



Possibilities and Pitfalls: The Role of Licensing in Supporting Relatives in Caring for Children in Foster Care

1200 18th Street NW • Suite 200 • Washington, DC 20036 • p (202) 906.8000 • f (202) 842.2885 • www.clasp.org

November 26, 2012

Acknowledgements

CLASP wishes to thank the Annie E. Casey Foundation for its support of this work, which is part of a multi-partner collaboration.

A growing body of research indicates that, when children can't remain safely at home with their parents, they generally do better when placed with relatives.¹ As with all things in child welfare, decisions must be made on a case-by-case basis, taking individual children's needs into account, but, on average, children do better in kinship foster care than when placed with non-relative foster parents. Foster care licensure often confers greater support – financial and otherwise – to kinship foster families.² What impact, then, does licensure

have on child outcomes? What, if any, differences are there for children in kinship foster care living with licensed caregivers as compared to those living with unlicensed ones? These are essential questions as we think about how to ensure the best outcomes for children and families involved with the child welfare system. While answers to these questions require looking at the licensing framework – standards, processes and practice – comprehensively, relatively little is known about the current state of any of these pieces. This report attempts to provide some of the background necessary for answering key questions associated with licensure of kinship foster parents by looking at the licensing processes in 13 states.³

INTRODUCTION

Why licensing is important for relatives⁴

Generally, when a child is in public custody and placement out of his or her home is required, state law requires that the placement be licensed.⁵ As this report will discuss in further detail, when the foster placement is with a

¹ See, e.g., Conway, T. & Hutson, R. Q. Is Kinship Care Good for Kids? (Washington, D.C.: Center for Law and Social Policy, 2007). Available at: http://www.clasp.org/publications/is_kinship_care_good.pdf

² It is important to recognize that the number of children in relative foster care – whether licensed or not – represent a very small segment of the total number of children in kinship care. Nationally there are about 6 million children living in households headed by grandparents or other relatives. That 6 million includes not only children in kinship foster care but also those living in other family types including, for example, children living in multi-generational families. While it's difficult to isolate the number of children who are being raised by relatives, we know that of those 6 million children living in relative headed households, about 2.5 million are living there without either parent present so it is almost certainly the relative who is raising the child.

³ The review of statutes, regulations, administrative codes and policy manuals and the interviews for this paper were conducted between January 2011-January 2012.

⁴ Much of this section is excerpted from an earlier report authored by CLASP in partnership with the ABA Center on Children and the Law entitled, *Relative Foster Care Licensing Waivers in the States: Policies and Possibilities* and is available at:

<http://www.clasp.org/admin/site/publications/files/Relative-foster-care-licensing-waivers-in-the-states101810.pdf>

relative, licensure is not required in all states. But, for non-relatives and, more often than not,⁶ relatives, licensure is required as a matter of state law.

Under federal law, states have broad authority to establish their own licensing standards so long as those standards “are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights”.⁷ Beyond these broad requirements, there are no specific licensing requirements in federal law and nothing in federal law precludes a state from placing a child in state custody in an unlicensed placement.

However, in order to receive Title IV-E payments, a child must be living in a licensed – or approved⁸ – home or child care facility. Therefore licensing is important to consider when thinking about providing support for children in foster care, particularly in the context of kinship foster care. Title IV-E requires that states establish licensing standards and that those standards “shall be applied by the state to any foster family home receiving funds under [Title IV-E] or [Title IV-B]”.⁹ In other words, if a state is drawing down either Title IV-E or Title IV-B funds for a foster family home, that home must be licensed in accordance with the state’s licensing standards as established pursuant to their IV-E state plan. While federal law does not prohibit placement of a child in a non-licensed home, the state could then not claim any IV-E or IV-B funds for such placements. Similarly, states may place children in a home that meets some alternative licensing or approval standards, for example a relative home approved using standards applied only to relatives, but, again, states could not claim any IV-E or IV-B funds for such homes. Instead, in both cases, the state would have to use state or local funds (or other allowable federal funds) for any payments made on behalf of the child which may be, but do not have to be, equal to the foster care maintenance payments for children in licensed placements. It is important to note that placement in a licensed, IV-E eligible home is also an eligibility requirement for federally funded

⁵ States use a variety of terms to refer to foster homes that are in compliance with the states licensing standards. For example, in some states individual foster homes aren’t licensed but, instead, they are certified as meeting the licensing standards by a licensing child welfare or child placing agency. For ease of reading, this paper will use the term “licensed” to refer to foster homes that are in compliance with a state or county’s licensing standards for foster homes.

⁶ Child Welfare Information Gateway. (2011). *Home study requirements for prospective foster parents*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

⁷ Sec. 471(a)(10) of the Social Security Act; see for example, *Standards of Excellence for Family Foster Care Services*, available at: <http://www.cwla.org/programs/standards/cwsstandardsfostercare.htm>. It is important to note that if a state chooses not to operate a federal Child and Family Services Program and not receive a single Title IV-B or IV-E dollar, it does not have to comply with any of the state plan requirements – including those related to foster home licensing – specified in 471(a)(10) of the Social Security Act.

⁸ In order for a foster home to be eligible for Title IV-E reimbursement, federal law requires that it has been, “licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type,” (Sec. 472(c) of the Social Security Act). States sometimes use other terms for homes approved by agencies in the state such as certified or verified. For ease of reading, this paper will use the term “licensed” to refer to foster homes that are in compliance with a state or county’s licensing standards for foster homes.

⁹ Sec. 471(a)(10)

guardianship assistance payments in states that take the option under the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) to operate such a program.¹⁰

Components of the licensing framework

It is important to distinguish licensing “processes” from licensing “standards.” It is equally important to distinguish “practice.” All three of these components together help shape a state’s licensing framework. Licensing standards are the more concrete requirements, for example, specified square footage requirements for bedrooms, number of hours of pre-licensure training, and standards regarding one’s personal background including any history of criminal activity or child maltreatment. Licensing processes, on the other hand, consist of the techniques, procedures and methods (the “elements required for licensure” described in the next section) the state articulates on paper that it will use to assess compliance with those standards as well as the sequencing of those elements and the overlay of waivers and variances. Practice, in the lexicon of this paper, has to do with the extent to which the processes are followed and implemented. The way licensing standards, processes, and practice interact determine how likely a relative is to become licensed as a foster parent.

What this paper looks at

This paper focuses on the licensing processes. Other related projects are exploring different aspects of foster care licensing; for example, one project is examining the licensing standards in all states while another is comparing the outcomes of children living with relatives in licensed foster homes to those of children living with relatives in unlicensed foster homes in a number of states. We reviewed statutes, regulations, administrative codes and policy manuals in thirteen states¹¹ and conducted interviews with state officials and other key stakeholders in those states to try to drill down to discern the differing ways states try to assess whether a particular individual or family meets the licensing standards.

Recognizing that there are few parameters for state licensing policy established at the federal level, we anticipated finding some significant variation across states in terms of the processes used, but had hoped that the variations would cluster into categories that could be evaluated to determine if they supported or interfered with licensing of relatives. This proved not to be the case. While differences certainly existed – both across states and within them – there was also notable similarity. The broad elements required for licensure appear to be fairly consistent across the states we looked at, though there may be differences in terms of sequencing. The specific details of and approach to individual elements – for example, training – differed but, in general, the *elements required for licensure* appear to include:

- Initial contact/recruitment
- Application

¹⁰ For information on Fostering Connections and the Kinship Guardianship Assistance Program, please see:

http://www.clasp.org/issues/pages?type=child_welfare&id=0001

¹¹ The thirteen states are: California, Colorado, Connecticut, Georgia, Idaho, Illinois, Maryland, Minnesota, New Jersey, New York, Ohio, Texas, Virginia. Care was given to ensuring a balance of state administered and state-supervised, county-administered states.

- Orientation
- Criminal background and child abuse and neglect registry checks
- Health screening
- Training
- In-home assessment/home study/interviews
- Inspection of home and grounds
- Other – for example, Department of Motor Vehicle record and reference checks – often part of the application or obtained during the in-home assessment

Some states combine some of these elements – for example, an orientation session may serve as the initial contact and a means of recruitment – and the sequencing can vary – for example, in some states orientation precedes submission of an application and in others the sequence is reversed. But, by and large, these elements were consistently present in the states examined.

However, even though there appear to be these common elements required for licensure, there was such significant variation within the elements and how the elements were combined and sequenced. Thus, we could not describe common patterns of how elements fit into the licensing processes in order to compare states with different patterns. Take training as an example of one common element: whether it is required for placement or only for federal reimbursement varies, the training modules vary, who provides the training varies, and when it must occur varies. There is so much variation within just the training component. When we tried to map patterns with each element, there was simply too much variation to describe any meaningful cluster of elements as “process” A versus “process B.”

Even if such categorization were feasible, identifying a clear link between the processes detailed in policy and the impact of those processes on the likelihood that relatives are able to be licensed as foster parents would be virtually impossible. For example, one state has, what appears in written policy, to offer a clear menu of options – including relative foster care – available to relatives to participate in the care of related children in public custody.¹² However, a stakeholder in that state indicated that, in practice, the options are seldom explained to relatives and that they must know to ask, before the judge, for the enhanced support that comes with licensure. Therefore few relatives actually benefit from what looks like a good process in policy. Similar conversations were had across the 13 states examined as part of this project, making clear that policy alone does not give us a complete picture of relative foster care licensing – practice is critical. While practice and implementation of policy, always matters, the interviews we did for this paper suggest that how processes on the books are carried out in individual states, counties and even families varies so much that attempting to point to something as a process that would make licensing more likely would not be empirically based.

¹² This project involved both state-administered and state-supervised, county-administered states. The term “public custody” is used to refer to children in state- or county-custody.

We had hoped that looking at official licensing policy and talking to stakeholders in the states would point to patterns of licensing processes that are conducive to licensure of relative foster parents; however, our research indicated that the licensing process is just a small part of the equation. Based on our research, it appears that agency or worker level philosophy and personal beliefs about the value of kinship care probably have more impact on whether a relative is licensed or not.

Overarching questions raised by our research

The following is a series of intersecting questions that must be addressed if we are to understand what shapes the likelihood that relatives are able to be licensed as foster parents:

What is the prevailing philosophy regarding kinship care?

The overarching philosophy of the state or jurisdiction regarding kinship care – whether that be “family is best” or “the apple doesn’t fall from the tree” or somewhere in between – is part of the broader context in which licensure of relatives happens or doesn’t.

Is there a preference for placement with relatives?

Likely closely tied to the prevailing philosophy regarding kinship care, the degree to which there is a preference for placement with relatives helps comprise the broader context that shapes whether and how readily relative caregivers get licensed. Of course, it is important to keep in mind that placement does not always equate to licensure. So while there may be a preference – in statute, policy, or more informally – to place with relatives, there is not always an associated preference for licensing those relatives. This may be due, in part, to the belief held by some that, although relative placement is best when safe and appropriate, relatives have a moral obligation to provide care and should not receive the financial support that comes with licensure to do so.

How and when are relatives identified and engaged?

Probably influenced by the prevailing philosophy regarding kinship care and any preference for kinship placement, how and when relatives are identified and engaged will impact relative licensure. If, for example, relatives are engaged in a way that makes them feel like part of a team working on behalf of the child, they may be more interested in pursuing licensure than if they are given minimal information and told that their relative children will go to “strangers” if they don’t agree to care for them on their own without supports.

What options are available to relatives to serve as placements for children in public custody?

In some states there are multiple options available to relatives to provide care for a child in public custody. In others, children in public custody can be placed only in licensed homes and there are, therefore, few options beyond becoming a licensed foster parent available to relatives to care for a child once that child is in public custody. Many appear to allow for provisional licenses and/or emergency placements of some kind. Of those allowing for provisional licensure and/or emergency placement, some require that the relative subsequently get licensed within a specified timeframe and others allow

the emergency placement to continue for an unspecified amount of time.¹³ Some states' licensing requirements are such that, through an expedited process, they can quickly license relatives.¹⁴ Thus, depending on the state or locality, a relative identified as a potential placement for a child may have many options – including becoming a licensed foster parent – available to them or very few. Also depending on the jurisdiction, any of the options that fall short of full foster care licensure may or may not come with financial support and the level of support may vary.

Stakeholders noted in two states where licensure is required that, if it became clear that a relative was unlikely to be able to become licensed, the case would sometimes be dropped to a “protective services” case. In such cases, the state doesn't take or maintain legal custody of the child so that relatives can care for the child without licensure, which may allow for some support, but generally not the same level as if the homes were licensed.¹⁵ The array of options available to relatives – and how well the pros and cons of each are explained – will likely impact how many relatives pursue licensure.

Federal Requirements to Identify and Notify Relatives

Regardless of the number of options a relative in a given state has, federal law requires states to identify and provide notice to all adult relatives within 30 days of a child being removed from his or her parents. Best practice would suggest that relatives be identified and provided with notice as soon as it is known that a child will be removed.

The notice must:

- specify that the child has been or is being removed from the custody of his or her parent(s);
- explain the options the relative has to participate in the care and/or placement of the child;
- explain any options that may be lost if the relatives do not respond to the notice;
- describe the requirements to become a foster family home and the additional services and supports that are available for children in such a home; and
- describe how to enter into an agreement to receive kinship guardianship assistance payments, if the state has elected to make them.

For additional detail on the identification and notice required as part of the *Fostering Connections to Success and Increasing Adoptions Act of 2008* see:

<http://www.clasp.org/admin/site/publications/files/NewHelpChapter2.pdf>

¹³ Per federal regulations states can claim Title IV-E reimbursement for children placed in provisionally licensed foster homes for up to 60 days between the date that the foster home meets all the licensing criteria and the date when the official license is actually issued. See Child Welfare Policy Manual 8.3A.8c. Question # 6.

¹⁴ Most of the states we looked at clearly allow for licensure pending receipt of the required FBI/criminal background checks if the relative attests that neither they nor other adults in their home have a disqualifying background.

¹⁵ Of course, if the state wants, it can also close or never open a case and place children with relatives regardless of licensing status. However, this may lead to little or no support for the relatives in meeting the needs of the child.

BACKGROUND

Background in the following two areas is necessary in order to understand the findings from our research: the distinction between 1) placement and licensure and 2) waivers and variances.

The decision of whether to license and the decision of whether to place are distinct

It is important to recognize that although the decision of whether to license a foster family and the decision of whether to place a child with a family are often talked about interchangeably, they are distinct decisions. Additionally, in many states, a child in public custody can be placed in an unlicensed setting. With non-relatives, the licensure decision will almost always precede the decision to place. For relatives, the sequence is often flipped and, in practice, the option of licensure may never be raised.

Licensing of non-relatives rarely happens in an emergency. The prospective foster parents may be very eager to have a child placed in their home and the agency may be particularly interested in making the family available for placements but rarely is there a child needing immediate placement in that home.¹⁶ Instead, for non-relatives, a decision is made that they would like to provide a home for unrelated children whether they came to that decision on their own or after having been recruited. They then go through the licensing process that is available to them and are then eligible for placement of foster children in their home. Whether or not children are placed in their home should then happen on a case-by-case basis depending on the needs of the children and the skills and capacities of the foster family.¹⁷

Relatives, on the other hand, almost always approach or are approached by the agency in an emergency situation – a child has or is about to be removed from his or her home and is in need of placement. The desire – if not always decision – to place a particular child with a particular relative is often clear very early on. There is no time to complete training or to have a series of in-person, in-home interviews to assess the relative’s motivation for and ability to foster a child. In a sense, the decision to place precedes the question of licensure.

The impact of this inverted decision making process plays out differently depending on policies, practices, and philosophies of the state/locality. That there is a distinction between the requirements and assessments associated with licensure and those associated with the decision to place seems consistent across the thirteen states we studied. However, where states draw that line with regard to different requirements varies. For example, in some states some amount of training is required prior to licensure. In other states training is not so much a requirement of licensure but must happen pre-placement. Similarly a psycho-social assessment of some kind appears to occur in all of the states we studied – in some states as part of the licensing process and in others independent of the licensing process as part of the decision to place.

¹⁶ Note that a number of states – but not all – appear to treat fictive kin as relatives for the purposes of licensing.

¹⁷ It bears noting that a number of interviewees acknowledged that, for a variety of reasons, there are licensed foster homes that aren’t used. Licensure does not guarantee that a home will be selected for placement of children.

While it's not clear what impact this sequencing has on licensing relatives, it seems reasonable to assume that in states where there are fewer requirements for licensure, any person – relatives included – will be more easily licensed. If more of the various requirements are assessed in the context of the decision to place as opposed to in the context of licensure, states should have more flexibility to be responsive to both the unique needs of kinship families and non-relative foster families. A more flexible approach should also help mitigate some of the barriers to licensure that relatives can encounter while allowing public agencies to take steps to protect the safety of the child. Thus a more flexible approach allows more relative caregivers to become licensed and, in many cases, receive additional support on behalf of the children they are caring for.

Flexibility: waivers and variances

The majority of children in foster care are placed with non-relatives and licensing policies are often developed with these caregivers – rather than relative caregivers – in mind.¹⁸ Some licensing requirements, such as those related to physical space within the home, may pose particular challenges for relatives who want to care for relative children in foster care (kinship foster care). Furthermore, some of the requirements may not make as much sense in the context of kinship foster care or may be outweighed by the benefits of placing a child with a relative in order to lessen the trauma of removal from his or her parents by maintaining family connections. Recognizing that some flexibility in the application of licensing standards might, particularly in the case of relative foster parents, be important in order to place children in the most appropriate setting, states have long been permitted to grant waivers of non-safety¹⁹ related standards on a case-by-case basis for relatives and to allow for variances for relatives and non-relatives. These two approaches allow for flexibility in application of a state's licensing standards without jeopardizing Title IV-E eligibility.

Variance - A state may license a foster family home that meets a standard for licensure through an alternative method that is equivalent to that specified in the state's licensing standards. For example, a state may license a family foster home that doesn't have safe drinking water in its well and, instead, allow the family to purchase bottled drinking water. Since this alternative method still achieves the objective of the licensing standard, that the home has safe drinking water, federal guidance refers to this as a variance and permits IV-E reimbursement for a child living in a home licensed in this manner.

Waiver - A state may also, on a case-by-case basis, exempt a relative home from compliance with a non-safety related standard.²⁰ This is known in federal guidance as a waiver and otherwise-eligible children

¹⁸ Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2010 data (October 1, 2009 through September 30, 2010). Available at: http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report18.htm

¹⁹ For the purposes of foster care licensing, "non-safety" is not defined in federal law. Guidance issued on July 9, 2010 (ACYF-CB-PI-10-11) made clear that states have the discretion to determine what constitutes a non-safety standard for licensing purposes. Fostering Connections codified policy that has been in existence since 1985. See Child Welfare Policy Manual, 8.3A.8c (1) available at http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=26#26.

²⁰ The guidance suggests that a foster family home licensed via a waiver is only eligible for Title IV-E reimbursement if it is a relative foster family home. Thus, it may be that non-relative foster placements licensed via a waiver would not be eligible for Title IV-E reimbursement.

living in homes licensed in this manner are also eligible for IV-E reimbursement. Consider, for example, a state that requires foster homes to provide a separate bedroom for each child. The state could choose to exempt a prospective relative foster parent with only one bedroom available for her two granddaughters from this requirement and still license the home.

It is important to note that while this is how federal guidance defines the terms waiver and variance, as detailed in another report co-authored by CLASP, *Relative Foster Care Licensing in the States: Policies and Possibilities*, states define and use the terms “waiver” and “variance” differently and not always in ways that are consistent with how the terms are used at the federal level. Further, a few states have adopted their own specific language, referring to what would be considered a waiver or variance at the federal level, with some other term. For additional detail see: <http://www.clasp.org/admin/site/publications/files/Relative-foster-care-licensing-waivers-in-the-states101810.pdf>

FINDINGS

Licensing policy – just part of the picture

Perhaps the most obvious but also critically important finding from our research is that policy doesn’t always equate to practice. This is a reality well known in all areas of policy – certainly in social policy. The reasons for this disconnect may include differing interpretations, lack of capacity to train those charged with implementation, policies that were developed without adequately accounting for the realities of practice, and so on. As a representative of the state agency in one state said, practice varies from county to county and worker to worker. A stakeholder in another state noted that while the policy director in the state had brought with her the priority of placement with relatives and revised regulations accordingly, the sense was that something was “getting lost in translation” when communicating those policies to the field staff.

In the context of child welfare – and notably in the case of kinship care – philosophical differences can also play a role. A number of those interviewed raised this issue noting, for example, that philosophies regarding kinship care may differ from county-to-county. One state-supervised, county-administered state agency official noted that although there’s a preference at the state-level for kinship foster parents to be licensed, there are more unlicensed kinship foster homes in the state than there are licensed ones. While this is likely driven by a number of things – including issues with training requirements as the officials noted – it also raises the question of whether the philosophy of the state agency differs from that of counties within that state.

Our research suggests that the beliefs and attitudes about kinship care held by those charged with implementing foster care licensing policy can have an important impact on the extent to which kinship caregivers are licensed as foster parents. For example, in one state, it was noted by a stakeholder that the relatively new director of foster care was “less risk-averse” and supportive of kinship families and, under him, there have been many more waivers issued. Therefore, while policy that appeared to be restrictive and likely to pose challenges for relatives wishing to get licensed became less restrictive when implemented under an agency director who believes children do best when able to remain with family and that those families need support. Conversely, policy that allows for licensing processes that are responsive to the unique circumstances of kinship caregivers

means little in a state or county where the common belief is that relatives should not be licensed unless they strictly adhere to the licensing standards. For example, a former director of a state with waiver authority on the books noted that he had never issued a waiver during his tenure, believing that the standards were there for a reason.

That is not to say that licensing policy doesn't matter. Policies governing foster care licensing standards and processes provide an important framework and can help set the tone for how a state works with kinship families. Stakeholders in one state noted that the "pendulum [had] totally swung" from a relative-averse approach toward one in which children are placed with relatives when safe and that policies had been shaped to facilitate that.²¹ For example, when licensing regulations were recently re-adopted in that state, a state agency official noted that there were efforts to make the regulations broader and less rigid, thereby reducing regulatory barriers for relatives. The new regulations, attributable at least in part to the shifting philosophy in the state, contribute to a more responsive licensing framework that, combined with the changing philosophy, should, in turn, shape practice.

Entity responsible for licensing varies across states – impact unclear

Just as there are differences between states in terms of standards, specific training modules used, and so on, the entity or entities responsible for licensing activities may vary from state to state. Not surprisingly, in small counties in county-administered states or small states, one entity will likely handle almost all aspects of child welfare including licensure. But in larger counties and states, it was not uncommon to hear of licensing activities and responsibilities being divided among two or more divisions within the public agency and/or with private agencies.

Our research suggests that licensing activities can be thought of as being comprised of two parts. One involves the more objective pieces like the inspection of the home and grounds and verifying a complete licensing application – the pieces that lend themselves to checkboxes. The other involves the more subjective components like foster parent assessments and interviews with the family and the like. While not all agree that this division is appropriate – some feel that there are benefits to approaching them jointly – some divide tasks along these lines. In some states there is an office of licensing that handles most of the objective pieces and a division that handles the other components. A number of stakeholders in states with this approach suggested that having a licensing division and the objectivity that comes with that contributes to higher quality foster homes.

Another potential division of licensing responsibility involves private agencies. For example, in some states, child-placing agencies – both public and private – are licensed by the state and, in turn, certify, verify, recommend, or approve foster homes. Sometimes the states then issues a license to the home based on the agency's recommendation. In one state, a certificate issued by a child-placing agency is considered a license.

²¹ Note that in this state, all children in state custody must be in licensed placements so this move represents not just a move toward placement with relatives but toward licensure of those relatives.

However, it appears, for the most part, private child-placing agencies aren't set up to license *relatives*. One stakeholder noted, private agencies aren't interested in certifying relatives because the certification process costs them money and then the relative is typically only going to care for that one child or sibling group – they won't be an ongoing resource to the agency. Our research in the thirteen states we studied indicates that relatives are almost always licensed by public agencies even if non-relatives are more often licensed by private agencies. It was noted in one state that this may serve to disadvantage relatives in that the public agencies may take longer to process licensing paperwork or provide less ongoing support.

Flexibility in application of licensing standards and processes – formally and informally – plays critical role

Regardless of the approach the state takes, licensing – particularly of relatives – must be looked at through the lens of the state's flexibility in application of its requirements and standards. This flexibility can be seen in written policy as waivers, exceptions, variances, alternative means of compliance, documented alternative plans, etc. States use a variety of terms to refer to exemptions from a given requirement (referred to as a “waiver” at the federal level for the purposes of eligibility for IV-E reimbursement) and to alternative means of complying with the intent of a given requirement (referred to as a “variance” at the federal level for the purposes of eligibility for IV-E reimbursement). In some states all caregivers – relative or not – may be licensed using a waiver or variance.²² In others, waivers and/or variances are only available to relatives. The requirements for which a waiver or variance can be provided vary. For some states, only specified requirements can be waived, in others there is more general waiver authority allowing for waiver of most requirements in certain circumstances.

While written policy – both in terms of flexibility available via waivers, for example, and the broader licensing requirements – may suggest a licensing structure that is more or less conducive to licensing relatives, it is important to recognize the critical role of implementation and practice. Broad authority to issue waivers to relatives will not likely lead to licensing more relatives if the authority to approve those waivers is vested in a director who ascribes to the myth that “the apple doesn't fall far from the tree.” On the other hand, a state with narrow or no waiver authority may be more relative-friendly if the overarching philosophy encourages kinship care and workers are empowered to allow for variances at the case level.

Unwritten policies and philosophies play out in other ways as well. For example, one state agency official indicated that relatives are “fast-tracked” in that reviewing their home assessments, for example, is prioritized over those of non-relatives. Similarly, in another state where licensure is required, a representative of the state agency indicated that the regions prioritize licensing kinship homes in which children have been placed on an expedited basis pending licensure. In contrast to this, another state indicated that although waivers are available to both relatives and non-relatives, they are generally more acceptable in the case of non-relatives.

²² Regulations indicate that a foster family home licensed via a waiver (as federally defined) is only eligible for Title IV-E reimbursement if it is a relative foster family home. Thus, it may be that non-relative foster placements licensed via a waiver would not be eligible for Title IV-E reimbursement (“Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews; Final Rule.” *Federal Register* 65:16 (January 25, 2000) pg. 4034).

Differences between state and federal terminology may reflect misunderstanding of federal requirements

As noted previously, there are differences between the federal definitions of waivers and variances and those of some states. The differing terminology and conceptualization of waivers, variances, exceptions, etc. continues to make it a challenge to understand how the flexibility of licensing regulations is being applied in practice. Additionally, our review suggests that some states may be approaching criminal background exclusions in a more restrictive way than what is required by federal law. Such a review was beyond the scope of this particular paper but it may be useful to explore whether such differences reflect intentional state policy decisions or a misunderstanding of the federal requirements.

PROMISING APPROACHES

A number of licensing processes emerged in our research that seem particularly conducive to licensing relative caregivers as foster parents. While it was not possible within this project to do an evaluation of the effectiveness of the following approaches, they may be worth exploring in more depth if licensing more relatives is the goal, as opposed to a goal of supporting relatives in caring for children who might otherwise end up in child welfare.

Establish core requirements for licensure

One state we looked at was able to identify a core set of standards and requirements that it deemed essential for health and safety. These standards comprise the requirements for full licensure or approval in that state. As such, foster homes licensed or approved as meeting those standards are considered licensed – and Title IV-E reimbursable – for federal purposes. However, there is an additional set of requirements, beyond those core licensing standards, that non-relative foster parents must meet. These requirements include some of those typically thought of as licensing requirements such as training²³ and providing personal financial information.

Such an approach seems to provide more room for licensing relative foster parents in ways that can accommodate their unique circumstances. For example, among states that require training prior to licensure, we frequently heard that that was sometimes a barrier to licensing relatives who felt such training was unnecessary. A framework in which there can be separate training requirements for relatives and non-relatives without risking the ability to get licensed – and without compromising the safety of the child, all the while appropriately

²³ It should be noted that, while there were varying perspectives among those interviewed on requiring training for relative foster parents, there seemed to be some agreement that at least some training – such as that around the impact of trauma on children – was necessary for all foster parents, including relatives.

reparing relatives to meet the child’s needs and providing federal financial support to do so²⁴ – may hold some appeal.²⁵

Presumptive eligibility

Most states we looked at provide for some measure of provisional licensure for relatives pending full licensure. This allows a children to be placed with these relatives while the relatives complete various foster care licensing requirements or, perhaps, while necessary paperwork is processed. Title IV-E dollars can be used to reimburse provisionally licensed homes but only for up to 60 days and only between the date that the foster home meets all the licensing criteria and the date when the license is actually issued.²⁶ An interesting variation we came across involves presuming, following an initial assessment, that the home meets licensing standards. This “presumptive eligibility” allows for a child to be placed with a relative foster parent, receive services and – assuming the child is otherwise eligible – begin receiving Title IV-E payments immediately.

Foster parent mentors

A number of stakeholders across the 13 states we studied noted that effective communication with relative caregivers posed challenges in getting them licensed. One approach that seems particularly geared toward addressing that issue is the use of foster parent mentors. In one state, mentors are made available to all prospective foster parents and are matched based on their particular circumstance – kinship, pre-adoptive, or more general foster care.

A representative of the state agency noted that the mentors are effective in helping relatives understand the importance of licensure. The mentors can also help relatives feel more comfortable with training and other requirements of licensure.

Communicate with relatives

Though obvious in our interviews and not exclusively associated with licensure, the value of communicating with relatives was mentioned frequently. An agency official from one state in particular talked about having worked through their policies and procedures to ensure that relatives are given the information they need at every point along the way to make informed decisions. That same official noted a dramatic increase (over 30 percentage points) in the percentage of the relatives licensed over a 4-year period.

²⁴ Sec. 471(a)(24) of the Social Security Act requires states to certify that, “before a child in foster care under the responsibility of the State is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child”. This does not, per federal law, have to be done in the context of licensing.

²⁵ Notably the state that has taken this approach indicated that it faced significant challenges in receiving Title IV-E reimbursement early on.

²⁶ See Child Welfare Policy Manual 8.3A.8c. Question # 6

CONCLUSION

Our research indicates that licensure of kinship foster parents is something that states have spent time thinking about, continue to wrestle with, and are eager to talk about. There seems to be an opportunity for dialogue among stakeholders – an opportunity to discuss challenges and also to share lessons and promising practices. Our research suggests that in facilitating such dialogue, efforts to establish shared terminology or, at least, shared understanding of varying terminology would be essential. Also essential would be making clear, from the outset, what requirements exist at the federal level around criminal and child abuse and neglect registry checks, placement, licensing, and Title IV-E eligibility and to clarify the distinctions among these.

As we consider increasing the percentage of relatives that become licensed and, more comprehensively, supporting relatives in caring for children who might otherwise end up in child welfare, we must keep in mind that licensing policy, whether standards or processes, is only part of the picture. Our research made clear that the broader philosophy and attitudes around kinship care have a significant impact on implementation and practice regardless of what is in writing. We must continue to work toward the following:

Dispelling the pervasive myths that surround kinship care

In spite of a growing body of research that indicates relative care is often best when children cannot remain safely at home,²⁷ myths surrounding kinship care persist in some areas and among some policymakers as well as some of those in the field of child welfare. These myths and the philosophies they engender threaten the potential for standards and processes that are responsive to and maximize the benefits associated with kinship foster care. For example, a state or locality that ascribes to “the apple doesn’t fall far from the tree” may limit – in policy or practice – the potential for flexible application of licensing standards via waivers or variances.

Enhancing efforts to make relatives aware of the full range of options that are available to them to participate in the care and placement of relative children

In order to become licensed, one must first be aware that a relative child needs placement. As required under the Fostering Connections to Success and Increasing Adoptions Act of 2008, agencies must exercise diligent efforts to ensure all adult relatives are identified and provided with notice when a related child is removed from his or her home. This notice must detail the options available for being involved with or caring for the child under federal, state and local law as well as any opportunities that may be lost by failing to respond. The notice must describe the requirements for becoming a licensed foster parent and the additional services and supports available to children placed in licensed homes. The notice must also describe how a relative who becomes a licensed foster parent can subsequently enter into a subsidized guardianship agreement if the state has taken the option to provide federal reimbursement for such placements. It is critical that this required notice is well-implemented such that relatives are able to make informed decisions about what is best for their families.

²⁷ Is Kinship Care Good for Kids?

Better understanding and addressing relatives' concerns and fears associated with becoming a licensed foster parent

A number of those we spoke with in states indicated that relatives often don't want to become licensed. The reasons for this vary but often involve discomfort with the having the child welfare agency involved in their lives and believing that training or other requirements are irrelevant to them. Other stated objections to licensing include a desire to minimize "intrusions" and oversight from the child welfare agency. Depending on the state, these concerns may be justified but, in others, they may reflect misunderstandings of the impact of licensing. We must better understand what relatives concerns are and what informed those concerns if we are to respond appropriately.

Providing appropriate training to the child welfare workforce

Even the best, most thoughtfully constructed policy is only as good as those implementing it. Though the overwhelming sense is that the child welfare workforce wants to do right by the children and families they serve, they must be supported and receive appropriate training to do so effectively. Caseworkers, supervisors, judges, and other professionals working in child welfare must receive training on the research about the value of placing children with relatives when safe and appropriate, as well as on state foster care licensing policies and related policies at the federal level in order to best meet the needs of children and families.