

March 24, 2023

Ms. Kathleen McHugh, Director
Policy Division, Children's Bureau
Administration for Children and Families
U.S. Department of Health and Human Services
330 C Street, SW
Washington, DC 20201

Re: Comments Regarding Separate Licensing Standards for Relative or Kinship Foster Family Homes
Notice of Proposed Rulemaking (RIN 0970-AC91) Published February 14, 2023, in the *Federal Register*

Please accept the comments of the National Indian Child Welfare Association (NICWA) regarding the notice of proposed rulemaking (NPRM) published on February 14, 2023, in the *Federal Register* (RIN 0970-AC91). NICWA is a national American Indian/Alaska Native (AI/AN) nonprofit organization based in Portland, Oregon. NICWA is a leader in the development of public policy that supports tribal self-determination in child welfare and social services for over 40 years. We have extensive knowledge and expertise in federal child welfare programming, including DHHS programs under Title IV-B and Title IV-E of the Social Security Act. NICWA frequently provides technical assistance and training to tribes and engages with tribal and state child welfare agencies in establishing policies and procedures that support tribal sovereignty and foster community-driven and culturally based solutions to child abuse and neglect, including the critical roles of relatives and kin in caring for their relative children and supporting family healing. We are currently updating our guidance booklet for tribes on the development and implementation of tribal foster care standards that highlights the important roles of relatives and tribes in child safety and family wellness. NICWA is also working in partnership with the [Grandfamilies & Kinship Support Network: A National Technical Assistance Center \(Network\)](#) to develop and publish a two-part toolkit on kinship services in tribal child welfare, providing tribes guidance on key policy considerations and sample policy language. We anticipate the policy toolkit will be available to tribal communities on NICWA and the Network's websites and an updated version of the tribal foster care standards on NICWA's website in 2023. Our comments focus on the impact of the NPRM for AI/AN children and families.

Relative and Kinship Care in Indian Country

We appreciate ACF's recognition of the impact that connection to family has on a child's sense of belonging, cultural identity, and development. Studies have shown that the experiences between Native children and their relative caregivers promote strong attachment and bonding development that can generate profound and long-lasting benefits to mental health, economic, and educational well-being (Henderson et al., 2015; Cross & Day, 2008; Cross et al., 2010; Mooradian et al., 2007; Kopera-Frye, 2009). In tribal communities, the responsibility for the care of children extends beyond the child's birth parents to include the child's extended family, close non-related caregivers, and community members, creating an interdependent nurturing network of caregivers that provide for the safety and well-being of the child and their parents. When children cannot be safely raised by their birth parents, either temporarily or permanently, kinship care has been a custom in tribal communities since time immemorial. Today, while AI/AN children represent 1% of all children in the United States, they comprise over 8% of all children in grandfamilies and 2% of all children in foster care (GU and NICWA, 2020, pg. 10). Thus, supporting these nurturing networks will require knowledge and approaches that reflect the strengths and resilience that come from long-standing traditions of caring for extended family.

Proposed Regulation Changes

§1355.20 Definitions

The proposed change under this section revises the definition of “foster family home” to give tribal and state Title IV-E agencies an option to establish one set of foster family home licensing or approval standards for relative or kinship foster family homes that are different from the set of standards used to license or approve non-relative foster family homes. We appreciate that the proposed regulation offers agencies flexibility in how licensing or approval standards are developed. Tribes are sovereign nations with their own governmental structures, including the authority to develop their own foster care licensing standards. We recognize that many tribal foster care licensing standards prioritize and value the roles and needs of relative and kinship families. Tribal communities know the needs of their children and families best, and this proposed rule change could give tribal child welfare agencies additional leverage to craft licensing or approval standards that align with tribal values, culture, and traditions to keep children safe and support family healing. With a more approachable process to meeting licensing or approval standards, such as aligning training, home conditions, and caregiver standards to the socioeconomic conditions of the community, more AI/AN relative and kinship families may feel comfortable becoming licensed foster family homes.

Part of the impetus for proposing changes in this NPRM is related to statutory changes enacted by Congress in the Family First Prevention Services Act, but also to move away from an over reliance on placement of children in group and institutional settings rather than family care. This is a much-needed change and will help AI/AN children more often find care with a relative or tribal member in alignment with the requirements of the Indian Child Welfare Act and is best practice in child welfare. We note that AI/AN children are overrepresented in state foster care systems nationwide at a rate 2.66 times greater than their proportion in the general population (NICWA, 2021), indicating the need for placement options that keep AI/AN children connected to their families, communities, and culture.

We appreciate that the NPRM gives Title IV-E agencies discretion on how to define “relative” and “kin” with regard to licensing or approval standards. Tribal communities were originally defined by families, clans, extended lineages, and other kinship forms, and many communities continue to uphold their understanding of kinship and the strength and obligations of kinship relations that influence child-rearing and child safety. Recognizing the different ways in which tribes define relatives and kin in their communities is important to honoring tribal sovereignty and self-determination. However, in the NPRM, the terms relative and kin are referred to as individuals related to a child by blood, marriage, or adoption, and other individuals who have an emotionally significant relationship with the child, including fictive kin. We recommend expanding this definition to include the following language: “...other individuals who have an emotionally significant relationship with the child **and/or the child’s family**, including fictive kin.” We also recommend a change in the definition to include “...individuals related to a child by blood, marriage, **tribal custom**, or adoption...” We understand that tribal custom often defines who is considered a relative in tribal communities and many relatives and kin already have existing relationships established with their relative children (e.g., have provided child or respite care, lived in a multigenerational home together, etc.), however, we also recognize that not every relative has had the opportunity to meet or spend substantial time with their relative children. For example, a child may have been removed from their home at a young age, lived far away from their relatives for a period of time, or had relatives whose life circumstances made it difficult to visit frequently or develop an emotionally significant relationship with their relative children. Nevertheless, relatives and kin may have strong relationships established with the child’s family and, with support from the family and agency, would be an interested and willing placement option. Therefore, we note the importance of approaching this definition with caution to prevent excluding possible placement options for children, leading to delays or frequent changes in placement and risk severing the child’s connections to family, community, and culture.

We also recognize this rule is critically important to state agencies who partner with tribes and serve AI/AN children and families. The Indian Child Welfare Act in particular requires that state agencies follow

specific requirements when an Indian child is removed from their home, including following foster care placement preferences that give priority to extended family members ([25 USC § 1915 \(b\)](#); [25 CFR 23.131](#)). We appreciate that this rule may generate opportunities for states to collaborate with tribes in redesigning their licensing or approval standards to prioritize relative and kinship placements and ensure such standards align with the needs of AI/AN children, families, and tribal communities served by the state. Beyond meeting the requirements in the Social Security Act, standards must be established with flexibility for relative and kinship families that have varying lived experiences and socioeconomic backgrounds, ensure that relative and kinship families receive timely and equitable financial assistance, as well as prevent creating additional barriers that relative and kinship families must overcome during an already highly stressful time. For example, state agencies may partner with tribes to develop separate standards for relative and kinship foster family homes that include but are not limited to the following considerations:

- AI/AN relative and kinship families need access to individualized and culturally appropriate training options, such as cultural events, ceremonies, peer support, and other cultural teachings, as part of required training hours to meet licensing standards and to effectively provide for the needs and safety of their relative children. All relatives and kin need some level of support, but that support won't look the same for every family. Licensing standards should reflect this variability and the need for targeted and intentional support for relative and kin families.
- Relative or kin's ability to provide care should not be based upon strict age restrictions and instead be based upon their ability to provide appropriate care.
- Many AI/AN children live in multigenerational households. Many times, mainstream licensing standards do not account for these living arrangements. Revising restrictive standards such as bedroom size and location requirements, number of children placed in the relative or kinship home, sleeping arrangements of the children, and other non-safety standards related to home environment may encourage more relatives and kin to become licensed foster family homes and ensure important familial and cultural connections. It is also helpful to identify ways the agency can work collaboratively to help remove barriers for relatives and kin to become licensed, including providing for equipment and furnishings, such as a smoke detector, fire extinguisher, or additional beds, wherever possible. NICWA recommends guidance that encourages practices to remove barriers to relatives becoming licensed and providing examples of the barriers that are often experienced.
- Relative and kinship families benefit from expedited home studies to reduce the risk of withdrawing from the licensing process.
- Non-safety income, transportation, literacy, language, and education standards can prevent AI/AN relative and kinship families from being licensed as placement options for their relative children. These standards often do not account for the varying socioeconomic conditions of tribal communities and may exclude relative and kinship families.
- State agency-imposed disqualifications for non-child-related past crimes, such as issuing bad checks, should be carefully considered so they do not impact current capacity for a relative or kinship caregiver to provide suitable care.

The proposed rule also requires that anything less than full licensure or approval is insufficient for meeting Title IV-E eligibility requirements and the ability to seek reimbursement for foster care maintenance payments. We are concerned that this language may create hardship for tribes that have more complicated and limited access to the national crime information databases operated by the Federal Bureau of Investigation (FBI). Some of the complications include tribes being dependent upon how states provide access to these national databases for tribes and other options that use federal agencies as the conduit can take over two months to complete comprehensive criminal background checks under these databases. While some tribes have been able to establish direct access to the FBI databases through the Tribal Access Program under the Department of Justice, this access is very expensive to establish and operate and is not feasible for every tribe that licenses foster family homes. We suggest that tribal Title

IV-E agencies be allowed to claim reimbursement upon initiation of national criminal background checks and full completion of statewide background checks of foster homes, which are much easier to access and quicker to provide findings in most cases. This change could benefit AI/AN children and their relative and kinship caregivers by ensuring receipt of financial assistance sooner as well as supporting tribes in running their Title IV-E programs and eliminating the need for tribes to pull from limited tribal funds.

§1356.21 Foster care maintenance payments program implementation requirements

One of the proposed changes in this section intends to make certain that agencies provide eligible children the same amount of foster care maintenance payment regardless of whether they are placed in a licensed or approved relative, kinship, or unrelated foster family home. We emphasize the importance behind this rule change. Relative and kinship foster family homes need equitable financial assistance to support the needs and safety of their relative children just as unrelated foster families do. Misconceptions and bias around relative and kinship families not needing the same amount of financial assistance as non-relative foster families because it is their responsibility to care for family is harmful and can reduce the number of relative and kinship families available for children in the foster care system. This can also place unnecessary barriers to the child's safety, placement stability, and identity development. Yet, children who experience emotional trauma as a result of child maltreatment and family separation are also more likely to have long-term mental health needs, require special education services, be involved in juvenile and criminal justice systems, and have lower earning potential than their peers (Fang, et al., 2012). Knowing this and the potential financial and emotional impact this could have on any related or unrelated foster family, ensuring relative and kinship foster family homes have equitable access to foster care maintenance payments makes good sense.

Conclusion

Tribal communities have experienced a painful history of family and community separation as a result of harmful federal policies and forced assimilation, including the boarding school experience, and mass removal and placement of AI/AN children with non-relative families by state and private child welfare agencies. We note the importance of understanding that these traumatic events can have a lasting intergenerational impact on AI/AN children and are evident today as adverse childhood experiences. In the face of grief and loss, AI/AN family values and culture continue on, acting as a form of protection, health, and healing. This rule change is a chance to acknowledge the continued challenges that AI/AN children and families face in the child welfare system and nurture the strengths of family and culture in tribal communities as a means to improving outcomes for all AI/AN children and families.

We greatly appreciate the opportunity to provide comments on the proposed changes in this NPRM as well as all the work ACF has done to move these rule changes forward. If you have any questions or comments, please contact NICWA Government Affairs and Community Development Specialist Mariah Meyerholz at mariah@nicwa.org. We look forward to continued partnership opportunities that support the safety and well-being of AI/AN children, families, and tribal nations.

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