody of the child and can help access services
- It is important that kin understand their options
- The families are their own best expert, but they need accurate information to make the decision that works for them

# Idaho: Paths to Permanent Kinship Families

## INSIDE FOSTER CARE

State has legal custody of the child

### Licensed kin:

Monthly financial assistance

### Unlicensed kin:

Temporary Assistance for Families in Idaho (TAFI)

- **Adoption** with legal help and ongoing financial assistance/ full tax credit
- **Guardianship** with legal help and ongoing financial assistance (GAP)

## OUTSIDE FOSTER CARE

No automatic legal relationship to grandchildren or other kin

Temporary legal authority possible through power of attorney or temporary guardianship

Only source of ongoing financial assistance typically TAFI

- **Adoption** with usually no legal help, no ongoing adoption assistance, can get tax credit with receipts, lose TAFI child-only grant
- **Guardianship** with typically no ongoing financial support

# Power of Attorney



Photo courtesy  
of Bridge Meadows.

- Form that parents complete to confer powers over the care of a child to a named person, with the exceptions of powers to consent to marriage or adoption
- It expires in six months or a year for parents deployed in the military overseas
- If no term is specified, can extend to three years
- Can easily be revoked by parents
- [Idaho Code Ann. § 15-5-104](#)

Idaho fillable power of attorney form [here](#)

# Guardianship and its Subtypes

- **Guardianship by Probate Court** –will names guardian and court appoints guardian upon death of parent or private guardianship case involving kin seeking guardianship. [Idaho Code Ann. § 15-5-207](#)
- **Co-Guardianship** – caregiver shares guardianship with parent. [Idaho Code Ann. § 15-5-207\(3\)](#)
- **Temporary Guardianship** – parent appoints person to have temporary rights and responsibilities for child. [Idaho Code Ann. § 15-5-207\(5\)](#)
- **Guardianship by Dependency Court** – may be subsidized or unsubsidized, may be state or federally funded (GAP). [Idaho Code Ann. § 15-5-212A](#)

Idaho [fillable forms](#)

# De Facto Custodian

- Person who has been primary caregiver of child for 6 months or more if child is under age 3 or one year or more if over age 3 = de facto custodian
- Has same standing as a parent in a guardianship case
- Guardianship is then determined based on the best interests of the child
- [Idaho Code Ann. § 15-5-213](#)



# Adoption

- Caregiver becomes the parent in the eyes of the law forever
- Caregiver has all rights and responsibilities for the child
- The birth parents' rights are terminated but they may have a right to contact or visit
- Some relatives do not feel adoption is right for them
  - They do not want to change the nature of their relationship with the child or parent
  - For example, grandma becomes mom and mom becomes sister

[Idaho Code Ann. § 16-1506](#)

# Comparing Adoption and Guardianship

## CHART

### Adoption and Guardianship for Children in Kinship Foster Care: Comparison Chart for Idaho

This chart is designed to help kinship foster parents compare adoption and guardianship as two options that you and the children in your care can pursue to exit foster care and create permanent families in Idaho.

While this chart is directed at kinship foster parents, it is also intended as a tool to help child welfare and other case workers assist kinship foster parents. Birth parents and older children may also find it helpful to review as part of their decision-making.

Generations United created this chart from Generations United's National Comparison Chart and accompanying Brief on Adoption and Guardianship for Children in Kinship Foster Care, which are available at [www.grandfamilies.org](http://www.grandfamilies.org). The content on this chart should not be considered legal advice, but rather general information to help guide your decision. Anyone considering adoption or guardianship should consult with a local legal professional.



Include information on:

- Rights and Responsibilities
- Financial and Legal Assistance
- Public Benefits
- Health Insurance
- Federal and State Tax Credits
- Caregiver Successor Planning and Death Benefits for Children
- College and Independent Living

RIGHTS AND RESPONSIBILITIES		
	ADOPTION	GUARDIANSHIP
What are my legal rights and responsibilities for the child?	You will become the parent in the eyes of the law forever. You have all rights and responsibilities for the child.	You will have most of the rights and responsibilities that come with caring for a child until the child reaches adulthood or the guardianship ends.
What are the birth parents' rights and responsibilities for the child?	The birth parents' rights are forever terminated.	Parents keep the rights to visit the child and to consent to adoption and/or name change.  Parents have an obligation to financially support the child if ordered by the court to pay child support.
Do I have authority to access services for the child?	As an adoptive parent, access to services for the child is the same as for any birth parent.	As a guardian, access to services for the child is typically the same as for any parent.

Idaho chart



# Deciding Which Legal Path



# When Guardianship May be Appropriate

- Young person has strong bond with parent and does not want to permanently sever parental rights
- Parent has a physical or emotional disability and cannot safely care for young person, but familial ties remain
- Kin caregiver believes permanently altering family legal ties is not in the best interests of the child or the family
- Cultural norms make terminating parental rights (TPR) inappropriate
- Child welfare agency cannot prove TPR grounds or caregiver does not want lengthy trial and possible appeal



# When Adoption May be Appropriate



- Terminating parental rights (TPR) makes sense and is in the best interest of the child
- Caregiver prefers to obtain all rights and responsibilities over the child
- There exists a problematic relationship with the parents
- Provides more control than guardianship regarding the birth parent's access to the child
- Tribal customary adoption - transfer of custody of a child to adoptive parents without terminating the rights of the birth parents

# When A Temporary Guardianship or Power of Attorney May Be Appropriate

- The caregiving period is time-limited and well-defined, and the parent will designate the caregiver as the temporary caregiver.
- Examples:
  - Custodial parent is in prison for a short sentence
  - Custodial parent needs to undergo medical procedures or rehabilitation
  - Custodial parent is traveling for a seasonal job or other opportunity
- Temporary guardianship provides authority until a more permanent legal relationship can be achieved

# Hear Directly from Kinship/Grandfamilies As Part of Your Trainings

The Grandfamilies & Kinship Support Network has three caregiver videos, featuring Generations United GRAND Voices. You may download them from the Network website:

Santana Lee: <https://www.gksnetwork.org/resources/kinship-grandfamilies-thrive-with-love/>

Rosalie Tallbull: <https://www.gksnetwork.org/resources/kinship-grandfamilies-thrive-with-perseverance/>

Keith Lowhorne: <https://www.gksnetwork.org/resources/kinship-grandfamilies-thrive-with-peer-support/>

# Public Benefits



# Monthly Financial Assistance

Potential sources of financial assistance for relatives raising children:

- Temporary Assistance for Families in Idaho (TAFI) relative caretaker grant or grandparent grant
- Foster care maintenance payments
  - Adoption Assistance – for special needs children being adopted from foster care
  - Guardianship Assistance – for children exiting foster care only

[See financial assistance tab at 2-1-1 Idaho CareLine webpage](#)

# Adoption Assistance



- Adoption assistance is monthly financial assistance up to the foster care rate for those children adopted from the child welfare system with “special needs”
- Special needs are defined by each state, and in Idaho and elsewhere include more than what is commonly referred to as “special needs”
- Special needs can include being part of a sibling group, being a teenager, etc.
- Idaho [adoption assistance](#) information

# Guardianship Assistance Program (GAP)

- Only for children who are with a relative in licensed foster care - it allows children to exit foster care into the permanent care of that relative
- Monthly financial support up to the foster care rate using federal or state funds
- Basic eligibility requirements for federal GAP:
  - Adoption and reunification are not appropriate options for the child
  - Child must be Title IV-E income eligible for federal GAP
  - Child must live with a licensed relative foster parent for six consecutive months prior to guardianship
  - Ineligible siblings can qualify if a sibling in the same home is eligible
- For state funded GAP – termination of parental rights is required

[Idaho Admin. Code r. 16.06.01.702](#) and [16.06.01.703](#), and [16.06.01.704](#)

# Temporary Assistance for Families in Idaho (TAFI) Relative Caretaker or Grandparent Grant

- No work requirements or time limits
- Available to help meet the needs of the child
- Eligibility based on child's income only
- For more information, see [Idaho](#) webpage



# Idaho – Support Comparison

<b>Outside the Foster Care System or Outside Licensed Kinship Foster Care</b> Temporary Assistance for Families in Idaho (TAFI) Relative Caretaker Grants	<b>Licensed Kinship Foster Care</b> Foster Care Maintenance Payments	<b>Guardianship Assistance and Adoption Assistance for Eligible Children Exiting Foster Care</b>
<b>One Child</b> <b>\$ 309 /month</b> Must apply for Medicaid separately	<b>One Child</b> Lowest rate <b>\$ 632 /month</b> Automatic Medicaid	<b>One Child</b> Lowest rate Up to <b>\$ 632 /month</b> Automatic Medicaid
<b>Two Children</b> <b>\$ 309 /month</b> Must apply for Medicaid separately	<b>Two Children</b> Lowest rate <b>\$ 1264 /month</b> Automatic Medicaid	<b>Two Children</b> Lowest rate Up to <b>\$ 1264 /month</b> Automatic Medicaid
<b>Three Children</b> <b>\$ 309 /month</b> Must apply for Medicaid separately	<b>Three Children</b> Lowest rate <b>\$ 1896 /month</b> Automatic Medicaid	<b>Three Children</b> Lowest rate Up to <b>\$ 1896 /month</b> Automatic Medicaid

# Social Security: Old-Age, Survivors, and Disability Insurance

- Children being raised by kin may be eligible if the child's parent is collecting retirement or disability insurance benefits or if the parent was fully insured when he or she died
- Kin can apply for benefits on behalf of the child based on the work record of the child's parent
- The child may qualify based on a **grandparent's** work record  
<https://www.ssa.gov/people/parents/>

# Supplemental Security Income

- Program administered by the U.S. Social Security Administration
- There's a screening tool to find out if an individual qualifies:  
<https://ssabest.benefits.gov/>
- Provides benefits for individuals who are elderly, blind, or have disabilities and who have limited income and assets
- Also provides cash benefits to children who are blind or have other serious disabilities; for children to qualify, they must be under 18 and meet the SSI disability, income, and asset criteria

# Health Care: Medicaid, CHIP, and Dental

- As with children being raised by parents, children being raised by kin should be able to access public health insurance through Medicaid and CHIP and Idaho Smiles (dental)
- Eligibility is based on the child's, not the household's income
- Caregivers do not need legal custody or guardianship of the children
- [Medicaid for Children in Idaho](#)
- [CHIP for Children in Idaho \(for children in homes with higher-incomes than Medicaid allows\)](#)
- [Idaho Smiles](#)



# Food and Nutrition Programs

- **Supplemental Nutrition Assistance Program (SNAP)**, formerly known as “Food Stamps” - Caregivers do not need legal custody or guardianship of the children. [Idaho information](#) and [general SNAP information for kinship/grandfamilies](#)
- **Women, Infants and Children (WIC) Program** – Helps eligible caregivers meet nutrition needs of children they raise under age 5. Caregivers do not need legal custody or guardianship of the children. [Idaho information](#) and [general WIC information for kinship/grandfamilies](#)
- **National School Breakfast and Lunch Programs** – Kinship families receiving SNAP, TAFI, or in foster care automatically qualify, as do families who participate in Food Distribution Programs on Indian Reservations (FDPIR). If not automatically eligible, a caregiver can contact the school to determine if they need to fill out an application. [Idaho information](#) and [general information for kinship/grandfamilies](#)

# Head Start & Child Care

- [Idaho Head Start](#) for children ages birth to five from income-eligible households. Contact your local Head Start (contact info available at the link)
- [Idaho Child Care Program \(ICCP\)](#) for children under age 13 (or older if they have special needs) from income-eligible households. Application is [here](#)



# Education

- Grandparents and other kin caregivers can ask for an assessment of a child up to age 3 if they suspect a significant developmental delay. See Idaho information [here](#).
- After age 3, a caregiver can ask the school district for an assessment for special education services.
- With a legal relationship to the child or power of attorney, caregivers should be able to enroll children tuition-free in public school.
- Each state has a McKinney-Vento federal homeless act liaison who can help enroll “unaccompanied youth” in school and connect the child to services.

# National Family Caregiver Support Program (NFCSP) and Native American Caregiver Support Program (NACSP)

- Provide 5 types of supportive services to family caregivers and relatives aged 55 and older who are the primary caregivers of children (with or without legal relationships to the children):
  1. *Assistance to caregivers about available services*
  2. *Assistance to caregivers in gaining access to services*
  3. *Individual counseling, organization of support groups, and training caregivers*
  4. *Respite care*
  5. *Supplemental services on a limited basis*
- Area Agencies on Aging (AAAs) or tribal organizations provide these services or contract for their provision

# NFCSP and NACSP cont'd

- AAAs and tribal organizations may use additional funding sources to try to reach the majority of caregivers who are under age 55
- Idaho's AAAs have been providing support groups and other services for kin
- Contact information for Idaho's AAAs available [here](#)



# Tax Credits:

## Earned Income Tax Credit (EITC)

- This tax credit is refundable so even workers who don't earn enough to pay taxes can get cash from the IRS
- Qualifying children:
  - Includes all relatives (and steps)
  - Must be under age 19 (or 24 if a full-time student)
  - If the child is permanently and totally disabled, there is no age requirement
  - Must have lived with the relative for more than ½ the year

See [IRS](#) guidance

# Child Tax Credit & Additional Child Tax Credit

- For kinship caregivers both inside and outside child welfare involvement with dependent children through age 17
- Eligibility:
  - **Relationship:** any related child (except cousins) or foster child (both related and not related) - fictive kin, such as a godparent or close family friend, are only eligible if they are the child's foster parent
  - **Residency:** the child must live with the caregiver for more than half the year
  - The child must have a Social Security number
  - The caregiver and child do **not** need to have a legal relationship
- See [IRS Guidance](#) for Child Tax Credit
- Additional Child Tax Credit is also available and is refundable (meaning if not enough taxes are owed, the caregiver can get a check for the credit). Refundable up to \$1,700 in 2024. See [IRS](#) guidance

# Adoption Tax Credit

- Credit for qualifying expenses to adopt children from in and outside the foster care system
- For those adopting from foster care, can claim the total credit without showing expenses
- If adopting outside of foster care, can deduct up to full amount based on actual adoption expenses
- In tax year 2024, the maximum amount is \$16,810 per child

See [IRS](#) guidance

***None of these tax credits are counted as income and they will not jeopardize other benefits***

# Alternative Care Planning



# Alternative Care Planning for Kinship/Grandfamilies Outside of Foster Care

<b>Informal Agreement</b>	<ul style="list-style-type: none"><li>• Caregiver can collect evidence that they're raising the child (school records, health care records, any health care affidavit, tax returns, TANF child-only or other benefits received for the child) and how they are related to the child (birth certificate, family records)</li><li>• Caregiver can plan with a trusted person by typing out wishes, signing the resulting document, and sharing with the trusted person and anyone else important to family. May also notarize the paper.</li></ul>
<b>Power of Attorney</b>	Caregiver can work with the parents to plan for where the child will go if they die.
<b>Guardianship</b>	Caregiver may be able to name successor guardian through guardianship process.
<b>Adoption</b>	<ul style="list-style-type: none"><li>• Caregiver can name guardian in will.</li><li>• Caregiver may be able to name standby guardian to take over if caregiver becomes disabled.</li></ul>

# Alternate Care Planning for Kinship Families Inside Foster Care or Who Have Exited Foster Care

<b>Foster Care</b>	Caregiver can work with the child’s case worker to make sure they have another family member or close family friend identified to care for the child if caregiver dies or can no longer care for the child.
<b>Guardianship</b>	As part of the process of becoming guardian and the child exiting the foster care system, the caregiver may be able to name a successor guardian to take over if they die
<b>GAP (Guardianship Assistance Program)</b>	The GAP agreement must be in place BEFORE getting the guardianship court order. The caregiver may name a successor guardian to take over. That successor does not have to be licensed or a relative to receive the monthly financial assistance.
<b>Adoption</b>	After the adoption process is complete, the adoptive parent can create a will and name a guardian for the child, just like any birth parent.
<b>Adoption Assistance</b>	As part of this process, the caregiver can name a successor guardian to take over if they die. If the new caregiver then adopts the child, they may be able to receive the adoption assistance.



# 2-1-1 Idaho CareLine

Get Connected. Get Answers. Dial 2-1-1 or 800-926-2588.

## Explore this Section

Welcome to 2-1-1

Community Supports

Child Care

**Kinship and Caregiving**

## Kinship and Caregiving

Kinship care refers to the care and protection of a child by relatives, members of their tribe, step-parents, or close family friends (also referred to as fictive kin). Relatives or fictive kin are the preferred placement for children who must be removed from their birth parents, as they have inherent capabilities for supporting and maintaining the child's family connections and cultural traditions.

<https://healthandwelfare.idaho.gov/services-programs/kinship-and-caregiving>

## The Only National Technical Assistance Center for those who Serve Kinship/Grandfamilies

We help government agencies and nonprofits in states, tribes, and territories work across jurisdictional and systemic boundaries to improve supports and services for families in which grandparents, other relatives, or close family friends are raising children.



**Insert your  
contact info  
here**





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