

EMERGENCY JUSTIFICATION

These emergency regulations are necessary to effectuate amendments made to section 1028-a of the Family Court Act by Chapter 434 of the Laws of 2019 (Chapter 434), which became effective immediately upon the Governor signing the legislation on October 29, 2019. Chapter 434 expands the categories of relatives whose application to become a foster parent of a child in nonrelative foster care can be heard by the Family Court under section 1028-a of the Family Court Act. Prior to Chapter 434, such hearings would only be held for relatives within the third degree of consanguinity of the child. Chapter 434 allows any relative, relative of half siblings and adult with a positive relationship with the child, including, but not limited to, a stepparent, godparent, neighbor or family friend (commonly called “fictive kin”) to be heard by the court.

The intent of Chapter 434 is to treat all kin (relatives and fictive) the same for purposes of emergency approval as foster parents pursuant to a 1028-a hearing. This regulatory change effectuates this intent by eliminating two different tracks for kinship foster parents, called “approval” and “certification.” Prior to this regulatory change, relatives within the third degree were approved, and relatives outside the third degree and fictive kin were certified. Local Departments of Social Services (LDSSs) are authorized to issue waivers to non-safety, non-statutory foster home requirements for approved homes but not for certified homes. This distinction meant that relatives within the third degree were allowed waivers, and all other kin (relatives outside of the third degree and fictive kin) were not. This created a barrier to kinship care as waivers are particularly important for emergency placements when kin may not have time to meet all the requirements of becoming a foster parent. Under the new regulation, all kin (relatives and fictive) are approved as foster parents and therefore able to access waivers.

This regulatory change is also necessary to protect the health, safety and welfare of children in foster care. Kinship placements are the preferred placements for children requiring out-of-home care because they reduce trauma by allowing the children to reside with a person with whom they have a preexisting bond. Non-kin foster care placements and congregate care placements are particularly traumatic for

children and are statistically less safe and stable.¹ This regulatory change would provide children with greater access to kinship placements by expanding waiver authority to all persons with whom the child has a bond.

This change would also help LDSSs in complying with the requirements of the Family First Prevention Services Act, which restricts federal funding for congregate care placements. The goal of the FFPSA is to maintain children in the least restrictive setting appropriate for their needs, which is most often a foster boarding home. The FFPSA does not include a lack of foster boarding homes as an acceptable reason for placing children in congregate care. Therefore, to maintain federal funding, the FFPSA creates the need for a dramatic increase in available foster boarding homes. Expanding kinship care helps fill the need, both by creating more home-based care and by preserving recruited foster homes for children who do not have kin resources, as well as for children who can be stepped down from congregate care placements that may no longer meet the child's needs.

¹ Campbell Cochrane Collections (Winokur, Holtan & Valentine, 2009)