

LICENSING HOMES OF GRANDPARENTS AND OTHER RELATIVE CAREGIVERS

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8.1 What does the new law say about the licensing of grandparents and other relatives?

The new law codifies existing U.S. Department of Health and Human Services (HHS) guidance (see Child Welfare Policy Manual, 8.3A.8c (1) available at http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=26#26) stating that agencies may, on a case-by-case basis, waive non-safety related licensing standards when licensing a relative’s home. For example, this may include waiving the requirement that each child have a separate bedroom if the relative is taking in siblings or waiving the requirement that a home have a certain amount of square footage per person. The new law also requires HHS to report to Congress within two years on how states are using the ability to waive non-safety standards and make recommendations as to how additional barriers to licensing relatives’ homes can be eliminated. (§471(a)(10); P.L. 110-351 §104)

8.2 Why was the licensing provision included in the new law?

There is concern that relatives have trouble getting licensed as foster parents. Many foster parent licensing standards — especially some of those related to training, the structure and layout of the home or room sharing — were developed with the needs of children being raised by non-relative foster parents in mind. Some of these requirements do not make as much sense for children placed with their relatives. There also is a growing body of knowledge and research that indicates that there is value in placing children with relatives. Thus, advocates, administrators

and policy makers have been suggesting that some flexibility in terms of non-safety-related requirements for relatives would allow more children to realize the benefits associated with kinship care. The new act takes a first step in this direction.

HHS guidance to the states specifies that the same licensing standards must be applied to relative and non-relative foster parents, but that exceptions can be made on a case by case basis for relatives. There has been some concern, however, that states have been hesitant to make such exceptions due to uncertainty about what is permissible. The new law codifies the HHS guidance, making it clear that exceptions are permissible on a case-by-case basis. The HHS report to Congress on licensing of relatives, described in the answer to question 8.5, will provide information that will allow for consideration of other ways to eliminate barriers to safely placing children with licensed relative foster parents.

8.3 Are criminal background checks and/or child abuse registry checks required to become a licensed caregiver?

Yes. States must conduct criminal background and child abuse registry checks, including fingerprint-based checks of national crime information databases, before any foster or adoptive parent or relative guardian — whether licensed or not — may be finally approved for placement of a child. Other adults living in the home of the caregiver must also undergo the child abuse and neglect registry checks. (§471(a)(20)(D); P.L. 110-351 §101(c)(2)(A))

8.4 What does the reference to “non-safety” licensing standards mean?

Pre-existing federal law requires that states establish and maintain standards for foster family homes that are “reasonably in accord with recommended standards of national organizations...including standards related to admission policies, safety, sanitation, and protection of civil rights,” but the law does not offer additional specificity. As such, licensing standards are established by states. The new law clarifies that states may waive any standards determined by the state to be non-safety standards on a case-by-case basis. States may define and waive those standards that it determines are not essential to the child’s safety. It is important to remember that safety standards cannot be waived and federal law still requires that states conduct criminal background and child abuse and neglect registry checks, including fingerprint-based checks of national crime information databases, before a foster or adoptive parent or relative guardian may be finally approved for placement of a child. Other adults living in the home must also undergo the child abuse and neglect registry checks. (§471(a)(10); P.L. 110-351 §104)

8.5 What is the Secretary of Health and Human Services required to report to Congress about the licensing of grandparents and other relatives?

The new law requires the Secretary of Health and Human Services to report to Congress no later than October 7, 2010, on the following: the national and state numbers and percentages of children in foster care placed in licensed relative foster homes and the numbers and percentages of those placed in unlicensed relative foster homes; the types of and frequency with which states grant case-by-case waivers of non-safety-related standards for relative foster homes; an assessment of how such waivers have affected children in foster care; a review of the reasons a relative foster home may not be licensed in spite of waivers; and recommendations for actions to increase the percentage of relative foster homes that are licensed. (P.L. 110-351 §104(b))