

KINSHIP CARE IN LOUISIANA

Louisiana has the fourth highest percentage of children living with grandparents in the United States. Across the state, 117,859 children (9.7%) live in grandparent-headed households and another 26,691 children (2.2%) live in households headed by other relatives; of the children living in households headed by grandparents and other relatives, 64,866 live there without either parent present.¹

How Does Louisiana Define "Kin?"

A state's definition of kin is important because all states treat kin differently than non-kin for purposes of licensing, payment, and other programs that may benefit kinship families. As there may be conflicting definitions of "kin" or "relative," either within a section or between two sections, it is helpful to always refer back to the "Definitions" section of a particular statute.

Three separate provisions of Louisiana Code define "kin" or "relative" in three different ways. Louisiana's Kinship Foster Care Program states that relatives within at least the second degree to the parent or step-parent of a child who may be related through blood or marriage are eligible to become kinship foster parents.² Louisiana's Kinship Care Subsidy Program offers more specific definitions. Kinship caregiver means the "grandparent, step-grandparent, aunt, uncle, or other adult relative within the fifth degree of consanguinity."³ Minor relative means a "grandchild, step-grandchild, or other minor relative not the natural or adopted child of the kinship caregiver who is under eighteen years of age."⁴ Additionally, pending legislation regarding a child's immediate placement following emergency removal from a home defines "relative" as an "individual with whom the child has established a significant relationship by blood, adoption, or affinity."⁵

Preferences for Placement of Children With Kin

The passage of the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (PRWORA) required states to consider relative placement first when determining placement for children in out-of-home care.⁶ As such, Louisiana currently gives preference to kinship caregivers as well as requires caseworkers to actively seek out kin when it is determined that a child cannot remain at home. According to the statute, when a child has been removed from his home and is in the care, custody, or guardianship of the Office of Community Services, the office shall make "reasonable

attempts" to place the child with a relative for kinship foster care.⁷ A kinship foster care arrangement (with no plan in place for the relative to adopt or pursue legal guardianship) should last no longer than three years, unless: the child cannot safely return home after three years; adoption is not an appropriate or legally

viable permanency plan; other higher priority permanency options, including placement with a legal guardian or in the legal custody of another willing relative, have also been determined not to be appropriate and in the best interest of the child; or the department has documented a compelling reason for the child to remain in long-term foster care, the relative has committed to a permanent, lifetime relationship with the child, and the juvenile court has determined that long-term foster care is the most appropriate permanency plan.⁸

Further, a pending provision of the Louisiana Children's Code outlines specific rules affecting relative caregivers that govern placement of a child following immediate removal from a home but prior to a continued custody hearing. Unless the best interest of the child requires a different placement, a child should be placed with the following individuals in the following order of priority: a suitable relative; a suitable individual;⁹ or a foster parent.¹⁰ A suitable relative or other suitable individual who seeks to become the custodian of the child must provide evidence of a "willingness and ability to provide a wholesome and stable environment for the child" and to protect the "health and safety of the child" prior to the adjudication hearing where a final custody determination will be made by the judge.¹¹

Licensure of Kinship Caregivers

Similar to states' definition of kin, licensing policies are critical in determining whether kinship caregivers will receive financial support for their services. Louisiana has no separate licensing protocols for kinship foster parents; thus, kinship caregivers have to meet the same licensing standards and receive the same foster care payment rate as non-kin foster parents.¹² Specifically, a person will be eligible to become a kinship foster parent only upon the completion of an investigation to ascertain if there is a record of criminal history for the prospective kinship foster parent or any other individual residing in the prospective parent's home. Further, the Office of Community Services will review kinship caregivers' personal and professional references; observe the kinship foster parent with the household members during a home visit; and interview the prospective kinship foster parent. Any other licensing requirements must also be met in order for a child to be placed in and remain in kinship foster care.

Only after the relative completes the full licensing process and is approved by the Office of Community Services to provide foster care services (in accordance with rules and regulations adopted by the Department of Social Services) can

a kinship foster care placement officially be made. It is important to note that a relative who has been granted legal custody or guardianship of a child is not eligible to participate in kinship foster care (for the purposes of receiving financial assistance and other public benefits).¹³ Rather, relatives that have been granted legal custody or guardianship are eligible to receive a cash payment of \$222 per eligible child via Louisiana's Kinship Care Subsidy Program.

Financial Assistance for Kin Raising Children

As previously mentioned, relatives approved for kinship foster care are eligible to receive payment for the full foster care rate¹⁴ as well as any other public benefits that might be available to foster parents in the state of Louisiana.¹⁵ Such benefits might include: cash assistance through the Family Independence Temporary Assistance Program;¹⁶ food stamps; and health insurance through LaCHIP or Medicaid).¹⁷ Additional benefits, such as child care subsidies, disability benefits, and special education services, might also be available.¹⁸

Relatives who have been approved as legal guardians are not eligible to receive foster care payments, but are eligible for payments through the Louisiana Kinship Care Subsidy Program (KCSP).¹⁹ This six-year-old program, which provides \$222 cash assistance per month for each eligible child, is administered by the Office of Family Support and is funded through the TANF block grant. To qualify for a subsidy under KCSP, kinship caregivers must:²⁰

- Possess or obtain, within one year of enrolling in the program, legal custody or guardianship of the minor relative;
- Have an annual income of less than 150% of the federal poverty threshold;
- Apply for benefits through the Family Independence Temporary Assistance Program;
- Have neither of the minor relative's parents residing in applicant's household; and
- Agree to pursue the enforcement of child support obligations against the parents of the minor relative with the assistance of the Department of Social Services.

Medical Consent and School Enrollment

Louisiana is one of twenty-nine states (including the District of Columbia) that have enacted legislation that enables grandparents and other relatives to consent to a child's medical care. The medical consent statute specifically provides that non-legal custodians (including siblings and others standing in loco parentis) are authorized to give legal consent for a child to receive any medical services for which parental consent is usually required.²¹ However, such consent shall be

superseded by any contravening decision of a parent or a person having legal custody of the child, provided the decision of the legal custodian does not jeopardize the life, health, safety, or welfare of the child. An affidavit for caregiver consent, valid for one year, is required; the precise requirements for this affidavit

are enumerated in the statute. A health care provider that acts in good faith reliance on a properly executed affidavit is not subject to civil liability, criminal prosecution, or professional disciplinary procedures for any action resulting from his or her reliance on the affidavit to provide treatment to a child.

Similarly, Louisiana is one of twenty-one states that enable grandparents and other relatives to consent to a child's enrollment in school (and school extra-curricular activities).²² Louisiana combines its medical consent and school enrollment statute; thus, the same rules regarding time limits (one year) and immunity (civil, criminal, and professional disciplinary procedures) apply.

¹ Louisiana: A State Fact Sheet for Grandparents and Other Relatives Raising Children (2005), [hereinafter "State Fact Sheet"] (Based on data taken from the U.S. Census Bureau, fact sheets for all fifty states and the District of Columbia were compiled by AARP, the Brookdale Foundation, the Children's Defense Fund, Casey Family Programs, the Child Welfare League of America, and Generations United. Taken together or viewed separately, the fact sheets are an excellent resource for legislators, kinship caregivers, and others interested in kinship care).² La. Rev. Stat. Ann. § 46:286.1 (2006).³ La. Rev. Stat. Ann. § 46:237 (2006).⁴ Id.⁵ La. Child. Code Ann. art 603 (2006). See also La. Child. Code Ann. Art. 620 (2006) (stating that the first two placement preferences for a child in need of care prior to the continued custody hearing should be the home of a "suitable relative").⁶ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, Tit. V, Sec. 505, 110 Stat. 2105 (1996) (amending the Social Security Act to instruct that the State "shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards").⁷ La. Rev. Stat. Ann. § 46:286.1 (2006).⁸ Id.

⁹ La. Child. Code Ann. Art. 603 (2006) (defining "suitable individual" as a person with whom the child "enjoys a close established significant relationship, yet not a blood relative, including a neighbor, godparent, teacher and close friend of the parent."¹⁰ La. Child. Code Ann. Art. 622 (2006).¹¹ La. Child. Code Art. 624 (2006).¹² La. Rev. Stat. Ann. § 46:286.1 (2006).¹³ Id.¹⁴ See Louisiana Department of Social Services Foster Parents, http://www.dss.state.la.us/departments/ocs/Foster_Parents.html (last visited June 16, 2006) (indicating that payments are determined by the child's age).¹⁵ La. Rev. Stat. Ann. § 46:286.1 (2006).¹⁶ See Louisiana Department of Social Services FITAP, http://www.dss.state.la.us/departments/ofs/Family_Independence_Temporary_.html (noting that the average grant in Louisiana is \$200 per month, which is slightly less than the \$222 per month available to legal guardians via the Kinship Care Subsidy Program).¹⁷ State Fact Sheet at 3.¹⁸ Id.¹⁹ La. Rev. Stat. Ann. § 46:237 (2006). See also Louisiana Department of Social Services Kinship Care Subsidy Program, http://www.dss.state.la.us/departments/ofs/Kinship_Care_Subsidy_Program.html, (providing detailed and user-friendly information about the Kinship Care Subsidy Program).²⁰ See La. Rev. Stat. Ann. § 46:237 (2006).²¹ La. Rev. Stat. Ann. § 9:975 (2006).²² Id.