

## Proposed Federal Rule Change Seeks to Increase Support for Relative and Nonrelative Kinship Foster Placements

The federal Administration for Children and Families (ACF) is proposing regulatory changes that could have a significant impact on the placement of children removed from their parents due to suspected abuse, neglect, or dependency. This post discusses the proposed changes and the reasons supporting them and highlights the importance of relatives and nonrelative kin in juvenile abuse, neglect, dependency (A/N/D) proceedings.

(Note that while the proposal refers generally to Title IV-E agencies, this post refers specifically to the Department of Social Services (DSS), the petitioner in North Carolina A/N/D matters. Additionally, this post cites to the ACF's proposal but omits internal citations within the proposal. See the [proposal](#) if you are interested in the research and other sources cited to by the ACF.)

### Summary of proposed changes

The proposed rule would revise the regulatory definition of “foster family home” to allow DSS to adopt licensing or approval standards for relatives (people related to a child by blood, marriage, or adoption) and for nonrelative or “fictive” kin (those with “an emotionally significant relationship with the child”). *Separate Licensing Standards for Relative or Kinship Foster Family Homes*, 88 Fed. Reg. 9411 (Feb. 14, 2023) (to be codified at 45 CFR pts. 1355-56). For North Carolina’s definition of “relative” and “nonrelative kin,” see G.S. 7B-101(18a) and (15a) respectively.

The proposal seeks to

- remove barriers to placement licensing of relatives and nonrelative kin, two important resource groups for children removed from their parents,
- enable less-restrictive requirements for relative and nonrelative kinship placements (e.g., by allowing children to share sleeping space, or by disregarding certain disqualifications related to income, transportation, literacy, language, education, and non-child-related past crimes, such as writing bad checks),
- allow federal IV-E funds to be used to support eligible children in relative and nonrelative kinship placements, similar to existing foster care maintenance payments for non-relatives, and
- implement federal oversight to ensure that relative and nonrelative kinship providers receive

support at the same rate and on the same schedule as licensed non-relative foster parents.

*Id.* at 9411, 9413.

## **Reasons offered for the changes**

The ACF has pointed to several motivating factors behind the proposal.

**Family matters.** The proposal references research concluding it is “generally best for children to be with family” where children in foster care “often do best.” *Id.* at 9411, 9414. Family placements are important because those “connections are critical to healthy child development and a sense of belonging” by helping to children preserve their “cultural identity and relationship to their community...[by remaining] connected to their families, communities, and schools.” *Id.* at 9414. The benefits of these familial and cultural bonds, according to the ACF, include improvements in children’s self-esteem, academic performance, coping skills, behaviors, overall mental health, and placement stability. *Id.*

**Placement crisis.** The ACF highlights two national realities relevant to its proposal: a shortage of qualified non-relative foster parents and a heavy reliance on relatives and nonrelative kin. *Id.* at 9416. In 2018, for example, nearly three million children whose parents were unable to provide care lived with relatives or nonrelative kin. Separate Licensing Standards, 88 Fed. Reg. at 9411-12. The ACF argues that these providers are at a disadvantage because they are subject to the same difficult licensing restrictions as non-relative foster families but are provided less information about placement standards and resources. *Id.* at 9414.

**Flexibility and safety.** The ACF believes the rule changes would give agencies like DSS more flexibility in placing children without putting those children at additional risk. The proposal “strongly encourages” agencies to develop approval standards appropriate for relative and nonrelative kinship providers but without relaxing safety requirements. For example, the ACF says, lengthy and intensive training programs for non-relative foster parents who are initially strangers to the child may be unnecessary for relatives and nonrelative kin, who often have an existing relationship with the child and know the child’s needs and interests. This is particularly important because relatives and nonrelative kin are most likely to be called upon for emergency placement with little notice. *Id.* at 9413. Safety-related requirements, like those related to sanitation and serious criminal histories, would remain in place. *Id.* at 9412.

**Financial support.** Broadening the definition of “family foster home” would allow DSS to use federal dollars (e.g., foster care maintenance payments) to support eligible relative and nonrelative kinship care providers, easing the burden on these groups. The new definition would also remove a barrier to eligibility for financial assistance and other benefits when guardianship is ordered,

increasing support for permanent placements with relatives and nonrelative kin. *Id.* For information on guardianship assistance in North Carolina, see [Guardianship Assistance Payments](#), NC DHHS Child Welfare Manual, Appendix 3-7.

**Addressing inequities.** “Many relatives who care for their kin are older, more likely to be single, more likely to be African American, more likely to live in poverty, and more likely to be less well educated.” Separate Licensing Standards, 88 Fed. Reg. at 9414. The ACF states, for example, that while Black or African Americans account for roughly 13% of the U.S. population, one-in-four children who live with a grandparent is Black or African American. *Id.* at 9415. The proposal “would especially provide a support to low-income prospective relative caregivers, many of whom are families of color, are from underserved rural areas, or are members of other communities in which long-term systemic factors such as poverty hamper families from making intergenerational progress.” *Id.*

Relative caregivers are also more likely to be used in emergency situations that results in unexpected costs to caretakers, many of whom are on fixed incomes, according to the ACF, who says the proposed rule will especially help poorer families provide care, at least until reunification can occur. *Id.* at 9414.

## **What this means for North Carolina**

States have the option to implement policies and conform practice to adhere to the newly written rules, if adopted. The North Carolina Department of Health and Human Services (DHHS) is aware of the proposed rule changes and is considering what, if any steps, it will take if the rule is adopted.

**Family first.** Numerous provisions in our Juvenile Code reflect North Carolina’s positive view of relative and nonrelative kinship providers throughout an A/N/D case.

- *Nonsecure Custody.* See, e.g., G.S. 7B-503(a) (requiring courts to consider whether a child can be released to a juvenile’s relative or other responsible adult); see also S. 7B-505(a1) (requiring DSS to make reasonable efforts to place siblings in the same home); G.S. 7B-505(b) (requiring diligent efforts by DSS to notify relatives and for placement with a relative willing and able to provide a safe home unless the court finds that placement is contrary to the juvenile’s best interests).
- *Adjudication.* Dependency requires that a court find that a lack of an appropriate alternative child care arrangement exists. G.S. 7B-101(9); see also *In re K.D.*, 178 N.C. App. 322 (2006). Alternative arrangements often include relative placement or supervision.
- *Disposition and later hearings.* See, e.g., G.S. 7B-903(a1) (requiring courts to first consider willing relatives who can provide care in a safe home when a child is removed from their parent). For a discussion of case law relevant to parent and relative placement priority, see

[Section 7.4.C.1](#) of The Abuse, Neglect, Dependency, and Termination of Parental Rights Manual, beginning on page 7-30.

**The data on NC.** The following statistics are derived from [data](#) available through a partnership between the UNC Chapel Hill School of Social Work, the Jordan Institute for Families, and NC DHHS. The data paints a similar picture in North Carolina as the national picture drawn by the ACF. In the last two full fiscal years (July 2020 through June 2022), one-third of all children in DSS custody in NC were initially placed with a relative. Many children spend significant time with those initial placements, increasing the burden on relative placement providers. For example, over the last twenty-five years (July 1997 through June 2022), among all children in DSS custody,

- an average of 60% remained in custody after 360 days (a number that has consistently trended higher and is now close to 70%), and
- over 40% had only one placement in their first year.

Regarding race, according to the U.S. Census Bureau's most [recently available data](#), Black-only households account for approximately 22% of all households in North Carolina. In 2021, nearly 30% of all children in DSS custody were Black. That gap appears to have narrowed significantly in recent years, decreasing from a high mark in 2000 when nearly [48% of all children in DSS custody were Black](#).

## Conclusion

Time will tell whether the ACF's proposal is adopted and, if so, what the response in North Carolina will be. For those who are interested, the public comment period for the proposed rule change runs through April 17, 2023. The proposed rule and the option to submit a formal comment can be found on the Federal Register's website, [here](#).