

GRANDPARENTS RAISING GRANDCHILDREN

COMMON LEGAL ISSUES

This legal manual is written and distributed by:

LAKESHORE LEGAL AID

803 10th Ave Suite C
Port Huron, MI 48060
(810) 985-5107

Health Law and Public Benefits Section

Edited and Written by:

Center for Civil Justice

Jacqueline Doig and Terri L. Stangl
Attorneys at Law
320 South Washington, 2nd floor
Saginaw, Michigan 48607
(517) 755-3120

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originally written by:

The Center for Civil Justice
Jacqueline Doig and Terri L. Stangl
Attorneys at Law
320 South Washington, 2nd floor
Saginaw, Michigan 48607
(517) 755-3120

through the support of:

The Genesee County Family Coordinating Council
801 Tuuri Place, Suite 232
Flint, MI. 48503
(810) 341-6775

I. INTRODUCTION

The purpose of this manual is to address frequently asked questions regarding the care of minor grandchildren by their grandparents.

The portions of the manual dealing with financial assistance were revised in July 1997, February 2001, March 2002, and February 2006, to reflect many of the changes resulting from “welfare reform”. Additional changes are expected and it is always best to supplement the information in this manual with updated information and legal advice.

If the grandparents are caring for one or more minor grandchildren in their home, it may be necessary for them to make certain educational, medical or financial decisions for the children. Generally, the biological parents have the power to make these decisions. However, when the children live separate from the biological parents, the law allows the custodial care-giver, in this case the grandparents, to make these decisions by agreement with the parents or a court order.

This manual offers guidance to assist the grandparents in establishing their decision-making power for their grandchildren when the parents are unwilling or unable to do so. This manual also provides basic information about private and public programs that offer, among other things, cash assistance, child care assistance, nutritional assistance and medical assistance. Many of the social services agencies that offer these programs require the grandparents to be income eligible to receive help.

This legal manual is intended as a guide to assist grandparents in establishing their custodial rights. The information contained in this manual is not intended to be a complete recitation of the laws, policies and procedures on grandparents caring for grandchildren.

Therefore grandparents should not make any decisions based on this manual without getting current legal advice.

II. ADDITIONAL ASSISTANCE

Various sections throughout this manual suggest that the grandparents should consult with an attorney or seek help from the Community Dispute Resolution Center in their area. The following is a list of sources for additional assistance:

Possible Sources of Free Legal Information or Assistance

Legal Services Offices -- *Lakeshore Legal Aid* provides free legal assistance to person over the age of 59 in the counties of Arenac, Bay, Clare, Gratiot, Gladwin, Genesee, Huron, Isabella, Midland, Saginaw, St. Clair, Sanilac and Tuscola. Lakeshore also provides free legal assistance to low income persons in the same counties, as well as Macomb County. Lakeshore Legal Aid can be reached at **1-888-783-8190**. If the grandparents are 60 or older, or if they are low income, and live outside of Lakeshore's service area, they may still qualify for free help from another local legal aid program in their area. The yellow pages lists legal services offices, according to geographical location, under attorneys, or you may call the State Bar of Michigan Referral Services at 1-800-968-0738.

Legal Hotline for Michigan Seniors -- Grandparents 50 or older may be eligible for a free phone consultation. Call 1-800-347-5297.

The Center for Civil Justice -- The Center posts “issue alerts” regarding public benefits on the world wide web at <http://www.mplp.org>.¹ Call 1-800-724-7441. They also provide a food stamp helpline where individuals can call to see if they might be eligible for food stamps. Call 1-800-481-4989.

Michigan Protection and Advocacy Services -- If the grandchild is developmentally disabled or suffers from a mental illness, the grandparents may be eligible for free or low cost legal help. Call 1-800-288-5923.

Private Attorneys

If the grandparents are not able to receive free help from one of the agencies listed above or they want to speak with a private attorney, they can receive a free or low cost consultation from a private attorney. The local Bar Association may have a lawyer referral program or the grandparents can call the **Michigan State Bar Association** at 1-800-968-0738.

Problems with protective services, foster care or adoption services

If there are any problems with the services or staff working in the protective services, foster care or adoption services divisions of the Department of Human Services Department of Human Services, the aggrieved party can file a complaint via the telephone to the Children’s Ombudsman in Lansing. This office will investigate complaints.

The Children’s Ombudsman
1-800-MICHFAM (1-800-642-4326) or 1- (517) 373-3077.

III. CUTTING THROUGH “RED TAPE”

¹ *Michigan Connections* is available by subscription and provides information on policy changes and advocacy ideas for low income persons and the agencies who serve them. Agency staff or the grandparents can call for a sample issue.

An Introduction to Advocacy with State Agencies

Working through state and federal paperwork can be easily confusing and frustrating. Consulting an attorney to assist in the paperwork may be helpful and necessary. However, there are some steps that the grandparents can do to protect their rights until they can consult with a legal advocate. The following section reviews some tips the grandparents may want to consider throughout this process.

Communication With The Caseworker

When a grandparent applies for money, health insurance or other service from the Department of Human Services, the grandparent will be assigned a caseworker. Communication with this caseworker is the key to getting the necessary help and information. If the grandparents are confused by any procedure or have a question, they should call their caseworker immediately. Caseworkers will assist them in obtaining certain verifications, information and appointments.

If the grandparents have a scheduled appointment with their caseworker, it is important that they attend the meeting. If it is absolutely necessary to cancel an appointment with the caseworker, the grandparents should do so well in advance so that it is possible to schedule another appointment. Also, the grandparents should communicate the reason for the missed appointment since the caseworker may be able to assist in resolving the problem.

If there is a problem with their case or caseworker, the grandparents should first attempt to resolve the problem with their caseworker. If they are unable to reach a resolution, the grandparents should call the caseworker's supervisor. If the problem remains unresolved, the grandparents may want to request a hearing. *See: "Requesting a Hearing,"* below. It is very important when applying for benefits, that the

applicant do so in writing, even if the caseworker says that the grandparent is not eligible. Without a written application and denial of benefits, there is no right to a hearing. **Requesting a Hearing**

If the grandparents disagree with a decision made or procedure taken at any stage of their case, they may request a hearing from the appropriate agency. The following is a non-exclusive list of reasons grandparents may request a hearing:

- Denied benefits
- Benefits cut or reduced
- Processing of application exceeding expected period
- Did not receive all entitled benefits
- Dispute as to procedure or requirements
- Denied entitled service; e.g., child care help, help getting transportation to doctors and hospitals, etc.

If the Department of Human Services (DHS) or Social Security Administration (SSA) is taking an action, they must send notice to all parties involved. The notice should be sent before the change in benefits begins. Most notices indicate that the grandparents can request a hearing if they think the decision or change is improper.

If the grandparents receive a notice of change in benefits, they may be able to stop the change until a hearing is held. The grandparents must request a hearing within the time period indicated on the notice. This date is usually about 10 days after the notice was sent. In most cases, if the grandparents request a hearing by the required date, their benefits will not change until a decision is rendered from the hearing. However, if the grandparents lose at the hearing, they may have to reimburse the agency for the benefits they received. This is usually done by cutting future grants by 10%.

When requesting a hearing, the grandparents may want to request an “in-person ” hearing. Otherwise, the hearing office will schedule a telephone hearing. *See “Hearing Process,”* below.

The grandparents should keep a copy of the notices received from the agency for their records. If they request a hearing, the grandparents should consult with an attorney or legal professional before the hearing. *See* “Where to Go for Help,” above.

The Hearing Process

After submitting a hearing request, the agency will send a written “hearing summary.” This is a summary of the Department of Human Service’s reasons for its action. The grandparents will be able to go to a pre-hearing conference with the caseworker and supervisor in an attempt to resolve the problem.

The parties will also receive a notice of the time and day for the hearing. The hearing will be by telephone unless the grandparents call the number on the notice to ask for an in-person hearing. Generally, if the hearing is by telephone, the grandparents and the DHS workers will be in the local DHS office, but the Judge will be in Detroit or Lansing. Telephone hearings are usually scheduled faster, but many people prefer to see a Judge face-to-face.

If the grandparents represent themselves at the hearing, they should bring any and all documents and/or witnesses so that the Administrative Law Judge is aware of all the evidence. If the grandparents want a telephone hearing, they should ask the local DHS office to mail a copy of their papers to the Judge so that the Judge can look at them during the hearing.

In general, the grandparents should be advised to consult with an attorney or other legal advocate prior to any hearings. The grandparents should do this as soon as they request the hearing so that their legal advocate will have time to prepare.

IV. ESTABLISHING THE RIGHT TO MAKE DECISIONS FOR THE GRANDCHILD

When grandparents care for minor grandchildren, it may be necessary to make certain decisions for their grandchildren. The grandparents must be granted the power to make these decisions, either through an agreement with the parents or a court order. If the grandparents are in contact with the children's parents, the parents can sign-over their decision making power. If, however, the parents are not involved or will not sign the necessary documents, the grandparents will have to ask the court to grant them the power. This is done by a "Motion".

INFORMATION REGARDING THE GRANDCHILD'S RECORDS

Release of information forms

Many agencies and offices have a legal duty to keep information about children private. They are not allowed to release information to anyone other than a parent or legal guardian, unless the parent gives legal permission for the release. This is an important protection for children, however, it is a major obstacle that prevents grandparents caring for their minor grandchildren from accessing necessary school or medical records.

A *Release of Information* form permits the grandparents to receive confidential information about grandchildren in their care. This form must be signed by a parent. It shows that the parent gives the grandparent permission to ask for and receive the same information about their grandchild that the parent could receive.

Examples of Release forms are attached in the Appendix.

A release of information form is a good form to use if:

- _ the grandparents have contact with the parent
- _ the parent will agree to sign the form
- _ the grandparents and the parent only want the grandparents to receive information and not the power to make any decisions

The parent does not have to agree to sign the release form. If they do, however, the grandparents can receive the information until the stated expiration date on the form or until the parent revokes permission.

POWER TO MAKE CERTAIN DECISIONS REGARDING THE GRANDCHILDREN

Parental powers of attorney

A *Parental Power of Attorney* is a form that gives the holder the legal right to do things that a parent could do. This can be important in certain situations. For example, if the grandchildren need medical treatment, the doctor or hospital may want to deal only with someone who has the legal power to make decisions. The grandparents may not be able to sign papers approving medical treatment that a grandchild needs while in their care. The parental power of attorney is a legal document signed by the parent authorizing the grandparents to take certain actions or make certain decisions concerning the care of the grandchildren. The power of attorney can list specific types of decisions that the grandparents have the power to make, such as medical decisions. It can also grant the grandparents broad decision-making power similar to the parents. The grandparents do not need a lawyer to get a parental power of attorney, however, they should always be mindful that they can contact an attorney to assist them at any time during the care of their grandchild. *Samples for a Power of Attorney are included in the appendix.*

A Parental Power of Attorney is good to use if:

- _ the child's parent is willing and available to sign the forms
- _ the grandparents need to make decisions for the child
- _ the grandparents need this power for an extended period of time
- _ the grandparents and parents want the parent to be able to regain power quickly at a later time
- _ if the grandparents or parents want to limit the power to certain issues
- _ the parties do not want a court involved

Michigan law says that a parental power of attorney is valid for six (6) months. If parties involved want to limit the time period, they should indicate as such on the form. If parties want to extend the period beyond the six (6) months, the parents will have to complete and file another form at the end of the 6 months.

A parental power of attorney can be modified or revoked at any time by the parent. The parent must sign another document indicating that he or she revokes the powers previously given to the grandparents.

The law provides that there are certain decisions that a parent cannot grant the grandparents through the use of a parental power of attorney. For example, if the grandchild is a minor who needs permission from a parent to marry, the parental power of attorney will not give the grandparent that power.

A SPECIAL POWER OF ATTORNEY will give the grandparents the legal power to do the specific things listed in the document granting permission. *Examples of a Medical Special Power of Attorney and an Educational Special Power of Attorney can be found in the Appendix.*

A GENERAL POWER OF ATTORNEY is similar to a special power of attorney, however it grants the grandparents similar rights as a parent regarding the grandchildren's health, support, care and well being. It does not grant standing in a custody suit. Again, it can be written and signed without the help of a lawyer, and does not need court sanction. *An example can be found at the end of this booklet in the*

Appendix.

Limited Guardianships

If a more formal document supervised by the Court is necessary, the grandparents and parents can motion the Probate or Family Law Court and obtain a Limited Guardianship. This is described in detail in the next section below.

WHEN A PARENT IS UNWILLING OR UNABLE TO GRANT DECISION-MAKING POWER TO THE GRANDPARENTS

Guardianships are serious matters. As a guardian, the grandparent steps “into the shoes,” of the parent. Decisions surrounding guardianships should be made carefully and if possible with the advice of an attorney. In general, any person interested in the welfare of a minor child can petition the Court to request a guardianship. A guardianship removes specific powers that the parents have over a child and transfers them to the guardian. To become a legal guardian, the grandparents must petition the Court. Procedurally, the grandparents will have to file a petition. The Court will decide if their situation is appropriate for a guardianship. If the court so determines and the grandparents are appointed as a guardians, the only way to discontinue the guardianship is to ask the court to terminate the guardianship. The Court will approve a guardianship only in certain situations. The law describes these situations. There are two types of guardianships, a “limited” guardianship and a “full guardianship.” If you ask the Court for a guardianship, you will have to show the Court that you qualify for the type of guardianship that you want. Each type of guardianships is discussed separately.

What are guardianships and when are they available?

Limited Guardianships

A Limited Guardianship is available only if the parents agree. The court papers must be signed by the grandchildren's parents who must VOLUNTARILY GRANT guardianship to the grandparents. Both parents, even if only one parent is the sole physical custodian, must agree to the guardianship.

The proposed limited guardian(s), in this case the grandparents, and the parent(s) must agree to a "placement plan" which outlines the following information:

1. The reasons for placement
2. Visitation and contact plans between the parents and child
3. The proposed duration of the guardianship
4. Who will support the child and how
5. Any other agreements regarding the child and the plan

The court determines the sufficiency of the plan and either approves or rejects the plan. Once the plan is established, it cannot be changed unless the Court agrees.

If the grandchild's parent has been accused of abusing or neglecting the grandchild, someone at the Department of Human Services, Friend of the Court or the Court itself, may suggest that the grandparents become the limited guardians in order to provide a safe home for the grandchild. Sometimes a DHS worker may propose a limited guardianship to a grandparent as a way to avoid more formal Court proceedings.

If the grandparents are asked to become a limited guardian by DHS because they believe the grandchild has been abused or neglected by a parent, the grandparents should speak to an attorney before agreeing to any procedures or arrangements. Even if the grandparents are willing to take the child, it may be better for the child and the child's parents if the grandparents become *foster parents* instead of limited guardians. Federal law states that if a child is in foster care, DHS must provide financial help and services, including cash assistance, to foster families. DHS must also provide special programs and services to the parents, including counseling and substance abuse help, in order to help the parents become reunited with

their children.

If the child is placed with the grandparents as guardians rather than foster parents, neither the grandparents nor the child's parents will be eligible for this help. In fact, as the guardians, the grandparents may be required to use their own income to support the grandchild before the grandchild may qualify for certain kinds of public assistance. This may not be a financial problem for some grandparents. In most cases, however, it will create a heavy financial burden on the grandparents. The grandparents may determine that it is better to be a guardian than to have protective services involved. However, if the grandparents want the option of receiving foster care help for themselves, or their grandchild's parents, a guardianship may not be the best option. Since the choices can confuse some grandparents, and there is not a "best" choice for everyone, they should consult an attorney before agreeing to be a limited guardian.

Full Guardianships

Grandparents can request the Court to grant them a full guardianship in two situations:

1. The parents of the child have let the child live with the grandparents, but have not given the grandparents legal authority (such as a power of attorney) to care for the child.

OR

2. Both parents' rights have been suspended or terminated by:

- (a) A prior court order,
- (b) Death,
- (c) Court order of mental in competency,
- (d) Disappearance, OR
- (e) Jail, prison or other similar confinement.

How do the grandparents petition for a guardianship?

Guardianships are handled by the “Family Court.” Many local courts have pamphlets or handouts prepared to answer questions regarding guardianship matters. The Probate or Family Court, and many attorneys, also have forms for petitioning the court for a guardianship. The grandparents may be able to fill the forms out on their own, but if they have questions or need assistance, they should contact an attorney.

Once the forms are completed, they must be filed with the Probate or Family Law Court. At this time, a date for a hearing before the Judge should be requested. If the grandparents receive public assistance or have very low income, they can also file a fee waiver that suspends the Court filing fees. This document is called an “Affidavit of Indigency” and is available at the Court. The Probate Court will schedule the date, and it is up to the Petitioner to make sure all interested people are notified of the hearing. There is also a special form to notify interested parties in the case. Again, a lawyer can assist with this procedure to be sure all the requirements are met.

At the hearing, the Judge will decide whether the requirements are met, and whether to grant the petition.

What powers, duties and liability does a guardian have?

If the grandparents are guardians for their grandchild, they must care for the child as if the child were their own. The grandparents’ obligations, duties and powers will relate both to the child’s well-being and the child’s property. The specific powers and duties will depend on the type of guardianship granted.

Full Guardianship

A. The Child’s Person

1. Duties:

- A guardian must facilitate the child's educational, social and other activities.
- a guardian must authorize medical or other professional care, treatment or advice.
- Usually, a guardian has to file reports with the court on the condition of the child and of the child's property in the guardian's possession or control.
- If the child is under six years old, the report must be filed and the guardianship must be reviewed every year.

2. Powers and Rights:

- A guardian may sue any party responsible for support, or to pay what is due for the welfare of the child.
- A full guardian may, under certain circumstances, consent to the minor child's marriage.
- Under certain circumstances, a guardian may consent to the adoption of a minor child, or release the child for adoption. If adoption is an issue, the grandparents must see an attorney.

3. Liability:

- A guardian cannot be sued for the acts of the child solely because the guardian stands in the position of a parent.
- A guardian cannot be sued by the child for injuries resulting from the guardian's consent to medical or professional care, treatment or advice, unless it would have been illegal for a parent to have consented.
- A guardian is required to use reasonable care to carry out the guardian's duties. A failure to carry out the duties reasonably could subject the guardian to legal liability.

B. The Child's Property and Money.

- The guardian must take "reasonable" care of the child's personal property, and if necessary, file a lawsuit to protect the child's property.
- If money is received from the child's property, or from any source for the benefit of the child, that money must be applied first to the child's current needs for support, care and education. If money is left after those needs are met, then guardians must do their best to conserve the remaining money ("excess") for the child's future, by saving or investing it reasonably.
- Sometimes a "conservator" (a person to care specifically for the money or property of the child) is appointed as well as a guardian. In that case, the guardian takes care of the support and education needs of the child, then pays the rest (the "excess") to the conservator, who has the duty to take care of the money by investing and saving it.

Limited Guardianships

A limited guardian must follow the Limited Guardianship Plan which must be part of the Limited Guardianship Petition and approved by the court.

A limited guardian has all the rights, powers and duties of a full guardian, EXCEPT:

- a. as modified by the plan, and
- b. a limited guardian does NOT have the power or right to agree to the marriage of a minor child, and
- c. a limited guardian does NOT have the power or right to release the child for an agency adoption, or to consent to the child being directly adopted. If adoption is an issue, the grandparents must see an attorney.

OBTAINING CUSTODY OF THE GRANDCHILD

At this time, the law does not allow grandparents to file independently to seek custody of a grandchild or to participate in a custody case between the parents, except in very limited circumstances. If any of the following situations exist, and the grandparents believe custody could be appropriate in their case, they should see an attorney to determine whether they have a right to file an action to sue for custody and to discuss the ramifications for doing so.

When the grandparents can sue for custody?

1. The grandparents are a full legal guardian of the child (See C-1 above),
2. The grandparents are a limited guardian of the child AND the parents have not complied substantially with the Limited Guardianship Plan (See C-2 above),
3. The grandchild is being adopted by the grandparents, AND the child has been in their care for a minimum of 6 months, AND the adoption order of placement is still in effect at the time the custody suit is filed, OR
4. The child's biological parents have never been married to each other, AND the child's custodial parent dies or is missing, and the other parent has NOT been granted legal custody under a court order.

GRANDPARENTS' VISITATION RIGHTS

This area of law is currently in flux. Generally, the law indicates that where parents are married and the family situation is basically intact, the Courts should stay out of family matters. It may be up to the grandparents and their family to find ways outside of Court to resolve misunderstandings that lead to denials of visits.

In a January 2002 decision, the Michigan Court of Appeals determined that a Michigan law allowing for limited visitation time between grandparents and grandchildren is unconstitutional. The Court held that the lack of guidance and defenses for custodial parents in the language of the law leaves the statute vague and fatally flawed. The court rendered the statute unconstitutional because it violated the parents' fundamental rights under the federal constitution to rear their children. In response to this decision, the legislature passed new legislation. The new law allows grand parenting time in the following situations:

- (a) An action for divorce, separate maintenance, or annulment involving the child's parents is pending before the court.
- (b) The child's parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled.
- (c) The child's parent who is a child of the grandparents is deceased.
- (d) The child's parents have never been married, they are not residing in the same household, and paternity has been established by the completion of an acknowledgment of parentage under the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, by an order of filiation entered under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a court

of competent jurisdiction that the individual is the father of the child.

(e) Legal custody of the child has been given to a person other than the child's parent, or the child is placed outside of and does not reside in the home of a parent.

(f) In the year preceding the commencement of an action under subsection (3) for grand parenting time, the grandparent provided an established custodial environment for the child as described in section 7, whether or not the grandparent had custody under a court order.

If a father has not acknowledged paternity of a child, the paternal grandparents may not seek grand parenting time.

There are several exceptions to the grand parenting time statute. It is very important to seek legal help if you are asking for grand parenting time. Also, because the law is still new, there is disagreement over whether it meets certain constitutional standards.

V. OBTAINING FINANCIAL ASSISTANCE FOR RAISING A GRANDCHILD

This section provides information regarding programs that may be available to provide cash assistance to help grandparents raise their grandchild. However this is an area where there has been a great deal of change.. Michigan has clearly stated that it will be changing many of its programs in over the next few years. This means that there will be constant change, both large and small.

Currently, many of the public assistance programs in Michigan are operating under federal law, the Social Welfare Act, and administrative rules. Each year some of the rules may change as part of the annual appropriations bill. The grandparents should be mindful that even if they or their grandchildren were denied assistance in the past, they may be eligible under the newer policies and

rules. They should seek legal advice if the grandparents or grandchildren were previously denied assistance under these programs. *See* “Where to Find Additional Help.” The grandparents can also advocate their rights on their own. *See* “Cutting Through the Red Tape.”

FAMILY INDEPENDENCE PROGRAM

The largest and most common cash assistance program for children is the Family Independence Program [“FIP”].

In Michigan, the Department of Human Services [“DHS”] runs the FIP program. The grandparents can apply for FIP at any DHS office. If FIP is denied or reduced, the grandparents can request a fair hearing to dispute the action.

In general, if the grandchildren are financially needy, they will be eligible to receive FIP in Michigan. Financial need is based on the income and assets of the child and other relatives in the home that the law requires be counted. DHS may also count the income and assets of others in the household, depending on who is in the home and who is applying for FIP.

People whose income and assets must be counted are called “the income group” or the “asset group.”

In addition to the rules about financial need, there may be other rules that require the grandparents, as the child’s caretakers, to follow certain procedures in order to receive a FIP grant. These non-financial rules also are discussed below.

Finally, there are rules about “verification” that determine what type of paperwork and proof the grandparents must give to DHS.

Generally

The grandchild must be “dependent”, i.e. the child must be under age 18 or an 18 or 19-year-old full time high school student who expects to graduate before reaching the age of 20.

The grandchild must be living with a “specified relative”. Grandparents meet this requirement as long as the child’s parents or step-parents are not living with them.

The grandparents will have to show their grandchild’s birth certificate and Social Security number.

Showing Financial Need

The FIP Group

Any of the following people who live with the grandchild will have to apply for FIP, with the grandchild, and the income and assets of these people will affect the grandchild’s eligibility for FIP:

- Either of the grandchild’s parents or stepparents
- The grandchild’s sisters, brothers, half-sisters and half-brothers, or step siblings if they are “dependent” (see section 1 above) .
- The parent(s) of the grandchild’s half-sisters and half-brothers
- The grandchild’s child
- Spouses, and “dependent” children if the grandparents apply for FIP for themselves as a caretaker relative”

The income and assets of these people will be included only if they live in the home with the grandchild. If any of the people listed receives SSI or Foster Care payments, they are not included in the group. Special rules apply if the parent of the grandchild is unmarried, under age 18, and living in the home with the grandparents and grandchild. For example, the grandparents may be required to receive that parent’s FIP check as a payee.

If the grandchild has income and assets, these will affect whether the grandchild, or others in the FIP group, are eligible for FIP. This will not be true, however, if the grandchild receives Supplemental Security Income (SSI).

If the grandparents are low income, they will not be eligible to receive FIP as part of their grandchild's group if either of their grandchild's parents or stepparents are living in the home, unless the parent is their own child and is still an un-emancipated minor or unless the grandparent has been awarded a guardianship by the court. In those cases, the grandparents must be the FIP grantee.

DHS will count the income of the grandchild's "group" members (see section 2 a. above), to determine whether the grandchild is eligible for FIP and, if so, how much assistance he/she should receive. DHS looks at gross income (before taxes and other deductions are taken out) for a one month period. DHS estimates the grandparents monthly income based on the best information it has at the time. If the grandparents are paid weekly, DHS will multiply their weekly income by 4.3 to come up with the monthly income.

Some income is not counted. For example, the first \$200 of a person's gross (before tax) earnings from work, and 20% of the remainder, will be excluded. Also, the first \$50 of current child support paid to the group, in the previous month, will not be counted. If the grandparents have to pay for work-related child care, they may be eligible to have at least part of their child care paid by DHS directly to a child care provider, if that provider is approved by DHS. If their child care costs are more than the amount paid by DHS, the grandparents will not be able to deduct the difference from their countable earnings for FIP. The grandparents should, however, report this difference if they receive Food Stamps because it will be taken into account in that program. Partial help with work-related child care costs is also

available from DHS even if the grandparents do not receive FIP, as long as their income is relatively low.

“Lump Sums” or “Windfalls”

In the past, a one-time payment received by a group member, while that member is on FIP, usually would be considered a “lump sum” that could disqualify the entire group from FIP for many months. An example of a lump sum would be a settlement from a lawsuit or a worker’s compensation claim. DHS would divide the total amount of the payment by the group’s “need standard” (an amount that is slightly more than the FIP payment amount), and would cut the group off of FIP for that number of months. Under welfare reform, DHS has eliminated the “lump sum” or “windfall rule” for FIP. The lump sum is now considered an asset. The rule will still disqualify a family from receiving Child Day Care payments for up to 12 months.

Assets

To qualify for FIP, the group must have less than \$3,000 in countable assets. Many types of non cash assets are not counted, such as a group member’s home, cars and trucks, land, boats, recreational vehicles, life insurance, burial plots, household furnishings and personal belongings. In most case, only assets that will be counted are:

- _ cash (including checking and savings accounts)
- _ investments (including stocks, bonds, CD’s, treasury bills but individual development accounts are excluded) retirement plans (including IRA’s, 401(k) and 403(b) plans)
- _ trusts

DHS will need information about any of the assets listed above that may have a group member’s name on it or which belongs to a group member. If the group member’s name is on the asset, it will be counted unless s/he can prove that s/he does not have access to the asset or the value of the asset. An

example of this would be a bank account that is owned jointly by a group member and a person outside the group, which requires both signatures for a withdrawal. If the owner who is not in the group refuses to allow the group member to withdraw from the account, then the money in the account should not be counted in the FIP case.

Non-Financial Factors

Verifying Absence of The Grandchild's Parent

DHS policy on proof of a parent's absence from the home has changed several times. Currently, policy states that the DHS case worker usually should take the grandparents word that the parent is not in the home. The grandparents do not have to prove the parent's absence unless their statements are "questionable" (for example, if the parent has given the grandparents address as his/her home). In the past, DHS workers had to insist on certain types of written proof that the parent was not in the home. In some cases, workers still use this policy and may automatically ask for written proof. The grandparents should seek legal advice immediately if they are asked for verification that they cannot provide or if it is difficult for them to obtain.

School Attendance

If the grandchild is age 16 - 19, the child must be attending high school

Cooperation with Efforts to Obtain Child Support

The grandparents and grandchild generally must cooperate in establishing paternity (if necessary) and seeking child support for the grandchild from the absent parents. This includes attending appointments, providing any known information about where the parent(s) live(s), etc. The grandparents do not have to cooperate if they can prove good cause. Good cause exists for not cooperating to obtain support or prove

paternity if: (1) danger of serious harm to the grandparents or the grandchild, (2) pending adoption proceeding, and (3) some other valid reasons

Work Requirements.—the “Work First” Program

Michigan has a “Work First” program, in which most adult recipients of FIP are required to participate. If the grandparents are over 65, or the grandparents can prove that they are disabled or applying for SSI, they should be exempt. In addition if the grandparent can bring proof from a doctor that they are needed to care for a spouse or child with disabilities, then the grandparent may also be excused from this requirement. If the grandparents are denied an exemption for which they think they are entitled, they should seek legal help. If the grandparents are applying for FIP for themselves, in addition to assistance for their grandchild, the Work First rules require them to find work or do some type of approved community service/job search/job training activity for up to 40 hours per week. The grandparents will have to accept almost any offers they receive for new jobs or increases in work hours up to 40 hours per week. The grandparents will have to attend an orientation at a local “Work First Agency” explaining these work requirements. If they apply for assistance for themselves, the grandparents FIP application may be denied if they do not attend orientation.

If the grandparents are working or attending DHS orientation or work programs, they may be eligible for child care and transportation assistance. The grandparents should ask their Work First or DHS worker about these benefits. If the grandparents are required to attend work or training, but are denied help with necessary transportation or child care, seek legal advice.

It is important to note, if an adult group member fails to comply with work requirements, this may result in a complete loss of FIP for the entire group for a minimum of one month. There are many changing

and complicated rules that apply to the Work First program, so if the grandparents or a member of a household receive a notice that seems incorrect, unfair or confusing, the grandparents should seek legal advice immediately.

Citizenship or Immigration Status

The law has changed so that many immigrants can no longer receive cash assistance or food stamps even if they are here legally. The grandparents will be asked to verify that they and anyone else who is applying for assistance are citizens. In some cases, it may be necessary to demonstrate when the person immigrated to the United States or their employment history in the United States. If the grandparents have questions related to their immigration status or how it may affect the eligibility of the grandparents or their grandchild for assistance, they should again seek legal advice. However the laws concerning this area can be hard to understand, and it is recommended that you seek legal assistance.

Reporting Changes and Information

The grandparents will have to report information about changes in household income, assets, employment, and other factors. Depending on the type of change that occurs, there may be a delay in adjusting the FIP benefits to reflect the change. Delays can be minimized by reporting all changes as soon as possible, but no later than 10 days after the change occurs. If the 10 day reporting period overlaps 2 months, the grandparents should be careful about the month when they report changes. If the grandparents' income increases, it is better to report it to DHS in the second month. If the grandparents' income decreases, it is better to report it during the same month because, otherwise, an adjustment in will be delayed a full month. In all cases, however, the report must be in within 10 days.

Vendor Payments and Deductions from FIP

The grandparents may choose to have DHS pay their rent or utilities directly, through “vending”. Having DHS pay the grandparents’ utility bills through vending may provide them with some protection from shut-offs during the winter months and help obtain additional energy assistance.

In some very limited cases, the grandparents may be forced to have vendor payments. These exceptions are very narrow. The grandparents should seek legal advice immediately if all or part of their check is sent to someone else without their request. If the grandparents (or someone in their grandchild’s group) have been overpaid ADC assistance in the past, DHS may reduce the grandparents’ ADC grant by a small amount to collect the overpaid amount. They should seek legal advice if DHS attempts to reduce the FIP grant.

If a landlord has a court judgment against the grandparents (or someone in their grandchild’s group) for unpaid rent or damages to a rental property, DHS may send a small part of the FIP grant to the landlord, as payment on the judgment (unless the house was not up to code). Some sections of this rule can be confusing. The grandparents should seek legal advice if they receive notice that their grandchild’s FIP is being reduced to pay a landlord’s judgment. Also they should seek legal advice if a landlord sues them for money.

FOSTER CARE PAYMENTS

The grandparents may be able to receive Foster Care Payments if their grandchild is placed in their home by the Department of Human Services under a juvenile court order that makes DHS responsible for the grandchild. The grandparents will have to meet licensing requirements in order to qualify for Foster Care payments. Foster Care payments generally will be somewhat higher than regular FIP payments.

THE FOOD ASSISTANCE PROGRAM

The Michigan Department of Human Services [“DHS”] determines eligibility under the federally-funded FAP program. To receive FAP, the grandchild (and other members of his/her group, as explained below) must meet both financial and non-financial eligibility rules.

The grandchild’s FAP group will include the grandparents, if they are acting as the grandchild’s parent. If the grandchild is the grandparents foster child, they may receive FAP without having the child in their FAP group however, the grandchild would not be able to receive FAP separately from the grandparents. Depending on who is in the household, others may be included in the group as well.

Currently, the grandparents’ group’s financial need will be based on their housing expenses (up to a monthly maximum), child care costs, and certain other expenses, as well as well as their income (no asset test) If the grandparents are 60 years or older, or a family member is receiving SSI, Social Security, or VA disability benefits, they should also claim deduction for any medical expenses that are not paid for by insurance. DHS can only deduct the medical expenses for the household members over 60 or on SSI, Social Security Disability or VA disability benefits.

In determining FAP eligibility and amounts, DHS deducts the first \$125, for a family of 1-4, \$148 for a family of 5 or \$170 for a family of 6 or more of the group’s income and 20% of any earned income. Adoption subsidies if any are not counted but foster care payments are counted as income.

In addition some legal immigrants may not be eligible for food stamps. Many refugees, asylees, children under 18, and elderly legal immigrants can still qualify. Adults under 65 who are non citizens but are here legally can be disqualified from receiving FAP for the first 5 years after their date of entry to this country unless they are refugees or in a few other categories. Legal immigrants seeking FAP will have to provide information about their immigration status, when they entered the country, any service in the United

States military, and their work history. This information will determine whether the legal immigrant will qualify for FAP. All citizen members of an immigrant's household may continue to qualify for FAP, even if the immigrant does not. The grandparents should seek legal advice if the new immigrant restrictions affect their household's FAP budgets to be sure that the right rules are followed.

SUPPLEMENTAL SECURITY INCOME (SSI)

Supplemental Security Income (SSI) is a federal cash assistance program for elderly and disabled persons. SSI is run by the Social Security Administration. Grandparents can call 1-800- 772- 1213 or visit their local Social Security office to begin the application process for SSI. There is an appeal process if their grandchild is denied assistance or assistance is reduced. They should seek legal advice if they think they need to appeal a decision.

Under welfare reform, some disabled children who had been receiving SSI were cut off. Children with some types of disabilities which create "behavior problems", such as Attention Deficit Disorder and Oppositional-DeDHSnt Disorder, are much less likely to qualify for SSI. It is now more difficult for some children to prove that they are disabled. If the grandchild is denied SSI or receives a notice that SSI is being stopped, seek legal advice immediately.

Welfare reform also has created new rules for the use of any large back payments a child receives after waiting to begin receiving SSI. Grandparents should seek legal advice if they receive a back payment of SSI for their grandchild and do not understand the new rules.

In order to receive SSI, the grandchild must be financially needy (low income, few assets). If the parent is living in the home, some of the parent's income and assets will be "deemed" to the child. In determining countable income for assessing SSI eligibility, the Social Security Administration deducts \$20 of

income. For earnings from employment, the Social Security Administration will deduct the first \$65 plus one half of the remainder. The SSI countable asset limit for an individual is \$2,000.

If the grandchild receives SSI, she or he cannot receive FIP for the same months. In some cases, however, the grandparents may be able to receive FIP as their grandchild's caretaker, even if the grandchild is not eligible for FIP because of SSI. If the grandparents are the representative payee for their grandchild's SSI benefits, they are required to use the SSI benefits in particular ways and may be required to keep records. The grandparents should be sure they understand and are willing to follow the rules about how they can use the child's SSI before they agree to be the Representative Payee.

SOCIAL SECURITY BENEFITS

In some cases, grandchildren may be eligible to receive Social Security benefits on their parent's record, or the grandparents record, or perhaps even on the record of a step-parent or step-grandparent. The grandchild does not need to prove financial need in order to receive Social Security, but will have to prove other factors, as summarized below.

There are many Social Security rules which allow a child to receive benefits under the record of a person who has died, or who has started to receive Social Security disability or retirement benefits. The Social Security Administration looks at the relationship between the child and the person on whose Social Security record the child wants to receive benefits. It also looks at whether that person was supporting the child, unless he or she is the person's natural child.

If the grandchild's parent has worked and paid into the Social Security system, and the parent has died or become disabled, the grandchild may be able to receive Social Security on the parent's record. If the grandchild's parent is receiving Social Security disability benefits, or is dead and had worked while alive,

the grandparents should contact the Social Security Administration to apply for benefits for their grandchild.

If granted, the benefits generally will continue until the child reaches age 18. If the grandchild becomes disabled before reaching age 22, the grandchild may continue to receive Social Security on the parent's record.

In some cases, the grandchild may be eligible to receive Social Security benefits on their record when they become entitled to retirement or disability benefits, or die. If the grandchild's parent is dead or disabled, and that parent was the grandparents' child, and if they provide at least half of the financial support for their grandchild during the year before they begin receiving disability or retirement benefits, or they die, the grandchild may qualify for Social Security on the grandparents' record.

The grandchild can receive Social Security benefits on the record of an adopting parent who receives Social Security disability or retirement benefits, or who dies, if the adoption occurred before the grandchild turned the age of 18. A dependency test will be applied if the adoption occurred after the grandchild became an adult.

CHILD SUPPORT

As discussed above, the grandparents may have to cooperate in obtaining child support for their grandchild from his parents if the grandchild is receiving any form of public assistance. This requirement will be waived if there is good cause not to cooperate. This may be the case if seeking child support from the child's parent may place the grandparents or the grandchild in danger.

If the grandchild is not receiving child support, the prosecuting attorney must assist in obtaining child support for their grandchild if they are the legal guardian or if their grandchild is receiving public assistance. [See the Health Care section.] If the grandchild is receiving public assistance, the child support specialists at the local DHS office should help arrange a meeting with the prosecutor's office. If the grandchild does not receive assistance, the grandparents should contact the prosecutor's office directly and ask to speak with the child support division.

Currently, the first \$50 per month of child support payments, made in the previous month, should be sent to the grandchild while he or she is receiving FIP.

VI. HEALTH CARE FOR GRANDCHILDREN

Meaningful access to health care for the grandchild will depend on both the grandparents ability to consent to medical treatment for the child, and their ability to arrange for payment for the medical services. This section discusses both consent to medical care and payment for care.

CONSENT TO MEDICAL CARE

In order to obtain medical care for their grandchild, the grandparents must have either written permission from the parent(s), or a court order appointing them as the child's guardian. A written authorization, signed by the parent in front of a notary public, will be accepted for up to six (6) months after it is signed. A sample Authorization for Consent to Medical Care form is included in the Appendix.

LIABILITY FOR MEDICAL BILLS

Consent to medical care or guardianship over the grandchild does not make the grandparents legally responsible for the grandchild's medical bills. Grandparents must carefully read any documents they are

asked to sign when seeking medical care for their grandchild. A provider may ask them to guarantee payment of the bills. It is imperative to emphasize that the grandparents are not legally required to agree to such conditions. In general, however, a medical provider may refuse to provide services without payment or a guarantee of payment. If the grandparents sign papers in which the grandparents agree to pay, they may be sued on any unpaid amount.

If the grandchild needs emergency medical care, and the grandparents are authorized to consent to medical treatment, hospital emergency rooms cannot refuse to treat their grandchild in an emergency even if there are not funds to pay for care.

PAYMENT FOR MEDICAL CARE

Realistically, except in emergency room situations the grandchild will not be able to obtain health care unless s/he can pay. In order to pay for the grandchild's medical care, the grandparents may need to pursue both private and governmental insurance. This section provides an overview of the following options:

- Private insurance under a parent's health insurance
- Private insurance under the grandparent's insurance
- Medicaid including "Healthy Kids" program
- Other free or reduced medical care such as free clinics

Remember that each payment option contains advantages and disadvantages. For example, more providers may be willing to treat the grandchild if s/he has private insurance, but the private insurance may have high co-payments or deductibles that the grandparent may not be able to pay. Medicaid may provide more comprehensive coverage, but many providers do not accept Medicaid.

If the grandchild is covered under a private health insurance policy, Medicaid will not pay for medical care unless the private insurance has been billed and refuses to pay.

INSURANCE COVERAGE ON A PARENT'S INSURANCE

The grandchild may be eligible for health insurance coverage through the parent's insurance, even when the grandchild is not living with the parent. Employed parents may have free health insurance coverage available through their employer.

Medical Support Orders

If the grandchild's parents will not voluntarily provide available health insurance, the grandparents may need to seek a court order.

If a court has appointed the grandparents as their grandchild's guardian, or if their grandchild is receiving public assistance (FIP or Medicaid), the prosecuting attorney in their county must help obtain a court order for child support, including medical support. MSA 25.222(1a); MCL 552.451a. Under Michigan's Child Support laws, the court must require a non-custodial parent to provide health insurance for the child if the parent has health care coverage available to them at a reasonable cost as a benefit of their employment. MSA 25.222(2); MCL 552.452. It will be up to the court to decide what is a "reasonable cost".

Obtaining Insurance Payments

Even if the grandchild has insurance coverage, the grandparents may have difficulty obtaining reimbursement for health care costs. Some insurance companies only accept requests for reimbursement from, or issue benefit checks to, the "subscriber", who may be the child's parent. The parent who is the subscriber may be unwilling to sign necessary forms or turn benefits checks over to the grandparents. A

federal law was passed to solve this problem. It allows courts to enter a “Qualified Medical Child Support Order”, allowing the legal guardian or custodial parent of the child to deal directly with the health insurance company and obtain insurance payments directly.

If the grandparents believe they need order, they should seek an attorney to assist them obtain a Qualified Medical Child Support Order. The grandparents should provide the attorney with any available information about the parent’s employment and insurance situation.

HEALTH INSURANCE ON THE GRANDPARENT’S POLICY

The grandparents may have health care available through a current or previous employer, which may provide optional coverage for minor grandchildren living in the grandparent’s home. The grandparents should contact their insurance agent or benefits representative to inquire about this possibility.

MEDICAID

Medicaid Generally

Medicaid is health insurance for low income children, families, pregnant woman, elderly or disabled persons. The state and federal governments combine funds to pay for Medicaid. In Michigan, Medicaid is administered by the Department of Community Health [“DCH”], in cooperation with the Department of Human Services [“DHS”]. DCH handles the actual payments for medical care under the Medicaid program and decides how the program operates in Michigan. DHS processes Medicaid applications and decides whether or not an individual or family is eligible for Medicaid.

There are many different categories of Medicaid available to children in Michigan. The eligibility rules for each category are different, making it very confusing for everyone. Also, the rules change often, and Medicaid for children in Michigan has expanded.

If the grandchild was denied Medicaid several months or several years ago, the grandparents may want to reapply -- the rules may have changed so that they now qualify. If the grandchild was denied Medicaid in the past three months, the grandparents may want to seek legal advice to be sure no mistakes were made. A hearing may be requested to correct any mistakes if the denial was sent within the past 90 days. It is easy for a case worker to make mistakes because the rules are so complicated.

The child may also be eligible for help through MICHild, a program for children with slightly higher incomes than those who qualify for Medicaid. MICHild requires payment of a \$5 per month premium for each family group in order to maintain coverage.

If the grandparents do not have health insurance and are low income, they may now be able to qualify for Medicaid because they have become the relative caretaker of a dependent child.

Applying for Medicaid

Medicaid applications are available at DHS offices, public health departments, and the billing or social work departments of many hospitals or other health care facilities. The application must be submitted to DHS, which then has 45 days to decide whether or not to approve it.

There are two Application forms that can be used to apply for Medicaid for the grandchild: the “short form” MICHild and Healthy Kids Application or the all purpose DHS Assistance form. The short form is easier to complete but it cannot be used to apply for Medicaid for grandparents, FAP or FIP. The longer form can be used to apply for all of these assistance programs and to apply for Medicaid for grandparents.

The only verification that must be submitted if you are applying only for Medicaid for the grandchild is: copy of insurance card if the child has any private coverage, and copy of any immigration papers if the

child is not a citizen and is seeking full Medicaid coverage. (Undocumented or “illegal” alien child will receive coverage for Emergency Services Only if they meet other eligibility requirements.) New federal requirements may make it necessary to submit birth certificates, also. Verification of income will only be requested if the information on the application contradicts other information on file with DHS.

Additional verification, including verification of income, will be requested if the grandparent wants coverage for himself or herself. DHS also will require the grandparents to cooperate with them if they seek a court order requiring one, or both of the grandchild’s parents to help pay for medical bills or insurance.

In most cases, the grandchild will automatically qualify for Medicaid to cover up to three calendar months before the month in which they apply. This retroactive Medicaid is important if there are unpaid, outstanding medical bills for the grandchild in those months. If the grandparents are applying for Medicaid for themselves and they want coverage for months prior to the month in which they apply, they must tell DHS that they have medical expenses from the retroactive period and fill out some additional forms.

Resolving Medicaid Problems

Decisions about the grandchild’s Medicaid -- including a decision that the child is not eligible for Medicaid -- can be appealed through a request for a hearing. Grandparents should seek legal advice if they receive a Medicaid denial or if Medicaid will not pay for particular services.

Questions about Medicaid eligibility or coverage may be available through the recipient helpline: 1-800-642-3195. The grandchild’s DHS case worker also may be able to answer questions.

Medicaid Managed Care

Most Medicaid recipients now receive health care through a “managed care” program.² Each recipient is assigned either to a Medicaid Health Plan (usually a Health Maintenance Organization [“HMO”]). Some people, including children who have very serious medical problems or disabilities and cannot maintain their current treatment in a Medicaid health Plan, may not have to enroll in a health plan. If the grandparents or grandchild are asked to enroll in a health plan and they are concerned about getting continued care, they may want to get legal advice. The Health Plan will assign the child to a primary care doctor who must approve all of the child’s specialist care. The grandparent should try to enroll the child in a Plan with which the child’s doctor participates. The health plan will assign the child to a primary care physician who will oversee all the child’s care, and it is best to try and have the child assigned to his or her current doctor, to assure continuity of care.

The primary care provider should assist the grandparents in getting all the health care that their grandchild needs. The health care provider should refer the grandparents to any specialized care that their grandchild needs. It is important for the grandparents to work with the grandchild’s primary provider, because Medicaid will only pay for health care that is approved in advance by that physician, clinic, or HMO. The primary provider must approve all tests, treatments, and prescriptions, including emergency care. Medicaid will not pay for medical care that has not been approved by the primary care provider.

The Department of Community Health will answer questions about managed care, including how to

² Medicaid managed care will be changing in the near future. Medical providers will be paid on a capitate (dollars per person) basis, rather than by a fee for each service provided. The procedures that Medicaid recipients will have to follow in order to get Medicaid-covered services also will change.

change the QHP/HMO that manages the grandchild's medical care. The toll-free number to call for answers to your questions is: 1-800-642-3195. Each plan has a grievance procedure to be used if there is a problem. If the grandparents have problems getting Medicaid or the Medicaid Health Plan to pay for a service, they can request a hearing at DCH. In either case, it is a good idea to see if they can get help from a legal services office or other advocate.

Medicaid Covered Services and Transportation

Medicaid should cover all necessary medical care that is approved by the provider or HMO that manages the grandchild's health care. Medicaid pays for doctors, hospitals, medical testing, prescriptions, and medical equipment such as wheelchairs.

Some services, such as dental care, intensive mental health treatment, chiropractic care, vision services, etc. are not provided by the Health Plans. When seeking those types of care, the grandparent should be sure to show the Medicaid card to the provider and make sure that they accept Medicaid.

Under federal law, the agencies that run Medicaid [DHS and DCH] also must assure the grandchild's transportation to medical care appointments and to the pharmacy. The Medicaid Health Plan is required to help with transportation to their medical providers as part of their plan. If they receive Medicaid with a "spend down" [See Section 3 b ii below] or are not in a Health Plan for some other reason, the grandparents should contact their grandchild's DHS caseworker to ask to apply for Medicaid transportation assistance. The grandparents should be prepared to explain their transportation problems. If the caseworker approves transportation assistance, the grandparents will have to submit forms from the transportation provider and medical office to obtain payment. The grandparents should seek legal advice if they are denied Medicaid transportation assistance.

Medicaid Health Screening for Children: Early Periodic Screening, Diagnosis and Testing [“EPSDT”]

Any child who receives Medicaid is entitled to health care screening and testing, preventive care, and full treatment of any condition that is diagnosed through the screening program, known as “EPSDT”. Under managed care, these services are supposed to be provided by the child’s Medicaid Health Plan. To arrange for health screening and testing for their grandchild, the grandparents should contact their provider (HMO or doctor). If they have questions, contact the local Department of Community Health. EPSDT pays for all routine, “well-child” check-ups, immunizations or vaccinations, etc. EPSDT is also supposed to help pay for treatment of most conditions identified in the screening, including eyeglasses, hearing aids, etc.

Prior Authorization

Most types of medical equipment and some types of care or treatment will have to be approved in advance by the Department of Community Health, as well as by the grandparents’ health plan. The grandchild’s medical care provider should know when prior approval must be obtained from the Department of Community Health. The grandparents should seek legal advice immediately if they grandchild’s medical care provider states that Medicaid will not approve payment for a necessary test, treatment, or other medical care.

Medicaid as Payment in Full

Some medical care providers will not accept Medicaid. Others limit the number of Medicaid patients that they can treat. When a physician or other health care provider accepts the grandchild as a Medicaid patient, the provider must accept the Medicaid payment as payment in full, except for the amount

of any Medicaid co-payments or deductibles. The physician must tell the grandparents in advance if a particular procedure or service will not be covered by Medicaid. Unless the grandparents agree in advance to have their grandchild receive a non-Medicaid-covered service, the provider should not bill for those non-covered services.

Co-payments

At the time this manual is being written, children on Medicaid in Michigan do not have to pay co-payments for services, but many adults with Medicaid have small co-pays for prescriptions, doctor visits, and hospital admissions.

Retroactive Medicaid Coverage and Medical Bills Paid Before Medicaid Eligibility is Established

It may take several weeks to obtain a Medicaid card once the grandparents have applied. However, if the grandparents or grandchild establishes eligibility, they may receive Medicaid coverage for up to three calendar months before the month in which they apply. For example, if the grandparents apply for Medicaid on June 20, they may be able to get Medicaid coverage for March, April, and May, as well as June and future months. This is called retroactive Medicaid.

Once the grandparents receive the proof of Medicaid coverage (the Medicaid “card”), they must present it to the provider and request that the provider bill Medicaid. If the grandparents already have paid for the medical service, they should ask the provider (doctor, hospital, pharmacy, etc.) to reimburse them and bill Medicaid. Some providers will assist with this.

Currently, the Department of Community Health and the Department of Human Services do not provide direct reimbursement for medical bills that are paid while the grandparents are waiting for Medicaid

to be approved unless DHS initially denied the Medicaid application and the grandchild or grandparent, won Medicaid after requesting a hearing.

The grandparents should seek legal advice if they have difficulty in obtaining Medicaid payment or reimbursement for bills that were incurred or paid before the agency issued the Medicaid card, but during the period that Medicaid eligibility is established.

Eligibility for Medicaid

This section explains some of the ways that the grandchild may be eligible for Medicaid. Each category of eligibility has different financial and non-financial rules. In addition, there are some rules that apply to all forms of Medicaid, such as a rule requiring Medicaid recipients to apply for other forms of assistance. The information below provides a general overview, and is not intended as a substitute for individualized legal advice.

Medicaid for Children Who Receive Family Independence Program (“FIP”) or Supplemental Security Income (“SSI”) Cash Assistance

If the grandchild receives cash assistance through Supplemental Security Income (“SSI”) program, the grandchild is automatically entitled to Medicaid health insurance coverage. The grandchild most likely will also qualify for Medicaid if receiving FIP. If the grandchild loses FIP because someone in the “FIP group” becomes employed or earns more money, the child will still qualify for “Transitional Medicaid” for 12 months thereafter, regardless of how much income the household has.

Medicaid for Children Receiving Foster Care Assistance or Adoption Assistance and Department Wards

If the grandparents receive foster care payments (ADC-FC) or adoption assistance for their grandchild, or if a court has ordered that their grandchild be committed to, or placed with DHS, their grandchild is entitled to Medicaid coverage.

Medicaid for Other Low Income Children

Grandchildren who do not receive FIP or SSI cash assistance may be eligible for Medicaid if they have a low income under a Medicaid program for Low Income Families (“LIF Medicaid”). In determining whether the grandchild’s income is low enough for him or her to qualify for LIF Medicaid, the Department of Human Services [“DHS”] will only consider the income of the child, if the child’s parent is not living in the home, unless the grandparent has applied to be on the FIP cash assistance grant with the child. Some Medicaid categories are based on income in comparison to a percentage of the federal poverty level, which is adjusted each year.

“Healthy Kids”

Children under the age of 19 are eligible for Medicaid if their group’s income is below 150% of the federal poverty guidelines. Children age 1 or younger can have income up to 185% of the federal poverty guidelines. There is no asset test for this category of Medicaid eligibility. This is helpful if the child has money in a savings account or other investments, but not a lot of regular monthly income.

The grandparent’s income will not be considered in determining the grandchild’s eligibility “Healthy Kids” Medicaid or MICHild.

Spend-down Medicaid and Medicaid for Persons Under Age 21

This category is usually used for children who are age 19 or 20, because younger children qualify for Healthy Kids Medicaid. To qualify for Medicaid in the “under age 21” category, the grandchild must

have both very low income and limited assets. The grandchild also may qualify for Medicaid under this category with a monthly, income-based deductible amount.

Protected Income Level

If the grandchild's monthly income is below the protected income level ["PIL"] for the county where s/he lives³ and meets the asset test discussed above, eligibility is met for full Medicaid coverage under this category.

If the income is over the Protected Income Level, the grandchild may still qualify for some Medicaid coverage with a deductible, discussed below. This previously was called Spend down Medicaid."

Spend-down Medicaid

Spend-down Medicaid is Medicaid with a monthly deductible amount. Medicaid with a deductible will only cover medical expenses which exceed the deductible amount. Because of the Healthy Kids program, described above, most children under age 19 should qualify for Medicaid without a spend-down. A child under age 21, or a caretaker relative (including grandparents) with income above the protected income level may qualify for spend-down Medicaid if the "Medicaid Group" has cash assets (bank accounts, stocks, bonds, etc.) that total less than \$3,000.

If the grandparents or their grandchild qualify for spend-down Medicaid, DHS will send a notice explaining that s/he will qualify for Medicaid in any month for which verification is submitted that medical

³ For example, the Protected Income Level is currently \$408 for a one person group and \$541 for a 2 person group in St. Clair county, and \$341/458 for 1 person/2 person groups in Huron County. The PIL levels are published in the DHS's Program Reference Manual (PRM).

expenses are equal to or more than the monthly deductible amount. The amount of the deductible will equal the countable income minus the Protected Income Level.

For example, a 19 year old grandchild receiving \$600 per month in countable Social Security benefits and living in St. Clair County, would have a monthly deductible of \$192 [\$600 - \$408 PIL]. Medicaid coverage will begin only when the grandchild has medical expenses of \$192 in a month. For example, if the grandchild goes to the doctor on June 2 and has a bill of \$100, then fills a prescription that costs \$50 on June 5, then goes to the hospital on June 10 and has a bill of \$2,000, the grandchild's Medicaid coverage will begin on June 10, but the grandchild will owe the first \$42 of the hospital bill [\$192 spend-down minus \$150 total doctor and pharmacy bill].

Medicaid for Disabled Children

Home Care Child -- Michigan also has several additional Medicaid categories for children who have disabilities or special needs. Children who have medical problems that are so severe they require nursing home or hospital-type care, but who can be cared for less expensively at home, may qualify for Medicaid as a "Home Care Child" or "waiver child". Income is determined according to SSI rules, which are discussed in section IV of the section on Financial Assistance.

Institutional Care -- If the grandchild has a developmental disability so severe requiring nursing home or hospital-type care, the grandchild may be eligible for Medicaid under a special Medicaid program. The grandchild's disability status and special needs must be evaluated and certified by the local Community Mental Health agency to qualify under this Medicaid category.

Special Health Needs -- The Department of Community Health also operates a medical care program for Children with Special Health Care needs. The grandparents should contact their local Health Department for more information.

Medicaid for Children who are Former SSI Recipients -- If the grandchild received SSI benefits on August 22, 1996, but lost them due to changes that the Social Security Administration made in the definitions of who is “disabled,” the grandchild should still qualify for Medicaid if the Medicaid was stopped before February 1998. The grandchild must be under age 18.

Medicaid for Relatives Caring for Needy Children

As a relative caring for their grandchild in their home, the grandparents may qualify for Medicaid as a “Caretaker Relative.” Their eligibility will be based on their income, not counting the grandchild’s income. A portion of the grandparents’ income will be disregarded to account for the needs of the grandchild and any other children the grandparents are raising. The grandchild’s eligibility for Medicaid will not be affected by the grandparent’s income.⁴ If their income is too high for full Medicaid coverage, the grandparents may receive Medicaid with a deductible as a caretaker relative

⁴ Note, however, when grandparents adopt a grandchild, they become the child’s parent, not the grandparent, and their income is counted in determining the child’s eligibility, unless the child is eligible for an adoption subsidy.

In order for the grandparents to be a caretaker relative, their grandchild must be applying for, or receiving, Medicaid, and must be under 18 or an 18-year-old high school student expected to graduate before reaching age 19.

If the grandparents apply for Medicaid, they do not have to apply for other public assistance programs.

The MI-CHILD PROGRAM

Michigan has a new health program for children in families with countable incomes greater than 150% but less than 200% of the federal poverty level. The first \$90 of earnings, some child care expenses, and child support will be disregarded from the monthly income. There are no asset limits. If the grandchild receives health insurance through MI-Child, the grandparents must enroll the child in a health plan, and pay a premium of \$5 per month regardless of the number of children in their home who receive MI-Child. If the grandchild receives comprehensive health insurance through a private insurance company, even if there are high co-pays and deductibles, the grandchild will not be eligible for MI-Child under current rules.

The grandparents can obtain an application for MI-Child through the DHS, the Department of Community Health, and at other agencies. The grandchild will be screened to determine eligibility for Medicaid under the Healthy Kids program. Children who qualify for Medicaid cannot receive MIChild.

OTHER “FREE” MEDICAL CARE PROGRAMS

Hill Burton Uncompensated Care

Many community hospitals must provide a certain amount of free medical care because the hospital received federal funds under the Hill-Burton program. Some hospitals have already fulfilled their obligation to provide care in past years. A few others still have a duty to provide free care.

Hospitals who must provide free medical care under the Hill-Burton program must post signs in prominent places (such as the billing office or waiting area) advising patients about the program. If the grandparents are unsure whether a hospital is in the program, they should ask the hospital or contact their local legal services office. These hospitals must accept applications for free care both for outstanding and unpaid bills, and for current or future medical care at the facility. Hill-Burton hospitals should have applications available. These applications should be located in their billing or credit office. The hospital must provide the grandparents with a written decision on their application.

Grandparents should apply for Hill-Burton free care if they or their grandchild have unpaid bills from a hospital that has a duty to provide free care under the Hill-Burton program, or if the grandchild needs medical care at a Hill-Burton hospital and does not have health insurance.

The grandparents should seek legal advice if they are not allowed to apply for help at a hospital that is required to have a Hill-Burton program, or if they apply and are denied.

Free Clinics

Some communities have free health clinics or federally qualified health centers that provide care on a sliding fee scale depending on income. Contact your local Health Department to find out if there are clinics in your community.

County Health Plans

Uninsured grandparents who are low- or moderate-income but have too much income or too many assets to qualify for Medicaid, or only qualify for Medicaid with a high deductible, may be able to qualify for basic health coverage for primary care through a County Health Plan. Eligibility rules for county health plans vary depending on the county.

VII. SCHOOL PROGRAMS AND REQUIREMENTS

SCHOOL ENROLLMENT

The local school district cannot require the grandparents to obtain a legal guardianship over a grandchild in their care if the grandparents have a parental power of attorney from the child's parent. The Michigan Supreme Court ruled, in 1996, that if a child is a "resident" of a school district, then the district must enroll the child in its schools. The law lists several ways in which a child is a "resident" for school purposes. For example, a child is a "resident" in the grandparents' school district, if a Court placed the child in their home. A child is also a resident if the child's parent placed the child in the grandparents home.

Michigan law allows parents to give other people a "parental power of attorney" over their children (See section I above). If a parent gives a parental power of attorney to the grandparents to provide a home for the parent's child, then that child can enroll in the school district where the grandparents live. However, the district does not have to enroll the child if it can show that the parent is simply trying to change school districts by placing the child with the grandparents.

The child can also go to school in any School District where at least one of the child's natural parent's live. Starting in 1996, Michigan law says that a child may enroll in any School District where at

least one of the child's natural parents live, regardless of whether that parent has legal custody of the child.

If the grandparents do not have a parental power of attorney from either parent, some school districts may refuse to enroll their grandchild. The school may still be prohibited from doing so since Michigan's new "School of Choice" law permits children to enroll in a district other than the one in which they "officially" reside. If the parent will not or cannot sign a parental power of attorney, and the grandparents' school district refuses to enroll the child, they should speak first with a School Board administrator in that District. If that does not resolve the problem, the grandparents may want to obtain a parental power of attorney or seek an attorney. If the parent has abandoned the child and the grandparents cannot obtain a parental power of attorney, they may need to go to Probate Court (or the new "Family Court") to seek guardianship..

SCHOOL RECORDS

Most school districts will allow the grandparents to review school records of a child in their care if they have a release form signed by the child's parent or legal guardian. The grandparents should ask the school if they have a form they require. If the grandparents do not have time to get a form, they can use the form provided in these materials. In general, the District will want identifying information about the child, including name, birth date, and social security number.

If the grandparents have a parental power of attorney, from either of the child's parents, or if they are the legal guardian of the child, they have the right to the child's school records. The grandparents can also make decisions about the child's education. If the grandparents do not have a court order indicating that they are legally responsible for their grandchild, it is uncertain whether the school district is required to allow the grandparents to review their grandchild's files or discuss the child's education. Most school

districts want the child's primary caretakers to be actively involved in the child's education and they will be happy to work with the care-giving grandparents. However, if the grandparents have a problem, they may want to talk to an attorney about their options.

SPECIAL EDUCATION

Some children have problems with school caused by learning disabilities or emotional disabilities. If the grandparents are caring for a child who has trouble in, or with school, and the grandparents have legal authority to speak for the child, they may want to request, in writing, that the school test the child to see if she or he is eligible for special education services. Some schools may have an application form, but the grandparents do not have to use the form to request testing.

If the child is eligible for special education, services such as extra tutoring, speech therapy and counseling maybe available. If the tests show that the grandchild is eligible for services, the school must hold an Individualized Education Planning Committee (IEPC) meeting. The child's parents or custodians have the right to attend and to participate in the plan that is developed to help the child. If the grandparents participate in an IEPC and they are not satisfied with the plan, they should not approve it. They CAN appeal. The school district cannot change the placement of, or services to, a child who needs special education services without an approved plan.

Some counties provide a free "Parent Handbook" on special education. This contains important information about children's rights under the special education laws. There may also be parent advocacy organizations. If the grandchild has developmental disabilities, Michigan Protection and Advocacy Services may provide assistance if eligibility requirements are met. *See* Section on "Where to Find Additional Help."

SCHOOL NUTRITION PROGRAMS

If the grandparents have limited income, there are several nutrition programs in their schools or community that may provide assistance. These include:

- A. School breakfast programs
- B. School Lunch programs
- C. Summer Food programs

Some of these programs are available in the summer as well. The grandparents should contact their local school district to learn if these programs are available and how to apply for them. If the grandchild is eligible, the school should not do anything that identifies the grandchild as eligible for free lunch. In some communities, the summer food program may be offered by parks, churches, or community agencies instead of the school district.

IMMUNIZATION REQUIREMENTS

The law states that in order for children to go to preschool, day care centers or schools they must first be immunized. The grandchild's doctor or the Public Health department can provide immunizations. If the grandparents are low income and go to the public health department, the service is free. *See* "Preventive Services" in the Health Care Section, above. It is also necessary for a child to be immunized in order to receive the full amount of cash public assistance ("FIP").⁵ If the grandparents do not go to their grandchild's primary doctor to get the immunization shots, they should still inform the doctor's office about the immunizations received so that the grandchild's records are current.

For more information about free immunizations, the grandparents should contact their local County Department of Public Health.

⁵ If the grandparents receive FIP fail to immunize a grandchild who is under age 6, without good cause, their

SOLVING PROBLEMS

If the grandchild has problems in school, the grandparents should attempt to contact the child's teacher. If that approach fails, the grandparents should talk to the Principal or other Administrator at the child's school. It is important that they talk to the people at the school who work with their grandchild. If this also fails to work, the grandparents may want to contact the Central Office at the School District.

If the child has problems getting special education services or placements, the grandparents can attempt to do the following:

1. Talk to the schools teachers and administrators
2. If this doesn't work, the grandparents can request a new Individualized Educational Planning Committee meeting.
3. If the IEPC doesn't help, the grandparents can file a complaint with either:
 - The Special Education Department of Their Intermediate School District
 - The Michigan Department of Education, Office of Special Education Services, (517) 373-9433. Grandparents should ask to speak with a "Compliance Consultant."

monthly FIP grant will be reduced by \$25.

RELEASE OF MEDICAL AND RELATED INFORMATION

I, _____, hereby authorize the release of all information pertaining to my child, _____ confidential and otherwise, written or verbal, to _____. I authorize _____ to request and receive any and all information from any medical, psychological or psychiatric source regarding my child's physical or mental condition and health, including but not limited to hospital or medical records, including but not limited to information regarding pharmaceuticals, HIV and AIDS, psychological or psychiatric information, and all information whether or not subject to heightened privacy standards. I release all agencies, hospitals, persons, offices and the like from any liability on account of any disclosure authorized by this Release.

A photocopy of this release shall be acceptable as an original. This release shall expire on _____ (date, no later than 1 year following execution) or upon my written revocation, whichever is sooner.

DATE: _____
Parent(s) signature(s) _____

_____/_____
Child's Date of Birth/Social Security #

Street Address

City State Zip Code

Phone Number

SIGNATURE OF WITNESS

DATE

RELEASE OF EDUCATION RELATED INFORMATION

I, _____ hereby authorize the release of all information, confidential and otherwise, written or verbal, pertaining to my child _____ to _____ I authorize _____ to request and receive any and all information from any school, teacher, education administrator, scholastic or educational records, or any other educational source regarding my child's schooling, education, educational behavior, grades, homework, schoolwork, learning ability or disabilities, psychological or emotional treatment or development, and all information related to schooling or education whether or not subject to heightened privacy standards. This release includes (does not include) permission to attend and participate in school activities for or with my child, such as field trips, parent-teacher conferences, parents' school associations of any kind, and the like. I release all agencies, schools, educational institutions, boards, teachers, administrators, persons, offices and the like from any liability on account of any disclosure authorized by this Release. A photocopy of this release shall be acceptable as an original. This release shall expire on _____ (date, no later than 9 mos. following execution) or upon my written revocation, whichever is sooner.

DATE: _____
Parent(s) signature(s) _____

Address And Phone:

_____/_____ Child's Date of Birth/Social Security #

SIGNATURE OF WITNESS

DATE

SPECIAL POWER OF ATTORNEY
FOR *MEDICAL CARE*

I, _____, hereby name _____
_____ as my attorney in fact (hereinafter "my agent"), and grant to my agent
the limited authority to care for my child, _____
_____, as follows:

1. I grant to my agent the authority to consent to all medical care necessary to my child's health and well being during the time my child is in the care of my agent.
2. This power includes, and is expressly limited to the following: the power to consent to all medical (not including psychiatric or psychological), dental and/or hospital care, treatment and procedures
3. If there is a specific purpose for allowing the power, write it here: _____
_____.

The provisions in this document are to be construed with this express purpose in mind.

This Power shall expire and all authority there under is revoked on

(d) _____ (date of expiration - generally no more than 6 months from date of signing.)

Date: _____

PARENTS' SIGNATURE(s)

(Please note, if both parents are custodians, then both must sign a form

Print/Type Name(s) & Address(es): _____

Phone: _____

On _____ (date) _____ (parents) who are known by me, appeared before me to execute this document, and have acknowledged **h** to be their free act and deed. _____

Notary Public, County, My Commission Expires: _____

GENERAL POWER OF ATTORNEY/
CONSENT FOR CARE OF MY CHILD

I/We _____, hereby name _____
_____ as my attorney in fact (hereinafter "my agent"), and grant to my agent the
authority to care for my child, _____ as follows:

1. It is understood that _____ shall remain in the care of my agent
until _____.

2. Pursuant to Section 405 of the Michigan Revised Probate Code, I grant to my agent the power and
authority to do all things necessary to ensure the safety and well being of my child while in the care of
my agent. This power includes (*cross out and initial, or delete any that do not apply*) the power to
consent to all medical, psychological dental and/or hospital care, treatment and procedures; consent to
receive, deliver or pay money and property due to my child; receipt of all confidential information or
records concerning my child, enrollment of my child in any school, place of worship, club, etc. This
delegation does not include the power to consent to adoption of this child or the power to consent to
marriage of my minor child.

The express purpose of this power is to allow the agent to do all things necessary to ensure the safe and
efficient care of my child, and to do all things necessary for his care.

[*If there are further specific purposes, write them here:* _____
_____]

All provisions contained herein are to be interpreted with this/those express purpose(s) in mind.

This Power shall expire and all authority there under is revoked on (e) _____ (date of
expiration -- no more than 6 months from date of signing.)

PARENTS' SIGNATURE(s)

(Please note, if both parents are

Date _____

custodians, then both must sign)

Name(s) _____
Address(es) _____

Phone: _____

On _____ (date) _____ (parents)

who are known by me, appeared before me to execute this document, and have acknowledged this to be
their free act and deed.

Notary Public, _____ County My Commission Expires: _____

REVOCATION OF POWER OF ATTORNEY
RELEASE OF INFORMATION

I hereby revoke the

_____ Power of Attorney regarding the care of my child
_____ Release of Information regarding my child

that was executed by me on [date(s)] _____ to _____
concerning my child(ren) _____ . A copy of this
revocation has been delivered to _____ by

_____ personal service
_____ certified mail to _____ 's last known address on _____ (date of service).

DATE: _____

Signature of Parent Revoking Power

Parent should send copy of signed form to:
child's school
child's doctor/hospital