



February 2022

Facilitating Kinship Licensure & Foster Care Exits to Guardianship

Angelique Day, Grace Nielson, Scout Hartley, Charles E. Lewis, Jr.

Summary:

Studies have shown that Kinship placement and guardianship has the lowest rate of reentry into the foster care system.¹ However, potential Kinship caregivers are denied the opportunity to care for the children they love because of barriers to licensure and restricted use of KinGAP (Kinship Guardianship Assistance Programs). Federal child welfare and foster care legislative reform is needed to provide children, their relatives, and fictive kin with easier ways of establishing guardianship as a form of permanency. Through nationwide implementation of KinGAP, diligent recruitment of relatives as a part of case planning for permanent guardianship, the adoption of standardized licensing requirements, and parity in funding and supports to kin guardians we can address the obstacles Kinship guardians face when trying to care for their family.

Background

In 2011, the U.S. The Census Bureau's Current Population Survey found that 1.65 million children in the U.S. live in households with grandparents and no parents present.² Additionally in 2021, an estimated 2.3 million grandparents are responsible for grandchildren, 1.1 million of whom are over the age of 60.³ In a nationally representative sample, Kinship caregivers tend to be older and have lower family income.⁴ Without consistent financial

assistance as a result of failure to obtain licensure, these families suffer. Issues of FAP standards, licensure opportunities, restricted use of KinGAP, and the minimal effort for location of relatives that harm foster children and their Kin are outlined in this briefing.

Inconsistencies in Foster and Adoptive Parent standards create huge barriers for Kin and non-Kin foster parents. For instance, states vary in standards like upper age limits, citizenship, education standards, income



requirements, and caps on the number of children allowed in the home. Additionally, the definition of who qualifies as a relative eligible for Kin care varies by blood, marriage, or adoption ranging from the first to fifth degree.⁵ And while these differences make it difficult for agencies to determine if Kin can be eligible caregivers, it also disqualifies certain qualified individuals based on their age, race, or history that no longer is indicative of their current abilities to care for individuals like their nieces, nephews, or grandchildren.

Licensure is another large challenge Kinship caregivers face when serving as guardians of family members. In fact, Kin experience the most difficulty getting licensed compared to any other placement type.⁶ Kin often do not have the time and resources to acquire licenses as the child is usually placed with them within a short time frame. This lack of preparation can be overwhelming, and many do not realize the options they have regarding licensure. Many Kin feel the process can be intrusive considering the relationship they have with the children which discourages them from becoming deeply involved with the child welfare system. Additionally, some agencies believe that relative care givers are

morally obligated to care for kin without receiving economic support were less likely to present the option of becoming licensed FAP to the prospective care giver.⁷ Many public agencies remain hesitant to grant flexibility in licensing permitted by the federal government despite the consistent struggles Kin have with this process.⁶

Without licensing, Kin guardians face a severe barrier in obtaining foster care monetary assistance. In 23 states, more than half of kinship caregivers do not receive maintenance payments.⁸ A child is eligible for a Kinship guardianship assistance payment if the child has resided with the caregivers for at least 6 consecutive months in the home of the prospective relative guardian.⁹ Length of required time of residency needs to be amended to reduce the amount of time Kin caregivers must wait to receive federal assistance. However, even with that change, current guardianship assistance programs are being underutilized. In 2016, six states accounted for 75% of GAP guardianships; those six states serve 51% of the children in foster care in the U.S. The same study found that in the same year, six states with approved GAP programs reported no GAP caseload.¹⁰



When looking at kin guardianship assistance, agencies often consider Kin placement as an alternative to foster care, which does not require licensure.⁶ Kin often are being used as shadow foster care placements and Child Protective Services workers are placing children in homes and then closing the case. By not bringing the case into the formal foster care system, Kin are not getting an option to qualify for benefits they would receive if the case was formal and they were offered the opportunity to become licensed. We can see how nuanced licensing eligibility directly correlates with the lack of financial support Kin receive as guardians.

Finally, current law requires “diligent recruitment” of foster families that reflect the race, color, and national origin of the child welfare population.¹¹ However, that law does not include the location of relatives as a part of the case planning process.

Current law does encourage states to consider giving relative caregivers preference over a non-related placement. However, some child welfare agencies are more successful than others at placing children with relatives.¹² The Emancipated Youth Connections Project (EYCP) assisted

twenty young adults who left the foster care system without sustained relationships, and found family or other caring adults as caregivers?. Their results show that for 19 of the 20 participants, 139 new permanent connections were made with biological family members.¹³ This shows if effort is made in locating relatives, there can be significant positive impacts on youth in the foster care system.

Current Policies:

Licensing Requirements

The Family First Prevention Services Act (FFPSA) created new national model for licensing standards for foster parents in 2018. The eleven standards include: eligibility threshold, physical and mental preparedness, background checks, home studies, a health and safety standard for living spaces, safe and healthy home conditions, home capacity (aligning with IV-E household occupants guideline), basic and private sleeping arrangements, emergency preparedness, transportation, and training.¹⁴ Under these standards, states are able to formulate their own licensing requirements. The problem is states were given flexibility on adopting these new standards.



Additionally, while all title IV-E programs require all prospective foster and adoptive parents to undergo criminal background checks, laws in 31 states, the District of Columbia, Guam, the Northern Mariana Islands, and Puerto Rico require relatives to undergo a criminal background check that includes all adult members of the household in addition to child abuse and neglect central registry checks.⁵ This is another barrier to licensing requirements for Kin, especially considering how quickly some guardians are pressed into being caregivers.

There are also problematic licensing standards within foster care placement manuals across all fifty states that have negative impacts on relative placement. One being upper age limits. Six states (AR, DE, LA, MD, WV, and WI) set a limit of 65 years. Only two states (NJ and ND) include anti-age discrimination language in their regulation of foster caregivers and two states (MO and NV) do not have age limits for placements.¹⁵

Proof of citizenship or legal residency is required to become a foster parent in at least eight states making it difficult for Kin who

are not documented to qualify for licensing. Certain states have income requirements that explicitly state foster parents must have adequate income to care for the child without reliance on foster care payments. This creates additional barriers to licensure for families in poverty or with low income.¹⁵

Finally, The Native American Children's Safety Act clearly applies background checks (criminal record and child abuse registry) to tribal placements of children in foster care settings. The act provides that a tribe may not place a child in foster care with an individual for any of prohibited crimes given in Title IV-E of the SSA (i.e., those at Section 471(a)(20)(A)(i)and(ii)).

*There does not appear to be an exception for relative placement.*¹⁶

Eligibility for Kinship Guardianship Assistance

As of June 2021, there are 53 Title IV-E agencies with approved plans to receive federal funding for guardianship assistance claims. However, 10 states do not have Title IV-E GAP.¹⁷ Without it, many families do not have the necessary financial assistance to support their loved ones. Of the previously mentioned 1.65 million children



living with their grandparents, 48% of those who live in grandmother-only housing, live in poverty.¹⁸ Through the recommendations outlined below, practical ways of combating income disparities and uplifting foster families can be achieved.

Diligent Recruitment of Kin

Sec. 422(b)(7) of the Social Security Act requires that the state's IV-B, Subpart 1 plan "provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed."¹¹ Without the intentional wording to locate relatives in the process of recruitment for foster parents, Kin can be forgotten or overlooked as caregivers.

There are current efforts in Kin recruitment called Permanency Action Recruitment Teams (PART) that work with teens poised to age out. These advocates work to identify significant others such as Kin, fictive Kin, friends, and acquaintances with whom they have had a positive and constructive relationship. After having identified those individuals, they are contacted and invited to a PART meeting. Ninety-eight of the 199

teens were placed in permanent homes. At almost 50% placement rate, their outcomes support the legislative recommendation to actively recruit family members as guardians.¹⁹

Recommendations:

Relative Criminal Background Checks

Inclusion of All Types of Relative/Kin placements

Potential Kinship caregivers are denied the opportunity to care for the children they love because of old criminal convictions that do not directly implicate child safety. **To address the issue, amend 471(a)(20)(C) to apply to apply to all types of relative/Kin placements (i.e., foster, adoptive, and guardianship) and conform language with the employee requirements in (D).**

471(a)(20)(A) and (B)) In most cases, there should be less strict criminal history requirements for relatives seeking to foster than for strangers. This proposal avoids conflicts with the Adam Walsh Act and can be preferred over the prescriptive NARA licensing requirement. The bill would not direct a state what it must do with information received from a relative's criminal records check (as with employees),



and states are still free to follow the NARA model licensing standards and to propose alternative criminal history check procedures/requirements.

And note for Tribal Children: Changes made for relative placements would require conforming changes for tribal children. The Native American Children's Safety Act (P.L. 114-165) amended the "character investigation" provision of the Indian Child Protection and Family Violence Prevention Act to clearly apply background checks (criminal record and child abuse registry) to tribal placements of children in foster care settings.

The act provides that a tribe may not place a child in foster care with individuals for whom any of prohibited crimes given in Title IV-E of the SSA (i.e., those at Section 471(a)(20)(A)(i) and (ii)). Without an exception for relative placements, youth are placed at risk. Currently language is aligned with IV-E but, without conforming amendments, changes to IV-E could create unintended differences for relatives of tribal children.

Eligibility for Kinship Guardianship Assistance

Not all states implement KinGap. This has implications for Kin caregivers in those states, and for tribes in those states with tribal- state agreements for Title IV-E. For example, a tribe with a tribal-state IV-E agreement cannot implement KinGap if the state does not choose to operate the program. In addition, many states that have KinGap do not use the program.

Requiring Implementation of KinGAP

To amend this problem, states should be required to implement KinGAP.

Additionally, encourage states to implement KinGAP by delinking KinGAP from AFDC eligibility requirements.

Delink by removing "foster parent" requirement: Amend 471(a)(28) "~~at the option of the State,~~ provides for the State to enter into Kinship guardianship assistance agreements to provide Kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared ~~as foster parents~~ and for whom they have committed to care



on a permanent basis, as provided in section 473(d).

Decreasing Length of Residency

Amend section 473(d)(3)(A)(i)(II) of the Social Security Act (42 U.S.C. 673(d)(3)(A)(i)(II)) **by striking “eligible for foster care maintenance payments under section 472 while residing for at least 6” and inserting “residing for at least 3”**.

Directly delinking KinGap AFDC-requirements does not benefit as many Kin families as clarifying that Kin are not required to be licensed foster care providers prior to being eligible for KinGAP. To decrease the time that Kin caregivers could go without federal support, modify the 6-month residency period to a 3-month period. Keep the requirement that the child is in the care and custody of the child welfare agency (Section 473(d)(3)(A)); but remove the requirement that child be eligible for Title IV-E foster care maintenance payment.

Title IV-E agencies are free to implement safety requirements such as home studies and background checks. If necessary, clarify that the amended relative criminal history checks (Section 471(a)(20)(C)) apply.

Diligent Recruitment of Kin

To address the issue of recruitment of Kin, add implementation requirements to existing law to **facilitate a focus on Kinship care by clarifying that “diligent recruitment” includes locating relatives**.

Implement Kin Location into Case Planning

Sec. 422(b)(7) of the Social Security Act requires that the state’s IV-B, Subpart 1 plan **“Provide for locating and involving relatives and fictive Kin as a permanent part of case planning, address barriers to family involvement, and provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.”**

Documentation of Continual Efforts

Sec. 471(a)(19) of the SSA requires that the state’s IV-E plan “provides that the State shall make **and document continual efforts to identify and locate relatives or fictive Kin as a potential placement and family support resource and consider giving preference to an adult relative over a non-related caregiver when determining a**



placement for a child, provided that the relative caregiver meets all relevant child protection standards.”

Clear and Convincing Evidence

If the State determines that placement with any relative or fictive Kin is not in the child’s best interest or that the relative does not meet the requirements of a relative caregiver, the State must document the basis for that decision with clear and convincing evidence.

If the state determines that efforts to identify and locate relatives and fictive Kin would be futile or inconsistent with the child’s best interests, the State shall document the basis of its determination with clear and convincing evidence.

Kin as Visitation Resources if Placement is Found Inappropriate

If the State determines that the child requires placement in an environment other than a home environment, the State shall make continual efforts to identify and locate relatives to serve as visitation resources for the child and potential future placement resources.



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