

Regulatory Impact Statement

1. Statutory authority:

Section 1028-a of the Family Court Act, as amended by Chapter 434 of the Laws of 2019, allows relatives to make an application to the court to become a foster parent of a child in non-relative foster care. Chapter 434 expands who may be heard under such hearings from just relatives within the 3rd degree to include all relatives, relatives of halfsiblings and adults with a positive relationship with the child or child's family.

2. Legislative objectives:

The proposed regulations would establish a definition of "relative" to include all categories of relatives addressed by Section 1028-a of the Family Court Act. The definition of "approved home" and "approved emergency relative foster home" would be expanded to include such definition of relative, as opposed to relatives only within the third degree of consanguinity. Waivers for non-safety, non-statutory foster homes requirements are only authorized for approved homes. Therefore, this change would expand the authority of local social services districts (LDSSs) to issue waivers beyond relatives within the 3rd degree, to include all relatives and adults with a positive relationship to the child or child's family. The regulation is necessary to meet the intent of Chapter 434 to provide parity to distant relatives and fictive kin for approval as foster parents.

3. Needs and benefits:

Chapter 434 of the Laws of 2019 amended §1028-a of the Family Court Act to expand the categories of relatives who may be heard by the Family Court Act regarding an application to become a foster parent of a child in non-kinship foster care placement. Current regulations allow only relatives within the 3rd degree to be heard. The expansion would include any relative and adults with a positive relationship with the child, including, but not limited to, a step-

parent, godparent, neighbor or family friend. Such persons are commonly referred to as “fictive kin.”

The intent of Chapter 434 is to treat all kin (relatives and fictive) the same for purposes of emergency approval through §1028-a. However, regulations currently create different standards for such categories of relatives. Relatives within the second or third degree are entitled to waivers for non-health or safety requirements through the approval process. Relatives outside of the third degree and fictive kin are subject to the certification process which does not allow for such waivers. Waivers are particularly important for emergency placements when kin may not have time to meet all the certification requirements. The result of the current regulatory framework is that, despite a judicial best interest finding, certain kin may not be eligible to become foster parents due to the lack of waiver authority.

The proposed regulation would require all relatives and fictive kin to be approved rather than certified as foster parents. This would expand non-safety waiver authority to all kin seeking to become foster parents. This change would meet the intent of Chapter 434.

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. Expanding kinship foster care is a key strategy in increasing overall foster care capacity and reducing congregate care.

4. Costs:

The implementation of emergency and proposed regulations will not result in costs to VAs or LDSSs. The proposed rules do not impose any new mandates. The proposed rules create the opportunity for additional kinship foster homes and create an opportunity to reduce congregate care placements; therefore, any impact would be cost-neutral.

5. Local government mandates:

The proposed regulations would not impose any additional mandates on local departments of social services.

6. Paperwork:

LDSSs are required to document their approval of, and reason for, any waiver issued to approve a foster home. This paperwork requirement is minimal.

7. Duplication:

The proposed regulations would not duplicate other state or federal requirements.

8. Alternatives:

No alternative approaches to implementing the changes to regulation were considered.

9. Federal standards:

The proposed regulations would not conflict with current federal standards. There are no comparable federal programs.

10. Compliance schedule:

Compliance with the proposed regulations would begin immediately upon final adoption.