

Immigrant Caregivers:

The Implications of Immigration Status on Foster Care Licensure



August 2017

INTRODUCTION

All foster parents seeking to care for children in the custody of child welfare agencies must meet certain eligibility requirements to become licensed providers. While federal law provides some guidance, licensing standards are largely determined by state law, and thus, may vary significantly across jurisdictions. In accordance with federal law, most states prioritize placement of foster children with relatives or fictive kin over non-relatives. In order to facilitate these placements, the majority of these states offer a modified placement approval process for kinship caregivers, such as unlicensed provider options, or waivers of non-safety related licensing standards.¹ However, in many cases, failure to obtain full licensure may disadvantage caregivers by, for example, precluding receipt of full foster care maintenance payments.

Nothing in federal law prohibits individuals with undocumented immigration status from becoming either licensed or unlicensed foster care providers. However, many states have implemented licensing standards that either expressly prohibit approval of undocumented caregivers or create barriers to approval. Section II discusses the challenges that various state licensing standards may pose for undocumented caregivers as well as the ways in which they may overcome these challenges.

UNDOCUMENTED CAREGIVERS

Prospective foster parents with an undocumented immigration status face particular challenges when seeking licensure or approval to provide care. For example, all states require that caregivers, whether licensed or unlicensed, undergo background checks. In addition to any general concerns that undocumented immigrants may have relating to interaction with law enforcement and other government entities, background checks typically require the individual to provide some form of government-issued identification, such as a state-issued driver's license or a Social Security Number. For undocumented immigrants, these accepted forms of identification are not always available. At least two states have established methods of processing background checks which accommodate undocumented immigrants.² Conversely, South Carolina's Department of Human Services Policy Manual expressly provides that

This Fact Sheet was created with the generous support of the Annie E. Casey Foundation.

¹ Federal law permits waiver of non-safety licensing standards for relative foster parents on a case-by-case basis. 42 U.S.C. § 671(a)(10).

² Cal. Welf. & Inst. Code § 309(d) ("A relative's identification card from a foreign consulate or foreign passport shall be considered a valid form of identification for conducting a criminal records check and fingerprint clearance check."); Ind. Dep't. of Child Servs., *Child Welfare Policies* § 13.9 (2013) ("If an individual is undocumented, the licensing worker should contact the [Central Office Background Check Unit] for instructions and approval as background checks are still required. The fingerprint registration cannot be completed without a social security number and the assistance of the COBCU."); *see also* Ind. Dep't. of Child Servs., *Child Welfare Manual* § 13.5 (2013) (For *unlicensed* placements, "If the subject of the check is an undocumented immigrant, it is still essential to obtain their government identification, even if that identification is from their native country."). Oklahoma recently proposed a similar approach for assessing and verifying an applicant who lacks a Social Security number or other tax identification number. Okla. Admin. Code, *Instructions to Staff 340:75-7-12* § 2(1)(A) (2015), <http://www.okdhs.org/library/policy/Pages/WF14-05.aspx> (accessed June 1, 2017).

records checks may prevent undocumented immigrants from becoming licensed foster caregivers.³ However, the majority of states are silent as to the issue.

A. Explicit Citizenship or Immigration Foster Licensing Requirements

Twenty states have explicit foster licensing standards that require U.S. citizenship or some form of documented immigration status.⁴ The phrasing, scope, and context of these requirements varies from state to state. The majority of these states require either U.S. citizenship or any form of documented immigration status.⁵ Arizona similarly accepts all applicants who are “lawfully present,” but it requires that those with “temporary authorization to be present in the United States . . . provide documentation indicating that the authorization is valid for a minimum of one year or that the applicant has already taken steps to obtain authorization to remain for at least one year.”⁶ Georgia,⁷ Maryland,⁸ New Mexico,⁹ North Carolina,¹⁰ and Tennessee¹¹ require either citizenship or lawful permanent resident status (i.e., a

³ S.C. Dep’t. Human Servs., *Policy and Procedures Manual*, ch. 8 (2013)(“Nothing in the foster care licensing regulations requires that a foster parent be a U.S. citizen or a documented immigrant. However, the inability in obtaining a complete criminal history record on an undocumented immigrant may prevent licensure.”).

⁴ Arizona (Ariz. Admin. Code § 21-6-301); Colorado (12 Colo. Code Reg. 2509-6:7.500.31(G)); Georgia (Ga. Div. of Fam. and Children Servs., *Child Welfare Policy Manual* § 14.11 (2017); see also Ga. Comp. R. & Regs. 290-2-5-.05); Hawaii (Haw. Dep’t. of Human Servs., *Child Welfare Services Procedures Manual*, Part IV, § 1.2.1); Iowa (Iowa Dep’t. of Human Servs., *Foster Family Home Licensing* 14 (2010)); Kentucky (922 Ky. Admin. Regs. 1:350 § 2(2)); Louisiana (La. Admin. Code Tit. 67, § 7313(B)); Maryland (Md. Code Regs. 07.02.25.04.B); Massachusetts (110 Mass Code Regs. 7.100(4)(i), 7.104(6)); Michigan (Mich. Admin. Code Rs. 400.9201, 400.9202); Mississippi (Miss. Div. of Fam. and Children’s Servs., *Miss. DFCS Policy* § F(II)(C)(1)(a) (2013); see also Miss. Code R. §§ 18-6:1.D-V(G)(1)(e), 18-7:1.XIV); Missouri (Mo. Code Regs. Tit. 13, § 35-60.030(2)); New Jersey (N.J. Admin. Code § 10:122C-5.3); New Mexico (N.M. Code R. § 8.26.4.8); North Carolina (N.C. Dep’t. of Health and Human Servs., *Foster Home Licensing Manual* § VIII.I (2014)); Oklahoma (Okla. Admin. Code § 340:75-7-12(b)); Oregon (Or. Admin. R. 413-200-0306); Tennessee (Tenn. Dep’t. of Children’s Servs., *Administrative Policies and Procedures* § 16.4(A)(1)(c)); Utah (Utah Admin. Code R. 501-12-5(1)(d)); Virginia (Va. Dep’t. of Social Servs., *Child and Family Services Manual* § D, 1.5.1.8 (2013)).

⁵ Framed in terms of “residence” (but not, specifically, Lawful Permanent Residence): Hawaii (“U.S. citizen or legal resident of the U.S.”); Michigan (“residing in the U.S. legally”); New Jersey (“legal residency”); Oklahoma (“reside lawfully in the United States”); Virginia (“citizens of other countries who are residing in the United states in a legal and documented manner”).

Framed in terms of “status:” Iowa (“legal alien,” “legally in the United States,” “legal status”); Kentucky (“United States citizenship or legal immigrant status”); Louisiana (“legal alien status”); Missouri (“citizen of the United States, either through birth or naturalization or be able to verify lawful immigration status”); Utah (“legal residential status”).

Other Language: Colorado (“lawful presence in the United States”); Mississippi (“legal alien,” “legally in the United States”); Oregon (“a United States citizen,” “a qualified non-citizen”).

⁶ Ariz. Admin. Code § 21-6-301(A)(2)(b).

⁷ “U.S. citizen or Permanent Legal Resident.” Ga. Div. of Fam. and Children Servs., *supra* n. 4. Note that “Permanent Legal Resident” is used to mean “Lawful Permanent Resident.” See *id.* § 14.1.

⁸ “Lawfully admitted for permanent residence.” Md. Code Regs. 07.02.25.04.B.

⁹ When listing personal requirements, the New Mexico regulation only calls for the applicant to be a “Legal Resident of the United States.” N.M. Code R. §8.26.4.8.A. However, it goes on to specify that, “minimum documentation required for the assessment process includes. . . Proof of the applicant’s U.S. citizenship such as a social security card, or proof of permanent residency, such as a green card.” N.M. Code R. § 8.26.4.12.F.6.

¹⁰ North Carolina’s policy manual states that “Foster parent applicants must be citizens of the United States through birth or naturalization or be able to verify lawful immigration status. Green cards provide verification of lawful immigration status. A copy of the green card shall be placed in the record of the foster parents that is maintained by the supervising agency.” N.C. Dep’t. of Health and Human Servs., *Foster Home Licensing Manual* § VIII.I (2014). It should be noted that this phrasing may be interpreted as allowing any form of “lawful immigration status,” or it may be interpreted as requiring applicants have “Green Cards.” For the purposes of this memorandum, the latter interpretation is applied.

¹¹ “United States Citizen or Legal Permanent Resident.” Tenn. Dep’t. of Children’s Servs., *supra* n. 3. It should be noted that the relevant federal term is *Lawful* Permanent Resident, so it is possible that Tennessee does not actually require official “Green Card” status.

“green card”), which is a specific form of immigration status. Massachusetts narrows its standard to include only U.S. citizens or immigrants with “legal¹² permanent resident status, asylum, refugee, or other indefinite legal status.”¹³

1. Legal Authority

The legal authority of the citizenship and immigration foster and licensing standards also varies. No state has codified an immigration provision in statute. Rather, 13 of the states set forth the rule in administrative codes.¹⁴ In the other seven states, the requirement is only stated in an agency policy manual.¹⁵ It should also be noted that Iowa and Mississippi, both of which set forth the immigration requirement in policy manuals, only require that the caseworker request immigration documentation “if legal status is in question.”¹⁶ This framing may work in favor of undocumented caregivers if the caseworker does not question the caregiver’s immigration status, but it may also open the door to racial profiling and discrimination.

2. Exceptions

Of the 20 states identified with explicit foster licensing standards that require U.S. citizenship or some form of documented immigration status, only three – Massachusetts,¹⁷ New Jersey,¹⁸ and Oregon,¹⁹ – explicitly exempt kin from the immigration status licensing standard, thereby allowing eligible undocumented immigrants to obtain full licensure. Conversely, three other states, Arizona,²⁰ Michigan,²¹

¹² It should be noted that the relevant federal term is *Lawful Permanent Resident*, so it is possible that Massachusetts did not intend to limit it to individuals with that specific status, but rather intended to encompass a more broad scope of individuals. However, based on the context provided by the other items in the list, it may be argued they intended to specify “Green Card” holders.

¹³ 110 Mass. Code Regs. 7.100(4)(i).

¹⁴ Arizona, Colorado, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New Mexico, Oklahoma, Oregon, and Utah.

¹⁵ Georgia, Hawaii, Iowa, Mississippi, North Carolina, Tennessee, and Virginia. It should be noted that while Georgia and Mississippi’s explicit requirements are set forth in the policy manual, they may draw authority from provisions in the administrative code. *See* Ga. Comp. R. & Regs. 290-2-5-.05 and Miss. Code R. § 18-7:1.XIV, *respectively*.

¹⁶ Iowa Dep’t. of Human Servs., *supra* n. 3; Miss. Div. of Fam. and Children’s Servs., *supra* n. 3.

¹⁷ 110 Mass. Code Regs. 7.105A (“The requirement set forth in 110 CMR 7.104(6) [citizenship/immigration requirement] may be waived for an applicant for a child specific or kinship home. . . provided the applicant otherwise meets the eligibility criteria set forth for child specific and kinship applicants and a determination is made that it would be in the child’s best interest to be placed in the applicant’s home.”).

¹⁸ N.J. Dep’t of Children and Families, *N.J. Dep’t of Child and Families Policy Manual* § IV-A-11-200 (2014), http://www.nj.gov/dcf/policy_manuals/PPP-IV-A-11-200_issuance.shtml (“A child may be placed with kinship caregivers who are undocumented immigrants only when such placement is clearly in the child’s best interest. Approval must be obtained from the [Child Protection & Permanency] Director or designee prior to placement, *and* a waiver of the home study requirement in N.J.A.C. 10:122C-5.3(a)1ii must be granted by the Office of Licensing.”).

¹⁹ Or. Admin. R. 413-200-0306(1) (“To qualify as a newly certified family or adoptive resource for a child or young adult in the custody of the Department, an individual must: (1) Be a United States citizen, a qualified non-citizen, **or a relative of the child** for whom the individual is seeking to be a relative caregiver or adoptive resource. . .”) (emphasis added).

²⁰ *See* Ariz. Dep’t. of Child Safety, *Kinship Foster Care Relatives Caring for children in DCS Custody* 17, <https://dcs.az.gov/sites/default/files/CSO-1047A.pdf> (accessed March 9, 2017) (“In order to make it easier for kin to get licensed, federal legislation says that non-safety licensing standards may be waived, on a case-by-case basis, for kin under certain conditions. . . Standards about criminal and DCS histories or the legal residency of the caregiver and other persons residing in the home cannot be waived.”); *see also* Ariz. Dep’t. of Child Safety, *Policy and Procedures Manual*, ch. 4, § 3 (eff. March 31, 2016) (directing Department employees to “[d]ocument the following about potential kinship caregivers. . . : legal name, DOB, SS#. . . citizenship status. . .”).

²¹ Mich. Dep’t. of Health and Human Servs., *Children’s Foster Care Manual* § 722-03B (“Placement with a relative with an undocumented legal status is prohibited.”); *but see id.* (“In exceptional circumstances, a waiver may be requested for a

and Mississippi,²² clearly state that the immigration status requirement may *not* be waived, even for kin. Missouri indirectly forbids waiver of the immigration status requirement by excluding the provision from a list of the only licensing standards that may be waived for a relative caregiver.²³ Additionally, Georgia’s child welfare policy may also prohibit waiver of the immigration requirement. The requirement is set forth in the “Safety and Quality Standards”²⁴ section of the policy manual, and the manual also states that only non-safety standards may be waived.²⁵ Thus, while there is no explicit ban on waiving the immigration requirement, it may be considered a safety standard that cannot be waived in Georgia. The remaining 13 states have either general waiver and variance provisions²⁶ or alternative approval procedures²⁷ that may, in effect, create exceptions for caregivers with an undocumented immigration status, but the state law and policy does not make a clear statement about kinship exceptions to immigration requirements.

B. Other Potential Barriers to Full Foster Licensure

While they do not have explicit citizenship and immigration status requirements, 11 states²⁸ have foster licensing standards that may create barriers to or directly prevent licensure of undocumented immigrants. Five states have language or communication requirements that may present barriers to prospective foster parents who are non-English speakers or whose primary language is different than that of the foster child.²⁹ Alabama requires that foster parents be able to read and write, but it does not

relative caregiver to forgo licensure when it is determined to be in the child’s best interest to be placed with or remain with an unlicensed relative.”).

²² Miss. Code R. § 18-6:1.D-V(G)(1)(e)(“These standards are NOT to be waived as a matter of general practice when licensing relative caregivers and require the above documentation in respective case records: U.S. Citizenship, only if the potential Resource Parent is a qualified alien. . .”).

²³ Mo. Code Regs. Tit. 13, § 35-60.080(2).

²⁴ Ga. Div. of Fam. and Children Servs., *Child Welfare Policy Manual* § 14.11 (2017).

²⁵ *Id.* § 14.11(“The Division of Family and Children Services (DFCS) shall allow waivers of non-safety standards in relative foster family homes for specific children in care on a case-by case- basis.”).

²⁶ Colorado (12 Code. Colo. Regs. § 2509-8:7.708.7); Hawaii (Haw. Code R. § 17-1625-5); Iowa (Iowa Admin. Code R. 441-113.4(237)); Louisiana (La. Admin. Code tit. 67, § 7303); New Jersey (*see* N.J. Admin. Code §§ 10:122C-2.2, 10:122C-1.3); North Carolina (10A N.C. Admin. Code 70L.0102); Oklahoma (Okla. Admin. Code § 340:75-7-18(j)); Tennessee (Tenn. Dep’t. of Children’s Servs., *Administrative Policies and Procedures* § 16.4(D)); Utah (Utah Admin. Code r. 501-1215(7)), Virginia (Va. Code Ann. § 63.2-900.1).

²⁷ Colorado (12 Code. Colo. Regs. § 2509-4:7.304.21); Hawaii (Haw. Dep’t. of Human Servs., *Child Welfare Services Procedures Manual*, Part IV, § 1, <https://shaka.dhshawaii.net/greenbook/publishing12/ch04/chp4sec1.pdf> (accessed March 9, 2017)), Kentucky (922 Ky. Admin. Regs 1:130); Louisiana (La. Dep’t. of Social Servs., *Office of Community Services Policy Manual*, doc. no. 6-430 (2014),

<https://stellent.dcfis.la.gov/LADSS/getContent?id=111735&rendition=Web&mimeType=application/pdf&noSaveAs=true>;

La. Admin. Code Tit. 48, § 4103); Maryland (Md. Code Regs. 07.02.25.10, 02.02.25.11); New Mexico (N.M. Code R. § 8.26.4.16 (temporary provisional licensure)); North Carolina (N.C. Gen. Stat. § 131D-10.3; 10A N.C. Admin. Code 70E.0709 (temporary provisional licensure)); Utah (Utah Admin. Code R. 62A-2-117.5; *see also* Utah Dep’t. Child and Fam. Servs., *Practice Guidelines* §§ 501.4(H), 501.5(C)(2)).

²⁸ Alabama, Alaska, Arkansas, Florida, Illinois, Maine, Nevada, New Hampshire, Ohio, South Carolina, and Texas.

²⁹ Arkansas (Ark. Code R. § 016.15.15-5.0 (“At least one parent in the foster home shall be able to communicate effectively in the language of the child.”)); Florida (Fla. Admin. Code R. 65C-13.030(“At least one licensed out-of-home caregiver in the home shall be able to effectively communicate with any children placed in the home and with the supervising agency.”)); New Hampshire (N.H. Code Admin. R. He-C 6446.04(b)(4)(“The applicant, or at least one applicant if more than one person is applying together, shall: . . . Be able to communicate in English. . .”)); Ohio (Ohio Admin. Code 5101:2-7-02(“At least one foster caregiver or applicant in the home shall be able to read, write, and speak in English or be able to effectively communicate with any child placed in their home and with the recommending agency.”)); Texas (40 Tex. Admin. Code § 749-2447(21)(Agency must “[d]ocument the language(s) spoken by each prospective foster parent.”)).

specify in which language.³⁰ Maine and New Hampshire have a state residency requirement.³¹ Alaska and Nevada’s foster care licensing applications ask for immigration-related information such as the applicant’s Social Security Number, U.S. government-issued identification, country of citizenship, and/or birthplace, even though there are no related citizenship or immigration requirements in the states’ statutes, regulations, or policy manuals.³² Similarly, Texas requires that case workers document an applicant’s citizenship during a home study.³³ Alabama³⁴ and South Carolina’s³⁵ official background check procedures may prevent licensure of undocumented immigrants. Illinois requires that applicants be “law abiding,” but state law and policy does not define the phrase “law abiding” nor does it indicate, specifically, that noncompliance with immigration laws would prevent an applicant from satisfying the requirement.³⁶ Finally, some states have education-related standards, such as the receipt of a high school diploma or GED. If those states do not accept equivalent credentials obtained in foreign countries, then such standards may prevent non-U.S. educated individuals from becoming licensed caregivers.³⁷ (And including other requirements such as possessing a state-issued driver’s license could add to the above list of states with potential challenges for immigrant caregivers.) While none of the states discussed in this section provide that non-U.S. citizenship will disqualify an applicant, these regulations and policies may create a chilling effect for undocumented caregivers. Additionally, these standards may indicate that, in practice, the state does not license undocumented caregivers.

C. Express Commitment to Licensing Undocumented Caregivers

In addition to Massachusetts, New Jersey, and Oregon, which, as discussed above, provide explicit exceptions to their immigration foster licensing requirements in order to accommodate undocumented relatives seeking licensure as foster parents, at least two other states and New York City have laws and policies which establish a commitment to ensuring immigration status does not prevent kinship foster placements. The first and most comprehensive is California, which passed The Reuniting Immigrant

³⁰ Ala. Admin. Code R. 660-5-29.02(1)(c)(1)(i).

³¹ Maine (10 148 Me. Code R. 16 § 2(B)(“An applicant . . . must reside in Maine and intend to reside in Maine for the period required for completion of the licensing/approval process.”)); New Hampshire (N.H. Code Admin. R. He-C 6446.04(b)(1)(“The applicant, or at least one applicant if more than one person is applying together, shall: (1) Be a legal resident of the state of New Hampshire . . .”).

³² Alaska (Ak. Dep’t. of Health and Social Servs., *Application Form for Foster Care License*, <http://dhss.alaska.gov/ocs/Documents/FosterCare/pdf/06-9162.pdf> (accessed March 13, 2017)); Nevada (Nev. Dep’t. of Child & Fam. Servs., *Caregiver Application*, http://dcfs.nv.gov/uploadedFiles/dcfsvgov/content/Programs/CWS/Placement/Caregiver_Application.pdf (accessed March 13, 2017)).

³³ 40 Tex. Admin. Code § 749-2447(5)(B)(“[Agency] must document the: (A) Length of time spent at each residence for the past 10 years (street address, city, state); and (B) Citizenship of the prospective foster parents.”).

³⁴ Ala. Admin. Code R. 660-5-29.02(4)(c)(3)(ii)(IV)(requires applicant’s Social Security Number and government-issued ID to run background check).

³⁵ S.C. Dep’t. of Social Servs., *Human Services Policy and Procedure Manual*, ch. 8, § 810.04 (2009)(“Nothing in the foster care licensing regulations requires that a foster parent be a U.S. citizen or documented immigrant. However, the inability in obtaining a complete criminal history record on an undocumented immigrant may prevent licensure. . . . State policy prohibits our state from denying a placement solely based upon the immigration status of the applicant; however, the inability to obtain a criminal history record on an undocumented immigrant may prevent approval of the home study.”).

³⁶ Ill. Admin. Code Tit. 89, Part 402.12(c).

³⁷ More research is needed to determine exactly how many states have education-related foster licensing standards. However, the following are examples of states that have education requirements: New Hampshire (N.H. Code Admin. R. He-C 6446.04(b)(5)(“Applicant for foster family care license must: . . . have a high school diploma or equivalent”)); Texas (40 Tex. Admin. Code § 749-2447(2)(Agency must do either or both of the following: “(A) Require that foster parents have a high school diploma or a G.E.D. high school equivalency. . . ; or (B)Have a screening program that [otherwise ensures requirements of regulation, without requiring actual proof of high school diploma or equivalency].”).

Families Act in 2012.³⁸ Among other things, this statute provides that children in foster care may be placed with an approved relative, regardless of that relative's immigration status.³⁹ The law also permits relative caregivers to use identification from a foreign consulate or a foreign passport for the purposes of running background checks.⁴⁰ The second, Indiana, states in the Department of Child Services Child Welfare Manual that, "Undocumented aliens may be considered as relative placements,"⁴¹ and provides alternative procedures for running background checks for both licensed⁴² and unlicensed⁴³ caregivers. Finally, New York City's Immigration and Language Guidelines for Child Welfare Staff states, "Pursuant to Executive Order No. 41, signed by Mayor Bloomberg on September 17, 2003, [the Administration for Children's Services] shall not inquire about a person's immigration status, among other things, unless that inquiry is needed to determine program, service or benefit eligibility or to provide City services."⁴⁴ The city's guidelines further provide, "Undocumented relatives can be considered as a resource for children."⁴⁵

CONCLUSION

In sum, 20 states have explicit immigration requirements for full foster licensure, and 11 states' licensing standards may present indirect barriers for undocumented immigrants. While most of these standards are mandatory law, codified in regulations, some appear in policy manuals. Massachusetts, New Jersey, and Oregon are the only states that explicitly exempt kinship caregivers from the immigration requirement. In 13 of the 20 states, relatives and fictive kin with undocumented status may be able to take advantage of waiver and variance provisions or alternative approval methods in order to provide care for foster children. In addition to explicit immigration requirements, 11 states have licensing standards that may pose indirect barriers to undocumented immigrants. Conversely, California, Indiana and New York City provide examples of how child welfare agencies may accommodate undocumented relative caregivers to ensure that immigration status does not prevent otherwise acceptable kinship placements.

³⁸ Cal. Sen. Bill No. 1064 (2012).

³⁹ Cal. Welf. & Inst. Code § 361.2(e)(2).

⁴⁰ Cal. Welf. & Inst. Code § 309(d); *see also* Cal. Welf. & Inst. Code § 361.4(b)(2).

⁴¹ Ind. Dep't. of Child Servs., *Child Welfare Policies*, ch. 12, § 1 (2012).

⁴² *Id.* ch. 13, § 9.

⁴³ *Id.* ch. 13, § 5.

⁴⁴ New York City Admin. for Children's Servs., *Immigration and Language Guidelines for Child Welfare Staff 1* (2004, 2nd ed.).

⁴⁵ *Id.* at 7.