



State Policies on Non-Family Foster Care Settings

July 2015



The Youth Law Center (YLC), established in 1978, is a public interest law firm that works to protect children in the nation's foster care and justice systems from abuse and neglect, and to ensure that they receive the necessary support and services to become healthy and productive adults. We believe every child in state custody deserves to live in a healthy and safe environment, free from abuse or neglect. We also believe every child deserves the opportunity to become a productive member of society, and to maintain ties to their families and communities whenever possible.

The research in this paper was made possible by the generous support of
The Annie E. Casey Foundation

CREDITS

Author: Alice Bussiere, YLC Staff Attorney
Special thanks to Rachel Murphy, Elaine Saly, Virginia Corrigan,
and Robin Bishop for their assistance.

Design: Design Action Collective
Copyright © 2015 Youth Law Center
All rights reserved

www.ylc.org

State Policies on Non-Family Foster Care Settings

CONTENTS

EXECUTIVE SUMMARY	v
REPORT	
Introduction	1
Current Restrictions on Congregate Care	2
The Effect of Legal Restrictions	4
Recommended Policy Principles	5
Conclusion	9
Table 1- Restrictions by Age	12
Table 2- Restrictions Regardless of Age	27
Appendix	30

EXECUTIVE SUMMARY

There is a growing consensus among child development experts and child welfare professionals that children should not grow up in congregate care facilities and that group care, especially care that is characterized by shift staff rather than a consistent primary caregiver, can interfere with healthy development. Experts recommend that group residential care should be used only to address the specialized behavioral and mental health needs of the child that cannot be met in a family setting and only for as long as needed to stabilize the child so he or she can return to a family.

While the use of congregate care has declined in recent years, states vary considerably in the rate at which they place children in nonfamily settings and the reasons children are placed in congregate care facilities. A majority of states and the District of Columbia have some kind of restriction on congregate care, although the types of limitations vary. Restrictions can be imposed by statute, regulation, or sub-regulatory policy or guidance and can be included in licensing, placement, and funding criteria.

Types of congregate care restrictions include:

- Absolute prohibition on placement of children under a specified age
- Prohibition on placement of children under a specified age with defined exceptions
- Enhanced admission criteria or facility requirements for children under a specified age
- Required justification, for example based on the clinical needs of the child
- Prior supervisory or departmental approval
- Case plans and placement criteria that specify purpose of placement, length of stay, and regular review
- Mandate to close facilities or limit capacity of non-family placements
- Explicit funding restrictions
- Limitation on approval of rates for additional facilities or additional capacity

The most common restrictions are based on the age of the child, most frequently for children under the age of 6, although some states limit congregate care placement for older children, and some states impose restrictions regardless of age. Some restrictions apply to specific facilities, for example distinguishing residential treatment centers from other types of group care.

RECOMMENDED POLICY PRINCIPLES:

State law should be informed by what we know about child and youth development and must be consistent with policy goals. In addition, provisions must be prescriptive rather than merely aspirational. Specifically, states can:

- 1. Eliminate congregate care as a placement and permit residential treatment as an intervention only if it is the least restrictive option to meet the child’s documented clinical needs.**
 - a. Require documentation of the child’s treatment needs that cannot be met in a family setting and documentation that the proposed facility can meet those treatment needs.
 - b. Build in protections, including time limits, regular reviews, and written approval by the child welfare director.
- 2. Prohibit congregate care for children under a specific age.**
- 3. Impose licensing standards and program requirements to ensure treatment facilities have the capacity to provide needed treatment and developmentally appropriate care.**
- 4. Ensure that funding supports policy.**

State Policies on Non-Family Foster Care Settings

Every child has a basic right and need to grow up in a safe home with a stable continuous relationship with at least one adult who is a trusted, committed parent figure. Group settings should not be used as living arrangements, because of their inherently detrimental effects on the healthy development of children, regardless of age. Group care should be used for children only when it is the least detrimental alternative. That standard is met only when there is no less restrictive setting available to meet a child's need for therapeutic mental health services. Even in that instance, group care should end when it ceases to be the least detrimental alternative for that child.¹

Children and youth of all ages, especially those in the child welfare system, need and deserve caring families to keep them safe and to support their emotional, physical and social development.²

INTRODUCTION

There is a growing consensus among child development experts and child welfare professionals that children should not grow up in congregate care facilities and that group care, especially care that is characterized by shift staff rather than a consistent primary caregiver, can interfere with healthy development.³ While the use of congregate care⁴ has declined in recent years, states vary considerably in the rate at which they place children in nonfamily settings and the reasons children are placed in congregate care facilities.⁵ Better

family support, increased use of kinship care, improved recruitment and retention of family foster homes, and more community-based services have helped to decrease the number of children in nonfamily settings in some jurisdictions.⁶ But specific limitations on group care placements can be a powerful tool to ensure that children do not end up in a congregate care facility by default.

When children must be removed from home, federal child welfare law requires states to

place them in the least restrictive (most family-like) and most appropriate setting available consistent with the best interest and special needs of the child.⁷ Many states have used this language in statutory or regulatory placement criteria or have created placement preferences that prioritize kinship care and family foster homes over group homes and residential treatment centers, but in the absence of specific restrictions it can be difficult to affect individual placement decisions made during a time of crisis or to move a child welfare system from reliance on empty beds in group homes to development of family-based alternatives.

This paper reviews current restrictions on congregate care and suggests policy principles that should be considered in developing state law requirements as part of an overall strategy to increase family-based care.

CURRENT RESTRICTIONS ON CONGREGATE CARE

A majority of states and the District of Columbia have some kind of restriction on congregate care, although the types of limitations vary.⁸ Provisions include admissions criteria and facility definitions that specify who may be served in certain types of facilities,⁹ placement criteria that specify where a child may be placed,¹⁰ and funding criteria that prohibit reimbursement for specified placements.¹¹ In addition, provisions that do not explicitly limit congregate care may have an effect on the availability of those placements. For example, licensing criteria requiring higher

staffing ratios and other protections for young children¹² may limit the number of providers who are able to meet the higher standards, and payment rates that reflect the actual cost of running congregate care facilities¹³ may discourage inappropriate placements because of budget considerations.

in the absence of specific restrictions it can be difficult to affect individual placement decisions made during a time of crisis or to move a child welfare system from reliance on empty beds in group homes to development of family-based alternatives

The most common restrictions are based on the age of the child, most frequently for children under the age of 6. Some restrictions are applicable to all children under a specific age. For example, Washington limits group care programs to children who are at least six years of age,¹⁴ and Hawaii excludes children under the age of three from institutional care.¹⁵ Some restrictions apply to specific facilities, for example distinguishing

residential treatment centers from other types of group care.¹⁶

Some jurisdictions provide limited exceptions to prohibitions based on age. For example, Florida prohibits residential child care facilities from admitting children under the age of 6, except for documented emergency circumstances or to prevent separation of a family,¹⁷ Nevada prohibits placement of a child under 6 in a child care institution unless the child requires medical services that cannot be provided in any other placement or if necessary to avoid separating siblings,¹⁸ and Alaska prohibits residential care facilities from admitting a child younger than 6 except in a facility licensed to provide emergency shelter.¹⁹

Other jurisdictions require special approval to place young children in group care. Alabama and Wisconsin require prior written approval

or special consent to admit a child under 6 years of age to a group home or child care facility.²⁰ Michigan requires written approval to place a child under 10 in a residential or other institutional setting of any kind.²¹ Mississippi prohibits placement of children under 10 in congregate care unless the child has exceptional needs that cannot be met in a relative or foster family home or the child is a member of a sibling group, and the Regional Director has granted express written approval for the congregate care placement.²² New York prohibits agencies from accepting any child under 5 in a group home unless the child is a sibling of another child in the facility and the agency has notified the department of its intent to care for the child, submitted a plan of care, and received a written statement from the department that its program and facilities for the care of the child are in compliance with department rules.²³

California and Colorado have imposed limits on congregate care up to age 12, in addition to restrictions for children under 6. California prohibits group home placement for children 6-12 except for evaluation or short term, specialized and intensive treatment.²⁴ California also limits group home placement for non-minor dependents in extended foster care.²⁵ Colorado prohibits placement of children under 12 in a specialized group home or residential child care facility unless the child has documented special treatment needs that cannot be met in family foster care and the Family Services Plan includes a description of the services available in the facility to address the child's specific needs. Colorado enforces these restrictions through limits on reimbursement of placement costs and fiscal sanctions or disallowances.²⁶

Some jurisdictions impose restrictions on congregate care generally, irrespective of age.

Some jurisdictions impose restrictions on congregate care generally, irrespective of age. California provides funding for group home placements only if the placement worker documents that the placement is necessary to meet the treatment needs of the child and the facility offers the necessary treatment services.²⁷ State law also requires the child's case plan to indicate the needs of the child that necessitate group home placement, the plan for transitioning the child to a less restrictive environment, and the projected timeline for that transition.²⁸ The District of Columbia prohibits placement of youth in group home care without written justification.²⁹ Massachusetts and Maine have placement standards that require family foster care, but provide general exceptions based on the needs of the child or lack of available foster homes.³⁰ Several jurisdictions create preferences for family-based placements or a ranked listing of

preferred placements, but allow placement decisions based on the individual circumstances of each case.³¹ Some jurisdictions include the right to the least restrictive placement in a statement of state policy or in a foster care bill of rights.³²

A few states have limited facilities or overall capacity by statute. Oklahoma has mandated a phase out of placements in specific facilities.³³ Rhode Island has imposed a limit on the number of out of home residential placements other than family foster care.³⁴ California created a moratorium on the establishment of rates for new group homes and on the amendment of existing rates unless facilities obtain an exception from the Department of Social Services.³⁵

States can limit congregate care through state statutes or formal regulations or through more

informal instructions. Table 1 sets out restrictions that have been codified in state statute or regulations based on the age of the child. Table 2 sets out statutory and regulatory provisions that are not based on age.

In addition, some states have implemented restrictions in sub-regulatory policy manuals or through agency directives. For example, Maine Child and Family Services policy establishes that children deserve to be placed in family settings whenever possible and sets out limited exceptions to placing children in family settings.³⁶ Policy in the District of Columbia prohibits group home placement without written justification and places additional restrictions on congregate care placement of children under the age of 12.³⁷ Louisiana policy states that all children are best served in family settings, but if it is necessary to place a child in a facility offering supervised treatment, the placement should be considered an interim short term placement for treatment, and the placement of last resort. Policy also notes that residential placement may be avoided through the timely provision of support services to the child's family of origin or foster family or placement in a treatment foster home.³⁸ The Connecticut Commissioner of the Department of Children Youth and Families has issued a memorandum prohibiting the placement of children directly into congregate care without her approval, with limited exceptions.³⁹ Maryland policy sets out specific circumstances that permit placement of children under 13 in group homes and specifies when children placed by the Department of Human Services can be comingled with children placed by the Department of Juvenile Services.⁴⁰

Some states imbed limits in practice rather than in written policy. In a recent survey,

several states reported they just don't place young children in congregate care facilities, except under special circumstances.⁴¹ Court orders impose limits in some states. For example, Connecticut,⁴² New Jersey,⁴³ Oklahoma,⁴⁴ and Tennessee⁴⁵ have entered into consent decrees that require a reduction in congregate care.

THE EFFECT OF LEGAL RESTRICTIONS

Legal restrictions, whether imposed by statute, regulation, or court order, cannot by themselves change child welfare practice, but combined with good enforcement and a commitment by child welfare professionals and advocates, they can help to forge an increase in the percentage of children in family care. Decreasing reliance on congregate care can lead to larger improvements in the child welfare system as well.⁴⁶

Changes in law can articulate and codify a commitment to family care, consolidate gains in reducing inappropriate congregate care placements, or sup-

port the development of alternatives to nonfamily care. The strongest legal restrictions are found in statutes or formal regulations. While agency policy, directives, or instructions can be helpful, they are easily changed and can be difficult to enforce. Statutes and formal regulations have the force of law and are harder to amend without full consideration of the effects proposed changes may have on children and families.

It is difficult to demonstrate a direct cause and effect link between legal restrictions and placement practices. Enforcement may be lax, exceptions may be liberally granted, or the state may have employed a variety of approaches to reducing nonfamily care, making it

The strongest legal restrictions are found in statutes or formal regulations.

difficult to attribute changes to any particular strategy. Nevertheless, legal requirements clearly have a role in overall reform. For example, in 2007 the Nevada legislature created limitations on group care for young children⁴⁷ as a matter of state policy supporting successful reforms in the state's two largest counties, Clark (Las Vegas) and Washoe (Reno), that significantly reduced the number of young children in congregate care.

In California, limitations on group home placements for children under the age of 6⁴⁸ stopped proposals to develop more group care facilities for young children in the 1990's and eventually led to a decrease in congregate care placements for very young children. The number of children under 6 in group care went from 351 (1%) in 1998⁴⁹ to 109 (.5%) in 2003 and 30 (.1%) in 2015. The number of children under 6 in shelter care⁵⁰ went from 1102 (3.1%) in 1998 to 59 (.2%) in 2003 and 18 (.1%) in 2015.⁵¹ Reform efforts including policy changes, a moratorium on group home rates, and other actions by the state and the counties have reduced group home placements for all children under 18 from a high of 10,535 (12.1%) in 2004 to 5193 (9%) in 2015.⁵²

The process of changing state law can also alter perceptions of congregate care and point out ways that inappropriate congregate care can interfere with healthy development. For example, in 2001 county shelters in California were required to meet licensing standards as a result of litigation that detailed conditions in those facilities.⁵³ Press reports covered the problems in county shelters and their effect on child development. Advocates and media reports also pointed out that only a few counties used shelters for children in foster care but most developed alternatives. Shelter care placements for all children under 18 dropped from 2751 (2.4%) in 2000 to 591 (.6%) in 2002 and 132 (.2%) in 2015.

RECOMMENDED POLICY PRINCIPLES

An expert panel recently included the following concerns about congregate care in a recent court report:

Stays in group residential care should be based on the specialized behavioral and mental health needs of children and should be used only for as long as is needed to stabilize the child or youth so they can return to a family-like setting. Prolonged stays are detrimental to the well-being of children. Group residential placements are not structured to deliver consistent and individualized treatment within a safe and nurturing environment. The kinds of treatment regimens that are offered in residential programs are geared largely to reinforcing behaviors that serve the needs of the institution to maintain order and control. The rotating shifts of caretakers, staff regulation of leisure time, and punishment-reward structures reinforce compliance behaviors. Little that is learned in these settings are directly transferrable to living in less restrictive, more family-like settings. Maintaining or building family connections that are a key requirement for a child's treatment are often given short shrift and not addressed for Illinois youth placed in group residential care. For children with siblings, they are likely to be separated if one or more is placed in congregate care, creating further disruption and loss for children. The evidence shows that children are harmed as a result of placement in congregate care in comparison to children who live and receive treatment in family settings. They lose or fail to make educational gains, they are more likely to drop out and less likely to graduate from high school, and they are more likely to be arrested. Even more troubling, children in congregate care are at greater risk of

further physical, verbal and sexual abuse – from their peers as well as from the adults responsible for their care.⁵⁴

State law should be informed by what we know about child and youth development and must be consistent with policy goals. Legal provisions must be prescriptive rather than merely aspirational. For example, a least restrictive placement policy is not likely to be effective unless the law clearly restricts the use of congregate care, limits exceptions, and provides a basis for enforcement.

1. Eliminate congregate care as a placement and permit residential treatment as an intervention only if it is the least restrictive option to meet the child’s documented clinical needs.

State law should be informed by what we know about child and youth development and must be consistent with policy goals.

Stays in congregate care should be based on the specialized behavioral and mental health needs or clinical disabilities of children. It should be used only for as long as is needed to stabilize the child or youth so they can return to a family-like setting.⁵⁵

... one in seven children under the care of the child welfare system is placed in a group setting — even though for more than 40 percent of these children, there is no documented clinical or behavioral need that might warrant placing a child outside a family.⁵⁶

These variations [in rates of nonfamily care] indicate a need for additional information on how and when states use congregate care, how congregate care is defined in each state, and what best practices can be shared to help all states reduce their

congregate care numbers by ensuring such placements are used only for children whose therapeutic needs make them necessary, and then only for the period needed to stabilize the child and transition them to family settings.⁵⁷

Regardless of a young person’s age, group placements are not appropriate as long-term living situations. Although research shows that even those young people who need specialized residential treatment

should not be there for longer than three to six months, U.S. children are spending an average of eight to nine months in group placements, according to the U.S. Department of Health and Human Services. More than a third of children remain in such settings even longer.⁵⁸

a. Require documentation of the child’s treatment needs that cannot be met in a family setting and documentation that the proposed facility can meet those treatment needs.

An obvious place to start reducing nonfamily care is eliminating congregate care placements that do not meet a child’s needs. States should refuse to allow group home placement as a default when finding family care just takes additional work or planning or because alternatives have not been developed for certain populations. For example, group homes are often the default placement for older youth and for youth who are sexually exploited, youth in the probation system who do not require secure confinement, and parenting youth, even though there is no evidence that congregate care is the right therapeutic

intervention for these young people. An important component is ensuring the child's treatment needs cannot be met in the family setting, even with services such as Medicaid Home and Community Based Services, wrap-around services, and therapeutic foster care.

If a child does have a clinical need for services in a residential congregate care facility, it is essential to determine whether the chosen facility meets the child's documented needs. Placing a child who needs treatment in a facility that does not provide that treatment is likely to further harm the child and waste precious child welfare placement funds.

When a child does need short term intensive treatment that cannot be provided in the home, states should maintain the family placement while providing treatment just as they would for a child who needs to be hospitalized for an illness or accident. This not only preserves the child's placement, but also encourages and supports the involvement of the child's caregiver in treatment and transition planning.

- b. **Build in protections, including time limits, regular reviews, and written approval by the child welfare director.**

Leaving a child in a congregate care facility may be an even stronger temptation than placing the child there in the first place. Placement workers may perceive the child as "safe" and put transition planning on a lower priority than working with children coming into

the system or having to leave a current placement. Facilities that have a financial incentive to continue treatment should not be the sole arbiters of when a child is ready for discharge. The child, his or her primary caregiver, and the child welfare worker should be thoroughly involved in all decision-making. Regular reviews, early identification of a likely discharge date, and a written determination by the child welfare director that treatment in the congregate care facility is still needed can help to ensure that children are not lost in the system.⁵⁹

2. Prohibit congregate care for children under 13 years of age.

Child development theory, federal legislation, and best practice confirm what we know intuitively—children should be placed in settings that are developmentally appropriate and least restrictive. For young children, particularly those age 12 and under, it is particularly important for their developmental needs to be met in family-like settings.⁶⁰

Leading experts have concluded that group placements should never be used for young children and that those raised in such settings are at high risk of developing clinical attachment disorders. Yet nearly a third of children who have been placed in group facilities are younger than 13.⁶¹

While many states prohibit or restrict congregate care for very young children, current research supports eliminating or severely restricting those placements up through age 12. There is little evidence that residential treatment is effective for young children

An obvious place to start reducing nonfamily care is eliminating congregate care placements that do not meet a child's needs.

and growing evidence that it interferes with healthy development.

3. Impose licensing standards and program requirements to ensure treatment facilities have the capacity to provide needed treatment and developmentally appropriate care.

... the reality of what occurs within an RTC [Residential Treatment Center] is often quite different from the highly individualized, highly structured programs that are advertised.⁶²

Studies have found that residential treatment programs have the best chance of success if they focus on family involvement, discharge planning and reintegration into the community. A strengths-based culture, provided by models such as Teaching-Family and Sanctuary that treat children individually, can help kids have as normal an experience as possible. Most importantly, children should stay only as long as their treatment requires.⁶³

Facility licensing criteria should reflect the expectation that residential treatment is an intervention that will be used only to address the treatment needs of the child and that facilities will be capable of providing that treatment. Staffing criteria, including qualifications and staffing ratios, should reflect the treatment that will be provided.

Licensing standards should include: admission criteria that admit only children who need residential treatment available at the facility, service plans that ensure the treatment services and the care and supervision the child receives in the facility will be designed to meet his or her treatment needs, transition planning

beginning at the date of admission and revisited at short intervals, inclusion of the child’s parents and other caregivers in the design and delivery of treatment, exit criteria that ensure children will not remain in the facility when they no longer require residential treatment, and seamless transition services that follow the child into the community.

Licensing standards are particularly important because they are enforceable. Licensing analysts can demand improvements, impose fines, and shut facilities down when violations of the standards occur. Regular licensing visits also ensure that another set of eyes will be looking at the services the facilities provide and

whether the children are healthy and safe. Unlike placement workers who may feel pressure to preserve placement options, licensing analysts are tasked with enforcing health and safety standards regardless of the need for additional placements.

In addition, program requirements should ensure that services meet prevailing standards

for behavioral health treatment. One way to accomplish this is to require facilities to meet certification or licensing criteria set by the agency responsible for oversight of mental health services and to undergo regular reviews to maintain their license or certification. Such requirements may also help to support Medicaid funding for covered services. Oversight should also include a review of indicators to determine whether the facility is failing to meet the treatment and developmental needs of the youth it serves. Examples include excessive calls for law enforcement intervention, a large number of readmissions to congregate care after discharge, and high staff turnover.

Too many child welfare systems are paying for services they don’t want and are not good for children.

4. Ensure that funding supports policy.

Finally, compared with children living in families, group placements are extremely expensive for taxpayers. It can cost seven to 10 times more to care for a child in a group placement than in a family.⁶⁴

In addition, Maine state legislators and the governor were concerned about the astonishing cost of institutional care versus out-patient care. Casey negotiated with the governor to redirect a substantial segment of the savings that resulted from congregate care reduction into expanding community-based services for families.⁶⁵

Too many child welfare systems are paying for services they don't want and are not good for children. Collecting and using data on unmet needs can allow the state to set priorities and shop for specific placements and services through requests for proposals. Imposing and enforcing funding criteria is an effective way to make sure facilities are providing adequate care and complying with all state requirements. Performance-based contracts that include regular monitoring can help to ensure that the state is getting what it is paying for.

In addition, legislation and budget allocations can ensure that precious child welfare funding is targeted at the right services.⁶⁶ Using savings from expensive congregate care facilities to increase support for foster families and relative caregivers, pay for community based services, or to hold beds open in family foster homes makes sense. For example, several states permit group home placement to avoid separating siblings, but paying a foster family with several bedrooms to reserve those placements for a sibling group may not only be better for the children but less expensive as well.

States can:

- Develop and fund services that allow children to remain safely at home
- Increase therapeutic foster family placements
- Identify sibling homes and pay a stipend to ensure that these homes are reserved for large sibling groups
- Provide wrap-around services to families
- Fund after school and summer activities so that working families can become foster families
- Conduct child specific recruitment efforts
- Develop emergency crisis management teams to help families cope with extreme behavior
- Hire professional foster parents who do not work at other jobs to parent children who need intensive supervision
- Fund one-on-one support for high risk youth

CONCLUSION

Although debate continues on the role of residential treatment in serving children in foster care, it is clear that too many children are in congregate care facilities by default. Restricting the use of unnecessary congregate care is an essential component of efforts to place more children who must be removed from their homes into alternative families rather than institutions.

The survey of state statutes and regulations demonstrates a wide variety of approaches to regulation of the use of congregate care facilities for children in the child welfare system. A more deliberate approach is needed to ensure that state laws and policies are consistent with policy goals and structured to support practices that will lead to better outcomes for children.

END NOTES

- 1 Dozier, M., Kaufman, J., Kobak, R., O'Connor, T. G., Sagi-Schwartz, A., Scott, S., Shaffer, C., Smetana, J., van IJzendoorn, M. H., & Zeanah, C. H., [Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association](#), 84(3) *American Journal of Orthopsychiatry* 219, 219-25 (2014).
- 2 Tracey Feild, [Op-Ed: DCF Commissioner Katz is Right; Children Belong in Families](#), *The CT Mirror* (March 2, 2015).
- 3 See, e.g., Dozier, *supra* note 1; Annie E. Casey Foundation, [Every Kid Needs a Family: Giving Children in the Child Welfare System the Best Chance for Success](#) (2015) [hereinafter *Every Kid*]. Recent research indicates that even cottage care workers who live with the children most of the week in a family-like setting do not demonstrate the same level of commitment to children as foster parents. Lo, A., Roben, C. K. P., Maier, C., Fabian, K., Shaffer, C. & Dozier, M., ["I want to be there when he graduates:" Foster parents show higher levels of commitment than group care providers](#), 51 *Children and Youth Services Review*, 95, 95-100 (2015).
- 4 "Congregate care" in this paper refers to out of home residential care in a nonfamily setting, including shelters, assessment centers, group homes, foster family group homes, residential treatment facilities, and psychiatric hospitals.
- 5 Children's Bureau, U.S. Department of Health and Human Services, [A National Look at the Use of Congregate Care in Child Welfare](#) (2015) [hereinafter *A National Look*].
- 6 See, e.g., The Annie E. Casey Foundation, [Rightsizing Congregate Care: A Powerful First Step in Transforming Child Welfare Systems](#) (2009) [hereinafter *Rightsizing*]; Children's Rights, Inc., [What Works in Child Welfare Reform: Reducing Reliance on Congregate Care in Tennessee](#) (2011) [hereinafter *Reducing Reliance*]; [A National Look](#), *supra* note 4.
- 7 [42 U.S.C. § 675\(5\)\(A\)](#).
- 8 Direct comparisons among states are difficult because states differ in the names and definitions of facility types, the administrative structure of state and local child welfare agencies, and the ways that placements are financed.
- 9 For example, [Ala. Admin. Code r. 660-5-37-.03\(11\)\(b\)](#); [Alaska Admin. Code tit. 7, § 50.320\(d\)\(1\)](#); [Fla. Admin. Code r. 65C-14.040\(4\)](#); [Ga. Comp. R. & Regs. r. 290-2-5-.09\(2\)\(a\)](#); [Haw. Code R. § 17-1627-27\(b\)](#); [465 Ind. Admin. Code r. 2-12-13](#); [Mo. Code Regs. Ann tit.13, § 40-72.010\(1\)\(A\)\(11\)](#); [18 N.Y. Comp. Codes R. & Regs. § 441.2\(h\)](#); [18 N.Y. Comp. Codes R. & Regs. § 448.3\(j\)](#); [Ohio Admin. Code 5101:2-9-11\(D\)](#); [Okla. Admin Code § 340:110-3-154\(a\)\(2\)](#); [Tenn. Comp. R & Regs. 0250-04-05-.06\(1\)](#); [Wash. Admin. Code 388-145-1360](#); [Wis. Admin. Code DCF § 52.21\(3\)](#); [WY Rules and Regulations FAMS PS Ch. 7, §§ 5, 7](#).
- 10 For example, [D.C. Mun. Regs. tit. 29 § 6256](#); [Michigan Department of Health & Human Services, Children's Foster Care Policy Manuals, FOM 722-03, p. 31 \(Jun. 26, 2015\)](#); [Nev. Rev. Stat. § 432B.3905](#).
- 11 For example, [Cal. Welf. & Inst. Code § 11402\(d\)](#); [12 Code Colo. Regs. §§ 2509-5-7.406.2, 7.407\(A\)\(3\)](#).
- 12 See, e.g., [Cal. Code Regs. tit. 22, §§ 84000\(b\), 84265.5; 922 Ky. Admin. Regs. 1:300, § 3\(5\)\(b\)](#), [Ohio Admin. Code 5101:2-9-36\(G\)\(1\)](#); [N.M. Code R. § 8.26.6.18\(B\)](#); and [S.D. Admin. R. 67:42:07:03](#).
- 13 Some states have been required to raise group home rates by court order. See, [California Alliance of Child and Family Services v. Allenby](#), 589 F.3d 1017 (9th Cir. 2009).
- 14 [Wash. Admin. Code 388-145-1360](#).
- 15 [Haw. Code R. § 17-1627-27\(b\)](#).
- 16 See, e.g., [WY Rules and Regulations FAMS PS Ch. 7, § 5](#) (non-therapeutic group home); [WY Rules and Regulations FAMS PS Ch. 10, § 6](#) (residential treatment).
- 17 [Fla. Admin. Code r. 65C-14.040\(4\)](#).
- 18 [Nev. Rev. Stat. § 432B.3905](#).
- 19 [Alaska Admin. Code tit. 7, § 50.320\(d\)\(1\)](#).
- 20 [Ala. Admin. Code r. 660-5-37-.03\(11\)\(b\)](#). [Wis. Admin. Code DCF § 52.21\(3\)](#).
- 21 [Michigan Department of Health & Human Services, Children's Foster Care Policy Manuals, FOM 722-03, p. 31 \(Jun. 26, 2015\)](#).
- 22 [Miss. Code R. 18-7-1\(V\)\(A\)\(3\), 18-7-1\(IX\)\(A\)\(2\)](#). Sibling placements are limited to 45 days.
- 23 [18 N.Y. Comp. Codes R. & Regs. § 448.3\(j\)](#).
- 24 [Cal. Welf. & Inst. Code §§ 319.3, 361.2\(e\)\(10\)](#).
- 25 [Cal. Welf. & Inst. Code § 16501.1\(c\)\(3\)](#).
- 26 [12 Code Colo. Regs. §§ 2509-5-7.406.2, 7.407\(A\)\(3\)](#).
- 27 [Cal. Welf. & Inst. Code § 11402\(d\)](#).
- 28 [Cal. Welf. & Inst. Code § 16501.1\(c\)\(2\)](#).
- 29 [District of Columbia Child and Family Services Agency, Policy on Placement and Matching, § VII\(B\)\(3\) \(Feb. 28, 2014\)](#).
- 30 [Office of Child and Family Services, Maine Department of Health and Human Services, Child and Family Services Policy, § V.D. \(Aug. 8, 2008\)](#); [Mass. Gen. Laws, ch. 119, § 32](#).
- 31 See, e.g., [Arizona Rev. Stat. Ann. § 8-514\(B\)](#).
- 32 See, e.g., [Arizona Rev. Stat. Ann. § 8-529\(A\)\(1\)](#); [Colo. Rev. Stat. § 19-7-101\(1\)\(aa\)](#); [Or. Admin. R. 413-010-0180\(1\)\(a\)](#); [40 Tex. Admin. Code § 748.1101\(B\)\(1\)](#).
- 33 [Okla. Stat. tit.10A, § 1-9-111](#).
- 34 [R. I. Gen. Laws § 42-72-36](#).
- 35 [Cal. Welf. & Inst. Code § 11462.04](#).
- 36 [Office of Child and Family Services, Maine Department of Health and Human Services, Child and Family Services Policy, § V.D. \(Aug. 8, 2008\)](#).
- 37 [District of Columbia Child and Family Services Agency, Policy on Placement and Matching, § VII\(B\)\(3\) \(Feb. 28, 2014\)](#).
- 38 [Office of Community Services, Louisiana Department of Social Services, Policy on Referrals to DCFS Residential Facility Resources \(Dec. 1, 2014\)](#).

- 39 Memorandum from Joette Katz, Commissioner, to Administrators and Program Directors, Re: Congregate Care (April 11, 2014).
- 40 [Department of Human Resources, Maryland Social Services Administration, Policy regarding placement of children in DHR's care, SSA 10-11 \(Oct. 1, 2009\)](#).
- 41 Zero to Three and Child Trends, [Changing the Course for Infants and Toddlers: A Survey of State Child Welfare Policies and Initiatives](#) (2013). Oregon has maintained a high percentage of family care placements without specific restrictions on congregate care. See, [A National Look](#), *supra* note 4. Advocates and providers attribute this to a historical commitment to family care and an understanding of the effects of the inappropriate use of congregate care, among other factors.
- 42 [Juan F. v. Malloy, No. H-89-859, United States District Court, District of Connecticut, Consent Decree, January 7, 1991](#).
- 43 [Charlie and Nadine H. v. Christie, No. 99-3678, United States District Court, District of New Jersey, Consent Decree, July 18, 2006](#).
- 44 [D.G. v. Yarbrough, No. 08-CV-074, United States District Court, Northern District of Oklahoma, Compromise and Settlement Agreement, January 4, 2012](#).
- 45 [Brian A. v. Haslam, No. 3:00-0445, United States District Court, Middle District of Tennessee, Modified Settlement Agreement and Exit Plan, April 7, 2015](#).
- 46 [Rightsizing](#), *supra* note 5.
- 47 [Act of June 1, 2007, Ch. 274, p. 1003, 2007 Statutes of Nevada \(codified as amended at NRS 432B.3905\) \(AB 147\)](#).
- 48 [Act of March 2, 1993, Ch. 1088, § 2, California Statutes of 1993 \(codified as amended at Cal. H.S.C. § 1530.8\) \(AB 1197\)](#). The legislature passed the law in 1993 but implementing regulations were not promulgated until late in 1997 after litigation. See, [Jones-Mason v. Anderson, No. 96-982959, San Francisco Superior Court, Stipulation to Stay Proceedings, February 27, 1997](#); [Cal. Code Regs. tit. 22, §§ 84200-84288](#); [California Department of Social Services, Child Welfare Services Manual, Ch. 31-405\(f\),\(g\) \(Jul.1, 2002\)](#).
- 49 The legislature passed the law in 1993 but implementing regulations were not promulgated until late in 1997 after litigation. See, [Jones-Mason v. Anderson, No. 96-982959, San Francisco Superior Court, Stipulation to Stay Proceedings, February 27, 1997](#); [Cal. Code Regs. tit. 22, §§ 84200-84288](#); [California Department of Social Services, Child Welfare Services Manual, Ch. 31-405\(f\),\(g\) \(Jul.1, 2002\)](#). See, Webster, D., Armijo, M., Lee, S., Dawson, W., Magruder, J., Exel, M., Cuccaro-Alamin, S., Putnam-Hornstein, E., King, B., Morris, Z., Sandoval, A., Yee, H., Mason, F., Benton, C., & Pixton, E. (2015) [CCWIP reports](#). Retrieved on 7/30/2015, from University of California at Berkeley California Child Welfare Indicators Project website.
- 50 Because of confusion about data definitions, the number of children in shelter care may have included some children in temporary family shelter care, but advocates' experience confirms that the number of young children in group shelter care facilities decreased substantially. In any event, temporary shelter care, even in a family, is not developmentally appropriate for young children because it requires an additional placement move.
- 51 [Id.](#)
- 52 [Id.](#) During this period group home placements for child welfare supervised children fell from 6629 (8.2%) in 2004 to 3406 (6.2%) in 2015. Group home placement rates for probation supervised youth increased from 3905 (58.7%) in 2004 to 1787 (63.1%) in 2015. This was likely due to a pronounced decrease in the use of secure juvenile correctional placements for this population.
- 53 [Warren v. Saenz, No. 317487, San Francisco Superior Court, Amended Order and Statement of Decision \(April 17, 2001\)](#).
- 54 Testa, M., Naylor, M., Vincent, P., White, M., [Report of the Expert Panel, B.H. vs. Sheldon Consent Decree](#) 14 (July 21, 2015).
- 55 [A National Look](#), *supra* note 4, p. 1.
- 56 [Every Kid](#), *supra* note 3, p. 1.
- 57 [A National Look](#), *supra* note 4, p. 14.
- 58 [Every Kid](#), *supra* note 3, p. 7.
- 59 For example, Maine changed policy to require prior authorization and utilization review of all children in high-end placements, and congregate care was redefined from a placement to a treatment. [Rightsizing](#), *supra* note 5, p. 4.
- 60 [A National Look](#), *supra* note 4, p. 7.
- 61 [Every Kid](#), *supra* note 3, pp. 5-7.
- 62 Judge David L. Bazelon Center for Mental Health Law, [Fact Sheet: Children in Residential Treatment Centers 7](#) (undated).
- 63 [Every Kid](#), *supra* note 3, p. 9.
- 64 [Id.](#), p. 7.
- 65 [Rightsizing](#), *supra* note 5, p. 5.
- 66 For example, Virginia, which has a locally administered child welfare system, increased state match funding for community-based services and decreased state match funding for residential and group-home placements. [Id.](#) p. 7.

Table 1 - Restrictions by Age

State	Age/Type	Restriction	Source
AL	Under 6 Facility admission	A child under six years (6) of age shall not be admitted to a child care facility ¹ except by special consent of the State Department of Human resources or if the child is admitted to a child care facility licensed to provide shelter care or where the child's mother is receiving care in a maternity center.	Ala. Admin. Code r. 660-5-37-.03(1)(b)
AK	Under 6 Facility admission	A facility ² may not (1) admit a child younger than six years of age, except in a facility licensed to provide emergency shelter care.	Alaska Admin. Code tit. 7, § 50.320(d)(1)
AR	Under 6 Facility admission	<p>The facility³ shall admit a child under age five (5) years only if that child is a part of a sibling group of whom one child is age five (5) years or older, or if it is the summer before the child is eligible to enter kindergarten. Exception is also made for the infant child of a mother who is admitted to the facility.</p> <p>...</p> <p>9. Emergency shelters may admit children under age five (5).</p> <p>10. Emergency shelters may admit children for a maximum of ninety (90) days.</p> <p>Any child admitted as an emergency placement shall be designated as such and must be discharged within 90 days or admitted as a regular placement.</p> <p>....</p> <p>12. When a child under the age of five (5) years is in care, the facility shall evaluate the continued appropriateness of the placement every ninety (90) days and document the evaluation in the child's record.</p>	Ark. Code R. 016.15.9-601, 8-10., 12.
CA	Under 6 Placement Detention	[A] child under the age of six years ... may be placed in a community care facility licensed as a group home for children or in a temporary shelter care facility ... only when the court finds that placement is necessary to secure a complete and adequate evaluation, including placement planning and transition time. The placement period shall not exceed 60 days unless a case plan has been developed and the need for additional time is documented in the case plan and has been approved by the deputy director or director of the county child welfare department or an assistant chief probation officer or chief probation officer of the county probation department.	Cal. Welf. & Inst. Code § 319.2

State	Age/Type	Restriction	Source
CA	Under 6 Post adjudication Placement	<p>A child under the age of six years may be placed in a community care facility licensed as a group home for children, or a temporary shelter care facility ... only under any of the following circumstances:</p> <p>(A) (i) When a case plan indicates that placement is for purposes of providing short-term, specialized, and intensive treatment to the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, pursuant to paragraph (2) of subdivision (c) of Section 16501.1, the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1, and the deputy director or director of the county child welfare department or an assistant chief probation officer or chief probation officer of the county probation department has approved the case plan.</p> <p>(ii) The short term, specialized, and intensive treatment period shall not exceed 120 days, unless the county has made progress toward or is actively working toward implementing the case plan that identifies the services or supports necessary to transition the child to a family setting, circumstances beyond the county's control have prevented the county from obtaining those services or supports within the timeline documented in the case plan, and the need for additional time pursuant to the case plan is documented by the caseworker and approved by a deputy director or director of the county child welfare department or an assistant chief probation officer or chief probation officer of the county probation department.</p> <p>(iii) To the extent that placements pursuant to this paragraph are extended beyond an initial 120 days, the requirements of clauses (i) and (ii) shall apply to each extension. In addition, the deputy director or director of the county child welfare department or an assistant chief probation officer or chief probation officer of the county probation department shall approve the continued placement no less frequently than every 60 days.</p> <p>(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:</p> <p>(i) The child's parent is also a ward of the court and resides in the facility.</p>	Cal. Welf. & Inst. Code § 361.2(e)(9).

State	Age/Type	Restriction	Source
CA	Under 6 Post adjudication Placement	(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services. (iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.	Cal. Welf. & Inst. Code § 361.2(e)(9).
CA	6 - 12 Placement Detention	[A] dependent child who is 6 to 12 years of age, inclusive, may be placed in community care facility licensed as a group home for children or in a temporary shelter care facility ... only when the court finds that placement is necessary to secure a complete and adequate evaluation, including placement planning and transition time. The placement period shall not exceed 60 days unless a case plan has been developed and the need for additional time is documented in the case plan and has been approved by a deputy director or director of the county child welfare department or an assistant chief probation officer or chief probation officer of the county probation department.	Cal. Welf. & Inst. Code § 319.3
CA	6 - 12 Placement Post adjudication	(A) A child who is 6 to 12 years of age, inclusive, may be placed in a community care facility licensed as a group home for children only when a case plan indicates that placement is for purposes of providing short-term, specialized, and intensive treatment for the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, pursuant to paragraph (2) of subdivision (c) of Section 16501.1, and is approved by the deputy director or director of the county child welfare department or an assistant chief probation officer or chief probation officer of the county probation department. (B) The short-term, specialized, and intensive treatment period shall not exceed six months, unless the county has made progress or is actively working toward implementing the case plan that identifies the services or supports necessary to transition the child to a family setting, circumstances beyond the county's control have prevented the county from obtaining those services or supports within the timeline documented in the case plan, and the need for additional time pursuant to the case plan is documented by the caseworker and approved by a deputy director or director of the county child welfare department or an assistant chief probation officer or chief probation officer of the county probation department. (C) To the extent that placements pursuant to this paragraph are extended beyond an initial six months, the requirements of subparagraph (A) and (B) shall apply to each extension. In addition, the deputy director or director of the county child welfare department or an assistant chief probation officer or chief probation officer of the county probation department shall approve the continued placement no less frequently than every 60 days.	Cal. Welf. & Inst. Code § 361.2(e)(10).

State	Age/Type	Restriction	Source
CA	Over 18 Placement	After a nonminor dependent either completes high school or attains his or her 19th birthday, whichever is earlier, continuation in or admission to a group home is prohibited unless the nonminor dependent satisfies the conditions of paragraph (5) of subdivision (b) of Section 11403, and group home placement functions as a short-term transition to the appropriate system of care. Treatment services provided by the group home placement to the nonminor dependent to alleviate or ameliorate the medical condition, as described in paragraph (5) of subdivision (b) of Section 11403 ⁴ , shall not constitute the sole basis to disqualify a nonminor dependent from the group home placement.	Cal. Welf. & Inst. Code § 16501.1(c)(3)
CO	Under 3 Facility definition	A "residential child care facility (RCCF)" shall provide twenty-four (24) hour residential group care and treatment for five or more children, between the ages of three (3) and sixteen (16) years old and for children from sixteen (16)-eighteen (18) years old and for those persons to twenty-one (21) years old who are placed by court order prior to their eighteenth birthday.	12 Colo. Code Regs. § 2509-8:7.705.1⁵
CO	Under 6 Funding	THE STATE DEPARTMENT SHALL NOT REIMBURSE ... E. Placements of children under the age of six (6) years in a specialized group facility or residential child care facility, except for children with documented exceptional needs which can be met only by the specifically identified facility. Documentation in the child's Family Services Plan shall include a description of the services available in that facility to address the child's specific needs.	12 Colo. Code Regs. § 2509-5:7.406.2
CO	Under 6 Funding	ADMINISTRATIVE REVIEW FINDINGS, FISCAL SANCTIONS, APPEALS, AND DISALLOWANCES A. Fiscal sanctions and disallowances occur as a result of Administrative Review findings of non-compliance in three areas: ... 3. Requirements for state reimbursement at Section 7.406.2 are not met, to include: ... e. Placements of children under the age of six (6) years in a specialized group facility or residential child care facility, except for children with documented exceptional needs which can be met only by the specifically identified facility. Documentation in the child's Family Services Plan shall include a description of the services available in that facility to address the child's specific needs.	12 Colo. Code Regs. § 2509-5:7.407

State	Age/Type	Restriction	Source
CO	Under 12 Funding	<p>THE STATE DEPARTMENT SHALL NOT REIMBURSE</p> <p>...</p> <p>F. Placements of children under the age of twelve (12) years in a specialized group facility or residential child care facility that exceed sixty (60) calendar days unless the child has documented special treatment needs that cannot be met in family foster care. Documentation in the Family Services Plan shall include a description of the services available in that facility to address the child’s specific needs.</p>	12 Colo. Code Regs. § 2509-5:7.406.2
CO	Under 12 Funding	<p>ADMINISTRATIVE REVIEW FINDINGS, FISCAL SANCTIONS, APPEALS, AND DISALLOWANCES</p> <p>A. Fiscal sanctions and disallowances occur as a result of Administrative Review findings of non-compliance in three areas:</p> <p>...</p> <p>3. Requirements for state reimbursement at Section 7.406.2 are not met, to include:</p> <p>...</p> <p>f. Placements of children under the age of twelve (12) years in a specialized group facility or residential child care facility that exceed sixty (60) calendar days unless the child has documented special treatment needs that cannot be met in family foster care. Documentation in the Family Services Plan shall include a description of the services available in that facility to address the child’s specific needs.</p>	12 Colo. Code Regs. § 2509-5:7.407
DC	Under 6 Placement	<p>The contracting entity shall place no child under the age of six (6) in a facility⁶ unless:</p> <p>(a) The child has documented exceptional needs which cannot be met in another type of care; and</p> <p>(b) The facility has a program to treat the child’s specific needs.</p>	D.C. Mun. Regs. tit. 29 § 6256.1
DC	Under 12 Placement	<p>The contracting entity shall place no child under the age of twelve (12) in a facility⁷ for longer than thirty (30) calendar days unless:</p> <p>(a) The child has documented special treatment needs which cannot be met in a foster home; and</p> <p>(b) The facility has a program to treat the child’s specific needs.</p>	D.C. Mun. Regs. tit. 29, § 6256.2

State	Age/Type	Restriction	Source
FL	Under 6 Facility admission	No child under the age of 6 years, or the age of enrollment in the first grade of school, shall be admitted to a residential child caring agency ⁸ except under emergency circumstances or to prevent the separation of a family. An emergency placement of a child under 6 years shall be documented in the child's case record, verifying that no alternate plan for care was available at the time of admission. Continued diligent effort shall be made, including referral to the department to place a child under age 6 in foster care or other appropriate care. Such plans shall be made within 30 days of the child's admission. Residential care for children under 6 who are part of a sibling group may be continued, as appropriate.	Fla. Admin. Code r. 65C-14.040 (4)
GA	Under 6 Facility admission	A child under the age of six (6) shall not be admitted to an institution, ⁹ unless the child is a member of a sibling group with at least one of the siblings being 6 years of age or older who will reside in the institution, or the mother who is under the age of 19 and her child are placed in the home together. Where a child under the age of six (6) is admitted, the child-caring institution shall provide developmentally-appropriate sleeping facilities, diapering facilities and daily child-care arrangements.	Ga. Comp. R. & Regs. r. 290-2-5-.09(2)(a)
HI	Under 3 Facility restriction	Children under three years of age shall be excluded from institutional care. ¹⁰	Haw. Code R. § 17-1627-27(b)
IL	13-18 Placement Secure facility	Only children and youth who are 13 years of age or older but less than 18 years of age for whom the Department is legally responsible may be placed in the secure child care facility ¹¹ in accordance with Section 5(m-1) of the Children and Family Services Act [20 ILCS 505/5(m-1)]. Each child or youth admitted to a secure child care facility must fully meet the admission requirements established by the Department.	Ill. Adm. Code tit. 89, pt. 411.110(a)
IN	Under 6 Facility definition	As used in this rule, "group home" means a type of child caring institution licensed for ten (10) or fewer children, six (6) years of age or older, who are apart from their parents or guardian on a twenty-four (24) hour a day basis and who have demonstrated the ability to follow direction and take appropriate action for self-preservation.	465 Ind. Adm. Code 2-12-13
IN	Under 6 Facility definition	As used in this rule, "emergency shelter" means a short term place of residence, other than a secure facility that: (1) is not locked to prevent a child's departure unless the administrator determines that locking is necessary to protect the child's health; and (2) provides twenty-four (24) hours a day temporary care for not more than sixty (60) consecutive days to an individual child six (6) years of age or older admitted on an emergency basis.	465 Ind. Adm. Code 2-10-9

State	Age/Type	Restriction	Source
IN	Under 6 Licensing restriction	A child caring institution ¹² shall not care for children under the age of six (6) years.	465 Ind. Ad- min. Code r. 2-12-33(d)
IN	Under 6 Licensing restriction	A private secure facility ¹³ shall not care for children under the age of six (6) years of age.	465 Ind. Ad- min. Code 2-11-33(g)
IN	Under 6 Admission criteria	Children admitted to a private secure facility ¹⁴ shall: (1) be six (6) years of age or older;	465 Ind. Ad- min. Code r. 2-11-40(a)
KS	Under 3 Facility admission	Children under three years of age shall be given care in a residential facility ¹⁵ only as follows: (1) To provide emergency care for not more than 30 days; or (2) To keep siblings together for a maximum of 90 days.	Kan. Admin. Regs. § 28- 4-273(b)
KY	Under 6 Placement	(2) Unless a child is a member of a family group placed in a facility, a child under six (6) shall not be placed in the residential child-caring facility ¹⁶ unless that facility is also licensed to provide emergency shelter service. ... (3) An exception to subsection (2) of this section may be made for a child age three (3) to six (6), if: (a) 1. For a child who is in the custody of the cabinet, the commissioner or designee and the residential child-caring facility agree that there is no less restrictive placement available to meet the child’s mental health, physical, or behavioral needs; ¹⁷	922 Ky. Ad- min. Regs. 1:390, § 3
MS	Under 10 Placement Group home	No child under 10 years of age shall be placed in a congregate care setting (including group homes and shelters) unless the child has exceptional needs that cannot be met in a relative or foster family home or he child is a member of a sibling group, and the Regional Director has granted express written approval for the congregate care placement. Sibling groups in which one or more of the siblings are under the age of 10 shall not be placed in congregate care settings for more than 45 days.	Miss. Code R. 18-7-1(V) (A)(3)

State	Age/Type	Restriction	Source
MS	Under 10 Placement Emergency Shelter Facilities	<p>The requirements for Residential/Group Home which pertain to the care of children prescribed under other sections of this document shall be followed. In addition, there shall be compliance with the following specific requirements for emergency shelter care facilities.</p> <p>A. Admission and Planning</p> <p>...</p> <p>2. Children under ten (10) years of age shall not be placed in a congregate care setting (including group residential homes and shelters), unless the child has exceptional needs that cannot be met in another placement or the child is a member of a sibling group and express written approval is granted by the Department's Regional Director or designee. Sibling groups with one or more siblings under ten (10) years of age shall not remain in congregate care settings for more than forty-five (45) days.</p>	Miss. Code R. 18-7-1(X)(A)(2)
MO	Under 6 Facility definition	<p>11. Types of care are—</p> <p>A. Foster family group home. A private home of foster parents who provide twenty-four (24)-hour care for seven to twelve (7–12) children under the custody and supervision of the division only. This type of care is not recommended for any child under the age of six (6) years;</p> <p>B. Independent foster family group home. A private home, independent of any agency auspices, of foster parents who provide twenty-four (24)-hour care for seven to twelve (7–12) children in the custody of parents, relatives, guardian or agencies. This type of care is not recommended for any child under the age of six (6) years;</p> <p>C. Satellite group home. A group home operated by a licensed child caring or child placing agency in a single dwelling or apartment owned, rented or leased by the agency. Child care staff are employed by the parent agency to provide twenty-four (24) - hour care for twelve (12) children or less. This type of care is not recommended for any child under the age of six (6) years; and</p> <p>D. Independent group home. A group home privately operated by a person in a single dwelling or apartment which is owned, rented or leased by the person. Child care staff are employed to provide twenty-four (24)-hour care for twelve (12) children or less. This type of care is not recommended for any child under the age of six (6) years.</p>	Mo. Code Regs. tit. 13, § 40-72.010(1)(A) ¹⁸

State	Age/Type	Restriction	Source
NV	Under 6 Placement	<p>Limitations on transfer and placement of child who is under 6 years of age; notice.</p> <ol style="list-style-type: none"> 1. An employee of an agency which provides child welfare services or its designee, an agent or officer of a law enforcement agency, an officer of a local juvenile probation department or the local department of juvenile services or any other person who places a child in protective custody pursuant to this chapter: <ol style="list-style-type: none"> (a) Except as otherwise provided in subsection 2, shall not transfer a child who is under the age of 6 years to, or place such a child in, a child care institution unless appropriate foster care is not available at the time of placement in the county in which the child resides; and (b) Shall make all reasonable efforts to place siblings in the same location. 2. A child under the age of 6 years may be placed in a child care institution: <ol style="list-style-type: none"> (a) If the child requires medical services and such medical services could not be provided at any other placement; or (b) If necessary to avoid separating siblings. 3. If a child is transferred to or placed in a child care institution in violation of subsection 1, the agency which provides child welfare services that is responsible for the child shall immediately notify the Director of the Department of Health and Human Services and shall move the child to another placement as soon as possible. 4. Each agency which provides child welfare services shall develop and implement a written plan to ensure that the provisions of this section are understood and carried out. 5. As used in this section, "child care institution": <ol style="list-style-type: none"> (a) Means any type of home or facility that: <ol style="list-style-type: none"> (1) Provides care and shelter during the day and night to 16 or more children who are in protective custody of an agency which provides child welfare services; or (2) Provides care and shelter during the day and night, through the use of caregivers who work in shifts, to children who are in protective custody of an agency which provides child welfare services. (b) Does not include a home or facility that provides medical services to children. 	<p>Nev. Rev. Stat. § 432B.3905</p>

State	Age/Type	Restriction	Source
NY	Under 5 Facility definition	Group home means a family-type home for the care and maintenance of not less than seven, nor more than 12, children who are at least five years of age, operated by an authorized agency, in quarters or premises owned, leased or otherwise under the control of such agency, except that such minimum age shall not be applicable to siblings placed in the same facility nor to children whose mother is placed in the same facility.	N.Y. Comp. Codes R. & Regs. § 441.2(h)
NY	Under 5 Facility admission	Children under five years—special provisions. A child under five years, who is a sibling of another child over such age resident in the group home, may be cared for in such facility, provided: (1) A crib is provided for such a child under two years of age. (2) Highchairs or tables and chairs suitable to the size of the children under five years of age in care shall be provided at feeding time. (3) An agency must not accept any child under five years of age in a group home unless it has notified the department of its intent to care for such child and the plan of care thereof and it has received a written statement from the department that its program and facilities for the care of such child are in compliance with the rules of the department.	N.Y. Comp. Codes R. & Regs. § 448.3(j)
OH	Under 6 Facility admission	[D] A residential facility ¹⁹ shall not admit any child under the age of six years except: (1) If the child is at least four years of age and is part of a sibling group being admitted to the residential facility where at least one of the members of the sibling group is six years of age or older. Placement of such child under the age of six years shall not exceed fourteen days. (2) If the child is the child of a teenage mother being admitted with the child's parent to a residential parenting facility. (3) If the child is admitted into a children's crisis care facility ²⁰ in accordance with rule of the Administrative Code.	Ohio Admin. Code 5101:2-9-11
OH	Under 13 Crisis care facility admission	[E] A certified children's crisis care facility ²¹ may provide residential care to a pre-teen placed in the facility by a PCSA or PCPA for more than seventy-two consecutive hours if the director of job and family services or the director's designee issues the agency a waiver of the seventy-two consecutive hour limitation. The waiver may authorize the certified children's crisis care facility to provide residential care to the pre-teen for up to fourteen consecutive days.	Ohio Admin. Code 5101:2-9-36.

State	Age/Type	Restriction	Source
OK	Under 14 Placement: Shelter	2. Subject to the availability of suitable placements, no child in the custody of the Department of Human Services: a. six (6) years of age or younger shall be placed in shelter care after June 30, 2013, or b. thirteen (13) years of age or younger shall be placed in shelter care after June 30, 2014.	Okla. Stat. tit.10A, § 1-9-111 A.
OK	Under 10 Placement	Children younger than ten years of age in OKDHS custody are not placed in CBRC [community based residential care] ²² placements, except when maintaining sibling groups together in placement or in CBRC placements that provide services to a younger age population due to the child’s treatment needs.	Okla. Admin. Code § 340:75-11-233(c)
OK	Under 6 Facility definition: D & E	A residential diagnostic and evaluation facility that offers a 20-day admission program for children in Oklahoma Department of Human Services (OKDHS) custody, six to 18 years of age, is available to provide a comprehensive assessment of each child admitted.	Okla. Admin. Code § 340:75-11-250(a)
OK	Under 8 Facility definition	Contracted residential intensive treatment services (ITS) are available to provide crisis stabilization interventions to children in Oklahoma Department of Human Services (OKDHS) custody, eight to 18 years of age, who are experiencing a mental health or psychiatric crisis to prevent admission to psychiatric care and enable the return to a community-based placement.	Okla. Admin. Code § 340:75-11-265(a)
OK	Under 5 Facility admission	(2) Admission ²³ of children under 5 years of age. (A) A program may only accept children under 5 years of age when maintaining a sibling group, or maintaining a child with a parent, or when there is a need for special services, such as: (i) medical care or monitoring; (ii) awake supervision; or (iii) crisis intervention, assessment, or treatment. (B) When a resident under 5 years of age is in care at the program, the admission assessment and the service plan document why this placement is in the resident’s best interest.	Okla. Admin. Code § 340:110-3-154(a)

State	Age/Type	Restriction	Source
TN	Under 5 Facility admission	<p>(1)(a) Children must not be accepted into group care before it is clearly established that their own families, with help, cannot offer them a home. They must not be admitted simply because they are in need of care away from their own homes, but because they are in need of the specific kind of care and services a particular agency has to offer.</p> <p>(b) The facility must not admit any children in excess of its license capacity. (Refer to 0250-4-5-.12 Emergency Shelter Care, for exception).</p> <p>(c) Children under five (5) years of age must not be admitted into a Residential Child-Care Agency. The only exception to this rule can be the acceptance of one child under five (5) years of age who is admitted with another sibling group. This child must not be under three (3) years of age and must live with the sibling group in one cottage. The cottage must have no more than six (6) children with a man and wife serving as house parents. (Refer to 0250-4-5-.12 Emergency Shelter Care, for exception).</p>	<p>Tenn. Comp. R. & Regs. 0250-04-05-.06</p>

State	Age/Type	Restriction	Source
WA	Under 6 Facility Admission	<p>What children may I serve in my group care program?</p> <p>(1) You may serve children who are at least six years of age and meet one of the following conditions:</p> <ul style="list-style-type: none"> (a) Have behaviors that cannot be safely or effectively managed in foster care; (b) Need temporary placement awaiting a more permanent placement; (c) Need emergency placement during a temporary disruption of a current placement; (d) Have emotional, physical, or mental disabilities; (e) Need a transitional living setting; (f) Need respite care from a licensed provider; or (g) Are age sixteen or older and need to acquire independent living skills. <p>(2) Your program may serve children younger than six years of age if it meets the following criteria:</p> <ul style="list-style-type: none"> (a) Provides services to children with intellectual and developmental disabilities; (b) Provides services to medically fragile children; (c) Provides services to expectant mothers or parenting youth; (d) Is licensed as a group receiving center; (e) Is licensed as an emergency respite center; (f) Is licensed as a resource and assessment center; or (g) Is a facility approved and certified under chapter RCW (2)(m).²⁴ 	<p>Wash. Ad-min. Code 388-145-1360</p>
WI	Under 7 Facility admission Written approval	<p>Conditions. A center²⁵ may admit a prospective resident if the center can meet the prospective resident’s needs, as determined by the admission screening report under sub. (2) and if the following conditions are met:</p> <p>...</p> <p>DCF 52.21(3)(a) DCF 52.21(3)(b) (b) Child under age 7. In admitting a child age 6 or under, the center has received prior written approval from the department. A center shall meet any additional requirements determined appropriate by the department for the care and treatment of a child age 6 or under.</p>	<p>Wisc. Ad-min. Code § 52.21(3)</p>

State	Age/Type	Restriction	Source
WY	Under 10 Facility definition	[Non-therapeutic group home.] (c) Age Range. (i) The age range at the time of admission is ten (10) through seventeen (17) years unless ordered by the court for placement in the facility;	WY Rules and Regulations FAMS PS Ch. 7, § 5
WY	Under 10 Facility definition	[Therapeutic group home.] (b) Age Range Age Range. The age range at the time of admission for children in Therapeutic Group Homes is ten (10) through seventeen (17);	WY Rules and Regulations FAMS PS Ch. 8, § 5

END NOTES TO TABLE 1

- 1 "Child care facility" includes group homes for 7-12 children and institutions for more than 10 children. [Ala. Admin. Code r. 38-7-2\(2\), \(10\)](#).
- 2 Applies to residential child care facilities (as opposed to foster homes.) See, [Alaska Admin. Code tit. 7, §§ 50.005 & 50.320\(a\)](#).
- 3 "Residential child care facility" means any child welfare agency that provides care, training, education, custody, or supervision on a twenty-four-hour basis for six (6) or more unrelated minors. [Ark. Code R. 016.15.9-600, 8-10, 12](#).
- 4 The nonminor dependent must meet one or more of the following criteria to qualify for extended foster care:
 - (1) The nonminor is completing secondary education or a program leading to an equivalent credential.
 - (2) The nonminor is enrolled in an institution which provides postsecondary or vocational education.
 - (3) The nonminor is participating in a program or activity designed to promote, or remove barriers to employment.
 - (4) The nonminor is employed for at least 80 hours per month.
 - (5) The nonminor is incapable of doing any of the activities described in subparagraphs (1) to (4), inclusive, due to a medical condition, and that incapability is supported by regularly updated information in the case plan of the nonminor. [Cal. Welf. & Inst. Code § 11403\(b\)](#).
- 5 See also, [12 Colo. Code Regs. § 2509-8:7.701.2\(G\)](#) (providing additional definition and requirements.)
- 6 This Chapter applies to youth residential facilities which shall include youth shelters, runaway shelters, emergency care facilities, and youth group homes. [D.C. Mun. Regs. tit. 29 § 6202.1](#).
- 7 This Chapter applies to youth residential facilities which shall include youth shelters, runaway shelters, emergency care facilities, and youth group homes. [D.C. Mun. Regs. tit. 29 § 6202.1](#).
- 8 "Residential child-caring agency" means any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes which are administered by an agency, emergency shelters which are not in private residences and wilderness camps. Residential child-caring agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under Section 393.067 or 397.081 F.S. [Fla. Admin. Code r. 65C-14.001\(9\)](#).
- 9 "Child caring institution" means a child-welfare agency that is any institution, society, agency, or facility, whether incorporated or not, which either primarily or incidentally provides full-time care for children through 18 years of age outside of their own homes, subject to such exceptions as may be provided in rules and regulations of the Board of Human Resources. This full-time care is referred to as room, board and watchful oversight. For purposes of these rules, a child caring institution means any institution, society, agency, or facility that provides such care to six or more children. [Ga. Comp. R. & Regs. r. 290-2-5-03\(e\)](#).
- 10 "Child-caring institution" or "group home" means any institution or group home licensed by the department, for the purpose of receiving six or more unrelated minor children for temporary substitute supervision, care, and maintenance apart from their legal custodians on a twenty-four hour basis for monetary payment. This term shall not apply to any boarding school which is primarily engaged in educational work or to any resource family home, detention facility, forestry camp, training school, or facility operated primarily for the detention of delinquent children. This term shall also exclude public child care institutions that accommodate more than twenty five children. [Haw. Code R. § 17-1627-1](#).

- 11 “Secure child care facility” means any child care facility licensed by the Department to provide secure living arrangements for children under 18 years of age who are subject to placement in facilities under the Children and Family Services Act and who are not subject to placement in facilities for whom standards are established by the Department of Corrections under Section 3-15-2 of the Unified Code of Corrections and which comply with the requirements of this Act and applicable rules of the Department and which shall be consistent with requirements established for child residents of mental health facilities under the Juvenile Court Act of 1987 and the Mental Health and Developmental Disabilities Code. “Secure child care facility” also means a facility that is designed and operated so as to ensure that all entrances and exits from the facility, a building, or distinct part of a building are under the exclusive control of the staff of the facility, whether or not the child has the freedom of movement within the perimeter of the facility, building, or distinct part of a building. [225 ILCS 10/2.22] [Ill. Admin. Code tit. 89, pt. 411.20](#).
- 12 As used in this rule, “children’s home” or “child caring institution” means a children’s home, an orphanage, an institution, a shelter care facility, a private secure facility, or other place maintained or conducted by any group of individuals or political subdivision engaged in:
- (1) receiving and caring for dependent children, children in need of services, or delinquent children; or
 - (2) operating for gain a private business of boarding children who are unattended by a parent, guardian, or custodian. [465 Ind. Admin. Code r. 2-13-5](#).
- 13 “Private secure facility” means a locked living unit within an institution for gravely disabled children with chronic behavior that harms themselves or others. [465 Ind. Admin. Code r. 2-11-22](#).
- 14 See note 13.
- 15 “Facility” means a group boarding home or residential center that provides residential care. “Group boarding home” means a non-secure facility providing residential care for not less than five nor more than ten persons unrelated to the caregivers, and includes emergency shelters and maternity homes. “Residential center” means a non-secure facility which provides residential care for more than 10 residents unrelated to the caregivers, and includes emergency shelters and maternity homes. [Kan. Admin. Regs. § 28-4-268 \(h\), \(j\), \(t\)](#).
- 16 “Residential child-caring facility” means an institution or group home providing twenty-four (24) hour care. [922 Ky. Admin. Regs. 1:390, § 1\(16\)](#).
- 17 Different exceptions apply for children not in the custody of the cabinet. [922 Ky. Admin. Regs. 1:390, § 3\(3\)\(a\)\(2\)](#).
- 18 There are separate licensing standards for residential treatment agencies. See, [Mo. Code Regs. tit. 13, § 35-71](#).
- 19 “Residential facility” means a group home, children’s crisis care facility (as defined in rule [5101:2-9-36](#) of the Administrative Code), children’s residential center, or residential parenting facility where twenty-four hour child care is provided by child care staff employed or contracted by an agency. A foster home is not a residential facility. [Ohio Admin. Code 5101:2-1-01B\(268\)](#)
- 20 [A] “children’s crisis care facility” means a facility that has as its primary purpose the provision of residential and other care to the children described in paragraph (A)(1) or (A)(2) of this rule:
- (1) One or more pre-teens voluntarily placed in the facility by the pre-teen’s parent or other caretaker who is facing a crisis that causes the parent or other caretaker to seek temporary care for the pre-teen and referral for support services;
 - (2) One or more pre-teens placed in the facility by a public children services agency (PCSA) or private child placing agency (PCPA) that has legal custody or permanent custody of the pre-teen and determines that an emergency situation exists necessitating the pre-teen’s placement in the facility rather than an institution certified under section 5103.03 of the Revised Code or elsewhere. [Ohio Admin. Code 5101:2-9-36\(A\)](#).
- 21 [A] “children’s crisis care facility” means a facility that has as its primary purpose the provision of residential and other care to the children described in paragraph (A)(1) or (A)(2) of this rule:
- (1) One or more pre-teens voluntarily placed in the facility by the pre-teen’s parent or other caretaker who is facing a crisis that causes the parent or other caretaker to seek temporary care for the pre-teen and referral for support services;
 - (2) One or more pre-teens placed in the facility by a public children services agency (PCSA) or private child placing agency (PCPA) that has legal custody or permanent custody of the pre-teen and determines that an emergency situation exists necessitating the pre-teen’s placement in the facility rather than an institution certified under section 5103.03 of the Revised Code or elsewhere. [Ohio Admin. Code 5101:2-9-36 \(A\)](#).
- 22 The Community-Based Residential Care (CBRC) program serves children in Oklahoma Department of Human Services (OKDHS) custody whose treatment needs cannot be met in a family setting, but whose treatment needs do not require inpatient psychiatric care. [Okla. Admin Code § 340:75-11-230\(a\)](#). Some types of CBRC facilities have definitions that are more restrictive. See generally, [Okla. Admin. Code § 340](#).
- 23 Applies to residential child care facilities, defined as a 24-hour residential program where children live together with, or are supervised by, adults other than the child’s parents or relatives. [Okla. Admin Code § 340:110-3-146](#).
- 24 A maximum or medium security program for juvenile offenders operated by or under contract with the department. [Wash. Admin. Code 74.15-020\(2\)\(m\)](#).
- 25 This chapter applies to the department, to applicants for a license to operate a residential care center for children and youth and to all licensed residential care centers for children and youth, except as provided in s. [DCF 52.57](#) for type 2 residential care center programs [temporary placement – 10 days], in s. [DCF 52.58](#) for short-term programs [90 days] and in s. [DCF 52.59](#) for respite care services programs. [Wisc. Admin. Code DCF § 52.02\(1\)](#).

Table 2 - Restrictions Regardless of Age

State	Type	Restriction	Source
CA	Funding Treatment need	In order to be eligible for AFDC-FC, a child or nonminor dependent shall be placed in one of the following: ... (d) A licensed group home ... provided that the placement worker has documented that the placement is necessary to meet the treatment needs of the child and that the facility offers those treatment services.	Cal. Welf. & Inst. Code § 11402
CA	Case plan ¹ Need Timeline Transition	If a group care placement is selected for a child, the case plan shall indicate the needs of the child that necessitate this placement, the plan for transitioning the child to a less restrictive environment, and the projected timeline by which the child will be transitioned to a less restrictive environment. This section of the case plan shall be reviewed and updated at least semiannually.	Cal. Welf. & Inst. Code § 16501.1(c)(2)
CA	Facility limitation	(a) Notwithstanding any other law, no new group home rate or change to an existing rate shall be established pursuant to Section 11462. An application shall not be accepted or processed for any of the following: (1) A new program. (2) A new provider. (3) A program change, such as a rate classification level (RCL) increase. (4) A program capacity increase. (5) A program reinstatement. (b) Notwithstanding subdivision (a), the department may grant exceptions as appropriate on a case-by-case basis, based upon a written request and supporting documentation provided by county placing agencies, including county welfare or probation directors. (c) For the 2012–13, 2013–14, and 2014–15 fiscal years, notwithstanding subdivision (b), for any program below RCL 10, the only exception that may be sought and granted pursuant to this section is for an application requesting a program change, such as an RCL increase. The authority to grant other exceptions does not apply to programs below RCL 10 during these fiscal years.	Cal. Welf. & Inst. Code § 11462.04

State	Type	Restriction	Source
CO	Funding Need Written approval	<p>THE STATE DEPARTMENT SHALL NOT REIMBURSE</p> <p>...</p> <p>G. Placements in a specialized group home with a capacity in excess of ten (10) children unless there is written approval by the placing caseworker’s supervisor. Such approval shall be based upon written documentation in the Family Services Plan that the child’s needs can be met only by the specifically identified facility. The documentation shall include a description of the services available in that facility to address the child’s needs.</p>	<p>12 Colo. Code Regs. § 2509-5:7.406.2</p>
CO	Funding Need Written approval	<p>ADMINISTRATIVE REVIEW FINDINGS, FISCAL SANCTIONS, APPEALS, AND DISALLOWANCES</p> <p>A. Fiscal sanctions and disallowances occur as a result of Administrative Review findings of non-compliance in three areas:</p> <p>...</p> <p>2. Level of care of the placement is too restrictive. Reimbursement is reduced to the average cost of the determined less restrictive type of available placement, unless the child is court-ordered into the more restrictive placement against the recommendation of the county department.</p> <p>3. Requirements for state reimbursement at Section 7.406.2 are not met [sic.], to include:</p> <p>...</p> <p>g. Placements in a specialized group home with a capacity in excess of ten (10) children unless there is written approval by the placing caseworker’s supervisor. Such approval shall be based upon written documentation in the Family Services Plan that the child’s needs can be met only by the specifically identified facility. The documentation shall include a description of the services available in that facility to address the child’s needs.</p>	<p>12 Colo. Code Regs. § 2509-5:7.407</p>

State	Type	Restriction	Source
OK	Facility transition	<p>A. 1. The Department of Human Services is authorized to manage and operate and may contract with designated youth services agencies or designated child-placing agencies for the management and operation of the children's shelter located in Oklahoma City, known and designated as the Pauline Mayer Children's Shelter, and the children's shelter located in Tulsa, known and designated as the Laura Dester Children's Shelter. The Department shall implement a plan to transition the use of shelters from a placement for children taken into custody into an alternative purpose to be determined by the Department. Kinship care homes and emergency foster care homes shall be utilized for the care of children instead of a shelter whenever possible. The Department shall monitor and report to the Legislature and Governor on a monthly basis the daily average shelter population and the number of kinship care homes utilized and the total number of emergency foster care homes available by county.</p> <p>2. Subject to the availability of suitable placements, no child in the custody of the Department of Human Services:</p> <p>a. six (6) years of age or younger shall be placed in shelter care after June 30, 2013, or</p> <p>b. thirteen (13) years of age or younger shall be placed in shelter care after June 30, 2014.</p>	Okla. Stat. tit.10A, § 1-9-111
RI	Capacity limit	Residential placement capacity. – Effective January 1, 2009, and for any day thereafter, the department's approved capacity for out-of-home residential placements, excluding foster homes, shall not exceed the total of one thousand (1,000) out-of-home residential placements. The department is authorized to reinvest any savings that result from reductions in out-of-home residential placements, into developing additional community-based services for children and their families.	R. I. Gen. Laws § 42-72-36

END NOTE TO TABLE 2

- 1 In addition, several states include the more general language from Title IV-E, 42 U.S.C. §675(5)(A) (least restrictive most family like setting) or a variation of that language in statute, regulation, or policy.

Appendix

PROPOSED LANGUAGE: DEFINING RESIDENTIAL TREATMENT AS AN INTERVENTION RATHER THAN A PLACEMENT

(Goal - Limit residential treatment to an intervention that meets the treatment needs of the child that cannot be met in the family setting and preserving the child's placement and relationship with a primary caregiver.)

PLACEMENT CRITERIA AND USE OF RESIDENTIAL TREATMENT

- (a) When it is necessary to remove a child from his or her parents, the child welfare agency [hereinafter CWA] shall place the child in an alternative family setting consistent with the best interest and special needs of the child.
- (b) The CWA may employ residential treatment as an intervention to meet the needs of a child over the age of twelve if:
 - 1. the child has a documented clinical need for short-term, specialized, and intensive treatment that cannot be provided in a family setting,
 - 2. the facility is able to meet the child's documented needs,
 - 3. the child's case plan documents:
 - i. the child's need for residential treatment,
 - ii. the services the residential treatment facility will provide,
 - iii. the anticipated duration of residential treatment,
 - iv. a plan for the active participation of the child's parents or primary caregiver, or both in the child's care and treatment, and
 - v. a plan and schedule for returning the child to the family setting, including identification of the services or supports necessary to support the child in the family, and
 - 4. the director/supervisor approves the use of residential treatment for the child in writing.

- (c) The CWA shall review the child's progress in residential treatment at least every 30 days to determine:
 - 1. whether residential treatment is meeting the child's needs,
 - 2. whether there is a continued need for residential treatment, and
 - 3. the anticipated date for returning the child to family care.
- (d) Residential treatment shall not exceed 120 days unless the [Agency Director] has determined in writing that progress has been made toward implementing the case plan, that the services the child needs cannot be provided in a family-based setting, and that the need for additional time in residential treatment is substantiated. The director shall review the basis for such continued residential treatment every 30 days.
- (e) In no event shall residential treatment exceed 180 days unless the CWA determines that the child has extraordinary needs for continued residential treatment that cannot be met in a family setting and obtains a court finding that the child's extraordinary needs require continued residential treatment.

Supporting licensing criteria regarding admission

- (a) A residential treatment facility shall not admit a child unless:
 - 1. The child has a documented clinical need for short-term, specialized, and intensive treatment that cannot be provided in a family setting, and
 - 2. The facility is able to meet the child's documented needs.
- (b) In an emergency a residential care facility may admit a child provided that:
 - 1. The emergency is documented by a medical or mental health professional prior to or within 48 hours of admission,
 - 2. Within 72 hours of admission, the facility documents that:
 - a. the child has a documented clinical need for short-term, specialized, and intensive treatment that cannot be met in a family setting,
 - b. the facility is able to meet the child's documented needs, and
 - c. within 72 hours of admission, the facility shall develop a plan to address the child's needs and return the child to family care.
- (c) In no event shall a residential treatment facility admit a child younger than twelve years of age.

