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FOSTER CARE: FAST TRACKING RELATIVES WHO CARE FOR KIDS

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CPPP

For 25 years, the Center for Public Policy Priorities has been a nonpartisan, nonprofit policy institute committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans. The center pursues this mission through independent research, policy analysis and development, public education, advocacy, coalition-building, and technical assistance.

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INTRODUCTION

In 2008, the federal government enacted the Fostering Connections to Success and Increasing Adoptions Act which was the first major revision to child welfare laws in a decade. One of the goals of the new federal law is to encourage the use of relative caregivers as they are often the best resource for children who cannot return home. Outcomes for children in relative homes are often better, and living with a relative allows children to maintain ties to their family, community, culture, and religion.

To increase the use of relative placements, Fostering Connections requires states to provide notice to relatives within 30 days after the child has been removed.¹ Among other things, the notice must tell the relative about how to become a licensed foster parent and the benefits and services available with this option. Fostering Connections also expanded the federal financial support available to relatives who take permanent custody of a child. Before Fostering Connections, the federal government only subsidized payments to relatives who took permanent custody of a child through an adoption.

But sometimes a relative who wants to provide a permanent home is unwilling or unable to adopt. Fostering Connections created the Kinship Guardianship Assistance Program (Kin-GAP) for such relatives.² It subsidizes payments to relatives who take permanent custody of children through legal guardianship. One of the requirements for Kin-GAP eligibility is that the child lives with a relative who meets foster care licensing standards for at least six months prior to the guardianship.

In 2009, the Texas legislature enacted the Kin-GAP option. In Texas, the program is called the Permanency Care Assistance (PCA) and a legal guardian is referred to as a “permanent managing conservator.”³ Texas adopted all the requirements of Kin-GAP, including the requirement that the relative be a verified foster parent for at least six months before conservatorship is transferred.⁴





Historically, very few relative caregivers in Texas have become licensed foster parents. Some relatives may have been deterred because they did not want the hassle of going through the licensing process. In other cases, an otherwise appropriate relative caregiver may have been willing to go through the process but ultimately may have been unable to meet all of the exacting requirements. And, unlike the majority of other states, Texas does not require relative caregivers to become licensed foster parents, possibly because of the cost.⁵ The state is not required to pay unlicensed relatives who care for children in state custody whereas a relative providing licensed foster care has to be paid at the prevailing foster care rate. As a result of all these factors, Texas' foster care licensing process has been primarily geared towards non-related caregivers.

But in light of the PCA program and the new notice requirement, Texas may want to adapt its licensing process to make it easier for relatives to meet the foster care standards. In making any accommodations for relatives, however, Texas needs to ensure that the child's safety is not unduly compromised. This special report explores how to achieve a balance between these interests, creating a framework to evaluate the current foster care standards in the context of a relative caregiver.

In doing so, we recognize that there may be disagreement with our conceptual framework as well as our application of the framework to the various standards. This report, however, is not meant to provide a definitive answer to the question of how to balance the interests of facilitating the foster care licensing process for relatives and ensuring the child has a safe and appropriate home. Instead, it is meant to provide a starting place and structure for the necessary public debate.

CHAPTER 1



Safety Considerations Are Different for Relative Foster Parents

The foster care licensing process is meant to ensure that people who get a financial subsidy to care for a child in state custody can meet the child's needs and provide a safe and appropriate home. To that end, federal law requires states receiving federal foster care funding to conduct a criminal and child abuse and neglect background check on all prospective foster parents. The federal government will not subsidize foster care cost for children placed in the home if any of the prospective foster parents have certain felony convictions.⁶ Federal law also requires states to develop standards on admission policies, safety, sanitation, and protection of civil rights, and will only provide funding for those who meet the requirements.⁷

What is safe and appropriate in the context of a stranger, however, may be different from what would be safe and appropriate for a relative caregiver. Relative caregivers have a natural interest in taking care of a child and acting in their best interests whereas an unrelated foster parent is usually a stranger to the child. Unrelated foster parents also do not know ahead of time which children will be placed in their home and often care for numerous children so they must be appropriate for a wide range of children. In contrast, relative caregivers will be caring only for a particular child or sibling group and so only need to be able to meet the specific needs of that child or sibling group.

There are also benefits to having a child live with a relative that may outweigh the risk that the standards are trying to address. Living with a relative allows children to better maintain ties to their family, community, culture, and religion. Outcomes for children in relative homes are often better as compared to children in foster homes. A recent study found that compared to a matched group of children in foster care, children in relative care had significantly fewer placements, were more likely to leave state custody, were less likely to have a new maltreatment allegation and were less likely to be involved with the juvenile justice system.⁸ As a result, it may be better for the child to live in a less than optimal home with a relative compared to living with a stranger in a home that meets all the technical licensing standards.

Finally, the purposes for becoming licensed may be different. Except for those who are licensed as both a foster and adoptive home, unrelated foster parents generally do not become licensed as a means of obtaining permanent legal custody of the child. Instead, becoming a foster parent is usually a longer term lifestyle choice. In contrast, the general expectation for relatives is that they will provide a permanent home if a child cannot return to their parents. As a result, the relative's status and need to be licensed as a foster parent is meant to be temporary and may be done solely to establish eligibility for the PCA program.



As a result of these differences, there may be foster care licensing standards that are needed to ensure a child's safety and well-being with a stranger that are not necessary or warranted with a relative.



To Accommodate Relative Caregivers, Federal Law Allows States to Waive “Non-Safety” Foster Care Standards but Provides Little Guidance about What that Means

Recognizing that relatives are often differently situated from other individuals seeking to get licensed, Fostering Connections provides that a state may waive for relative caregivers “non-safety” foster care licensing standards on a case-by-case basis for specific children in care.⁹

The waiver under Fostering Connections is different than what has historically been allowed. Federal rules already provide for a variance with foster care licensing standards. A variance requires compliance with the standard but allows flexibility in how compliance is achieved.¹⁰ For example, a standard may require safe drinking water with a variance allowing a foster parent who does not have potable water to fulfill that requirement by using bottled water. Although the scope of a variance in the federal rules is limited, its application is broad. It is available to any prospective foster parent and for any standard.

A waiver under Fostering Connections is broader in scope than a variance as it allows a state to excuse compliance altogether.¹¹ But it is more limited in its application as it is only available to relatives (however a state defines the term) and if the standard is a “non-safety” one.¹²

There is little guidance in federal law or rules, however, about how to determine which standards are non-safety and, thus, eligible for a waiver. The Administration of Children and Families (ACF) program instruction issued on Fostering Connections states that the criminal and child abuse and neglect background requirements for foster parents are not subject to the waiver provision.¹³ Waivers are also addressed in the ACF Child Welfare Policy Manual. In discussing the Fostering Connections waiver, the Manual uses the example of a standard that requires bedrooms to be a certain size as one that could be subject to a waiver. But otherwise, states are given discretion to determine what “non-safety” means.



Texas Has No Statewide Policy on Which Foster Care Standards Are Non-Safety

In Texas, the foster care standards on admission, sanitation, safety, and protection of civil rights are referred to as minimum standards.¹⁴ There are hundreds of minimum standards ranging from general provisions that would be expected in any home (e.g., provide sufficient food and water) to detailed, specific requirements that the average home may or may not meet (e.g., a fire extinguisher in the kitchen and on each level of the home). Using these standards, potential foster parents are assessed and verified either through the state agency or through a private child placing agency (CPA) that has been licensed by the state to verify foster homes.

Following federal law, for several years Texas law allows for a variance from the minimum standards for “good and just cause.”¹⁵ Texas law also provides for a waiver of the standards if “the economic impact of compliance is sufficiently great to make compliance impractical.”¹⁶

If the entity that is assessing and verifying the foster parent decides that a variance or waiver may be necessary, it submits a request to the Child Care Licensing (CCL) division of the Department of Family and Protective Services (DFPS).¹⁷ The request is then assigned to an individual CCL inspector who evaluates the request and makes a recommendation to his supervisor about whether it should be granted.¹⁸ In evaluating the request, CCL policy requires the inspector to consider, among other things, whether granting the request will “negatively impact child safety.”¹⁹

But there is no policy or guidance about how to make this determination and Texas has not identified which minimum standards are considered “non-safety” as provided in federal law under Fostering Connections. Instead, Texas has a general provision that allows a waiver as long as the standard is not required by statute.²⁰ The state has weighted the minimum standards on a risk scale from high to low. The risk scale, however, does not allow for an easy categorization of the standards into safety vs. non-safety as the vast majority of standards are weighted as medium risk. And even standards rated as “high” risk do not necessarily translate into a safety classification. For example, the standard that requires a babysitter to be certified in CPR is rated as a “high” risk even though this is not a common practice outside of foster care.



Texas Needs to Develop a Statewide Policy on Which Standards Are Non-Safety to Ensure the Waiver Process is Fairly Applied and Supports the New PCA Program

The decision about whether a particular minimum standard is “non-safety” and, thus, eligible for a waiver is currently left in the hands of the individual CPAs who submit the requests and the individual CCL inspectors/supervisors who evaluate the requests. Although this allows for maximum flexibility in the waiver process, it

makes it difficult to ensure that the process is consistently applied, and so relatives may be treated differently depending on which agency or inspector processes their application.

The lack of a statewide policy about what standards should be eligible for a waiver may also thwart the state's goal to get as many relatives licensed as possible so they can take advantage of the PCA program. The CPA verifying the home and not the relative applicant makes the decision about whether to submit a waiver request to the state. Because CPAs may be liable if a child is hurt in one of the homes they have verified, or because of their own internal management practices, the CPA may be more conservative than the state in their interpretation of which standards are non-safety. For whatever reason, CPAs may choose not to submit a waiver request when a waiver actually would have been warranted. If that happens, otherwise appropriate relatives will be denied licensing and, thus, reduce the pool of relatives that are eligible for the PCA program.

To avoid these problems, Texas needs to articulate a guiding philosophy about waiving standards and identify which standards are non-safety and, thus, eligible for a waiver. Doing so should not unduly infringe on the flexibility needed to address the individual circumstances of each family. Even if a standard is deemed eligible for a waiver, CCL inspectors will still have to consider the requests on a case-by-case basis and do not need to waive it in any particular case. And even if it is waived, the CCL inspector can put conditions on the waiver and it will be time limited to be in effect for no longer than 3 years.²¹ Alternatively, if a standard falls in the safety category and is not eligible for a waiver, a variance may still be available to address any difficulties the relative may have with compliance.



There Is No Directly Applicable Framework for Identifying which Foster Care Standards Should be Considered Non-Safety

One option for Texas is to look at what other states have done with their licensing process and adopt the general consensus about what standards should be considered non-safety. But as the federal government has left it to the states to decide how to treat relative caregivers, there is significant variation in what they do. In some states, relatives are subject to the exact same standards and process as non-relatives while others allow for a modification of licensing standards for relatives on a case-by-case basis.²² But even among states that do allow a modification of licensing standards for relatives, there is no consensus about what standards should be subject to a modification. A recent study on relative foster care licensing found that some states, like Texas, have a general provision allowing a modification unless the standard is explicitly prohibited by law from being modified.²³ Other states take the opposite approach and specifically identify which standards are subject to a modification. But even among these states, there is significant variation in which standards can be modified.

Another way to define which standards should be considered non-safety for relatives in the foster care licensing context is to look at what is required in Texas in other, similar contexts. In Texas, the Child Protective Services (CPS) division within DFPS evaluates potential relative caregivers who are not seeking foster care status using a risk and home assessment.²⁴ Both the minimum standards and the CPS risk and home assessments are aimed at ensuring that the caregiver can provide a safe home, meet the child's needs and will treat the child appropriately. But, unlike the minimum standards, the CPS assessments do not dictate that the caregiver or home meet any particular requirements. If this same approach were applied to relatives seeking to become licensed, virtually all of the minimum standards would be classified as non-safety and eligible for a waiver. But if relatives are going to be subsidized by the state, it seems reasonable to require that they meet a higher standard than those who are not, if for no other reason than to ensure continued public support for the program.



Creating a Framework for Classifying which Foster Care Minimum Standards Are Non-Safety

As discussed above, there is little guidance from the federal government, other states, or Texas law about how to actually determine which foster care standards are non-safety in the context of a relative caregiver.

Conceptually, it seems reasonable to hold relatives seeking to become paid foster parents to a higher standard than unpaid relative caregivers. At the same time, given the benefits of relative care, relative foster parents should be given more latitude than unrelated foster parents. Using these principles and current Texas law as a guide, we have created our own framework for evaluating how a minimum standard in Texas should be categorized.

Texas law already provides that a waiver is not available if the standard reflects a statutory requirement. As a result, these standards will be categorized as not eligible for a waiver.

For standards not required by statute, Texas law provides that a waiver is only available if compliance would impose a significant financial hardship. Consequently, as a first step, only those standards that could require a relative to spend money to achieve compliance should be eligible for a waiver. Difficulties that a relative may have in complying with other standards, such as those that may require a change in lifestyle (e.g., no smoking in the house), should be addressed through the variance process.

With respect to those standards that could impose a significant financial hardship, we have developed the following criteria for how they should be classified:

- Any minimum standard the violation of which would result in removal from a parent's home will be classified as safety;
- Any minimum standard that relatives are required to meet through the CPS assessment process will be classified as safety;
- Any minimum standard a violation of which would jeopardize a child's immediate physical safety will be classified as safety;
- Any standard which imposes requirements that are essential for the relative to meet a child's basic needs or that would generally be expected from any type of caregiver or parent will be classified as safety;
- All other standards will be classified as non-safety.

In sum, under our framework, the only standards eligible for a waiver are those that: (1) are not required by statute; (2) could impose a financial burden; and (3) are classified as non-safety using the criteria above.

But we do not expect this framework to be definitive and, instead, hope that it is used as a starting place for the necessary public debate about how to best deal with relatives seeking to become licensed foster parents. We also reiterate that even if our classifications were adopted, they should not dictate what should happen in any individual case. CCL inspectors and supervisors need to evaluate each waiver request on a case-by-case basis, making a decision based on the particular circumstances of the relative and the child. As part of this process, CCL inspectors should explore whether there are ways to help the relative comply without a waiver. For example, the state can provide an upfront payment to relatives of up to \$1,000 to help support children in the home while the relative is waiting to get licensed.²⁵ The relative may be able to use this payment to make the changes necessary to comply with the minimum standards (e.g., purchase smoke detectors, beds or cribs). If they do, the state may be able to claim a federal subsidy to cover part of the cost.²⁶



CHAPTER 2

IDENTIFYING WHICH TEXAS FOSTER CARE LICENSING MINIMUM STANDARDS SHOULD BE ELIGIBLE FOR A WAIVER FOR RELATIVE CAREGIVERS

In this section we look at the minimum standards related directly to foster parents²⁷ and, applying the criteria above, identify which ones should be eligible for a waiver.

See Appendix A for a table summarizing our classifications.

TRAINING (SUBCHAPTER F): PARTIALLY ELIGIBLE FOR A WAIVER

The minimum standards on training are designed to ensure that foster parents have the skills and knowledge necessary to meet the needs of the children who will be living in their home. But training, even if it is provided for free, may impose a financial hardship on a relative. They may need to take off work to attend the training or pay for day care while they attend.

Looking at how the standards should be classified, they were developed for unrelated foster parents who are licensed without knowing which children will be ultimately placed in their home or what their needs will be. As a result, unrelated foster parents need to have comprehensive training to develop a range of skills and knowledge so they can handle a broad range of behaviors and needs. In contrast, relative caregivers will be licensed or verified only for a specific child and so they should only be required to attend training to the extent it is necessary to meet the needs of that child.

To a certain degree, all children in substitute care have special needs based on the original trauma they suffered related to the underlying abuse or neglect and the subsequent trauma from being taken out of their home. As a result, all caregivers, even relatives who have an ongoing relationship with the child, need some form of training about what behaviors they can expect from the child and ways to appropriately and effectively deal with them in order to meet the child's basic needs. At the same time, however, the state should have the flexibility to tailor that training to the needs of each individual child.

We classify the general requirement for training as safety and not eligible for a waiver. But we classify all the specific requirements regarding training and certification (what it must include, how long it has to last, when it has to be completed, and whether it has to be repeated annually) as non-safety. They should be eligible for a waiver.

CHILDREN’S RIGHTS (SUBCHAPTER G): *NOT ELIGIBLE FOR A WAIVER*

These standards require that foster parents respect the basic rights of a child such as no discrimination based on gender, race, religion or sexual orientation, no abuse, neglect or exploitation, no harsh, cruel, unusual, unnecessary, demeaning or humiliating punishment, the right to have personal possessions, and privacy in their person and communications. They also require that a child’s basic physical, educational and medical needs are met and that they allow reasonable contact with their parents and siblings. There is nothing in these standards that should impose a financial hardship except for possibly meeting the child’s medical needs. But as all children in state custody are covered under Medicaid, this requirement should not be a problem even for relatives who have limited financial resources.

These standards should not be eligible for a waiver.

MEDICAL AND DENTAL SERVICES (SUBCHAPTER J): *NOT ELIGIBLE FOR A WAIVER*

As it relates to foster parents, these standards require that prescribed medication is appropriately administered, that medication is properly stored and that protective and supportive medical devices are properly used. These requirements should not impose a financial hardship and, thus, should not be eligible for a waiver.

There is an additional requirement in this subchapter that the caregiver and others in the home obtain a tuberculosis (TB) screening prior to placement. If the relative does not have insurance that would cover such a screening and cannot obtain it at a free or low cost clinic, it could impose a financial burden. Looking at how it should be classified, if the relative or other household members has TB, there is a high likelihood they will pass it onto the child which could jeopardize the child’s immediate physical safety. As a result, we classify this particular standard as safety as well. It should not be eligible for a waiver.

DAILY CARE, PROBLEM MANAGEMENT (SUBCHAPTER K)

These standards are divided into five different categories: (1) special requirements for young children; (2) special requirements for pregnant youth; (3) educational services; (4) recreational services; and (5) discipline and punishment.



**SPECIAL REQUIREMENTS FOR YOUNG CHILDREN
(DIVISIONS 1-2): *NOT ELIGIBLE FOR A WAIVER***

Some of the standards in this section require caregivers to provide appropriate stimulation, food and supervision and proscribe safe sleeping arrangements (e.g., do not cover child's head or face while sleeping). Other standards restrict the types of equipment that can be used with an infant (e.g., no baby bungee jumpers). Compliance with these requirements should not impose a financial hardship and, thus, these provisions should not be eligible for a waiver.

Other standards require a separate crib for each infant and that the crib and bedding meet basic safety standards. As these provisions could require a relative to purchase things they may not already have, they could impose a financial hardship. Looking at how they should be classified, the lack of a safe, individual crib and bedding for each infant could jeopardize a child's immediate physical safety. As a result we classify these standards as safety. They should not be eligible for a waiver.

**SPECIAL REQUIREMENTS FOR PREGNANT YOUTH
(DIVISION 3): *NOT ELIGIBLE FOR A WAIVER***

The standards that apply directly to foster parents prohibit the use of emergency behavior intervention with a pregnant youth if the youth's doctor finds that such an intervention would be inadvisable. An emergency behavior intervention is when a foster parent physically, mechanically or chemically restrains or secludes a child to control their behavior. The standards also require foster parents to be available as a resource and support once the child is born and the youth is parenting. As these provisions do not require the relative to provide financial support for the youth's child, they should not impose a financial hardship. They should not be eligible for a waiver.

EDUCATIONAL SERVICES (DIVISION 4):
NOT ELIGIBLE FOR A WAIVER

The one standard that applies to foster parents (§749.1893) requires them to be involved with the child's education including reviewing information the school sends home, allowing study time, requesting help from the school if the child is not making progress and attending important school meetings. These requirements should not impose a financial burden and, thus, should not be eligible for a waiver.

RECREATIONAL SERVICES (DIVISION 5):
NOT ELIGIBLE FOR A WAIVER

These standards require that all children are provided with daily opportunities for recreational activities. They also require that children with special needs get a minimum amount of physical stimulation and that the caregiver make efforts to provide them with as normal of an experience or environment as possible.

As these provisions do not require or mandate any particular type of activity, the relative should have sufficient flexibility to meet the standards even with limited financial resources. As a result, the standards should not impose a financial burden and, thus, should not be eligible for a waiver.

DISCIPLINE AND PUNISHMENT (DIVISION 6):
NOT ELIGIBLE FOR A WAIVER

These standards require foster parents to apply consistent and age appropriate discipline and prohibit the use of corporeal or other harsh, cruel, unusual, unnecessary, demeaning or humiliating discipline or punishment. These standards should not impose a financial burden and, thus, should not be eligible for a waiver.

EMERGENCY BEHAVIOR INTERVENTION
(SUBCHAPTER L): *NOT ELIGIBLE FOR A WAIVER*

These standards describe in what situations an emergency behavior intervention is appropriate, how the intervention should be applied and what documentation is required when it is applied. An emergency behavior intervention is when a foster parent physically, mechanically or chemically restrains or secludes a child to control their behavior. These standards should not impose a financial burden and, thus, should not be eligible for a waiver.

FOSTER HOME SCREENINGS AND VERIFICATIONS (SUBCHAPTER M)

The standards directly related to foster parents are divided into three categories: (1) information the CPA must obtain from the prospective foster parent; (2) capacity and child/caregiver ratio requirements; and (3) supervision.²⁸

INFORMATION OBTAINED FROM PROSPECTIVE FOSTER PARENT (§749.2447): *PARTIALLY ELIGIBLE FOR A WAIVER*

These standards require the CPA that is screening the potential foster parent to obtain information regarding the applicant's appropriateness as a caregiver. There are 23 categories of information that CPAs must obtain. Most of the standards simply identify the information that must be obtained and would not impose any financial hardship on the relative and, thus, should not be eligible for a waiver.

But there are 2 categories that have specific requirements the caregiver must meet. The first requires that a relative have a high school degree or GED or pass a screening that shows they have equivalent competencies in basic reading, writing and math. Requiring a relative to obtain the equivalent of a high school degree could impose a financial burden as the relative may have to attend and pay for classes.

The second requirement is that, in addition to discussing the quality of their current and past marital relationships, a relative is also required to provide documentation of past relationships including previous marriages, divorces or deaths of former spouses. Getting such documentation may require the payment of fees and even possibly incurring legal costs and, as such, may impose a financial burden.

Looking at how to classify these two requirements, unlicensed relatives are not required to meet any particular educational standard nor are they required to provide documentation regarding past relationships. Not having a high school diploma, or even being illiterate, and not having documentation of past relationships do not necessarily jeopardize a child's immediate physical safety nor are they essential for the caregiver to meet the child's basic needs, and they would not be generally expected of any parent or caregiver. As a result, we classify these standards as non-safety. They should be eligible for a waiver.

CAPACITY OF THE HOME (DIVISION 5): *NOT ELIGIBLE FOR A WAIVER*

We limit our discussion in this section to the foster family home standards and do not address the foster group home standards.

The standard which limits the total number of children who can live in a foster family home to six (§749.2551(a)) is based on a statutory definition²⁹ and, thus, should not be eligible for a waiver.

There are also standards that further limit the number of young or special needs children who can live in the home. Unlike other standards, however, these standards simply establish a rule. As they do not require the relative to do anything in particular (e.g., move into a larger home), there is no financial hardship attached to compliance and, thus, they should not be eligible for a waiver.

SUPERVISION (DIVISION 6): ***PARTIALLY ELIGIBLE FOR A WAIVER***

These standards require caregivers to provide a basic level of supervision such as knowing which children they are responsible for and being aware of where they are and what they are involved in. These provisions should not impose a financial burden and, thus, should not be eligible for a waiver.

There is also a standard that restricts who can babysit children in the home (§749.259). It requires that a babysitter to be 16 years or older and be certified in first aid and CPR. One would expect that someone who meets these requirements would charge a higher price for babysitting than the average teenager. As a result, this provision may impose a financial burden. Looking at how to classify this standard, there is no parallel requirement for relatives who are not foster parents and a babysitter who does not meet all these requirements does not necessarily jeopardize the child's immediate physical safety, assuming they have no special medical needs. Finally, it is not something that one would generally expect parents or other caregivers to require of their babysitters. As a result, we classify this standard as non-safety. It should be eligible for a waiver.

FOSTER HOME PHYSICAL ENVIRONMENT **(SUBCHAPTER O)**

These standards try to ensure that the home in which the child will be living is appropriate. The standards fall into 7 different categories: (1) health and safety; (2) tobacco use; (3) weapons, firearms and other explosive materials; (4) space and equipment; (5) nutrition and food preparation; (6) transportation; and (7) swimming pools and other bodies of water. The CPS assessments for unlicensed relatives evaluate whether there are conditions in the home that are hazardous or unsanitary, but have no specific requirements about standards that must be met.

HEALTH AND SAFETY (DIVISION 1): ***PARTIALLY ELIGIBLE FOR A WAIVER***

The standards require a formal health inspection from the local health authority (§749.2902). If one is not available, the CPA can use the state approved Environmental Health Checklist form instead. Formal health inspections, if they are available, can be expensive as inspectors may charge a fee. Moreover, meeting all of the requirements in a health inspection or the checklist may require changes to the home. As a result, this provision may impose a financial burden. Looking at how to classify this standard, the lack of a formal inspection does not jeopardize a child's

immediate physical safety and is not something that would generally be expected in any household. That being said, the state should not be paying to have a child live in an unsanitary home. For this standard, we conclude that relatives seeking to get licensed should be treated like relative caregivers assessed by CPS. The requirement that the home is evaluated for unsanitary conditions is classified as safety and should not be eligible for a waiver. But the requirement for a formal health inspection or that the home meet the Environmental Health Checklist is classified as non-safety and should be eligible for a waiver.

There are also standards related to fire safety. For these standards, there is some flexibility already built in as a CPA can use a fire prevention checklist in lieu of requiring an inspection by a certified fire inspector. But compliance, even with the checklist, may impose a financial burden as relatives may be required to purchase smoke detectors and fire extinguishers. Looking at how to classify these standards, if they are violated, they may jeopardize a child's immediate physical safety. Data from the Centers for Disease Control (CDC) shows that deaths from home fires are the third leading cause of fatal home injury, causing the deaths of more than 2,500 individuals in 2009 and injuring 13,000 more.³⁰ Smoke detectors are an important prevention tool. 40 percent of home fire deaths occurred in homes without a smoke detector.³¹ The availability of fire extinguishers, especially in the kitchen, are important as well as cooking is the primary cause of residential fires.³² As a result, we classify these standards as safety. They should not be eligible for a waiver.

There are also standards that require proper storage of dangerous tools and the vaccination of pets. Getting proper storage facilities and pet vaccinations can cost money and so may impose a financial burden. Looking at how to classify these standards, failing to properly store dangerous tools and getting pets vaccinated could jeopardize a child's immediate physical safety. As a result, we classify these standards as safety. They should not be eligible for a waiver.

Finally, the standards require the relative to develop a disaster and emergency plan. This should not impose a financial burden and, thus, should not be eligible for a waiver.



TOBACCO USE (DIVISION 2):
NOT ELIGIBLE FOR A WAIVER

These standards prohibit a child from using or possessing tobacco products and limit adults from smoking tobacco in the house or in the car with children. As these provisions simply limit rather than prevent a relative from smoking, they should not impose a financial burden. They should not be eligible for a waiver.

**WEAPONS, FIREARMS, EXPLOSIVE MATERIALS
AND PROJECTILES (DIVISION 3):**
NOT ELIGIBLE FOR A WAIVER

These standards do not prohibit a caregiver from possessing these materials but, rather, require that they be safely stored. Obtaining proper storage facilities could impose a financial burden. Looking at how to classify the standards, given the dangerous nature of guns and explosive materials, a violation of these standards could jeopardize a child's immediate physical safety. As result, we classify these standards as safety. They should not be eligible for waiver.

SPACE AND EQUIPMENT (DIVISION 4):
ELIGIBLE FOR A WAIVER

These standards dictate how large bedrooms have to be, what rooms can be used as bedrooms, sleeping arrangements (e.g., each child has their own bed, children of the opposite sex who are over the age of 6 cannot share a bedroom, children older than 3 cannot share a bedroom with an adult) and space for recreation. Essentially, these standards try to ensure optimal sleeping and space accommodations for children. To comply with these requirements, a relative may have to find a larger home or purchase additional beds and, thus, they may impose a financial burden.

Looking at how to classify them, there are no parallel requirements in the CPS assessments for relatives and bedroom size is the one standard that the federal rules identify as appropriate for a waiver. A violation of these standards would not jeopardize a child's immediate physical safety and in many homes, children sleep in small rooms, share a bed, or sleep on the couch and many homes do not have identified recreation spaces. As a result, we classify these standards as non-safety. They should be eligible for a waiver.

NUTRITION AND FOOD PREPARATION (DIVISION 5):
NOT ELIGIBLE FOR A WAIVER

These standards require a foster parent to provide sufficient food and water, follow basic sanitary requirements for the kitchen (keep it clean) and food storage (keep covered and protected from contamination). These requirements should not impose a financial burden and, thus, should not be eligible for a waiver.

There are additional standards that require a caregiver to meet a child's special dietary and feeding needs. These may require special training or for the caregiver to purchase special foods and, thus, may impose a financial burden. Looking at how to classify them, a failure to meet a child's special dietary or feeding needs would jeopardize a child's immediate physical safety. As a result, we classify these standards as safety. They should not be eligible for a waiver.

TRANSPORTATION (DIVISION 6): *NOT ELIGIBLE FOR A WAIVER*

These standards essentially require that foster parents follow the law and safe operating procedures when transporting children, such as wearing seatbelts. These requirements should not impose a financial burden and, thus, should not be eligible for a waiver.

The standards also require the use of car seats. If the caregiver has to purchase these, it may impose a financial burden. But the lack of a car seat is not only against the law, it would jeopardize a child's immediate physical safety. As a result, we classify this standard as safety. It should not be eligible for a waiver.

SWIMMING POOLS, BODIES OF WATER (DIVISION 7): *NOT ELIGIBLE FOR A WAIVER*

These standards require that pools are properly maintained, provide specific safety measures to prevent children from gaining unsupervised access, provide specific child/caregiver ratios for pool use and address safety around other bodies of water. To the extent that the caregiver does not already have such measures in place, they could impose a financial burden.

Looking at how to classify these standards, a violation regarding unsupervised access to a pool and safety around other bodies of water could jeopardize a child's immediate physical safety. A failure to appropriately supervise a child could also jeopardize a child's immediate physical safety, especially since the child/caregiver ratios for swimming seem reasonable (e.g. one adult for every child under 2) and allow lifeguards and other adult volunteers or relatives to be included in the ratios. Data from the CDC show that there were over 3,400 unintentional drownings in 2007, 1 in 5 of which involved children under the age of 14.³³ Moreover, for every child who died, another four survived but needed emergency care services and often ended up with brain damage and long-term disabilities.

As a result, we classify these standards as safety. They should not be eligible for a waiver.

CONCLUSION

With new notice requirements for relatives and the advent of the PCA program, more relatives in Texas will likely be applying to become licensed foster parents. As many relatives have limited financial means, however, it may be difficult for them to meet all the minimum standards. Texas law already has a process in place to address such circumstances, allowing CCL to waive, or excuse compliance, when it would impose a significant financial burden. Fostering Connections added another layer to that process, limiting waivers to “non-safety” standards. But the federal government left it to the states to define what that means. To date, Texas has not adopted a statewide policy regarding which of its minimum standards for foster care licensing are non-safety, leaving it in the hands of the individual CPAs and CCL investigators. This may result in inconsistent practices around the state and may undermine the state’s efforts to get relatives licensed and into the PCA program.

To address this problem, this report creates a framework that identifies which standards should be eligible for a waiver, while leaving sufficient flexibility for the system to address the individual needs of each family and child.

We recognize that there may be disagreement with our conceptual framework as well as our application of the framework to the various standards. This report, however, is not meant to provide a definitive answer to the question of how to balance the interests of facilitating the foster care licensing process for relatives and ensuring the child has a safe and appropriate home. Instead, it is meant to provide a starting place and structure for the necessary public debate.





Endnotes

- 1 42 U.S.C. §671(a)(29). Not only is Texas complying with the notice requirement, it has also increased its outreach to relatives regarding foster care.
- 2 42 U.S.C. §673(d).
- 3 Texas Family Code §264.851 et seq.
- 4 Texas Family Code §264.852(b).
- 5 Twenty-eight states require relative caregivers to be licensed foster parents. Allen T, DeVoght K, Geen R. *Findings from the 2007 Casey Kinship Foster Care Policy Survey*. Child Trends. December 2008.
- 6 42 U.S.C. §671(a)(20). In addition to prospective foster parents, Texas law requires a criminal and child abuse and neglect background check for anyone 14 years or older who is living or regularly staying in the home. (Human Resources Code §42.056(a)).
- 7 42 U.S.C. §671(a)(10).
- 8 Winokur, et al. *Matched Comparison of Children in kinship Care and Foster Care on Child Welfare Outcomes*. Families in Society: The Journal of Contemporary Social Services pp. 338-346. 2008. That same study found, however, that children living with relatives were less likely than children in foster care to reunify.
- 9 42 U.S.C. §671(a) (10).
- 10 Child Welfare Policy Manual 8.3A.8c (14).
- 11 Child Welfare Policy Manual 8.3A.8c (1).
- 12 Child Welfare Policy Manual 8.3A.8c (1).
- 13 Administration on Children and Families program instruction dated July 9, 2010. (ACYF-CB-PI-10-11). But in Texas, a risk evaluation process is available for prospective foster parents with criminal convictions not prohibited in federal law. (TAC §745.693).
- 14 Available at: http://www.dfps.state.tx.us/child_care/child_care_standards_and_regulations/default.asp (Accessed on April 5, 2011).
- 15 Texas Human Resources Code §42.048(c).
- 16 Texas Human Resources Code §42.042(j).
- 17 Based on information provided by CCL.
- 18 Texas Administrative Code (TAC) §745.8309.
- 19 CCL Handbook 5110.
- 20 40 TAC §745.8307.
- 21 40 TAC §§745.8311-13.
- 22 Allen T, DeVoght K, Geen R. *Findings from the 2007 Casey Kinship Foster Care Policy Survey*. Child Trends. December 2008.
- 23 *Relative Foster Care Licensing Waivers in the States: Policies and Possibilities*. CLASP and American Bar Association Center on Children and the Law. September 29, 2010.
- 24 CPS Handbook §6322.2 et al.
- 25 Texas Family Code §264.755.
- 26 ACF program instruction dated July 9, 2010. (ACYF-CB-PI-10-11).
- 27 We do not classify the minimum standards related to child placing agencies. CCL Minimum Standards, Subchapter H and I.
- 28 We have not included the standards relating to respite care (Division 7) or Agency-Foster Family Relationship (Division 8) as these primarily relate to responsibilities of the child placing agencies.
- 29 Texas Human Resources Code §42.002(11).
- 30 <http://www.cdc.gov/HomeandRecreationalSafety/Fire-Prevention/fires-factsheet.html>
- 31 <http://www.cdc.gov/HomeandRecreationalSafety/Fire-Prevention/fires-factsheet.html>
- 32 <http://www.cdc.gov/HomeandRecreationalSafety/Fire-Prevention/fires-factsheet.html>
- 33 <http://www.cdc.gov/HomeandRecreationalSafety/Water-Safety/waterinjuries-factsheet.html>



Appendix A

Subchapter/Division	Eligible for waiver?
Training (subchapter F)	Requirement for training - No; Specific training requirements - Yes
Children's Rights (subchapter G)	No
Medical and Dental Services (subchapter J)	No
Daily Care, Problem Management (subchapter K)	
Special Requirements for Young Children (Div 1-2)	No
Special Requirements for Pregnant Youth (Div 3)	No
Educational Services (Div 4)	No
Recreational Services (Div 5)	No
Discipline and Punishment (Div 6)	No
Emergency Behavior Intervention (Subchapter L)	No
Foster Home Screenings and Verifications (subchapter M)	
Info from Prospective Foster Parent (§749.2447)	Educational competencies and relationship documentation - Yes; Otherwise - No
Capacity of the Home (Div 5)	No
Supervision (Div 6)	Babysitter requirements - Yes; Otherwise - No
Foster Home Physical Environment (Subchapter O)	
Health and Safety (Div 1)	Requirement for a formal health inspection or use of Environmental Health Checklist - Yes; Otherwise - No
Tobacco Use (Div 2)	No
Weapons, Firearms, Explosive Materials (Div 3)	No
Space and Equipment (Div 4)	Yes
Nutrition and Food Preparation (Div 5)	No
Transportation (Div 6)	No
Swimming Pools, Bodies of Water (Div 7)	No



Notes



OUR MISSION

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