

**National Association for Regulatory Administration (NARA)
Generations United &
American Bar Association (ABA) Center on Children and the Law**

**Considerations for Federal Register Comments
on proposed Model National Family Foster Home Licensing Standards
as called for in the Family First Prevention Services Act**

***Please note:** Given that we are the drafters of the NARA Model Family Foster Home Licensing Standards, on which Children’s Bureau “relied heavily” for its proposed National Model Family Foster Home Licensing Standards, we have been asked by many agencies and advocates about our position on the Children’s Bureau proposed Model, which was released on August 1 and is due for public comment by October 1. We are providing this information as a resource to our partners, members and networks to use when developing your comments. You are welcome to use as much or as little as you like. We hope you find this document helpful.*

I. Position of the NARA Partners

The National Association for Regulatory Administration (NARA), Generations United, and the ABA Center on Children and the Law (we) are pleased that the Children’s Bureau used the NARA Model Family Foster Home Licensing Standards as the “main source” for its proposed National Model Family Foster Home Licensing Standards (proposed National Model). Although the Children’s Bureau did not incorporate all of the NARA standards or accompanying tools, they focused on some of the most important NARA Standards that address many of the licensing barriers faced by relatives. That focus is consistent with both the spirit of the Family First Prevention Services Act (Family First Act) and with the spirit with which the NARA drafters approached their “multiyear effort”.

As many other components of the recent Family First Act highlight, supporting kin caregivers is a critical component of meeting children’s needs in the child welfare system and there are numerous benefits for kin caregivers to be licensed, including differential rates of financial support to care for children. As a result, the NARA Standards placed great emphasis on breaking down barriers that may disproportionately affect kin caregivers in the child welfare system.

We are pleased that the Children’s Bureau is submitting their proposed National Model for public scrutiny and comment, as we know this process will improve them and help further the goal of licensing safe and appropriate homes for children who cannot safely remain with their parents.

II. Overall Recommendations

There are principles and standards in the NARA Model that are not referenced in the proposed National Model and could provide important guidance in the Overview section of the proposed National Model.

Incorporate NARA’s “Community Standards” Definition in the Proposed National Model:

The proposed National Model mentions that the standards are flexible and should reflect “community standards,” as we do in the NARA Model. The proposed model uses the same term, but does not define it. We suggest incorporating the NARA definition of that term as it gives

important clarification – “local norms bounding acceptable conduct. For housing, the term means acceptable building standards based on the neighborhood and similar homes.” It is important to make clear that, for example, we are not comparing homes on rural Indian lands with large suburban homes.

Incorporate NARA’s “Household member” Definition in the Proposed National Model:

The proposed National Model uses the term “household member” throughout the standards, but does not define the term. We recommend incorporating the NARA definition to address concerns about having renters and others in the home needing to be interviewed as part of the home study process and also having them subject to physical and mental health requirements. Household members are defined as “any relative or non-relative who regularly lives, shares common areas, and sleeps in a home. An individual who is living, sharing common areas, and sleeping in a home temporarily for more than two consecutive weeks is considered a household member.” As defined, for example, this would not include a person who is renting the basement and does not share any common areas.

Incorporate Two Key NARA Principles in the Proposed National Model:

The NARA model includes 10 Principles that guided the development of our standards and that should guide their implementation as well. Principle #5 emphasizes the importance of flexibility and community standards. The proposed National Model also effectively includes these aspects of that principle. However, the National Model should also incorporate concepts in that same principle that emphasize the importance of cultural considerations and that “[i]f necessary, the agency should assist the applicant with costs associated with meeting the standards.” This means, for example, agencies should assist applicants buy a fire extinguisher or a crib, if those are barriers to meeting the standards. We recommend that the proposed National Model incorporate these concepts that encompass the entire licensing process.

As part of developing the NARA Standards, we consulted with the National Indian Child Welfare Association (NICWA). Although we asked for that consultation late in the process, it was invaluable. We incorporated all of their suggestions. One of those was NARA Model principle #10, which reads: “When working with American Indian and Alaska Native families, public and private agencies should consult with tribes and nearby urban Indian organizations with expertise in recruiting and licensing tribal family homes.” Furthermore, in the NARA Model, we direct those developing tribal standards to NICWA materials. We recommend that the proposed National Model incorporate this critical principle and refer the 12 tribes operating Title IV-E agencies and states working with tribes to the NICWA materials. This recommendation can augment the existing language on page 37496 that says “We encourage agencies to utilize best practices, such as engaging tribal communities or others as appropriate in licensing families...”

Incorporate Emergency Placement Standards in the Proposed National Model:

Unlike the NARA model, the National Model does not have emergency placement procedures, also known as provisional licensing standards. We recommend incorporating them in the proposed National Model. We believe they are within the scope of the legislative requirements of the Family First Act. Emergency placement standards are often the first step in the process for relatives to become fully licensed, and consistent with legislative intent, these standards address barriers that relatives typically face. Unlike unrelated foster parent applicants, children are usually placed with

relatives prior to licensing. These standards allow a child to be placed in a safe home with a relative immediately after removal from the parents' home. The relative then completes the remaining licensing process while the child is in the home. This way, children can safely be placed first with the relative and do not have to experience multiple placements.

III. Specific Comments on the Proposed National Model

A. Foster Home Eligibility

a.i. This is from the NARA Model and we recommend no changes. We believe it is a good age for relatives as it is the age of majority in most states and siblings often care for their siblings and should have the option to become licensed foster parents. Age 21 appears in many state standards and that is too old for some siblings. In other states, e.g., Alabama, the age of majority is 19 and these proposed standards are flexible enough to allow for that and not require any modifications to their laws or policies.

a.ii. This is from the NARA Model and we recommend no changes. Many states require that an applicant, whether related or not, have sufficient wealth to take on another child without relying on the foster care maintenance payment. The language "prior to the addition of a child..." is very intentional and ensures that homes are financially stable enough to take care of their own needs, whether it be a single grandmother living on social security and retirement or a working family of four. The goal of this recommendation to prevent individuals from becoming foster parents, whether related or not, to meet their own financial needs, while also not requiring applicants to be so wealthy that they are able to take care of another child without the assistance of a foster care maintenance payment to meet that child's needs.

a.iii. This is from the NARA Model and we have since learned that there may be some inconsistencies with federal law and some consequences that we did not intend. We recommend that changes be made to comply with Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Those laws and the NARA spirit of allowing flexibility and non-verbal communication should be stressed so that, for example, children speaking Spanish can be placed with English speakers and vice versa. We understand one of the issues is that agencies are required by law to provide interpreters, and by allowing family and friends to serve as interpreters we are unintentionally violating that principle. Furthermore, although we believe it is important that a caregiver and child be able to communicate, we also did not intend to require that they be able to fluently communicate. In the NARA Interpretative Guide, we stress the importance of non-verbal communication as well. We understand there may be some unintended consequences to that requirement as well.

a.iv. This is from the NARA Model and we recommend no changes. Both Models require foster parents to be "functionally literate", rather than some states requirements' that foster parents have a high school diploma or be fluent in English. Some further incorporation of language from the NARA Interpretative Guide may be helpful in the proposed Model's summary of the standard. "Functional literacy does not necessarily require functional literacy in English. Rather, it means that the applicants have the ability to read and write at the level necessary to participate effectively in the society or community in which they live. For example, they must be able to read street signage, medicine labels, and complete basic school and other forms in their community. Their community

may include another language and culture and therefore functional literacy in English would not be necessary.” Page 16, NARA Interpretative Guide. When the NARA partners drafted this, we had in mind communities such as Little Havana in Miami; communities in the U.S.A. where the prominent language is not English.

b. Physical and Mental Health: These standards are essentially from the NARA Model and we think they are flexible enough for local jurisdictions to provide any further guidance that is necessary, for example, to protect health care professionals from liability. For example, some states have included language on physical exam forms that allow the health care professional to indicate how long they have known the applicant and to indicate “that based on how the applicant presents today, they are capable to care for a child.” We encourage each jurisdiction to work with their health care professionals to develop forms that address local concerns.

b.iv. These immunization requirements are from the NARA Model and we recommend no changes, although we do ask for two additions. Based on consultation with the health care community, we suggest including requirements for caregivers of infants to receive the Tetanus-Diphtheria-Pertussis vaccine, and for the influenza vaccine for caregivers of infants and children with special health care needs.

c. Background Checks: These standards, like the NARA Model, strictly adhere to the federal Adam Walsh law concerning criminal background checks and child abuse and neglect clearances, and do not, like almost half of the states, go well beyond federal requirements. Adam Walsh bars people from ever becoming foster parents if they have committed violent felonies and bars applicants for five years if they have committed drug-related offenses. Many states go well beyond this and bar people from serving as foster parents if they have ever committed non-violent crimes, such as writing bad checks in their youth.

The NARA Standards acknowledge that states and tribes may choose to consider additional crimes when assessing the suitability of an applicant and provide some guidance on how to appropriately assess such non-barrier crimes. The NARA drafters recommend that the proposed National Model include such guidance. See NARA Standard 10.E. for the criteria, which include the type of crime, age of individual at time of conviction and length of time that has elapsed since conviction. The National Standards require a check of national crime information databases pursuant to §471(a)(20) of the Social Security Act. However, the NARA Standards require important additional database background checks for criminal and abuse background, including state and local criminal databases, adult protective registry and the sexual offender registry. We recommend including these checks in the proposed National Model.

Additionally, we recommend the proposed National Model follow NARA standard 11.C. by providing guidance to states that chose to prevent licensure for any substantiated report of child abuse or neglect, beyond those listed in Adam Walsh, involving the applicants or any household member who is an adult age 18 or older. NARA suggests that these substantiated reports “be assessed on a case-by-case basis, which includes a discussion with the applicants and household members, to determine if the safety of any child in the home will be impacted. If not impacted, the results of the abuse and neglect background check may not prevent licensure.”

Further, the National Standards do not address the need for the applicant to report any juvenile offenses committed by any members of the household, which should be considered not to automatically prevent licensure, but to determine the suitability of the home. See NARA Standard 11.D.

Finally, there appears to be some language missing in the last sentence in the summary for this standard on page 37497. We recommend the following language be added to help clarify the intent and reflect §471(a)(20)(B) of the Social Security Act. The sentence should say: “Further, title IV-E agencies must request [child abuse and neglect registry information from] any other state or tribe in which any such applicant or other adult has resided in the preceding five years.”

d. Home Study: These standards are essentially from the NARA Model. With the addition of the definition of “household member” from NARA, the concerns raised by some about interviewing “household members” will be addressed. If you chose not to incorporate the NARA definition, we suggest you reiterate that states and tribes have the flexibility to define household member as they see fit, but should define it so that frontline caseworkers will not define it too narrowly and cause unnecessary barriers.

Furthermore, we recommend the addition of some language from the NARA Interpretative Guide, which provides alternative methods to interview household members— “the agency can exercise its discretion and interview the individual via the Internet using Skype or similar technology that allows the agency staff person to see the household member. Telephone- only interviews of household members do not meet this standard, unless exceptional circumstances exist.” NARA Interpretative Guide, page 20.

B. Foster Family Home Health and Safety

The standards in this section are essentially from the NARA Model with a few potentially important distinctions for some families.

a.ii and iii. The proposed National Model made an important change from the NARA Model that could pose a barrier for some, and we recommend strictly adhering the NARA Model. The proposed Model requires a “kitchen” and a “bathroom” The NARA drafters intentionally used the words “facilities” and indicate that separate rooms designed as kitchens and bathrooms are not required. We did this with rural homes, studio apartments and other living arrangements in mind.

a.vi. These standards are essentially from the NARA Model. We recommend adapting some language from the NARA Interpretative Guide, and adding a “viii. May need to take additional steps for the safety of the child in foster care, depending on the home, the area in which it is located, and the age and any cognitive and behavioral challenges of the child. For example, applicants may be required to child proof their home or place a fence to prevent the child from accessing nearby railroad tracks or another hazard like a creek or pond.”

b.i. These standards are essentially from the NARA Model. We have one recommended addition to qualify the recycling requirement to only where recycling is available.

C. Foster Home Capacity

These are from the Family First Act and are also included in the NARA Model. We recommend one addition from the NARA Model: “The total number of children in a family foster home, including the family's own children living in the home, must not exceed 8. The agency may determine lower capacities based on the family assessment and home study.”

D. Foster Home Sleeping Requirements

These standards are modified from the NARA Standards, and several of the NARA sleeping standards are omitted. We commend the Children’s Bureau for following the NARA Model and not requiring bedrooms, but instead calling for “sleeping spaces.” This is essential to address a common barrier faced by relatives. The notion of treating all children in the home equitably is also fundamental. It is designed to prevent arrangements where all birth children sleep in their own bedrooms, while the foster children are sleeping in the living room.

We have a couple of suggested additions from the NARA Model:

The proposed National Standards do not provide guidance on who may share a bed, other than to say foster parents may not co-sleep with infants. NARA provides some standards, which could be incorporated.

Additionally, the number of children sharing a sleeping space should be considered. The NARA Interpretative Guide, page 22, cautions “ To ensure a family like environment in the foster home, the number of children assigned to a bedroom or sleeping space must be limited.”

E. Emergency Preparedness, Fire Safety and Evacuation Plans

These standards are essentially from the NARA Model and we do not recommend any changes, although we do recommend the overall addition above of the language that agencies help with costs if needed.

Some commenters have raised the issue that posting an evacuation plan is not typical in most family homes. Although we acknowledge that comment as true, we also note that foster homes are special, in that they are taking care of other people’s children and therefore some extra safety steps from a typical family home are warranted. Children in foster care who are unrelated to their foster parents often come in and out of homes quickly and need to have a reference point for evacuation instructions in the event of an emergency.

F. Transportation

These are essentially the NARA standards with one important addition in the summary made by the Children’s Bureau, which should be deleted: “and only adults in the home having a driving record in good standing transport the child.” This is contrary to reasonable and prudent parenting and should be deleted. There are also some punctuation issues in the national model that could lead to misinterpretation, so we recommend:

- A semicolon after “public transportation”
- The deletion of “one” and adding “a vehicle”
- Changing the semicolon after owned to a comma

It will now read “Reliable transportation would include a properly maintained vehicle or access to reliable public transportation; if a vehicle is owned, legal transportation would include...”

G. Training

These standards are modified from NARA. We recommend including a minimum of 6 hours, as in the NARA Model, so that states and tribes do not think they must provide all of this training, which could take many hours, prior to licensing the home. Many hours of training are often a barrier to relatives, particularly in areas where training is only offered periodically, is not tailored to kinship families, and is not delivered in a variety of modalities including in-home and online.

H. Foster Parent Assurances

These standards are modified from the NARA standards. Some concerns have been raised about ceremonies that involve tobacco in the Native American community, and we are open to any recommended exemptions. We also recommend adding an assurance that applicants will respect and accept the cultural identities of any children placed with them. Finally, the listed assurances are not lettered correctly (a.b.b.d.) as published.

To access the NARA standards: <https://nara.memberclicks.net/nara-model-foster-care-standards>

To access the proposed National Model: www.gpo.gov/fdsys/pkg/FR-2018-08-01/pdf/2018-16380.pdf

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