

Improving Foster Care Licensing Standards around the United States: Using Research Findings to Effect Change

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INTRODUCTION

Generations United and the American Bar Association Center on Children and the Law conducted comprehensive legal research of foster care licensing standards in all fifty states and the District of Columbia. In this paper, we summarize our findings and make recommendations to improve the licensing of relative and non-relative foster parents.

Our research found:

- **Problematic standards** like requiring that applicants be no older than 65, have a high school degree or pay for a physical exam for each member of the household.
- **Varying standards** among the states for the same type of requirements that should not vary significantly from jurisdiction to jurisdiction. The varying standards raised questions about which is the best standard or how standards can be combined to create a model standard.
- **Model language** that can be used to develop our “core” standards.

The reason for all these standards, even the problematic ones, is based on legitimate public policy concerns – like having healthy, stable, and safe foster parents. We recommend that we take what we have discovered and create a set of “model” core standards. We will do away with problematic requirements, and use the best of the standards from the states to develop clearly defined expectations. Expectations that must be met by all: things like a flushing toilet in the house, firearms locked away, and a working telephone on the premises at all times. Core standards will also include requirements—like having healthy foster parents -- that are more difficult to phrase. We will use our research to develop those as well. Only variances -- or alternative means of compliance -- will be allowed for these standards. We will need to explore, as part of the next steps, whether “non-core” standards will also be needed.

Using this approach, rather than requiring countless specific standards, with the potential for a waiver from those standards, applicants will have more predictability. Applicants will not have to expose themselves to the uncertainty and subjective nature of the waiver process. For example, if they are over age 65, they will not have to worry how the licensing authority will determine whether they are strong enough to care for the child. Rather than an arbitrary assessment of “strength” or age limits, the core standards can include baseline health criteria.

Finally, even with written, codified core standards, the practice of how they are applied is a fundamental and often problematic issue. However, having written standards in state law or regulation -- which have been subject to the state’s regulatory process -- better ensures that practice will be more uniform from one caseworker to another.

METHODOLOGY

We conducted legal research of state statutes, administrative codes, and regulations of all 50 states and the District of Columbia for thirty-three categories of foster care licensing standards listed in the accompanying spreadsheet.

To conduct the research, we primarily used Westlaw and WestlawNext, which are research databases for the legal community. We did not rely on free online state statutes and regulations, since they are often not current. When regulations referred to Policy Manuals or other documents not part of Westlaw, we researched those documents using free online sources, typically the relevant state child welfare agency's website. We also researched Policy Manuals when we found states to be missing key standards in their regulations. We did not, however, research Policy Manuals for all 50 states and DC, as we found most of the standards to be in state regulations.

Please note that our research did not include:

- licensing process or procedures (that aspect of this project was handled by the Center for Law and Social Policy)
- care of children after placement in a licensed home
- other post-licensing requirements like foster parent recordkeeping and reporting

PROBLEMATIC LICENSING STANDARDS

❖ Eligibility¹

Eligibility for foster parents, both related and unrelated, is of course the threshold for becoming licensed. We found problematic standards in four areas of this critical category. Two of these standards would seem to have a particularly negative impact on relatives, and the other two on both relatives and non-relatives:

- (1) Upper age limits for applicants may specifically pose a problem for some grandparents, great aunts, uncles, and other relatives who may otherwise be suitable foster parents.
- (2) Citizenship or documentation requirements that restrict applicants, particularly relatives who are not US citizens or legal residents, but may want to become foster parents to their grandchildren, nephews or cousins who were born in the US and are therefore US citizens.
- (3) Education and literacy standards that are not fundamental to raising children.
- (4) Income requirements, especially those coupled with limitations on home businesses and working outside the home.

(1) Upper age limits

In six states' laws and regulations, we found what could arguably be categorized as age discrimination.² Five of these states explicitly refer to upper age limits of 65. In Maryland, if a foster parent is 60 years or older, the local departments must "observe

¹ This "eligibility" category of standards corresponds with row 5 in the accompanying excel spreadsheet of laws and regulations.

² Arkansas (not over age 65 - must obtain a waiver if one or both applicants are 65 or over or one or both current foster home providers reach 65) at Ark. Admin. Code 016.15.15-6.0; Delaware (may be over 65 "if agency observation established the ability of the foster parents to provide adequate care") at 9 Del. Admin. Code 201-3.2; Louisiana (must be less than 65 if initial approval) at 67 LA ADC Pt V, § 6303; Maryland (if 60 or older, local departments to "observe and document that the foster parent's strength is adequate to meet the needs of children in care") at COMAR 07.02.25.05; West Virginia (not older than 65 "unless waiver granted") at W. Va. Code St. R. 78-2-13; and Wisconsin ("no older than 65 unless waiver granted") at W.S.A. 78-2-13.

and document that the foster parent's strength is adequate to meet the needs of children in care.” COMAR 07.02.25.05. This state regulation requires subjective determination, to which relatives may be unwilling to consent. Surprisingly we found only two states, New Jersey and North Dakota, which have anti-age discrimination language in their regulations.³ New Jersey’s general anti-discrimination provision includes age: “[n]either the Department nor a contract agency shall discriminate with regard to the application or licensure of a resource family parent on the basis of race, color, national origin, age, disability, gender, religion, sexual orientation, parental status, birth status, or marital, civil union, or domestic partnership status.” NJ ADC 10:122C-1.6 In North Dakota, applicants are protected against discrimination on the basis of age (and disabilities), but they have the burden to show that disabilities and age do not “inhibit” their duties as foster parents: “physical disabilities or age of foster parents do not affect licensing of the home provided that the applicant can show that these factors do not significantly inhibit the ability of the foster parents to efficiently carry on the duties required of them.” NDAC 75-03-14-04.

Two states that do not have upper age limits have some notable language worth mentioning. Under Missouri law, the “age of the child's grandparent or other relative shall not be the only factor that the children's division takes into consideration when it makes placement decisions and recommendations to the court about placing the child with such grandparent or other relative.” V.A.M.S. 210.565. Nevada’s regulations provide that the “age of the foster parent should be considered only as it affects his physical energy, flexibility or ability to care for a specific child, and in relation to the probable duration of the care of a particular child.” NAC 424.260.

(2) Citizenship requirements

We did not identify any states that require applicants in law or regulation to be US citizens. Some states, however, may require citizenship in practice. At least eight states require proof of citizenship or legal residency⁴; in Massachusetts, applicants must be either US citizens or granted “permanent legal resident status,” which is otherwise known as a “green card” and is a very specific type of documentation. 110 CMR 7.100.

(3) Education and literacy requirements

Education and literacy requirements may impact the same population affected by citizenship requirements, in addition to otherwise suitable applicants who may not have

³ In foster care placements, federal law only requires states to protect against discrimination on the basis of race, color or national origin. 42 USC 671(a)(18)(A).

⁴ Kentucky (citizenship or legal alien status) at 922 KAR 1:310; Maryland (US citizen or legal immigrant) at COMAR 07.02.25.05; Massachusetts (US citizen, or granted permanent legal resident status by US immigration officials) at 110 CMR 7.100; Missouri (US citizen or verify lawful immigration status) at 13 Mo. Code of State Regulations 35-60.030; New Jersey (must supply evidence of legal residency if not citizen of US) at NJ ADC 10:122C-1.6; New Mexico (requires proof of US citizenship or legal residence) at N.M. Admin. Code 8.26.4; Oklahoma (must be residing lawfully in US) at ADC 340:75-7-12; and Utah (must verify legal residency status “when appropriate”) at UT ADC R501-12-6.

attained a high school diploma or equivalent. Three states' laws and regulations specify that applicants must have the ability to communicate in English.⁵ Ohio and Massachusetts require either English or another language.⁶ In Ohio, applicants must be able to communicate with the "recommending agency." OAC 5101:2-7-02. In practice, this could have a limiting impact if the agencies at the county level do not have workers who speak other languages. Oklahoma and West Virginia⁷ -- require literacy without mention of language, and New Hampshire requires applicants to have high school diplomas or equivalents.⁸

Arkansas and North Carolina regulations require applicants to have functional literacy. In Arkansas, "[t]he level of formal education attained by the applicants shall be sufficient to allow them to function in their community, employment, and home. For example: foster parents should be able to follow physician's instructions, read labels on medication, and administer proper dosages of medication." Ark. Admin. Code 016.15.15-6.0. Similarly, in North Carolina, foster parent applicants must have graduated from high school or received a GED (Graduate Equivalency Diploma) or must have the ability to read and write "as evidenced by their ability to administer medications as prescribed by a licensed medical provider, maintain medication administration logs and maintain progress notes." 10A NCAC 70E.1104. Although more practical, these types of definitions could lead to subjective determinations by caseworkers and embarrassment on the part of the applicants.

(4) Income requirements

The vast majority of states, 41, have written income requirements for applicants, which may pose a serious licensing barrier to both relatives and non-relatives. Some states simply say applicants must have "sufficient income." Many others explicitly state that the applicants must have sufficient income to meet the needs of the household without reliance on the foster care payment. Indiana, for example, says that "foster care payments are intended for the sole benefit and care of the child." 465 IAC 2-1.5-5. Similarly, Connecticut's regulations provide that "[f]oster parents shall have an income sufficient to meet the needs of their family. Money received on behalf of the child shall be expended for the care of the child." Regs. Conn. State Agencies § 17a-145-147.

Limitations on home businesses

In several of these states, they also have limitations on home businesses, which could severely impact income and thereby jeopardize satisfying the income requirement. Typically, the limitation is that there may be no home business without prior approval or

⁵ Florida at Fla. Admin. Code r. 65C-13.030; New Hampshire at N.H. Code Admin. R. He-C 6446.03; and Virginia at 22 VA ADC 40-141-60.

⁶ Massachusetts at 110 CMR 7.100; and Ohio at OAC 5101:2-7-02.

⁷ Oklahoma (ability to read and write if will be alone with foster child) at page 8 of Licensing Requirements Manual, page 8, http://nrckids.org/STATES/OK/ok_homes.pdf; and West Virginia (able to read and write or have another adult present in the home, during the hours of care, who is able to read and write) at W. Va. Code St. R. 78-20-6.

⁸ New Hampshire at N.H. Code Admin. R. He-C 6446.03.

if the business poses a risk to the health or safety of the child.⁹ Louisiana’s regulations require that the applicant “ensure that the home business does not interfere with the care of the child.” 67 LA ADC Pt V, § 6303. As many parents who work from home can attest, work from home often “interferes with the care of a child.” Depending on how caseworkers interpret and apply these types of requirements and whether they approve the businesses, this restriction may pose a barrier to licensing.

Limitations on working outside the home

In Delaware and Louisiana, which also have limitations on home businesses, and at least two additional states – South Carolina and South Dakota – child care plans must be approved for those parents who work outside the home. S.C. Code of Regulations R. 114-550; ARSD 67:42:05:06. Massachusetts prohibits applications from individuals whose schedules would require that preschool children spend more than 50 hours/week in child care or that school age children spend more than 25 hours/week in child care. 110 CMR 7.100. Although seemingly reasonable numbers, for some otherwise suitable applicants, these strict limitations may not always be possible.

❖ Physical and mental health standards¹⁰

This category of standards includes immunization requirements, bans on smoking, and tuberculosis clearance. Many of these standards are necessary to ensure that foster children have healthy home environments.

Physical exam requirements

The most problematic standard in this overall category is probably the requirement in 27 states that a physical exam or a medical statement be prepared by a doctor (and sometimes other health professionals are permissible) usually within 12 months of the foster care application. Twelve of these states require physicals or medical statements for each member of the household, not just the applicant. Most states in their laws and regulations do not reference who pays for these physicals, although three states explicitly state that the applicant must pay.¹¹ Given state budget crises and the fact that the law does not specify, it is probable that in practice many applicants are required to

⁹ Colorado at 12 CCR 2509-8:7.708.22; Delaware at 9 Del. Admin. Code 201-3.2; Florida at Fla. Admin. Code r. 65C-13.030; Hawaii at Haw. Admin. Rules (HAR) § 17-1625-19; Illinois at 89 Ill. Adm. Code 402.11; Indiana at 465 IAC 2-1.5-3; and Louisiana at 67 LA ADC Pt V, § 6303.

¹⁰ This category of standards corresponds with row 10 in the accompanying excel spreadsheet of laws and regulations.

¹¹ In Maryland, The foster family applicant must pay for the physical examinations of all household members “unless the local department develops other resources to cover the expense.” COMAR 07.02.25.05. In New Mexico, the regulations require the applicant to pay for physical exam reports for each adult household member. N.M. Admin. Code 8.26.4.12. In Kansas, if the caregiver experiences significant changes in health, including indications of substance abuse, the regulations state that a health assessment may be required and the caregiver must pay for it. K.A.R. 28-4-819.

pay for these examinations. With high health care costs and the fact that 16.3%¹² of the population does not have health insurance, this requirement can pose a serious obstacle to foster care applicants, whether related or not.

Potential discrimination on the basis of disability

There are no state laws or regulations that are overtly discriminatory on the basis of disability, although a few have language that raises concerns about how these applicants would be assessed in practice. For example, in Hawaii, which is one of the 27 states requiring physical examinations or medical reports, the report must certify that the “resource family suffers no illnesses or disabilities that would interfere with the resource family's capacity to care for children.” Haw. Admin. Rules (HAR) § 17-1625-18. How is “capacity to care for the children” being assessed? In Vermont, “[a]ll members of the household shall be free from physical conditions, mental limitations, or emotional problems, which would have an adverse effect on the physical or emotional well-being of foster children.” Vt. Admin. Code 12-3-501:20. What criteria are being used to determine “adverse effect”?

A few states have language explicitly protecting applicants with disabilities. In California, “the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control.” West's Ann.Cal.Health & Safety Code § 1530.5. In Delaware, “[d]isabilities of foster parent(s) or household members are to be considered only as they affect the ability of the household to care for the child.” 9 Del. Admin. Code 201-3.2.4. Louisiana has similar language: “[h]andicapping conditions of foster parent(s) or household members are to be considered only as they affect the ability of the household to care for the client(s).” 67 LA ADC Pt V, § 6305. As pointed out on page 5 of this paper, North Dakota protects applicants on the basis of disability, although it puts the burden on them to show that their disabilities do not inhibit their ability to perform their foster parent duties; and, New Jersey's regulation has a broad anti-discrimination provision that includes disabilities. NDAC 75-03-14-04; NJ ADC 10:122C-1.6.

❖ Other living standards¹³

These standards mostly address important foster home requirements such as having a working phone, electrical service, water, cooling and heating, lighting for necessary activities and safety, bathrooms, and kitchen facilities.

¹² DeNavas-Walt, C., Proctor, B.D., and Smith, J.C. (2011). *Income, Poverty, and Health Insurance Coverage in the United States: 2010*. Washington, D.C.: U.S. Census Bureau. Retrieved from <http://www.census.gov/prod/2011pubs/p60-239.pdf>

¹³ This category of standards corresponds with row 14 in the accompanying excel spreadsheet of laws and regulations.

Possible bias against rural families

Within this category, we found six states with standards that may cause bias against rural families. Colorado's regulations require that the prospective foster parent: "live in an area that is accessible to health resources, public and private utilities, adequate and safe water supplies, sewage disposal, and fire and police protection." Depending on how a case worker interprets "accessible," this requirement could pose a significant licensing barrier for rural families. 12 CCR 2509-8:7.708.23. Similarly in Missouri, the "foster parent(s) shall be so located that they have access to schools, recreational, religious or other community resources." 13 Mo. Code of State Regulations 35-60.040 In Arkansas, "[t]he neighborhood/community in which the foster home is located will be one which is accessible." Ark. Admin. Code 016.15.15-6.0. This standard begs the question, "accessible" to what or whom? Nevada's foster homes must "be reasonably accessible to educational and religious facilities, medical care, recreational facilities, special facilities for training and guidance of children, fire services and visits from parents and agency staff..." NAC 424.355. Oklahoma's foster homes must be "accessible to or able to arrange transportation to school, church, recreational and health facilities, and other community resources, as needed." Okla. Admin. Code 340:110-5-60. Finally, in Utah, The foster home "must be located in a vicinity in which school, church, recreation, and other community facilities are reasonably available." UT ADC R501-12-7.

Other potential barriers

Arkansas has additional requirements that may bar licensing for applicants in urban areas or because they do not own the home. Arkansas requires "a healthy environment and be free from health hazards... and incidents of violent crime." Ark. Admin. Code 016.15.15-6.0. Since violent crime often happens in urban areas, this may bar families who live there. For families who rent, Arkansas poses another potential hurdle: "If the foster family does not own the home, the owner must verify that he/she has no objections to the applicant caring for children in foster care." Ibid.

Like the "accessibility" and "healthy environment" determinations, many states have other requirements that require highly subjective findings on the part of the case worker, and conclusions that may be culturally biased. These standards raise questions as to how best to handle these types of inquiries, and what specifically case workers should assess.

❖ Transportation standards¹⁴

Transportation standards cover access to reliable transportation, driver's licenses, vehicular insurance, and child safety, including the use of safety restraints and car seats. The safety requirements often extend to prohibiting smoking in vehicles transporting foster children.

¹⁴ This category of standards corresponds with row 15 in the accompanying excel spreadsheet of laws and regulations.

A fairly representative example of transportation safety requirements from Wyoming:

- (a) Vehicles used to transport children shall be maintained in safe condition and comply with applicable motor vehicle laws.
 - (b) Documentation shall be kept of vehicle maintenance.
 - (c) Operator of vehicles used to transport children shall have the appropriate type of license.
 - (d) The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity nor the number of seat belts installed when the vehicle was manufactured.
 - (e) Each child who is a passenger, and who is two years of age or under, or who weighs 40 pounds or less or who is 40 inches tall or less shall be secured in a child safety restraint system.
 - (f) Any child who is not within the age, weight, and height requirements of subsection (e) of this section shall wear seat belts in all vehicles.
 - (g) When children are transported, there shall be a First Aid kit, available in the vehicle.
 - (h) All medications that are transported will be inaccessible to children.
 - (i) Liability insurance shall be maintained and documented on each vehicle.
- WY ADC FAMS PS Ch. 5 s 8

Requirements to own a vehicle

The most problematic standard in this area is the requirement that foster parents own a vehicle. Fortunately, we found only one state with this explicit requirement. In its regulations, Arkansas provides that foster parents must have “their own transportation available.”¹⁵ Ark. Admin. Code 016.15.15-6.0. This, of course, could be a barrier for some potential foster parents. Some states may effectively require foster parents to have vehicles with language requiring them to “maintain” transportation or have 24 hour access to transportation. As an example, Vermont’s foster parents must “maintain vehicles used to transport foster children in a safe condition and shall assure that such vehicles are properly registered, inspected and insured.” Vt. Admin. Code 12-3-501:40. In Florida and Virginia, transportation must be available at all times. Fla. Admin. Code r. 65C-13.030; 22 VA ADC 40-141-120.

❖ **Health and safety standards¹⁶**

The health and safety standards across the 50 states and DC are similar in that they require common sense safety precautions. The majority of states require smoke detectors, emergency evacuation plans, locked and stored firearms, and cleanliness, sanitation, safety, freedom from

¹⁵ But please note that Area Directors may grant a waiver in situations where provisional foster families have been recruited specifically for a child.

¹⁶ This category of standards corresponds with rows 17-20 in the accompanying excel spreadsheet of laws and regulations.

hazards and good repair.¹⁷ None of the health and safety standards seem unreasonable or potentially discriminatory. These are standards to protect children that should be in any state's laws and regulations.

Although a few states are more prescriptive than others, requiring things like periodic fire/evacuation drills, names and telephone numbers for doctors, police, and emergency personnel posted by the phone, and storage of medications in a way that is inaccessible to children, our research did not identify any outrageously strict standards.

Outside inspections and the issue of who pays for them

Much like the physical examination requirements, the health and safety standard that potentially might bar otherwise suitable foster parents is the prevalent requirement of outside home inspections and the issue of who pays for them. Fifteen states require inspection by an outside agency, such as the Fire Marshal and/or the health department; and 19 states may require outside inspection depending on the agency official's discretion and the circumstances, such as whether the home uses well water. Only one of the states – Nebraska -- that require inspection by an outside agency specifies that it is the applicant who pays, although the fire marshal "may" pay. Neb. Admin. R. & Regs. Tit. 474, Ch. 6, § 003. This leaves the open question of who pays in the other 33 states.

VARYING STANDARDS

The varying standards in these categories raise the question about which is the best standard or how standards can be combined to create a model standard.

❖ **Initial training standards¹⁸**

Forty-seven states¹⁹ in law or regulation require some form of training prior to licensing either related or non-related foster parents. The time requirement for training varies dramatically from state to state.

Of the 47 states requiring pre-licensing training, note the significant difference in hours:

- 19 states do not have any minimum number of hours of training requirement
- 13 states require between 6 - 12 hours of training
- 7 states require between 13 - 21 hours of training
- 8 states require between 22 - 30 hours of training

¹⁷ Several states also restrict certain types of animals in foster homes and many states have safety requirements, such as current rabies vaccinations. In Massachusetts, no foster child under age 12 is allowed in a home with a Rottweiler, Pit Bull or German Shepard dog, or a mixture of these breeds, unless determined to be in the best interest of the child, except for a dog used as a service animal for a household member with a verified disability. 110 CMR 7.105. We did not find any other state that restricted several breeds of dogs.

¹⁸ This category of standards corresponds with row 6 in the accompanying excel spreadsheet of laws and regulations.

¹⁹ The four states that do not require pre-licensing training in law or regulation: Alaska, Connecticut, Nevada and Tennessee.

In-home training can be a good approach for some families who might have transportation, child care, work or other issues making it difficult for them to attend training at a specific location. The only state where in-home training is explicitly mentioned in state law or regulation is Mississippi: “Home-based training modules are available to foster parents; however, no more than four (4) clock hours of the required twelve (12) hours of in-service training can be obtained through home study.” MS ADC 18-6-1:K.

❖ Home studies²⁰

Most states’ home study requirements in law and regulation are very prescribed and include explicit interview standards. We did not find any overtly discriminatory requirements. However, many states have requirements that require highly subjective findings on the part of the case worker, and conclusions that may be culturally biased. These standards raise questions as to how best to handle these types of inquiries, and what case workers should specifically assess. Some states use standardized assessments, like the Structured Analysis Family Evaluation (SAFE) instrument – required in Colorado and New Mexico’s regulations²¹ -- or the PRIDE “Conducting Mutual Family Assessment and Family Development Plan” process in the PRIDE Practice Handbook, which is apparently used in North Dakota.²²

Here is an example from Arkansas of subjective criteria for assessing applicants:

- 1) The capacity to love and care for children and respond to children's needs;
 - 2) The capacity and willingness to give love, affection, and care to a child without expecting the child to return this love and affection;
 - 3) The willingness to allow for socialization of the child in foster care with his/her peers;
 - 4) Flexibility in their expectations, attitudes, and behavior in relation to meeting the needs of children;
 - 5) Ethical standards and values which are conducive to the well-being of children;
 - 6) The ability to accept a child's background without passing moral judgment on the child or the child's birth/legal family;
 - 7) The ability to accept a child's relationship with his or her birth/legal family;...
 - 9) Emotional stability, including a satisfactory method of handling angry feelings;
 - 10) Satisfactory and stable adult relationships...;
 - 11) The ability to function adequately in their chosen life style...;
 - 12) An acceptance of their own childhood experiences. An absence of any qualities which indicate that the foster parent could abuse children;
 - 13) The capacity to absorb the presence of a child in care without undue disruption to their own family life. The ability to cope with the departure of the child in foster care; and
 - 14) The maturity to exercise good judgment and appropriate use of authority, along with the youthful qualities of vitality and flexibility which are necessary to care for children.
- Ark. Admin. Code 016.15.15-6.0

²⁰ This category of standards corresponds with row 7 in the accompanying excel spreadsheet of laws and regulations.

²¹ 12 CCR 2509-8:7.710.3; N.M. Admin. Code 8.26.4.

²² Family Assessment Process - PRIDE 622-05-20-15 at <http://www.state.nd.us/robo/projects/62205/62205.htm>

❖ Capacity standards²³

Capacity standards govern the number of children that may live in a foster home, and are not necessarily problematic on their face. However, the numbers of children allowed in a home vary significantly state to state, which raises questions about how these numbers are determined and what is the best capacity standard. States vary between allowing three to six foster children in a home, and/or a total of between four to eight children. For only one state, West Virginia, did we identify language that bases capacity on findings from the home study. Licensing a home for a certain number of children based on the composition and size of a home on its face seems to be a common sense approach to determining capacity. Although West Virginia also has specific capacity maximums, the “home study shall make a recommendation regarding the number, ages, and gender of children for which the home may be approved for placement and any other special conditions or circumstances that may apply.” W. Va. Code St. R. 78-2-16. Other states may take this approach in practice, but we did not find anything in laws or regulations.

Our findings concerning capacity standards show the variation among the states:

- The number of foster children allowed in the home is often limited by the number of the foster parent’s own biological children in the home, resulting in capacity standards which specify the number of foster children and/or the total number of all children in the home.
- Eighteen states allow a total of 6 children (foster and biological) to live in the foster home; 6 states allow a total of 8 children; 5 states allow a total of 5 children; 2 states allow a total of 7 children; and 1 state sets the maximum at 4 children.
- Six states allow 6 foster children to live in one foster home; 5 states allow a total of 5 foster children; 5 states allow a total of 4 foster children; and 3 other states vary between standards allowing a maximum of 3, 7, and 8 foster children in the same home.
- Capacity standards differ in some states based on the age of the child, allowing for fewer very young children (24 months or younger).
- There are more stringent capacity limits if the home is licensed as a specialized or therapeutic foster home.
- Twenty-one states have capacity standards that allow the maximum number of children in a home to increase to accommodate the placement of sibling groups. In addition to these 21 states, another 4 states have specific provisions that allow capacity standards for siblings to be waived.

²³ This category of standards corresponds with row 12 in the accompanying excel spreadsheet of laws and regulations.

❖ **Square footage**²⁴

Anecdotally, we have heard for many years that strict square footage requirements act as a licensing barrier. Almost half the states, 24, have specific square footage standards in their laws and regulations. The majority of these square footage standards are for each child's space in a bedroom, and this standard varies among states anywhere between 35 to 75 square feet each. These differences raise questions about what is the best square footage requirement and whether these strict requirements are even necessary.

❖ **Sleeping arrangement standards**²⁵

Standards concerning foster children's sleeping arrangements are among the strictest in licensing laws and regulations. These standards govern types of beds and cribs, number of children allowed in a bedroom, and what elements, such as a window, door, closet, constitutes a permissible bedroom. They also limit children of different genders sharing a room, and foster parents sharing bedrooms with the children. The need for these types of requirements is self-evident, particularly in light of the fact that many of these children have a history of sexual abuse. As with many of the other standards, nothing is overly discriminatory or problematic, but again, language that differs among the states raises the issue about what would be the best standards to ensure the health and safety of foster children.

❖ **Abuse and neglect background checks**²⁶

Federal law requires states to conduct abuse and neglect background checks on foster parent applicants and all adult household members. 42 USC 671 (a)(20)(B). The relevant portion of federal law is cited in the text box on the next page. We found language mirroring the federal requirements in virtually all the state laws and regulations. There are three states where we did not find these requirements, but they are most probably in other written state policy.

Many state laws and regulations also contain requirements that go beyond the federal requirements, and we should determine which, if any, of these are important standards that should be followed by all states. For example, the federal law requires background checks on all "adult" household members; however, some states – Arkansas, Kansas, and South Dakota -- require checks on household members as young as age ten. Ark. Admin. Code 016.15.15-6.0; K.A.R. 28-4-805; ASD 67:42:05:06. Kansas has particularly detailed language that further specifies that all fees to obtain the checks from other states and national crime identification databases (NCID) must be paid by the applicant:

(a)...The applicant...shall submit a request to conduct a background check by the Kansas department of social and rehabilitation services... The request shall list the required information for the following:

²⁴ This category of standards corresponds with rows 13-14 in the accompanying excel spreadsheet of laws and regulations.

²⁵ This category of standards corresponds with row 13 in the accompanying excel spreadsheet of laws and regulations.

²⁶ This category of standards corresponds with row 22 in the accompanying excel spreadsheet of laws and regulations.

- (1) Each individual 10 years of age and older who resides, works, or regularly volunteers in the family foster home, excluding children placed in foster care;*
 - (2) each caregiver 14 years of age and older; and*
 - (3) each resident of a home in which informal visitation occurs who is at least 10 years of age...*
- (g) All fees to obtain child abuse and neglect background checks from other states and NCID checks must be the responsibility of the applicant. K.A.R. 28-4-805*

Several states require checks on teenagers as well as adults. In Connecticut, 16 year olds must be checked. C.G.S.A. § 17a-114. In Illinois, members of the household ages 13 through 17 must authorize a check of Statewide Automated Child Welfare Information System (SACWIS) and the Statewide Child Sex Offender Registry. 89 Ill. Adm. Code 402.2, 402.4, & 402.12. In Iowa and Texas, the age is 14; Texas further requires checks on anyone “frequently” staying in the home. Iowa Admin. Code 441-113.13(237); 40 TAC § 749.2447. In Kentucky, “adolescent” members of the household, ages 12 to 17, must be checked. 922 KAR 1:490.

States also differ in whether they deny licenses to only those with substantiated child abuse, or whether having an indictment, open or pending case is sufficient. Some states, like Maine, provide in law and regulation that they may deny a foster parent application if there is an open child abuse and neglect case. ME ADC 10-148 Ch. 16, § 9. Similarly, in Delaware, the applicants and household members must be free of all convictions, indictment or substantial evidence of involvement in child abuse or neglect. The Agency may make exceptions when the Agency documents that the health, safety and well-being of children would not be endangered. 9 Del. Admin. Code 201-3.2.8.1 and 3.2.8.1.1. In other states, such as South Carolina and Utah, the child abuse or neglect must be substantiated or supported before denying a license. S.C. Code of Regulations R.114-550; U.C.A. 1953 § 62A-2-120; UT ADC R501-12-4. Florida has among the most detailed regulations on this standard: only abuse and neglect reports in which the applicant was named as the “caregiver responsible” for the abuse or neglect must be used for initial licensing decisions. If the person applying is or was a licensee of the department and was named in any capacity in three or more reports during a five year period, those reports may be reviewed by the department for their relevancy. Fla. Admin. Code r. 65C-13.023.

Federal law requires states to:

- (B)(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part;
- (ii) comply with any request described in clause (i) that is received from another State; and... 42 USC 671 (a)(20)(B)

❖ Criminal history records checks²⁷

All states and the District of Columbia require that criminal background checks be conducted on foster parent applicants. These checks are mandated by a federal law known as the Adam Walsh Child Protection and Safety Act of 2006. 42 U.S.C. § 671(a)(20)(A). As part of our research, we sought to determine how many states include disqualifying or barrier crimes beyond those required by federal law. This research is necessary as part of determining if any of these additional categories of barrier crimes should be included in “model” core standards.

Based on our initial research, we determined that at least 21 states disqualify for crimes beyond Adam Walsh crimes. Some examples include scheme to defraud, defrauding creditors, issuing a bad check, maltreatment of the elderly, prostitution not involving children, threatening terror, and attempting or assisting suicide. For some crimes, it is impossible to determine if they go beyond Adam Walsh without delving into the states’ criminal laws. For example, prostitution involving a child would be an Adam Walsh crime; whereas without a child, it would not. It is typically not possible to know if the crime involves a child without looking at the elements of the crime in the criminal code.

Adam Walsh Child Protection and Safety Act of 2006, in part, requires the following:
(20)(A) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases...for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part, including procedures requiring that--
(i) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and
(ii) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; ... 42 U.S.C. § 671(a)(20)(A)

Some states also include driving violations as a barrier to licensing, which is clearly beyond Adam Walsh crimes. For example, in Florida, applicants must not have driving violations less than five years old on file with the Department of Motor Vehicles, which relate to driving under the influence of alcohol or drugs. Fla. Admin. Code r. 65C-13.030. In Arkansas, the department

²⁷ This category of standards corresponds with rows 23-35 in the accompanying excel spreadsheet of laws and regulations. 42 USC 671(a)(18)(A).

will check the driving record (violation points) for each potential foster parent and other applicable members of the household. The Arkansas State Vehicle Safety Program sets the maximum number of traffic violation points a foster parent may be allowed. Ark. Admin. Code 016.15.15-6.0.

RELATED FOSTER PARENTS

Now that we have reviewed the basic categories of foster home licensing standards, we will turn our attention to how applicants are treated by law and regulation if they are related to children who have been removed from their parents' home and the relative wants to become licensed.

❖ Provisional licensing²⁸

The threshold difference between licensing non-relatives and relatives concerns timing and urgency. The standards in this document are what all applicants must meet to become "licensed" to care for children; they do not concern "placement" of specific children. For relatives, we are by definition addressing the placement of specific children who have been removed from their parents' homes due to abuse or neglect. The timing is backwards as a result. For non-relatives, they generally seek licensure first and placement second. For relatives, their desire for placement of a specific related child leads them to pursue licensure. That basic difference creates the need for an expedited timeframe when licensing relatives. In response to that need, many states have "provisional licensing."

Provisional licenses are typically time limited and allow a relative or a non-relative to care for a child after certain basic safety checks have been completed on the home and household members. These licenses generally allow the adult to complete the licensing process during the time period of the provisional license; and in the event they are unable to be licensed, the child is removed. About 35 states have these licenses, and only a couple – Arkansas and the District of Columbia -- specifically limit them to kin.

❖ Emergency or temporary placements²⁹

Rather than providing for "provisional licensing", a few states – California, Connecticut, Minnesota, New Jersey, New York, Oklahoma, Rhode Island, and Utah -- call for the same type of background checks, time limitations, and applications for full licensure, but rather than "licensing" the home, albeit it provisionally, the states simply call it an emergency or temporary placement. Almost all of these states limit these placements to relatives or kin. In Connecticut, emergency placements are also open to children where the adult is a relative of a sibling. Whether the fact that the home is not "provisionally licensed" by the state affects the state's liability for the placement is an open question.

²⁸ This category of standards corresponds with row 31 in the accompanying excel spreadsheet of laws and regulations.

²⁹ This category of standards corresponds with row 31 in the accompanying excel spreadsheet of laws and regulations.

❖ **Waivers and variances**³⁰

After addressing the difference in timing and urgency for relatives and non-relatives, the question arises as to whether the same standards make sense for relatives as non-relatives. For example, should the prohibition against foster children of opposite genders sharing a bedroom apply to siblings? Some states address these types of differences by allowing for case by case waivers³¹ or variances.³²

Our research found that almost half of the states have provisions allowing for some type of non-safety related waivers, and almost twenty states allow for variances from non-safety related requirements. About fifteen states have waivers for specific licensing standards, such as age requirements. In Arkansas, for example, foster parent applicants must obtain a waiver if they are 65 or over or one or both current foster home providers reach 65. Ark. Admin. Code 016.15.15-6.0.

About sixteen states have provisions that only apply to kinship caregivers, which allow for the waiver of either specific requirements or any non-safety requirement. For example, in Connecticut, they have a general waiver provision for relatives: the commissioner may grant a waiver on a case-by-case basis from any non-safety related procedure or standard, including any standard regarding separate bedrooms or room-sharing arrangements, for a child placed with a relative, if such placement is otherwise in the best interests of the child. C.G.S.A. § 17a-114. In Kentucky, specific exceptions to the requirement that foster parents be age 21 are allowed for relatives between ages 18 and 21 who are “able to meet the needs of the child”. 922 KAR 1:310.

Over ten states also have waiver and variance provisions to facilitate the placement of siblings together. Most of these provisions allow for waivers of capacity standards in order for siblings to remain together in the home. In Colorado, variances from square foot space standards are also allowed for siblings. 12 Colo. Code Regs. § 2509-8:7.708.22. Michigan has a general variance provision to facilitate sibling placement: the department may grant a variance to one or more licensing rules or statutes to allow the child and one or more siblings to remain or be placed together. The department may grant the variance if it determines that such a placement would be in the child's best interests and that the variance would not jeopardize the health or safety of a child. M.C.L.A. 722.118b.

❖ **Separate relative licensing standards**³³

The Adoption and Safe Families Act prohibits a two-tiered system of licensing, one for relatives and another for non-relatives, according to the Final Rule implementing ASFA. In the comment and response section of this Final Rule, the Children’s Bureau of HHS explicitly states: “relatives

³⁰ This category of standards corresponds with row 32 in the accompanying excel spreadsheet of laws and regulations.

³¹ Waivers are essentially case-by-case exemptions from compliance with a non-safety related standard.

³² Variances are basically an alternative method of compliance with a state’s licensing standard.

³³ This category of standards corresponds with rows 34-35 in the accompanying excel spreadsheet of laws and regulations.

must meet the same licensing/approval standards as non-relative foster family homes.”³⁴ Although the language of ASFA itself is not as clear, this is the federal guidance on the subject. Research conducted by the Urban Institute found that partially as a result of this rule, 27 states changed their licensing policies. Of these, 18 states implemented stricter licensing standards for relatives than they had previously.³⁵ While we were conducting our research for this project, we saw many state codes of law that had entire sections devoted to licensing of kin, which had been repealed in their entirety. Consequently, our research did not turn up much in the way of separate licensing standards for relatives, although many states have language treating the licensing of relatives differently.

Louisiana is one of the only states with what they call separate minimum standards for relatives in its law. This 1997 Louisiana law, which was amended in 2000, allowed the Office of Children and Family Services to establish a Kinship Foster Care Program with different licensing standards: the “office of children and family services shall establish, in accordance with the provisions of this Section, eligibility standards for becoming a kinship foster parent including the following...” LSA-R.S. 46:286.1. Although the law is still in effect, the Office of Children and Family Services does not appear to have such a program. There is nothing in Louisiana’s regulations about such a program and the department’s website explicitly states that relatives must meet the same standards.³⁶

Several states do however have language facilitating the licensing of relatives. In Hawaii, the department must provide a child's relative with an application to be the child's resource family within fifteen days of the relative's request to provide foster placement for the child. If the application is submitted and denied, the department must provide the applicant with the specific reasons and an explanation of appeal procedures. HRS § 587A-10. Furthermore, relatives are not required to complete training prior to licensing. They have one year after placement to complete training. HRS § 346-17. In Idaho, “[t]he department may expedite placement with a relative, issue a foster care license or grant a limited variance or waiver of a licensing standard or requirement if, in the department’s judgment, the health and safety of the related child is not thereby endangered.” I.C. § 39-1211A. In Illinois, there is a separate part of the code for “APPEAL OF FOSTER FAMILY HOME LICENSE DENIALS BY RELATIVE CAREGIVERS.” 89 Ill. Adm. Code 338.10 et seq. We have not explored how that appeal process plays out in practice, but it is interesting to note that such a mechanism has been called for in the regulations. New York has procedures calling for expedited approval for relatives. According to

³⁴ Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews; Final Rule, 65 Fed. Reg. 4032 (2000). Retrieved from http://www.acf.hhs.gov/programs/cb/laws_policies/cblaws/fed_reg/fr012500.htm

³⁵ Geen, R. (2004) *The evolution of kinship care policy and practice*. Children, Families, and Foster Care 14 (1), 138. (citing Jantz, A., Geen, R., Bess, R., et al. *The continuing evolution of state kinship care policies*. Washington, D.C.: The Urban Institute, 2002). Retrieved from <http://www.princeton.edu/futureofchildren/publications/journals/article/index.xml?journalid=40&articleid=138§ionid=907>

³⁶ Louisiana Department of Children and Family Services, *Foster/Adoptive Parenting Common Questions*. Retrieved from www.dss.state.la.us/index.cfm?md=pagebuilder&tmp=home&pid=195.

state law, after a relative applies to become a foster parent, the court must hold a hearing to determine whether the child should be placed with the relative in foster care. If the court determines that placement in foster care with the relative is in the best interests of the child, the court shall direct the local commissioner of social services, to initiate an investigation of the home of the relative within 24 hours and thereafter expedite approval or certification of the relative, if qualified, as a foster parent. Please note, however, that no child in New York “shall be placed with a relative prior to final approval or certification of such relative as a foster parent.” McKinney's Family Court Act § 1028-a.

We found only one state that requires relatives to meet additional licensing requirements beyond those required of non-relatives. In Colorado, relatives must have:

the ability to provide a permanent home through adoption, guardianship or permanent custody, including the ability to meet the individualized needs of the specified child(ren), assessment of the relationship with birth parents and extended family members as they impact capacity of the applicants to care for the child(ren), and the ability to set boundaries with birth parents to maintain safety for the child(ren) in care. 12 CCR 2509-8:7.710.33.

RECOMMENDATIONS

We recommend that we build on our research summarized here and use what we have learned to develop a set of clear, “model” core standards that can be objectively applied to both relatives and non-relatives. These core standards would recognize that all foster homes should have certain basic standards, such as a toilet that flushes, running water, and smoke detectors.

These standards would be limited to foster care homes, and would not also address other types of child care or community institutions. In some states, we see standards that apply to both. We recommend treating residential foster care separately, like in California: “The department ... shall consider these homes as private residences, and shall establish regulations for these foster family homes and certified family homes of foster family agencies as an entirely separate regulation package from regulations for all other community care facilities.” West's Ann.Cal.Health & Safety Code § 1530.5. Furthermore, California exempts foster homes from civil penalties that would apply to other community care facilities. West's Ann.Cal.Health & Safety Code § 1530.5.

❖ Finish criminal background research

As a first step, we will continue with our existing research into Adam Walsh disqualifying crimes by delving into the criminal codes of each of the 21 states that seem to go beyond Adam Walsh to look at the elements of the crimes to determine if they go beyond or not. For example, we will determine whether certain forms of prostitution in a state involve children and are therefore included under Adam Walsh. Once this is finished, we can use the results as part of developing our recommended “core” standards.

❖ Build on existing research

In developing “model” core standards, we recommend using existing language from various states in order to create the best standard. For example, a core standard should address fire/evacuation drills. The states have standards in this area that vary dramatically. States require drills from monthly in Indiana to twice a year in Florida. Illinois and Alaska require quarterly drills, unless the child is under age 12 and then Alaska also requires monthly. How often is best and reasonable? When should the first drill take place, soon after placement? How about Arizona’s requirement that “[w]ithin 48 hours after a foster child is placed in a foster home, a foster parent shall give the foster child a developmentally appropriate explanation of the emergency and evacuation plan, and ensure that the foster child can follow the plan in the event of a fire or emergency”? A.A.C. R6-5-5846. We can answer these questions and pull other existing good state practices to develop the most sensible overall approach to drills. For example, Indiana requires that drills be conducted at varying times of day and during varying weather conditions. 465 IAC 2-1.5-11. This seems like a reasonable requirement given that fires could occur at any point. California requires that babysitters know the emergency procedures. 22 CCR § 89323. This appears to be another helpful requirement.

Some standards pose a particular problem for relatives seeking licensure to care for a specific child. For example, age and disability are factors that may affect relatives more than non-relatives. We can ensure that our “core” standards do not have these types of requirements that relatives may not be able to meet, and instead use good protections from among the existing state standards. For example, in California, “a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control.”

Other standards that can be developed using existing research include:

- What are transportation standards that allow children to have access to necessary transportation, without requiring applicants to own vehicles, which might not make sense or be economically feasible?
- When should home inspections by outside agencies be required and who should pay for them?

We can also use existing research to replace standards that are problematic and unnecessary with language that better addresses public policy concerns:

- Replace arbitrary upper age limits for applicants with health requirements and anti-age discrimination language.
- Move away from language that can be interpreted by caseworkers and others to require applicants to have enough income to cover the expenses of the entire household, including the foster child, without reliance on the foster care payment. Recognize that good public policy does not want applicants who are becoming foster parents solely as an income supplement, but does want to include foster parents who may not be

wealthy enough to cover the costs of the entire household and foster child without reliance on the foster care payment. Substitute language like “[f]oster parent(s) shall have sufficient income to meet their needs and ensure the security and stability of the household independent of foster care maintenance payments” (9 Del. Admin. Code 201-3.2) with the following language: “[f]inancial resources shall be adequate to ensure that the home is maintained to be safe “ (12 CCR 2509-8:7.708.21) or the “income of the family must be sufficient to maintain an adequate standard of living for the family before the addition of a foster child.” (Haw. Admin. Rules (HAR) § 17-1625-19).

- Instead of physical examination requirements for the entire household for which the child welfare agencies do not assist with the costs, require physical examination of applicants only, with the state covering the costs, and limit household member requirements to tuberculosis and other infectious disease clearance.
- Do away with arbitrary square footage requirements.

❖ **Convene child development and safety experts**

In addition to pulling from existing research, we recommend convening some child development and safety experts to explore some of the open questions identified in this report:

- Which training standards are sensible? Should these standards, which sometimes include training content, be different for relatives? For some relatives who lack preexisting relationships with the children, should their training be the same as non-relatives? Should home based training be encouraged? How about training concerning the specific child?
- Which capacity standards make sense? Should they be based on the individual home study findings?
- How best should the subjective inquiries during home study interviews be handled in order to address safety concerns while limiting potential bias on the part of the caseworker? What are the key questions to ask? Is there an existing protocol that the experts think accomplishes our objectives?
- What are the best sleeping arrangement standards in order to ensure safety without making excessive requirements that otherwise suitable applicants might be unable to meet?

❖ **Determine whether we need a second level of non-core standards with waivers and variances**

As the “model” core standards are being developed, we will need to explore if we need a second level of standards, e.g., non-core, and how waivers and variances should be handled for those non-core standards.

❖ **Conduct detailed interviews with department officials in California and New Jersey**

As part of developing the core standards and determining whether a second level of non-core standards is needed, we recommend detailed interviews with child welfare department officials

in California and New Jersey, both of whom have this approach in their laws and regulations. We would like to explore with them:

- How they developed their core (or in New Jersey, level 1 standards)? What was the process? Are there any core standards that do not make sense in practice? What changes would they like to see made?
- How California defines “core” and “non-core”? California law and regulations do not define these terms. We know that relatives only need to meet core standards. Who has to meet non-core standards? Under what conditions?
- How about waivers and variances? We know that core standards in California cannot be waived or exempted, and that documented alternative plans are allowed, which are basically variances. Non-core standards, on the other hand, can be waived and exempted. How does this work in practice? Would they recommend this approach? Any changes?

❖ **Discuss whether to cover placement and care of child standards**

Finally, California’s core standards also concern care of the child standards after the applicant has been licensed and the child placed. This project did not include standards addressing placement and the care of the child after placement. We will need to explore as a group whether these should also be addressed as part of this project or another project.

❖ **Convene external and internal stakeholders**

After our “model” language and approach is compiled, we can convene external stakeholders, such as the foster parent community and relative caregivers, to explore their thoughts about our recommendations.

As a final step before we explore dissemination strategies, a representative sample of internal stakeholders from child welfare agencies around the country should be convened and consulted.

CONCLUSION

We are looking forward to taking our year of comprehensive research to the next level and making recommendations that will hopefully change the landscape of foster care licensing. We aim to truly fulfill the public policy intent behind licensing standards, which is to ensure that foster children have safe and appropriate placements. By focusing on core standards like working telephones, smoke detectors, and safe cribs and doing away with standards that have more to do with cultural bias and wealth, like requirements to own vehicles and have arbitrary square footage in homes, we hope to facilitate the licensing of additional, appropriate relative and non-relative foster parents.