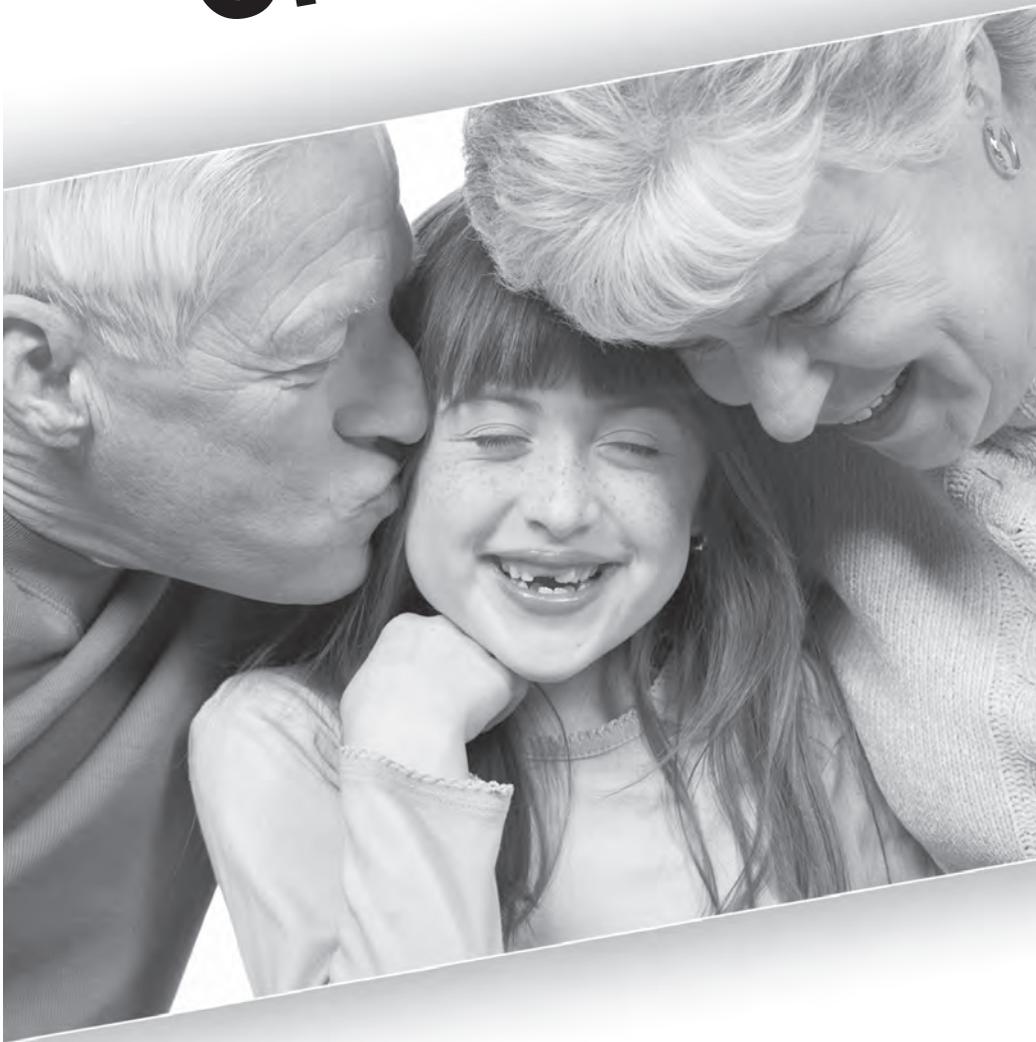


Grandparents Raising Grandchildren



GRANDPARENTS
RAISING GRANDCHILDREN

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Caution

This booklet is not intended to be and should not be used as a substitute for legal advice regarding specific situations. If legal advice is desired, seek the services of a lawyer. The information in this booklet is current as of June 2008. Laws can change. Consult a lawyer to assure that specific legal information is current.

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Preface

Grandparents Raising Grandchildren is a practical handbook for grandparents who are long-term caretakers for their grandchildren and who seek to establish a legal relationship with their grandchildren. It is designed to be used by non-lawyers. Its intended audience is both grandparents and social service providers who work with grandparents.

Introduction

Grandparents are raising millions of children in this country. While extended families have always helped with child rearing, grandparents increasingly are becoming primary caretakers because their grandchildren have become neglected, abused, or abandoned due to parental neglect, drug abuse, imprisonment, mental illness, or a life threatening disease.

One of the challenges a grandparent faces is establishing a legal relationship with the child. A legal relationship allows the grandparent to register the child for school, to consent for medical or dental treatment for the child, to obtain health insurance for the child, to make decisions without consulting the child's parents, and to define exactly the responsibilities of the grandparent to the child.

The purpose of this booklet is to explain the basic legal options available for grandparents in the State of Colorado. It outlines the opportunities, definitions, resources, and barriers grandparents may encounter as they pursue establishing a legal relationship with a grandchild.

While this booklet focuses on grandparents, other family members can also use it. Some of the information may not apply, depending on the nature of the relationship between the relative and the child, but most of it should be helpful.

Items may be referenced in one place and detailed in another section. Interested persons are encouraged to read the entire booklet.

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PART I - First Steps

A crisis is any situation where immediate action is needed to ensure the well being of the grandchild. A grandparent, another family member or an outside agency staff member may determine immediate action is needed.

When first confronted with the reality that your grandchild might be with you to stay, “every feeling will go through your head; it is a period of intense anxiety”, experienced a grandmother. It is recommended that those grandparents stay calm, look at all options, ask for information and support, and make the best decision possible at the time.

◆ SELF INITIATED ◆

A self-initiated situation occurs when the grandparent believes that the grandchild is not being properly cared for or may be abused. This can occur based on what the grandparent has heard from the child or observations by the grandparents. In this situation, it is important to gather as much information as possible and call the local Department of Social Services or Police Department. They are required to assess child abuse and neglect allegations. If the grandparents would like to have the child stay with them, this is a good time to advise authorities.

If a grandparent wishes to have the child live with them on a temporary or permanent basis and Social Services is not involved, the grandparent can approach the parent or guardian directly and request a power of attorney, custody, guardianship or adoption arrangement. It is helpful to seek the advice of an attorney who is experienced in family law. Call or visit the website local bar association to get a listing of attorneys in your area or Metropolitan Lawyer Referral Service in Denver to obtain a referral to an attorney.

◆ FAMILY INITIATED ◆

In this situation, the parent or guardian of the child requests **that the grandparent take temporary or permanent custody of the child.**

The current guardian (usually the parent) and the grandparent(s) will need to reach an agreement with regard to the degree of legal responsibility needed (power of attorney, custody, guardianship, adoption). The basic guideline is that whoever gives the legal right (power of attorney, custody, guardianship, and adoption) can take it away. For example, if a parent gives temporary power of attorney, the parent can revoke it. If a court makes a decision, only the court can change that decision. It is helpful to have all actions in writing.

◆ AGENCY INITIATED ◆

Agency initiated situations exist when an outside agency (hospital, police, Social Services, etc.) approaches the grandparent about placing the child in the grandparent's home. This can happen if the parents die, are in an alcohol or drug inpatient program, are incarcerated, or when Social Services has become involved due to concerns of abuse or neglect. The grandparent needs to know and understand what is being requested and what options exist before committing to a grandchild placement.

◆ POINTS TO REMEMBER ◆

Any crisis situation is stressful. Frequently, a grandparent will feel overwhelmed by the situation but does not wish to share this for a variety of reasons. It is important to acknowledge, “I need help. I don’t know what to do about ...” Grandparents will find the overall situation less difficult if they can address their feelings about the situation (loss, resentment, etc.). Social networks, faith communities, and neighbors may be sources of support.

Call the local Senior Center, Social Services, or contact a counselor for problem solving and support. **Situations might be resolved without an attorney. Read the rest of this handbook and contact an attorney regarding the specific situation.**

PART II - Legal Relationship Options

A grandparent caring for a grandchild needs written legal authority to care for the child. This authority can include power of attorney, allocation of parental responsibilities, guardianship, or an adoption. The choice depends upon many issues, including: 1) how long the child is staying with the grandparent; 2) how well the parents and grandparents get along; and 3) financial needs.

◆ POWER OF ATTORNEY ◆

A power of attorney is written permission from a parent giving an “agent” the authority to make decisions and provide care for a child. This can be as simple as handwritten permission to obtain medical care, or a formal document prepared by an attorney and signed in front of a notary public.

A power of attorney gives the agent the authority to make decisions for the child, but does not reduce any of the rights of the parents. The parent can revoke a power of attorney, take the child back, or change decisions that the grandparent or other agent has made. It is important to have a power of attorney any time a child is being cared for. Without it, the grandparent may not be able to get medical care or other assistance for the child especially if the parent(s) are absent.

Issues and authority to be addressed within a power of attorney include:

1. The parent gives the grandparent permission to care for the child. An effective agreement will say how long the authority is given to the agent . Traditionally, powers of attorney are valid for nine months. Colorado law allows a power of attorney to care for a child to be valid for a maximum of twelve months. After twelve

- months, a new power of attorney must be signed to continue or re-establish the agent authority.
2. The grandparent should be given authority to obtain medical care for the child. It is also a good idea for the grandparent to have the right to make school and educational decisions and child-care arrangements. It is important to include any health insurance information for the child and the HIPPA required release.
 3. The specific powers that are given to the grandparent may be limited to only a few matters, such as the right to care for the child or enroll the child in school or obtain medical care. It may give the grandparent the power to make all decisions that a parent can make. The areas of authority and the limits should be specifically addressed. The right to make medical decisions can include all medical care, or emergency care only.
 4. State in writing that the power of attorney is valid unless or until it is revoked. This will not stop the parent from taking back the authority to make decisions about the child, but it may resolve arguments about whether the power of attorney remains valid.
 5. The power of attorney can be signed by either one of the child's parents or by both of them, but not by a non-custodial parent. In either case, the parents still retain all of their rights regarding the child.
 6. The power of attorney must be signed by a parent. It can be handwritten or typed. It may be helpful to have it witnessed and notarized, but that is not required. If grandparents expect disagreements about the power of attorney, it could be helpful to have an attorney involved in writing it.

◆ ALLOCATION OF PARENTAL RESPONSIBILITIES ◆

The Allocation of Parental Responsibilities (custody) of a child must be granted by a court order. The allocation of parental responsibilities (APR) includes provisions for parenting time and decision-making power. Parenting time establishes how much time and under what conditions the child spends with the grandparent(s) and the parent(s). This is different from grandparent visitation. Decision-making refers to the right to make major decisions for the child, including decisions about medical care, education, spiritual and religious upbringing, and extracurricular and other activities. Decision-making may be joint between the parent and grandparent, or sole decision-making authority may be granted. An allocation of parental responsibilities order does not permanently end the rights of the parents, but they can only have decision-making authority and parenting time (visitation) with the child as provided in the order.

A lawyer may need to be involved in getting an allocation of parental responsibilities order because it is granted by a court action. If the parents agree to grant the allocation of parental responsibilities, they can file the allocation of parental responsibilities action in court and then the parents and grandparent can sign a written agreement. This agreement, often called a Parenting Plan, must be approved and signed by the judge before it can become a court order. The judge's decision concerning all aspects of APR will be based upon the best interests of the child.

A grandparent can file an action asking for an order allocating parental responsibilities if the child has lived with the grandparent for six months and the action is filed with six months after the child leaves the grandparent's home. Both parents must be notified of the filing of the action and any hearing dates. The

judge in an allocation of parental responsibilities case decides what rights the custodial grandparent has and what visitation the parents have. Parents will usually be given some sort of visitation unless the judge feels that the visits would endanger or harm the child. An allocation of parental responsibilities order can never grant a custodial grandparent, who is not the parent of the child, the right to consent to the marriage of the child under the age of 18 or to the adoption of the child.

It is important to specifically ask the judge in an allocation of parental responsibilities case to grant the right to make decisions regarding the educational needs of the child, since this authority is not automatic.

The judge may also require the parent to pay child support to the grandparents or other caretakers of the child.

The parenting time provisions of an allocation of parental responsibilities order can be changed by returning to court and requesting a modification. Modifications of parenting time can be granted whenever it would serve the best interests of the child. However, if either party is requesting a substantial modification of parenting time which also changes the party with whom the child resides a majority of the time, the parenting time modification can be granted only if both parties agree to the change, or the child has been integrated into the moving party's family with consent of the other party, or the child's present environment endangers the child's physical health or significantly impairs the child's emotional development and the change is advantageous to the child.

A person with an order allocating parental responsibilities (sometimes called a custody order) also can apply for adoption of the child if the parents have abandoned the child for more than a year or have failed to provide support for over a year. (See Adoption, below.)

◆ GUARDIANSHIP ◆

Guardianship is another way that a grandparent may get the authority to care for a child and make decisions on the child's care. (This is different from a conservatorship, which makes you guardian of the child's finances.) Guardianship is granted by a court and gives the guardian full permission to make all decisions about a child except financial decisions and the right to agree to adoption. The guardian may care for the child, or arrange for someone else to provide care. This includes the authority to consent to marriage, enlist in the armed forces, represent a child in legal actions, consent to an adoption of the child.

The guardian is not legally responsible to support the child.

If authority is needed to make decisions about the child's property and finances, a court must grant a conservatorship. One person may be appointed both guardian and conservator. A conservatorship is not needed for a grandparent to simply receive and spend child support for the child.

The guardian may care for the child, or arrange for someone else to provide care. A person seeking guardianship of a child twelve or older must give the child notice of the action and the child may consent or refuse to consent to the appointment of the guardian. The court can appoint a guardian over the child's objection if the court finds it to be in the best interests of the child.

Guardianships are very flexible. Few laws define how they are used. Flexibility can be good or bad for the Guardian and the parents. Since there are no clear laws saying how guardianship is revoked or changed, a judge has much more leeway when deciding. It is also not clear what the rights of a parent are when a grandparent has guardianship, unless this is specifically stated in the Guardianship Order.

Guardianship can be granted either through the Colorado Probate Code when a parent is unable to care for their child or has died, or through the Colorado Children's Code when a child is dependent or neglected.

A person with Guardianship is issued a document called *Letters of Guardianship*. This document can be carried by the Guardian to prove that he or she has the authority to make decisions for the child. A person with Guardianship can also apply for adoption of the child if the parents cannot be found or have failed to provide support for over a year. (See Adoption, below.)

◆ ADOPTION ◆

Adoption is the process by which a court creates the legal relationship of parent and child between persons who are not parent and child by birth. When the court places the adopting adult(s) fully in the position of parent(s), the court is no longer involved in any aspect of the family. The child's birth certificate is revised to reflect the adopting parents as birth parents. The adopting grandparent has a responsibility to support the grandchild, and the grandchild has the same inheritance rights as a child born to the grandparent. An adoptive grandparent who is collecting Social Security retirement can receive support for the grandchild.

In order for a child to be adopted, parental rights of both parents must be ended or terminated through a court process. Parents who wish to relinquish their parental rights must receive counseling through a county Department of Social Services or a licensed child placement agency, and then appear in court to declare their desire to relinquish. The parents may specifically name the grandparent as custodian at that time. At the court hearing, if only one parent can be found, that parent may testify that the other parent has abandoned the child.

When the birth parents have abandoned the child or failed to provide support for over a year, a grandparent may file for the adoption of the grandchild, if the grandparent has had the grandchild living in the grandparent's home for a year or more. These types of adoptions are referred to as "kinship adoptions" and "custodial adoptions."

The grandparent, in order to adopt, must be approved for adoption through an assessment (sometimes called a home study) by the county Department of Social Services, or by a licensed child placement agency. The grandchild to be adopted must receive counseling, if he or she is age twelve or over. A child twelve or older must consent to the adoption. The court could order counseling for any age child if it is in the best interest of the child.

If the grandchild is involved in a dependency or neglect case, the department may help the parents either relinquish or file for termination of parental rights. (See Dependency and Neglect Actions in Part III.)

There are usually two hearings, one for placement and one for the final adoption. In most cases, there will be a case worker assigned to monitor the placement. As soon as possible, after the petition, the court will hold a hearing and decide whether or not the adoption is in the best interest of the grandchild. If it finds that the adoption is in the grandchild's best interest, it will issue a decree of adoption. Such decree makes the adoption final.

Birth parents have constitutional rights to parent their children. Even if the potential adoptive parent(s) can provide and care for the child better than the birth parent(s), the courts must consider the birth parents' rights to care for and control the child's upbringing. A court may find that adoption is an extreme and permanent resolution and that a less drastic

alternative, such as Guardianship or the Allocation of Parental Responsibilities is preferable for the child's best interests.

Adoption is a complicated process. Contact an attorney who specializes in this field or a licensed child placement agency. Also, contact the grandparents' local Department of Social Services for advice and referral.

Adopting a child is a major step that needs to be considered carefully. It is strictly a voluntary choice. No one can be forced to adopt a child.

Adoption is the only option when someone wants to take complete and permanent responsibility for the child without the threat of legal interference by the child's birth parents. The adoptive grandparent may choose to allow the grandchild's birth parents to stay involved in the grandchild's life through visits or letters, or they may choose not to do so.

Adoption should not be selected by someone who wants to reunite a child with his or her birth parents someday. It is not the best choice for someone who only wants to provide temporary care for a child. Adoption is for life. Since the decree of adoption terminates the birth parents parental rights and the court's involvement with the family, a birth parent may not go back to court to seek or enforce an agreement to have contact with the child.

The adoption process can be very expensive; especially if the Department of Social Services is not involved. Currently, there are tax credits available to reimburse many of the costs incurred in adopting. See page 23.

Adoption can help or hurt the grandparent financially. (See Part IV for more information on financial issues.)

PART III - When The Child Protection System is Involved

◆ DEPENDENCY AND NEGLECT ACTIONS ◆

The government does not interfere in family matters unless there is reason to believe that the child is not safe within the family. Grandparents need to basically understand the formal child protection system.

Dependency and neglect actions usually begin when there is a report to the police or the Department of Social Services indicating that a child is being abused or neglected, or for some other reason needs protection by the State. There is an investigation, after which Social Services may decide to take the child out of the home and/or may decide to file a Petition in Dependency and Neglect.

The court or law enforcement officer has the authority to remove a child from the home of the parents. Upon removal, they may place the child in a foster home or they may place the child with the grandparent who is “appropriate, capable, willing, and available to care for the child.” (Colorado statutes - C.R.S. 19-3-402) However, a hearing must be held within two or three days (depending on the situation) so that a court may decide whether the child is to be returned to the parents or remain in the custody of Social Services. The child’s parents have a right to have an attorney represent them at this hearing. The court will appoint an attorney if they cannot afford one.

Social Services will file a Petition in Dependency and Neglect if they are given temporary custody of the child as a result of abuse or neglect concerns. Social Services may also choose to file such a petition if the child remains at home.

Only a county Department of Social Services can **file such an action**. The **Petition must claim that one of these has occurred**:

- 1) the child is abandoned;**
- 2) the child is abused by a parent;**
- 3) the child is abused by someone other than a parent without the parent protecting the child;**
- 4) the child’s environment is injurious to his welfare;**
- 5) a parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well-being;**
- 6) the child is homeless, without proper care, or not living with his parent, guardian, or a legal custodian through no fault of such parent, guardian, or a legal custodian; or**
- 7) the child has run away from home or is otherwise beyond the control of his parent, guardian, or a legal custodian.**

There must be a court hearing to determine whether the claims of the Petition are true. If the court finds that the claims are true, the child is said to be Adjudicated Dependent and Neglected. A treatment plan must be established which addresses the problems, establishes goals, and defines conditions under which the child is returned home (or kept at home).

When a Dependency and Neglect Petition is filed, the court will appoint a Guardian ad litem to represent the best interest of the child in court. The court may appoint a Guardian ad litem at any time if there is good cause. This person is given all information about the case and may make recommendations

to the court about the child.

The court must hold a dispositional hearing within 30 to 45 days if there is an Adjudication. This hearing may even be held the same day as the Adjudication. At the time of the dispositional hearing, a treatment plan will be established specifying what needs to be done before the child can be returned to the parents (or in order for the child to remain with the parents if he hasn't been removed). If enough reasons exist and the proper motion has been filed, the court has the option of terminating the parent-child legal relationship of one or both parents at this hearing.

If the child involved is five (5) years old or younger, and has been placed out of the home, an expedited procedure will be followed. The adjudicatory hearing must be held within 60 days of the parents being served with a petition. The dispositional hearing must be held within 30 days of the adjudication. A permanent planning hearing must be held within 90 days of the dispositional hearing and the children must be placed in a permanent home no later than 12 months after the original out-of-home placement of the children.

If parental rights are not terminated, Social Services must provide services to help the parents create a safe home for the child. Social Services can also be called on to provide therapy or other services for the child. The child will be returned to the parents as soon as the court decides that the home is safe. If the parents cannot make the home safe after a period of time (which will vary according to the situation) a hearing will be held to determine a permanency plan for the child, including a permanent placement goal. At any time before or after this hearing, a motion to terminate the parent-child legal relationship (parental rights) may be filed.

Parental rights may only be terminated by the court

following a hearing. This will be done only when the child has been abandoned or seriously abused or neglected and the parents will not or cannot meet the physical, mental, and emotional needs of the child. After ordering termination of parental rights, the court will place custody of the child with the Department of Social Services, a private child placement agency, or a relative. A hearing will be held ninety days later to determine whether the child is going to be adopted or whether some other permanent arrangements need to be made. Parents have a right to appeal the termination of their rights and this can delay adoption proceedings.

◆ NATIVE AMERICAN CHILDREN ◆

Separate Federal laws apply to Native American children. See page 29 of this booklet for more information.

◆ PLACEMENT WITH RELATIVES IN A DEPENDENCY CASE ◆

When a child is removed from the home of the parents, Social Services may contact a grandparent or other relatives and ask them to care for the child. Care by a grandparent or other relative of a child who is in the custody of Social Services is called “kinship care.” This is like a foster care placement, except that it is with a relative. A grandparent who finds out that his or her grandchild is in the custody of Social Services can contact Social Services directly to request that the child be placed with the grandparent. If they know the name of the child protection worker assigned to the child, they may contact that person directly. In most cases, a home study will be conducted before a decision is made to place the child with the grandparent. A social worker will come to the home and interview everyone living there. Paperwork and training will normally be required, if the child is to be placed

with the grandparent. The child may or may not live with the grandparent while the study is being completed. Social workers will often lead a family group decision-making meeting regarding sensitive and complicated issues.

When a grandchild is placed with a grandparent by Social Services, the grandparent will be required to follow rules set by the case worker and the court. These may include keeping the child from seeing the birth parents, or following strict rules about such visits. It is very important to cooperate with Social Services.

Even if kinship care is not set up when the child is first removed from the parents, Colorado law specifies that the court may place the child in the legal custody of a relative, including the grandparent, at the time of the dispositional hearing. The law says that the grandparent may be given preference for placement if it is in the best interests of the grandchild. This means that if the grandparent wants to care for the grandchild, the grandparent needs to attend this hearing. The Department of Social Services may be given custody of the grandchild even though the child is with a grandparent, or the court may give custody directly to the grandparent. A grandparent should ask about payments as a “foster parent” to help cover expenses, because Social Services may not tell about that, and a judge can be asked to make them pay grandparents.

◆ ADOPTION IN A DEPENDENCY CASE ◆

When parental rights are terminated by the Department of Social Services, the Department will look for a family to adopt the child. A grandparent has the right to request permission to adopt. It is important to make this request before the motion to terminate the parent-child legal relationship is filed, because then the grandparent must be given a priority status when the placement decision is made. There is no requirement that the grandparent be notified of either the plan to terminate parental rights or of a grandparent's preference for placement. This is why it is important for an interested grandparent to remain involved throughout the Dependency and Neglect action. A grandparent who properly applies for permission to adopt must undergo an assessment and be approved for adoption. Also, if the child is age twelve or over, the child must agree to the adoption.

Parents often file an appeal after their parental rights are terminated. If this happens, the grandparent will probably have to wait for a year or two before knowing whether they will be able to adopt.

PART IV - Financial Issues

◆ CHILD SUPPORT ◆

The grandparent may be able to obtain child support from the birth parents of the grandchild. The amount of child support is based upon the incomes of the parents of the grandchild.

Child support is established by a court order. If there is a custody action involving the grandchild, the court has authority to order child support for the grandchild. If the grandparent is caring for the grandchild under a power of attorney, a guardianship, or conservatorship order, a separate action for child support must be started. If the grandparent adopts the grandchild, the grandchild becomes a child of the grandparent, and the rights and obligations of the grandchild's birth parents are ended. There is no right to child support from the grandchild's parents after an adoption.

If child support is ordered to be paid to the grandparent, but is not being paid, the grandparent can enforce payment of child support. Enforcement can be undertaken through a private attorney or through an agency of the State of Colorado (the Child Support Enforcement Unit in each county). Private attorneys will charge a fee. Laws exist in most states, which are intended to help enforce payment of child support by parent(s) who live outside of Colorado.

If the grandparent is receiving public assistance, the State of Colorado will try to collect child support from the birth parents to reimburse the State. Such collection action may also occur through the local Department of Social Services.

◆ PUBLIC ASSISTANCE, T.A.N.F. AND MEDICAID ◆

The grandparent might be eligible to receive public assistance for the grandchild. Benefits would be available whether the grandparent is caring for the grandchild under a power of attorney; a custody order, a guardianship order, or the grandparent has adopted the grandchild.

Benefits from public assistance typically include a monthly payment, medical insurance coverage, (Medicaid), medical treatment, and food stamps.

Benefits may be payable to the grandchild and received by the grandparent, and benefits might be payable directly to the grandparent if the grandparent qualifies.

The grandparent can consult with the Department of Social Services in the county where the grandchild will live to determine what specific benefits are available to the grandchild and the grandparent.

Grandparents must meet the criteria and be approved by the Department of Social Services.

If the grandparent becomes a licensed foster care patient, that status may provide for additional benefits to be paid for the grandchild or for the grandparent.

◆ RETIREMENT SOCIAL SECURITY ◆

If a grandparent is receiving Social Security, retirement or disability benefits there will be no reduction in benefits because the grandparent cares for or adopts a grandchild. It does not make any difference whether the grandparent is acting with a power of attorney, custody order, or guardianship order or adoption. There will be no reduction in benefits if the

grandparent formally adopts the grandchild.

If the grandparent formally adopts the grandchild, the grandparent may receive additional benefits because of the existence of the minor child. If the grandparent dies after the adoption is final, but before the grandchild reaches the age of eighteen, a Social Security benefit will be paid for the grandchild until the grandchild reaches the age of eighteen.

If one of the natural birth parents was qualified for Social Security and has died, the grandparents who are caring for the grandchild may be able to collect the natural birth parent's social security.

The grandparent receiving Social Security benefits can contact his or her local Social Security office to find out if the grandchild qualifies for these payments.

BENEFITS

◆ HEALTH INSURANCE ◆

The grandparent may seek to obtain health insurance for the grandchild.

Health insurance may or may not be available through the grandparent's employment. The ability to insure a grandchild under a health insurance policy available through the grandparent's employment depends upon the provisions of the insurance contract between the employer and the insurance company. The existence of a power of attorney, a custody order, or a guardianship order regarding the grandchild may help obtain insurance coverage through the employer's policy. The extent of coverage available may depend upon whether the employer or the grandparent pays for coverage for dependents.

If the grandparent adopts the grandchild, then the grandchild becomes the child of the grandparent, and the grandparent is entitled to the same medical and dental benefits that the employer's policy provides to children of employees. The grandparent can also independently purchase health insurance insuring the adopted grandchild.

The grandparent may also apply at the Department of Social Services for Medicaid or CHP+ for medical assistance for the grandchild.

◆ FAMILY LEAVE ◆

If the grandchild is not healthy, it may be difficult for the grandparent to meet employment obligations. The grandparent may be entitled to take unpaid leave from work

if the grandchild needs care due to a serious health condition. Under the Federal Family and Medical Leave Act (FFMLA), the grandparent might qualify to take up to 12 weeks of unpaid leave per year to provide care for a serious health condition of the grandchild. This law applies only if the employer has at least 50 employees and the grandparent has been employed at the job for at least 12 months.

When the child's parent is in the military, family members such as grandparents may be covered under new provisions of the FFMLA. The National Defense Authorization Act of 2008 creates a new entitlement of twenty-six weeks of leave (rather than twelve) to permit family members to care for members of the Armed Forces, including a member of the national Guard or Reserves, who is undergoing medical treatment for a serious injury or illness. The second amendment permits an employee to take FMLA leave for a "qualifying exigency" arising from a family member's active duty. Although regulations defining the term "qualifying exigency" have not been issued as of July 2008, it is expected that absences to deal with personal matters such as childcare will be encompassed.

The grandparent may also be entitled to family leave to care for the grandchild during the first year the grandchild is placed with the grandparent for adoption or foster care.

TAX ISSUES

◆ INCOME TAX DEPENDENCY EXEMPTION ◆

If the grandparent pays more than half of the grandchild's total support in a year, the grandparent can take an income tax dependency exemption deduction for the grandchild. The grandchild must earn less than a certain income limit, qualify as a citizen or resident of the United States, and not file a joint return with a spouse. If these requirements are met, it is not necessary to have a power of attorney, a custody order, or a guardianship order regarding the child. The same requirements apply for a grandparent to take a dependency exemption for an adopted grandchild.

If there is a divorce action by the parents of the grandchild, or a custody or child support action regarding the grandchild, the Colorado court is obligated to allocate between the parties the right to claim the income tax dependency exemption for the grandchild. If the grandparent is a party to such action, the right to the dependency exemption might be allocated to the grandparent.

The grandparent may be required to prove that support for the grandchild was paid. It is important to save canceled checks and receipts for expenses paid.

◆ INCOME TAX EARNED INCOME CREDIT ◆

If the grandparent has a low-income level and the grandchild lives with the grandparent for more than one-half of a tax year, the grandparent may select the earned income credit against income taxes. If the grandparent qualifies, the grandparent can receive a credit, which lowers income tax, or might receive a refund even if no tax is owing.

The amount of the credit is based upon the amount of the grandparent's earned income. A grandchild is a qualifying child if he or she lived with the grandparent for more than one-half of the tax year, was under the age of nineteen (or a full-time student under the age of twenty-four), or permanently and totally disabled at any time during the tax year.

To claim the earned income credit the grandparent does not need to be operating under a power of attorney, a custody order, or a guardianship order, and does not need to have adopted the grandchild.

The grandparent can check with a tax preparer to determine eligibility for the credit.

◆ CREDIT AGAINST INCOME TAXES FOR ADOPTION EXPENSES



If the grandparent adopts the grandchild, the grandparent may claim a credit against the grandparent's income tax for qualified adoption expenses. A taxpayer may claim a credit against income taxes for qualified adoption expenses for each eligible child. (The possible credit is up to \$11,650.00 in the case of a child with special needs.)

Qualifying expenses include reasonable and necessary fees, court costs, attorney fees, and other expenses directly related to the adoption. An eligible child is one who has not attained the age of eighteen at the time of the adoption, or who is physically or mentally incapable of self care. If income tax is low in the year of adoption, unused credit can be applied to future tax liability for up to five years.

CHILDREN WITH SPECIAL NEEDS

◆ ADOPTION SUBSIDY ◆

Subsidies may be available through the State of Colorado and the Federal government to help people to adopt children with special needs. The subsidies may include a monthly cash payment and/or Medicaid coverage for the child.

To receive an adoption subsidy, the child must meet all of the following requirements:

1. Be legally free for adoption and in the custody of the Department of Social Services through a county or private, nonprofit, licensed agency in Colorado or living with a relative.

2. Have a special need, which is defined as one of the following:

Physical disability

Mental retardation

Developmental disability

Emotional disturbance

Hereditary factors that have been documented by a physician or psychologist

High risk children (such as HIV positive, drug or alcohol exposed in utero)

Other conditions that act as a serious barrier to the adoption

3. Reasonable attempts have been made, without success, to place the child with a family who will adopt without a subsidy, unless the best interests of the child would not be served by such an effort.

4. Children in the custody of a licensed nonprofit private agency or living with relatives must meet Federal low-income guidelines, which means that their birth parents must have been eligible for welfare payments at the time their children were removed.
5. All parent-child legal relationships are terminated.
6. The county department, agency, or relative requesting the adoption subsidy is financially responsible for the care of the child.

The child's eligibility for subsidy is based upon these factors, and not the need of the adopting family.

The adopting family applies for the adoption subsidy by contacting their local Department of Social Services. **The subsidy must be applied for before the Petition to Adopt is filed.** It is a good idea to apply for the subsidy for a child who is eligible even when the adopting family is uncertain about wanting the subsidy. This is because it is not possible to get the help later if something changes. A family who does not believe that they want a subsidy can apply and sign the paperwork for the subsidy, then decline the monthly payment at that time. This is referred to as a dormant subsidy. Then, if the child has problems later on, or if there are financial difficulties, the subsidy can be renewed.

Signing the subsidy agreement requires the adopting parents to keep Social Services informed on the status of the child. The agency verifies that the child has special needs, or is at risk of having special needs at a later time. The subsidy is contingent upon available public funds and is reviewed every three years. The eligibility for subsidy continues regardless of where the family moves, even to another state.

An adopting family who is denied a subsidy has a right to

appeal the ruling. For more information about this program, contact the local county Department of Social Services, or the State Department of Human Services, Division of Child Welfare, Adoption Programs, 1575 Sherman Street, 2nd Floor, Denver, CO 80203-1714,(303)866-1714.

◆ **NONRECURRING EXPENSE REIMBURSEMENT** ◆

Families adopting special needs children may also qualify for a Nonrecurring Adoption Expense Reimbursement to help with costs of adopting such as: adoption application fees, adoptive family study (or home study), court costs and attorney fees, health and psychological evaluations of the adopting family members, and travel expenses to visit the child. The total amount that can be obtained is limited to \$800and may not cover all expenses.

The requirements to be eligible for Nonrecurring Adoption Expense Reimbursement are similar to those for Adoption Subsidy. The county Department of Social Services can provide more information.

◆ **CSN (CHILDREN WITH SPECIAL NEEDS)** ◆

Additional support programs are available in Colorado for children with certain kinds of special needs. Contact the local Public Health Department for information about the CSN Program for Children with Special Needs, which covers health care costs for children with chronic illnesses. For more information call: Children with Special Needs, Boulder County Public Health, 529 Coffman, Longmont, CO 80501, (303) 678-6064, (303) 678-6125, www.bouldercountychildhealth.org.

◆ FAMILY SUPPORT SERVICE ◆

The Family Support Services Program (FSSP) for developmentally disabled family members living at home can provide in-home or community support to help the person remain at home. For information about this program, contact Imagine!, 1400 Dixon St., Lafayette, CO 80026, (303) 665-7789, www.imaginecolorado.org or contact your local DD office.

◆ SUPPLEMENTAL SECURITY INCOME (SSI) ◆

Social Security Income (SSI) is available for a physically or emotionally disabled child. The child may qualify for monthly income and/or health care through Medicaid. These payments continue as long as the child is disabled. The parent, guardian, or custodian of the child must apply through the local Social Security office. A physician or another professional person must be willing to state that the child has a physical or mental condition that can be medically proven and which results in “marked or severe functional limitations.” The condition must last at least 12 months or be expected to result in death. A child holding a job which the Social Security office considers to be “substantial work” does not qualify.

The grandparent who is caring for a disabled grandchild can apply for SSI by contacting Social Security. Most claims are initially denied. Attorneys can help with appeals.

PART V - Other Information

◆ SCHOOL & PRESCHOOL ISSUES ◆

It is important that any papers, which give a grandparent a legal right to care for a grandchild, include permission to make decisions about the education of the grandchild.

This must be specifically stated, or the birth parents remain as the only persons who can make decisions regarding any special education needs. This is true even if the Department of Social Services has custody of the child.

Children who are removed from their parents very often need special help at school as a result of the move and the reasons behind it, even if they do not otherwise need help. The grandparent should contact the grandchild's school, explain the circumstances, and ask for special help for the child. Please keep in mind that the child does have rights to privacy of his or her history.

Under a number of Federal and Colorado laws, every child, including one with disabilities or special needs, has a right to a free appropriate education provided in the least restrictive environment. This means that the public schools are required to provide an education that meets the needs of the child without charging the parents. Parents (or those with the right to make educational decisions) can require the public schools to test a child to see if the child has special needs, and to develop a plan to meet those needs. If the parent does not agree with the school's test results or plan for the child, there is a process for appeal.

Federal law also provides for early intervention services for all disabled infants and toddlers. Call the local school district of the grandparents to seek a screening if a preschool child may need early intervention services.

◆ INDIAN CHILD WELFARE ACT (ICWA) ◆

The Indian Child Welfare Act is a Federal law designed to protect the best interests of Native American children and to promote the stability and security of Indian tribes and Indian families. This act controls any child custody (including Dependency and Neglect, foster care, custody, guardianship or adoption) proceedings concerning any child who is a member of an Indian tribe, eligible for membership in a tribe, or is a biological child of a tribe member. The act requires that the tribe be notified, even if the birth parent is trying to place the child privately.

The Indian Child Welfare Act requires that all placements of Indian children follow very strict rules. Even an adoption can be set aside if the rules are not followed. Therefore, it is very important to contact an attorney who has experience in this area if there is any possibility that a child may have Indian blood or Indian parents.

◆ GRANDPARENT VISITATION ◆

If the grandchild resides within the State of Colorado, the grandparent can seek a court order establishing visitation with the grandchild. Grandparent visitations can be established in any of the following circumstances:

- a) where the grandchild's parents are divorced or legally separated;
- b) where the grandchild is not in the custody of one of his or her parents, or the grandchild does not live in the home of one of his parents; or
- c) where the grandchild's parent (child of the grandparent) has died; or

- d) where there has been any previous court case involving the custody of the grandchild, including a paternity case, a child support case, or a guardianship case concerning the child.

The grandparent is required to request visitations through the court located where the child lives. The request must be formally made in writing. The grandparent can seek the assistance of an attorney in making such a request. The court will grant visitation rights to the grandparent if the court finds such visitations are in the best interest of the grandchild. A U.S. Supreme Court case said in 2000 that where grandparents wanted visitation rights, the parents have superior rights to decide for their own children, but the decision was based on a Washington law that allowed anyone, not just grandparents, to ask for visitation rights, which was too vague and too broad. The Colorado laws are still being used for grandparents to request visitation.

Colorado law provides a method for resolving disputes regarding formal grandparent visitations. The court may require a hearing or mediation by the grandparent and the child's custodian. The court has the authority to change prior court orders or require makeup visitations for the grandparent.

If the grandchild resides in a state other than Colorado, the law of the state where the grandchild resides will determine any right to grandparent visitations. The grandparent can contact an attorney in that state to determine whether any rights to grandparent visitations exist.

FUTURE PLANNING

◆ RETIREMENT DISABILITY PLANNING ◆

Grandparents as older adults, may consider including documents which would direct others on how to help them in the event they become disabled. A power of attorney can appoint an agent to handle the grandparents' financial affairs when they are unable. The appointment of a power of attorney is even more important if the grandparents are caring for a grandchild. A power of attorney can also give authority to make health care decisions for the grandparents when they are unable to do so; and a medical declaration (living will) can state the grandparents' wishes about continuing and withdrawing life support procedures.

Standard forms for powers of attorney and medical declarations are available from many organizations, including senior centers and private attorneys. Grandparents caring for a grandchild may find it to be wise to seek the assistance of a private attorney to design specific documents for their situation.

◆ INHERITANCE RIGHTS ◆

At the death of the grandparent, the property of the grandparent can pass in three ways. First, ownership of property will determine how it passes. If property is owned in joint tenancy by the grandparent and other person(s), the property will pass automatically to the other person(s).

Second, if a beneficiary designation has been made for certain property, such property will pass to the beneficiary named. Third, if the grandparent has created a testamentary

will, certain property will pass through the will.

If the grandparent wishes property to pass to the grandchild at the grandparent's death, the grandparent can counsel with an attorney to determine proper ownership and beneficiary designation of property, and/or to execute a testamentary will.

If the grandparent does not have a testamentary will, property that would pass by a valid will, will be distributed to the grandparent's relatives as directed by Colorado State law. The grandchild will not necessarily receive property of the grandparent if Colorado law determines how property will pass.

The fact that the grandparent is caring for the grandchild under a power of attorney, a custody order, or a guardianship order, does not change how the grandparent's property will pass at death.

If the grandparent adopts the grandchild, the grandchild becomes a child of the grandparent. Joint tenancy ownership of property and beneficiary designations will still control. If the grandparent has a testamentary will, it will still control passage of property. If the grandparent does not have a testamentary will, the grandchild is treated as a child of the grandparent, and might inherit from the grandparent.

An adopted grandchild may also qualify to receive Federal Social Security pension benefits, or other benefits, if the grandparent dies while the grandchild is a minor. Passage of property at death is complex. An attorney can help you with your unique situation.

PART VI

PUBLICATIONS

AARP Foundation: Grandparent Information Center

601 E. St, NW, Washington, DC 20049

1-888-687-2277 www.aarp.org/grandparents

Publications:

1. Grandparenting: The Joys and Challenges
Guide to Public Benefits for Grandfamilies
2. State Laws Governing Grandparent and Other Third-Party Visitation with Children
3. Financial Assistance for Grandparent Caregivers:
TANF
4. GRANDFACTS: A State Fact Sheet for Grandparents
and Other Relatives Raising Children
5. Raising Your Grandchild: Tips for Promoting Positive
Behavior Today and for the Future

PREVENT CHILD ABUSE AMERICA

500 N. Michigan Ave., Suite 200, Chicago, IL 60611-3703

312-663-3520 www.preventchildabuse.org

Publication:

1. Raising Your Grandchild, a tough but rewarding job

INTERNAL REVENUE SERVICE

2323 Table Mesa Drive, Boulder, CO 80302

1-800-829-1040 www.irs.gov

Publication:

1. Qualified Adoption Expenses

AGENCIES

Colorado Department of Human Services - Division of Child Welfare, 1575 Sherman Street, Denver, CO 80202-1714

Metropolitan Lawyer Referral Service, 899 Logan, Denver, CO; (303) 831-8000, www.mlrs.org

Rocky Mountain Adoption Exchange 14232 East Evans Avenue, Aurora, CO 80014 (303) 755-4756

Boulder County Department of Social Services, (303) 678-6000

Weld County Department of Social Services, (970) 352-1551

Boulder County Legal Services, 315 W. South Boulder Road, Suite 205, Louisville, CO 80027 (303) 449-7575

WEBSITES

www.gu.org Generations United – An organization to help youth and older generations.

www.bbsa.org Big Brothers, Big Sisters of America- A youth mentoring organization that teams up volunteers with at-risk youth.

www.parentsanonymous.org Parents Anonymous – a nationwide, self-help support group. It offers free children’s programs during meetings.

www.circleofparents.org - An organization that provides free support groups for parents.

www.cwla.org/programs/kinship/ (Child Welfare League of America) – Free e-newsletter, Kinship Reporter, Standards of Excellence for kinship care.

www.childrensdefense.org (Children's Defense Fund) Updates on federal legislation, Guides for Grandparent and Other Relative Caregivers.

www.grandparentagain.com Offers information about education, legal support, support groups, and other organizations for grandparents raising grandchildren.

www.grandsplace.org Dedicated to supporting grandparents and other relatives raising others' children. It provides opportunities for grandparents to provide comments and to gather information.

www.igrandparents.com Fun activities to do with your grandchild.

www.grandparenting.org The Foundation for Grandparenting website features a special section on long-distance grandparenting.

www.insurekidsnow.gov Children's Health Insurance Program (CHIP) offers medical and dental health care to children under 18. For families who earn too much money to qualify for Medicaid but not enough to pay for private insurance. Colorado Child Health Plan (CHP+) This plan requires premium payments, but they are adjusted based on annual income and family size.

www.changealifeforever.org/index.asp Basic information about foster care & adoption by state.

www.coloradodivorceinfo.com/grandparents-rights/ Colorado divorce information, grandparent rights, etc.

www.raisingyourgrandchildren.comIndex.htm Piecing Hearts Together Again! Information including dealing with stress, legal issues, mental health disorders, financial assistance, local resources, and more.

www.cocaf.org Colorado Coalition of Adopted Families-An organization formed by a group of families who desired to increase the amount of information and resources available to adoptive families.

www.childtraumaacademy.org/default.aspx The Child Trauma Academy. A collaborative group of individuals and organizations working to improve the lives of high-risk children through direct service, research and education.

www.uwex.edu/relationships/ Through the Eyes of a Child – Focus is on family relationships and child development rather than legal or financial issues.

www.courts.state.co.us/chs/court/forms/selfhelpcenter.htm Colorado Judicial Branch- Guardianship, Custody and adoption forms for do-it-yourself help.

◆ DEFINITIONS ◆

Assessment (Home Study) - A formal study of a potential adoptive family.

Child Placement Agency - An agency licensed by the Colorado Department of Human Services to place children for foster care or adoption.

Child Support - Financial support for a child paid by a parent who does not have primary custody.

Custodial Adoption - An adoption by a grandparent (or other custodian) who has a court order for custody or guardianship where the parents have abandoned or failed to support the child for a year or more.

Guardian ad litem - A person appointed by the court to represent the best interests of a child in a court action, -or- an

attorney appointed by the court to represent the best interests of the child he/she represents for the purpose of a Dependency and Neglect Action.

Indian Child Welfare Act (ICWA) - Federal law which gives Indian tribes the primary right to determine placement of Indian children.

Kinship Adoption - An adoption by a grandparent (or certain other “kin”) where the parents have abandoned or failed to support the child for a year or more.

Kinship Care - Care of a child by a relative - (Usually a child in the custody of social services.)

Letters of Guardianship or Conservatorship - The actual document by which the court appoints a guardian or conservator for an individual.

Parent-Child Legal Relationship - all rights and duties that a parent has with a child or a child has with a parent.

Relinquishment - The act of a parent voluntarily giving up their legal rights and obligations to a child.

Special Education - Free educational services with a Public School system for children with learning disabilities and other special educational needs.

TANF - Temporary Assistant to Needy Families - Public assistance for families.

Treatment Plan (Service Plan) - A formalized plan required in a dependency and Neglect Action.

Additional copies of this guide may be obtained from:

Boulder County Aging Services Division
3482 North Broadway
Boulder, CO 80306

Mailing Address:
PO Box 471
Boulder, CO 80306

(303) 441-3570



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