



KINCARE FAMILIES AND NYCHA

How changing NYCHA's definition of family will help protect children in kinship care and prevent children from entering the foster care system.

A report by



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Executive Summary

Kinship caregivers - family members or close friends who are raising a child who is not their biological child - are a segment of New York City's population who are often overlooked. Most kinship caregivers step in without hesitation to care for children who need them, but they are up against many challenges. In a city where over 200,000 children are being raised by kinship caregivers, Mobilization for Justice (MFJ) has developed a legal practice to help provide these families with stability and support.

Although many kinship caregivers are certified foster parents or have court orders for custody or guardianship, this is not always the case. Kinship caregivers may have taken in children through informal arrangements with parents, during an emergency when parents are unavailable or have passed away, or after a child is removed from an unsafe home. Caregivers encounter numerous challenges when they take a child in, from not having the proper documentation needed to enroll a child in school or obtain healthcare, to not having the resources to adequately provide for a child's needs. Through our work, we have found that caregivers are often confronted with putting one of their most basic needs, housing, at risk in order to care for a child in need.

Many MFJ clients are currently living in New York City Housing Authority (NYCHA) housing. NYCHA tenants must submit information regarding their family composition.¹ NYCHA has created a definition of "family" that tenants must meet in order to qualify for housing and to maintain housing.² MFJ has analyzed definitions of family used by NYCHA and the federal government, and how those definitions are implemented, and found that NYCHA's definition is detrimental to kinship caregivers. Our key findings are:

- Kinship caregivers may face a threat of eviction from NYCHA housing if they do not add a child to their family composition who has come to stay with them during a time of crisis.
- But kinship caregivers are prohibited from adding a child to their "family composition" if they do not have a legal custody or guardianship order, resulting in a loss of NYCHA housing or ineligibility to apply.
- Kinship caregivers are required to prove a blood relationship, which can be costly and difficult for caregivers.
- The narrow definition of family that NYCHA uses provides a strong disincentive to potential kinship caregivers, resulting in unnecessary foster care placements.

¹ NYC Housing Authority. Eligibility. <https://www1.nyc.gov/site/nycha/eligibility/apply.page> (Last visited Oct. 19, 2016).

² NYCHA Management Manual, Chapter IV, Subdivision IV, Section F.4.a.(2) (CURRENT).

I. NYCHA has created a narrow and unfair definition of family that does not allow for non-traditional family units and results in barriers to accessing NYCHA housing for clients who need it most.

There is no universally recognized definition of what constitutes a family. The federal government has expansive definitions for what or who comprises a family. The most relevant of these definitions is that used by the Public Housing Agency (PHA) and the U.S. Department of Housing and Urban Development (HUD). PHA and HUD define family as follows:

“Family includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status: (2) A group of persons residing together, and such group includes, but is not limited to: (i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family); (ii) An elderly family; (iii) A near-elderly family; (iv) A disabled family; (v) A displaced family; and (vi) The remaining member of a tenant family.”³

This definition of a family clearly states that the listed examples are not exhaustive.

Unfortunately, NYCHA defines family narrowly. According to the NYCHA requirements for eligibility, a family is defined as, “[t]wo or more persons related by blood, marriage, domestic partnership, adoption, guardianship, or court awarded custody.”⁴

Prior to 2002, NYCHA more broadly defined family to include “[t]wo or more unrelated person(s), regardless of sex, living together as a cohesive family group or a sharing relationship.”⁵ This definition was changed to limit the categories of people with whom a tenant can reside.⁶ NYCHA’s current definition is thus narrower and burdens non-traditional family units, including kinship families.

NYCHA’s definition is also inconsistent with and narrower than other definitions of the term “family” in another housing context. For example, New York State’s Rent Stabilization Code defines “family” to include people “holding themselves out as family members . . . through their words or actions.”⁷ Thus, families who are living in rent-stabilized apartments are able to immediately provide refuge to a displaced child without the threat of eviction.

NYCHA’s narrow definition of “family” adversely affects current NYCHA tenants and prospective NYCHA tenants. NYCHA fails to recognize fictive kin, such as godparents, family

³ 24 CFR 5.403.

⁴ NYCHA Management Manual, Chapter IV, Subdivision IV, Section F.4.a.(2) (CURRENT).

⁵ NYCHA Management Manual, Chapter IV, Subdivision IV, Section F.4.a.(2) (OLD VERSION).

⁶ Memorandum, Subject: Occupancy and Remaining Family Members Policy Revisions, NYCHA GM-3692, November 22, 2002, Amended July 11, 2003.

⁷ 9 NYCRR § 2520.6(o)(2)(vi) (NYC RSC).

friends, or even neighbors, who have stepped in to care for a child but who have no actual blood relation to that child. This failure to recognize non-traditional family units places kinship caregivers at a disadvantage because they will likely not qualify for public housing. Kinship caregivers who begin caring for a child who is not recognized under the NYCHA definition of a family member, often do so in times of crisis. In these instances, there is no time to go to court and obtain a legal order before allowing the child to reside in the home. Additionally, even when there is a family relationship, NYCHA will often still require clients to obtain legal custody or guardianship orders before a kinship caregiver can care for a child in need.

Many of our clients experience the negative effects of NYCHA's strict family composition rules firsthand. One client, Ms. B, came to MFJ seeking assistance in caring for her granddaughter. Ms. B was living in NYCHA housing and attempted to add her granddaughter to the family composition. NYCHA would not allow her to do so without a formal court order of legal custody or guardianship. Ms. B first attempted to go to court alone to obtain guardianship, but was met with a hostile judge. MFJ assisted Ms. B and helped her obtain a temporary order of guardianship, which NYCHA initially told Ms. B that they would accept. However, once Ms. B had the temporary order, NYCHA did not accept it. Once again, Ms. B and MFJ went to court and, after several months, obtained a permanent order of legal guardianship for her granddaughter that would be acceptable to NYCHA.

II. Kinship caregivers face numerous burdens in complying with NYCHA requirements, which create barriers to accessible housing, require tenants to endure lengthy court procedures, and cause instability for families.

“New York City's shortage of affordable housing has reached a crisis point.”⁸ In a city where affordable housing is hard to come by even under the best of circumstances, kinship caregivers are at an even greater disadvantage when they increase their household size. Nationally, “only 15 percent of low-income kinship caregivers receive any housing assistance, despite most having reported difficulty paying housing costs.”⁹ Kinship caregivers encounter additional barriers when attempting to comply with NYCHA family composition requirements. They are often forced to undertake lengthy court proceedings to comply with NYCHA requirements, risk losing income and employment to attend numerous court appearances, thereby creating instability both for caregivers and children.

⁸ *Our Current Affordable Housing Crisis*. NYC Housing. <http://www1.nyc.gov/site/housing/problem/problem.page> (last visited Oct. 19, 2016).

⁹ *Stepping Up For Kids, What Government and Communities Should Do to Support Kinship Families*. Policy Report Kids Count. The Annie E. Casey Foundation. Page 8.

A. Kinship caregivers who take in a child, who would otherwise be thrust into the foster care system, may be ineligible for NYCHA housing or face eviction from NYCHA housing due to NYCHA's restrictive definition of a family.

Many of the kinship caregivers who seek services from MFJ are already living in NYCHA housing. According to NYCHA's rules, the head of household must notify NYCHA of any change in family composition. But caregivers face a dilemma when a child does not fit into NYCHA's definition of a family member since caregivers can face negative repercussions, such as eviction, for not notifying NYCHA of an additional person in the home or refusal of NYCHA to accept the change in family composition if the child does not fit into the narrow definition. Additionally, any changes to a person's "family size, source of income or amount of income may affect the placement of [an] application."¹⁰ Thus, a caregiver who has already applied for housing but is suddenly in a position of having to care for a child, can face undue hardship by adding a child to their family composition. The addition of a household member affects their placement by causing their application to be moved to the back of the line. The entire family would then have to wait even longer for affordable housing than the already long wait for NYCHA housing. According to a 2015 management audit by the Office of the Comptroller, as of December 2014, "there was a wait list of 273,391 households vying for NYCHA apartments."¹¹

In cases where caregivers are fearful of informing NYCHA of the added household member because they do not want to jeopardize their housing, caregivers may be penalized when the new household member is eventually discovered. According to the NYCHA Tenant Selection and Assignment Plan (TSAP), "persons who have misrepresented information affecting eligibility,... immigration status, family composition" may be ineligible for NYCHA housing for three years from the date that the offending person is deemed ineligible.¹² Caregivers endure the stress and turmoil of trying to care for a child in need, while being put at risk of losing housing.

Keeping children with kin provides stability to families, but NYCHA's narrow definition creates unnecessary uncertainty and risk. Caregivers face a denial of an application, loss of priority on the wait list, or eviction, resulting in housing instability for the entire family for years to come.

¹⁰ Frequently Asked Questions, New York City Housing Authority, #18. <https://www1.nyc.gov/assets/nycha/downloads/pdf/applicant-faq.pdf> (last visited Oct. 19, 2016).

¹¹ Landa, Marjorie. *Management Audit*. City of New York Office of the Comptroller. Page 1. June 24, 2015.

¹² *Tenant Selection and Assignment Plan*. New York City Housing Authority. Page 26. January 22, 2016.

B. Kinship caregivers must endure lengthy and burdensome family court proceedings to obtain a legal order or show a blood relation that comply with NYCHA requirements.

Forcing caregivers to have a permanent court order before they meet NYCHA's definition is impractical and precludes families from public housing who need assistance the most. The timing of these requests is difficult because families are in the midst of dealing with the turmoil surrounding the displacement of a child. NYCHA's requirements also create a potential predicament for families. If a family takes in kin and obtains a legal order of guardianship prior to including the child in the family composition, they can be at risk of eviction because they failed to inform NYCHA of the child's presence in the home. Conversely, if a family waits to obtain a guardianship order, they can also face eviction if they do not meet NYCHA's definition of family.

Court proceedings for custody or guardianship can be lengthy and full of hurdles. A family court case can vary from eight to eleven months, though many cases take more time than that.¹³ Many clients who are caring for non-biological children do not know where the legal parents are or have difficulty contacting them. A family court case cannot proceed until the legal parents of a child have been properly served and notified of the proceedings. This step is often one of the biggest hurdles for our clients and results in numerous court adjournments and lengthy delays, keeping a child in limbo. It is very difficult for families to navigate this process without an attorney and kinship caregivers do not have a right to counsel in most family court proceedings.

One former MFJ client, Ms. C., is living in a NYCHA apartment in Manhattan. She recently found herself having to care for her young grandson. She and her then husband went through the lengthy process of obtaining joint custody. Ms. C., who has a mobility impairment, had difficulty serving the child's birth father with relevant legal papers. As a result, the custody proceeding dragged on for more than one year. Ms. C. faced further upheaval in her life when she and her husband decided to separate. Her husband moved out of the home, and ceased his involvement in the child's life. Ms. C. reached out to NYCHA, wanting to add her grandson to her lease. She was first told by the NYCHA property manager that she would need to adopt her grandson, and then later told that she would need sole custody rather than the joint custody that she had already fought to obtain. In addition to giving Ms. C. inconsistent information, NYCHA is requiring her to embark on a lengthy, difficult court process to gain sole custody because she is no longer married. Ms. C. would have to go through the long and complicated court process all over again, just to gain sole custody of a child of which she already has legal custody.

Kinship caregivers also step in to care for children during abuse or neglect cases that have been filed against one or both biological parents. These proceedings, pursuant to Article 10 of the

¹³ Kramer, Abigail, *Is Reform Finally Coming to New York City Family Court?*, The New School Center for New York City Affairs. Page. 13.

Family Court Act, can take years to resolve. When a child is removed from a parents' home, a court may order "direct placement" of a child with a kinship caregiver. A final order of custody or guardianship may not be granted until the Article 10 proceeding is complete. While placement with the family is in the best interest of family stability, a child directly placed with a kinship caregiver would not meet NYCHA's definition of family and the caregiver would not be allowed to take in the child.

Blood relatives also face difficulties in complying with NYCHA regulations, despite the fact that NYCHA states that persons related by blood can be included in a family composition. Often, people face barriers when trying to prove that there is a blood relationship between a NYCHA tenant and a child that the tenant has taken in. Proving a blood relationship between a caregiver and a child can be time-consuming and, in some cases, impossible. For example, absent a court order of custody or guardianship, caregivers do not have the authority to obtain a copy of a birth certificate of a child if they are not the biological parent. Similarly, if the relationship to the child is by marriage, a person would either need to have a copy of a Marriage Record or obtain one from the New York City Office of the City Clerk. Our clients may not have the authority to request marriage certificates of relatives. Additionally, people obtaining these documents are forced to bear the burden of paying the fees for the documents. Both a certified birth certificate and a Marriage Record cost \$15, which can be a significant amount to caregivers who have limited incomes and are caring for children.

MFJ has had many clients who struggle to obtain necessary documents. One client, Ms. R, is an aunt of the child who she was trying to care for. Ms. R and her sister, the child's mother, had different last names. Because of this, Ms. R had to show her own birth certificate. She also had to obtain records showing that her name had been changed when she was a child. Additionally, Ms. R was asked to show proof that her mother had been married to the father of Ms. R's sister. Ms. R had to take her elderly mother to the Supreme Court in the county where the divorce was completed to obtain a copy of her divorce decree. Each set of documents that Ms. R had to obtain came with a fee. Luckily, Ms. R was able to contact each family member needed to assist in demonstrating a family relationship to the child, but this is not always the case for our clients.

When documents cannot be obtained to prove a family relationship, clients may be asked to undergo a DNA test in a private laboratory, potentially paying for the procedure out of pocket. This procedure is unnecessary, invasive, and expensive. Furthermore, a DNA test would require another individual to have the test performed to prove the family relationship. This would require someone to also incur the cost of the second test and that is only assuming that the other individual is available and willing to take the test. It is unreasonable to expect people to go to such great lengths to prove blood relation, rather than allowing for family units that may be non-traditional.

C. The definition of family currently used by NYCHA leads to instability for families, harm to the child, and a greater burden on New York City.

Children in foster care also suffer from NYCHA's definition of family. The TSAP states that, "[a] family may also include foster children who are authorized by a recognized foster care agency to reside with the applicant."¹⁴ When an individual is being evaluated as a potential foster parent, they must be able to demonstrate that there is adequate space in the home for the foster child¹⁵. A foster care agency will deny an individual clearance to become a foster parent based on insufficient housing. However, NYCHA will not allow foster children to be added to the family composition without that family already being authorized by a recognized foster agency. This leads to a catch-22 for children and for foster parents. Potential foster parents are stuck in a trap of being unable to become a foster parent without larger housing, and being ineligible for larger housing without first being approved as a foster parent. During the time it takes for a potential foster parent to become certified, the foster child may be residing with stranger foster parents or floating from foster home to foster home.

It has been well established that "the process of being removed from one's home and placed in foster care has consequences... and can have negative effects that last a lifetime."¹⁶ Children who are removed from their parents' homes may experience numerous forms of trauma including, "the psychological and neurobiological effects associated with disrupted attachment to biological parents, the specific traumatic experiences (e.g., neglect and/or abuse) that necessitated placement, the emotional disruption of placement, and the need to adjust to the foster care environment."¹⁷ "Most experts believe that placing children with relatives or other caregivers they already know reduces the inevitable trauma of being removed from their parental homes."¹⁸ Research has shown that if a child is unable to be with their parent, being placed with a family resource is the best alternative; with family, children will experience less stress and behavioral problems that could create a lasting psychological impact.¹⁹ Children placed with family also tend to experience less disruption in their education.²⁰

NYCHA's limited definition of "family" creates barriers for children otherwise eligible to be placed with kin. Rather than being able to move into NYCHA housing with a family member who is willing to care for them, these children have no alternative than to enter the foster care system, where they are suddenly dealing with strangers and unfamiliar places.

¹⁴ *Tenant Selection and Assignment Plan*. New York City Housing Authority. Page 19.

¹⁵ New York State Office of Children and Family Services, *Regulations for Certified and Approved Foster Family Boarding Homes*. 18 NYCRR Pt. 443. June 2010.

¹⁶ *Removal from the Home: Resulting Trauma*. UPenn Collaborative on Community Integration. Page. 1

¹⁷ *Id.*

¹⁸ *Data Snapshot on Foster Care Placement*. Annie E. Casey Foundation. May 2011. Page 1.

¹⁹ *Stepping Up For Kids, What Government and Communities Should Do to Support Kinship Families*. Policy Report Kids Count. The Annie E. Casey Foundation. Page 4.

²⁰ *Id.*

Furthermore, the long-term impact on children and society of allowing children to be placed in the foster system are far reaching. Children who remain in foster care are more likely to experience higher rates of incarceration, fall below average in education, experience cognitive delays, have higher rates of teen pregnancy, and be more vulnerable to homelessness later on in life. The Institute for Research on Poverty (IRP) analyzed research on the impacts of foster care on children. One study found that, “[a]rrest rates for male former foster children generally fall between 25 and 35 percent, but have been reported to be over 40 percent. Of those arrested, one-quarter to one-half are subsequently convicted.”²¹ Foster care also has a negative impact on education achievement: “[a]most all of the studies of former foster children revealed that their level of education is below the average for those of comparable age in their state or country.”²² In addition to educational delays, “researchers found that approximately one-third of children 3 years old and younger involved in the child welfare system showed evidence of delays in cognition, language, and/or adaptive behavior.”²³ The IRP research also states that, “[s]tudies of homelessness... have revealed that a disproportionate number of the homeless have spent time in foster care.”²⁴ Children who are placed in fewer foster care placements generally adjust better to adulthood and independence.²⁵ This has a direct impact on New York City and how many people in future generations will need to utilize subsidized housing and other government funded programs.

Children who are removed from the homes of their parents and not allowed to live with kinship family members are put into foster care. New York City then incurs the cost of foster care subsidy payments, ACS involvement, supportive services, and court proceedings. The cost in New York State to keep a child in foster care is \$29,000 per year.²⁶ That amount more than doubles for a therapeutic foster home or foster home for children with special needs, costing \$66,000 per year.²⁷ By denying kinship caregivers the opportunity to care for a child, NYCHA is unnecessarily costing New York City money.

NYCHA’s definition of a “family” has created a system that denies otherwise capable caregivers the opportunity to care for children in need. NYCHA can support family stability and child welfare, and decrease New York City expenditures simply by expanding the definition of a “family” to include non-traditional family units.

²¹ Thomas McDonald et al., *Assessing the Long-Term Effects of Foster Care: A Research Synthesis*. Page 25.

²² *Id.*

²³ Kramer, Abigail, *Is Reform Finally Coming to New York City Family Court?*, The New School Center for New York City Affairs, 8.

²⁴ Thomas McDonald et al., *Assessing the Long-Term Effects of Foster Care: A Research Synthesis*. Page 25.

²⁵ *Id.* at 33.

²⁶ Initiative 7, *Innovation, Finance: Investing in Better Outcomes for Children, Stronger Families, and Healthier Communities*. Ten for 2010, 14. New York State Office of Children and Family Services.

²⁷ *Id.*

III. Recommendations

The benefit of a more inclusive definition of “family” by NYCHA will be felt by caregivers, children, and New York City. Caregivers will be able to provide for children in need and maintain appropriate housing. Children will not be placed in foster care with strangers and then likely moved from home to home. New York City benefits by having more people in appropriate accommodations, by keeping children out of stranger foster placements, and by contributing to family stability that results in people who are healthy, productive people later in life. To further this goal, we offer the following recommendations.

- NYCHA should adopt the definition of “family” that is used by the Public Housing Agency and U.S. Department of Housing and Urban Development. By changing the definition to one that does not limit family units to the enumerated family compositions, kinship caregivers would be able to comply with NYCHA requirements and to provide for children who need them. The broader definition will lead to clients having more access to affordable housing, while also allowing more children to remain with family members.
- NYCHA should develop guidelines that all property managers must follow and limit individual discretion when determining who can be added to household. One way to alleviate this problem is to clarify NYCHA policy to allow a wider range of family compositions. For examples, NYCHA should include adding fictive kin, such as godparents, to those who can add a child to their household and expanding the definition of minor to extend to situations where an individual is still under a guardianship order but is over the age of 18. NYCHA should also allow applicants who have filed for custody or guardianship of a minor, but do not have a final order yet, to add the child to their family composition. Once a family composition has been approved by NYCHA, a property manager should not have discretion to deny a family member based on arbitrary demands for documentation.
- Finally, NYCHA should allow tenants who do not have a legal custody or guardianship order, but instead have a family court order “directly placing” a child who has been removed from their parent’s care, to add children to their household composition.

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