IDENTIFICATION OF AND NOTICE TO GRANDPARENTS AND OTHER RELATIVES

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Nature of the Notice

2.1 What does the notice provision require and what is its purpose?

The state child welfare agency must exercise due diligence to identify and provide notice to all adult grandparents and other relatives of each child within 30 days of the child's removal from his or her parent(s)' custody. This notice allows grandparents and other relatives to get involved early in the child's care and/or placement. Sometimes relatives can keep the child out of foster care. A relative who cannot provide a placement for a child may be able to participate in the child's care in other important ways, such as by maintaining a relationship with the child or taking the child to doctor's appointments, extracurricular activities or visits with birth parents. (§471(a)(29); P.L. 110-351 §103)

2.2 Who is required to get the notice?

The act requires that the state exercise due diligence to provide notice to *all* adult grandparents and other adult relatives including those suggested by the parents. This means relatives who live in the area and those in distant communities or states. (§471(a)(29); P.L. 110-351 §103)

2.3 Aren't there really two requirements here – one to identify all adult grandparents and other relatives and the other to provide them notice?

Yes. State agencies are required to exercise due diligence to both identify all adult relatives and provide those relatives with notice. (§471(a)(29); P.L. 110-351 §103)

2.4 What does "due diligence" mean?

The statute does not define due diligence, and it can have different meanings in different legal contexts. However, generally due diligence requires the actions of a "reasonable person." As administrators, policy makers and advocates think about implementing the new identification and notice requirements, they should think about what someone wanting to identify and notify relatives about an important event would reasonably do to accomplish those goals. What is reasonable and appropriate may vary with the circumstances.

2.5 How must the state agency document that notice has been given and to whom?

The act does not specify that a state child welfare agency must document that notice has been provided or to whom. However, because notice is required as part of a state's plan, it would be to the state's benefit to document who has been notified and what information was provided to each person in case questions are ever raised about whether or not notice was provided. It would also be very useful to have such contact information available in the child's case record in the event that family contacts are subsequently needed.

2.6 What responsibility does the court have to ensure that notice has been given to grandparents and other adult relatives?

Nothing in the new law explicitly requires the court to ensure that notice has been given. However, in its role as the entity reviewing a child's case plan and status, the court could inquire of the agency what steps the agency has taken to identify and provide notice to the appropriate relatives and who has and has not been notified. State law may make the court's role more explicit. For example, state law could require the court to inquire about the status of the agency's

due diligence to identify and provide this notice. Colorado law requires the court to order parents to provide names, contact information, and comments about the appropriateness of relatives whom the agency must then contact within 90 days. New York law requires the court to order the local commissioner of social services to immediately investigate and contact any relatives including all grandparents, all suitable relatives identified by the parent and any relative a child over the age of five identifies as someone who plays or played a significant positive role in his or her life.

2.7 Does the notice to relatives have to be in writing?

The act does not specify the manner in which notice must be given. However, good policy and practice would suggest that the notice be in writing for everyone's benefit. The agency would have proof that it provided notice and the relatives receiving notice would have a record of the opportunities they have to care for or participate in planning for their relative children. A copy of the written notice could be kept in the child's case record for possible future use.

2.8 What accommodations must be made in providing notice to grandparents and other relatives with disabilities or who are not fluent in English?

In order to meet the due diligence standard, it is likely that the agency will have to provide notice in a manner that reasonably ensures the relative has understood the notice. A written notice may not be enough in some cases. This could mean providing notice in a language the relative is fluent in. Or the family's caseworker may have to go over the written notice in person with the relative. If an individual has a visual impairment, the notice may need to be written using large print or braille. For suggestions about what is reasonable in various circumstances, consider guidance from the U.S. Department of Health and Human Services (HHS) Office of Civil Rights at http://www.hhs.gov/ocr/lep/lep_guidance080403.pdf and the Technical Assistance Manual for Title II of the Americans with Disabilities Act as it applies to the operations of state and local governments at http://www.ada.gov/taman2.html#II-7.0000. (This latter section addresses communications with individuals who have visual or hearing impairments.)

2.9 What information must be included in the notice to grandparents and other relatives? Are there any confidentiality issues?

In the notice, states are required to:

- 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.

Federal, state and local laws require child welfare agencies to keep certain information confidential. The requirement that states provide notice that a child is entering or has entered foster care supersedes and preempts those provisions. However, only the information necessary to comply with this federal requirement can be shared. The relative should simply be notified of the removal or impending removal and provided the information described above. There is no requirement to share the circumstances leading to the removal in the initial notice. If the child is placed with the relative or the relative becomes involved in the child's care, additional information may be shared as appropriate. As in most aspects of child welfare practice, a determination of what can be shared will depend upon the individual circumstances, as well as local, state and federal law. (§471(a)(29); P.L. 110-351 §103)

2.10 For the purposes of this notice requirement, how is "relative" defined?

The new law does not define the term "relative" for the purposes of the notice requirement. HHS may define the term or leave it to state discretion. If it is left to the states, a state may choose to define relative to include only a person related by blood, marriage, or adoption, as some do now in their subsidized guardianship programs, or a state could use a broader definition of relative that includes a godparent, close friend, or someone with a significant existing relationship with the child. A state may find it useful to look at whether and how "relative" is defined in other relevant laws in th

2.11 Is there an exception for contacts that may raise a family or domestic violence risk?

Yes, there is an exception to the notice requirement in cases of domestic and family violence. Such an exception should be based on risk to the child or birth parent. For example, if the birth mother has a history of victimization from one of the child's relatives—such as the child's father or a paternal or maternal grandparent—then notice to that relative may not be appropriate. While the new law does not specify how the determination should be made or by whom, best practice provides some guidelines. There are a number of crucial questions that must be considered in assessing family or domestic violence risk and these questions will be best answered through a conversation between the worker and the birth parent that allows the parent to disclose information confidentially and without fear. Such a conversation also allows for assessment of the individual circumstances in each case. While the act does not require documentation of the reason for an exception due to family or domestic violence, documentation could help to 1) prevent re-traumatizing the parent by requiring them to describe their experience with domestic or family violence multiple times; 2) document the history of abuse to help aid the decision making process; 3) prove the notice requirement was considered; and 4) protect a parent from inappropriate claims of being uncooperative if the reasons for not providing information about relatives are explained in the case record.

Family members of a perpetrator of domestic or family violence should not automatically be excluded from receiving notice when a child is removed from a parent's custody. Such relatives should be contacted and their involvement in the care and placement of the child explored if the birth parent and child(ren) are not afraid of them and/or have not been victimized by them in the past; such family members are able to keep the safety needs (physical and emotional) of the child and birth parent above all other loyalties; and they agree to maintain visitation for the child and birth parent as appropriate. (§471(a)(29); P.L. 110-351 §103)

2.12 Does the requirement that notice occur within 30 days after the removal of a child from the custody of the parents refer to removal from the physical custody or from the legal custody of the parents?

When a child is removed from the custody of his or her parents, there is both removal from their physical custody (physical separation) and removal from their legal custody (removal of certain decision-making authority). The removals may occur at different times and in different order. Since the statute does not clarify whether the notice should be given within 30 days of the legal or physical removal of the child, it would be wise for states to provide the notice within 30 days of whichever event happens first. This is consistent with the desire to have relatives become involved in a child's case as quickly as possible.

2.13 Does the notice requirement apply to children voluntarily placed with a relative by their parents?

Sometimes a parent voluntarily places a child in the care of the relative when the child welfare agency has not filed a petition to legally remove the child from the parent's custody and no court has ordered the placement. The parent retains decision-making authority regarding the child. The notice requirement in the new act does not seem to apply in these cases. The notice requirement in the new act ensures that all relatives have an opportunity to get involved when the *state* (via the child welfare agency and the court) seeks to remove a child from his or her parents, not when the separation is a result of the parent's own planning and decision-making.

2.14 If a grandparent or other relative is not identified until more than 30 days after the child has been removed, must the relative be notified?

The act neither requires nor prohibits notice to relatives identified beyond 30 days of the child's removal. Due diligence, in the majority of cases, should require identification and notice to relatives soon after a child is removed from his or her home, allowing them the opportunity to participate in the care and placement of the child. However, it is reasonable to expect that in some cases relatives will not be identified until later. In these cases, states should consider, on a case-by-case basis, whether notification would be appropriate. The decision will likely vary depending on how long the child has been with the current caregivers, the previous relationship between the relative and the child, and the permanency plan for the child.

2.15 Will grandparents and other relatives of American Indian children have a right to notice under this provision?

Yes, many will. The notice requirement is a Title IV-E state plan requirement. If tribes or consortia of tribes begin to run their own foster care and adoption assistance programs and receive federal Title IV-E funds, they will be required to comply with most state plan provisions including the notice requirement. Tribes that have agreements with states to administer or co-administer Title IV-E programs are also required to comply with state plan provisions and thus will be required to meet the notice requirement. Of course, American Indian children in the custody of a state child welfare agency will also benefit from the state plan requirement. The requirements will not apply to children whose care and placement are the responsibility of a tribe that does not administer a Title IV-E program directly or through a state-tribal agreement, although tribes may provide such notice under their own laws or customs. (§471(a)(29), §479B; P.L. 110-351 §103, §301(a)(1))

2.16 How many states currently require notice to grandparents or other relatives when a child is removed from a parent's care and is about to be, or has been, placed in foster care?

Several states, including Colorado and Connecticut, already have notice requirements in place; however, they are not all identical to the federal notice requirement. Specific requirements of the notice vary between states. For example, Colorado requires parents, at the temporary custody hearing, to identify relatives and provides that the court may order the agency to make reasonable and timely efforts to contact "appropriate" relatives within 90 days of the hearing about potential placement. Connecticut requires the state to use "best efforts" to identify and locate all grandparents within 15 days of removal from the home. Others, like Kansas, require that certain relatives receive notice of court hearings rather than the removal itself.

2.17 Does the new notice provision require state legislation?

The act does not require state legislation. It requires that states, in their Title IV-E state plans, assure that they will exercise due diligence in identifying and providing notice to all adult relatives of the child. Some states may elect to implement the new Title IV-E state plan requirement through state legislation while others may make any necessary changes at the agency policy level or through other, non-legislative means. Legislation would be necessary if there is an existing notice statute that conflicts with this requirement. For example, if a state has a law that allows 90 days or only gives notice to grandparents, that state would require new legislation to modify the pre-existing law.

Consequences of the Notice

2.18 What consequences are there for a state if the state does not provide notice?

The new law does not specify the consequences for a state that fails to provide notice. However, because the notice provision is required as part of a state's Title IV-E state plan, failure to comply could result in the loss of at least a portion of a state's Title IV-E payments.

2.19 If a grandparent or other relative does not respond to the initial notice, will he or she lose his/her chance later to contact or care for the child?

The state is required in the notice to explain both the options the relatives have to participate in the care and/or placement of the child as well as any options that may be lost, under state law, by failing to respond to the notice. For example, if a relative does not respond to the notice until after the child is placed in a foster home the relative may not have the opportunity to be the child's foster parent. Therefore, a relative can weigh the consequences of not responding when considering the notice he or she received. (§471(a)(29(B)); P.L. 110-351 §103)

2.20 Does a child, grandparent or other relative have any recourse if the agency does not give the proper notice?

The new law does not specify the recourse for a child or relative if the agency fails to provide proper notice. However, there might be legal remedies available based on other state and federal laws.

2.21 What if a parent refuses to identify grandparents or other relatives (for example, paternal relatives)?

The new law requires states to exercise due diligence to identify and notify all adult relatives "including any adult relatives suggested by the parents" but it does not require parents to identify relatives. As part of its effort to identify and notify relatives, state law may require parents to provide information about relatives and comment on the appropriateness of placing the child with such relatives. Colorado has such a law and requires the court to inform parents that placement with relatives may not happen without the provision of such information.

Whether or not states enact legislation, it will be important for them to develop model practices for gathering information from parents in constructive ways. Many parents will want to provide information about relatives with whom they would like to see their children placed. When parents do not want to provide such information, it will be important to understand why they don't. If, for example, there are concerns about domestic or family violence, a number of crucial questions must be considered in assessing the appropriateness of providing notice, and these questions will be best answered through a conversation between the child welfare worker and the birth parent that allows the parent to disclose information confidentially and without fear. It may also be helpful to consult the parents' attorney on this issue.

While the new law does not require documentation of such conversations, it would be helpful for a variety of reasons. First, documentation that a parent refused to identify a relative because of concerns about domestic violence creates a record of why certain relatives were not notified of the child's removal. Such a record also helps prevent re-traumatizing the parent by requiring them to describe their experience with domestic or family violence multiple times. Second, the documentation will be useful in future decision-making regarding the placement and care of the child. Third, documentation of such conversations proves that the notice requirement was considered. Finally, documentation helps protect a parent from inappropriate claims of being uncooperative if the reasons for not providing information about relatives are explained in the case record.

2.22 If, as a result of the notice, a grandparent or other relative is located and is interested in caring for the child, must the child welfare agency assist them in doing so?

The notice provision specifically requires that the agency inform the relative of the requirements to become a foster family home and the additional services and supports that are available for children in such a home and, if the state has elected to make relative guardianship assistance payments, the notice must describe how to enter into an agreement to receive such payments. (§471(a)(29)(C)&(D); P.L. 110-351 §103)

2.23 Could the relative who is given notice become the foster parent for the child?

Yes, provided they meet the state's requirements to become a foster parent.

Relevance of Access to the Federal Parent Locator Service

2.24 What is the Federal Parent Locator Service and how does it assist state agencies in their efforts to locate grandparents and other relatives?

Both the federal government and the state maintain parent locator services used primarily to enforce child support. The Federal Parent Locator Service (FPLS) is a set of databases (and data-matching activities) housed at the Social Security Administration and operated by the Office of Child Support Enforcement within the U.S. Department of Health and Human Services (HHS). The primary purpose for collecting and using the information in the databases is to establish parentage or to establish, set the amount of, modify, or enforce child support obligations. The FPLS contains information about the location of anyone who is under an obligation to pay child support, anyone against whom a child support obligation is sought, anyone to whom a child

support obligation is owed and anyone who has or may have parental rights to a child . The databases include the individual's social security number; most recent address; the name, address and employer identification number of the individual's employer; information on the individual's employment income and benefits (including health care coverage); and information about assets of or debts owed to the individual. The State Parent Locator Service (SPLS) is operated by the state child support agency and also includes case-level information related to child support and parentage. Such information may help the state agencies locate information about children's relatives.

2.25 How will agencies go about obtaining information from the Federal Parent Locator Service?

The gatekeeper for information in the FPLS is a state child support agency. Thus, a child welfare agency requesting information would submit the request to the state child support agency, which would in turn submit the request to the FPLS (73 Fed. Reg. 56422, Sept. 26, 2008). The state child support agency also may exchange information *directly* with the child welfare agency consistent with federal and state data confidentiality laws.

2.26 Under what circumstances can the child welfare agency obtain information from the Federal Parent Locator Service or State Parent Locator Service?

In order for a state child support agency to disclose information in the FPLS, the requestor must be an *authorized person*, requesting *specified information* for an *authorized purpose*. Even before the new law passed, child welfare agencies administering Title IV-B and Title IV-E programs were authorized persons, and could request limited information from the FPLS to locate a parent or someone who might have parental rights for the purpose of establishing parentage. Although the new law has not yet been interpreted by the federal Office of Child Support Enforcement, it specifies that state child welfare agencies may request information to carry out their responsibilities under Title IV-B and Title IV-E, which now includes a responsibility to notify all adult relatives when a child is removed from his parents' custody. Sharing of information to administer programs has been permitted between child support programs and Temporary Assistance to Needy Families programs for a number of years. The structure of the new law appears to extend this same sort of information sharing to agencies that administer Title IV-B and Title IV-E programs. (§453(j)(3); P.L. 110-351 §105)