

# Child Trends Comments on Proposed Rule to Develop Separate Licensing Standards for Relative or Kinship Foster Homes

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Children's Bureau  
Administration on Children, Youth and Families  
U.S. Administration for Children and Families  
Submitted via email: [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov)

Re: Comment on Notice of Proposed Rulemaking  
Separate Licensing Standards for Relative or Kinship Foster Family Homes  
Docket Number: 2023-03005

Dear Children's Bureau:

Kinship caregiving plays an incredibly important role in the lives of many of our nation's children: Over 2.5 million children are being raised by relatives—including grandparents, aunts, uncles, or siblings—or by close family friends without their parents in the home. We know that providing services and supports to this population of children and youth is critical to their health and well-being.<sup>1,2</sup> For the subset of these children who are in foster care or at risk of entering foster care, kinship care plays a unique role in keeping them connected to their families, cultures, and communities during a time of incredible turmoil and trauma. Nationally, in 2020 there were 137,356 children in foster care who were in kinship placements.<sup>3</sup>

We are grateful for the opportunity to share our thoughts on the proposed rule to allow states to develop separate licensing standards for relative or kinship foster homes. We believe this rule can play an important function in streamlining the foster home licensing process for kinship caregivers, opening the door to the services and supports that will help them and the children they care for thrive.

Child Trends is a highly respected, nonpartisan research organization focused exclusively on improving the lives and prospects of children, youth, and their families. For over 40 years, decision makers have relied on our rigorous research, unbiased analyses, and clear communication to improve public policies and interventions that serve children and families. The researchers and evaluators who contributed to these comments have decades of experience working closely with kinship caregivers, child welfare case workers

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<sup>1</sup> The Annie E. Casey Foundation. (2022). *Children in kinship care in the United States*. Kids Count Data Center. <https://datacenter.kidscount.org/data/tables/10455-children-in-kinship-care?loc=1&loct=1#detailed/1/any/false/2479/any/20160>

<sup>2</sup> Generations United. (2022). Together at the table: Supporting the nutrition, health, and well-being of grandfamilies, 2022 State of grandfamilies report. <https://www.gu.org/resources/state-of-grandfamilies-report-2022/>

<sup>3</sup> Generations United. (2022). Together at the table: Supporting the nutrition, health, and well-being of grandfamilies, 2022 State of grandfamilies report. <https://www.gu.org/resources/state-of-grandfamilies-report-2022/>

and leaders, communities, and programs designed to support kinship caregivers and the children in their care.

In 2022, Child Trends fielded a survey of state child welfare agency administrators, asking questions about current policies related to kinship caregiving for children in the custody of the child welfare agency, as well as facilitated arrangements in which relatives care for children not in agency custody. Although the data have not yet been published, these comments elevate certain findings from that survey. Child Trends will release products from the survey in 2023.

## **The proposed rule simplifies a licensing process that can be complicated for potential kinship caregivers and makes it difficult for them to become licensed foster parents.**

Becoming a licensed foster parent can be difficult for a child's kin for a number of reasons. They may lack the requisite number of bedrooms or home square footage required in foster home licensing, or they may not have enough time to comply with training requirements because a child was placed in their care on an emergency basis without advanced warning.<sup>4</sup> Many states have created licensing waivers for relatives, as permitted under the 2008 federal Fostering Connections Act, which has led to more consistency and predictability in kin placements as the licensure process.<sup>5</sup> In our 2022 kinship policy survey, 36 out of 44 responding states allow various licensing standards, such as square footage requirements or caregiver age standards, to be waived or modified for relatives.<sup>6</sup> However, waivers may not be used consistently within states and may create administrative and logistical burdens for caseworkers and families; this, in turn, results in a process that may be inequitably implemented within states and communities.<sup>7</sup> Developing a separate set of licensing standards for kin is a natural next step that builds off the success of waivers, allowing for a more consistent process that maintains child safety.

## **By streamlining licensure under the proposed rule, kinship caregivers will have easier access to the financial resources and support services that they need in their new caregiving role.**

Access to financial and other resources is critical as kin shift into a caregiving role, a transition that can bring tremendous financial and emotional strain. According to U.S. Census Bureau data, many kinship caregivers are already struggling financially: They are more likely to be experiencing poverty and food insecurity than families in which at least one parent is present.<sup>8</sup> Increased cash benefits that come from foster care payments enable caregivers to provide the material goods and caregiving that support children's healthy development.<sup>9</sup> The data from our 2022 kinship policy paint a complicated picture of the types of arrangements kinship caregivers have with child welfare agencies. Overall, it is less likely that policies will require or encourage direct assistance for kinship caregivers caring for a child whose parents retain custody (also known as diversion) than for kinship caregivers who are unlicensed or are licensed foster parents. We found similar disparities in service provision and service outcomes between unlicensed and licensed kinship

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<sup>4</sup> Family Focused Treatment Association. (2015). *The kinship treatment foster care initiative toolkit*. <https://www.ffa.org/page/KinshipToolkit>

<sup>5</sup> U.S. Department of Health and Human Services, Administration for Children and Families. (2020). *Use of Title IV-E programmatic options to improve support to relative caregivers and the children in their care (IM-20-08)*. <https://www.acf.hhs.gov/cb/policy-guidance/im-20-08>

<sup>6</sup> Data from not-yet-published 2022 Child Trends survey of state child welfare administrators.

<sup>7</sup> Beltran, A., & Epstein, H. R. (2013). The standards to license kinship foster parents around the United States: Using research findings to effect change. *Journal of Family Social Work, 16*(5), 364-381. <https://doi.org/10.1080/10522158.2013.832463>

<sup>8</sup> Generations United. (2022). Together at the table: Supporting the nutrition, health, and well-being of grandfamilies, 2022 State of grandfamilies report. <https://www.gu.org/resources/state-of-grandfamilies-report-2022/>

<sup>9</sup> Gennetian, L., & Magnuson, K. (2022). *Three reasons why providing cash to families with children is a sound policy investment*. Center on Budget and Policy Priorities. <https://www.cbpp.org/research/family-income-support/three-reasons-why-providing-cash-to-families-with-children-is-a>

care providers, lending additional evidence to the idea that relatives who are licensed foster parents have more access to financial resources and services than kin who are not licensed or who are caring for a child through kinship diversion.

With reduced financial distress, kin are afforded more time and capacity to support the children in their care, who have likely experienced the trauma of maltreatment and of removal from their parents' home. Beyond the monthly stipend, foster parent licensure increases accessibility to support groups for both the caregiver and the child, to health care for the child, and to training for the caregiver—each of which contribute to enhanced outcomes for children.<sup>10</sup> Research has shown that providing kinship caregivers with educational supports—for example, help with participating in special education meetings or connecting families to tutoring services—improves educational outcomes for children in care.<sup>11</sup>

## Reducing barriers to licensure can help promote equitable experiences and outcomes for children and youth involved with the child welfare system.

When a child welfare agency decides that a child must be removed from their home due to safety concerns, there are many benefits to placing them with relatives or kin. Children know and trust their new caregivers and can stay connected to their communities and traditions. Historically and currently, children of color—especially Black and American Indian/Alaska Native children—and children living in poverty are disproportionately represented in the child welfare system. Disparities exist at every phase of a child welfare case and are caused by a number of systemic factors, including structural racism, racial bias and discrimination, and the frequent conflation of poverty and neglect.<sup>12,13</sup> Kinship care is an important resource in creating a more equitable child welfare system: It preserves children's cultural identities and relationships to their communities, allowing them to sustain cultures and customs.<sup>14</sup> Many non-safety-related licensing standards—often rooted in standards of parental “fitness” defined in relation to the values and family structures of middle class White Americans—disproportionately create barriers to licensing for families of color, those with low socioeconomic status, or those in rural areas. This proposed rule is an important step to reducing those barriers.

Child Trends' experiences studying changes to child welfare systems and policies over time, as well as our close relationships with states, provide us with an understanding of what challenges may exist when the Children's Bureau begins implementing this new rule. In our kinship policy survey, we asked states questions about three groups of kinship caregivers with a connection to the child welfare system: licensed foster parents, unlicensed kinship caregivers in situations where the child has been removed from legal custody of their parents, and kinship caregivers caring for children whose parents retain legal custody (i.e., diversion). The kinship caregiving policy environment is diverse across the United States, with states allowing, encouraging, and prohibiting all of these arrangements in different ways. As such, implementation of the proposed rule will look different in different communities.

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<sup>10</sup> Children's Rights Litigation Committee of the American Bar Association Section of Litigation. (2022). *Benefits of Kinship Placement - Social science support for your in-court and out-of-court legal advocacy: A tool for lawyers*.

<https://www.grandfamilies.org/Portals/0/Documents/Care-Custody/ABA%20memo-re-benefits-of-kinship-placement-adoption.pdf>

<sup>11</sup> Washington, T., Gleeson, J. P., & Rulison, K. L. (2013). Competence and African American children in informal kinship care: The role of family. *Children and Youth Services Review, 35*(9), 1305–1312. <https://doi.org/10.1016/j.childyouth.2013.05.011>

<sup>12</sup> Dettlaff, A. J., & Boyd, R. (2020). Racial disproportionality and disparities in the child welfare system: Why do they exist, and what 3he be done to address them? *The ANNALS of the American Academy of Political and Social Science, 692*(1), 253-275. <https://doi.org/10.1177/0002716220980329>

<sup>13</sup> Child Welfare Information Gateway. (2021). *Child welfare practice to address racial disproportionality and disparity*. <https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/>

<sup>14</sup> Epstein, H. R. (2017). *Kinship care is better for children and families*. American Bar Association, Center on Children and the Law. [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-36/july-aug-2017/kinship-care-is-better-for-children-and-families/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/july-aug-2017/kinship-care-is-better-for-children-and-families/)

Based on our expertise and findings from the kinship policy survey, we make the following recommendations:

### **Recommendation 1: Promote adoption of the new rule by publicizing the benefits for children and families—including the economic and societal benefits—and providing implementation tools.**

The proposed rule is optional for states and not all agencies will choose to implement it. For example, there are still 10 Title IV-E agencies that have not adopted the Title IV- Guardianship Assistance program, another optional initiative authorized in 2008 through the Fostering Connections Act.<sup>15</sup> A variety of factors may play into a state or county's decision to take up optional rules or programs, including the cost-benefit to the agency of implementing the rule or program (e.g., administrative cost of implementing program vs. potential financial benefit), the proportion of the population in their jurisdiction eligible for a program, their capacity to implement a rule or program, and their overall agency culture or attitude toward the provisions or spirit of a rule (e.g., the belief that families should take care of their own without support from the government).

To encourage all states to implement the proposed rule, we recommend developing resources that help states understand its benefits and ease the work involved in implementation. These may include:

- Summaries of the research on the benefits to children when they are placed with kin
- Cost-benefit analyses on licensing that show potential returns on investment in kinship licensure
- Tools to understand the fiscal implications of a state increasing the number of licensed kinship foster placements
- Models of licensing policies that promote kinship caregiving, which states can tailor and adopt to their own circumstances
- Sample resources for kinship caregivers describing the licensing process

By partnering with existing technical assistance centers—such as the Grandfamilies and Kinship Support Network, Capacity Building Center for States, and National Child Welfare Resource Center for Tribes—the Children's Bureau can provide critical resources to smooth the path to implementation.

### **Recommendation 2: Direct agencies to clearly communicate available placement options to kinship caregivers—in addition to information on the implications of those choices—so they can make informed decisions about the resources, supports, or arrangements that best meet their needs.**

Despite the benefits of becoming a licensed foster care placement (e.g., financial support via maintenance payments and case management supports that non-licensed caregivers do not receive),<sup>16</sup> some kinship caregivers may prefer to not pursue licensure—especially Black and Native American families who have been directly impacted by the child welfare system's racist history of child separation.<sup>17, 18</sup> Deciding whether to become a licensed foster home is a complex decision with many implications beyond simply fiscal concerns. Agencies should provide potential caregivers with information on all available options, including

<sup>15</sup> Beltran, A. (2021). *Guardianship assistance*. Grandfamilies.org. <https://www.grandfamilies.org/Topics/Guardianship-Assistance>

<sup>16</sup> Child Welfare Information Gateway. (2022). *Kinship care and the child welfare system*. <https://www.childwelfare.gov/pubs/f-kinshi/>

<sup>17</sup> Cantey, N. I., Smith, L. W., Sorrells, S. F., Kelly, D., Jones, C., & Burrus, D. (2022). Navigating racism in the child welfare system: The impact on black children, families, and practitioners. *Child Welfare, 100*(2), 163-183. <https://go.gale.com/ps/i.do?id=GALE%7CA698841082&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=00094021&p=AONE&sw=w&userGroupName=anon%7E1ca4f114>

<sup>18</sup> Child Welfare Information Gateway. (2021). *Child welfare practice to address racial disproportionality and disparity*. <https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/>

opportunities for kin to visit with a child to maintain connections; resources available when children are placed in an unlicensed home; options for custody outside the child welfare system; and/or the process for pursuing foster home licensure. Frontline workers should be trained on methods for providing information and answering questions about the resources available to kinship caregivers, as well as the obligations that will be placed on kinship caregivers should they decide to become a licensed foster home. For example, licensure has the benefit of providing kinship caregivers with financial support, but also requires monitoring and oversight by the agency. Kinship caregivers should have the information they need to choose the best option for them—a key principle of family-centered practice.<sup>19</sup> Child welfare agencies should also consult with kinship caregivers in developing these resources to ensure that they are accessible and relevant to the communities with which they will be shared.

### **Recommendation 3: Encourage agencies to adopt broad definitions of fictive kin, which will help children maintain ties to their cultures and communities.**

While many agencies have already adopted broad definitions of kin and have included fictive kin in those definitions, some states' agencies still have not. As stated in the Notice of Proposed Rulemaking, fictive kin “often include people who are not related by blood, marriage or adoption, but who have an emotionally significant relationship with the child, and those who are treated ‘like family.’”<sup>20</sup> In our kinship policy survey, we learned that states vary in when and how they include fictive kin in their definitions of relatives. For example, 20 states include fictive kin in their definitions of relative for identifying adult relatives when a child first comes to the attention of the child welfare agency. For the 31 states that reported policies allowing kinship diversion, only 21 include fictive kin as eligible caregivers.

A narrow definition of kin means fewer options for potential kinship caregiving placements. Placing children with caregivers with whom the child has emotional bonds and ties beyond blood relationships can increase the likelihood that children maintain ties to their cultures and communities. Research shows that maintaining such ties (even through a teacher or church member) can reduce or mitigate trauma associated with removal from the home and promote permanency, including reunification.<sup>21</sup> Furthermore, states that maintain narrow definitions of relatives and fictive kin disadvantage communities that traditionally define family in broad or non-Western ways (e.g., Native American, Black, and South Asian communities). Federal implementation guidance should provide examples of broad definitions of relatives and kin to encourage states to be as inclusive as possible. States must also work closely with Tribal leaders to develop definitions that are meaningful for Native American communities and respectful of Tribal sovereignty and the policy making role of Tribal leaders.

### **Recommendation 4: Begin collecting better federal data on kinship placements so state leaders and communities can begin to measure the impact of implementation on agency practice and child outcomes.**

Currently, the Adoption and Foster Care Analysis and Reporting System (AFCARS) does not require agencies to differentiate between licensed and unlicensed relative foster care placements. This approach limits the ability of researchers and policymakers to monitor implementation of the proposed rule and its impact on child outcomes. However, in our kinship policy survey, we learned that most states collect data that allow for this distinction in their administrative case management systems. For example, 35 states commonly collect demographic information on caregivers and the legal relationship between caregivers and

<sup>19</sup> Child Welfare Information Gateway (2021). *Family engagement: Partnering with families to improve child welfare outcomes*. <https://www.childwelfare.gov/pubs/f-fam-engagement/>

<sup>20</sup> Eger, J. J. (2022). *Legally recognizing fictive kin relationships: A call for action*. American Bar Association, Center on Children and the Law. [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/january-december2022/fictivekin/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january-december2022/fictivekin/)

<sup>21</sup> Child Focus. (2022). *Children in kinship care experience improved placement stability, higher levels of permanency, and decreased behavioral problems: Findings from the literature*. <https://www.grandfamilies.org/Portals/0/Documents/Kinship%20Research/4-%20Kinship%20Outcomes%20Review%20Handout.pdf>

children for both licensed and unlicensed relative caregivers. This indicates that most states would be able to submit data on both licensed and unlicensed relatives to the Children's Bureau.

Given that most agencies already collect this information or make this distinction, ACF should consider future revisions or additions to federal reporting requirements. For example, for the current placement setting variable in AFCARS, ACF should add another response option that distinguishes between licensed and unlicensed relative placement settings. In addition to creating the mechanism to gather these data federally, federal leaders should provide states with necessary guidance so that the data are entered consistently across states.

## Conclusion

Thank you again for the opportunity to comment on the proposed rule. We believe the rule builds on the good work currently happening in states to promote kinship caregiving and that it will create new opportunities to better support kinship caregivers and the children in their care.

If you have any questions about these comments, please contact Kehinde Akande at Child Trends ([kakande@childtrends.org](mailto:kakande@childtrends.org)); (240) 223-9396).

Sincerely,

/s/

Carol Emig,

President