

**BALTIMORE COUNTY
DEPARTMENT OF SOCIAL SERVICES**

KINSHIP CARE RESOURCE MANUAL

March 2008



BALTIMORE COUNTY

M A R Y L A N D

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INTRODUCTION

The idea for this manual arose from a need recognized by the Baltimore County Department of Social Services for a reference guide for staff who work with grandparents and other caregivers. An increasing number of children in Baltimore County are being raised by their grandparents and other kin. Baltimore County Department of Social Services staff who work with this population recognized that grandparent caretakers needed information and guidance on a variety of legal issues, but there was no one place to which they could turn to obtain this information.

Grandparent caretakers are particularly hard to reach because there is no one place, group, or organization where large numbers of grandparent caretakers typically congregate. Thus, it would be difficult to effectively distribute materials exclusively for grandparent caretakers because of the challenge of locating those who are most in need of the information. It was determined that a manual written for social workers, lawyers, and health care personnel who come in contact through their work with grandparent caretakers might be an effective tool to strategically get the information into the hands of individuals who are in a position to empower grandparent caregivers, assist them in asserting their rights, and obtain the benefits to which they are entitled. We intend to disseminate copies of this manual in a systematic way through these networks within Baltimore County and to make them available to social service agencies in other counties throughout the State of Maryland.

This is not to say that this manual will not be read by many grandparent caretakers. It is, however, written in significantly more depth and more detail than might ordinarily be found with self-help materials, so that even rather complex issues are discussed in the manual and can, we hope, be effectively addressed.

ACKNOWLEDGMENTS

This manual would not have been possible without the dedication and extended efforts of several individuals at the Baltimore County Department of Social Services. This project was spearheaded and coordinated by Ann Abramson, Co-Facilitator of the Kinship Care Support Group Program, who spent over a year nursing this project through from conception to completion. Marty Zimmerman, also a Co-Facilitator, spent many hours reviewing drafts and advising on the development of this Manual.

Director, Timothy Griffith, supported the idea and the accomplishment of this project, which Baltimore County Department of Social Services plans to distribute to sister agencies throughout the State of Maryland. This important resource will serve as a useful tool for addressing the many issues surrounding the rights of grandparents and non-parental caregivers.

Many others reviewed portions of the drafts for accuracy including Marci Van De Mark, Assistant Director of Adult and Adolescent Services; Aimee Bollinger-Smith, Administrator of Adult and Adolescent Services; Karen Keyer, Supervisor of Family Violence Unit; Judith Schagrin, Assistant Director of Children's Services; Gary Holt, Assistant Director Family Investment Division; and Tom Saylor, Medical Assistant Policy Specialist.

Baltimore County Department of Social Services would like to acknowledge the invaluable contributions of the law firm of Hogan & Hartson LLP. Many Hogan & Hartson attorneys spent countless hours researching and drafting this manual through its Community Services Department. In 1970, Hogan & Hartson became the first major law firm to establish a separate practice group devoted to developing pro bono legal service opportunities for the entire firm. The firm has been a leader in the provision of legal services in the public interest ever since. It has been the recipient of the ABA Pro Bono Publico Award and widespread recognition from bar associations and community and legal services organizations.

DISCLAIMER

This manual is intended only to provide **general guidance** on the issues addressed herein; **it does not purport to provide, nor should it be taken as providing, legal advice.** Moreover, the law in Maryland is constantly changing and evolving. Therefore, it should be noted that all references to laws and monetary limits for public benefits programs are subject to change at any time. **Again, this manual is a general guide and not legal advice.** Given that the application of Maryland's laws related to children is very fact specific and varies depending on the specific circumstances presented in each case, the reader should **not** rely on this general guidance as providing answers to individual legal issues or problems.

March 2008

FINANCIAL AND INCOME ISSUES

Grandparents raising minor grandchildren in Maryland may be eligible for certain benefits and additional income sources to help ease the strain on their budgets. These benefits generally base eligibility on the income of either the grandparent, the grandchild, or all members of a household.

Income-based programs providing cash benefits include the Family Investment Program (FIP) which includes Temporary Cash Assistance (TCA), the Maryland Energy Assistance Program (MEAP), and the Electric Universal Service Program (EUSP). Other benefits, such as the Food Stamp program and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), provide financial assistance to purchase nutritious foods.

In addition to these Maryland benefits, the federal government offers other benefits that base eligibility on an individual's employment record. Social Security retirement benefits and Social Security Disability Insurance (SSDI) provide income to individuals who have worked for a minimum period in eligible jobs to qualify for these programs. Grandparents with limited income may also be eligible for the Supplemental Security Income (SSI) program and other federal benefit programs include Veterans benefits and Railroad Retirement Benefits.¹

Furthermore there are tax credits which grandparents may be able to take advantage of including the Federal Tax Credit for Child and Dependent Care, Federal Earned Income Tax Credit, Homeowners' Property Tax Credit Program, and the Renters' Tax Credit Program.

Child support is another income source grandparents may be able to receive from one or both of the grandchild's parents. Grandparents may seek child support payments regardless of their income and whether the parents live in Maryland or elsewhere in the United States.

¹ This program is officially known as the Social Security Equivalent Benefits (SSEB) portion of Tier 1 Railroad Retirement Benefits.

I. TEMPORARY CASH ASSISTANCE (TCA)

Temporary Cash Assistance (TCA) is part of Maryland's Family Investment Program and provides a limited cash benefit program to needy families with dependent children.² TCA provides monthly cash benefits to eligible low-income families with dependent children. A grandchild may receive TCA individually *or* both the grandparent (if the grandparent is also eligible) and the grandchild may obtain a household TCA benefit. The amount of TCA assistance a grandchild or a family will be eligible to receive will depend on the size of the family and the family income. Each local Maryland Department of Social Services administering the TCA determines the specific amount an eligible family or person will receive.³ Currently the maximum monthly amounts available are \$210 for an individual, \$372 for a family of two, \$472 for a family of three and \$570 for a family of four. With each additional family member, the possible benefit increases.⁴

a. Eligibility Requirements

In order to be eligible for TCA, the recipient (the grandchild if the application is child only, or also the grandparent if the grandparent is applying with the grandchild) must be a resident of Maryland and a U.S. citizen or an immigrant who is a permanent resident (green card holder) or other immigrant who meets specific additional requirements.⁵ In addition, the grandchild must truly live in the grandparent's home and may only be absent from the home for short periods of time or for specific reasons.⁶

² See, e.g., Md. Code art. 44A *et seq.* (2006).

³ COMAR 07.03.03.13E(1) (2007).

⁴ COMAR 07.03.03.17 (2007).

⁵ COMAR 07.03.03.07A and COMAR 07.03.03.07B (2007).

⁶ COMAR 07.03.03.07D (2007).

b. Income and Asset Requirements

In order to be eligible for TCA grants, the grant recipients must have assets below \$2,000.⁷ Certain assets, including cars, homes, and items for day-to-day living are not counted toward the \$2,000 asset limit. Each local Maryland Department of Social Services considers all income of members of the “assistance unit” and others who may be contributing to the family in determining both eligibility for a household TCA grant and the amount of benefit.⁸ However, certain income, such as SSI benefits, is not included in the income calculation.⁹ In order to be eligible for TCA grants, income must not exceed the following levels:¹⁰

Number of Individuals in the Assistance Unit	Monthly Income Level
1	\$358
2	484
3	610
4	735
5	861

c. Work Requirements

In addition to meeting the eligibility, income and asset requirements, members of an assistance unit must meet TCA’s work or education requirements.¹¹ Generally, adults and children 16 years old or older, who are not enrolled full time in school, must participate in a “work activity.”¹² Work activity includes employment, job training, and community service.¹³ There are exceptions to the work

⁷ COMAR 07.03.03.12 (2007).

⁸ COMAR 07.03.03.13E(1) (2007).

⁹ COMAR 07.03.03.13D (2007).

¹⁰ COMAR 07.03.03.17 (2007). Higher levels are available for larger assistance units.

¹¹ COMAR 07.03.03.07I (2007).

¹² *Id.*

¹³ COMAR 07.03.03.07I (2007).

requirement for adults receiving SSI or adults who are caring for a physically or mentally disabled child or family member, or who are caring for a child under the age of six, and child care is unavailable.¹⁴

d. Child-Only TCA Grant

If a grandparent's income, or lack of work activity, makes him or her ineligible for a TCA household grant, the grandparent may apply on the grandchild's behalf for a child-only grant. While Maryland will consider all assets and income available to the grandchild, it will only consider assets that the grandchild has a "legal interest and which are actually available and countable."¹⁵ This includes child support payments and applicants for TCA must apply for child support and assist the State in obtaining such support, unless a good reason for not doing so can be demonstrated.¹⁶

If the grandparent is included with the child in the grant application, the maximum period normally allowed for families to receive TCA in Maryland is 60 months, but if the application is "child only," the child can receive TCA benefits until he or she is 19 years old.¹⁷

e. Form of TCA Grants

The Maryland Department of Human Resources provides TCA grants by check or through the Electronic Benefit Transfer System (EBTS).¹⁸ Payments are made within the first few days of each calendar month. The recipient of the payment can be the grandparent if he or she is a recipient or if the grandparent is the caretaker of a child recipient.¹⁹ Other payees may also be designated by the TCA case manager, if needed.²⁰

¹⁴ COMAR 07.03.03.03.07I (2007) and COMAR 07.03.03.03.08 (2007).

¹⁵ COMAR 07.03.03.03.12C(1) (2007).

¹⁶ COMAR 07.03.03.03.10 (2007).

¹⁷ COMAR 07.03.03.07 (2007)

¹⁸ COMAR 07.03.03.03.16 (2007).

¹⁹ *Id.*

²⁰ *Id.*

f. Application

Grandparents may apply for TCA for the family unit including themselves or just for the children in their care. The grandparent will need to complete and sign a TCA application form that is available on-line²¹ or that can be obtained by calling the grandparent's local Maryland Department of Social Services.²² The same application is used for TCA, Food Stamps, Medicaid, and Emergency assistance.²³ Once the application is submitted, the Department of Social Services will assign a case manager and arrange an interview with the grandparent. The grandparent must bring with them certain documentation to verify the information provided in the application. The case manager will initiate a needs assessment process and will likely request specific documentation from the grandparent to complete the needs assessment. The case manager will work with the applicant to develop an agreement entitled the "Family Independence Plan" that will include information about the grandparent's commitment and responsibilities for cooperating with Social Services and actions the grandparent will take to improve the family's financial situation.²⁴ The case manager will offer the grandparent support services in addition to (or instead of) TCA, as may be applicable.²⁵

²¹ See <http://170.224.111.196/fia/forms.htm>.

²² Grandparents can find their local Department of Social Services by calling (800) 332-6347 (EN ESPAÑOL: (800) 732-7850 or TTY for Hearing Impaired: (410) 767-7025) or by going on-line to <http://170.224.111.196/county.htm>. Note that there are penalties for submitting false information. COMAR 07.03.03.04 (2007).

²³ These other programs will be discussed below or are addressed in other chapters of this Handbook. Note, families eligible for federally funded TCA are automatically eligible for Medical Assistance (MA), but not all families eligible for federally funded TCA are automatically eligible for food stamps. See the Department of Human Resources Family Investment Administration Temporary Cash Assistance Manual Chapter 2D available at <http://170.224.111.196/tca/index.htm>.

²⁴ COMAR 07.03.03.04 (2007).

²⁵ *Id.*

g. Decision on Eligibility

The Department will make a decision on the application within 30 days of the application, unless certain extenuating circumstances exist.²⁶ If the grandparent does not supply requested verification documentation within the requested time (usually ten days) the application will be denied unless the grandparent demonstrates that he or she is making a good faith effort to obtain the documentation, but is unable to do so. Such difficulties should be reported to the case manager as soon as they occur. The case manager may be able to assist the grandparent in obtaining the required information.²⁷

II. MARYLAND ENERGY ASSISTANCE PROGRAM (MEAP)

Through the Maryland Energy Assistance Program (MEAP),²⁸ Maryland makes a one time payment every year to help low-income families pay for their heating (whether it is gas, electric, oil, propane, coal, wood, or kerosene) during the winter months. There is also limited assistance available to replace broken or inefficient refrigerators and furnaces.

a. Eligibility Requirements

Eligibility is evaluated with respect to the household. A “household” is defined as “an individual or group of individuals who are living together as one unit and for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.”²⁹ A household is eligible for assistance if the household resides in Maryland, the members of the household are U.S. citizens or permanent residents (green card holders) or other immigrants who meet specific

²⁶ COMAR 07.03.03.05 (2007).

²⁷ *Id.* See also, the Department of Human Resources Family Investment Administration Temporary Cash Assistance Manual Chapter IV available at <http://170.224.111.196/tca/index.htm>.

²⁸ See <http://www/Md.oa.state.Md.us/GparentDir.pdf>.

²⁹ COMAR 07.06.06.02B(16) (2007).

additional requirements.³⁰ The household must also meet certain income requirements. Grandparents may be eligible for MEAP, whether they own or rent their homes.

b. Income Limits

The income limits are set each year and are based on the Federal Department of Health and Human Services for the Low Income Home Energy Assistance Program.³¹ For the program year July 1, 2006-June 30, 2007 the income standards are as follows:³²

HOUSEHOLD SIZE	MAXIMUM MONTHLY INCOME STANDARDS	MAXIMUM YEARLY INCOME STANDARDS
1	\$1,633	\$19,600
2	2,200	26,400
3	2,766	33,200
4	3,333	40,000
5	3,900	46,800
6	4,466	53,600

If there are more than six members of a household, then \$566 of monthly income will be added to the Monthly Income Standards for each additional person in the household.

Not all income is counted in determining eligibility. For example, while TCA benefits and Social Security payments are counted, child support and food stamps are not.³³ Generally, grandparents may be eligible if they:

- ❖ are over 60 years old and live on a limited income;
- ❖ receive TCA;
- ❖ receive SSI;
- ❖ receive Food Stamps;
- ❖ receive certain veterans or Social Security disability benefits;

³⁰ COMAR 07.06.06.03 (2007).

³¹ *Id.*

³² See www.goprincegeorgescounty.com/Government/AgencyIndex/Social_Services/.

³³ COMAR 07.06.06.04 (2007).

- ❖ have income at or below 150% of the federal poverty guidelines (not listed on cited web page-See Footnote 44 for more information); or
- ❖ have, or can establish, an Electric Service Account in their own name.

c. Form of MEAP Grant

MEAP grants are paid only once a year. Ordinarily, the MEAP benefit is paid directly to the energy supplier on behalf of the applicant. The benefit may also be paid to the landlord on behalf of the applicant when heating costs are included in the rent. Only under certain extenuating circumstances will the payment be made directly to the applicant.³⁴

III. ELECTRIC UNIVERSAL SERVICE PROGRAM (EUSP)

Through the Electric Universal Service Program (EUSP)³⁵ Maryland provides cash assistance and weatherization services available to low income Maryland residents and helps these residents reduce and manage their electric costs.

a. Eligibility Requirements

Electric customers are individuals either with an electric service account in their name or seeking an electric service account in their name.³⁶ Eligibility for assistance is based on household income.³⁷ A “household” is defined as “an individual or group of individuals who are living together as one unit and for whom residential electric service is customarily purchased in common.”³⁸ An applicant is eligible for EUSP assistance if the individual is an electric customer, resides in Maryland, is a U.S. citizen, a permanent resident (green card holder) or other immigrant who meets specific additional requirements,

³⁴ COMAR 07.06.06.07 (2007).

³⁵ COMAR 07.06.22.01 *et seq.* (2007).

³⁶ COMAR 07.06.22.02 (2007).

³⁷ COMAR 07.06.22.03 (2007).

³⁸ COMAR 07.06.22.02B(13) (2007).

and the total household income does not amount to more than one and a half times the federal poverty level for the applicable household size.³⁹

Generally grandparents may be eligible for EUSP assistance if they:⁴⁰

- ❖ are over 60 years old and live on a limited income;
- ❖ receive TCA;
- ❖ receive SSI;
- ❖ receive Food Stamps;
- ❖ receive certain veterans or Social Security disability benefits;
- ❖ have income at or below 150% of the federal poverty guidelines; or
- ❖ have, or can establish, an electric service account in their own name.

b. Income Limits

Income is counted only during the 30-day period prior to the application.⁴¹ Certain income is “countable” and other income is exempt from the calculation. Countable income includes such items as wages, social security (except Medicare payment deductions), interest, TCA grants, unemployment benefits, and most child support payments.⁴² Wages of children 17 years and younger, educational assistance, lottery winnings, and certain other benefits are excluded from countable income.⁴³ The federal poverty level is adjusted each year. For 2007, households with up to the following maximum yearly income standards, based on household size, would be eligible for EUSP assistance:⁴⁴

HOUSEHOLD SIZE	MAXIMUM MONTHLY INCOME STANDARDS	MAXIMUM YEARLY INCOME STANDARDS
1	\$1,276.25	\$15,315.00
2	1,711.25	20,535.00

³⁹ COMAR 07.06.22.03 (2007).

⁴⁰ See, <http://170.224.111.196/how/energy/eusp.htm>.

⁴¹ COMAR 07.06.22.04A (2007).

⁴² COMAR 07.06.22.04D (2007).

⁴³ COMAR 07.06.22.04E (2007).

⁴⁴ U.S. Department of Health and Human Services, 2007 Federal Poverty Level Guidelines, available at http://www.cms.hhs.gov/MedicaidEligibility/07_IncomeandResourceGuidelines.asp.

HOUSEHOLD SIZE	MAXIMUM MONTHLY INCOME STANDARDS	MAXIMUM YEARLY INCOME STANDARDS
3	\$2,146.25	\$25,755.00
4	2,581.25	30,975.00
5	3,016.25	36,195.00
6	3,451.25	41,415.00
7	3,886.25	46,635.00
8	4,321.25	51,855.00

If there are more than eight members of a household, then \$3,480.00 of income will be added to the Yearly Income Standards for each additional person in the household.

c. Forms of EUSP Assistance

EUSP assistance can be used one time in a year to pay a customer’s electric bill. If the customer’s application for electric bill assistance is approved, the Department of Social Services will pay the electric company directly.⁴⁵ The amount of assistance will depend upon the household’s countable income poverty level, the household’s consumption of electricity in the year preceding the filing of the application, and whether the applicant lives in public or subsidized housing.⁴⁶

EUSP assistance can also be used to pay amounts past due to the electric company.⁴⁷ Assistance will be granted to assist an applicant in having their electric service restored if it has been terminated, or to keep service if they are otherwise in danger of losing it. Again, if this assistance is approved, the Department of Social Services will pay the electric company directly.⁴⁸

IV. FOOD STAMPS

The food stamp program helps low-income households purchase healthy and nutritious foods. Recipients may use Food Stamp benefits to purchase food at grocery stores.

⁴⁵ COMAR 07.06.22.07 (2007).

⁴⁶ COMAR 07.06.22.07C (2007).

⁴⁷ COMAR 07.06.22.08 (2007).

⁴⁸ COMAR 07.06.22.08 (2007).

a. Eligibility

Eligibility for food stamps depends on household income and assets. The food stamp program defines a “household” as a home consisting of any of the following: (a) a person living alone; (b) a group of people who live together and regularly buy and prepare meals together; (c) a person who lives with others, but who usually buys and prepares meals separately from the other people who live with him/her; (d) a person, 60 years or older, and a spouse, who lives with others and is unable to purchase foods or prepare meals because of a disability.⁴⁹ A household is eligible for assistance if it is in Maryland and the members of the household are U.S. citizens or permanent residents (green card holders) or other immigrants who meet specific additional requirements.⁵⁰

b. Categorical Eligibility

If all members of a household receive either TCA or SSI benefits, or several other state or federal income based assistance, the household is automatically eligible to receive food stamps.⁵¹

c. Income and Asset Requirements

Eligible households may have only up to \$2,000 in countable assets unless a member of the household is 60 years or older, in which case, the limit on countable assets increases to \$3,000.⁵² The value of a home, household goods and personal effects, a car, and certain other assets are not counted toward this limit.⁵³

When calculating eligibility, the Department of Social Services will count income from any source except certain specific excepted income such as certain federal and state assistance payments and

⁴⁹ COMAR 07.03.17.03 (2007). *See also*, <http://www.dhr.state.Md.us/how/cashfood/fstamp.htm>.

⁵⁰ COMAR 07.03.17.09 (2007). *See also*, Department of Human Resources, Family Investment Administration, Food Stamp Manual, Residency Section 110, Page 1.

⁵¹ COMAR 07.03.17.12 (2007).

⁵² COMAR 07.03.17.25 (2007).

⁵³ COMAR 07.03.17.27 (2007) and COMAR 07.03.17.28 (2007).

educational assistance.⁵⁴ Other expenses may be deducted when calculating household income, for example, certain medical payments, child care expenses, mortgage or rent, property taxes, and utility expenses.⁵⁵

The schedules for income and deductions effective January, 2007 are as follows:⁵⁶

2007 POVERTY LEVEL GUIDELINES

HOUSEHOLD SIZE	Monthly Income Elderly/Disabled Separate Household* 165% of Poverty	Maximum Gross Monthly Income* 130% of Poverty	Maximum Net Monthly Income* 100% of Poverty	Maximum Allotment
1	\$1348	\$1062	\$ 817	\$155
2	1815	1430	1100	284
3	2283	1799	1384	408
4	2750	2167	1667	518
5	3218	2535	1950	615
6	3685	2904	2234	738
7	4153	3272	2517	816
8	4620	3640	2800	932
Each Additional Member	+468	+369	+284	+117

*Maximum gross and net monthly income figures are not used for computing the food stamp allotment. They are included as a reference for determining the household’s eligibility.

d. Work Requirements

In addition to meeting the eligibility, income, and asset requirements, members of a household between the ages of 16 and 60 who are able to work are expected to work, unless there is a good reason otherwise.⁵⁷ At the time of the application, and every 12 months thereafter, each household member in the 16-60 age group must register for work and accept suitable work, with some exceptions.⁵⁸

⁵⁴ COMAR 07.03.17.30 (2007) and COMAR 07.03.17.31 (2007).

⁵⁵ COMAR 07.03.17.33 (2007), COMAR 07.03.17.34 (2007), COMAR 07.03.17.37 (2007), and COMAR 07.03.17.38 (2007).

⁵⁶ COMAR 07.03.17.45 (2007). See Department of Human Resources, Family Investment Administration, Food Stamp Manual, Standards Section 600.4, Page 1 (revised 12/06). See also <http://www.fns.usda.gov/fsp/faqs.htm#9>.

⁵⁷ COMAR 07.03.17.21 (2007). Those who are 16 or 17 years old who are attending school are not required to register for work. Department of Human Resources, Family Investment Administration, Food Stamp Manual, Work

e. Application

Grandparents applying for food stamps must complete the same application as for TCA grants or they can file an electronic application.⁵⁹ As described above, the application form is available on-line⁶⁰ or can be obtained by calling the grandparent's local Maryland Department of Social Services.⁶¹ The application can also be made in person. As with the TCA application, after the application is signed and submitted, the applicant will have an in-person interview with a case worker.⁶² The household is required to cooperate with the case worker to provide verification of the information provided in the application.⁶³

Requirements Section 130, Page 1 (revised 12/06). Generally, students between the ages of 18 and 50 who are enrolled in an institution of higher education at least half time, are ineligible for food stamps. COMAR 07.03.17.10 (2007).

⁵⁸ *Id.*

⁵⁹ *See Id.* at Section 400: Filing an Application.

⁶⁰ *See* <http://170.224.111.196/fia/forms.htm>.

⁶¹ Grandparents can find their local Department of Social Services by calling (800) 332-6347 (EN ESPAÑOL: (800) 732-7850 or TTY for Hearing Impaired: (410) 767-7025) or on-line at <http://170.224.111.196/county.htm>. There are penalties for submitting false information. COMAR 07.03.03.04 (2007).

⁶² COMAR 07.03.17.15 (2007).

⁶³ *See* Department of Human Resources, Family Investment Administration, Food Stamp Manual, Customer Rights and Responsibilities Section 403 and Verification Section 408 (revised 12/06). On its website (<http://170.224.111.196/how/cashfood/fstamp.htm>), the Maryland Department of Human Resources recommends bringing the following items to verify an application for food stamps: (1) Proof of identity (driver's license, ID card); (2) Proof of address, unless you are homeless (apartment or house lease, electric, gas, water or phone bill, rent book or receipt, or mortgage statement); (5) Social Security Number for everyone for which you are applying. If you don't have a number you will have to apply for one; (6) Proof of the amount all earned and unearned income before taxes or deductions (pay stubs for the past month or two, employer wage statement, benefit letters from Social Security, unemployment compensation, Veteran's Administration or pensions); (7) Proof of shelter costs. If you want the Maryland Department of Human Resources to count your actual utility expenses you will have to verify them (rent or mortgage, insurance on your house, telephone, gas, electric, oil and water bills); (8) Proof of any cash or non-cash assets (most recent savings and checking account statement, value of stocks or bonds); (9) Proof of immigration status for non-citizens who are applying for food stamps (you do not have to provide any immigration information on people who are not applying for food stamps); (10) Proof of child support payments you make if you want the Maryland Department of Human Resources to consider the amount you pay (support order, separation agreement, child support records); (11) Proof of out-of-pocket medical expenses if you are age 60 or older or receive federal disability benefits (doctor or hospital bills; prescription receipts, receipts for over-the-counter medical expenses if prescribed by a medical practitioner; transportation costs to get to medical care); and (12) Proof of child care expenses if you are working or looking for work or in training.

In most cases, the application will be approved or denied within 30 days.⁶⁴ However, in cases of severe need, the applicant will be provided one month's worth of stamps within seven days.⁶⁵

f. Distribution of Food Stamp Benefits

Food stamps in Maryland are accessed and distributed through the Electronic Benefits Transfer System (EBTS). EBTS uses a plastic card similar to a bank debit card to transfer funds from a food stamp benefits account to a retailer's account. With an Electronic Benefits Transfer (EBT) card, food stamp customers may pay for groceries.⁶⁶

Families receiving food stamps are required to report changes that may affect their eligibility for food stamps.⁶⁷ If a recipient receives extra food stamps because they have not reported the correct information or a change in information, they will have to refund the value of the extra food stamps.⁶⁸

V. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides nutrition education and supplemental nutritious food for pregnant women, new mothers, infants, and children up to five years old.⁶⁹ Grandparents caring for a young grandchild, a pregnant grandchild or a grandchild who has recently delivered a baby, may be able to apply for WIC benefits on behalf of a grandchild.

⁶⁴ *Id.*

⁶⁵ COMAR 07.03.17.19 (2007). *See also* Department of Human Resources, Family Investment Administration, Food Stamp Manual, Expedited Service Section 401 (revised 12/06).

⁶⁶ *See* the Maryland Department of Human Resources website at <http://170.224.111.196/stamp/spend.htm>.

⁶⁷ COMAR 07.03.17.47 (2007). *See also* Food Stamp Manual, *supra* note 55 at 9.

⁶⁸ COMAR 07.03.17.50 (2007). *See also* Food Stamp Manual, *supra* note 55 Claims Against Households Section 490.

⁶⁹ *See* <http://www.fha.state.md.us/wic/>.

a. Eligibility

For a grandchild to qualify for WIC assistance, the grandchild must reside in Maryland, meet certain income requirements, be considered nutritionally at risk, and must not also be receiving benefits under the Commodity Supplemental Food Program funded by the United States Department of Agriculture.⁷⁰

b. Income Limits

In order to be eligible for WIC assistance, a local WIC office of the Maryland Department of Health and Mental Hygiene will evaluate the income of the grandchild and the whole family who are living together.⁷¹ If the grandchild is receiving food stamps, TCA grants or participates in the Maryland Children's Health Program or certain other state administered income-based assistance programs, the grandchild will automatically receive WIC assistance.⁷² If the grandchild is not already participating in one of these assistance programs, the family will need to demonstrate that its countable income does not exceed 185% of federal poverty limits.⁷³ Countable income includes almost all income to the family including wages, social security, public assistance, and child support payments. It excludes only certain, very specific, payments.⁷⁴

The chart below illustrates the income limits for WIC eligibility for 2007.⁷⁵

HOUSEHOLD SIZE	MAXIMUM MONTHLY INCOME STANDARDS	MAXIMUM YEARLY INCOME STANDARDS
1	\$1,574.04	\$18,888.50
2	2,110.54	25,326.50

⁷⁰ COMAR 10.54.01.05 (2007).

⁷¹ For purposes of the Maryland WIC program, "family" means a group of related or nonrelated individuals who are not residents of an institution but who are living together as one economic unit, except that residents of a homeless facility or an institution may not all be considered as members of a single family. COMAR 10.54.01.04(14) (2007).

⁷² COMAR 10.54.01.05 (2007). *See also* <http://www.fha.state.Md.us/wic/>.

⁷³ COMAR 10.54.01.07 (2007).

⁷⁴ COMAR 10.54.01.04(18) (2007).

⁷⁵ The chart shows 185% of the federal poverty limits for 2007. *See supra* note 44.

HOUSEHOLD SIZE	MAXIMUM MONTHLY INCOME STANDARDS	MAXIMUM YEARLY INCOME STANDARDS
3	\$2,647.04	\$31,764.50
4	3,183.54	38,202.50
5	3,720.04	44,640.50
6	4,256.54	51,078.50
7	4,793.04	57,516.50
8	5,329.54	63,954.50

A grandparent applying for WIC assistance for a grandchild who is not receiving benefits under any of the programs that would make the grandchild automatically eligible for WIC assistance, will need to provide documentation to the local agency to verify the family's income information.

c. Nutritional Risk

In order to receive WIC benefits, the grandchild must also be evaluated by the local WIC office or a health care professional and it must be determined that the grandchild faces some nutritional health risk. Risk may be based on medical conditions, low or high weight, dietary deficiencies, and other conditions such as alcohol or substance abuse.⁷⁶

d. Access to WIC Benefit

WIC assistance is distributed by check. The check lists the specific items and amounts of food the recipient can buy with his/her WIC check. Generally, WIC checks are valid for milk, cheese, eggs, dried beans, peanut butter, cereal, juice and formula. Sometimes, specific brands are listed on the check or in the WIC guide that comes with the checks. Each check is only valid for a specific time period (usually one month) and only certain stores participate in the WIC program. An approved WIC recipient will receive an ID folder and an appointment to pick up WIC checks. The person receiving benefits can appoint another person, for example, their grandparent, to pick up their checks and buy food for them. When the recipient or his/her representative goes to get the checks, they will also be asked to participate in nutrition education activities.⁷⁷

⁷⁶ COMAR 10.54.01.08 (2007), COMAR 10.54.01.04(23) (2007), and COMAR 10.54.01.11 (2007).

⁷⁷ See <http://www.fha.state.md.us/wic/html/wicnu-eng.cfm>.

VI. SOCIAL SECURITY⁷⁸

Grandparents probably are most familiar with Social Security retirement benefits. Those who meet the applicable age requirement and who have paid into the Social Security program over their lifetimes through payroll deductions may receive a monthly payment intended to provide income during their retirement.⁷⁹ Eligibility for Social Security retirement benefits is based on “credits” earned through qualified employment.

Grandparents may not be aware that Social Security benefits also may be available to grandchildren with deceased or disabled parents whose employer made proper payroll deductions. For more information on Social Security benefits, grandparents may call the Social Security Administration at (800) 772-1213, or visit <http://www.ssa.gov> or their local Social Security office. (The hearing impaired may contact the Social Security Administration at (800) 325-0778 or visit their local Social Security office.)

a. Full Social Security Retirement Benefits for Grandparents

A grandparent may receive full Social Security benefits starting at ages 65 to 67, depending on his or her year of birth.⁸⁰ Those born before 1938 can receive full benefits beginning at age 65. Individuals born in 1938 or later may have to wait anywhere from two months to two years after they turn 65 to begin receiving full retirement benefits. In addition to the age rules, the grandparent must have 40 “credits.”⁸¹ Generally, a grandparent must work ten years to earn the necessary 40 credits. Currently, credits are awarded for each \$1000 in earnings per year with a maximum of four credits per year awarded.

⁷⁸ See generally 20 C.F.R. § 404.301 *et seq.* (2007).

⁷⁹ See Social Security Credits in Social Security Administration, Disability Planner, available at <http://www.ssa.gov/retire2/credits.htm> for information on how credits are earned and the number of credits required to receive retirement benefits.

⁸⁰ See Full Retirement Age in Social Security Administration, Retirement Planner, available at <http://www.ssa.gov/retire2/retirechart.htm>, to find out what will be a grandparent’s “full retirement age” for purposes of Social Security.

⁸¹ *How You Earn Credits*, Social Security Administration Publication No. 05-10072 (Jan. 2007), available at <http://www.ssa.gov/pubs/10072.html#number>.

If a grandparent is disabled the number of credits required is reduced.⁸² A grandparent's benefit amount is based on his or her earnings averaged over most of his or her working career and/or the working career of his or her spouse. Higher lifetime earnings result in higher benefits.⁸³

b. Early Social Security Retirement Benefits for Grandparents

While 65 is the earliest age that an individual may begin receiving full Social Security benefits, those eligible may elect to begin receiving some payments as early as age 62. If a grandparent chooses to begin receiving Social Security benefits early, the monthly payment will be less than if the individual had waited until full retirement age. A grandparent should consider carefully whether the benefit of receiving Social Security benefits early outweighs the drawback of a reduced monthly payment for his or her lifetime.⁸⁴

c. Social Security Retirement Benefits Based on the Work Record of a Current or Former Spouse of Grandparent

There are situations where it may be advantageous for a grandparent to look to another's work record for Social Security benefits including when a grandparent (1) who has never worked, (2) whose work record is insufficient to qualify for Social Security retirement benefits, or (3) who would receive only a minimal monthly benefit, can consider whether he or she may qualify for benefits based on the work record of a current or former spouse.⁸⁵

If a grandparent's spouse is eligible for Social Security retirement benefits, the grandparent may receive these benefits based on his or her current spouse's work record when he or she reaches full retirement age.⁸⁶ A spousal benefit is equal to one-half of the eligible individual's monthly benefit. A

⁸² *Id.*

⁸³ See Learn About Social Security Programs in Social Security Administration, Retirement Planner, *available at* <http://www.ssa.gov/r&m6.htm>.

⁸⁴ See Full Retirement Age in Social Security Administration, Retirement Planner, *supra* note 80.

⁸⁵ See Benefits for your Spouse in Social Security Administration, Retirement Planner, *available at* <http://www.ssa.gov/retire2/yourspouse.htm>.

⁸⁶ *Id.*

married grandparent eligible for a minimum monthly benefit based on his or her work record, may be eligible to get a higher amount if his or her spouse is eligible for a higher benefit.⁸⁷

In certain circumstances, a divorced grandparent can receive spousal benefits based on his or her ex-spouse's work record. To receive Social Security based on an ex-spouse's earnings, the grandparent must (1) have been married to the ex-spouse for at least ten years; (2) be at least 62 years old; (3) be unmarried; and (4) not be eligible for an equal or higher benefit on his or her own Social Security record, or on someone else's Social Security record.⁸⁸

d. Based on the Work Record of a Grandchild's Parent

In some circumstances, a grandchild may be eligible for Social Security based on the work record of either a parent or a grandparent. If a grandchild's parent (or stepparent or adoptive parent) is deceased, disabled, or receiving Social Security benefits, the grandchild may be able to receive Social Security based on that parent's work record.⁸⁹ To receive benefits on the basis of a parent's work record, the grandchild must be unmarried. Generally, the grandchild must be under 18 years old although a grandchild enrolled in high school remains eligible while in school until age 20. The age requirement does not apply to a disabled grandchild whose disability began before he turned 22 years old. A grandparent who believes his or her grandchild may be eligible for Social Security benefits based on the parent's work record may contact the Social Security Administration for further information.

⁸⁷ *Id.*

⁸⁸ See Benefits for Your Divorced Spouse in Social Security Administration, Retirement Planner, available at <http://www.ssa.gov/retire2/yourdivspouse.htm>.

⁸⁹ See Benefits for Your Children in Social Security Administration, Retirement Planner, available at <http://www.ssa.gov/retire2/yourchildren.htm>.

e. Based on the Work Record of a Grandchild's Grandparent

In the case of grandchildren, a grandchild can also receive Social Security benefits on the work record of a grandparent as long as the following conditions are met:⁹⁰

- ❖ The grandchild's natural or adoptive parents are deceased or disabled (1) at the time the grandparent became entitled to retirement or disability insurance benefits or died; or (2) at the beginning of the grandparent's period of disability that continued until he or she became entitled to disability or retirement insurance benefits or died.
- ❖ The grandchild was legally adopted by the grandparent's surviving spouse in an adoption decreed by a court of competent jurisdiction within the United States.
- ❖ The grandchild's natural or adopting parent or stepparent must not have been living in the same household and making regular contributions to the child's support at the time the grandparent died.

In addition, the grandchild must have lived with the grandparent in the United States before reaching age 18 and received at least one-half support from the grandparent for the year before the month the grandparent began receiving retirement or disability benefits or died.

VII. SOCIAL SECURITY DISABILITY INSURANCE

Social Security Disability Insurance (SSDI) provides benefits to eligible disabled grandparents and certain eligible dependent grandchildren. SSDI does not require applicants to meet income requirements. Instead, eligibility for SSDI, like Social Security retirement benefits, is based on a grandparent's work record.

a. SSDI for Grandparent

To receive SSDI, a grandparent must have a qualifying disability and have paid into Social Security. Employees pay into the Social Security program through payroll deductions. If a grandparent worked long enough for employers who made these deductions, the grandparent may qualify for SSDI benefits. To determine whether his or her work record is sufficient to receive SSDI benefits, a grandparent may call the Social Security Administration at (800) 772-1213, or visit www.ssa.gov, or visit

⁹⁰ See www.socialsecurity.gov Find an Answer to your Question. Answer ID 352; Category: Benefits: General Benefit Questions (last updated April, 11, 2007).

a local Social Security office. (The hearing impaired may contact the Social Security Administration at (800) 325-0778, or visit their local Social Security office.)⁹¹

b. SSDI for Child Under 18 Years of Age

SSDI provides benefits to children under age 18 only if a parent or caregiver grandparent receives SSDI.⁹² If a child's parent receives SSDI benefits, that child will qualify for SSDI dependent benefits regardless of whether the child also has a disability.⁹³ If a caregiver grandparent receives SSDI benefits, a dependent grandchild, in turn, may qualify for SSDI benefits. To be eligible, the grandchild must qualify as a "dependent grandchild," meaning the grandchild must live with his or her grandparent and received at least one-half support from the grandparent for at least one year before the grandparent became eligible for SSDI.⁹⁴ A dependent grandchild who qualifies for SSDI will receive benefits until he or she turns 18 or until the child turns 19, if he or she remains in high school.

c. SSDI for Disabled Grandchild Over 18 Years of Age

If a grandparent provides care to a disabled adult grandchild, the grandchild may qualify for SSDI benefits on the basis of his or her parent's or grandparent's work record. For a dependent adult child to receive SSDI benefits based on his or her parent's work record, the child must have been disabled before age 22 and be unable to work. Additionally, the impairment must have lasted, or expect to last, for at least one year, or expect to result in the child's demise. For an adult grandchild to receive SSDI benefits based on his or her grandparent's work record, the grandchild must meet these requirements and be a dependent grandchild.

⁹¹ See Social Security Administration, Apply for Disability Benefits - Adult (Age 18 or Over), in Social Security Administration, Disability Planner available at <http://www.ssa.gov/applyfordisability/adult.htm>.

⁹² If a child is disabled and under age 18 and neither the child's parent nor his or her grandparent receives SSDI, the child may qualify for SSI.

⁹³ See Benefits for Your Children in Social Security Administration, Disability Planner, available at <http://www.ssa.gov/dibplan/dfamily4.htm>.

⁹⁴ 20 C.F.R. § 404.364 (2007).

For information on receiving SSDI for a dependent adult grandchild, please contact the Social Security Administration at (800) 772-1213 or visit a local Social Security office.⁹⁵ (The hearing impaired may contact the Social Security Administration at (800) 325-0778 or visit their local Social Security office.)

VIII. SOCIAL SECURITY RAILROAD RETIREMENT BENEFITS

The Social Security Administration provides a monthly pension to individuals who have worked for a minimum period of time for the railroad industry. To receive benefits, an individual must have either (1) a total of ten years or more working in the railroad industry or (2) five or more years of railroad work performed since 1995. For further information about receiving this benefit, please contact the local Railroad Retirement Board office at (410) 962-2550.⁹⁶

IX. SUPPLEMENTAL SECURITY INCOME (SSI)

Individuals who receive monthly Social Security benefits may also qualify to receive Supplemental Security Income (SSI). The purpose of the SSI program (Title XVI of the Social Security Act (the Act)) is to ensure a minimum level of income to people who are age 65 or older, or blind or disabled, and who have limited income and resources.⁹⁷ SSI provides a monthly cash benefit to low-income adults and children. The Social Security Administration administers SSI. This benefit may be available to the grandparent, the grandchild, or both, provided that each meets the eligibility requirements, discussed below.

⁹⁵ See generally *Apply for Disability Benefits - Child (Under Age 18)* in Social Security Administration, Disability Planner, available at <http://www.ssa.gov/applyfordisability/child.htm>. An application for SSDI dependent benefits cannot be completed online.

⁹⁶ See *Railroad Earnings* in Social Security Administration, Disability Planner, available at <http://www.ssa.gov/retire2/railroad.htm>; see also U.S. Railroad Retirement Board, <http://www.rrb.gov/default.asp>.

⁹⁷ 20 C.F.R. § 416.410 (2007).

a. Eligibility Requirements

In order to be eligible for SSI the recipient (the grandparent or the grandchild) must be a resident of the United States and a citizen or an immigrant who is a permanent resident (green card holder) or other immigrant who meets specific additional requirements.⁹⁸ Applicants for SSI must also apply for all other benefits for which the applicant may be eligible.⁹⁹

b. SSI for the Grandparent

Unlike the more common form of Social Security benefits discussed above, SSI benefits are not based on the recipient’s work record. Instead, grandparents may receive SSI benefits if they meet the income requirements and are either: (1) age 65 or older; (2) blind; or (3) disabled.¹⁰⁰ A grandparent who meets both the eligibility requirements will qualify to receive a federal monthly SSI benefit of approximately \$623 per month as an individual or \$934 per month as a married couple, as of 2007.¹⁰¹ In addition, the State of Maryland provides a supplemental benefit based on the level of care the individual recipient receives. The chart below provides the various payment levels:¹⁰²

Living Arrangement	State Supplementation		Combined Federal/State	
	Individual	[a] Couple	Individual	[a] Couple
Care Home: [b]				
I. Minimal supervision	\$ 66.00	---	\$ 669.00	---
II. Moderate supervision	175.00	---	778.00	---
III. Extensive supervision	463.00	---	1,066.00	---
IV. Specialized and intensive supervision	666.00	---	1,269.00	---
Assisted Living [b]	184.00	---	787.00	---

⁹⁸ 20 C.F.R. § 416.202 (2007).

⁹⁹ 20 C.F.R. § 416.210 (2007).

¹⁰⁰ See Understanding Supplemental Security Income, 2007 Edition, available at <http://www.socialsecurity.gov/ssi/text-understanding-ssi.htm>.

¹⁰¹ 71 Fed.Reg. 62636 (October 26, 2006).

¹⁰² See http://www.workworld.org/wwwwebhelp/ssi_state_supplement_maryland.htm.

c. Income Requirements

To receive SSI, a grandparent must not have a net income greater than the current benefit rate. Certain benefits, including Food Stamps, will not be included in the grandparent's income when determining SSI eligibility.

d. Definition of Disability

As stated above, the grandparent must be: (1) 65 years old or older; or (2) blind; or (3) disabled under SSI's regulations. Disability under SSI means a medically determinable physical or mental impairment that results in an inability to engage in any substantial gainful activity and that is expected to last at least one year or to result in death.¹⁰³ The disability standard for adults seeking SSI may differ from the disability standard applied to children.

e. SSI for Grandchild

Regardless of whether a grandparent receives an SSI benefit, a grandchild may qualify for the benefit independently. To receive SSI, the grandchild also must fulfill income and disability requirements.

f. Income Requirements

To receive SSI benefits, a grandchild is subject to income limitations. If a child's income from working is greater than \$900 per month, the child is not eligible for SSI benefits.¹⁰⁴ For these purposes, the grandparent's income is not included in the child's income calculation.¹⁰⁵ However, if the

¹⁰³ See SSI Eligibility Requirements in Understanding Supplemental Security Income, *available at* <http://www.socialsecurity.gov/ssi/text-eligibility-ussi.htm>

¹⁰⁴ Social Security Administration, Benefits for Children with Disabilities, SSA Publication No. 05-10026 at 4 (2007), *available at* <http://www.ssa.gov/pubs/10026.pdf>. The income level that disqualifies a child for SSI benefits is subject to change and one should consult the Social Security Administration for current dollar amounts. For the most part, public benefit figures in this manual cover 2007.

¹⁰⁵ For information about calculating a grandchild's income, see Spotlight on Deeming Parental Income and Resources in Understanding Supplemental Security Income, *available at* <http://www.ssa.gov/ssi/spotlights/spot-deeming.htm>.

grandchild's parent lives in the household, a portion of the parent's income will be included in the child's net income for SSI purposes.¹⁰⁶

g. Disability Requirement

A child receiving SSI must have a medically determinable physical or mental impairment or combination of impairments that results in marked and severe functional limitations and has lasted or is expected to last for a continuous period of at least 12 months.¹⁰⁷

h. Impact on Other Benefits

The receipt of an SSI benefit may have an impact on a grandparent's or grandchild's receipt of TCA benefits in that an SSI benefit may increase the grandparent's or grandchild's income beyond the income eligibility threshold for the TCA program. However, other benefits are not affected by receipt of SSI. A grandchild-only TCA grant will not affect a grandparent's eligibility for SSI benefits. A grandparent or grandchild's receipt of Food Stamps will not affect eligibility for SSI, as Food Stamps are not included in the income calculation.¹⁰⁸

i. Appeals

If the Social Security Administration denies an application for SSI benefits, or if a grandparent feels he or she or the grandchild is entitled to a greater benefit amount, the grandparent can appeal the adverse decision. The Social Security Administration must receive the appeal within 60 days from the date the grandparent receives notice of the adverse decision. A grandparent may file an appeal by contacting the Social Security Administration at (800) 772-1213 or visiting a local Social Security office.

¹⁰⁶ Even if the child's parent is not currently a member of the household, a portion of the parent's income may still be included in the child's net income under some circumstances.

¹⁰⁷ See Benefits for Children with Disabilities, *supra* note 104, at 4.

¹⁰⁸ See SSI Income in Understanding Supplemental Security Income, *supra* note 103.

(The hearing impaired may contact the Social Security Administration at (800) 325-0778 or visit their local Social Security office.)¹⁰⁹

X. VETERANS DEATH BENEFITS

The Department of Veterans Affairs provides a monthly death benefit to an un-remarried surviving spouse, or an unmarried child of a deceased wartime veteran who served in the U.S. military if the individual's countable income is below the program limits.¹¹⁰ Generally, the deceased veteran must have served in the military for at least 90 days, with at least one day served during a period of war. However, the service requirements differ for more recent military service. In addition, the veteran must not have been dishonorably discharged.¹¹¹ The recipient can be an unmarried spouse of any age or a child under 18, or in school and under 23, or incapable of self support before the age of 18.¹¹²

The recipient's income must be below the limits set annually. For 2007, the limits are as follows:¹¹³

Surviving Spouse/Child(ren) - Alone or With the Other

Maximum Annual Pension Rate (MAPR) Category	Amount
MAPR Without Dependent Child	\$ 7,329
MAPR With One Dependent Child	9,594
Housebound Without Dependents	8,957
Housebound With One Dependent	11,219
MAPR For Child Alone	1,866
Add for Each Additional Child	1,866

¹⁰⁹ See http://www.socialsecurity.gov/disability/disability_starter_kits_child_factsheet.htm#disability.

¹¹⁰ See Department of Veterans Affairs, Veterans Benefits Administration, Death Pension Benefits *available at* <http://www.vba.va.gov/bln/21/pension/spousepen.htm#1>.

¹¹¹ See *Id.*

¹¹² See *Id.*

¹¹³ See *Id.*

Note, not all income is countable and certain medical expenses are deductible from income before determining eligibility. For further information, contact the Department of Veterans Affairs at (800) 827-1000.

XI. CHILD SUPPORT

Grandparents may receive child support from the grandchild's parents if the parents are still alive. The Maryland Department of Human Resources is available to assist grandparents and other non-parent caregivers with collecting child support from parents who are away from the home. In order to become eligible for this assistance, the grandparent must (i) establish paternity of the grandchild; (ii) pay a one time non-refundable \$25 application processing fee which may be waived if the grandparent is receiving TCA or medical assistance, and (iii) provide as much information as possible concerning the location of the absent parent(s).¹¹⁴ There is no income requirement in order to receive assistance from the Maryland Department of Human Resources' Child Support Program.

The State of Maryland provides certain guidelines which are followed when determining the amount of child support a child may receive.¹¹⁵ Under certain special circumstances, however, a court determining the amount of child support may deviate from these guidelines. A Maryland Child Support Worksheet which will help you calculate the estimated child support your grandchild may receive is located online at <http://www.dhr.state.md.us/csea/worksheet.htm>. For more information, contact the local Child Support Enforcement Agency for Baltimore County by calling (800) 332-6347 or by visiting <http://www.dhr.state.md.us/csea/local.htm>.

XII. PROVIDING FINANCIALLY FOR A GRANDCHILD AFTER THE GRANDPARENT'S DEATH

A grandparent who is fortunate enough to have assets or property upon his or her death may want to find ways to ensure a grandchild receives this money after the grandparent passes away. A grandparent

¹¹⁴ See <http://www.dhr.state.md.us/how/chldprnt/support.htm>.

¹¹⁵ See Md. Code. Fam. Law § 12-204 (2006).

has several options for providing financial assistance to a grandchild after the grandparent dies. A grandparent may execute a will, purchase a life insurance policy naming the grandchild as the beneficiary, or designate the grandchild to receive the grandparent's retirement benefits. The option that the grandparent selects depends on factors including whether the grandparent has assets or property to bequeath in a will and whether a grandparent's employer has a pension plan that allows a grandchild to be the beneficiary.

a. Execute a Will

A will is an important legal document specifying the distribution of the grandparent's assets after his or her death. A grandparent can use a will to help ensure that the grandchild inherits all or part of the grandparent's assets or to make specific bequests. If a grandparent chooses not to execute a will, his or her assets will be distributed according to Maryland law. This means that the grandparent's assets may be divided among other relatives in addition to the grandchild or may skip the grandchild entirely. If the grandparent passes away without a will, the added costs associated with the Maryland court process would reduce the grandparent's assets that otherwise the grandchild might have inherited.

b. Life Insurance

A grandparent may take out an insurance policy on his or her life as a method of providing money to the grandchild upon the grandparent's death. To accomplish this, the grandparent may purchase a life insurance policy and name the grandchild as the policy's beneficiary. For more information and for a list of registered life insurance companies and additional information about life insurance in general and the companies providing insurance in Maryland contact the Maryland Insurance Administration, 525 St. Paul Place, Baltimore, MD 21202, (410) 468-2000, (800) 492-6116, (800) 735-2258 TTY or on-line at www.mdinsurance.state.md.us

c. Pension Plan Distributions

If an employed grandparent participates in a traditional pension plan – whether maintained by a private company, the government, or the military – the grandparent may be able to pass along to a grandchild a portion of his or her benefits under the pension plan. To do this, the grandparent will need to

select the correct form of distribution under the plan while still employed. Depending on the terms of the grandparent's specific pension plan, the two potential forms of distribution to grandchildren include: (1) a joint and survivor benefit permitting a grandparent to name a survivor other than a spouse, and (2) a term certain benefit.

For a grandchild to receive distributions under a joint and survivor benefit, the grandparent must designate the grandchild as the survivor. In so doing, the grandparent must comply with the rules in the pension plan. However, a grandparent's pension plan may not even offer this distribution option, thus preventing the grandparent from leaving a portion of his pension to the grandchild. Instead, the plan may offer a joint and survivor benefit only for a grandparent's spouse.

Further, because the grandchild's expected life span is much longer than the grandparent's, this form of benefit may reduce substantially the grandparent's pension benefits. Before electing this distribution option, a grandparent should ask the plan administrator how much the election of a joint and survivor benefit would reduce his or her pension.

Under a term certain benefit, a pension plan will continue to pay a grandparent's pension benefit for a period of predetermined time (*e.g.*, 5, 10, or 25 years). If the grandparent dies during this predetermined time, the grandparent's designated beneficiary will receive the pension benefit for the remainder of the predetermined time. When designating the beneficiary, the grandparent again must comply with the rules set forth by the plan administrator. Merely naming the grandchild as the beneficiary in the grandparent's last will and testament is insufficient to enable the grandchild to receive a term certain benefit.

A grandparent should note, however, that making a term certain election may adversely impact the grandparent's ability to receive full pension benefits (because the predetermined time may be longer than the grandparent's expected life span). Alternatively, the term certain election may cause the grandparent's pension to terminate before he or she passes away because the predetermined time may be shorter than the grandparent's life span. Before electing this distribution option, a grandparent should:

(1) ask the plan administrator how much the election of a specific term would reduce his or her benefit, and (2) consider whether he or she wishes to risk that the pension will run out before his or her death.

Once a grandparent begins receiving his or her pension, the grandparent cannot elect to change the form of distribution. Thus, if the grandparent already has retired and has begun receiving pension benefits, he or she cannot elect one of the above options, unless he or she made the election before retiring.

d. Sections 401(k)/403(B) Retirement Plans and Individual Retirement Accounts

Another option for some grandparents to plan for a grandchild's financial security may be to designate the grandchild as the beneficiary of the grandparent's 401(k) or 403(B) retirement plan or Individual Retirement Account (IRA). Sections 401(k) and 403(B) retirement plans are offered by some employers, and a grandparent must elect to participate while still employed before retirement. IRAs are private investment plans that provide tax benefits to individuals saving for retirement. By designating a grandchild as the beneficiary of a 401(k) or 403(B) retirement plan or an IRA, the grandparent may allow the grandchild to inherit the money that the grandparent has invested.

The grandchild's beneficiary designation must be done in compliance with the requirements set forth by the applicable 401(k) or 403(B) plan administrator or the IRA's trustee. Naming the grandchild as the beneficiary of a 401(k) or 403(B) plan or IRA in the grandparent's will is not sufficient. If a grandparent does not comply with the plan's requirements, the grandchild will not inherit automatically the 401(k) or 403(B) retirement plan account or the IRA. Instead, the grandparent's assets would be distributed according to the applicable 401(k) or 403(B) retirement plan or IRA trust or custodial documents. Most likely, the plan documents would apply the Maryland law of descent and distribution.

XIII. ELIGIBILITY FOR FINANCIAL BENEFITS

Grandparents in Maryland can find out which benefits they may be eligible for by calling or visiting the local Department of Social Services office or neighborhood office. Appropriate telephone numbers are available in the telephone directory or on applicable county web sites. In Baltimore County,

for example, the Baltimore County Department of Social Services is located at Drumcastle Government Center, 6401 York Road, Baltimore, MD 21212. Their phone number is (410) 853-3930. Further information can also be found on their website at www.dhr.state.md.us/baltocounty.htm.

You can also go to the Maryland Department of Human Resources website <http://www.marylandsail.org/> and use the SAIL system. SAIL is an internet based system to help you to learn about the various social services offered by the State of Maryland and to apply for such services. Information sent in through the SAIL system is kept strictly confidential

HOUSING ISSUES

Grandparents providing care for their grandchildren must make numerous decisions related to housing. This chapter discusses some common housing-related issues.

I. TYPES OF HOUSING AND FINANCING

In general terms, a grandparent in Maryland may occupy one of three broad types of housing: (1) government-subsidized housing under the Housing Choice Voucher Program; (2) public housing; and (3) private housing.¹¹⁶

a. Housing Choice Voucher/Certificate Program (HCP or Section 8 Program)

The Housing Choice Voucher/Certificate Program (HCP) is a federally-funded rental assistance program under the U.S. Department of Housing and Urban Development¹¹⁷ operated by local public housing agencies, such as the Baltimore County Housing Office and the Housing Authority of Baltimore City, among others.¹¹⁸ The HCP provides housing payment assistance to very low-income families, the elderly, and the disabled. It permits the participants to locate their own housing, including single-family homes, townhouses and apartments, so long as the housing meets the quality standards and other requirements of the program.¹¹⁹ Families and individuals eligible to apply for assistance under the HCP

¹¹⁶ Some counties in Maryland may not offer public housing *per se*.

¹¹⁷ For further information and links, see the website for HUD's Office of Housing Choice Vouchers at <http://www.hud.gov/offices/pih/programs/hcv>.

¹¹⁸ For example, the Housing Authority of Washington County, the Harford County Housing Agency, and the Housing Authority of St. Mary's County reportedly administer the program in those locales. In local Maryland jurisdictions without the authority to act as a public housing agency or otherwise do not offer such a program, the HCP is administered by Maryland's Department of Housing and Community Development. See <http://www.dhcd.state.Md.us/Website/programs/section8/section8.aspx>.

¹¹⁹ See HUD's Housing Choice Vouchers Fact Sheet, at http://www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm; see also 24 C.F.R. §§ 982.1, 982.401 (2007).

(i) have annual incomes of 50% or less of the area median income, and (ii) are U.S. citizens or fit within select categories of non-citizens with eligible immigration status.¹²⁰

The participating tenant-family under the *certificate* program will not pay more than 30% of their monthly adjusted household income, with the HCP paying the balance of the rent, whereas a participating tenant-family under the *voucher* program may pay more or less than 30% of their monthly adjusted household income depending on the amount of the locality-based, formula-calculated subsidy.¹²¹ The balance payments made under the Section 8 Program are made directly by the public housing agency to the landlord.

Section 8 Programs or HCP's often have wait-lists for participation and Baltimore County is no exception. It reports that the "average wait to reach the top of the Waiting List" for its HCP after an application is submitted is "approximately three to five years."¹²² The Housing Authority of Baltimore City, as of June 2006, has closed its waiting list, with a plan to provide advance notification when the waiting list re-opens.¹²³

b. Public Housing

Certain jurisdictions in Maryland offer public housing as another means of assisting low-income families, the elderly, and disabled persons to afford decent, sanitary, and safe housing. The Public Housing Program is also federally-funded, but, unlike the HCP, the rental housing units are actually owned and operated by the local public housing authority. The rental assistance under the Public Housing

¹²⁰ See HUD's Housing Choice Vouchers Fact Sheet, http://www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm; Maryland's Overview of the Section 8 Program, <http://www.dhcd.state.md.us/Website/programs/section8/section8.aspx> (last visited May 28, 2007); 24 C.F.R. § 982.201 (2007).

¹²¹ See HUD's Housing Choice Vouchers Fact Sheet, *supra* note 120, Maryland's Overview of the Section 8 Program, *supra* note 120, *see also* 24 C.F.R. § 982.1(a)(3), (4) (2007).

¹²² See Baltimore County Summary of the Housing Choice Voucher Program, <http://www.baltimorecountymd.gov/Agencies/socserv/financialassistance/dsssec8.html>.

¹²³ See Information Guide, Housing Choice Voucher (Section 8) Program, Housing Authority of Baltimore City, Revised June 2006 (Version 1.2), available at http://www.baltimorehousing.org/index/ps_section8.asp.

Program therefore is linked to a particular dwelling owned by the government, whereas the certificates and vouchers of the HCP are generally portable.¹²⁴

The Housing Authority of Baltimore City administers such a public housing program, offering several types of developments in its public housing program: family developments, mixed population developments, Hope VI developments, senior-only buildings, and other housing opportunities.¹²⁵ An applicant for public housing with the Housing Authority of Baltimore City must qualify as a “family,” as that term is defined, and certain income limits.¹²⁶ Some categories of applicants may receive local preferences in Baltimore City’s Public Housing Program, including, among others, working families and those unable to work because of age (62 or older) or disability, or veterans and veterans’ families.¹²⁷ Once an application reaches the top of the public housing wait list, a criminal background check and an eligibility interview will be conducted.¹²⁸

c. Private Housing

Private housing, unlike public housing, consists of dwellings that an occupant privately rents or owns. Housing restricted to residents older than a certain age, otherwise known as senior housing, may fall into either of these categories.

A grandparent raising a grandchild may be eligible for general government assistance that can be used to help pay rent even when privately renting an apartment or home.¹²⁹ For example, the Rental Allowance Program provides eligible recipients with fixed monthly rental allowances for up to 12

¹²⁴ See <http://www.hocmc.org/Housing/HCV/HCV.htm>.

¹²⁵ See Information Guide, Public Housing Program, Housing Authority of Baltimore City, Revised June 2006 (Version 1.1), at 5-6, available at http://www.baltimorehousing.org/index/ps_public.asp.

¹²⁶ See *Id.* at 4.

¹²⁷ See *Id.* at 8.

¹²⁸ See *Id.*

¹²⁹ General government assistance usable for rent cannot be combined with Housing Choice Vouchers. 24 C.F.R. § 982.551(n) (2007) (“An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative . . . federal, State or local housing assistance program.”).

consecutive months. To qualify, a recipient must belong to a low income household with a “critical and emergency housing need” and be ineligible for other federal or state housing relief.¹³⁰ Another example is the Separate State Temporary Cash Assistance Program, which serves “families with a child cared for by a non-parent relative,” among others.¹³¹ This program provides cash assistance to eligible needy families with dependent children when available resources do not fully address the family’s needs.

II. RIGHTS AND RESPONSIBILITIES

The housing rights and responsibilities of a grandparent raising a grandchild come from multiple sources, including: (1) federal law, including the rules and regulations of the United States Department of Housing and Urban Development (HUD);¹³² (2) Maryland law, including the rules and regulations of the Housing Office;¹³³ and (3) individual lease agreements. Depending on the type of housing, all of these rules and regulations may apply at the same time and each should therefore be consulted to answer any particular questions a grandparent might have. It is worthwhile to highlight a couple of rules because a failure to follow them may result in the denial/termination of rental assistance payments or affect the assistance provided.

For example, a grandparent receiving Housing Choice Vouchers must get prior approval from the landlord and Housing Office before a grandchild may move into the home, except when the move follows a formal legal adoption, birth, or other court order.¹³⁴ If you add a household member through adoption, birth, or court order, or if a household member leaves the dwelling, you must report that change to the

¹³⁰ Md. Code art. 4-§ 1401 to 4-§ 1408 (2006); COMAR 05.05.03 (2007).

¹³¹ Maryland Family Investment Administration, TANF State Plan at 9-10 (2006-2008), *available at* <http://www.dhr.state.md.us/fia/cassist.htm>.

¹³² 24 C.F.R. § 982 (2007).

¹³³ At the time of publication, the Code of Baltimore County Regulations, including those applicable to government subsidized and private housing, is unavailable to the public. The Baltimore County Office of Law is in the process of re-codifying the regulations and intends to publish them as they become available.

¹³⁴ 24 C.F.R. § 982.551(h)(2) (2007); Baltimore County Housing Office, Instructions for Reporting an Interim Change, at 1 (2001), *available at* <http://www.co.ba.md.us/Agencies/socserv/financialassistance/dssinter.html>.

Housing Office within 15 days.¹³⁵ Under Baltimore County’s Interim Change procedures, failure to follow these requirements may result in the Housing Office’s terminating your rental assistance and/or require repayment of any overpayment of housing subsidy.¹³⁶ Other rules may affect your rental payments by increasing or decreasing the amount of rental assistance payments as well. For example, when the head of the household is 62 years of age or older, voluntarily reporting certain medical expenses may increase rental assistance.¹³⁷

III. QUESTIONS AND ANSWERS

I live in an apartment with only one bedroom. Is it legal for me to keep my grandchild with me in the apartment?

Generally speaking, yes. Under HUD rules, every dwelling which is paid for by Housing Choice Vouchers must have at least one bedroom for every two people in the home.¹³⁸ The rules allow occupants to use a traditional living room as a bedroom.¹³⁹ While there are apparently no federal regulations prohibiting grandparents and grandchildren of the opposite sex from sharing a bedroom, “children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.”¹⁴⁰

If my grandchild, who resides with me, is involved in illegal activity such as selling drugs, can this activity adversely affect my rights as a tenant?

Yes, in a variety of ways. For example, it may violate a specific provision of your lease agreement, particularly if any of the illegal conduct occurs at the housing unit, and therefore subject you to action by your landlord, including possible eviction or damages. If you participate in the HCP, one of

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ 24 C.F.R. § 982.401(d)(2) (2007).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

your obligations under HUD's rules is that the household members cannot engage "in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity" of your unit.¹⁴¹ Such conduct may lead to the termination of assistance under the HCP as well.¹⁴² Such policies appear to be the norm.¹⁴³ Moreover, the police and prosecuting authorities may conclude that you have criminal liability in some respect as a result of your grandchild's criminal activity.

¹⁴¹ 24 C.F.R. § 982.551(l) (2007).

¹⁴² 24 C.F.R. § 982.553 (2007).

¹⁴³ For example, the Housing Commission of Anne Arundel County reportedly has a "zero tolerance" with respect to residents' involvement in drug related or other criminal activity. It likewise considers any criminal or drug-related activity to be a serious lease violation. *See* <http://hcaac.com/pages/viewpage/lease-violations.html>. Or, as the Montgomery County Housing Commission simply puts it "[r]esidents and guests must not get involved in drugs, crime or violence." *See* <http://hocmc.org/Housing/PH/PH-ResidentResp.htm>.

CUSTODY

This chapter explains the various legal relationships that grandparents can have with their grandchildren. Section I provides a brief overview of federal and Maryland law governing custodial relationships. Section II describes the rights of grandparents who assume care and responsibility for their grandchild as part of an informal arrangement. The Maryland child welfare system is described in Section III and includes a description of the Maryland Kinship Care Program, which allows children to be formally placed under the foster care of their grandparents. Section IV explains the various types of legal relationships which can be established by the court through a judicial proceeding. These formal arrangements include custody, guardianship and adoption. Section V answers frequently asked questions.

I. INTRODUCTION TO FEDERAL AND LOCAL LAW GOVERNING CUSTODIAL RELATIONSHIPS

The Fourteenth Amendment of the United States Constitution gives parents a fundamental right to raise their children as they see fit.¹⁴⁴ Federal law presumes that all parental decisions are in the child's best interests and protects these decisions against government intervention.¹⁴⁵ Parental rights cannot be terminated unless it can be shown by clear and convincing evidence that the parental relationship is detrimental to the child's welfare.

Maryland law also presumes that parents are the best caregivers for their children. Parents have both a legal and moral responsibility to provide financial support and care for their children.¹⁴⁶ Unless the state acts to intervene in the parent-child relationship – i.e., when the parents are deceased or unable to care for their children, or when their rights have been terminated due to abuse or neglect – parents are the

¹⁴⁴ *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

¹⁴⁵ *Smith v. Org. of Foster Families For Equality and Reform*, 431 U.S. 816, 845 (1977).

¹⁴⁶ *Petrini v. Petrini*, 336 Md. 453, 459 (1994); Md. Code Fam. Law § 5-203(b)(1) (2006).

legal guardians of their children and have the right to make decisions affecting their child's education, health and welfare.¹⁴⁷

Neither the United States Constitution nor Maryland law grants grandparents similar rights. The grandparent-grandchild relationship is not legally recognized and does not endow grandparents with any rights with respect to the care, visitation or custody of their grandchildren. However, a grandparent can obtain the same rights available to parents by acquiring a legally recognized relationship through guardianship, custody or adoption.

A common issue facing most grandparents seeking a formal relationship with their grandchildren is whether to terminate the biological parents' rights or, alternatively, set up an arrangement allowing both parents and grandparents to share in child care responsibilities. It is not necessary to terminate parental rights in order for grandparents to establish a legally recognized relationship with their grandchildren. Termination of parental rights is a drastic measure that can cause additional conflict within an already stressed family. However, if parental rights are not terminated, the state or either parent may intervene in the grandparent-grandchild relationship at any time. All of these issues should be considered in deciding which of the following legal relationships are appropriate under the circumstances.

II. INFORMAL ARRANGEMENTS

Many grandparents care for their grandchildren as part of an informal arrangement – i.e. where the grandparent has assumed parental responsibilities for the child without involving state agencies or the judicial system. An informal arrangement can arise when the biological parents have died, are unable to care for the child, or have otherwise abandoned the child and the grandparent assumes the role of primary caregiver.

¹⁴⁷ Md. Code Fam. Law § 5-203(a) (2006).

a. Grandparents' Rights in Informal Relationships

When a grandparent undertakes the responsibility of fulfilling parental duties without petitioning a court for custody or guardianship, the grandparent acts *in loco parentis*.¹⁴⁸ Under these circumstances, the parent retains legal custody over the child even though the grandparent, as primary caregiver, has assumed physical custody. Legal custody confers the right to make important decisions about a child's upbringing. Because the biological parent retains legal custody, grandparents do not have the authority to make certain decisions on behalf of their grandchild. For example, they may not be able to act on behalf of their grandchild to consent to medical treatment, marriage, enlistment in the armed forces or legal representation. Note, however, that grandparents may be able to consent to medical treatment by completing a affidavit of family hardship.

Since the grandparent-grandchild relationship is not legally recognized, Maryland law does not require that a child's grandparents be notified when a third party petitions for guardianship and/or adoption of the child/children in question.¹⁴⁹ Thus, an informal care arrangement will not prevent a third party from establishing a legal relationship with the grandchild.

Grandparents do have limited legal rights in an informal arrangement. If the care of the child is provided with the consent of the biological parents, the courts will recognize a grandparent's right to petition the court for payment of past due child support.¹⁵⁰

b. The Parent's Ability to Re-Enter the Child's Life

In an informal care arrangement, where the child has not been formally placed in the home of the grandparent by a court or the department of social services, the biological parents can take physical custody of the child at any time. This situation can be avoided if the grandparent (i) successfully sues for

¹⁴⁸ *Pope v. State*, 284 Md. 309, 323 (1979).

¹⁴⁹ *L.F.M. v. Dep't of Soc. Serv.*, 67 Md. App. 379, 385 (1986).

¹⁵⁰ *O'Brien v. O'Brien*, 136 Md. App. 497, 508 (2001). A grandparent might want to assert this right if they are caring for their grandchild after the custodial parent's death – if the custodial parent had been receiving child support from the non-custodial parent, the grandparent acting *in loco parentis* has the right to collect past due child support payments from the non-custodial parent for the benefit of the grandchild.

custody, or (ii) is awarded custody subsequent to an abuse or neglect proceeding brought against the biological parents by the local department of social services. In both types of proceedings, a court will presume that a child should remain with their parents unless the parents have voluntarily relinquished their rights. In cases where the biological parents do not want to cede their parental rights to the child's grandparents, a court hearing will be necessary and grandparents may have a difficult time obtaining legal custody of their grandchildren.

c. Where the Parent Is a Minor

A special situation exists where one or both parents of a minor child are themselves unemancipated minors. Under such circumstances, Maryland law requires that the parents of the minor parent(s) provide financial support for the grandchild if the minor parent is incapable of doing so.¹⁵¹ Formal proceedings are not required for a grandparent to be charged with this responsibility. Under this rule, the parental duties of the grandparent to their own minor children are merely extended to include their grandchildren.

d. Economic Considerations

Caring for a child can be a financial burden and the limited resources available to informal caregivers is an important consideration for many families. Generally, if the child is eligible for a child-only Temporary Assistance for Needy Families (TANF) grant, Medicaid, or Social Security benefit, those benefits can be received by a third party (including a grandparent) on behalf of the child, even if the care arrangement is informal. Grandparents can also apply for medical coverage for their grandchild through the Maryland Children's Health Program, however, eligibility depends upon proof that the grandchild does not also live with either biological parent. The Program only considers the grandparents' income for

¹⁵¹ Md. Code Fam. Law § 5-203(c) (2006).

eligibility purposes if the grandchild has been formally adopted. Information about the Program is available from local health departments.¹⁵²

Some federal and state programs, however, do exclude informal caregivers from eligibility. For example, only grandparents who formally participate in the foster care system as a foster care or kinship care provider are eligible for financial assistance from the Maryland state welfare system.¹⁵³ Directly contacting the government agency which is the source of the funding in question is usually the best way to determine eligibility.

III. THE CHILD WELFARE SYSTEM: FOSTER CARE AND THE MARYLAND KINSHIP CARE PROGRAM

a. The Child Welfare System

When the state acts to intervene in the parent-child relationship, it usually does so through the child welfare system. Maryland's child welfare system is overseen by the Social Services Administration (SSA), which operates within the Department of Human Resources. Child welfare services – including adoption, foster care, child protective services, and services to families with children – are delivered by local departments of social services under the supervision of the SSA. The child welfare system is governed primarily by Section five of the Maryland Family Code, as well as regulations promulgated by the SSA.

b. Foster Care for Children in the Child Welfare System

Foster care is a temporary placement outside the home for children who have been abused or neglected, or whose parents are unwilling or unable to care for them. Foster care programs are operated by 23 counties in Maryland and Baltimore City. The Maryland Foster Care Program seeks to create a “permanency plan” for each child in the system. The goal of the plan is to place children in a permanent living situation within 15 months of entering foster care.

¹⁵² Additional information about the Maryland Children's Health Program can be found on the Internet at <http://dhmh.state.Md.us/mma/mchp/>. The Program also has a hotline: (800) 456-8900.

¹⁵³ COMAR 07.02.09.03C(3) *et. seq.* (2007).

A “restricted foster home” is a family foster home approved to serve a specific foster child/children and only that child/children.¹⁵⁴ When a child is placed in the care of the local department of social services, the child’s grandparents have the opportunity to apply for approval to become a restricted foster care provider. Restricted foster care providers receive the benefit of financial assistance from the State of Maryland. To become approved as a restricted foster care provider, there are numerous requirements which must be satisfied.¹⁵⁵

As part of the approval process, the local department of social services performs an assessment of the home and all family members living in the home. The assessment of the home ensures that there is no apparent risk to the health and safety of the child.¹⁵⁶ The assessment of the family examines (i) the family's relationship with the child and the child's parents, (ii) care provided to other children in the home, (iii) the family's knowledge of the circumstances and conditions that have led to the need for the child's placement, (iv) the role that the family has played in the past to help or protect the child and prevent occurrences of abuse, including the family's present ability to protect the child if placed in the home, and (v) the family's ability to understand the need for protection.¹⁵⁷

The department will also gather character references and determine whether there is adequate sleeping space in the home.¹⁵⁸ Local department records will be reviewed to determine whether any member of the family has a prior indicated or unsubstantiated finding of abuse or neglect.¹⁵⁹ The grandparent will have to complete 27 hours of pre-service training to become an approved foster parent. Finally, the grandparent will have to provide (i) a certification stating that he or she has no prior criminal record or indicated findings of child abuse or neglect, and (ii) a written statement acknowledging that he

¹⁵⁴ COMAR 07.02.25.02B(26) (2007).

¹⁵⁵ COMAR 07.02.25.11 (2007).

¹⁵⁶ COMAR 07.02.25.11C(1) (2007).

¹⁵⁷ COMAR 07.02.25.11C(2) (2007).

¹⁵⁸ COMAR 07.02.25.11C(8) (2007).

¹⁵⁹ COMAR 07.02.25.11C(5) (2007).

or she understands the Department's discipline policy (which, among other things, prohibits corporal punishment).¹⁶⁰ The Maryland Department of Human Resources has more detailed information about the approval process for restricted foster care providers.¹⁶¹

c. The Maryland Kinship Care Program

Maryland developed a formal kinship care program in 1995. When it is necessary to remove a child from the parental home because of abuse or neglect, Maryland law requires local departments to give first priority to placing the child in the home of a relative. The local department of social services may petition the court for an order removing the child from the parent's home and formally placing the child in the care of the child's grandparent or other relative. To be clear, the grandparent does not have the right to petition the court directly since "kinship care" is a placement option for children committed to the state. To qualify for placement, the grandparent also must pass a formal custody and guardianship homestudy and be approved by the department.¹⁶²

Approval as a kinship care provider is based on a number of factors similar to the requirements for restricted foster care, including (i) the parent's and the child's relationship with the grandparent, (ii) the grandparent's physical and mental ability to care for a child, (iii) the grandparent's ability to provide a stable, healthy and safe home for the child, and (iv) the grandparent's willingness to assume legal responsibility for the child if reunification with the child's parents is not possible within 12 to 18 months.¹⁶³ The department will conduct a home safety inspection and background check for every person living in the home over the age of 18.¹⁶⁴ Participation in the Kinship Care Program includes an agreement

¹⁶⁰ COMAR 07.02.25.11C(6)-(7) (2007).

¹⁶¹ Information about the foster care system is available from the Maryland Department of Human Resources at (800) 555-1345.

¹⁶² Maryland Department of Human Resources, <http://www.dhr.state.Md.us/ssa/foster/approval.htm>; COMAR 07.02.09.03B(1) (2007).

¹⁶³ COMAR 07.02.09.03D (2007).

¹⁶⁴ COMAR 07.02.09.05 (2007).

to protect the child from further abuse and neglect, cooperate with the department and refrain from using corporal punishment.¹⁶⁵

Since formal kinship care is a placement option for the state when children are committed to the state, grandparents are not automatically eligible for formal kinship care and they cannot individually apply to assume that role. Interested grandparents should contact the Kinship Care Program office at the Maryland Department of Human Resources for information and assistance.¹⁶⁶ The Kinship Care Resource Center of Maryland at Coppin State University can also provide grandparents with additional information and support services.¹⁶⁷

IV. TURNING TO THE COURTS: SEEKING CUSTODY, GUARDIANSHIP OR ADOPTION

There are several ways to establish a formal care arrangement. One option is to file a custody action in the Circuit Court of Maryland. A custody action asks the judge to issue an order conferring custody to the petitioning party. A more permanent option is to pursue guardianship or adoption.

a. Custody

Filing for custody is one way to formalize an informal care arrangement. A custody order officially grants the caregiver the right to care for the child in question. To obtain a custody order, a complaint must be filed in the Circuit Court in the county in which the caregiver resides. A complaint for custody asks the judge to issue an order granting formal custody of the child to the grandparent.

If a petition for custody is contested by the biological parent or some other third party, the court will appoint a guardian for the child to ensure that the child's interests are represented by a neutral party.¹⁶⁸ The court will then schedule a hearing to gather more information from the parties.¹⁶⁹

¹⁶⁵ COMAR 07.02.09.03D (2007).

¹⁶⁶ The Kinship Care office can be contacted at (410) 767-7521. The Program also maintains a website at <http://www.dhr.state.Md.us/how/chldprnt/kinship.htm>.

¹⁶⁷ The Kinship Care Resource Center of Maryland is located at 2553 W. North Avenue, Baltimore, MD 21216-3698. Telephone inquiries can be directed to (410) 951-4177 or toll free at (866) 951-4177.

¹⁶⁸ *Shurupoff v. Vockroth*, 372 Md. 639, 644 (2003).

In the event of a custody dispute between a parent and a third party, it is assumed that the child's interests are best served by awarding custody to the parent.¹⁷⁰ However, a third party such as a grandparent can be awarded custody over the objection of the parent if (1) the parent is unfit, or (2) due to exceptional circumstances, the child's best interests will not be met by granting parental custody.¹⁷¹

In determining the child's best interests, the court will consider numerous factors, including (i) the length of separation between the child and the biological parent, (ii) the child's age when the third party began providing care, (iii) the effect that a change in custody could have on the child, (iv) the nature of the relationship between the child and the third party, (v) the parent's desire to gain custody, and (vi) the potential for a stable future for the child if placed in the parent's custody.¹⁷² A custody order is not permanent and can be changed if the need arises.¹⁷³

b. Legal Guardianship

A grandparent caring for a grandchild may petition the court for legal guardianship.¹⁷⁴ An order for guardianship vests the grandparent with the right to make legal and medical decisions for the child. A guardianship order can be granted without terminating parental rights, and can be changed much like a custody order. More information about guardianship petitions is provided below with the information about adoption.

c. Adoption

Under Maryland law, formal adoption of a child is the only way that the legal relationship between parent and child can be terminated.¹⁷⁵ Adoption of a grandchild gives custodial grandparents the

¹⁶⁹ *Id.* at 645.

¹⁷⁰ *B.G. v. M.R.*, 165 Md. App. 532, 545 (2005).

¹⁷¹ *Id.*

¹⁷² *Id.* at 546-547.

¹⁷³ *McAndrew v. McAndrew*, 39 Md. App. 1, 9 (1978).

¹⁷⁴ Md. Code Est. & Trusts § 13-702 (2001).

¹⁷⁵ *Sider v. Sider*, 334 Md. 512, 529 (1994).

autonomy, rights, and responsibilities of a parent, and thus may be a very desirable option for grandparent caregivers.¹⁷⁶ However, adoption can be a somewhat lengthy, possibly contentious legal process.

In Maryland, either all living biological parents must relinquish their parental rights or a court must terminate their rights in order for adoption to be an option.¹⁷⁷ If the local department of social services has custody of the child, that department must consent to the adoption as well.¹⁷⁸ If the child is over ten years old, then the child's consent is also considered.¹⁷⁹ If the child's parents cannot be located for more than six months, their consent is not required.¹⁸⁰

Because of its potential to create tension within the family, grandparents may wish to pursue adoption only when they are sure that the biological parents will not contest the proceeding, or where the need for permanency and stability for the child outweighs the burden of a rancorous court proceeding.

d. Adoption Procedures

The state legislature has set forth by statute specific procedures for adoption.¹⁸¹ A formal court decree must be issued to create a new parent-child relationship through adoption.¹⁸²

Adoption proceedings begin when a petition for guardianship is filed with the court.¹⁸³ A guardianship petition must be filed before the child in question turns 18.¹⁸⁴ The petition must include written consent from the natural parent or proof that the natural parents' rights were relinquished by a

¹⁷⁶ Md. Code Fam. Law § 5-352(a)(2)(i) (2006) (after order of adoption is entered, the adoptee "(1) is the child of the adoptive parent for all intents and purposes and (2) is entitled to all of the rights and privileges of and is subject to all of the obligations of offspring born to the adoptive parent.").

¹⁷⁷ *See generally* Md. Code Fam. Law § 5-331 (2006).

¹⁷⁸ *See generally* Md. Code Fam. Law § 5-338 (2006).

¹⁷⁹ *Id.*

¹⁸⁰ Md. Code Fam. Law § 5-338(a)(2) (2006).

¹⁸¹ *Carroll County Dep't of Soc. Serv. v. Edelmann*, 320 Md. 150, 172-173 (1990).

¹⁸² *Id.*

¹⁸³ Md. Code Fam. Law § 5-313(a) (2006).

¹⁸⁴ Md. Code Fam. Law § 5-313(c) (2006).

state administrative, executive or judicial body.¹⁸⁵ The court will undertake the responsibility of sending a notification of the petition for guardianship to the natural parents, who will then have the opportunity to contest the adoption during a trial before the juvenile court.¹⁸⁶

In determining whether the guardianship is in the best interests of the child, the court has the power to order an investigation by a government agency.¹⁸⁷ Although the approval process can be quite lengthy, the juvenile court is required to rule on a guardianship petition either (i) within 180 days of the filing of the petition, or (ii) within 45 days of a trial where the petition is contested.¹⁸⁸

The courts are hesitant to grant an adoption in instances where the biological parent objects, unless clearly warranted.¹⁸⁹ The court will look to the best interests of the child when determining if adoption is appropriate.¹⁹⁰ Although advanced age alone will not lead a court to deny a guardianship petition, it is a relevant factor which the court will consider in a contested case.¹⁹¹

A grandparent may adopt a grandchild without terminating the natural parent's rights to visitation by entering into a post-adoption contract.¹⁹² A post-adoption contract for visitation can help foster a relationship between parent and child without forcing grandparents to share legal rights with respect to the child. The courts will enforce a post-adoption contract for visitation as long as the visitation is not contrary to the child's best interests.¹⁹³

¹⁸⁵ Md. Code Fam. Law § 5-313(d) (2006).

¹⁸⁶ Md. Code Fam. Law §§ 5-315(a), 5-318(b) (2006).

¹⁸⁷ Md. Code Fam. Law § 5-317 (2006).

¹⁸⁸ Md. Code Fam. Law § 5-319(a) (2006).

¹⁸⁹ *Dawson v. Eversberg*, 257 Md. 308, 313 (1970).

¹⁹⁰ *Id.*

¹⁹¹ *Ex Parte Frantum*, 214 Md. 100, 103 (1957).

¹⁹² Md. Code Fam. Law § 5-308(a) (2006).

¹⁹³ *Weinschel v. Strople*, 56 Md. App. 252, 261 (1983).

e. Available Resources

Utilizing the legal system to establish a formal relationship can be a complicated and expensive process. There are several useful resources available to grandparents in Maryland to assist them through this process.

The Maryland Department of Family Administration coordinates the development of family law policy in Maryland by working with the court and family support services.¹⁹⁴ The Department of Family Administration's website maintains a listing of Family Law Self-Help Centers located in each county and also provides a link to attorneys offering free or low cost legal services in the State of Maryland. The Maryland Social Services Administration and the Maryland Department of Human Resources, discussed in Section III, are also excellent resources. The AARP website also maintains a wealth of information specifically geared towards grandparents.¹⁹⁵

VI. FREQUENTLY ASKED QUESTIONS

What are the advantages of an informal care arrangement?

An informal care arrangement has several advantages. Informal arrangements are more flexible than formal arrangements. In an informal arrangement families can determine which care arrangement is in the best interests of the child and the family. In a formal arrangement, a state agency or the court system will make an independent determination which might be against the family's wishes. Informal care arrangements can be modified at any time, without a court order, to best suit the needs of the child, the grandparents and the biological parents. This can be especially advantageous in a situation where the biological parents are unable to provide care for their child for a short period of time but wish to resume care in the future. Additionally, informal arrangements can be established without the need for an attorney or significant financial resources. It can be complicated and expensive to institute custody or

¹⁹⁴ The website for the Maryland Department of Family Administration can be found at <http://www.courts.state.Md.us/family/index.html>.

¹⁹⁵ The Grandparenting page of the AARP website can be found at <http://www.aarp.org/families/grandparents>.

adoption proceedings. However, informal arrangements do have several disadvantages which should be carefully considered before making a final decision.

I cannot physically care for my grandchild, but neither can her parents. What should I do?

The Maryland Department of Human Resources should be contacted to arrange a plan for the child rather than immediately seek foster placement of the child(ren). The local Department of Social Services is obligated to make reasonable efforts to prevent placement, including exploring noncustodial parents and other relatives, as well as offering services to prevent the need for placement. Grandparents are entitled to petition a court for rights to visit a child who is in foster care. Courts will grant such a request if it can be shown that visitation is in the child's best interests.¹⁹⁶

I have a chronic medical condition that may incapacitate me in the future. How can I prevent my grandchild from being taken into the system when that happens?

Standby guardianship is an option in this case. A standby guardian is the person appointed to care for a child if the child's caretakers are physically or mentally incapable of doing so. This can be accomplished either by judicial appointment or parental designation.

In order to obtain a standby guardianship, it must be shown that (1) there is a significant risk of incapacitation or death of the grandparent within two (2) years of the filing of the petition for standby guardianship, and (2) the best interests of the child will be served by the appointment of a standby guardian.¹⁹⁷ Under Maryland law, courts are not permitted to grant standby guardianship without the consent of the child's parents.¹⁹⁸ As a result, it is important to obtain parental cooperation before filing such a petition.

¹⁹⁶ Md. Code Fam. Law § 9-102 (2006).

¹⁹⁷ Md. Code Est. & Trusts §§ 13-903; 13-904 (2001).

¹⁹⁸ Md. Code Est. & Trusts § 13-903 (2001).

PROTECTING THE CHILD FROM HARM

I. VIOLENT PARENTS

If a grandparent is concerned that a parent may physically hurt his or her grandchild, there are several options.

a. Calling the Police

If the threat of violence is immediate, a grandparent could call the police at 911. In a non-emergency situation that nevertheless warrants police involvement, the grandparent could dial 311 where such service is available. A law enforcement officer who responds to a request for help in connection with a fear of serious and immediate domestic abuse is obligated to protect the person from harm when responding to the request and accompany the person to the home so that the person may remove clothing and personal effects (regardless of who paid for the items).¹⁹⁹ The officer is also required to report any suspected child abuse or neglect to the local department of social services both immediately, by oral report, and in writing, within 48 hours of the contact that revealed the suspected child abuse or neglect (with a copy to the State Attorney's office in the case of suspected child abuse).²⁰⁰

b. Protective Orders

The grandparent could petition a court for a protective order.²⁰¹ A petition for relief from abuse must be under oath and include the following information known to the petitioner: (1) the nature and extent of the abuse for which relief is being sought, including any information concerning previous injury from abuse; (2) each previous action between the parties in any court; (3) each pending action between

¹⁹⁹ Md. Code Fam. Law § 4-502 (2006).

²⁰⁰ COMAR 07 02.07.04B (2007) (requiring health practitioners, educators, human service workers and police officers to report suspected child abuse and neglect).

²⁰¹ Under Maryland law, the following persons are eligible for relief: (1) the current or former spouse of the respondent; (2) a cohabitant of the respondent; (3) a person related to the respondent by blood, marriage, or adoption; (4) a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within 1 year before the filing of the petition; (5) a vulnerable adult; or (6) an individual who has a child in common with the respondent. Md. Code Fam. Law § 4-501(1) (2006).

the parties in any court; (4) the whereabouts of the alleged maltreater, if known; (5) if financial relief is requested, information known to the petitioner regarding the financial resources of the alleged maltreater; and (6) in a case of alleged abuse of a child or a vulnerable adult, the whereabouts of the child or vulnerable adult and any other information relating to the abuse of the child or vulnerable adult. There are no filing fees or court costs for protective orders.²⁰²

There is a District Court commissioner that handles petitions after-hours, when the courts are not open for business, so relief is designed to be available immediately. If the District Court commissioner finds that there are reasonable grounds to believe that the respondent has abused the grandparent or the child, the commissioner may issue an interim protective order. The interim protective order may, among other things: (1) order the respondent to refrain from further abuse or threats of abuse of the grandparent and the child; (2) order the respondent to refrain from contacting, attempting to contact, or harassing the grandparent and the child; (3) order the respondent to refrain from entering the residence of the grandparent; (4) award temporary custody of the child to the grandparent; and (5) order the respondent to remain away from the place of employment, school, and/or temporary residence of the grandparent and child. Regarding step 3, however, note that if the grandparent and the respondent reside together at the time of the alleged abuse, the court may not grant an order to vacate and award temporary use and possession of the home to the grandparent unless the grandparent's name appears on the lease or deed to the home or the grandparent has resided in the home for a period of at least 90 days within one year before filing the petition. This rule applies to temporary and final protective orders, as well. An interim order lasts until the earlier of the temporary protective order hearing and the end of the second business day that the office of the clerk of the local district court is open following the issuance of the interim protective order.²⁰³

²⁰² Md. Code Fam. Law § 4-504 (2006).

²⁰³ Md. Code Fam. Law § 4-504.1 (2006).

Alternatively, temporary and final protective orders may be sought from the office of the clerk of the local district court during normal business hours. A temporary protective order lasts up to seven days, although it may be modified and extended for up to 30 days. A temporary protective order automatically leads to a final protective order hearing. A temporary protective order will be issued if the court finds that there are reasonable grounds to believe that the respondent has abused the grandparent or the child. A final protective order lasts up to 12 months, although it too may be modified and extended for up to another six months. A final protective order will be issued if the court finds by clear and convincing evidence that the alleged abuse has occurred (or if the respondent consents to the entry of a final protective order). The relief provided by temporary and final protective orders can include the relief provided by an interim protective order plus establishing a temporary visitation arrangement, awarding emergency family financial maintenance to any person eligible for relief to whom the respondent has a duty of support, awarding temporary use and possession of a vehicle jointly owned by a person eligible for relief and the respondent to the person eligible for relief, directing the respondent to undergo counseling, and ordering the respondent to surrender to the police any firearm in the respondent's possession for the duration of the protective order. A respondent who violates a protective order may be found in contempt of court, criminally prosecuted, and imprisoned or fined.²⁰⁴

II. ABUSE AND NEGLECT: WHEN THE THREAT IS LESS SEVERE

a. Calling the Local Department of Social Services

Anyone who has reason to believe that a child has been abused or neglected should immediately (1) in the case of abuse, notify the police or the local department of social services, and (2) in the case of neglect, notify the local department of social services.²⁰⁵ Child Protective Services (CPS), a program

²⁰⁴ Md. Code Fam. Law §§ 4-505 to 4-509 (2006).

²⁰⁵ The telephone numbers for the local departments of social services in Maryland are listed on the Maryland Department of Human Resources Child Protective Services website: "Local Departments of Social Services Child Protective Services for the State of Maryland," Child Protective Services, Maryland Department of Human

within each department of social services, will gather information about the suspected abuse or neglect and investigate, coordinating with local law enforcement as necessary. They may seek further information from the reporting source, other relatives of the child, schools, hospitals, clinics and the police. If suspected physical or sexual abuse is reported, either CPS or the police (depending on how the jurisdiction is organized) will, within 24 hours: (1) initiate an on-site investigation; (2) see the alleged child victim and determine whether the health, safety and well-being of the child require that the child be removed; (3) attempt to see any other children who are in the care of the suspected maltreater and determine if they should be removed; and (4) attempt to have an on-site interview with the alleged victim's caretaker. If suspected neglect or psychological abuse is reported, the CPS investigators must make the same on-site visit and assessment, but their timetable is five calendar days instead of 24 hours. If they consider the child to be in danger of immediate harm or injury, they will attempt to make the least disruptive and traumatic arrangements necessary for the child's protection and care. In extreme cases, they may remove the child from the home with or without the consent of the parent.²⁰⁶

The CPS investigators are obligated to complete their investigation within 60 days of receiving the initial report. Within five working days after completing their investigation, they must complete a written report including the identification of any needed services and a finding of whether the alleged abuse or neglect is indicated, unsubstantiated, or ruled out. They must record the facts upon which the

Resources, at <http://www.dhr.state.md.us/cps/address.htm>. The in-State toll-free telephone hotline for reporting suspected child abuse and neglect in Maryland is: (800) 332-6347.

Maryland law provides the following definitions for child abuse and neglect. "Abuse" means "(1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed; or (2) sexual abuse of a child, whether physical injuries are sustained or not." Md. Code Fam. Law § 5-701(b) (2006). "Neglect" means "the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate: (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or (2) mental injury to the child or a substantial risk of mental injury." *Id.* § 5-701(s).

²⁰⁶ See COMAR. 07.02.07 *et seq.* (2007) (CPS investigations), 07.02.26.04 (notices sent to those found responsible for alleged child abuse or neglect).

latter finding is based, and they must identify any alleged abuser or neglector. The standard of proof required for a determination that an individual is an alleged abuser or neglector is a preponderance of the evidence (and not beyond a reasonable doubt, as required for a criminal conviction). Upon completion of the investigation and written report, the CPS investigators must send all individuals found responsible for child abuse or neglect a notice of action including the finding and an explanation of how to appeal. CPS must also report its findings to the State Attorney's office in the case of an abuse investigation. CPS may refer the case to staff providing continuing child welfare services to enhance family functioning, such as day care, emergency food, or shelter, parenting classes, therapeutic counseling, parent aide or homemaker services, and assistance with housing. It may also seek judicial intervention. CPS keeps a case record for every child and family investigated. All records and reports concerning child abuse and neglect, as well as the information contained in them, are treated as confidential.²⁰⁷

The grandparent could also make other caregivers, such as day care providers or school teachers, aware of the grandparent's concerns. They could aid the grandparent in providing support to the child. If they observe any signs of abuse or neglect, they are obligated to report their observations to CPS.

III. FREQUENTLY ASKED QUESTIONS

Is the grandparent required to allow his or her daughter or son to take the grandchild home with him or her when he or she arrives at the grandparent's home apparently under the influence of alcohol?

Assuming that the grandparent does not have court-ordered custody over the grandchild, possibly the best and most direct approach is to ask if the daughter or son can stay over until he or she is sober. If the daughter or son resists, then the grandparent may refuse to allow the grandchild to go home with the parent. Although the parent has the right to take custody of the child, it is unlikely that the grandparent will face any legal repercussions in these circumstances.²⁰⁸ The grandparent also could consider

²⁰⁷ *See id.*

²⁰⁸ However, see Md. Code Fam. Law §§ 9-304 to 9-307 (2006) (providing that a relative, having acquired lawful possession of the child, may not detain the child within the state for more than 48 hours after the lawful custodian demands that the child be returned).

involving the police to ensure the safety of the grandchild. If the parent leaves the grandparent's home with the child, the police might be able to pull over the parent before the parent has driven too far.

If the problem is a recurring one, the grandparent could report the intoxication to CPS as child neglect, insofar as the parent is putting the child's welfare at substantial risk of harm.²⁰⁹ In a custody case, the grandparent could petition for custody on this basis, contending that the parent is unfit.

Can the grandchild stay with the grandparent after the grandparent reports abuse or neglect to the authorities?

One of the "fundamental philosophical principles" of the Maryland Department of Human Resources in its work through its CPS program²¹⁰ is: "The ultimate success of CPS intervention rests with the family, which must be encouraged to be involved with and participate in the intervention process."²¹¹ If CPS intervenes in cases where the abuse or neglect allegations are substantiated, it will attempt to do so using the least disruptive and traumatic means necessary for the protection and care of the child.²¹² It may temporarily place the child with a relative or encourage the family to seek a protective order if appropriate to limit the alleged maltreater's access to the child.²¹³ When returning the child to the parent's home is not possible, placement with relatives by whom adoption, custody and guardianship, or care and custody, in descending order of priority, are planned to be granted is regarded as the next best option.²¹⁴ Placing a child in long-term foster care is regarded as the least desirable option and is only a last resort.²¹⁵

²⁰⁹ See *supra* for a discussion of the process set in motion when child abuse or neglect is reported.

²¹⁰ See COMAR 07 02.07.01 (2007) (setting forth the purpose and scope of Child Protective Services).

²¹¹ See "What is Child Protective Services (CPS)?", Child Protective Services, Maryland Department of Human Resources, at <http://www.dhr.state.md.us/cps/>.

²¹² COMAR 07 02.07.07E (2007).

²¹³ *Id.*

²¹⁴ See Md. Code Fam. Law § 5-525(e) (2006).

²¹⁵ See *In re Adoption/Guardianship of Victor A.*, 872 A.2d 662, 670-71 (2005), explaining the fundamental rights of parents, the role of the child welfare system, and the procedures and standards for removing a child from the custody and care of the child's natural parents.

A grandparent has been taking care of a grandchild for many years. Suddenly, the grandchild's father/mother wants the grandchild to live with him/her. The grandparent is certain that the parent just wants to take the child's monthly benefits check. What can the grandparent do to make sure that this does not happen?

Unless a grandparent has adopted or been awarded legal custody of the grandchild, the grandparent has no legal right to prevent the child from living with his or her parent. Parents are vested with a fundamental right of parents generally to direct the “care, custody, and control” of their children without undue interference by the State.²¹⁶ This right has been recognized by the U.S. Supreme Court as contained within the bounds of the federal Due Process Clause of the U.S. Constitution.²¹⁷ Grandparents, on the other hand, do not enjoy a constitutionally protected liberty interest in custody of, visitation with or decision-making with respect to their grandchildren. In short, parents and grandparents stand on unequal footing.²¹⁸

Standing alone, the parent's decisions to spend welfare money inappropriately or frivolously may not rise to the level of child neglect. Absent other signs, it might be difficult to make the case that the parent's spending decisions are tantamount to child neglect. But they could be one factor among others pointing to neglect, for which it may be helpful for the grandparent to initiate outside intervention.

If the parent of the grandchild is still an unemancipated minor and is the grandparent's child, then the grandparent is responsible for any child support for a recipient of temporary cash assistance to the extent that the minor parent has insufficient financial resources to fulfill his or her child support responsibility.²¹⁹ In that instance, the grandparent could control how a monthly benefits check for the child is spent.

²¹⁶ See *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (plurality opinion). This right has been recognized by the U.S. Supreme Court as contained within the bounds of the federal Due Process Clause of the U.S. Constitution.

²¹⁷ *Id.*

²¹⁸ *Koshko v. Haining*, 398 Md. 404, 423 (2007).

²¹⁹ Md. Code Fam. Law § 5-203 (2006).

If the grandparent was awarded legal custody of the grandchild, and the natural parent returns seeking custody, the general rule is that courts avoid modifying custody awards unless the parent presents evidence of a material change in circumstances relating to the child's welfare that justifies a change in the custody arrangement.²²⁰ The circumstances to which change would apply would be the circumstances known to the trial court when it rendered the prior order.²²¹ Recognizing the value of finality in custody awards, a court would change an award only if the moving parent meets this "heavy" evidentiary burden and changing the custody arrangement would clearly be in the best interests of the child.²²²

Can a parent legally prevent a grandparent from spending time with a grandchild?

Visitation, which is considered to be a temporary form of custody, and custody determinations are governed by the same principles, meaning that there is a strong legal presumption in favor of the parents' prerogative regarding the custody or visitation of their child with third parties.²²³ While Maryland law expressly permits a grandparent to petition a court for visitation rights at any time,²²⁴ including when the parents' marriage is intact²²⁵ and when the child has been adopted by a third party,²²⁶ the grandparent will win visitation rights only if the grandparent presents at least *prima facie* evidence that the custodial parents are either unfit or there are exceptional circumstances, such as harm, justifying the visitation rights.²²⁷ Failing this evidentiary burden, the grandparent will not overcome the presumption that the

²²⁰ *Wagner v. Wagner*, 674 A.2d 1, 14-15 (Md. Ct. Spec. App. 1996).

²²¹ *Id.* at 14.

²²² *Id.* at 16.

²²³ *Koshko*, 398 Md. at 424.

²²⁴ Md. Code Fam. Law § 9-102 (2006).

²²⁵ *Maner v. Stephenson*, 677 A.2d 560, 564 (Md. 1996).

²²⁶ *Beckman v. Boggs*, 655 A.2d 901, 907-08 (Md. 1995).

²²⁷ *Koshko*, 398 Md. at 440.

parents' decision is in their child's best interests, and unfortunately for the grandparent the parents would be within their rights in choosing to prevent the grandparent from seeing the child.²²⁸

If the grandparent meets the evidentiary burden regarding the parents' lack of fitness or other exceptional circumstances, the court would go on to determine in its discretion whether awarding visitation rights to the grandparent is in the child's best interests.²²⁹ The court would grant the visitation award not for the grandparent's gratification or enjoyment, but to fulfill the perceived needs of the child.²³⁰ The court would consider all relevant circumstances in assessing what would best serve the child's best interests, but special guidelines with respect to grandparental visitation include: "the nature and stability of the child's relationships with its parents; the nature and substantiality of the relationship between the child and the grandparent, taking into account frequency of contact, regularity of contact, and amount of time spent together; the potential benefits and detriments to the child in granting the visitation order; the effect, if any, grandparental visitation would have on the child's attachment to its nuclear family; the physical and emotional health of the adults involved; and the stability of the child's living and schooling arrangements."²³¹ Courts also have recognized and considered the psychological toll of visitation disputes on children.²³² If a parent chose to violate the court's final order, the parent would risk being held in contempt of court.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Beckman*, 655 A.2d at 903.

²³¹ *Fairbanks v. McCarter*, 622 A.2d 121, 126-27 (Md. 1993).

²³² *Maner*, 677 A.2d at 564.

EDUCATION

In Maryland, all children who are five years of age or older and under the age of 21 will be admitted free of charge to the Maryland public schools. Each child who resides in Maryland and is five years old or older and under the age of 16 must attend school.²³³ Further, each person who has legal custody or care of a child who is five years of age or older and under the age of 16 must see that the child attends school.²³⁴ This applies to relatives caring for children in an informal kinship care relationship. If a person who has legal custody or care and control of a child fails to see that a child attends school, induces a child to be absent from school or harbors a child who is unlawfully absent from school, that person is guilty of a misdemeanor and may be subject to a fine or imprisonment.²³⁵

Children in Maryland have three basic options for their education: Maryland county public schools (MCPS), charter schools, or private schools. MCPS and charter schools do not charge tuition to Maryland residents.

I. MARYLAND PUBLIC SCHOOL SYSTEM

Children in Maryland who are enrolled in MCPS attend a school based on where their parent or guardian resides.²³⁶ Generally a child attends their local neighborhood school. For the most part, a child residing in a valid kinship care arrangement, a child living with a court appointed guardian or a child placed in a foster home by a Maryland state or county social service agency will be eligible to enroll and receive a free education at a MCPS school based upon where the relative taking care of the child resides.²³⁷ However, the MCPS in which you wish to enroll your grandchild will require you to prove

²³³ Md. Code Educ. § 7-101(a) (2006); Md. Code Educ. § 7-301(a)(1) (2006).

²³⁴ Md. Code Educ. § 7-301(c) (2006).

²³⁵ Md. Code Educ. § 7-301(e) (2006).

²³⁶ Md. Code Educ. § 7-101 (2006).

²³⁷ Md. Code Educ. § 4-122.1 (2006).

that guardianship was obtained for necessary reasons concerning the child and not for the convenience of the persons involved or for the primary purpose of attending a school in a specific Maryland county.

A grandparent can determine his or her grandchild's neighborhood school by calling the local school system. It is very important to note that although all MCPS schools are under the auspices of the Maryland State Department of Education, each county school system has its own rules and regulations regarding enrollment, attendance and other school policies. You should contact your local school system or visit the local school system on the web before enrolling your grandchild in school and if you have any questions regarding school policies. Links to each of the 24 MCPS school systems can be found at <http://www.marylandpublicschools.org/MSDE/schoolsystems/>.

II. FREQUENTLY ASKED QUESTIONS

How can I enroll my grandchild in school?

If this is the first time your grandchild will be enrolling in any school you should call the school directly to set up an enrollment appointment. Be sure to ask what you must bring with you to enroll your grandchild in school. Schools are open during the summer to help grandparents with the registration process. Early registration also helps the school system evaluate your grandchild's placement and to respond to unanticipated enrollment increases.²³⁸

At a minimum, most schools require the following documents: (1) birth certificate; (2) proof of custody/guardianship (documentation which determines where the child resides and who has decision-making authority); (3) proof of parent/guardian identity (i.e. driver's license, passport, W-2 for the current year); (4) proof of residency; and record of immunizations (DHMH Form 896). Acceptable proof of residency is established by each local school system. You should call the school where you plan to enroll your grandchild to find out what will be accepted as proof of residency. Generally accepted documents

²³⁸ See BCPS' "Student Registration & Moving Tips", available at http://www.bcps.org/schools/moving_tips.html.

include a current rental lease, current utility bills containing applicant's name and address, or a current property tax bill.

If you are providing informal kinship care, you will also be required to verify the informal kinship care relationship through an affidavit.²³⁹ The affidavit should include the following information:

- (i) The name and date of birth of the child;
- (ii) The name and address of the child's parent or legal guardian;
- (iii) The name and address of the relative providing informal kinship care;
- (iv) The date the relative assumed informal kinship care;
- (v) The nature of the serious family hardship and why it resulted in informal kinship care (Note: in some counties (e.g. Baltimore County) you may be required to submit supporting documentation of the serious family hardship that resulted in informal kinship care) (*see* FAQ #2);
- (vi) The kinship relation to the child of the relative providing informal kinship care;
- (vii) The name and address of the school the child previously attended;
- (viii) Notice that the county superintendent may verify the facts given by the relative providing informal kinship care in the affidavit and conduct an audit of the care after the child has been enrolled in the county public school system;
- (ix) Notice that if fraud or misrepresentation is discovered during an audit, the county superintendent shall remove the child from the county public school system roll; and
- (x) Notice that any person who willfully makes a material misrepresentation in the affidavit shall be subject to a penalty payable to the county for three times the pro rata share of tuition for the time the child fraudulently attends a public school in the country.²⁴⁰

An informal kinship affidavit may be filed at any time during a school year; however, you must file an affidavit annually at least two weeks prior to the beginning of the school year for each year your grandchild continues to live with you.

²³⁹ Md. Code Educ. § 7-101(c)(2)(i) (2006).

²⁴⁰ Md. Code Educ. § 7-101(c)(3) (2006).

If your grandchild is transferring from another school in Maryland, you must bring a copy of your grandchild's Maryland Student Transfer Record. A copy of this form can be obtained from the school from which your grandchild is transferring (*see* FAQ #3). If you have any questions about the schools enrollment process or if you are unable to obtain some of the documents required by MCPS school to register your grandchild, contact your grandchild's school and they will be able to answer your questions and suggest alternative documents that can be provided to complete the registration process.

If your residency changes at any time, you are responsible for notifying your grandchild's school immediately. If the new residency is located in another school attendance area or another county, you will need to verify the new domicile with your grandchild's current school. Your grandchild may be eligible for continued enrollment in the current school, but you should contact the school regarding their policy and your child's eligibility to be enrolled in that school. If you enroll your grandchild in a school where he or she is not eligible to attend, your grandchild will be withdrawn from the school and you may become liable for non-resident tuition for the period your grandchild attended the school.

What is considered to be a "serious family hardship" for the purpose of enrollment under the informal kinship care provision?

If you are caring for your grandchild in an informal kinship care arrangement you may be required to provide evidence of the "serious family hardship" which lead to your grandchild coming to live with you in order to refute any claims that your grandchild came to live with you solely for the purpose of enrollment in a different school. One or more of the following is considered a serious family hardship: (1) death of father/mother/legal guardian; (2) serious illness of father/mother/legal guardian; (3) drug addiction of father/mother/legal guardian; (4) incarceration of father/mother/legal guardian; (5) abandonment by father/mother/legal guardian; (6) assignment of father/mother/legal guardian to active military duty. However, the following are not considered to be serious family hardships: (1) presence in a certain county primarily for improved quality of education; (2) presence in a county primarily because of adverse conditions or dissatisfaction with the child's prior school system; and (3) parent(s)/guardian(s) placing the child with the caretaker for child care purposes.

What do I do if my grandchild will need to transfer schools when he or she comes to live with me?

Call the school your grandchild last attended and ask the school to prepare a **Maryland Transfer Form**. Tell them the last day your grandchild will attend school and ask if you may pick up the Maryland Transfer Form, or if it can be mailed to you or brought home to you by your grandchild. The Maryland Transfer Form will contain all the information you need to enroll your grandchild in the new school. **Call your grandchild's new school and schedule an appointment**. Be sure you bring the Maryland Transfer Form. The appointment will ensure that time is set aside to speak with you and to answer any questions you may have. Also ask what items you need to bring with you to enroll your grandchild in the new school.

What do I do if my grandchild is coming to live with me and I live in a different school attendance area than his/her current school and my grandchild does not want to change schools or I think my grandchild would be better off at another school?

Students are expected to attend the school within the established attendance area in which they currently reside or are assigned in accordance with an Individualized Education Plan. If your grandchild is living with you because you are the legal guardian or informal kinship care giver and you believe your grandchild would be better off at a MCPS school other than your local neighborhood school, you may seek a special permission transfer. In addition, the “No Child Left Behind” Act may provide additional rights to move a child from a school that is failing academically or that is dangerous.

Each county school system has its own set of circumstances that justify the transfer of a student to a school outside the attendance area in which the student currently resides. Although many school systems have similar policies, you should **call the school** you would like your grandchild to attend to find out about their policy regarding enrollment of non-resident students. For the most part, if a student’s domicile changes during the school year, the student may complete that semester in his/her current school as a non-resident student provided he/she pays tuition for the remainder of the semester. A student who has completed grade 11 at a certain high school but who moves out of the school attendance area, may complete grade 12 at his/her current school provided he/she pays tuition for the remaining semesters. Tuition for non-resident students is established annually by the Board of Education. Requests for waiver

of tuition will be granted if the child meets the criteria for a free lunch, reduced priced lunch or medical assistance.

A student also may be able to transfer schools if they prove a justifiable hardship. For example, in Baltimore County a student may request a transfer based on one more of the following:

1. When a student who has completed grades 4, 7 or 11 changes residence to another Baltimore County school attendance area, said student may continue in the original elementary, middle or high school until completion of the terminating grade of that school.

2. When a student desires to pursue a curricular/academic course or program of study not offered in the regularly assigned school, said student may be transferred to the requested school provided the student has met the stated prerequisites.

3. When the purpose is for: (a) medical reasons (must be accompanied by documentation for a physician or mental health provided) or (b) student adjustment issues which cannot be resolved at the home school placement as evaluated and determined by appropriate school systems officials.

4. When a student changes residence within Baltimore County during a school year, said student may remain in the original school until the end of the school year.

5. When a student's family is planning to move during the school year, said student may enroll in the school in the attendance area in which he/she is planning to live.

6. When a student has a sibling who is attending the requested school and the sibling would continue to attend that school at the time of the student's initial enrollment, said student may be granted a transfer to that school.

In addition, the federal "No Child Left Behind" law creates opportunities for students to transfer out of schools that are failing academically or are dangerous. Children may transfer out of a school which has been labeled as failing in accordance with the No Child Left Behind law. A school will be considered a "failing school" if for two years or more the student body's poor academic performance does not improve. MCPS is required to inform parents or guardian grandparent caregivers of eligible students that their children are eligible to transfer if their school has been identified as a "failing school." This

notification usually occurs the summer before the start of the school year. Children also may transfer out of a “persistently dangerous” school. MCPS also must notify parents of children who attend schools that are identified by MCPS as persistently dangerous.

What is a charter school? How do I enroll my grandchild in a charter school?

A charter school is an alternative to a MCPS school. They are public schools operated independently by an administrative entity according to a contract (also called a charter agreement) with the County Board of Education.²⁴¹ A charter school is different from a non-charter public school because it is not operated by MCPS and MCPS administrators. Instead, a charter school is run by an administrative entity such as a non-profit organization, a parent or guardian of a child who attends a public school in the county, or the staff of a public school.²⁴² A charter school must complete a rigorous application process with the Board of Education before the school is eligible to receive public funds. Like non-charter public schools, they are tuition-free for Maryland residents.²⁴³ But unlike non-charter public schools, which teach a standard curriculum, charter schools may differ in academic emphasis.²⁴⁴ Most charter schools emphasize a particular teaching method, instructional theme, or academic area of concentration. For example, some charter schools focus on mathematics, science and technology, or public policy, while other specialize in educating immigrant students whose first language is not English. Because of the uniqueness of charter schools, a grandparent caregiver should research the curriculum of a charter school before enrolling a grandchild to ensure a good fit. Like other public schools, charter schools must comply with federal and state laws prohibiting discrimination, as well as all applicable

²⁴¹ Md. Code Educ. §§ 9-102 and 9-104 (2006).

²⁴² Md. Code Educ. § 9-104 (2006).

²⁴³ Md. Code Educ. § 9-102 (2006).

²⁴⁴ Md. Code Educ. § 9-101 (2006).

health and safety laws.²⁴⁵ A list of current charter schools in Maryland can be found at http://www.marylandpublicschools.org/MSDE/programs/charter_schools/docs/No_CS_Schools.htm.

To enroll your grandchild in a charter school, you should contact the specific charter school in which you would like to enroll your grandchild and complete an application. Public charter schools are open to all students on a space-available basis, and on a lottery basis if more students apply than can be accommodated, without regard to where you live in Maryland. Applications and enrollment deadlines usually fall early in the calendar year. A grandparent caregiver should plan ahead and contact charter schools in the winter to complete applications for the next academic year (which usually begins in late summer).

How can I enroll my grandchild in the free school breakfast or lunch program?

To enroll your grandchild in a free and reduced price meal program, you must complete a household meal benefit application.²⁴⁶ This application will be sent home with your grandchild at the beginning of each school year.²⁴⁷ You should complete the application, sign it, and return the application to your grandchild's school. Once the application has been processed, a notice will be mailed to your home address notifying you of your grandchild's eligibility for free or reduced price meals.²⁴⁸ If your grandchild is approved for free or reduced meals, she or he remains eligible for the entire school year.²⁴⁹ A copy of the application can be found on the Office of Nutrition and Food Services website at http://www.bcps.org/offices/ofns/free_reduced_program.html.

²⁴⁵ Md. Code Educ. § 9-102 (2006).

²⁴⁶ See Office of Food and Nutrition Services website, "Free and Reduced Price Meal Program," available at http://www.bcps.org/offices/ofns/free_reduced_program.html.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

If you receive food stamps or temporary cash assistance, your grandchild is eligible for free breakfast and lunch at school.²⁵⁰ Your grandchild also may be eligible to receive free or reduced price meals at school if your household meets certain federal guidelines.

How can I access the help of counselors or other professional staff at my grandchild's school? What types of services do they provide?

Most MCPS schools have counselors on staff who are available to speak with you or your grandchild. Counselors (also called school psychologists) are available to provide emotional and career counseling for your grandchild. Counselors can help your grandchild experience success in school, develop career awareness and decision-making skills, and assist your grandchild in understanding and respecting self and others. Counselors provide a variety of services, including individual and group counseling, classroom guidance, and consultation to grandparents and teachers. Additionally, counselors can be a useful source of information about college admissions, community college enrollment, and job opportunities for high school graduates.

To access the help of counseling staff, you should contact the counseling office at your grandchild's school. You may also contact the Baltimore County Office of School Counseling at (410) 887-0291 or the Office of Psychological Services at (410) 887-0303.

My grandchild is having behavioral problems in school and they want to suspend him/her. What can I do about this? How can I help my grandchild?

It is important for grandparents to become involved in their grandchild's school and classroom at the beginning of each school year and to communicate regularly with their grandchild's teachers throughout the school year. Consistent involvement in your grandchild's school may prevent and/or reduce behavioral problems. Should your grandchild experience behavioral problems in school, it is possible that your grandchild may be suspended (and potentially expelled) as a result of his or her misbehavior.

²⁵⁰ *Id.*

Your grandchild's principal may suspend your grandchild for cause, for not more than ten days.²⁵¹ If your grandchild is suspended you are entitled to a prompt conference with the principal and any other appropriate school personnel during the suspension period. At or before this conference, your grandchild must receive oral or written notice of the charges against her or him.²⁵² Your grandchild has the right to give her or his side of the story.

If your grandchild's principal finds that your grandchild should be suspended for longer than ten days, the principal must report the matter in writing to the school superintendent.²⁵³ Following a thorough investigation, the superintendent may decide to extend your grandchild's suspension for more than ten days or expel your grandchild from school. If the superintendent finds that a longer suspension or expulsion is warranted, the superintendent or the superintendent's representative must arrange a conference with you and your grandchild. You have the right to appeal the superintendent's decision to the school board within ten days after the superintendent's decision.²⁵⁴ The school board must hold a hearing on the matter and you may bring a lawyer and witnesses to the hearing. The school board's decision is final.

The school wants to evaluate my grandchild for special education? What are my rights?

The Maryland County Public Schools system aims to provide a quality education for all students, including students with disabilities, in the least restrictive environment possible so that all students can reach their maximum potential. Special education is specifically designed instruction to meet the unique needs of a child with a disability, including special instruction in the classroom, designed at no cost to the parent or guardian of a child. The Division of Special Education/Early Intervention Services collaborates with families, local early intervention systems, and local school systems to ensure that all Maryland

²⁵¹ COMAR 13A.08.01.11 (2007).

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

children and youth with disabilities have access to appropriate services and educational opportunities to which they are entitled under federal and state laws. MCPS is required to provide a free appropriate public education for students who have learning disabilities.²⁵⁵ For example, children with emotional difficulties, children with ADHD, children with reading or math learning difficulties, children with mental retardation or children with autism may qualify for special education and related services. Special education may include specialized instruction, counseling, speech and language therapy, transportation to and from school, occupational therapy and accommodations in the classroom (i.e. priority seating)

If a school suspects that a student has a learning or other disability, the school system promptly refers the student to an individualized education program (IEP) team.²⁵⁶ The student's classroom teacher or other school personnel generally will refer a student to the team after attempting general education interventions. An IEP team should include the parents or guardians of the student; a regular education teacher of the student; and a special education teacher. Within 90 days of receiving a written referral, the IEP team must complete an evaluation of the student and determine whether the student requires special education and related services.²⁵⁷

If your grandchild is referred to an IEP team to be evaluated for special education services, you are entitled to attend the IEP team meeting and should receive at least 10-days written notice of the meeting.²⁵⁸ You are encouraged to participate in this meeting and provide any input that you have about your grandchild's educational needs. The IEP team will review your input and the school's assessment and other data about your grandchild, including instructional strategies that have been tried. Your child's teacher and other school personnel also will include their observations. If the IEP team requires

²⁵⁵ Md. Code Educ. §§ 8-301 to 8-307 and 8-401 to 8-416 (2006).

²⁵⁶ COMAR 13A.05.01.04 (2007).

²⁵⁷ COMAR 13A.05.01.06A (2007); Maryland State Department of Education Technical Assistance Bulletin 1 (December 1999).

²⁵⁸ COMAR 13A.05.01.07 (2007).

additional evaluation of your grandchild following this meeting, the team first must obtain your written consent.²⁵⁹

If you disagree with the evaluation of the IEP team, you may request an independent educational evaluation at public expense.²⁶⁰ The school either will provide an independent educational evaluation or initiate a due process hearing to show that its evaluation is appropriate.²⁶¹ The hearing will be held before an impartial hearing officer. If the hearing officer determines that evaluation is appropriate, you may not obtain an independent educational evaluation of your grandchild.²⁶² If the hearing officer rules in your favor, the independent educational evaluation will be conducted at no cost to you.

If the school finds that your grandchild requires special education services, the IEP team must develop an individualized education plan for your grandchild that takes into account a variety of factors, including the results of the IEP team's evaluation, your grandchild's communication needs, and whether your grandchild needs assistive technology devices and services.²⁶³ The school will provide you with a copy of your grandchild's IEP at no cost to you. The IEP team must meet at least once a year to review and revise your grandchild's IEP, as appropriate.²⁶⁴ The IEP team also must determine whether your grandchild requires extended school year services.²⁶⁵ You may request a meeting at any time to review and/or revise your grandchild's IEP.

Under Maryland law, children with disabilities must, to the maximum extent possible, be educated with students who are not disabled.²⁶⁶ If you have a dispute with the MCPS about the provision

²⁵⁹ COMAR 13A.05.01.13 (2007).

²⁶⁰ COMAR 13A.05.01.14 (2007).

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ COMAR 13A.05.01.08 (2007).

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ COMAR 13A.05.01.10 (2007).

of special education services to your grandchild, you are entitled to request mediation.²⁶⁷ You have the right to be accompanied or advised by counsel at a mediation.²⁶⁸ You may also initiate a due process hearing if you have a dispute with the MCPS about the provision of special education services to your grandchild.²⁶⁹ This request must be made in writing to the Office of Administrative Hearings, which will provide you with information about free or low cost legal and other relevant services available. A hearing officer will conduct the hearing and mail a copy of the decision to you within 45 days.²⁷⁰

Additionally, if your grandchild's IEP cannot be implemented in a public school program, the MCPS may be required to place your child in a private school at the expense of the school system. If you have further questions about Maryland's special education placement process, you may contact the Maryland State Department of Education's Division of Special Education and Early Intervention at (410) 767-0261 or if you are in Baltimore County, the Baltimore County Public School Resource Center for Families and Schools at (410) 887-5443.

²⁶⁷ COMAR 13A.05.01.15 (2007).

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

ACTIVITIES AND ASSISTANCE FOR AT-RISK CHILDREN

There are several resources available for a grandparent seeking wholesome outside activities to occupy a grandchild's spare time or assistance in dealing with a troubled grandchild.

Many children thrive in structured after-school or summer programs. Such programs can promote self-confidence, broaden a child's circle of friends, and provide a safe and secure place to spend time. These programs may be particularly important if the grandparent caregiver is working and is unable to supervise the child after school or in the summer.

An older grandchild may have progressed beyond structured activities and be ready for an after-school or summer job. Like structured programs, a part-time job can increase a grandchild's self-confidence and provide a welcome sense of personal satisfaction. Part-time jobs also can serve as an important learning tool about money and time management.

I. STRUCTURED ACTIVITIES AND ENRICHMENT PROGRAMS

There are a number of resources for structured programs and summer camps. One resource is the Boys & Girls Club of America, an organization offering enriching programs in character and leadership development, education and career development, health and life skills, the arts, and sports. To locate the nearest club, call (800) 854-CLUB, or visit <http://www.bgca.org/clubs/> (providing the ability to locate a club by entering a zip code). As another resource, many police departments have a Police Athletic League (PAL) with the mission of preventing juvenile crime and violence by providing civic, athletic, recreational and educational opportunities to local youth. PALs operate youth recreational centers with fun activities like table tennis, billiards, video games, crafts, and other forms of entertainment. For more information, visit <http://www.nationalpal.org/> (providing the ability to locate a local chapter by entering a zip code). The Baltimore County PALs is located at 700 East Joppa Road, 7th Floor, Towson, MD 21286-5501. Their telephone number is (410) 887-5892 and their website is <http://www.baltimorecountymd.gov/Agencies/police/community/pal/>.

Many children also benefit from having a mentor or tutor who gives individualized attention. Mentors develop friendships with children and can be great at encouraging self-esteem. Tutors focus on helping with school work. Big Brothers Big Sisters is known for effectively matching mentors, which the organization screens and trains, with at-risk children primarily from single-parent homes. For more information, call (215) 567-7000, or visit <http://www.bbbs.org/> (providing the ability to locate an agency by entering a zip code). The Maryland Mentoring Partnership develops youth mentorship programs that are sponsored by schools, religious institutions, corporations, and community organizations. For more information, call (800) 741-2687, or visit <http://www.marylandmentors.org/> (providing the ability to locate a mentorship program by entering a zip code).

Local churches, schools, youth organizations, parks and recreation departments, and other community organizations also may offer fun youth activities.

II. EMPLOYMENT FOR AN OLDER GRANDCHILD

In Maryland, anyone under the age of 18 is considered a minor. The general rule is that a minor between the ages of 14 and 18 may work only with a work or special permit issued by either the Maryland Department of Labor's Division of Labor and Industry or a county superintendent of schools (or a designee); a minor under the age of 14 may not be employed at all. For more information about obtaining a work permit, call the Division of Labor and Industry at (410) 767-2239, or visit the Division's offices located at 1100 N. Eutaw Street, Room 606, Baltimore, MD. There are exceptions to the permit requirement for farm work, domestic work performed in a home, work performed for a parent's business, golf caddying, sailing instruction, newspaper delivery, and work as a camp counselor. Also, a minor may work as an unpaid volunteer for a non-profit organization if a parent of the minor or person standing in place of the parent consents in writing and, for hazardous work in a volunteer fire department or volunteer

rescue squad, the minor is at least 16 years old and has completed or is taking a course of study about fire fighting or rescue.²⁷¹

The employment of minors is subject to extensive regulation. Certain activities that are deemed to be too dangerous are barred for minors entirely, including construction, manufacturing, mechanical work, and the like. Also, unless the Division of Labor and Industry grants an exception, minors may not: work before 7:00 a.m. or after 8:00 p.m., except that minors may work until 9:00 p.m. from Memorial Day to Labor Day; or work for more than four hours on a day when school is in session, eight hours a day when school is not in session, 23 hours in a week when school is in session for five days, or 40 hours in a week when school is not in session (not including any hours worked in a bona fide work-study or student-learner program while school normally is in session).²⁷²

III. ASSISTANCE FOR GRANDCHILDREN AT RISK

Children occasionally misbehave. When these incidents are relatively minor, a grandparent caregiver may be able to handle a grandchild's bad behavior independently. However, in certain instances, the grandparent may need assistance in responding to the child's conduct, particularly when the child is aggressive or violent. In those instances, the grandparent might consider speaking with the child's teacher, principal and/or school counselor and asking for their input and guidance. These individuals see the child regularly and may have insight into the reasons for the child's behavior, as well as suggestions to address it. Moreover, through this dialogue, the school personnel and the grandparent may be able to work together to develop a coherent response to the child's conduct.

The grandparent might also consider speaking with mental health professionals and arranging counseling for the child. Some people hesitate to contact a mental health professional to deal with anger issues because of the perceived stigma surrounding mental health issues. But through treatment, the child

²⁷¹ Md. Code Lab. & Empl. §§ 3-201 to 3-216 (2006).

²⁷² *Id.*; see also "Employment of Minors (Work Permits)," Division of Labor and Industry, Maryland Department of Labor, at <http://www.dllr.state.Md.us/labor/empm.html>.

could learn how to manage his or her feelings, express anger and frustration in appropriate ways, and be responsible for his or her actions. Moreover, these services are confidential. Many counselors specialize in working with adolescents and their families. The child's school may be able to provide referrals. In addition, there is a Maryland Youth Crisis Hotline (toll-free), providing counseling services to young people and families 24 hours a day, 7 days a week, at: (800) 422-0009. The U.S. Department of Health and Human Services Substances Abuse & Mental Health Services Administration also operates a toll-free hotline at (800) 273-8255.

If the child's behavior is extreme and a threat or crime has occurred, the grandparent may need to call the police, even if he or she is reluctant to do so. This is particularly important if the grandparent feels that anyone is in danger. The police may press charges if they believe that a crime has occurred.

If the child has harmed or threatened harm to the grandparent, the grandparent has the option of seeking a protection order. The process for obtaining such an order is detailed above; see "Protecting the Child from Harm."

IV. FREQUENTLY ASKED QUESTIONS

A grandchild has been arrested by the police. What will happen to him or her? What steps should a grandparent take to make sure that the child gets a lawyer?

If the child is under 18 years old, Maryland law considers him or her to be a juvenile for most non-traffic criminal offenses.²⁷³ In Maryland, there are juvenile courts in each county and in Baltimore City that have exclusive original jurisdiction over cases involving children under the age of 18.²⁷⁴ This means that children subject to the jurisdiction of the juvenile court system may not be prosecuted for a

²⁷³ There are certain offenses for which juvenile cases go directly to criminal court: children age 14 or older who are charged with crimes which, if committed by an adult, are punishable by death or life in prison; children age 16 or older who are charged with certain felonies (such as robbery, carjacking, second degree rape, second degree murder, assault in the first degree, and others); and children age 16 or older who are charged with non-jailable traffic/boating offenses. *See* Md. Code Cts. & Jud. Proc. § 3-8A-03 (2007). However, a judge may waive a case to juvenile court. *Id.*, § 3-8A-06. For most violent crimes, the age of the person at the time the alleged act was committed controls the determination of jurisdiction; in other cases, the age of the child at the time the petition is filed controls. *Id.* § 3-8A-05.

²⁷⁴ For locations and directions, visit http://www.peoples-law.org/finding/courts/finding_courts.htm.

criminal offense in a regular court unless juvenile-court jurisdiction has been waived.²⁷⁵ Juvenile courts are more treatment oriented and less punitive than regular courts, and they use a different vocabulary: the child is a “respondent,” not a defendant; the proceeding is an “adjudicatory hearing” in which the child may admit or deny involvement in the offense, not a “trial” in which the defendant pleads guilty or not guilty.²⁷⁶ The remedies include, among other things, drug and alcohol rehabilitation programs and supervised work programs. The vision of juvenile courts is for every child to “become a self-sufficient productive adult”²⁷⁷ and to assist children and their parents in stopping delinquent behavior. You can find out more about the juvenile court at <http://www.courts.state.md.us/juvenile.pdf>.

Committing a delinquent act (or crime) does not emancipate a minor. Parents, or the minor’s legal guardian, are held liable for the acts of their children. Parents are accountable to the victims and to the community. However, in certain situations, the court may decide to remove the child from the home to find another situation that will provide discipline and care.

Cases involving certain serious offenses by juveniles go directly to a criminal court. These cases include:

- ❖ Children 14 or older charged with crimes which, if committed by an adult, are punishable by death or life in prison;
- ❖ Children 16 or older charged with robbery or attempted robbery with a dangerous or deadly weapon;
- ❖ Children 16 or older charged with non-jailable traffic or boating offenses.

A judge, however, can transfer these serious cases to the juvenile court.

²⁷⁵ See Md. Code Cts. & Jud. Proc. § 3-8A-07 (2007).

²⁷⁶ See “Juvenile Court in Maryland,” at <http://www.courts.state.Md.us/juvenile.pdf>.

²⁷⁷ See “DJS Vision, Mission and Core Values,” Maryland Department of Juvenile Services, at <http://www.djs.state.Md.us/mission.html>. The Maryland Department of Juvenile Services has the following mission statement: “The Department of Juvenile Services embraces a balanced and restorative justice philosophy. DJS seeks to ensure the public safety and protection of the community, to hold juvenile offenders accountable to victims and communities, and to develop youth competency and character to assist them in becoming responsible and productive members of society.” *Id.*

The police will contact the child's parent or caregiver to inform him or her of the child's arrest and the initial court hearing. Sometimes, the child is released for the period between the arrest and the initial court hearing; otherwise, the child usually will be housed only with other juveniles at a juvenile detention facility in the interim period between arrest and his or her appearance in court, which generally is the next day (except Sundays). If the child is not charged with a crime, he or she will be released. If the child is formally charged, a judge will decide whether the child should be detained further or released pending further proceedings.

If a child enrolled in the public school system is arrested for a reportable offense, which includes a crime of violence, the police will notify the local school superintendent of the arrest, and the State's Attorney will keep the superintendent apprised of the disposition of the offense. The purpose of this reporting is to provide appropriate educational programming and related services to the child and to maintain a safe and secure school environment for students and school personnel. The information is treated as confidential and will not be made part of the child's permanent record.²⁷⁸

If the grandparent would like to retain a lawyer for the child but would like assistance in finding one, the local bar association would be one place to go for a referral:²⁷⁹ The Baltimore County Bar Association can be reached at (410) 337-9100. The child may be eligible to be represented by a public defender.

The People's Law Library of Maryland is a useful website that provides legal information and self-help resources to low and moderate income Marylanders. Visit <http://www.peoples-law.info>. The Legal Aid Bureau, Inc. is Maryland's primary provider of civil legal services to low-income persons, however, the organization does not provide criminal law counsel. For more information, call (410) 951-7777 (or toll-free: (800) 999-8904), or visit <http://www.mdlab.org>.

²⁷⁸ Md. Code Educ. § 7-303(b)-(c) (2006).

²⁷⁹ See "Lawyer Referral," "Public Resources," Maryland State Bar Association, at <http://www.msba.org/public/referral.htm>.

A grandchild's mother or father is incarcerated. What legal right does a grandchild have with respect to visiting the parent in prison?

Children under 18 may visit prisons if they are accompanied by a person 18 years of age or older who is on the inmate's visiting list and if they are immediate family to either the inmate or the adult visitor. For a list of Maryland's correctional facilities, including their locations and visitation policies, visit the Maryland Department of Public Safety & Correctional Services website at <http://www.dpscs.state.md.us/locations/prisons.shtml>. The accompanying adult does not need to be the grandchild's guardian or custodian. The adult is required to present photo identification at the jail. Typically, there are restrictions on the number of people who may visit at any one time, the number of visits permitted during a day or week, and what the visitors may wear and bring into the jail.²⁸⁰ Some correctional facilities may operate special recreational or enrichment programs geared toward inmates with children.

If the parent is incarcerated in a federal prison, the child must be on his or her parent's visiting list in order to visit. If the child is over the age of 16, he or she may visit the parent without an adult present, but must bring identification. However, children under 16 must be accompanied by an adult with identification, and children under 18 must have a parent or guardian sign a "Visitor Information" form (BP-629) approving the child's visitation. For more information about visitation policies at federal prisons, visit the Federal Bureau of Prisons website at http://www.bop.gov/inmate_locator/who.jsp.²⁸¹

Visiting someone in prison can be stressful, particularly for a child. Knowing the visitation rules beforehand is essential. It may be helpful to tell the child small details about what an upcoming visit will be like, such as how long the ride is, what the officers' and inmates' uniforms look like, what the entry

²⁸⁰ See "Correctional Facility Locator," Maryland Department of Public Safety & Correctional Services, at <http://www.dpscs.state.Md.us/locations/prisons.shtml>.

²⁸¹ See "Who Can Visit? General Information Page," Federal Bureau of Prisons, at http://www.bop.gov/inmate_locator/who.jsp. See also "Program Statement: Visiting Regulations," U.S. Department of Justice, Federal Bureau of Prisons, available at: http://www.bop.gov/policy/progstat/5267_007.pdf (effective April 7, 2003).

search process will be like, and what the child should do if he or she has to go to the restroom. It also may be helpful to encourage the child to keep a list of things he or she wants to tell the parent.

Helping the child to write letters to the parent is another way to encourage the relationship.

HEALTH CARE

The importance of proper health care for children cannot be overstated. Adequate health care involves the prevention, treatment, and management of illness, and includes regular medical and dental checkups, vaccinations/immunizations, developmental and mental health services and access to prescription drugs. Children with health care coverage have increased access to such medical services and thereby have better overall general health, wellbeing, and the ability to engage in day-to-day activities, such as schooling and athletics.

All grandparents should know that if their current private health insurance plan or employer-sponsored health insurance policy covers dependents, their grandchild could be eligible for coverage under such private health insurance plan.²⁸² In addition, there are several federal and state programs in Maryland that provide children in foster care and children living with low and average-income relatives access to primary, preventative and other health care, including Medical Assistance (Medicaid) and the Maryland Children's Health Program. These programs cover the cost associated with most regular pediatric check-ups, dental services, mental health services, hospital care, immunizations, prescription drugs, and more.

I. MARYLAND MEDICAL ASSISTANCE (MEDICAID) PROGRAM

The Maryland Department of Health and Mental Hygiene (DHMH) provides Medical Assistance, also known as Medicaid, to certain eligible low-income children and adults. Medicaid is a free health insurance program that covers the costs of medical care with state and federal tax money. Medicaid coverage is *automatically* given to individuals receiving certain other forms of public assistance, such as TCA, SSI, or Foster Care.²⁸³ Medicaid is also given to certain individuals deemed to be “medically needy.”

²⁸² Md. Code Ins. § 15-403 (2006).

²⁸³ See “Your Voice in HealthChoice” which can be found at the Baltimore HealthCare Access, Inc. (BHCA) website at <http://www.bhca.org/>.

a. Eligibility for Medicaid

If a court has granted you formal legal custody of your grandchild or you have been approved as a formal kinship care provider, your grandchild may be eligible for coverage by Medicaid. You are encouraged to apply for it because coverage is not automatic.²⁸⁴ Under these circumstances, you should ask your case worker for you grandchild’s “red and white” Medical Assistance (MA) card. If the card is not available, you should request the MA number to give to providers when accessing health care for your grandchild. In addition, you should request information regarding *HealthChoice*, the managed care system for Maryland Medical Assistance. If your grandchild was placed in your care pursuant to foster care or formal kinship care, they should be enrolled in *HealthChoice*. This program is described in more detail below.

If you are providing informal kinship care to your grandchild, your grandchild may still be eligible to automatically receive Medicaid if your grandchild is under the age of 21 and he or she meets the financial and technical eligibility requirements for Maryland’s TCA program. In addition to making your grandchild automatically eligible to receive Medicaid, TCA provides monthly financial assistance. You must file an application for TCA at the nearest Local Department of Social Services (LDSS).²⁸⁵ To be eligible for TCA, your grandchild’s earned and unearned income cannot exceed the TCA benefit level, and your grandchild’s assets cannot exceed the TCA limit. Your income and assets are not considered when applying for TCA as a relative caretaker for your grandchild. Only income/assets that belong to the child or that the child receives is considered, which includes child support and social security benefits. Calculation of income is a complex process and you will be asked to submit documents and information regarding your grandchild and their situation. Eligibility can be confusing and you should contact your nearest LDSS to help you make the determination as to whether your grandchild is eligible.

²⁸⁴ See “Children in Foster or Kinship Care: Accessing Care with HealthChoice” (2004 edition) which can be found at the Baltimore HealthCare Access, Inc. (BHCA) website at <http://www.bhca.org/Foster.htm>.

²⁸⁵ Interested individuals should call (800) 332-6347 to find the nearest LDSS. In addition, a list of the addresses and phone numbers of LDSSs for Baltimore City and all counties in Maryland can be found in Appendix A.

Even if your grandchild’s income/assets exceed the TCA limits, your grandchild may still be eligible for Medicaid if your grandchild’s income and/or assets are less than the Medicaid medically needy standards. The chart below sets forth the standards used to determine whether your grandchild’s income meets the Medicaid “medically needy” financial restrictions.²⁸⁶

**Families and Children
Medicaid Medically Needy
Maximum Family Income and Assets**

Family Size	Countable Monthly Income	Countable Assets
1	\$350	\$2,500
2	392	3,000
3	434	3,100
4	475	3,200
5	521	3,300
6	573	3,400

If your grandchild’s income exceeds the aforementioned limits, he or she may become income eligible to qualify for Medicaid coverage through a “spenddown” process. The spenddown process allows a person to keep his or her Medicaid application open over a six month period, and if, at any time during this period, a person incurs medical expenses, the amount of the medical bills can be deducted from income to determine eligibility for Medicaid for the remainder of the period.²⁸⁷ There is no spenddown process for assets.

b. Benefits Under Medicaid

Benefits provided under Medicaid include:

- ❖ Doctor visits and check-ups;
- ❖ Hospital care;
- ❖ Prescription medications;
- ❖ Shots;
- ❖ Vision care (eyeglasses for children under age 21);

²⁸⁶ Questions and Answers about Medicaid Eligibility and Benefits at <http://dhmh.state.md.us/mma/Eligibility/MAelig-2006Q&A.html>.

²⁸⁷ *Id.*

- ❖ Mental health;
- ❖ Drug and alcohol abuse treatment services (all children and *selected* adult populations);
- ❖ Laboratory tests; and
- ❖ Home health services.

Medicaid recipients may also receive the following:

- ❖ Rare and expensive case management services;
- ❖ Medical day care services for adults or children;
- ❖ Long term care services;
- ❖ Healthy start case management services;
- ❖ HIV/Aids testing for treatment; and
- ❖ Services for individuals with developmental disabilities.²⁸⁸

For a full list of services, please call the Maryland Medicaid Hotline at (410) 767-5800 for Baltimore Area residents or (800) 492-5231, or visit the Maryland Department of Health and Mental Hygiene at <http://dhmh.state.md.us/mma/Eligibility/MAelig-2006Q&A.html>.

Eligibility for Medicaid lasts for a term of one year. You must reapply annually so that your family's eligibility can be re-evaluated. To find out if you are eligible for Medical Assistance, please apply at your LDSS.²⁸⁹

II. MARYLAND STATE-WIDE HEALTH CARE PROGRAMS

In Maryland, children are also eligible to receive assistance through the Maryland Children's Health Program (MCHP), the Maryland Pharmacy Assistance Program, the WIC Program, Healthy Start, and mandatory medical care provided in Maryland public schools. A grandparent providing informal kinship care to a grandchild may apply on behalf of the grandchild for all medical and public assistance entitlements (i.e. Medicaid, MCHP) for which their grandchild may be eligible provided they have filed a

²⁸⁸ See <http://www.bcha.org/Healthchoice.htm/>.

²⁸⁹ Interested individuals should call (800) 332-6347 to find the nearest LDSS. In addition, a list of the addresses and phone numbers of LDSSs for Baltimore City and all counties in Maryland can be found in Appendix A.

Consent for Health Care Affidavit.²⁹⁰ See Frequently Asked Questions for more information on the Consent for Health Care Affidavit.

a. Maryland Children’s Health Program

MCHP provides another source of free and low cost health care for low and average-income families caring for children up to the age of 19 who are not eligible for Medicaid. MCHP is available if a family’s income is at or below 200% of the federal poverty level.²⁹¹ Grandparents may only apply for MCHP on behalf of their grandchild if the child is living in their home and the child’s parents are not, regardless of whether the grandparent has established a formal kinship arrangement with the grandchild. Further, it is important to note that the grandparent’s income will not be counted for purposes of determining eligibility unless the child has been formally adopted by the grandparent.²⁹²

If a child does not qualify for MCHP because he or she does not meet the income eligibility requirement, he or she can still obtain low cost health care coverage through Maryland Children’s Health Program (MCHP) Premium. MCHP Premium is available to children whose income exceeds 200% but is still at or below 300% of the Federal Poverty Level (FPL).²⁹³ Children enrolled in MCHP Premium must pay a monthly premium (\$45.00 or \$57.00) to purchase this health care coverage.²⁹⁴ This amount is subject to change annually. MCHP Premium is not available to children currently covered by or voluntarily dropped by an employer-sponsored group health plan or health insurance coverage within six months before the date of application to the Local Health Department (LHD) or LDSS.²⁹⁵ Children covered by either MCHP or MCHP Premium will receive the full range of Medicaid covered services and will be enrolled in *HealthChoice*.

²⁹⁰ Md. Code Health-Gen. § 20-105(i) (2006).

²⁹¹ See Maryland Children’s Health Program at <http://www.dhmf.state.Md.us/mma/mchp/>.

²⁹² See *id.*

²⁹³ See *id.*

²⁹⁴ See <http://www.bhca.org/pdf%20and%20Word/mchpflyerboth.pdf>.

²⁹⁵ See Maryland Children’s Health Program at <http://www.dhmf.state.Md.us/mma/mchp/>.

To apply for the MCHP, a grandparent can pick up an application at the nearest LDSS, LHD, WIC Centers, and local hospitals and schools. Applications can also be mailed to grandparents upon request by calling (800) 456-8900, or can be downloaded from <http://www.dhmh.state.md.us/mma/mchp/>.

If a grandchild does not qualify for Medicaid or MCHP, and has no private medical insurance, it still may be possible to obtain low-cost or free necessary mental health services for the grandchild. To determine if such services are available, call Maryland Health Partners, which manages Maryland's Public Mental Health System at (800) 888-1965.

b. HealthChoice

Once approved for either Medicaid or MCHP, a child will receive coverage through the State's Medicaid Managed Care Program, *HealthChoice*. *HealthChoice* will send an information packet on various Managed Care Organizations (MCOs) available to the eligible child to join. MCOs provide or arrange to provide care for Medicaid or MCHP members who join their plans. In order to ensure the receipt of Medicaid benefits, members who enroll in an MCO must receive medical care through their MCO. For more information on *HealthChoice* you may contact your LDSS.²⁹⁶ Residents of Baltimore City may also contact BHCA at (410) 649-0507.

Within 21 days of receiving the information, grandparents must choose one of the listed MCOs for their grandchild unless the grandchild is in foster care or a formal kinship relationship, in which case, a grandchild enrollee would have 60 days to select an MCO.²⁹⁷ If the grandchild already has a physician, a grandparent should select the MCO to which the physician belongs. If you do not select an MCO or a primary care physician, the state will assign one to your grandchild. If you need assistance with the selection process, you may call the telephone number provided in the *HealthChoice* information or the *HealthChoice* Enrollee Action Line at (800) 254-4510. **In most cases you will not be allowed to change**

²⁹⁶ See Appendix A for a list of LDSSs.

²⁹⁷ Until the MCO selection is made, enrollees will be given a fee-for-service Medicaid card to use.

an MCO for one year after enrollment. Be sure to select the right MCO for you and your grandchild.

Until a health plan choice is made and the plan becomes effective, a child will have “fee-for-service” Medicaid. This means that each medical provider who provides services for the grandchild would bill the Medicaid program (e.g., Maryland Department of Health and Mental Hygiene) for such services. The grandchild will be able to see any provider that accepts Medicaid during that time. For a list of medical professionals who provide fee-for-service medical care under Medicaid in a particular area, call (800) 492-5231. Medical professionals who provide hospital services usually provide fee-for-services under Medicaid.²⁹⁸

c. Maryland Pharmacy Assistance Program

The Maryland Pharmacy Assistance Program (MPAP) provides pharmacy benefits to low-income individuals not eligible for Medicaid who need help paying for prescription drugs. Individuals receiving MPAP pay a co-payment of \$2.50 for all generic drugs and some brand name drugs. MPAP recipients pay \$7.50 for other brand name drugs. MPAP has more liberal eligibility requirements than Medicaid, and MPAP should be considered an option even if an individual does not qualify for Medicaid. However, MPAP is only available to children under the age of 19 who have been denied by MCHP. Any child eligible for MCHP is ineligible for MPAP. Additionally, the child’s family unit must have a monthly income of less than \$948 and assets less than \$4,000 to be eligible for MPAP. For purposes of this calculation, non-adopted grandchildren are not considered a part of the grandparents’ household and are their own family unit so long as their parents do not reside with them.

To enroll in MPAP, a person must complete a mail-in application, which requires documentation of income, assets, and other information. Applications are available by calling toll-free, (800) 226-2142,

²⁹⁸ See “Children in Foster or Kinship Care: Accessing Care with HealthChoice” (2004 edition) at page 6, which can be found at the BHCA website at <http://www.bhca.org/Foster.htm>.

and are also available on-line. Applications are not accepted via email or fax. Any questions should be directed to the nearest LDSS. Applications should be mailed to:

Maryland Pharmacy Program
P.O. Box 386
Baltimore, MD 21203-0386

d. Women, Infants, and Children Program

Grandparents can get several forms of assistance for grandchildren under the age of five from WIC. WIC offers free nutritional information, referrals, and stipends to caregivers to purchase nutritional staples like milk, formula, cereal, eggs, and other approved foods. WIC is available to grandchildren who:

- ❖ are under the age of five;
- ❖ live in Maryland;
- ❖ have a nutritional need; and
- ❖ satisfy the household income limits in the following chart.

Family Size	Maximum Household Income
1	\$18,130
2	24,420
3	30,710
4	37,000

Add \$6,290 to the Maximum Household Income for each additional family member over 4.

To apply for WIC, grandparents need to call their local WIC office to set up an appointment. Phone numbers for local WIC offices are available at www.fha.state.md.us/wic/html/find.html. Grandparents must bring proof of income, proof of address, and the grandchild to the meeting. For additional information, refer to Section V of the Financial and Income Issues section of this manual.

III. FREQUENTLY ASKED QUESTIONS

What legal documents do I need to be empowered to authorize medical treatment for my grandchild?

In order to authorize medical care for a grandchild, grandparents must either (1) have formal legal custody of the grandchild (i.e. court appointed guardianship, adoption); (2) be approved as a informal kinship care provider (i.e. the grandparent has court sanctioned physical custody of the grandchild while

the state child welfare agency holds legal custody of the child); or (3) qualify to provide informal kinship care and annually file an affidavit to this effect with the Department of Human Resources' Social Services Administration. If a grandparent already has legal custody of his or her grandchild, he or she has already been granted authority to make medical decisions regarding the child and does not need to seek formal or informal kinship care status in order to make such medical decisions on behalf of the grandchild and would not need any additional documentation to show to physicians and other health care providers.

Informal kinship care is defined as “a living arrangement in which a relative of a child, who is not in the care, custody, or guardianship of the local Department of Social Services, provides for the care and custody of the child due to a serious family hardship.”²⁹⁹ Informal kinship care is not possible if the child is already in the custody of a department of social services, or if the court has appointed someone besides the relative as the child's legal guardian.

A grandparent who provides informal kinship care to a grandchild may authorize medical services on behalf of the grandchild provided the court has not appointed a guardian for the child or awarded custody of the child to another individual and the grandparent verifies the informal kinship care relationship by filing an affidavit with the Department of Human Resources' Social Services Administration attesting that the grandparent and the grandchild meet the above qualifications.³⁰⁰ A Consent for Health Care – Affidavit (Form DHR/SSA 554) is available at each county board of education and local health department. An affidavit should be filed annually at the following address:

Maryland Department of Human Resources
Social Services Administration
311 W. Saratoga Street, Room 592
Baltimore, MD 21201

If any change occurs in the care or in the serious family hardship of the child, notice should be given to the Department of Human Resources, Social Services Administration in writing within 30 days

²⁹⁹ Md. Code Health-Gen. § 20-105(a)(2) (2006).

³⁰⁰ Md. Code Health-Gen. § 20-105(b) (2006).

after the change occurs. Grandparents should retain multiple copies of the affidavit sent to the Department of Human Resources' Social Services Administration because they will have to provide a copy to the physicians treating their grandchild. An affidavit, however, does not abrogate the right of the parents of a child to consent to health care on behalf of the child in the future.³⁰¹

What steps do I need to take concerning vaccinations for my grandchild?

In addition to making health care decisions for a grandchild based upon a formal or informal kinship care arrangement, a grandparent may consent to the immunization of a minor grandchild if (1) a parent verbally or in writing delegates this authority to such grandparent³⁰² or (2) a parent is not reasonably available and the parent has not expressly refused to give consent to the immunization or has told the grandparent that they may not consent to the immunization or has withdrawn a written authorization in writing.³⁰³ A parent is deemed not reasonably available if (1) the location of the parent is unknown; (2) a grandparent has made a reasonable effort to locate and communicate with the parent for the purpose of obtaining consent and has failed and not more than 90 days has passed since the date the effort was made; or (3) the grandparent has contacted the parent and requested consent to the immunization of their grandchild, and the parent has not acted on the request and has not expressly denied authority to the grandparent to consent to the immunization.³⁰⁴ If a parent verbally delegates the authority to a grandparent to consent to the immunization of their grandchild or if the grandparent is authorized consent because the child's parent is not reasonably available, the grandparent should confirm the verbal delegation or confirm that the parent is not reasonably available in writing and put the writing in the grandchild's medical records.³⁰⁵

³⁰¹ Md. Code Health-Gen. § 20-105(j) (2006).

³⁰² Md. Code Health-Gen. § 18-4A-02 (2006).

³⁰³ Md. Code Health-Gen. § 18-4A-03 (2006).

³⁰⁴ *Id.*

³⁰⁵ Md. Code Health-Gen. § 18-4A-03(e) (2006); Md. Code Health-Gen. § 18-4A-0(b) (2006).

Vaccinations against certain dangerous diseases, such as polio and diphtheria, have nearly eradicated these diseases in the United States. However, because these diseases have not been completely annihilated, it is still important today for children to receive vaccines. The Center for Disease Control (CDC) suggests that children should receive the following vaccinations by age two:

- ❖ Four doses of diphtheria, tetanus & pertussis vaccine (DTaP);
- ❖ Four doses of Hib vaccine;
- ❖ Four doses of pneumococcal vaccine;
- ❖ Three doses of polio vaccine;
- ❖ Three doses of hepatitis B vaccine;
- ❖ One dose of measles, mumps & rubella vaccine (MMR); and
- ❖ One dose of varicella vaccine.

The CDC issues a chart annually with a recommended vaccine schedule. The CDC also produces recommended “catch up” schedules for children and adolescents who start their vaccinations late.³⁰⁶ In addition, the State of Maryland also requires certain vaccinations for all schoolchildren. A list of such vaccinations can be found at http://edcp.org/pdf/Min_Vacc_Req%2007_08.pdf.

Medicaid, MCHP, and the “To Immunize Kids Everywhere” (TIKE) van program, all cover the costs of immunizations for individuals who are eligible for the programs. It is advisable to bring any records of past immunizations to the clinics to avoid repeating vaccinations that the grandchild has already received.

I obtain health insurance from my job. Am I permitted to add my grandchild whom I take care of to my health insurance policy? If not, is there any health insurance policy I can obtain for my grandchild?

If a grandparent has health insurance through his or her employer, the grandparent may be able to add the grandchild to the health plan.³⁰⁷ Grandparents should contact their employer or private health insurance provider to determine whether their current health insurance policy covers dependents, and, if

³⁰⁶ See <http://www.cdc.gov/nip/recs/child-schedule.htm>.

³⁰⁷ Md. Code Ins. § 15-403 (2006).

so, what steps need to be taken to add a grandchild to the health policy and obtain coverage. Each individual or group health insurance policy that (1) provides coverage on an expense-incurred basis and (2) provides coverage for a family member of the insured or covered employee must provide the same health insurance benefits and eligibility guidelines that apply to any covered dependent to a grandchild who is unmarried and is in the court-ordered custody, resides with and is the dependent of the insured, subscriber, employee or member and has not attained the limiting age under the terms of the policy.³⁰⁸ The health insurer may require proof that the insurer is the grandparent of the grandchild, but the insurer must pay the cost of obtaining such proof.³⁰⁹ If private health insurance is not available for certain low-income families and individuals, there are numerous federal, state, and local programs that provide healthcare assistance, including assistance to grandparents who are raising grandchildren. If it is not possible to add grandchildren to their employer-based policy, grandparents may seek medical coverage for their grandchildren under Medicaid or MCHP.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

TELEPHONE CONTACTS¹
(As of March 2008)

General Contacts:

AARP Legal Services Network	(866) 330-0753
Baltimore County Public Defender's Office	(410) 324-8900
Child Care Resources Network	(410) 288-5600
Legal Aid Bureau – Baltimore County Office	(410) 296-6705
Maryland Department of Aging Baltimore County	(410) 767-1273 (410) 887-2594

Courts:

Baltimore County Circuit Court	(410) 887-2687
Juvenile Department Clerk	(410) 887-3863
Juvenile Drug Court	(410) 887-2194
Family Division	(410) 887-6578
Self Help Family Law Program	(410) 887-3446
Domestic Violence Protective Order Advocacy and Representation Project	(410) 853-3035
Domestic Violence Crisis Hotline	(410) 828-6390

Financial and Income Issues:

Maryland Attorney General's Office	
Consumer Protection Division	(410) 528-8662
Medical Billing Complaints	(410) 528-1840
Health Plan Decision Appeals	(877) 261-8807
Better Business Bureau	(410) 347-3990
Centers for Medicare and Medicaid Services	(800) 633-4227
Baltimore County Department of Social Services	(410) 853-3000
Adolescent Services	(410) 853-3000
Child Abuse & Neglect Referrals	(410) 853-3000
Child Support Enforcement & Establishment	(410) 887-3200
Emergency Food Assistance Program	(410) 767-7015
Energy Assistance Program	(410) 853-3385
Housing Office	(410) 853-8990
Financial Assistance	(410) 853-3000
Services to Families with Children	(410) 853-3000
Temporary Cash Assistance for Caregivers	(410) 887-2800
Department of Veterans Affairs	(800) 827-1000
Maryland Department of Veterans Affairs Baltimore Service Center	(800) 446-4926

Baltimore County Office of Child Support Enforcement	(800) 332-6347
Railroad Retirement Board Office	(410) 962-2550
Social Security Administration	(800) 772-1213
Baltimore County	
Towson	(410) 825-7671
Middle River	(410) 391-7163
Owings Mills	(410) 356-7212

Housing Issues:

Maryland Department of Housing	(800) 756-0119
Baltimore County Department of Social Services Housing Office	(410) 853-8990

Custody Issues:

Baltimore County Circuit Court Self Help Family Law Program	(410) 887-3446
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Protecting Children from Harm:

Baltimore County Family Violence Hotline	(410) 828-6390
Department of Social Services Screening Unit	(410) 887-3000
Department of Social Services Child Protective Services	(410) 887-3000
Family and Children's Services of Central Maryland	(410) 281-1334

Education Issues:

Baltimore County Public Schools	(410) 887-4554
Free and Reduced Price Meals	(410) 887-7860
Parent Support Services	(410) 887-6489
Special Education	(410) 887-3660
Student Support Services	(410) 887-0216
Black Student Fund	(202) 387-1414
Early Learning	(410) 887-4313
Head-start	(410) 285-7030
Maryland Department of Education School & Community Outreach Office	(410) 767-0484
Partners for Success	(410) 887-5443
Summer Food Service Program	(410) 767-0225

Activities and Assistance for At-Risk Children:

Baltimore County Department of Parks and Recreations	(410) 887-3871
Baltimore County Public Defender's Office	(410) 324-8900
Big Brothers/Sisters of America	(410) 243-4000
Boys and Girls Club of Harford County	(410) 272-8233
Boys and Girls Club – Salvation Army	(410) 768-0477
Franklin Square	(410) 728-4888
Glen Burnie	(410) 768-0477
Middle River	(410) 682-2450
Department of Employment Services	(410) 767-2800
Department of Health & Mental Hygiene Mental Health Program	(800) 888-1965
Greater Baltimore Urban League	(410) 523-8150
Maryland Mentoring Partnership	(410) 685-8316
Police Athletic League of Baltimore County	(410) 887-5892
United Planning Organization	(202) 238-4600
Work Permit and Employment of Minors	(410) 767-2239

Health Care Issues:

Baltimore County Health Department	(410) 887-3740
Drug & Alcohol Coordinator	(410) 887-3828
Center for Disease Control	(800) CDC-INFO
Centers for Medicare and Medicaid Services	(800) 633-4227
Maryland Attorney General's Office	
Medical Billing Complaints	(410) 528-1840
Health Plan Decision Appeals	(877) 261-8807
Maryland Department of Health & Mental Hygiene	(877) 463-3464
Maryland Health Choice Enrollment (Includes Medicaid)	(800) 977-7388
Maryland Health Choice Questions	(410) 767-5800
Maryland Health Choice Enrollee Action	(800) 284-4510
Children's Health Program	(800) 456-8900

Healthy Kids, EPSDT
Rare & Expensive Case Management
Mental Health

(410) 767-1638
(800) 565-8190
(800) 888-1965

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