

REPORT TO CONGRESS ON STATES' USE OF WAIVERS OF NON-SAFETY LICENSING  
STANDARDS FOR RELATIVE FOSTER FAMILY HOMES

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Children's Bureau  
Administration on Children, Youth and Families  
Administration for Children and Families  
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## **Introduction**

The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law (P.L.) 110-351, made numerous amendments to the Social Security Act (the Act) to promote the safety, permanency, and well-being of children and youth in foster care. Among the changes made by the law were several intended to strengthen family connections for children and youth and to support greater use of kinship care when it is a safe and appropriate option. Among other provisions, P.L. 110-351 amended the Act at section 471(a)(10) to explicitly permit child welfare agencies to waive on a case-by-case basis non-safety related licensing standards for relative foster family homes.

The law also required the U.S. Department of Health and Human Services (HHS) to submit a Report to Congress on children placed in relative foster family homes and the use of licensing waivers. States were asked to provide the following information for Fiscal Year (FY) 2009 on relative care:

- The number and percentage of children in foster care placed in licensed relative foster family homes;
- The number and percentage of children in foster care placed in unlicensed relative foster family homes;
- The frequency of case-by-case waivers of non-safety licensing standards for relative foster family homes;
- The types of non-safety licensing standards waived;
- An assessment of how such case-by-case waivers of non-safety licensing standards have affected children in foster care, including their safety, permanency and well-being;
- Reasons why relative foster family homes may not be licensed despite authority to grant such case-by-case waivers of non-safety licensing standards;
- Actions the State plans to take, or is considering taking, to increase the percentage of relative foster family homes that are licensed while ensuring the safety of children in foster care and improving their permanence and well-being; and
- Suggestions the State has for administrative and/or legislative actions to increase licensed relative care.

This report summarizes the responses of the 50 States, Puerto Rico and the District of Columbia, hereafter referred to as the “States.”

## **Background**

When a Court determines that it is contrary to the welfare of a child to remain in his or her home, placement and care responsibility often is legally transferred to the State agency charged with ensuring the safety and welfare of children. The agency then identifies a foster care placement where the child can be cared for safely. Foster care placements include a variety of living situations, including in the care of relatives, non-relative foster homes, group homes, and other settings. Foster care placements must be licensed or approved before the State can receive Federal reimbursement for title IV-E maintenance payments provided for a subset of children in foster care.

The State licensing authority is responsible for establishing standards for foster family homes and child care institutions that protect the health and safety of children. Relatives generally must meet the same standards as non-related foster parents for their homes to be licensed or approved. Special situations may arise where there are grounds for waiving a requirement for an individual relative/foster parent on behalf of a foster child; however, the agency still must adhere to the Federal requirements under section 471(a)(20) of the Act (concerning criminal background and child abuse and neglect checks for relative foster and adoptive parents and guardians, and disqualifying crimes).

### *Data collection and limitations*

For purposes of gathering the information for this report, HHS queried the States regarding data on the number of children living in licensed and unlicensed relative homes, and the number of waivers that were approved for FY 2009. This report summarizes the data reported by the States. However, this was the first time that States were asked to provide this information, and some States do not routinely collect this data in their automated systems. For this reason, several States did not report key information requested regarding relative foster family homes. In addition, States have varying definitions for the categories of licensed, approved, and unlicensed relative placements, and States used various means for calculating the data. Due to the significant amount of missing data and other differences among States in what was reported, a national estimate of the number and percentage of children in licensed or unlicensed relative care could not be determined.

The data presented is based on the information obtained from each State child welfare agency's data system, and in some cases there may be an under-representation of the total number of children in relative placements. In some States, the data system may only track children placed with relatives at the initial placement, and not throughout the life of the case. In other States, information may not be available for waivers that are approved by private licensing agencies rather than the State child welfare agency.

### **State Data on the Use of Relative Care and Licensing Waivers**

Data submitted by the States is presented in Table 1: State Data of Children in Foster Care Placed in Relative Foster Family Homes and the Use of Licensing Waivers. These data include the number and percentage of children in foster care placed in licensed relative foster family homes; the number and percentage of children in foster care placed in unlicensed relative foster

family homes; and the frequency with which States approved waivers of non-safety licensing standards for relative foster family homes.

*Data regarding children in licensed and unlicensed relative foster family homes*

Overall, States reported placing 115,594 children in either licensed or unlicensed relative foster homes in FY 2009. Eight States were unable to report the number of children in foster care who were placed with licensed versus unlicensed relative foster family homes. These States are referenced in Table 1 as having not reported (NR) the information. Due to discrepancies in how States calculated the percentage of children in care, a national average could not be ascertained. For the 32 States that reported percentages based on *all* children in foster care, an average of 16 percent of children were placed in licensed relative foster homes and 14 percent in unlicensed relative foster homes. Nine states calculated percentages based on the number of children in relative placements. For these 9 States, an average of 38 percent of children were placed in licensed relative foster homes and 62 percent in unlicensed relative foster homes.

*Frequency of licensing waivers approved*

As seen in Table 1, 15 States<sup>1</sup> reported that in FY 2009 they did not permit use of licensing waivers for relatives to become licensed foster parents, and thus maintained the same licensing requirements for both relative and non-relative placements. Six of the 15 States that did not permit waivers of non-safety licensing standards reported that no children in foster care are placed in unlicensed relative foster family homes.

The 15 States that reported not using licensing waivers are referenced in Table 1 as not applicable (NA) under the column Frequency of Licensing Waivers Approved. Another 11 States did not have the infrastructure to aggregate, in report format, the number of licensing waivers that were approved. These States are referenced in Table 1 as having not reported (NR) the information.

Among States that did provide data regarding the frequency of case-by-case waivers of non-safety licensing standards, the number of waivers granted in FY 2009 ranged from 1 to 274 waivers.

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<sup>1</sup> 15 States that do not permit waivers of licensing requirements: Alabama, Alaska, Delaware, Florida, Georgia, Kentucky, Minnesota, Mississippi, New Mexico, Oklahoma, Puerto Rico, Texas, West Virginia, Wisconsin and Wyoming.

**Table 1: State Data of Children in Foster Care Placed in Relative Foster Family Homes and the Use of Licensing Waivers**

State	Number of Children in Licensed Relative Homes		Number of Children in Unlicensed Relative Homes		Frequency of Licensing Waivers Approved
	Number	Percentage <sup>2</sup>	Number	Percentage	Frequency
Alabama	110	2%	0	0%	NA <sup>3</sup>
Alaska	297	62%*	181	38%*	NA
Arizona	338	10%*	3,124	90%*	14
Arkansas	443	6%	452	6%	NR <sup>4</sup>
California	24,174	34%	1,229	2%	NR
Colorado	1,192	24%*	3,751	76%*	9
Connecticut	851		37		10% of licensed relative homes received a waiver
Delaware	41	3%	263	20%	NA
District of Columbia	268	13%	76	4%	24
Florida	344	4%*	7,337	96%*	NA
Georgia	73	1%	847	10%	NA
Hawaii	638	45%	7	Less than 1%	6
Idaho	278	87%*	41	13%*	22
Illinois	2,427	15%	3,624	22%	72
Indiana	2,863	28%	750	7%	2
Iowa	308	5%	2,126	33%	59
Kansas	55	1%	1,280	26%	3
Kentucky	NR	NR	370	5%	NA
Louisiana	408	8%	1,062	22%	29
Maine	167	9%	305	17%	38
Maryland	847	10%	1,775	20%	1 or 2 a month
Massachusetts	NR	NR	NR	NR	NR
Michigan	1,116	22%*	3,921	78%*	78

<sup>2</sup> Reported percentages of children in licensed and unlicensed care are not comparable across all States. Thirty-two (32) States reported percentages of children in licensed and unlicensed relative care as a proportion of all children in foster care. Nine States reported the percentages of children in licensed and unlicensed relative care as a proportion of children in relative care only; the percentages for these States are marked with an asterisk(\*). For the remaining States where no percentage is provided, the information received was insufficient to be able to determine the applicable percentage.

<sup>3</sup> NA= Data not applicable, i.e. the State does not permit waivers of licensing requirements.

<sup>4</sup> NR=Data not reported.

**Table 1 continued**

Minnesota	2,614	22%	0	0%	NA
Mississippi	383	11%	NR	NR	NA
Missouri	2,415	17%	1,320	9%	NR
Montana	479	19%	334	13%	5
Nebraska*	63		945		82
Nevada	1,309	16%	637	8%	NR
New Hampshire	60	8%	285	24%	75% of licensed relative homes received a waiver
New Jersey	2,339	18%	2,996	23%	274
New Mexico	355	20%	0	0%	NA
New York	2,273	27%	NR	NR	NR
North Carolina	177	2%	2,087	21%	18
North Dakota	NR	NR	303	14%	0
Ohio	146	Less than 1%	2,270	17%	NR
Oklahoma	1,504		0		NA
Oregon	1,396	78%*	390	22%*	NR
Pennsylvania	NR	NR	NR	NR	47
Puerto Rico	685	44%	0	0%	NA
Rhode Island	440	43%	584	57%	NR
South Carolina	40	Less than 1%	315	6%	NR
South Dakota	60	4%	222	16%	0
Tennessee	483	11%	331	7%	NR
Texas	66	Less than 1%	7,924	31%	NA
Utah	638	14%	954	21%	12
Vermont	70	15%	0	0%	12
Virginia	295	5%	NR	Estimated 8-12%	2
Washington	390	11%*	3,033	89%*	1
West Virginia	NR	NR	NR	NR	NA
Wisconsin	344	5%	1,673	25%	NA
Wyoming	68*	40%*	103	60%*	NA

## Assessment of the Use of Waivers

### *Types of non-safety licensing standards waived*

Section 471(a)(10) of the Act permits child welfare agencies to waive on a case-by-case basis a non-safety licensing standard for a relative foster family home. A child welfare agency has the discretion to determine what constitutes a non-safety standard for the purpose of meeting this requirement.

States reported that the majority of non-safety licensing standards approved pertained to a child's sleeping arrangements or the space requirements in the home (e.g. bedroom space, square footage). Waivers allowed a foster family home to parent more children and children of different ages than would normally be allowable under licensing rules. Many waivers provided relatives with exemptions from pre-license and ongoing foster parent training requirements, or extensions to complete foster parent training, health evaluations, or Cardiopulmonary Resuscitation (CPR) and First Aid training. A few States granted waivers to permit relatives with past non-violent criminal histories to become licensed as foster parents.

States also reported that waivers of non-safety licensing standards had been approved for the following types of circumstances:

- The “adequate income” licensing standard or the caregiver having a defined source of income;
- Age of the applicant;
- Medical Evaluation: A relative foster parent must pass a medical appraisal by a physician; waivers have been approved for relatives with a communicable disease such as Hepatitis B, C, Tuberculosis, and HIV;
- Definition of a relative;
- Well water testing of the home; waiver granted if relatives agreed to use bottled water for drinking and cooking; and
- Home maintenance (e.g., adequate furnishings in the home); possession of renter's insurance; swimming pool inspections in the off season; home telephone service.

### *State assessment of the use of waivers*

States reported improvements with placement stability and child well-being amongst families that received waivers of non-safety licensing standards. States overwhelmingly noted that providing waivers of non-safety licensing standards has facilitated the placement of children in foster care with a relative and frequently enabled siblings and families to remain together, while minimizing the trauma for children placed in foster care. States reported that by waiving the non-safety requirement of training, which requires an extensive time commitment from the prospective foster parent, the relative is better able to be available to the relative child and meet their needs. States also found that in families that received waivers, the child's well-being was enhanced by living with relatives, as these children had less frequent and less severe behavioral health problems than those in traditional foster care, and had a greater likelihood of parental visitation occurring in the relative's home as opposed to a community setting.



States also noted that in families that received waivers, a relative placement often becomes the child's permanent caregiver. For instance, the District of Columbia has found that children living with relatives are four times less likely to experience a placement disruption than children placed with non-relative foster families.

*Reasons why relative foster family homes may not be licensed despite authority to grant such waivers*

Many States cited that despite the authority to grant case-by-case waivers of non-safety licensing standards, some relative foster family homes remain unlicensed due to familial preference. States reported the following reasons why families choose not to become licensed:

- The licensing process is too time-consuming and the paperwork required for licensing is overwhelming;
- The child they are caring for is almost 18;
- The relative caregiver believes the child will be reunified soon with his/her parents or parental rights will be terminated;
- The relative caregiver already receives monetary assistance from the parent or the child receives disability payments from Social Security;
- As a result of becoming a licensed foster care provider, relatives who are licensed daycare providers would need to decrease the number of children they can care for under their daycare license;
- As a result of becoming a licensed foster care provider, the relative may be required to care for non-related children;
- The relatives desire to entirely avoid the child welfare system;
- Relatives do not want to provide autobiographical information, including family's medical history;
- Relatives are able to provide financially for the child without receipt of a foster care payment; and
- Relatives elect to receive state Temporary Assistance for Needy Families (TANF) child only grants<sup>5</sup> instead of becoming licensed foster parents.

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<sup>5</sup> States can provide Temporary Assistance for Needy Families (TANF) child-only grants to any relative caring for a child in a kinship care arrangement, regardless of the relative's income, provided that the relative meets the State's TANF definition of a relative caretaker.

Some States did note that there continue to be differences in practice and philosophy as to whether or not relatives should be licensed, and variations exist regarding whether all families are approached regarding licensure. Although many States do grant waivers, some States are restricted by State laws that limit which requirements can be waived. For instance, under Ohio law, the child welfare agency cannot waive aspects of foster parent training regulations. In addition, some States also reported difficulty with inter-jurisdictional placements where the receiving State is not willing to apply a waiver or variance to a relative family.

### **State Strategies for Increasing Licensing among Relative Caregivers**

States reported a broad range of strategies aimed at encouraging relatives to become licensed as foster care providers.

#### *Policy and administrative strategies*

Some States reported the importance of designating a staff person or licensing review panel at the central office to address any questions internally regarding the procedures for waiving licensing standards. Some States reported that they are in the process of: updating their regulations to clarify the requirement that waivers be allowed for relative foster parents; writing policy directives to define non-safety requirements which may be waived; and providing technical assistance to local departments in defining situations for which waivers are acceptable. Some States also are arranging focus groups with licensing workers and relative caregivers to identify ways to streamline the licensing process, identify barriers, and ensure consistency across regions. For instance:

- West Virginia has created a committee to study licensing standards as well as the State's home study assessment model. West Virginia's standards are currently more stringent than required by either Federal regulations or the Council on Accreditation. The committee's goal is to explore possible avenues to simplify the process for relatives to become approved placement resources for foster children.

States have adopted various new or ongoing strategies aimed at increasing the percentage of relative caregivers who complete the foster parent licensing process. For instance:

- Minnesota launched a Child Welfare Data Dashboard, which includes performance on ten high priority outcomes for children; among these is the "rate of relative care." The State expects that including relative care among these measures will improve child welfare caseworkers' awareness of the importance of relative care, leading to increased use of licensing for relatives.
- New Hampshire employs a designated relative care specialist who serves as a liaison between both the licensed and non-licensed relative care providers and the State child welfare agency. This specialist is responsible for enrolling all relatives into the Statewide automated child welfare information system database. This database assists the relative care specialist in sharing training and resource information with all

non-licensed and licensed relative caregivers and in providing them with on-going support and consultation.

- Rhode Island's Regional Permanency Support Teams work with the agency's caseworkers to help locate relatives and kinship supports for children in foster care. This process has been focused primarily on children who have been in care for longer periods of time, but the Permanency Support Teams also are now beginning a process of identifying relatives and kinship caregivers within the first 90 days of a child entering placement if they were not known earlier.
- Hawaii implemented Statewide improvements to assist relatives with limited English proficiency to navigate the child welfare system throughout the training and licensure process. It also has significant multi-ethnic representation among advisory committee members, staff, contractors, and providers.
- Tennessee partnered with ChildFocus<sup>6</sup> to address the decline in kin placements in two pilot sites. A report was prepared with lessons learned and recommendations for next steps. The core recommendations included: implementing a standardized kin approval waiver process; developing stronger partnerships with the Relative Caregiver Program and the courts to meet the needs of kin; promoting and assessing the practice of full disclosure to kin caregivers; and gathering data about the experience of families who care for relative children but do not formally enter the child welfare system.

#### *Identification and recruitment of relatives*

States reported instituting policies and practices to require diligent relative searches so that kinship caregivers, especially paternal relatives, may be identified and licensed earlier in the process. States also reported pursuing concurrent multiple relative options at the time of a child's removal from the home. States described advising all relative caregivers of the advantages of becoming a licensed foster care provider, which may include additional supports from the agency and a higher monthly foster care subsidy to support the children in their care. In some States, the caregiver must sign a form indicating that they have been informed of all options and requirements when making a decision on becoming a licensed relative foster parent versus becoming an unlicensed relative care provider. Some States require private agency contractors to actively seek out relatives for children who may be entering out-of-home care and encourage relative caregivers to become licensed. Other States continue to enhance and expand caregiver recruitment, retention, training, and support.

The following are some specific examples of strategies States utilized in FY 2009 to improve identification and recruitment of relatives:

- Pennsylvania's court improvement project created a curriculum, entitled Family Finding, designed to educate child welfare professionals on the importance of seeking

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<sup>6</sup> ChildFocus is a national human services consulting firm specializing in policy advocacy, strategic planning, organizational development and assessment, government relations and excellence in kinship policy and practice.

relatives to participate in case planning efforts. Pennsylvania uses a search engine tool to assist agencies in case planning efforts, including seeking relatives as potential placement resources for children.

- Hawaii's Keiki Placement Project reviews all cases of children in placement ages zero to three to ensure that relatives are located, contacted, and provided the opportunity to connect with and to care for family members in out-of-home care, if they meet licensing standards.

### *Training activities*

States described various methods to provide foster parent training to relative caregivers in a more time-efficient and flexible manner. Some States offer relative caregivers with a variety of alternative training options that include: one-day modified fundamentals training; training twice a month; reducing the number of hours of pre-service training; one-on-one training for relatives; holding off-site sessions in the community (e.g. schools, libraries) to increase access for relatives; and delivering training via video conference. In addition, families had the option of attending training in another district or trainings were rotated to various locations within each district offering greater access.

Many States partnered with universities or local community support groups to provide training and services to relative caregivers. These programs aim to increase relative caregivers' understanding about the child protective system, the juvenile court, the foster care program, permanency for children, and safety concerns such as domestic violence.

States also reported strengthening family finding and engagement activities; expanding the practice of family group conferencing to include family members in case plan development; expanding family finders; and establishing kinship navigators Statewide. For example, Hawaii has developed Project First Care Emergency/On-Call Resource Family Homes to promote reunification and relative placement and various other services such as mentoring of birth parents, Family Finding,<sup>7</sup> and Ohana Conferencing.<sup>8</sup>

### **State Legislative Actions and Recommendations for Increasing Licensing among Relative Caregivers**

In FY 2009, States reported implementing various legislative actions aimed at increasing the percentage of relatives licensed as foster parents in their State. States highlighted the following recent legislative changes to address the various needs of kinship caregivers:

- The State of Michigan appropriated \$2.4 million to support relative licensing activities. Relative care providers are referred by the child welfare agency to private child placing agencies to complete the process of foster care licensing. In the event

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<sup>7</sup> Family Finding is a program aimed at reconnecting children in foster care with their extended biological family, to reestablish relationships and explore ways to find permanent family placements for children.

<sup>8</sup> Ohana Conferencing is a program for youth, families and the Hawaii Department of Human Services to discuss the child's case plan in a youth driven, family oriented and culturally appropriate manner. <http://epicohana.info>

that a home needs some improvements in order to comply with licensing rules, the Family Incentive Grant, Public Act 131 of 2008, was enacted to provide support and funding.

- Nevada passed legislation (Nevada Revised Statutes Chapter 432B, Section 550) to expand the types of relatives who receive preference when a child is placed in the custody of a person other than the child's parents, from third to fifth degree of consanguinity. Policies have been revised to reflect this change and encourage the diligent search for relatives, as well as to reinforce the responsibility to educate potential relatives on the services and supports that might be available to them.
- Connecticut passed a statute (Public Act 09-185) establishing a presumption that awarding temporary custody to a relative is in the best interests of the child; requiring the Agency to notify relatives when a child comes into care; and requiring follow-up with the identified relatives.

States were asked for suggestions regarding areas of Federal law or policy that might need modification in order to encourage relative foster care. Some States requested clarification from HHS on what licensing standards could be considered "non-safety related" as well as information regarding standards and best practices in conducting an assessment of how such waivers affect safety, permanency, and well-being. In addition, Several States made recommendations for Federal or legislative changes in two primary areas: the criminal background check procedures for licensing relatives and Federal funding.

- States requested a legislative change to permit States discretion in licensing kinship caregivers who have criminal convictions in the distant past that currently are prohibited from licensure by the Adam Walsh Act. Some States recommended reinstating the opt-out provisions allowing States to design their own criminal background check procedures to assess the safety of the familial home. (Absent a change in Federal law, States do not have discretion to waive requirements relating to criminal background checks.)
- Some States recommended de-linking title IV-E eligibility from the former Aid to Families with Dependent Children income requirements.
- Some States recommended providing incentive awards to States that increase the number of relatives that are licensed and to relatives who become licensed foster parents.

## **Conclusion**

With the enactment of P.L. 110-351, Congress explicitly permitted child welfare agencies to waive on a case-by-case basis non-safety licensing standards for relative foster family homes. While some States already had been providing waivers to relative foster homes, this legislative change has encouraged more States to actively engage relatives and to increase the percentage of relative foster family homes that are licensed.

Overall, States tended to grant waivers of non-safety licensing standards related to the physical conditions of a relative's home, the training required of relatives, and other minor non-safety standards. States described the importance that waivers have made in allowing children to continue to be placed with relatives instead of entering a traditional foster care setting. States reported that waivers are customarily approved, except in cases where the agency feels that the child may be endangered by living with a relative foster parent. States reported various innovative strategies for increasing the percentage of relatives that are licensed including: identifying and recruiting relatives earlier in the process, offering alternative training options for relative caregivers, and expanding the role of family finders and kinship navigators. Most States, including the 15 that do not allow licensing waivers, continue to increase their efforts to promote licensure among relatives as a way of supporting the safety, permanency, and well-being of children in care.