



## **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) in California.

### **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, aunts, great aunts, great-great aunts, uncles, great uncles, great-great uncles, first cousins, first cousins once-removed, and the spouse of any relative in this list, even if the marriage was terminated by death or divorce.<sup>3</sup>

A non-related extended family member (NREFM) is an adult who has an established familial relationship with a relative of the child or a familial or mentoring relationship with the child.<sup>4</sup> Although NREFMs do not fall within the “relative” definition above, they may also be considered for placement.<sup>5</sup> A NREFM is generally treated as a relative except as specified below.

### **Can a relative or NREFM be a placement for a youth in the juvenile justice system?**

Yes. The probation department has an affirmative duty to identify, contact, and consider for placement relatives of a detained youth whenever probation has reason to believe the youth is at risk of entering foster care placement.<sup>6</sup> A relative or NREFM can be a temporary placement pending adjudication or a placement for a ward of the juvenile court with a foster care placement order.<sup>7</sup>

### **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 and locate the child’s grandparents, parents of a sibling of the child (if the parent has legal custody of the sibling), adult siblings, and other adult

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

<sup>2</sup> Welf. & Inst. Code §§ 319 (f) (2), 361.3(c)(2), and 628(d)(2).

<sup>3</sup> *Id.*

<sup>4</sup> Welf. & Inst. Code § 362.7 and 727(a)(4)(A).

<sup>5</sup> Welf. & Inst. Code §§ 309(d)(1), 361.45, 361.2( e)(3) and 727(a)(4).

<sup>6</sup> Welf. & Inst. Code § 628 (d).

<sup>7</sup> Welf. & Inst. Code §§ 636(3)(b) and 727(a)(4)(A).

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relatives of the child.<sup>8</sup> Within 30 days of removal, the social worker or probation officer must provide the located 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>9</sup> Notice does not have to be given to any relative with a history of family or domestic violence that would make such notice inappropriate.<sup>10</sup>

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

Although the child welfare agency is required to identify, contact, and consider relatives for placement when a child comes into the foster care system, relatives 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>11</sup> Preferential consideration means that the relative requesting placement must be the first placement to be considered and investigated.<sup>12</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>13</sup> and the child welfare agency must approve the relative's home.<sup>14</sup>

For youth in the juvenile justice system, the probation department is required to seek out and inform relatives of the various options to participate in the care, placement and support of the youth and his family whenever probation has reason to believe the youth is at risk of entering foster care placement.<sup>15</sup> Relatives should make their interest in placement known to the probation agency, the court, and the youth's attorney as soon as possible. However **requests** by relatives of youth in the juvenile justice system are not give preferential consideration under the law.

### How do relatives or NREFMs get their homes approved as placements?

The child welfare or probation agency has the discretion to place a child in the **approved** home of a relative or NREFM prior to a judicial determination declaring the child a dependent or ward of the court.<sup>16</sup> Before determining whether placement of the child with a relative would be appropriate, the placing agency must complete an initial

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<sup>8</sup> Welf. & Inst. Code §§ 309(e)(1), 628(d)(2).

<sup>9</sup> Welf. & Inst. Code §§309(e)(1)(A)–(B), 628(d)(2)(A)–(B).

<sup>10</sup> Welf. & Inst. Code §§309(e)(1), 628(d)(2).

<sup>11</sup> Welf. & Inst. Code § 361.3(a), (c)(2).

<sup>12</sup> Welf. & Inst. Code § 361.3(c)(1);

<sup>13</sup> Welf. & Inst. Code § 361.3(a)(1)–(7).

<sup>14</sup> Welf. & Inst. Code §§ 309(d)(1) and 361.45(a); RFA Written Directives (v. 4.1) Section 7-01(b).

<sup>15</sup> Welf. & Inst. Code §628(d).

<sup>16</sup> Welf. & Inst. Code §§ 309, 361.3 636(d)(3), 636(d); ACL 16-10 at pgs. 4-5; RFA Written Directives (v. 4.1), Art. 7.

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assessment of the relative's or NREFM's suitability, including an in-home inspection, and criminal and child abuse records checks of the adults living in the home to assess the safety of the home and the ability of the potential caregiver to care for the child's needs.<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 placing 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 or neglect criminal record, the home will not be approved as safe for the child to be placed.<sup>20</sup>

Upon completion of this initial assessment, the child may be placed on an **emergency** basis in the home.<sup>21</sup> Relatives and NREFMs must complete the full Resource Family Approval (RFA)<sup>22</sup> process to obtain final approval of the home as a placement and be eligible to receive foster care benefits for the child.<sup>23</sup> Kin caregivers can receive CalWORKS, the basic aid program for needy families, that provides a rate well below the foster care rate and some counties provide assistance for emergency placements. (See section below on financial assistance).

## What is Resource Family Approval?

Resource Family Approval (RFA) is the unified process to approve relative, NREFM, foster, guardianship, and adoptive families seeking to care for children placed in out-of-home care through the juvenile court system.<sup>24</sup> The RFA process consists of two components: a home environment assessment (home inspection, background checks, and caregiver assessments) and a permanency assessment (psychosocial assessment and caregiver training).<sup>25</sup> The home environment assessment evaluates whether the home is safe for the child while the permanency assessment evaluates the caregiver's

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<sup>17</sup> Welf. & Inst. Code §§ 309(d)(1) and 361.45(a); ACL 16-10; CDSS RFA Written Directives (v. 4.1) Section 7-01(b).

<sup>18</sup> Welf. & Inst. Code § 309(d)(3). 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> Welf. & Inst. Code § 16519.5(d)(2)(A)(ii); see Cal. Health & Safety Code § 1522(g)(1)(C)(i).

<sup>21</sup> *Id.*

<sup>22</sup> Information on RFA including the implementing Written Directives, ACLs and ACINS may be found here: <http://www.cdss.ca.gov/inforesources/Resource-Family-Approval-Program> .

<sup>23</sup> Welf. & Inst. Code §§ 16519.5; RFA Written Directives (v. 4.1) Section 7-01 (f) and (g).

<sup>24</sup> Welf. & Inst. Code § 16519.5. ACL 16-10; ACL 16-10; RFA Written Directives (v. 4.1).

<sup>25</sup> Welf. & Inst. Code § 16519.5 (d) .

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ability and willingness to care for a child in foster care.<sup>26</sup> For kinship placements, a permanency assessment must be completed within 90 days of the child's placement in the home.<sup>27</sup> If the home is ultimately not approved, applicants including kin can appeal any RFA related denials to the county agency and file for a state fair hearing.<sup>28</sup>

### **Will the child be placed with a requesting relative with preferential placement consideration once the relative's home is approved for placement?**

The ability of the relative to provide a secure and stable environment for the child must be assessed based on the following factors prior to any agency or court determination approving a preferred relative's request for placement:<sup>29</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;
  - (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.
  - (i) Arrange for appropriate and safe childcare, as necessary.

The child welfare agency has the discretion to place a child in the approved home of a relative or NREFM, prior to a judicial determination that a child is a dependent.<sup>30</sup> After a 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. 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>31</sup>

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<sup>26</sup> Welf. & Inst. Code § 16519.5(d)(3). See RFA forms (e.g., application, background, home safety checklists etc.) for detailed information on requirements. <http://www.cdss.ca.gov/inforesources/Resource-Family-Approval-Program/Forms>

<sup>27</sup> Welf. & Inst. Code § 16519.5(e)(1)(A).

<sup>28</sup> Welf. & Inst. Code §§ 16519.5(f)(1)(B)(8) & 16519.6; ACL 16-110; RFA Written Directives (v.4.1) Art.12.

<sup>29</sup> Welf. & Inst. Code § 361.3(a).

<sup>30</sup> Cal. Welf. & Inst. Code §§ 309, 361.3.

<sup>31</sup> Welf. & Inst. Code § 361.3(e).

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### **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 or probation officer assigned to the child should maintain regular contact with the child and the caregiver and continue working toward reunification with the child's parent(s).<sup>32</sup> The social worker or probation officer must convene a Child and Family Team (CFT) meeting to get input in the development of a foster care case plan that includes services and placements.<sup>33</sup> Relative caregivers should be a part of the CFT and participate in the CFT meetings. The court will have hearings at least every six months to review the case and consider the progress of reunification.<sup>34</sup> The caregiver is entitled to notice of and may attend the court hearings.<sup>35</sup> The social worker or probation officer is required to file with the court progress reports before each review hearing and must provide the caregiver a summary of his or her recommendations contained in the report 10 days before the hearing.<sup>36</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>37</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 caregiver is 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 status of the placement with the relative.

- (1) Foster Care Benefits – Relatives and NREFMs caring for a related child in foster care will receive a monthly foster care payment once the caregiver completes the RFA process (both the home safety and permanency assessments). The rate of payment per child is based on a state standardized schedule of basic rates and may be supplemented by a level of care rate for children with special needs.<sup>38</sup>
- (2) CalWORKS – Relative caregivers can receive CalWORKS<sup>39</sup> for a child living in their home as an emergency placement (or informally without court intervention). Eligibility is determined not by the income or property of the relative but by the

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<sup>32</sup> Welf. & Inst. Code § 360(b) and 727.2.

<sup>33</sup> Welf. & Inst. Code §§ 706.6 and 16501.1.

<sup>34</sup> Welf. & Inst. Code § 366 and 727.2( c).

<sup>35</sup> Welf. & Inst. Code § 291(a), 727.4 and 16010.4 (b).

<sup>36</sup> Welf. & Inst. Code § 366.21(c) and 727.4.

<sup>37</sup> Welf. & Inst. Code § 366.21(d) and 727.2( c)..

<sup>38</sup> Welf. & Inst. Code § § 11460 (AFDC-FC including school of origin transportation supplement) 11461 (rates) and 11461.3 (relative/NREFM equivalent rates).

<sup>39</sup> Welf. & Inst. Code § 11200 *et seq.* Also see, CDSS, California Work Opportunity and Responsibility to Kids (CalWORKs), available at <http://www.cdss.ca.gov/calworks/>.

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income and resources of the child. This program provides basic aid only at a rate that is below the foster care rate.<sup>40</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 foster family home rate (including any level of care rate that the child would receive in foster care).<sup>41</sup> For a more detailed discussion see the Youth Law Center’s Fact Sheet: **Kinship Guardianship Assistance Payments (Kin-GAP)**.

## What happens if the child is not reunified?

Legal permanency is the goal for children in foster care, which may be achieved in a variety of ways.<sup>42</sup> However, the permanency plan options are considered in the following order: reunification, adoption, guardianship and “planned permanent living arrangement.” Almost all children have an initial permanency goal of reunification<sup>43</sup>, but if reunification does not happen, the following permanency goals are considered:

- (1) Adoption<sup>44</sup> – Adoption is legally permanent. Once a child is adopted, they cannot be removed from their adoptive home unless the court determines that the adoptive parents are not taking proper care of the child. Adoption requires termination of the legal parents’ rights or their consent to the adoption.<sup>45</sup> It also requires consent of the child, if over 12 years-old.<sup>46</sup> Relative caregivers are given preference for adoption. Adoptive parents who adopt a foster child can receive financial assistance through the Adoption Assistance Program.<sup>47</sup> For more information on this program, see the Youth Law Center’s Fact Sheet: **Adoption Assistance Program**.
- (2) Legal Guardianship<sup>48</sup> – A guardianship temporarily suspends the rights and responsibilities of the child’s parent and gives legal authority and responsibility to care for the child to a responsible adult who becomes the child’s legal guardian. Guardianship can be terminated by the court upon petition of the parent, guardian, or child and automatically terminates upon the child’s 18<sup>th</sup> birthday. Unlike a foster parent, a legal guardian has legal custody of the child and stands in place of the child’s parent in providing physical needs, such as food, clothing,

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<sup>40</sup> For more information on CalWORKs for non- needy caretaker relatives, see ACL 16-45.

<sup>41</sup> Welf. & Inst. Code §§ 11360–11364, 11366, 11367, 11369-11372, 11374–11379 & 11385–11393.

<sup>42</sup> See Welf. & Inst. Code § 366.26(c)(1)(A) and 727.3 (b).

<sup>43</sup> Welf. & Inst. Code §§ 366.26 and 727.2.

<sup>44</sup> Welf. & Inst. Code § 366.26(b)(1) and 727.3(b)(3).

<sup>45</sup> Fam. Code §§ 8604 – 8606.

<sup>46</sup> Fam. Code § 8602.

<sup>47</sup> Welf. & Inst. Code § 16115, 16118-16125.

<sup>48</sup> Welf. & Inst. Code §§ 366.26(b)(3) & (5), and 728 (c)-(f).

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shelter, medical care, and education.<sup>49</sup> Relative caregivers who become legal guardians to a foster child may be eligible to receive Kin-GAP funds, at the foster care rate the child would have received in a county foster home.<sup>50</sup> For more information on this program, see the Youth Law Center's Fact Sheet: **Kinship Guardianship Assistance Program—Kin-GAP.**

- (3) Planned Permanent Living Arrangement<sup>51</sup> – This is generally long-term foster care and is the least preferred option under the law. The court may order this permanent plan for youth age 16 or older only after considering, and ruling out, each of the other permanent plan options listed above. In order to provide this type of placement, the court must state a compelling reason for determining that a plan of termination of parental rights and adoption is not in the best interest of the child.<sup>52</sup> 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>53</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>54</sup> However, informal arrangements do not provide the child or the caregiver with the same level of legal protections that more formal arrangements provide.

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<sup>49</sup> More information on the rights and responsibilities of a legal guardian for a dependent of the juvenile court, see: <http://www.courts.ca.gov/1206.htm>.

<sup>50</sup> Cal. Welf. & Inst. Code §§ 11364 & 11387.

<sup>51</sup> Welf. & Inst. Code § 366.26(b)(7) and 727.3(b)(6).

<sup>52</sup> Welf. & Inst. Code § 366.3(h)(1) and 727.3(b)(6).

<sup>53</sup> Welf. & Inst. Code § 388(a) and 775.

<sup>54</sup> General information to facilitate an informal caregiver relationship is available at <http://www.courts.ca.gov/1214.htm>.