

Legal and Custody Help for Grandparents Raising Grandkids

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Legal issues for grandparents raising
grandchildren

There are many reasons why you might choose to take on a full-time parenting role in your grandchild's life. Death, divorce, illness, neglect, abuse, or legal troubles could all lead to a shift in familial duties. But when you made your decision to raise your grandchild or grandchildren, you probably didn't think too much about the legal implications. However, if your grandchildren live with you for any length of time, it's important that you understand the laws that can impact grandparents raising grandchildren.

For example, are you authorized to register your grandchild at school? Can you make medical decisions for them? Get them health insurance? Who is legally obligated to pay for clothes and other necessities for the children—and are there programs available to help?

Just because you've taken in your grandchild, it doesn't mean you have legal rights to make decisions for that child. Unless you've taken steps to secure a legal caregiving relationship, you may have trouble enrolling your grandchildren in school, authorizing medical treatment, and getting financial assistance and health insurance. It's important to discuss the legal issues with your grandchild's parents, if possible, and try to agree on how to move forward.

[\[Read: Grandparents Raising Grandchildren\]](#)

The following information can help you navigate the legal considerations that come with taking custody of and caring for your grandchildren. Note that all of these legal solutions relate to laws within the United States, and policies will differ by country.

What type of legal issues will I face?

These will depend on the needs of your family, and—especially in areas such as legal custody and guardianship—the issues can vary according to where you live. It's essential to seek some legal help to ensure you're moving in the right direction for your family.

Questions to consider include:

Safety. Have the children been removed because the parents were unfit? Are you worried the parents might want the child back and not give them proper care? If there is a safety risk, it may mean getting Child Protective Services or the police involved.

[Read: Child Abuse and Neglect]

Permanency. If the stability and safety of your grandchildren are threatened, you may want to investigate legal protections to ensure they stay in a safe environment. In some cases, that may mean asking for permanent custody and the ability to make decisions for your grandchildren.

Visitation. Are the parents interested in visiting? Is that best for the children? In that case, which caregiving options give the parents the ability to visit or request custody of their child?

Cost and time. Which custody choices require more time in court or more legal expenses for you?

Benefits and health. Make sure you understand how your custody choice could affect your grandchild's health insurance coverage or benefits.

Temporary physical custody of your grandchildren

If you have physical custody without a court order, you have no legal rights to make decisions for your grandchildren about health care and school enrollment. You also can't make legal arrangements for someone else to take care of your grandkids should something happen to you.

Establishing a legal custody or guardianship arrangement will give you the most legal rights. But if you're hesitant to get the courts involved, there are several alternatives to consider. They can be especially helpful and simple when there is a cooperative relationship between the child's parents and grandparents.

Power of attorney

If your grandchild's parents are willing, they can create a power of attorney that gives you temporary authority to make specific decisions for their child. Once power of attorney is signed over, you have whatever legal rights are specified in the document. For example, you might be given legal authority to seek medical care for your grandchild or register them in school.

The power of attorney does not remove a parent's legal rights, and the parent can revoke it at any time. You will want to check what provisions there are in your state for power of attorney.

Medical and educational consent laws

Some states also have consent laws that make it possible for grandparents to make medical and school decisions for their grandchildren without going to court.

- Educational consent laws, or open enrollment laws, allow grandparents or other adults who are raising a child without legal custody to enroll that child in public school.
- Medical consent laws allow a parent to authorize another adult to consent to medical, dental, and mental health care for their children and obtain access to health records.

How do grandparents get medical consent?

The parent giving the authorization may complete a medical consent form (such as the one in the Helpful Links section below) or simply write a statement. The form or statement must contain information such as the name of the grandparent (or other family caregiver), child's name and date of birth, and insurance information. The form may need to be notarized as well, or completed in the presence of witnesses.

Kinship foster care

When a child has been removed from their parent's home by the state, grandparents have another temporary custody option: kinship foster care.

- **In kinship foster care, you do not have legal custody of the grandchild.** This means that although you can take care of your grandchild's day-to-day needs, you can't make any major decisions without first obtaining consent from the agency that acts for the state.
- **Kinship foster care is not permanent.** It is considered temporary custody. The goal is for the child to be placed in a permanent home. While you may be working towards the child being permanently placed with you, the final decision is with the state agency.

Formal vs. informal kinship foster care

Kinship foster care arrangements can be formal or informal. In a formal kinship foster care arrangement, grandparents can receive the same payments that foster parents receive, which can be helpful in managing costs. However, to receive that financial assistance, you'll need to be a fully licensed kin caregiver. A state agency will hold you to the same standards as other foster parents, which can mean training, home visits, and evaluations.

Some grandparents prefer informal arrangements for this reason. In informal arrangements, the state places the child with you and then steps out of the picture. You don't have to worry about further interference or oversight. The trade-off is that you won't receive monthly financial assistance.

If neither option seems ideal, you may want to check if your state has subsidized guardianships. Subsidized guardianships give grandparents more legal rights over the grandchildren in their care while also offering some payment.

Legal relationship options for grandparents

For more permanent and secure custody arrangements that give you broader legal protections, grandparents raising grandkids have three options:

- Legal custody
- Guardianship
- Adoption

All three options require that you go to court. You will probably want to hire an attorney to help you through the process. If you can't afford an attorney or need help applying for legal custody, contact your local legal aid office or bar association.

Legal custody (custody order)

The most common way to establish a legal relationship with your grandchildren is by getting a custody order from a judge. Unless the parent has voluntarily given up parental rights, you will most likely have to prove that the parent is unfit. But some states have laws that make it easier for relatives who already have physical custody to obtain legal status based on the best interests of the child.

Legal custody may not be permanent. However, once legal custody is awarded, your grandchildren's parents will have to go to court if they want to get their kids back. If they prove that circumstances have changed and they are now able to care for their children, the court may return legal custody to them.

Guardianship

Guardianship is similar to legal custody, in that it is a legal relationship between you and your grandchild that is ordered by a court. As in legal custody, grandparents accept the day-to-day caregiving responsibilities for the child, while parents retain some of their rights. The primary difference is that guardianship is usually handled in probate court.

In some states, guardianships are more permanent than legal custody—remaining in effect until the child is 18. Sometimes, guardians also have more authority, including the ability to:

- Make medical decisions on behalf of your grandchild.

- Add your grandchild to your health insurance plan.
- Designate a standby guardian who can take care of your grandchild if and when you're not able to.

Adoption

Adoption is a permanent option where you, as the grandparent, receive all parental rights and responsibilities and the child's biological parents no longer have any rights. Once the adoption is complete, you become your grandchild's legal "parent." However, some states allow for biological parents' rights to be restored under certain conditions.

Adoption can give a solid sense of permanency and stability for your grandchild, especially if the parents are never expected to be in the right place to give their all to the child. Adoption doesn't necessarily have to be adversarial. For example, sometimes families consider it if the birth parent is very young and not ready for the responsibilities of parenthood.

Comparing custody options

Physical custody

- Best in cases where grandparents and parents are in agreement.
- Grandparents have no legal right to make important decisions for the child.
- With power of attorney from parents, grandparents' custody is strengthened.
- Parents can take the child back and terminate power of attorney at any time.
- Parents still have full legal rights.

Legal custody

- Best when grandparents and parents are in agreement and there's a good chance that the parents will eventually take the child back.

- Gives grandparents authority to make daily decisions regarding their grandchild's welfare.
- Grandparents may not be able to make medical decisions or add the child to health insurance plan.
- Parents have a right to visitation.
- Parents can request custody again someday, but must petition in court.

Guardianship

- Best when grandparents desire long-term commitment and want authority to make decisions.
- Gives grandparents authority to make daily decisions regarding their grandchild's welfare.
- May offer grandparents more rights than legal custody.
- Parents have a right to visitation.
- Parents can request custody again someday, but must petition in court.

Adoption

- Best when grandparents want to ensure that they will raise their grandkids permanently.
- Grandparents have all authority over the child.
- Grandparents become the permanent legal "parents".
- Parents lose all rights.
- Parents cannot request custody later.

Financial help for grandparents raising grandchildren

As every parent knows, raising children can be expensive. For a grandparent raising grandchildren, you may face additional financial challenges. You may be on a fixed

income, no longer working, and if you weren't expecting it, you may not be prepared for the financial costs of suddenly taking on children.

[[Read: Coping with Financial Stress](#)]

If you're struggling to make ends meet, you may want to look into federal and state financial assistance programs. There may also be financial resources and services available in your community to help with food, health care, and other expenses.

Temporary Assistance to Needy Families (TANF)

This program offers cash assistance for low-income families. There are different rules for receiving cash assistance, but eligibility is determined by residency, income, and assets. You may qualify to receive benefits as a family, or your grandchildren can receive benefits under the child-only grant. With the child-only grant, your grandchildren may be able to receive benefits until they are 18 (or 19 if they are still in high school). Time limits of assistance will vary by state.

Supplemental Security Income (SSI)

This program pays monthly cash benefits to families with mentally or physically disabled children. To qualify, families need to have a limited income.

Kinship foster care and subsidized guardianships

As previously mentioned, you can receive financial assistance by applying formally to be your grandchild's foster parent. Of course, this option is only available if the child has already been removed by the state from the parent's home.

Another option is subsidized guardianship (although it is not available in all states). Similar to kinship foster care, this option offers some payments from the state to help meet the basic needs of the children. However, this option also allows grandparents the legal responsibility associated with a guardianship.

Financial support from the parents

In some cases, parents and grandparents are able to share responsibilities. One or both parents may contribute financially. If the parents are involved, sit down and make a plan with them. It may be uncomfortable to discuss financial issues with your children, but you want to make sure that you provide the best care for your grandchildren without neglecting your own financial needs for retirement and beyond.

Even if grandparents have legal custody or guardianship, parents can be asked to pay a specific child support amount. Some parents prefer such a formalized arrangement.

Health insurance

Health insurance can be a headache for grandchildren. Even healthy children will most likely need several doctor visits for physicals and routine illnesses, and those bills can rapidly add up. The first thing to check is with your specific healthcare plan for provisions.

In many states, you may need to be the child's legal guardian in order to add them to your plan. If you are currently receiving Medicare, your options will be limited. Look into enrolling your child into Medicaid or check your state's Children's Health Insurance Program. Even if your income is above limits, you may be able to enroll just your grandchild.

- **Medicaid** provides healthcare coverage for qualified low-income children and adults. Medicaid is a federal program, but it is administered locally at the state level. Medicaid covers medical, dental, and mental health services. If your grandkids qualify for Temporary Assistance to Needy Families (TANF) or Supplemental Security Income (SSI), they automatically qualify for Medicaid. But you will still need to file an application for Medicaid coverage separately.
- **Children's Health Insurance Program (CHIP)**. If you make too much money to qualify for Medicaid, but are having trouble affording private health insurance for your grandkids, you may qualify for CHIP. The requirements and level of assistance vary

from state to state, but in most cases, CHIP covers check-ups, vaccinations, prescriptions, and hospital visits.

As a [grandparent raising grandchildren](#), you'll want to develop an understanding of the laws and policies that affect your rights as a caregiver. It may initially feel a little overwhelming, but just take things one step at a time, and reach out to legal experts and local community resources when you need help. Once you've figured out the legal aspects, you can focus on what's most important: [raising a healthy, happy grandchild](#).

More Information

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