

## Relative Caregivers

### A Fact Sheet Prepared by the Youth Law Center

This fact sheet addresses issues regarding children in foster care who are placed with “kin” (relatives or non-related extended family members).

### What is a relative caregiver?

When a child is removed from the physical custody of a parent because of abuse or neglect, the child welfare agency has an affirmative duty to seek out relatives for assessment and placement.<sup>1</sup> “Relative” is defined as an adult who is related to the child by blood, adoption, marriage or affinity within the fifth degree of kinship.<sup>2</sup> This includes stepparents, siblings, step-siblings, half-siblings, grandparents, great-grandparents, great-great grandparents, great-great-great grandparents, aunts, great aunts, great-great aunts, great-great-great aunts, uncles, great uncles, great-great uncles, great-great-great uncles, first cousins, first cousins once-removed, nieces, nephews, and the spouse of any divorced or deceased relative in this list.<sup>3</sup>

Non-related extended family members (NREFMs) who have an established familial or mentoring relationship with the child, who do not fall within the “relative” definition above, may also be considered for placement.<sup>4</sup> A NREFM is generally treated as a relative except as specified below.

### How will family members know if a child has been taken into foster care?

When a child is removed from home, the social worker or probation officer must conduct an investigation to identify, locate and notify the child’s grandparents and other adult relatives<sup>5</sup>. The social worker or probation officer must provide the relatives with notice that the child has been removed from home and information about how to become a foster parent or relative caregiver, the supports and services available for a child in out-of-home placement, and other options for maintaining contact with the child.<sup>6</sup> The notice does not have to be given if there is a history of family or domestic violence that would make such notice inappropriate.<sup>7</sup>

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<sup>1</sup> Cal. Welf. & Inst. Code § 309(d).

<sup>2</sup> Cal. Welf. & Inst. Code §§ 361.3(c)(2)(placement), 11362(state Kin-GAP) & 11391(federal Kin-GAP).

<sup>3</sup> Cal. Welf. & Inst. Code § 361.3(c)(2).

<sup>4</sup> Cal. Welf. & Inst. Code § 362.7.

<sup>5</sup> Cal. Welf. & Inst. Code §§309(e)(1) & 628(d)(2); California Department of Social Services (CDSS), All County Letter (ACL) No. 09-86, Notification of Relatives (December 29, 2009), *available at* <http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2009/09-86.pdf>

<sup>6</sup> Cal. Welf. & Inst. Code §§309(e)(1)(A),(B) & 628(d)(2)(A),(B).

<sup>7</sup> Cal. Welf. & Inst. Code §§309(e)(1) & 628(d)(2).

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### How does one become a relative caregiver to a child?

The child welfare agency may contact relatives for placement, but if a relative is willing to take care of a child, they should let the child's social worker and the juvenile court know of their interest as soon as possible. The child welfare agency and the court must give preferential consideration to **requests** by grandparents, aunts, uncles or siblings.<sup>8</sup> Preferential consideration means that the relative requesting placement must be the first placement to be considered and investigated.<sup>9</sup> Preferential consideration does not guarantee that placement will be with that relative. The child welfare agency and the court must still consider whether placement with the relative would be appropriate to meet the child's needs.<sup>10</sup>

### What will the child welfare agency do once a relative is identified as a prospective placement?

Before the agency and the court determines whether placement of the child with a relative would be appropriate, the child welfare agency must assess the relative's home for safety and capabilities as a potential caregiver for the child and approve the relative for placement.<sup>11</sup>

### Caregiver Home Safety Assessment

For a relative's home to even be considered as a placement, the home must first be approved by the child welfare agency as meeting the health and safety standards required for foster care placements. The homes of NREFM's are approved in the same manner as relatives.<sup>12</sup> The home assessment consists of:

- (1) A home visit,<sup>13</sup> and
- (2) A criminal records check of:
  - (a) The relative; and
  - (b) Everyone in the home over the age of 18; and
  - (c) Children in the home over the age of 14 (if the social worker feels it is appropriate);<sup>14</sup> and
- (3) A Child Abuse Index check on any person over the age of 18 living in the home.<sup>15</sup>

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<sup>8</sup> Cal. Welf. & Inst. Code § 361.3(a),(c)(2).

<sup>9</sup> Cal. Welf. & Inst. Code § 361.3(c)(1); see *In Re Antonio G.*, 159 Cal.App.4th 369, 376-77 (2007).

<sup>10</sup> Cal. Welf. & Inst. Code § 361.3(a)(1),(7).

<sup>11</sup> Cal. Welf. & Inst. Code § 309(d)(1).

<sup>12</sup> Cal. Welf. & Inst. Code §§ 309(d)(2) & 362.7; 22 Cal. Code Reg. §§ 89378. 89387.

<sup>13</sup> Cal. Welf. & Inst. Code §§ 309(d)(1) & 361.4(a).

<sup>14</sup> Cal. Welf. & Inst. Code §§ 309(d)(1) & 361.4(b).

<sup>15</sup> Cal. Welf. & Inst. Code § 361.4(c).

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If there are deficiencies that prevent the home from being approved for placement, the social worker will discuss the deficiencies with the caregiver, explain what the relative can do to bring their home into compliance, and provide the relative with any reasonable assistance needed to come into compliance.<sup>16</sup> If the home is ultimately not approved, the relative can file a grievance with the child welfare agency.<sup>17</sup>

If anyone living in the home has a criminal record, the home will not automatically be disqualified. However, if the conviction is anything other than a traffic violation, the individual will need to get an exemption in order for the home to be approved by the child welfare agency.<sup>18</sup> Some crimes are deemed “non-exemptible” offenses. However, some “non-exemptible” offenses may be exempted if the person meets certain rehabilitation requirements.<sup>19</sup> If any person over the age of 18 living in the home has a child abuse criminal record, the home will not be approved as safe for the child to be placed there.<sup>20</sup>

## Relative Placement Determination

If the relative’s home is approved by the child welfare agency, the agency and the juvenile court must then assess the ability of the relative to provide a secure and stable environment for the child based on the following factors:<sup>21</sup>

- (1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs;
- (2) The wishes of the parent, the relative, and the child if appropriate;
- (3) Placement of siblings and half siblings in the same home;
- (4) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or child abuse or neglect;
- (5) The nature and duration of the relationship between the child and the relative and the relative’s desire to care for the child;
- (6) The ability of the relative to do the following:
  - (a) Provide a safe, secure and stable environment for the child;
  - (b) Exercise proper and effective care and control of the child;
  - (c) Provide a home and the necessities of life for the child;
  - (d) Protect the child from his or her parents;
  - (e) Facilitate court-ordered reunification efforts with the parents;

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<sup>16</sup> See generally CDSS ACL 04-02, available at <http://www.cdss.ca.gov/getinfo/acl04/pdf/04-02.pdf>.

<sup>17</sup> CDSS ACL 02-85 (2002); CDSS Manual of Policy & Procedures (MPP) § 31-020, at 22-24.1, available at <http://www.dss.cahwnet.gov/ord/entres/getinfo/pdf/cws1.PDF>.

<sup>18</sup> Cal. Welf. & Inst. Code § 309(d)(4). See also Cal. Health & Safety Code § 1522(g)(1) (The director must have substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime are of such good character as to justify the placement and not present a risk of harm to the child).

<sup>19</sup> Cal. Health & Safety Code § 1522(g)(1)(A)(ii); see also *Doe v. Saenz*, 140 Cal. App. 4th 960, 975 (2006).

<sup>20</sup> Cal. Welf. & Inst. Code § 16519.5(d)(1)(A)(ii); see Cal. Health & Safety Code § 1522(g)(1)(C)(i).

<sup>21</sup> Cal. Welf. & Inst. Code § 361.3(a).

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- (f) Facilitate visitation with the child's other relatives;
- (g) Facilitate implementation of all elements of the case plan;
- (h) Provide legal permanence for the child if reunification fails.

Prior to a judicial determination that a child is a dependent, the agency has the discretion to place a child in the approved home of a relative or NREFM.<sup>22</sup> After judicial determination that a child is dependent, the court has the authority to order that the child be placed with an approved relative or NREFM, even if the agency has not recommended or has objected to the placement. If the court does not place the child with a relative who has been considered for placement, the court must make a record of the reasons for denying placement with that relative.<sup>23</sup>

### **If the child is placed with the relative caregiver, what type of follow-up should be expected?**

After the child is placed with a relative caregiver, the social worker assigned to the child should maintain regular contact with the child and the caregiver and continue working toward reunification with the child's biological parent(s).<sup>24</sup> The court will have hearings at least every six months to review the case and consider the progress of reunification.<sup>25</sup> The caregiver is entitled to notice of and may attend the court hearings.<sup>26</sup> The social worker is required to file with the court progress reports before each review hearing and provide the caregiver a summary of his or her recommendations contained in the report 10 days before the hearing.<sup>27</sup>

Relative caregivers are permitted to file their own report containing recommendations on what they believe the court ought to do with the child.<sup>28</sup> These recommendations must be submitted to the juvenile court before the review hearing in order to be considered.

### **Is a relative caregiver eligible for financial support? If so, how is this determined?**

Yes. The relative may be eligible to receive financial assistance to care for the child. The amount of benefits received on behalf of the child will depend on the type of benefits the child is eligible to receive and the legal relationship of the relative to the child.

- (1) Foster Care Benefits – Relatives and NREFMs caring for a related child in foster care will receive a monthly foster care payment if the child meets the federal

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<sup>22</sup> Cal. Welf. & Inst. Code §§ 309 & 361.3.

<sup>23</sup> Cal. Welf. & Inst. Code § 361.3(e).

<sup>24</sup> Cal. Welf. & Inst. Code § 360(b).

<sup>25</sup> Cal. Welf. & Inst. Code § 366.

<sup>26</sup> Cal. Welf. & Inst. Code § 291(a).

<sup>27</sup> Cal. Welf. & Inst. Code § 366.21(c).

<sup>28</sup> Cal. Welf. & Inst. Code § 366.21(d).

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foster care eligibility requirements.<sup>29</sup> Even if the child does not meet the federal requirements, a NREFM may be eligible to receive a monthly foster care payment under the state AFDC-FC program.<sup>30</sup> The rate of payment per child is based on a state standardized schedule of basic rates based on the age of the child and may be supplemented by a county determined “specialized care increment” for children with special needs.<sup>31</sup>

(2) CalWORKS – If the child does not meet federal foster care eligibility requirements, the relative should apply for CalWORKS.<sup>32</sup> Eligibility is determined not by the income or property of the relative but by the income and resources of the child. This program provides basic aid only at a rate that is below the foster care rate.

a. Approved Relative Caregiver Funding Option Program (ARC) – ARC is a county optional program for approved relative caregivers of a non-federally eligible child that provides the same basic foster care rate that a federally eligible child would receive. The basic foster care rate does not include a county specialized care increment, a clothing allowance, or an infant supplement. To qualify for ARC funding, the non-federally eligible child must reside in California and be a dependent or ward of the juvenile court placed with the relative. An undocumented child may be eligible for the ARC Program if all ARC requirements are met.<sup>33</sup>

(3) Kin-GAP– Relative caregivers who have cared for a child in foster care for the previous 6 months and who are appointed as legal guardians as part of the child’s permanency plan are eligible for Kin-GAP benefits. The rate of payment is equal to the county foster family home rate (including any specialized care increments) that the child would receive in foster care.<sup>34</sup> For a more detailed

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<sup>29</sup> Cal. Welf. & Inst. Code §§ 11401 & 11402; 42 USC §§ 671 & 672 (Federal foster care eligibility rules require that the child must have met the state AFDC eligibility standards that were in place on July 16, 1996 during the month the petition was filed to remove the child (eligibility month) or the month a voluntary placement agreement was signed. The child must have lived in the home of a specified relative within six months of the eligibility month and be deprived of parental support. In addition, there must be a court order that finds: (1) continuation of the child in his/her own home would be “contrary to the welfare of the child” and (2) reasonable efforts were made to prevent the removal of the child from his/her family or to facilitate the return of the child who has been removed).

<sup>30</sup> Cal. Welf. & Inst. Code § 11401.

<sup>31</sup> Cal. Welf. & Inst. Code § 11461(a), (e); CDSS ACL 01-55, at 4, *available at* <http://www.dss.cahwnet.gov/getinfo/acl01/pdf/01-55.pdf>. A transportation supplement may also be available if the child will continue to attend a school attended prior to placement. See Cal. Welf. & Inst. § 11460(b).

<sup>32</sup> See generally CDSS, California Work Opportunity and Responsibility to Kids (CalWORKs), *available at* <http://www.cdss.ca.gov/calworks/>.

<sup>33</sup> Cal. Welf. & Inst. Code § 11461.3; CDSS ACL 14-89 (December 16, 2014), at 1-4 & 25, *available at* <http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2014/14-89.pdf>.

<sup>34</sup> Cal. Welf. & Inst. Code §§ 11360-11364, 11366, 11367, 11369-11372, 11374-11379 & 11385-11393.

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discussion see the Youth Law Center's Fact Sheet: **Kinship Guardianship Assistance Payments (Kin-GAP)**.

### What about adoption?

If reunification efforts fail or if the child's permanency plan is not reunification, adoption is the next preferred permanency plan for the child. The court must determine if termination of parental rights is appropriate and if adoption is the appropriate permanency plan.<sup>35</sup> Again, relative caregiver is given preference for adoption.

Relative caregivers who adopt a child they have been caring for can continue to receive financial assistance through the Adoption Assistance Program.<sup>36</sup> For more information on this program, see the Youth Law Center's Fact Sheet: **Adoption Assistance Program**.

If the court determines that the child's permanent plan will be guardianship or a Planned Permanent Living arrangement, the relative caregiver or the child can, if circumstances change, petition the juvenile court at a future time to change the child's permanency plan to adoption.<sup>37</sup>

### If the child is not reunified, is adoption the only option?

No. Legal permanency is the goal for children in foster care, which may be achieved in a variety of ways.<sup>38</sup> However, the permanency plan options must be considered in the following order: reunification, adoption, guardianship and "planned permanent living arrangement". There are certain situations where adoption would be completely ruled out.<sup>39</sup>

### Are there other situations outside the Foster Care system in which a relative may care for a child?

Yes. An adult may care for a related child informally without court intervention or formally through the "probate court" guardianship process. Relative caregivers caring for children in informal arrangements may be able to enroll a child in school or consent to medical care utilizing a Caregiver Authorization Affidavit.<sup>40</sup> However, informal

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<sup>35</sup> Cal. Welf. & Inst. Code § 366.22(a).

<sup>36</sup> See generally CDSS, Adoption Assistance Program, available at <http://www.childsworld.ca.gov/pg1303.htm>

<sup>37</sup> Cal. Welf. & Inst. Code § 388(a).

<sup>38</sup> See Cal. Welf. & Inst. Code § 366.26(c)(1)(A).

<sup>39</sup> See Cal. Welf. & Inst. Code §§ 366.26(c) & 366.26(c)(1)(B)(ii) ("A child 12 years of age or older objects to termination of parental rights" may be a compelling reason to deny a termination petition).

<sup>40</sup> General information to facilitate an informal caregiver relationship is available at <http://www.courts.ca.gov/1214.htm>

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arrangements do not provide the child or the caregiver with the same level of legal protections that more formal arrangements provide.