



PROGRAM MEMO

Program Memo: Title 390 - Protection and Safety - #2-2001

To: Holders of Title 390

From: Jone Bosworth, Deputy Director, Protection and Safety

Signed by:

Ron Ross, Director
Department of Health and Human Services

3/28/01 (Date)

Re: Licensing and Approval of Foster and Adoptive Homes

Effective Date and Duration: Upon receipt. To remain in effect indefinitely.

Contact: If you have questions about this program memo, please contact Margaret Bitz, (402)471-9457, or Katie McLeese Stephenson (402)471-9456, Protection and Safety Division

Citations: 390 NAC 6-002.04, 390 NAC 7-001.06, 390 NAC 7-004.02, 479 NAC 2-002.01C PFPCC Out-of-Home Care Guidebook, Page 51

Purpose: The purposes of this memorandum are to clarify the Department's regulations regarding placement of children in licensed vs. approved foster and adoptive homes, and to clarify payment to relatives.

Background: Adoption and Safe Families Act (ASFA) Regulations issued by the Federal Department of Health and Human Services in January, 2000, clarified that Title IV-E funds cannot be used to pay maintenance costs of children in unlicensed foster or adoptive homes. (The term "adoptive home" in this memo refers to a home where a child is placed with the intent of adoption by that family. It does not refer to a situation in which the family already has completed the adoption.)

The rationale behind this federal regulation is that licensure establishes a set of standards to assure health, safety, and well-being for children in care. Allowance of a lesser standard (e.g., an approval standard) is viewed as possible support for lower quality care for children, particularly where safety is concerned.

The authors of the federal regulation recognized that in some instances, placement of a child with relatives or persons previously known to the child might be in the child's best interest, even if specific circumstances might preclude licensure of that placement. Despite that recognition, they held to the need for licensure when federal funds are to be used to pay for the placement.

Federal HHS also recognized the authority of states to establish different rules for placements paid for from state dollars. Therefore, it is necessary for our Department to clarify use of licensed vs. approved foster and adoptive homes.

(Federal regulation would allow states to waive a licensing requirement in certain special situations. Such a waiver would be possible only for relatives, only on an exceptional, case-by-case basis, and only when the standard does not involve a child's safety. Existing Nebraska licensing regulations do not allow for such waivers.)

Current Regulations Re: Licensure and Approval: 390 NAC 7-001.06 is entitled "Assessments of Families Interested in Becoming Foster or Adoptive Parents." That section clearly prohibits placement in a home that is not licensed unless the prospective foster parent is already known to the child or is a relative. "The Department will not place a child in a home not known to the child before wardship before the home is licensed, has completed the home study process and has completed required pre-service training." It does allow for placement with relatives or persons known to the child before placement when an approval study has been completed. {See 390 NAC 7-004.02 for regulations entitled "Approval of Unlicensed Homes (Non-Emergency Situations). 390 NAC 6-002.04 requires a "written adoptive home study" prior to placement of a child into an adoptive home.)

Clarification: In light of ASFA, the expectation is that HHS and HHS-OJS wards will be placed in licensed homes, whether for purposes of foster care or adoption. This expectation includes relatives and persons known to the child. It also includes placement of wards out of state. (Please be sure to pay attention to the "notes" that are below. This expectation does not preclude placements with approved families known to the child or approved relatives, nor does it preclude payment at the FCPay rate to approved relatives.)

In recognition of the fact that the child's best interest must be the first and foremost concern, a process for authorizing exceptions to this requirement is being put into place. Exceptions to the requirement for licensure will be made by Protection and Safety Division, Central Office, using the following guidelines:

1. The child's best interest will be met by allowing placement (or continued placement) in an approved home: AND
2. The adoptive parent or foster parent was known to the child prior to the placement or is related to the child, and the adoptive or foster parent cannot meet one of the licensing requirements, AND documentation shows that the licensing requirement is not connected to the safety of the particular child being placed or to other children in the home. (An example might be square footage or allowance of young children with no history of sexual issues to sleep in the same room.); OR
3. The adoptive or foster parent can be licensed but has not been able to complete the required pre-service training, AND documentation shows that the foster or adoptive family will be able to provide safety for the child in question and for other children in the home without pre-service training. In this case, the worker and family must establish a date by which licensure will be completed; OR
4. The child has been placed with the family prior to the effective date of this memo, the family refuses to be licensed, and moving the child will be detrimental to the child's well-being.

Prior to April 16, 2001, each Service Area must assess each placement in a foster or adoptive home that is not licensed and determine if the home should be licensed, keeping in mind that placements in unlicensed homes are to be an exception rather than the rule. For each such placement, the Service Area is to report whether the child will remain in the home or will be moved, and if so, when. If the child is to remain, the Service Area must complete a copy of the attached form, which will request an exception to licensure either in the longer-term or while the home is being licensed, or, in the case of a relative, will request waiver of a specific licensing regulation. The forms are to be sent to Allison Wilson, Licensing Specialist, Protection and Safety Division. Protection and Safety Division will make a decision to approve or deny the exception and notify the Service Area of the decision by approximately May 1.

NOTE. We will NOT move children from current placement solely because the foster or adoptive parents are not licensed.

As of April 16, 2001, the same process must be used when placement of a child in an unlicensed foster or adoptive home is contemplated. In an emergency, the Service Area Administrator or designee can authorize placement in an approved but unlicensed home, with a relative or person previously known to the child, for up to a week, while a request for authorization is being processed through Protection and Safety, Central Office.

NOTE: The fact that a relative is unlicensed is not reason, by itself for deciding against placement of a child with a relative. Both state and federal statute require giving preference to relatives as an out-of-home placement resource. In addition, the Nebraska Family Policy Act is clear that preference must be given to relatives for permanent placement of a child who cannot be reunited with a parent and when health, safety, and best interests of the child can be met if the child is placed with the relative.

Payment to Relatives

Relatives who have a ward in foster care cannot be required to apply for ADC Relative Payee as their payment source for the ward's maintenance. Please see PFPC Guidebook, Chapter 7, Page 51, which states, "Relatives providing foster care are to be given the choice of using the Foster Care Payment Determination process or applying for ADC relative payee, or adding the child to the relative's ADC unit. When explaining this choice to relatives, the worker should help them consider what is most beneficial for the child and for themselves." This directive also is included in regulation, at 479 NAC 2-002.01C. The choice between relative payee and FCPay is not contingent upon licensure or approval.

Licensure of Adoptive Families

An adoptive parent technically is providing "foster care" for the child prior to the adoption. Therefore, an adoptive parent must be licensed using the same requirements that would apply if she or he were planning to provide only foster care, including the same 21 hours of pre-service training. It is not acceptable to substitute the adoption curriculum for any of the 21 hours. The adoption training may be used toward the ongoing training requirement.

Placements with Families Out of State

As mentioned above, the expectation and exception process apply to HHS and HHS-OJS wards placed out of state. The case manager is responsible to obtain a written statement from the receiving state regarding licensure status of the foster or adoptive family, and, if the family is licensed, a copy of the license.

Licensure of Tribal Families

When a family lives on an Indian reservation, a license issued by the tribe is acceptable. Information on tribal licensure can be obtained through Allison Wilson, Protection and Safety Division.

If you have questions about this memo, please contact Margaret Bitz or Katie McLeese Stephenson.



REQUEST FOR APPROVED STATUS

PART I: To Be Completed By Resource Development Staff

Name of Foster Parent	Street Address	City	Zip Code
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Case Manager's Name:	Local Office:	Case Manager's Telephone Number:
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Name of Child:	SS#	DOB:	
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Date of placement:	Relationship to Foster Parent:
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1. Reason for Exception: *(Check appropriate box and explain the situation in writing)*
- 6-003.25A Character and Ability
 6-003.34 Training
 6-003.35A Square Footage
 Criminal History
 Unrelated Adults Living Together
 Other (Specify) _____

2. Safety: *(Document in writing why this will not compromise the child's safety or safety standards)*

Signature of Designated Area Staff	Service Area	Date Signed
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PART II: Decision- To be Completed by CEO, Central Office Protection and Safety or Designee
 (Property Damage histories are approved by the SA CEO only,
 all other criminal history requests require both the SA CEO P&S Administrator's signature)

Decision: <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	Signature of CEO or Designee	Date Signed
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Decision: <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	Signature of Central Office Protection and Safety Administrator or Designee	Date Signed
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Basis for Recommendation: