

## **A License to Abuse? The Need for National Policy Reform of Kinship Care Licensing Procedures**

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*The last 20 to 30 years have seen a significant rise in the use of kinship care as a formal out-of-home placement option for abused or neglected children in the government's custody. This shift has generated debate concerning the benefits and risks of kinship care, and thus far, research findings are largely inconclusive. Notably, there has not been an accompanying formal and holistic review and reformation of relevant child welfare policies. One particularly critical legislative area that has been overlooked by the existing literature is the process by which states license kinship foster homes. Due to the lack of federal leadership in setting universal safety standards for kinship care licensing procedures, states' policies may fail to protect children adequately. An overview of current federal policy is presented, and the state of Indiana is used as a case study to provide a basis for understanding the significant gaps in states' policies that necessitate national policy reform. Federal mandates are necessary to ensure that all states provide a consistent and proper level of safety for vulnerable children. Finally, recommendations for appropriate new policies are made.*

Over the last two to three decades, kinship care has become an increasingly popular placement option for children who were removed from their homes by the child welfare system following a report of parental abuse or neglect (Geen, 2004; U.S. Department of Health and Human Services [US DHSS], 2000). In the child welfare field, there is a consensus that placing children with kin reduces the trauma of being removed from their home and possibly leads to improved outcomes across a spectrum of measures compared with children placed in traditional foster homes (Gibbs & Müller, 2000; Rubin et al., 2008; Wilson, 1996; Winokur, Crawford, Longobardi, & Valentine, 2008; Winokur, Holtan, & Valentine, 2009). In response to these perceived bene-

fits, the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193) of 1996 prioritized placement with kin over placement with nonkin foster parents, which led states to increase their usage of kinship care (Allen, DeVooght, & Geen, 2008).

The movement toward kinship care, however, is based on research that is insufficient in scientific rigor, scope, and depth (Geen, 2004; Winokur et al., 2009), and for this reason, considerable debate exists regarding the balance between the benefits and detriments of kinship care (Gibbs & Müller, 2000; Rubin et al., 2008). Children placed in kinship care experience higher levels of poverty; live with aging and less physically and mentally healthy caregivers; and are exposed to physical safety hazards, violence, and drug and alcohol use at a higher rate than children in nonkin placements (Bartholet, 1999; Ehrle, Geen, & Clark, 2001; Geen, 2004; Koh, 2010; Pecora et al., 2009; Rubin et al., 2008; U.S. DHSS, 2000). In one of the few longitudinal studies conducted on the practice, kinship care was also shown to be associated with higher levels of “unhappiness with life” and “the presence of prolonged anxiety” in adult women who lived in kinship care as children (Carpenter & Clyman, 2004). Despite a greater need for services due to the above risks, kinship caregivers continue to receive fewer services than traditional foster parents (Geen, 2004; Rubin et al., 2008).

These concerns notwithstanding, the rapidly increasing number of children in need of placement without a corresponding increase in nonkin caregivers, as well as the observed benefits of kinship care, underscore the necessity to continue providing kinship care as a viable option (Geen, 2004; U.S. DHSS, 2000). In light of contradictory research findings, however, national and state policies should incorporate unambiguous precautions on the use of kinship foster homes. Although the efficacy of kinship care has been a primary focus of debate in the literature (Geen, 2004; Gibbs & Müller, 2000), the role of licensing procedures in contributing to the safety of kinship foster homes has been largely overlooked. There is currently no federal law that cogently mandates national safety guidelines for states to follow when licensing kinship foster homes, which results in unequal levels of pro-

tection for vulnerable children across state lines. The practices used by some states to approve kinship home licenses are dangerously lenient. Indiana is one of the worst culprits, and is used here as a case study in order to better understand the crucial need for improvements in federal- and state-level policies. The following analysis provides innovative approaches to improve existing federal and state kinship care licensing policies, and calls upon federal and state legislatures to implement necessary amendments to current relevant law.

### **Current Status of Federal Licensing Regulations**

Although federal law regarding kinship foster home licensure encourages certain licensing policies by restricting the availability of funds and reimbursements depending upon states' laws, there is no national standard that dictates that kinship care licensing requirements ensure minimal assurance of a child's safety (42 U.S.C. 671; Allen et al., 2008; Geen, 2004). The standards that states typically require for licensing traditional foster parents include the completion of a home study assessment by a trained social worker, positive references from nonrelatives, space requirements in the home, completion of several hours of training on how to care for abused and neglected children, income requirements, and clearance of criminal history and child abuse background checks (Allen et al., 2008). Federal law in Title IV-E of the Social Security Act stipulates that standards of licensure for kinship foster parents must match the nonkin standards in order for the state to receive federal reimbursements for foster care payments made to such a family (42 U.S.C. 671; Allen et al., 2008; Child Welfare Information Gateway, 2012; Geen, 2004). Thus, the federal government *encourages* states to apply their nonkin licensing standards equally to kinship caregivers by making such a policy more fiscally beneficial than using a separate (often less strict) process. Yet the federal law falls grievously short of making this a *requirement* that states must follow.

Despite the government's claim that the intended purpose of this stipulation in Title IV-E is to ensure the safety of a foster placement (Geen, 2004), logical inconsistencies indicate that fi-

nancial motivations eclipsed safety considerations in this policy choice (Allen et al., 2008; Geen, 2004). If the denial of federal funds to nonlicensed kinship foster families were truly about safety concerns, then the policy would prohibit nonlicensed placements under all circumstances. On the other hand, if nonlicensed kinship placements were deemed safe, then there would be no reason for the government to deny funds in any case. The aforementioned situations are mutually exclusive: it does not make sense that the withholding of funds is due to safety concerns and at the same time the government allows placements in unsafe homes. Consequently, it holds that safety must not be the deciding factor of whether or not to reimburse states (Allen et al., 2008). Instead, it is probable that these Title IV-E provisions are financially motivated as a convenient avenue for the federal government to curtail national spending on foster care.

It is imperative that the federal government embrace a leadership role in ensuring that children's safety is unquestionably the paramount concern of the child welfare system. The current ambiguity in both the language and intention of the federal law sets a precedent that leaves far too much room for states to enact policies that do not ensure the safety of children above any other considerations, monetary or otherwise. To provide a convincing rationale for national policy reform regarding kinship foster home licensing, the following section will analyze the specific adverse effects of the current gap in federal law on one state's policies.

### **Case Study: Indiana's Kinship Care Licensing Policies**

The state of Indiana was chosen for this case study because, although the state has some policies in place that regulate the approval of kinship placements, they are fragmented and only include minimal provisions for ensuring the safety of children placed into such homes. The state's policies are some of the most dangerous in the country in regard to licensing kinship foster homes, and the Indiana Department of Child Services (DCS) has a documented track record of egregious and fatal failures in protecting the children in its care (Evans, 2012a; Evans, 2012b; Ev-

ans, 2012c). Indiana presents an alarming warning of the potential consequences that could occur in any state due to the lack federal guidance in issues pertaining to child welfare. This analysis will rely heavily on two sources: relevant legislation in the Indiana Code, and the DCS Child Welfare Policy Manual. The policy manual is based on the applicable laws in the Indiana Code and outlines requisite procedures for state employees.

To begin, it is not clear in the DCS policy manual whether licensing standards for potential kinship caregivers must mirror the same process and standards as traditional foster parents, or if a different process, which would not meet federal reimbursements standards, pertains to potential kinship caregivers. The DCS policy manual does not include a section dedicated explicitly to licensing kinship caregivers, but rather there are fragmented policies included in various sections regarding licensure of traditional foster homes. This haphazard approach could easily lead to important safeguards being overlooked by workers. It is quite possible that this disorganized method of kinship licensing could be deliberate in order to allow Indiana to claim that they are licensing kin through the same process as nonkin, and thus maintain eligibility for federal reimbursement.

Secondly, whereas Indiana Code and DCS policies are in harmony regarding the administration and evaluation of background checks for potential kinship foster parents, the guidelines regarding license approval based on the results of those background checks are questionably lenient (IC 31-27-4-13; IC 31-34-4-2; Indiana DCS). Indiana law allows for the use of waivers to place children with persons who have criminal or child abuse histories, including felony charges such as battery, criminal confinement, arson, and cases involving a weapon. Federal policy currently mandates that preference for placement with relatives only applies when “the relative caregiver meets all relevant state child protection standards” (P.L. 104-193). In addition, waivers of licensing standards for kin are only to be used for matters that do not affect the safety of children, but the federal government allows the state to define what constitutes a “non-safety” standard (42 U.S.C. 671; Allen et al., 2008). The lack of clarity in these federal policies regarding precisely what constitutes “matters af-

fecting the safety of children” and “non-safety standards” has permitted Indiana to create policies that allow children to be placed with a kinship caregiver even if s/he has a documented history of criminal activity or child abuse.

Although stipulations exist in the administration of criminal history waivers that appear to protect the safety of the child, there is no system of checks and balances to ensure that DCS employees comply with all of those caveats. Indeed, it is worth noting that according to a manager of a highly esteemed Indiana non-profit foster care agency, Indiana DCS workers frequently fail to discuss the nature or context of criminal history charges with kinship families before approving the placement (personal communication, November 3, 2011). Although the aforementioned policies allow greater flexibility in promoting family preservation and are beneficial in certain situations, such as when a potential kinship caregiver had a past charge of neglect involving an abusive domestic relationship that is no longer an issue, these policies are overly inclusive to a dangerous degree. In fact, it is possible that they are in violation of some of the federal policies of the Social Security Act. Title IV-E, Section (a)(20)(A) of the Social Security Act prohibits the apportioning of federal money to any foster family that was convicted of certain felony charges at any time, including a crime against children or a crime involving violence, including rape, sexual assault, or homicide. The legislation also prohibits a felony conviction for physical assault, battery, or a drug-related offense within five years of application for foster care licensure (42 U.S.C. 671). This contradiction between the state and federal law points to the need for closer federal oversight of state policies.

Indiana’s lax and poorly enforced policies regarding criminal and child abuse backgrounds endanger children through the introduction of the possibility of continued abuse or neglect. Existing literature raises critical concerns that while in kinship care, children may be more likely to be abused than in traditional foster homes, unsupervised contact with abusive or neglectful parents is more common, and intergenerational violent behavioral patterns may emerge more readily and with greater frequency (Bartholet, 1999; Dubowitz, Feigelman, & Zuravin, 1993; Geen, 2004). The

following questions are also provoked by critical inconsistencies in policies regarding waivers: (1) If charges such as domestic battery are non-negotiable restrictions and automatically disqualify a relative from becoming a kinship foster parent due to their violent nature, then what explains the failure to include all violent charges as non-negotiable disqualifiers? (2) If the guiding philosophy of a given state refuses to acknowledge the potential for batterer rehabilitation, on what basis does it believe that a person can be rehabilitated from being guilty of child abuse or from other charges relevant to the care of a child, such as criminal confinement? If the state lacks clear scientific evidence or a logical protocol regarding which crimes endanger a child, then it should always err on the side of safety. If such evidence exists, then only past charges with clear indications that no continuing threats exist should be eligible for a waiver. Indiana needs to make relevant modifications to the Indiana Code and the DCS Child Welfare Policy Manual to ensure that children are only placed with kinship foster parents when the state can provide clear evidence that those individuals are able to safely provide for that child's needs.

### **Recommendations**

The purpose of licensing a foster home is to provide an avenue for assessing and verifying potential caregivers' abilities to provide for children's needs safely and adequately. Therefore, it is essential to consider the impact of national policies on the integrity of the kinship licensing process in terms of ensuring that a placement would be in the child's best interest. Although no studies were identified that contrasted the safety, permanency, developmental, or other outcomes of children in kinship care to the type of licensing process that their state utilizes, stricter licensing policies are more likely to ensure the physical and emotional safety of a child. Legislation that mandates a full licensure process for kinship care that mirrors standards for nonkin foster homes would ensure the highest level of safety, assuming adequacy in the state's full licensing procedures.

The number of states that require kinship caregivers to complete the same full licensure process as nonkin foster parents

has steadily increased over recent years, indicating a preference for this practice and perhaps demonstrating recognition that this practice best protects the safety and well-being of children in the foster care system (Allen et al., 2008). In addition, the analysis presented in this article is not the first sound argument in favor of an overhaul of the federal policy regarding foster care. A report by an office of the U.S. DHSS found that current licensing and funding policies are outdated and do not lead to quality services, and that reimbursement claims do not correlate to service quality or outcomes (2005). This report confirms that merely tying federal funding to those kinship foster homes that met the same standards as traditional foster homes is not an effective method to promote safety.

The limited knowledge on the effects of kinship care warrants special caution and additional federal policies to set a national standard for licensing kinship foster homes. The following framework for federal legislators creates a clear and separate set of laws regarding all kinship care placements, regardless of whether they receive funds from the federal government. These federal laws, which states would be subject to and which would take precedence over any state laws, should:

- (a) Clearly stipulate the standards that kinship caregivers must meet in order to be approved to care for a child and outline the practices that workers must follow in order to complete this process,
- (b) Require the application of state standards for traditional foster care licensing to kinship foster parents and require that standards (c) to (h) are included in this process, even if they are not required by the state's traditional foster care licensing process,
- (c) Explicitly state that under all circumstances, allowable waivers are to be on an individual basis and *only* for standards which refer to the caregiver's age, income, and the space requirements of the home,
- (d) Explicitly require national fingerprint-based criminal history background checks and child abuse/neglect registry checks for all states that the appli-



- cant has lived in since the age of 18,
- (e) Explicitly state that no potential kinship foster parent may be approved if they are shown to have a history of a criminal offense as listed in Title IV-E, Section(a)(20)(A) of the Social Security Act and that waivers may not be used to circumvent this standard,
  - (f) Explicitly state that no potential kinship foster parent may be approved as a caregiver if they are shown to have had a substantiated case of child abuse or neglect, unless the charge was due to circumstances that were out of the person's control and/or are no longer occurring (e.g., domestic violence), and that waivers may not be used to circumvent this standard,
  - (g) Demand that kinship foster homes undergo a thorough home study and any other assessments deemed necessary, which are to be completed by a trained social worker,
  - (h) Demand a check of the state's own child abuse/neglect registry prior to placing a child in a home even under "emergency" circumstances, and prohibit such a placement if a substantiated case is found,
  - (i) Institute a system of checks and balances to ensure the proper, full, and ongoing implementation of the new policies by requiring the naming and authorization of a national office responsible for periodically verifying states' adherence to the above policies and which would have authority to enact appropriate penalties against the state if the standards are not met.

The adoption of a portion of these proposals, particularly (c) through (f), would considerably advance current policies in a direction that ensures the child welfare system is not favoring financial or other considerations to the great detriment of its stated goal of promoting the safety of vulnerable children.

## Conclusion

Given its documented benefits and the need for caregivers, there is reason to continue the use of kinship care. Those benefits, however, will only ensue when the safety of a kinship foster home is carefully assessed before allowing the placement of a child. Indiana's child welfare policies demonstrate one example of a state's failure to provide necessary precautions to verify the safety of a kinship foster home. The federal government must acknowledge and rectify the deleterious impact of states' dangerous policies through national reform of kinship foster home licensing procedures. The information presented in this study underscores the necessity of restructuring federal policy to explicitly demand certain safety standards and provide proper leadership.

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