



DEPARTMENT OF HEALTH AND HUMAN SERVICES, Administration for Children and Families, 45 CFR Part 1355 and 1356, RIN 0970–AC91

### Separate Licensing Standards for Relative or Kinship Foster Family Homes

The Child Welfare League of America (CWLA) supports HHS and the Children’s Bureau’s recent efforts to promote and strengthen kinship (relative) caregivers as an important part of out of home care/child welfare system through proposed changes through, 45 CFR Part 1355 and 1356, RIN 0970–AC91.

#### **CWLA’s Promotion of Kinship: A History**

CWLA has long supported and promoted kinship care as an important permanency option for children and families, as is evidenced in our rich history of research, practice standards, and advocacy for policies that support relative caregivers.

Starting in the 1980s CWLA began to intentionally promote the option of relative caregiving especially as relative and kinship caregiving was an important part of care within communities of color and in rural communities. In August of 1986 we even teamed with the National Council on Aging to found Generations United in recognition of the need to support and advocate for a range of cross-generational issues including promoting families taking care of kin both in and outside of the formal child welfare system.

CWLA’s early recognition of the significance of kinship care in child welfare continued when we proposed “Kinship Care” as the name for full-time protection and nurture of children by relatives, members of Tribes or clans, family members who were not related or anyone children and relatives identify as kin. The definition was recommended by the National Commission on Family Foster Care, convened in 1991 by CWLA in collaboration with the National Foster Parent Association, and published as a chapter, “The Significance of Kinship Care,” in the book, *A Blueprint for Fostering Infants, Children, and Youth in the 1990s*. The term was adopted from Dr. Carol Stack’s 1974 book titled *All Our Kin: Strategies for Survival in the Black Community*.

In 1992 CWLA began the process of developing policy and practice recommendations with the help of the CWLA North American Kinship Care Policy and Practice Committee that had expertise on the critical issues involved in kinship care. This resulted in several CWLA publications, beginning with *Kinship Care: A Natural Bridge* (1994), and a demonstration project titled “Enhanced Support Services for Kinship Caregiver Families.” This project led to the first national conference on kinship care in 1997 convened by CWLA and the CWLA National Kinship Care Advisory Committee and the CWLA Kinship Care Best Practice Standards Committee that focused on the development of a new volume of kinship care standards published in 2000.

Between 1999 and 2014 CWLA held four National Conferences specifically on key issues in kinship and throughout its history has included Kinship as an important topic at workshop sessions at its annual



national conference. As a result of these convenings and in partnership with experts and researchers in the field, CWLA published the following additional publications on the topic of kinship and relative care:

- 1997: *Relatives Raising Children: An Overview of Kinship Care*, Dr. Joe Crumbley
- 2018: *Kinship Care and Child Welfare: New Directions for Policy and Practice* special issues
- 2019: *Traditions of Caring and Collaborating Kinship Family Information, Support, and Assessment Trauma Informed Model of Practice* that agencies can implement and adapt. This Model of Practice was researched and field tested. It provides the framework in which all staff have the same vision and mission, share the same values, use strengths-based language, implement evidence-informed practice principles and strategies, and achieve outcomes in the best interests of children and families.
- 2020: *Reflections – Learning from the Past, Implications for the Future (Reflections on Kinship)*

Today, CWLA offers 1) a 12-hour training program for all staff in agencies that work with kinship families and 2) a 30-hour training program for all staff who facilitate the nine information and support meetings and complete family assessments with kinship caregivers. Recognizing the need for tailored support and preparation, these trainings focus on the nine critical dynamics for kinship families that are different from traditional resource families: financial support, health and mental health, school, child behavior, family relationships, support services, fair and equal treatment, and satisfaction and recommendations. Together, these two programs provide the foundation and tools necessary for an agency or organization to implement the Model of Practice.

### **Kinship Care: Background**

Today relative/kinship care is an important and growing option of care to keep children connected to their families. Even with our greatest hopes of advancing prevention and support services through such tools as the Family First Prevention Service Act, there will always be a need for quality out-of-home care including family foster care. To the extent we can supplement and substitute unrelated family foster care with kinship care we need to do all we can. Research shows that keeping children with kin minimizes trauma, preserves cultural identity, improves behavioral and mental health outcomes, improves placement stability, promotes sibling ties, especially important to keep youth who are older connected to families.

As noted in your comments on the NPRM, until the February 1979 Supreme Court 8-0 ruling by Justice Thurgood Marshall (*Miller v. Youakim*, 440 U.S. 125) some states were unwilling to provide equal AFDC payments to kinship/relative caregivers through what was then the AFDC foster care program. (AFDC-FC). Many states distinguished between children who resided with relatives in foster care. Children in non-relative foster homes qualified for the AFDC-FC program (foster care), with its greater monthly payments. Children placed in relatives' homes were only allowed to participate in the basic AFDC program. The Department of Health Education and Welfare (HEW) interpreted the AFDC federal statute to require that States provide AFDC-FC benefits "regardless of whether the . . . foster family home in which a child is placed is operated by a relative." Some states refused to pay kin at the higher rate and the Supreme Court sided with HEW over the states.



Despite the changes mandated by the Court and significant research and evidence in support of kinship care, there continues to be reluctance on the part of some officials and policymakers at the local, state, and federal level to see relative care as an important tool to strengthen permanence for children in care.

As noted above, CWLA has seen Kinship care as a major strategy to keep children connected to their families and out of care since the 1990s. CWLA has worked to develop policy and practice recommendations and to facilitate learning about effective strategies and best practices for working with and supporting kin families. During this time a significant body of research has developed to demonstrate that kinship care is especially effective for families who are black, indigenous, or in rural areas.

Congress started to pay greater attention to kinship issues in 1996 with the creation of the Temporary Assistance for Needy Families (TANF) program which included as part of its first purpose under the law to, "(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives."

In 2004, CWLA, in partnership with the Children's Defense Fund (CDF) and the Center for Law and Social Policy (CLASP), worked to introduce legislation in the 109<sup>th</sup> and 110<sup>th</sup> Congresses. With bipartisan, bicameral support, legislation that extended kinship care through Title IV-E was sponsored by Senator Hillary Clinton (D-NY), Senator Olympia Snowe (R-ME), Congressman Danny Davis (D-IL) and Congressman Todd Platts (R-PA) with their introduction of S.2704 and HR 3380. Similar provisions were included in the final version of the Fostering Connections to Success and Increasing Adoptions Act PL-110-351 of 2008.

The use of kinship care has grown dramatically since the 1990s. With the support of Congress and passage of Fostering Connections, which acknowledged the important role relatives play in the life of a child and encouraged states to connect children who are in foster care with their relatives, both child welfare law and policy prioritized placing children with grandparents, relatives, or close family friends when possible. Many of the current challenges child welfare agencies are facing across the country, including the lack of appropriate placements, could be better addressed through a greater use of kinship care.

Despite this progress much more is still needed, and we believe your recent actions will be a step along the way.

### **REGULATORY CHANGES**

*"Agencies may establish foster family home licensing or approval standards for all relative or kinship foster family homes that are different from standards for non-relative foster family homes."*

CWLA endorses HHS's proposed changes to the definitions of foster care in Section 1355.20 and Section 1356.21, noted above. The changes would allow state agencies to create a separate definition of foster care that would apply to relative and kinship caregivers that is different from the traditional definition for non-relative foster families. The resulting standard will be more flexible and appropriate for relative and kin caregivers and the children in their care.



We agree that this revision has the potential to remove one possible barrier to claiming Title IV–E federal funding for children who come from “a home of removal” and who would qualify under the 1996 AFDC income and eligibility standards. As noted in your comments, states have the ability on a case-by-case basis to waive some foster care requirements and restrictions on such concerns as sleeping spaces, income, transportation, training, and educational requirements that may not be as necessary when you are placing a child with an aunt, uncle, grandparent, sibling, or other relatives. The ability for a state to have a consistent, separate definition that addresses these concerns may remove a challenge and potential administrative burden for an understaffed agency and a workforce that may be required to follow a waiver or case-by-case exception process and evaluation. That simplification of definitions could streamline the foster care placement and recruitment process and bring more relatives into providing foster care at this critical time of shortage in out-of-home care slots.

CWLA encourages HHS to seek the input of states that have already implemented policies that allow them to streamline kinship licensure when creating new technical assistance materials, including any model licensure standards. We recognize that some states are further ahead in recognizing and supporting relative care, and the lessons learned from leaders in the field should inform the Administration’s support to states implementing the new rules.

There is also the need to elevate the financial support for relative caregivers. Consistent with this we agree with HHS’ proposed revision to Section § 1356.21 (m):

*“(m) Review of payments and licensing standards. In meeting the requirements of section 471(a)(11) of the Act, the title IV–E agency must review at reasonable, specific, time-limited periods to be established by the agency: (1) The amount of the payments made for foster care maintenance to assure their continued appropriateness, and that the amount made to a licensed or approved relative or kinship foster family home is the same as the amount that would have been made if the child was placed in a licensed or approved non- relative foster family home; (2) The amount of the payments made for adoption assistance to assure their continued appropriateness; and (3) The licensing or approval standards for child care institutions and foster family homes.”*

This revision has the potential of strengthening relative caregivers’ ability to care for their kin through additional resources, especially if they are on fixed, Social Security, or retirement incomes. It may also have the potential of freeing up some TANF dollars by allowing families that receive the TANF child-only payments to become part of the foster care/child welfare system and have additional support through the child welfare agency instead of the work and cash-assistance focused TANF agency. Such a transformation may also strengthen supports for other families in need of TANF support.

CWLA encourages HHS, in both its messaging and its assistance to state implementation, that it ensures the new flexibilities and additional financial supports do not lead to the unintended consequence of relative caregivers being pushed into the formal foster care system when it is not necessary or beneficial. There will always be relative and kin caregivers who choose not to be involved with the child welfare agency for a variety of reasons, and we all must work towards the goal of not increasing the overall number of children entering the child welfare system each year when it is not in their best interest.



CWLA also supports HHS' decision to not impose a federal definition of relative and kinship.

In helping to craft the 2008 Fostering Connections to Success and Increasing Adoptions Act PL-110-351) and the predecessor kinship care legislation (2005-S.2704/HR 3380) CWLA was part of that debate and discussion. There was consensus that this definition of kin should be left to the state or tribal agency, in part because while some categories of relatives are simple and clear such as grandparents and aunts and uncles, other relative definitions such as cousins or even siblings may not have common 50-state definitions. It was also clear that some relationships between a child and adult caretaker, what some refer to as "kith" may be just as strong as blood relatives and these relationships must not be precluded. This self-determination of the definition of kin is particularly relevant for tribal communities, where kinship care is deeply ingrained in cultural practices and definitions vary among tribes.

By not defining relatives in this instance, you are being consistent with guidance you have already issued for those that have extended Title IV-E funding through what is referred to as the "Kin-GAP" Title IV-E provisions.

In conclusion, we appreciate the efforts of the Children's Bureau in proposing these adjustments. We will continue to work on ways that can strengthen relative caregivers and their increasing role in supporting children separated from their families. We encourage both HHS and the Congress to examine an effective way to address the on-going link to the 1996 AFDC eligibility standard. These proposed NPRM changes will help in some instances, but eligibility for Title IV-E reimbursement will continue to be based on the AFDC income and standards applied to that child's "home of removal." In the last budget, OMB indicated that only 39 percent of children in foster care were actually eligible for federal funding under Title IV-E. Without addressing this link, federal funding will continue to disappear despite these proposed changes, making it ever more challenging for states to have sufficient funding to provide the high-quality services required by law.

Again, thank you for your work on behalf of children and families. The proposed changes will remove barriers for children to be cared for by their relatives and kin and will decrease burdens on the child welfare workforce and agencies. CWLA is grateful for your support and attention to this matter and stands ready to assist the Administration in promotion and implementation of the new rules when they are adopted.