Model Family Foster Home Licensing Standards, Kinship Diversion and Voluntary Placement Agreements

Moving the Work Forward: Best Practices to Support Kinship Families
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Types of Kinship Care

- In the U.S., approximately **2.7 million children** are cared for by relatives and close family friends
  - Majority of children are outside the foster care system

- **Formal Kinship Care – child in state/county custody**
  - Only 1 in 4 children placed with relatives in foster care system
  - Unlicensed kinship foster care
  - Licensed kinship foster care

- **Informal Kinship Care**
  - No formal government involvement, some receive public benefits
  - Caring for child with or w/o legal custody/guardianship
  - Often arranged by parents
  - Relative placement as a diversion from state custody
Licensing Kin Caregivers
Federal Foster Home Licensing Requirements

- Federal law says little about the actual licensing of foster homes:
  - States must designate a state authority responsible for standards.
  - States have broad flexibility so long as those standards “are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights…”
  - “a waiver of any such standard may be made only on a case-by-case basis for non-safety standards (as determined by the State) in relative foster family homes for specific children in care.”

- States must periodically review their licensing standards.

- The federal Adam Walsh Act also requires states to conduct criminal background and child abuse registry checks.
Foster Home Licensing Standards Research

- Generations United and ABA Center on Children and the Law conducted 50 state and DC survey of foster care licensing standards to identify trends, problematic standards, and barriers specific to relatives.

- Research Findings included:
  - **Problematic standards**, such as:
    - Applicants be no older than 65 unless waiver
    - Applicants able to communicate in English
  - **Varying standards** for the same type of requirements that should not vary significantly:
    - Capacity: states vary between allowing 3 to 6 foster children in a home, total between 4 to 8 children
    - Criminal convictions: at least 21 states disqualify for crimes beyond those in federal law (Adam Walsh Act)

- Paper summarizing findings: *Improving Foster Care Licensing Standards around the United States: Using Research Findings to Effect Change* available at [www.grandfamilies.org](http://www.grandfamilies.org)
Model Family Foster Home Licensing Standards

- National Association for Regulatory Administration (NARA) joined GU, ABA and AECF to work on standards
- Covers standards for licensing foster family homes
- Does not cover:
  - licensing processes or procedures
  - care of children after placement in a licensed home
  - other post-licensing requirements like foster parent recordkeeping and reporting
- NARA adopted the standards as the NARA national standards, available at www.grandfamilies.org
- Accompanying the model standards are: principles, purpose statement, interpretative guide and implementation tools
Potentials Role for Legal Service Providers

- Determine if your state requires relatives to be licensed in order to care for children in state custody
- If relatives are not licensed:
  - Ask why and make sure it is by choice
  - Ensure relatives understand their placement options
  - Determine if there is a barrier to licensing that can be easily fixed, e.g. family needs a new bed, fire extinguisher
  - Ultimately it is agency decision if the relative can be licensed, the court cannot order a home to be licensed
- Ask about the use of licensing waivers in your jurisdiction
- If relatives are not licensed, find out if they have all necessary supports and services to safely care for the child
Licensing: Best Practices

- Establish workgroup or taskforce:
  - to compare state licensing standards to Model Standards
  - when possible, change standards to align with Model Standards
- Some states allow licensing waivers to be approved at the local level instead of the state level
- Some states have designated kinship liaisons, both professional and/or kinship caregiver peer mentors to help relatives through the difficult licensing process
- Movement at the federal level to look at how to best move Model Standards forward at state level
The Kinship Diversion Debate

What is Kinship Diversion?

- Child welfare agency investigates a report of child abuse and neglect
- Agency determines a child cannot remain safely with parent
- Agency facilitates child’s ongoing care with relative **instead of** bringing a child into state custody OR
- Court decides to dismiss petition and allow child to live with a relative
- Approximately 400,000 children diverted from system each year – possibly higher
- Almost all jurisdictions engage in some type of diversion – level of services offered to families varies widely
Kinship Diversion: Arguments FOR

- Whenever possible, kinship diversion is preferable option for children and families
- With the right supports, families are better able to care for children without the complications and uncertainty of government involvement
- Some relatives are safe but would not qualify for licensing as foster parents
Kinship Diversion: Arguments AGAINST

- Relatives are being unfairly pressured into caring for children without understanding their options or receiving appropriate services and financial support.
- Without the protections of foster care, birth parents are not being given a fair chance at reunification.
- Many relatives lack a legal relationship with the child and therefore cannot access services.
- Few jurisdictions systematically track and analyze impact of diversion on children’s safety, permanence and well-being.
SUPPORTED DIVERSION
Best Practices: Supported Diversion

“Good” diversion is possible if accompanied by:

- Appropriate risk assessment
- Team decision making and full disclosure of options
- Appropriate needs assessment and services for kinship care triad (kin, child, parent)
- A “way home” for birth parents via reunification services
- Caregiver legal status and permanency considerations
- Appropriate tracking of diverted children and families
State Models for Supported Diversion

- Adoption Assistance
  - California law allows AAP can be paid when child is “at risk” of foster care, but this standard is rarely utilized
  - Relatives can go from federal subsidized guardianship assistance to subsidized adoption assistance if later adopt

- Guardianship
  - Most states do not offer support outside of TANF (only available to relatives – including more expansive definitions of relatives) - BUT -
  - California: Youth with a non-related legal guardian established by the juvenile court (i.e., foster care or delinquency) OR probate court (i.e., diverted from foster care) are eligible for AFDC-FC benefits without ever entering foster care
Voluntary Placement Agreements

- Title IV-E funding is available for youth who are “voluntarily placed”
  - Agreement between child welfare agency and bio parent/guardian
  - Allows child to get services, benefits and support for up to 180 days
  - No court involvement
  - Prior to expiration of 180 days child must be:
    - Formally removed
    - Released for adoption/guardianship
    - Returned to parent
Potential Roles for Legal Service Providers

- Work with local child welfare agencies to develop strong diversion policy (and clear and public articulation of policy) that ensure protections and services for kinship triad
- “Translate” diversion policies so kinship care families fully understand full range of options (including foster care)
- Establish legal relationship between the relative caregiver and the child
- Bring legal challenges to inappropriate diversion policy and use of diversion
- What other effective approaches and roles have you all explored in your states and local jurisdictions?
Safety Plans and Due Process
Safety Plans and Due Process

- What is a Safety Plan?
  - Written arrangement between a family and the child welfare agency to provide safety for a child if there is a present/impending threat
  - Should be time limited
  - Safety Plans are voluntary in nature
    - Can they be voluntary? What about the threat of removal?
- Recent Pennsylvania due process challenges
  - Parents have certain legal rights any time a separation occurs within the family and/or if a deprivation of rights occurs including, but not limited to:
    - Any altering of parental capacity;
    - Separation of a parent from a child - removal of a parent; removal of a child;
    - Interference with custody;
    - Interference with decision making authority;
    - Interference with parental visitation, such as limiting unsupervised contact with a child.
Safety Plans and Due Process

- PA cases held the following steps must be taken to protect against infringement of a parent’s due process rights when using a safety plan:
  - Notice to the parent of their rights to challenge the safety plan
  - An opportunity to be heard within a reasonable time period

- Cases also found:
  - Child welfare agencies must establish policy and train staff to ensure procedural rights are provided to parents
  - Caseworkers can be liable for violating parents’ constitutional rights if they conduct investigations without “reasonable and articulable evidence… that a child has been abused or is in imminent danger of abuse.”

- The Sixth and Seventh Circuits have also considered cases where safety plans were implemented without notice and an opportunity for a hearing:
  - Both circuits predate the PA cases
  - Held no due process requirement because safety plans were voluntary, as long as there was no coercion through duress
Questions and Group Discussion