STATE STATUTES
CURRENT THROUGH JANUARY 2023

Placement of Children With Relatives

To find statute information for a particular State or Territory, go to the State Statutes Search.

When a child is removed from their home and placed in out-of-home care, relatives are the preferred resource because this placement type maintains family connections and cultural traditions that can minimize the trauma of family separation. In fact, in order for States to receive Federal payments for foster care and adoption assistance, Federal law under title IV-E of the Social Security Act requires that State agencies "consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards."[1] The Family First Prevention Services Act (P.L. 115-123) signaled the importance of strengthening these family connections by providing funding for kinship navigator programs that assist kinship caregivers in accessing programs and

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[1] 42 U.S.C. § 671(a)(19) (LexisNexis 2018). Placement refers to the placing of a child in the home of an individual other than a parent or guardian or in a facility other than a youth services center.

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services to meet the needs of the children they are raising, regardless of whether the children served are eligible for title IV-E-funded services.[2] Title IV-E further requires all States[3] operating a title IV-E program to exercise due diligence to identify and provide notice to all grandparents, all parents of a sibling of the child when that parent has legal custody of the sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents) that (1) the child has been or is being removed from the custody of their parents, (2) the options the relative has to participate in the care and placement of the child, and (3) the requirements to become a foster parent to the child.[4]

Title IV-E of the Social Security Act provides Federal reimbursement to States for a part of the cost of providing foster care, adoption assistance, and kinship guardianship assistance on behalf of each child who meets Federal eligibility criteria (as described in 42 U.S.C. §§ 672 and 673).[5] These reimbursements are available to public agencies in all 50 States, the District of Columbia, and Puerto Rico as well as to any Indian Tribe, Tribal organization, or Tribal consortium operating an approved program to provide foster care maintenance payments, adoption assistance, and, at the agency's option, a guardianship assistance program.[6]

GIVING PREFERENCE TO RELATIVES FOR OUT-OF-HOME PLACEMENTS

For this publication, statutes that describe the specific requirements for giving preference to a suitable relative when a child is in need of out-of-home care have been collected across all States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. An analysis[7] of the information collected indicates that each State defines "relative" somewhat differently, including relatives by blood, marriage, or adoption ranging from the first to the fifth degree. While all title IV-E programs must consider giving preference to relative placements, approximately 49 States, the District of Columbia, Guam, and Puerto Rico include this language in their statutes.[8] A noncustodial parent is regarded as the first choice for caring for the child; in fact, 14 States require that agencies must first determine whether a noncustodial parent is a suitable placement resource for the child.[9] If the agency determines that the noncustodial parent is not a suitable placement, preference for placement is given to the child's grandparents. Other relatives that may be considered for placement of the child include great-grandparents, adult siblings, cousins, the parent's sibling, or the parent of the child's sibling. For Indian children, 14 States have

[2] 42 U.S.C. § 627 (LexisNexis 2018); ACYF-CB-PI-18-11

[3] The term "State" as used in this document includes the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa (42 U.S.C. § 410(h) (LexisNexis 2018)). Except for Guam and American Samoa, all States are approved to operate the title IV-E Foster Care and Adoption Assistance Program and are subject to the requirements of title IV-E of the Social Security Act. This document does not include references to any Tribal code.

[4] 42 U.S.C. § 671(a)(29) (LexisNexis 2018)

[5] Congressional Research Service. (2017). *Child Welfare: An Overview of Federal Programs and Their Current Funding*.

[6] U.S. Department of Health and Human Services, Administration of Children and Families, Children's Bureau. (2012). *Title IV-E Foster Care*.

[7] This analysis is limited to statutes and regulation. States also can implement the title IV-E requirements through policy or procedure.

[8] The word “approximately” is used to stress the fact that States frequently amend their laws and applies to all data in this publication. The information in this publication is current only through September 2022. The statutes in New Hampshire, American Samoa, and the Virgin Islands do not express a preference for relative placements.

[9] Arizona, Arkansas, Colorado, Florida, Iowa, Montana, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Utah, Vermont, and Wyoming

statutes specifically allowing members of an Indian child's Tribe to be considered "extended family members" for placement purposes.[10]

In 28 States, the District of Columbia, and Guam, when a suitable relative cannot be found, the agency may consider placing the child with "fictive kin."[11] The term "fictive kin" refers to a person who is not related to the child by blood, marriage, or adoption but who is known to the family, has a substantial and positive relationship with the child, and is willing and able to provide a suitable home for the child. Examples of fictive kin caregivers can include the adoptive parent of the child's sibling, a nonrelated godparent, a close family friend, a neighbor, a clergy member, or other adult who has a close and caring relationship with the child.

While all agencies operating a title IV-E program must exercise due diligence to identify and provide notice to relatives, 29 States and Guam utilize statutes and regulations to require social services agencies to exercise due diligence in identifying and locating a child's relative when out-of-home placement is needed.[12] The steps that need to be taken include the following:

- Requiring the child's parent to provide a list of the names, addresses, and telephone numbers of every grandparent and other adult relatives of the child
- Exercising due diligence to identify all grandparents and other adult relatives of the child, including any adult relatives suggested by the parents, subject to exceptions due to family or domestic violence
- Contacting the relatives within 30 days to inform them of the child's removal from home and to explain the options that the relative has to participate in the care and placement of the child
- Informing the relative of any options that may be lost by not responding to the notice
- Assessing the relative's willingness and suitability to provide care for the child

APPROVING RELATIVE PLACEMENTS

When the State social services department is granted custody of a child, the department assumes responsibility for making a safe and appropriate placement for the child. Statutes and regulations in 20 States and the District of Columbia require that the relative providing out-of-home care must be licensed or certified as a foster family home,[13] although eight of these States allow temporary or provisional approval while the relative works to complete the requirements for full approval or licensure.[14] In seven States, licensure is not required by statute or regulation, but relative care providers may elect to be certified.[15] In

[10] An Indian child's extended family members are considered as a placement resource in Alaska, California, Minnesota, Missouri, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, and Washington. Under the Federal Indian Child Welfare Act (ICWA), the term "extended family member" is defined by the law or custom of the Indian child's Tribe or, in the absence of such law or custom, is a person who is at least age 18 and who is the Indian child's grandparent, sibling, or the sibling's spouse or child, first or second cousin, or stepparent, or the parent's sibling. (See 25 U.S.C. § 1903(2)). ICWA also addresses placement preferences for children meeting the definition of an Indian child.
[11] Alaska, Arkansas, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, and Vermont
[12] Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, Washington, and West Virginia
[13] Alabama, Alaska, Arkansas, Connecticut, Hawaii, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Rhode Island, South Carolina, Tennessee, Virginia, and Wisconsin
[14] Arkansas, Connecticut, Maryland, Massachusetts, Minnesota, Montana, North Dakota, and Rhode Island
[15] Arizona, Illinois, Indiana, Michigan, Nebraska, Virginia, and Washington

four States, statutes and regulations do not require kin care providers to be licensed.[16]

In the 20 States and the District of Columbia that use statutes and regulations to address requirements for relative placements, before a child can be placed in the home of a relative, the child-placing agency must do an assessment to determine that the relative is "fit and willing" to provide a suitable placement for the child, able to ensure the child's safety, and able to meet the child's needs. 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.[17] Child abuse and neglect central registry checks also are required.[18]

PLACEMENT OF SIBLINGS

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) amended title IV-E plan provisions to require that title IV-E agencies make reasonable efforts to place siblings removed from their home in the same foster care, adoption, or guardianship placement or, if that is not possible, facilitate visits or ongoing contacts for siblings that cannot be placed together, unless it is contrary to the safety or well-being of any of the siblings to do so.[19]

Statutes or regulations in approximately 37 States, the District of Columbia, and Guam require child-placing agencies to make reasonable efforts to place siblings in the same home when they need of out-of-home care except when there are documented reasons why a joint placement would not be in the best interests of any of the siblings.[20] Reasonable efforts include giving placement preference to persons that are willing and able to provide appropriate care for all the children in the home. In addition, the agency may grant variances to one or more licensing standards regulating foster family homes, including exceptions to the number of children that may be placed in the home, as long as the home otherwise complies with fire and building safety regulations. In 39 States and Puerto Rico, statutes or regulations require that siblings who cannot be placed together be given opportunities for visits and/or other contact or communication.[21]

ADOPTION BY RELATIVES

Approximately 11 States[22] require in statute or regulation that State agencies give preference to relatives when making adoptive placements

[16] Florida, Kansas, Kentucky, and New Mexico

[17] Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Montana, New Jersey, North Dakota, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington, Vermont, Wisconsin, and Wyoming

[18] Title IV-E requires these checks regardless of whether foster care maintenance payments are to be made on behalf of the child; see 42 U.S.C. § 671(a)(20) (LexisNexis 2018). For more information on the requirements for background checks for foster and adoptive parents, including criminal records and child abuse and neglect central registries, see Child Welfare Information Gateway's *Background Checks for Prospective Foster, Adoptive, and Kinship Caregivers*.

[19] 42 U.S.C. § 671(a)(31) (LexisNexis 2018)

[20] Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, Washington, West Virginia, and Wisconsin

[21] Arizona, California, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Tennessee, Vermont, Virginia, Washington, and Wisconsin

[22] Arkansas, California, Illinois, Minnesota, Nebraska, New York, Ohio, Oregon, Rhode Island, Washington, and Wisconsin

for children in their custody.[23] However, in four States, if the child has been placed in foster care with a nonrelative and has been living with the same foster parent for significant period of time when they become available for adoption, the nonrelative foster parent may be given first preference to adopt.[24]

In Ohio, Oregon, and Rhode Island, if an Indian child needs adoptive placement, the Indian child shall be placed in accordance with the order of preference established by the Indian child's Tribe or, if the Indian child's Tribe has not established placement preferences, according to the following order of preference:

- With a member of the Indian child's extended family
- With other members of the Indian child's Tribe
- With other Indian families
- With other non-Indian prospective adoptive families

In the statutes or regulations of approximately 35 States, when a parent places the child directly with a relative, the laws provide for a streamlined adoption process, such as not requiring a preplacement assessment or home study unless specifically ordered by the court.[25] In 11 States, the child must have resided with the relative for a period of time or have established a significant relationship with the relative in some other way.[26] All States require checks of criminal history records and child abuse central registries for the adopting relatives and other adult household members.[27]

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

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[23] Other States may require this is in agency policy or procedure.
[24] Missouri, New York, Ohio, and Tennessee
[25] Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, and Virginia
[26] Alabama, Alaska, California, Colorado, Delaware, Florida, Louisiana, New Hampshire, New Mexico, North Dakota, and Virginia.
[27] Title IV-E requires these checks regardless of whether adoption assistance payments are to be made on behalf of the child; see 42 U.S.C. § 671(a)(20) (LexisNexis 2018).

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