



AUGUST 2012



Are Subsidized Guardianships Making a Positive Difference for Kids?

EARLY EVIDENCE FROM THE FIELD

Under a federal law known as the Fostering Connections Act, Texas recently began providing financial assistance to relatives when they became legal guardians of children who have been abused or neglected, cannot return home, or be adopted. This paper will explore whether these payments have increased overall permanent placements with relatives or have only led relatives to shift from adoption to legal guardianship, thereby increasing permanency through legal guardianships, but potentially decreasing adoptions. Early evidence suggests that while there have been increases in both overall permanency and relative guardianship, the proportion of children being adopted by a relative has declined.

U.S. and Texas Make Commitment to Support Relative Legal Guardians

In an effort to increase permanent placements with relatives¹, and permanency overall, the federal government passed the Fostering Connections to Success and Increasing Adoptions Act in 2008. Whenever a child is removed from the home, the Fostering Connections Act requires that the child's relatives be notified about the removal and told of their options to provide a placement for the child. One specific provision of the Fostering Connections Act is the Kinship Guardian Assistance Program (Kin-GAP), which provides federal funding for a payment program for relatives who become licensed foster parents² and then take permanent custody of children through legal guardianships (what Texas law calls permanent managing conservatorship).³

In Texas, relatives who become legal guardians are not required to become licensed foster care parents. Before the Fostering Connections Act, relatives could become licensed foster parents and receive a foster care subsidy; but for various reasons, few did.⁴ Often, they either did not know they could become licensed or could not or did not wish to comply with the extensive licensing requirements.⁵ Even before Fostering Connections, Texas had a limited financial assistance program that provided transition assistance for relatives who choose not to become licensed foster care providers but are willing to provide kinship placements.⁶

Furthermore, when the child was able to exit the system⁷, relatives sometimes had to make the difficult decision to not become legal guardians because they could not afford it. Before Fostering Connections, the state provided only very limited transitional financial support. Of course, if they adopted, relatives could receive significant financial assistance (up to \$545 per month). However,



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adoption requires a court to legally terminate parental rights, which can be legally problematic and emotionally difficult for relatives. Instead, many relatives chose the less difficult path of guardianship or not taking the child at all. If relatives did not step forward, the child's options were limited to either being adopted by a non-relative or remaining in foster care with a non-relative until they turned 18.

In 2009, the Texas Legislature implemented and funded several of the optional provisions of the Fostering Connections Act including the Kin-GAP. Known as Permanency Care Assistance (PCA) in Texas, this program is intended to increase the overall number of children who leave the foster system and are permanently placed with relatives. To further increase the impact of the PCA, Texas is now publicizing this option. The PCA program may have the greatest impact on relative caretakers who, prior to PCA, were willing to become legal guardians but were financially unable to do so.⁸ The relative can be paid at a rate that is less than the foster care payment but the same as an adoption subsidy so that both are equally supported.⁹

Before a relative can receive financial support for assuming legal guardianship, the law requires them to become licensed foster care parents of the child for six months prior to guardianship.¹⁰ The licensing requirement is intended to ensure that relatives can meet the child's needs and provide a safe and appropriate home.¹¹ Under federal and state law, some non-safety related licensing standards can even be waived depending upon the individual family's circumstances. (To learn more about the foster care licensure process, see our report [Licensing Relatives as Foster Parents](#)).¹²

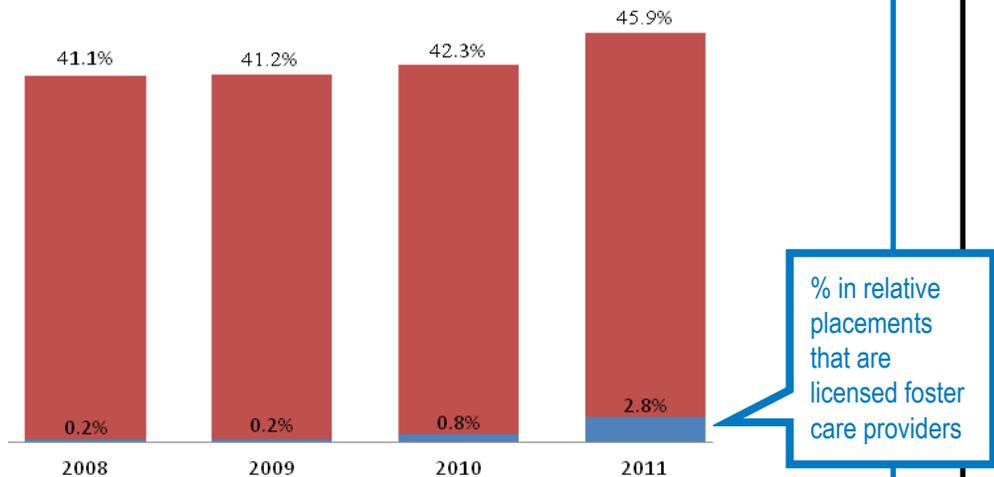
The Department of Family and Protective Services (DFPS) began entering into PCA agreements in September 2010 and payments to support relative legal guardians began October 1, 2010. Common sense tells you there may be a substitution effect, with relatives moving from adoption to legal guardianship when the financial supports are equalized. And research from other states has demonstrated this type of effect.¹³ With only one full year (FY 2011) of data since the PCA was fully implemented, we present preliminary findings to explore whether the PCA may be leading to changes in children's exits to permanency with relatives, recognizing that additional years of data will need to be examined before any concrete trends can be identified. Two questions are addressed. During the time since PCA implementation: (1) have children's permanent placements with relatives increased; and (2) has the proportion of children being placed with relatives through legal guardianship compared to the proportion of children being placed with relatives through adoption?

Texas is Increasingly Placing Children with Relatives both Temporarily during State Custody and Permanently After Exiting State Care

Preliminary data suggest that there has been an increase in children's placements with relatives since Texas began entering into PCA agreements during FY 2011. Children who have been removed from their homes but are still in state custody are increasingly being placed with relatives, both overall and specifically with licensed relatives. This is an indication that the financial assistance provided by the PCA program is encouraging some relatives to go through the process of becoming a licensed foster parent.¹⁴

Early Evidence from the Field

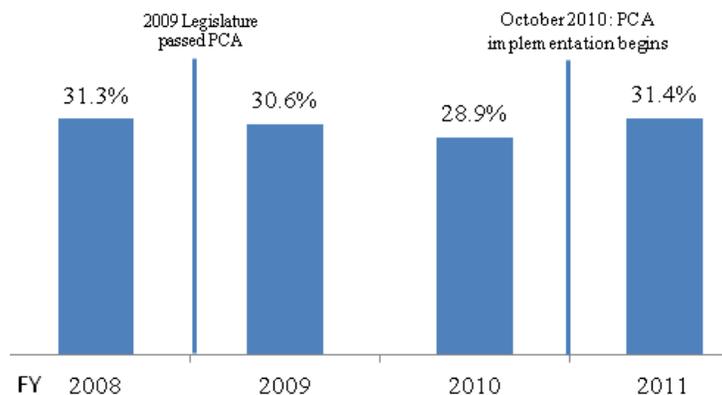
Relative Care Placements for Children in State Custody Sees Slight Increase in 2010, Big Bump in 2011



Source: *Relative Care Placements as a Percentage of Children in DFPS Custody, CPPP analysis of data from Texas Department of Family and Protective Services.*

When a child is removed, the priority for the state is to find a permanent placement for the child, which can include, in this priority order, returning home (reunification), being adopted, or being placed with a legal guardian. In the years leading up to the PCA program (FY 2008 - FY 2010), the percentage of children in state custody exiting into permanency declined from 31.3 percent to 28.9 percent. However, in FY 2011 after the PCA program began, the percentage of children exiting into permanency overall returned to its prior levels, reaching 31.4 percent.

Overall Exits to Permanency Back on the Rise in 2011



Source: *All Exits as a percentage of children in DFPS custody into Permanency (Reunification, Relative Guardianship, Adoption), CPPP analysis of data from Texas Department of Family and Protective Services.*

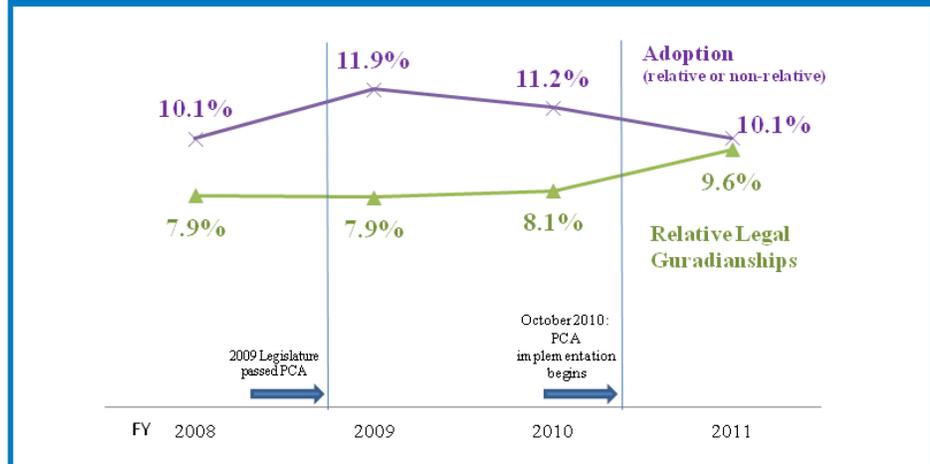
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Adoptions Decline While Relative Guardianships Increase

When non-reunification exits to permanency¹⁵ are broken down by type of exit, interesting patterns emerge that indicate the PCA program may be associated with increases in children's exits into legal guardianships with relatives.

- The percentage of children exiting into legal guardianships with relatives remained relatively steady in the years leading up to the PCA program (increasing only slightly from 7.9 percent in FY 2008 to 8.1 percent in 2010) and then increased to 9.6 percent in FY 2011, suggesting that the PCA program has in fact increased the percentage of children exiting DFPS custody through legal guardianships with relatives.
- In contrast, the percent of children exiting into permanency through adoption (either to a relative or non-relative) increased from 10 percent in FY 2008 to 11.9 percent in FY 2009, but has been declining since. Approximately 10 percent of children exited DFPS custody through adoption in FY 2011.

After Permanency Care Assistance Program Implemented in 2010, Relative Placements Increase and Adoptions Decline



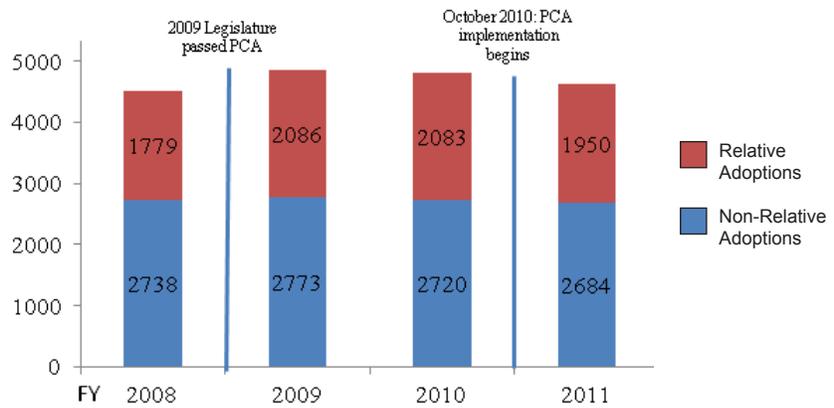
Source: *Permanency Exits as a Percentage of all Children in DFPS Custody*; CPPP analysis of Texas Department of Family and Protective Services data.

Between 2009 and 2011, the Decline in Relative Adoptions was Larger than the Decline in Non-Relative Adoptions

When the number of children exiting custody through adoptions is broken down further, the data suggest that the decline in adoptions between 2009 and 2011 may be driven more by the decline in relative adoptions, not non-relative adoptions. Between 2009 and 2011, relative adoptions declined by 136 adoptions, or more than 6 percent, while non-relative adoptions declined by 89 adoptions or 3 percent. These findings lend more credence to the suggestion there may be a substitution effect resulting from the PCA program.

Early Evidence from the Field

Overall Adoptions Declined in 2011 Largely Due to a Reduction in Relative Adoptions

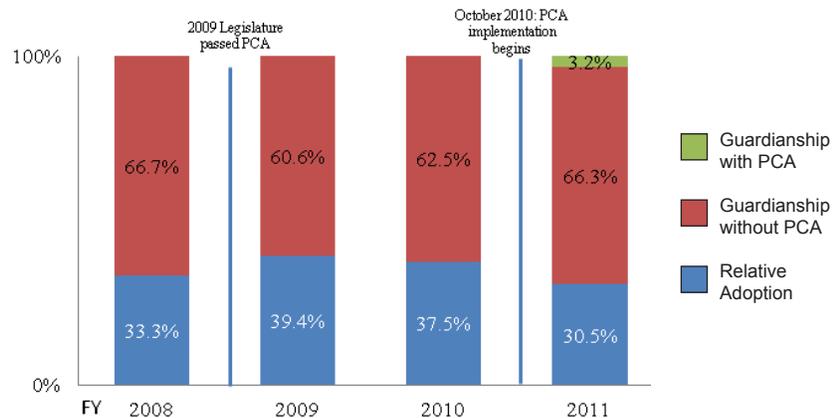


Source: Number of Children Exiting DFPS through Adoption, CPPP analysis of data from Texas Department of Family and Protective Services.

Adoptions Accounted for a Smaller Percentage of all Permanent Placements with Relatives After PCA

The state almost doubled the number of permanent relative placements between 2003 and 2011, reaching nearly 6,400. Among all exits to permanency with relatives, the proportion of children exiting via adoptions increased from 17.7 percent in 2004 to 39.4 percent in 2009, and then declined between 2010 and 2011 (down to 30.5 percent in 2011). In contrast, the proportion of relative exits via legal guardianships had been declining relative to adoptions (78.1 percent in 2006 to 60.6 percent in 2009) and then increased in both 2010 and 2011.

Proportion of Permanent Relative Placements Attributable to Adoptions Declined Following Passage of PCA Program in 2009



Source: Permanency Exits to Relatives; CPPP analysis of Texas Department of Family and Protective Services data.

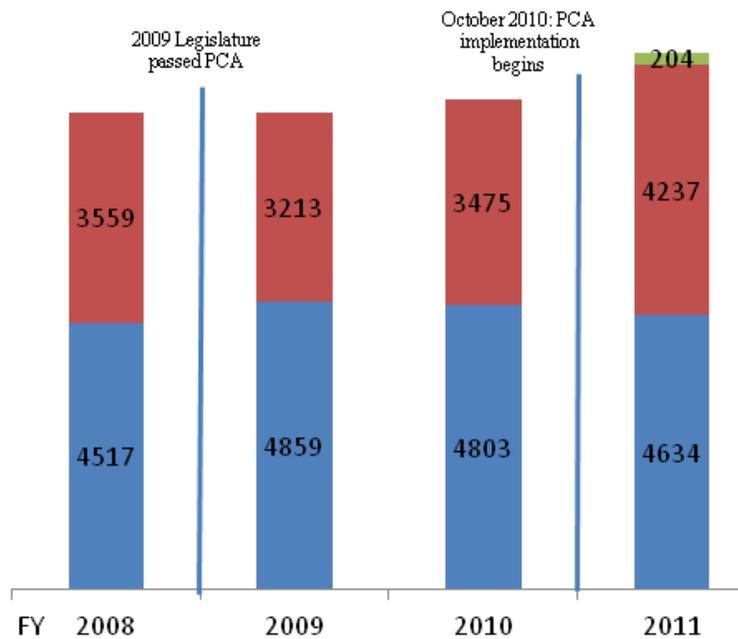
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Increase in Relative Legal Guardianships Not Just a Shift from Adoptions

The raw data show, however, that there is not just a simple shift of relatives moving from adoption to relative legal guardianship due to the financial support of the PCA. Between 2009 and 2011, there were 225 fewer adoptions (a decline of 4.6%). It is impossible to say whether the 204 additional relative guardianship placements in the PCA program were relatives who would have adopted if not for the PCA option. But what is important to also note is that placements to relatives who were not receiving support from the PCA program grew by 1,024 (a 31.9% increase) from 2009 to 2011. Even if there is some adoption to guardianship shift happening, Texas has seen a dramatic increase in relatives becoming permanent placements overall—which is good news for kids.

Even Without Support from the PCA, More Relatives Becoming Legal Guardians

Relative PMC, PCA Relative PMC, no PCA Relative Adoption



Source: Permanency Exits to Relatives; CPPP analysis of Texas DFPS data.

LEGAL GUARDIANSHIP VS. ADOPTION

Does it Matter to the Child?

Some research suggests that whether a child is placed with a legal guardian or an adoptive parent, outcomes such as a caregiver's intention to provide a stable home for the child or for a child's sense of belonging in the family do not differ.¹⁶ Though much more study of this issue would be helpful before concluding that adoption versus guardianship does not matter to the child. And there are some practical considerations. Even though both legal guardianship and adoption are considered "permanent" placements for children in DFPS custody, the actual permanency of the two differ. As a legal guardian, the relative has the same rights and responsibilities of a parent, but unlike an adoptive parent, the legal relationship terminates when the child turns 18 and becomes an adult.¹⁷ Additionally, legal guardianship is more easily given up by a relative caregiver, and is more easily challenged through further litigation by birth parents than is adoption, which requires the final termination of parental rights and the creation of a new parental relationship.¹⁸

Does it Matter to the System?

Under current federal law, there are also fiscal implications. The federal government rewards states financially when a relative (or non-relative) chooses adoption, but not for other permanency options, including legal guardianship. But states that subsidize legal guardianship may effectively reduce their ability to increase adoptions. States must inform relatives of the kinship guardianship assistance program in the initial notice after the child has been removed.¹⁹ All relatives are told upfront that there is a choice between adoption and guardianship. But states have no "carrot" to encourage relatives to pick adoption over guardianship because relatives will be subsidized no matter which choice they make.²⁰ States have no "stick" either. While Fostering Connections does require that the state find adoption not appropriate before a relative becomes eligible for a kinship guardianship payment,²¹ if a relative decides against adoption in favor of legal guardianship, the state's only recourse would be to remove the child from the relative's otherwise appropriate home—hardly something that would be in the child's best interest. As a result, whether relatives adopt or become guardians is mostly a matter of relative preference.

By encouraging relative legal guardianships but rewarding only adoptions, current federal policy is simply out of alignment. As the preliminary data here suggest, one policy may be undermining the other. What the federal government wants is safe, permanent homes for kids. It should support states financially when they achieve permanency, not merely adoption. Generally states reinvest the federal adoption incentive payments into their child welfare systems, improving outcomes for children. If states end up losing adoption incentive funds, it undermines the system.

Conclusions

It has been one year since Texas began entering into permanency care assistance (PCA) agreements with relatives under the Fostering Connections Act. This report provides tentative evidence to suggest that in that year, the PCA program has contributed to an overall increase in exits to permanency and, specifically, relatives becoming legal guardians. In fact, these recent increases reversed a trend where exits into permanency had been on the decline. There are a number of ways to encourage the use of PCA by relatives in order to increase permanency for children. If the state hopes to continue this increase, we recommend that the licensing process to become foster care parents be made more efficient. (To learn more about the foster care licensure process, see our report [Licensing Relatives as Foster Parents](#)).²²

While legal guardianships with relatives have increased, exits to relative adoptions have decreased. This decline may be related to a shift in relatives moving from adoption to legal guardianship. Providing financial support for relatives who choose to assume legal guardianship seems to be contributing to increases overall permanency. But, if states increase legal guardianships at the expense of adoptions, states may risk losing the important federal dollars allocated to them for increasing permanency through adoptions. That may mean less money for states to invest in the child welfare system. So that states are not penalized for implementing federal law, the federal government needs to support states' efforts to increase overall permanency and not just one form of permanency (i.e. adoption).

This is certainly not the end of the story. Much more work needs to be done to evaluate whether data presented in this report represent a longer-term trend or a one-year adjustment. These initial findings do, however, call for close examination in the years to come.

Endnotes

- 1 In this report, we use the term relative to include traditional relatives and DFPS's category of fictive kin, or those family friends that have a close relationship with the child.
- 2 Technically, the child care placing agency hold the license and the foster home is "verified" as being in compliance with applicable laws and regulations. For the purposes of this paper, we will use the more colloquial term "licensed" rather than "verified".
- 3 Burstain, J. (2009). Child Protective Services and the 81st Legislature. Center for Public Policy Priorities Policy Page. <http://www.cppp.org/research.php?aid=899>.
- 4 Burstain, J. (2010). Implementing the Permanency Care Assistance Program. Center for Public Policy Priorities. <http://www.cppp.org/research.php?aid=966>.
- 5 See note 4.
- 6 In Kinship Placements where the relative is not a verified foster parent, relatives receive up to \$500 per year per child until the child is 18 if their income is below 300% of the federal poverty level (e.g., approximately \$33,000 annually for an individual or \$67,000 for a family of four). After the child exits DFPS custody, a relative caregiver that becomes a permanent guardian prior to PCA would also receive up to \$500 per year per child for up to three years after guardianship (i.e., Permanent Managing Conservatorship) ends. To learn more, see <http://bit.ly/PvqWiH>.
- 7 How a child exits the system is influenced by many factors including, but not limited to, whether the child can return home to the parent, whether parental rights have been terminated, or whether the child is eligible for adoption.

Early Evidence from the Field

- 8 See note 4.
- 9 The relative is paid \$4800 a year for a child at a basic level of care and \$6540 a year for a child at a moderate, specialized or intense level of care.
- 10 Burstain, J. (2008). New Federal Foster Care Legislation: What it Means for Texas. Center for Public Policy Priorities. <http://www.cppp.org/research.php?aid=790>.
- 11 Burstain, J. (2011). Licensing Relatives as Foster Parents. Center for Public Policy Priorities. <http://www.cppp.org/research.php?aid=1113>.
- 12 See note 11.
- 13 Testa, M.F. (2008). Subsidized Guardianship: Testing the Effectiveness of an Idea Whose Time has Finally Come. Children and Family Research Center. See also Subsidized Permanent Guardianship Assessment and Evaluation, Submitted to the Tennessee Department of Children and Family Services on January 15, 2010 by Children and Family research Center and Westat.
- 14 See note 11.
- 15 In addition to the permanency exits of legal guardianship and adoption, reunification exits (the child exits to DFPS custody to return home) also contributed to the overall increase in permanency in 2011. Reunifications followed a similar trend as the overall pattern of exits: declining from 13.3% in FY 2008 to 9.6% in FY 2010 and then increasing to 11.7% during FY 2011.
- 16 Testa, M.F. (2005). The Quality of Permanence – Lasting or Binding – Subsidized Guardianship and Kinship Foster Care as Alternatives to Adoption. Virginia Journal of Social Policy and The Law, 12, 499-534
- 17 See note 4.
- 18 Testa, M.F. (2004). When children cannot return home: Adoption and guardianship. The Future of Children, 14, 115-129. bit.ly/Uc2fwb.
- 19 42 U.S.C. §671(a).
- 20 Although the law allows states to set a lower rate for legal guardians, in practice, it does not work. Maryland and North Carolina each had a guardianship assistance demonstration project that set a lower rate for legal guardians. Experience in both states was that doing so made it difficult, if not impossible, to attract anyone into the program because of the attendant financial loss. Synthesis of Findings from State Assisted Guardianship Title IV-E Demonstration Projects (September 2005). Administration of Children and Families. (Available at: <http://1.usa.gov/Rt45sl>).
- 21 42 U.S.C. §673(d)(3)(A)(ii).
- 22 See note 11.

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