

Prospective foster parents with an undocumented immigration status face particular challenges when seeking licensure or approval to provide care. For example, all states require that caregivers, whether licensed or unlicensed, undergo background checks. In addition to any general concerns that undocumented immigrants may have relating to interaction with law enforcement and other government entities, background checks typically require individuals to provide some form of government-issued identification, such as a state-issued driver's license or a Social Security Number. For undocumented immigrants, these accepted forms of identification are not always available. Although at least two states have established methods of processing background checks which accommodate undocumented immigrants,<sup>2</sup> most states are silent on the issue.



## A. Explicit Citizenship or Immigration Status Foster Licensing Requirements

Sixteen states have explicit foster licensing standards that require U.S. citizenship or some form of legal immigration status.<sup>3</sup> The phrasing, scope, and context of these requirements vary from state to state.

- Three states frame the requirement in terms of “residence” (but not lawful (legal) permanent residence).<sup>4</sup>
- Four states frame the requirement in terms of “status.”<sup>5</sup>
- Two states frame the requirement in terms of lawful presence.<sup>6</sup>
- While Arizona accepts all applicants who are “lawfully present,” it requires those temporarily authorized to be in the United States to “provide documentation indicating that the authorization is valid for a minimum of one year or that the applicant has already taken steps to obtain authorization to remain for at least one year.”<sup>7</sup>
- Five states require either citizenship or lawful (legal) permanent resident status (i.e., a Green Card, which is a specific form of immigration status).<sup>8</sup>
- Massachusetts set its standard to U.S. citizens or immigrants with “legal permanent resident status, asylum, refugee, or other indefinite legal status.”<sup>9</sup>
- Mississippi says, “A legal alien may obtain a Resource Home license if all adult household members are legally in the United States.”<sup>10</sup>

### 1. Legal Authority

The legal authority for the citizenship and immigration foster care and licensing standards also varies.

- Only California has codified an immigration provision in statute, allowing the release of a child who has been taken into temporary custody by the state or local agency to the custody of relative or nonrelative extended family members “regardless of the parent’s, guardian’s, Indian custodian’s, or relative’s immigration status.”<sup>11</sup>

- New Mexico recently amended their licensure rules to explicitly note that citizenship or immigration status shall not prevent eligibility for licensure of relative, fictive kin, or non-relative foster homes.<sup>12</sup>
- Eleven states set forth their specific citizenship or immigration status foster licensing requirements in administrative codes.<sup>13</sup>
- Seven states set forth their requirements in agency policy manuals or guides.<sup>14</sup>
- Mississippi requires that the caseworker request immigration documentation “if legal status is in question.”<sup>15</sup> This framing may work in favor of undocumented caregivers if the caseworker does not question the caregiver’s immigration status, but it could also open the door to racial profiling and discrimination.

### 2. Exceptions

Of the 16 states identified with explicit foster care licensing standards that require U.S. citizenship or some form of documented immigration status—

- Arkansas,<sup>16</sup> Massachusetts,<sup>17</sup> and New Jersey<sup>18</sup> explicitly exempt kin from the immigration status licensing standard, thereby allowing eligible undocumented immigrants to obtain full licensure.
- Arizona<sup>19</sup> and Mississippi<sup>20</sup> state that the immigration status requirement may *not* be waived, even for kin.
- Missouri indirectly forbids waiver of the immigration status requirement by excluding the provision from a list of the only licensing standards that may be waived for a relative caregiver.<sup>21</sup>
- Nine states do not make a clear statement about kinship exceptions to their immigration requirements, but they have waiver provisions<sup>22</sup> and/or alternative approval procedures<sup>23</sup> that may, in effect, create exceptions for caregivers with an undocumented immigration status.<sup>24</sup>
- Other states may have temporary provisional license provisions that could give caregivers with an undocumented immigration status more time to comply with citizenship or legal immigration status requirements.<sup>25</sup>

## B. Other Potential Barriers to Full Foster Care Licensure

While they do not have explicit citizenship and immigration status requirements, 18 states have foster licensing standards that may directly prevent or create barriers to licensure of undocumented immigrants.<sup>26</sup> Of these 18 states—

- Eight states have *language or communication requirements* that may present barriers to prospective foster parents who are non-English speakers or whose primary language differs from that of the foster child.<sup>27</sup>
- Nine states require that foster parents be *able to read and write*, but do not specify in which language.<sup>28</sup>
- Connecticut, Maine, New Hampshire, and South Dakota do not have explicit citizenship or immigration status requirements but have *state residency requirements*.<sup>29</sup>
- Other states, including Alaska, Delaware, and Florida, have *foster care licensing applications or regulations* that ask for immigration-related documentation such as the applicant's Social Security number, U.S. government-issued identification, and/or birth certificate.<sup>30</sup> Texas requires documentation of an applicant's citizenship status.<sup>31</sup>
- Illinois and Maine *require applicants be "law abiding,"* but do not indicate in law or policy whether noncompliance with immigration laws would prevent an applicant from satisfying this requirement.<sup>32</sup>
- Some states have *education-related standards*, such as a high school diploma or GED. If those states do not accept equivalent credentials obtained in foreign countries, then such standards may prevent non-U.S. educated individuals from becoming licensed caregivers.<sup>33</sup>
- *Official background check procedures* may prevent licensure of undocumented immigrants. For example, Alabama requires licensees to provide their Social Security number and a government-issued photo ID to run required background checks.<sup>34</sup>
- Other requirements, such as *possessing a state-issued driver's license*, could add to the list of states with potential challenges for immigrant caregivers.

While none of the states discussed in this section provide that non-U.S. citizenship will disqualify an applicant, these regulations and policies may create a chilling effect for undocumented caregivers. Additionally, these standards may indicate that, in practice, the state does not license undocumented caregivers.

## C. Express Commitment to Licensing Undocumented Caregivers

In addition to Arkansas, Massachusetts, and New Jersey, which, as discussed above, provide explicit exceptions to their immigration foster care licensing requirements to accommodate undocumented relatives seeking licensure as foster parents, at least two other states and New York City have laws and policies that establish a commitment to ensuring immigration status does not prevent kinship foster placements.

- The most comprehensive is California, which passed The Reuniting Immigrant Families Act in 2012.<sup>35</sup> This statute provides that children in foster care may be placed with an approved relative, regardless of that relative's immigration status.<sup>36</sup> The law also permits relative caregivers to use identification from a foreign consulate or a foreign passport for the purposes of running background checks.<sup>37</sup>
- Indiana states in its Department of Child Services Child Welfare Manual that "Undocumented aliens may be considered as a relative placement,"<sup>38</sup> and provides alternative procedures for running background checks for both licensed<sup>39</sup> and unlicensed<sup>40</sup> caregivers who are undocumented.
- New York City's Immigration and Language Guidelines for Child Welfare Staff states, "Pursuant to Executive Order No. 41, signed by Mayor Bloomberg on September 17, 2003, [the Administration for Children's Services] shall not inquire about a person's immigration status, among other things, unless that inquiry is needed to determine program, service or benefit eligibility or to provide City services."<sup>41</sup> The city's guidelines further provide, "Undocumented relatives can be considered as a resource for children."<sup>42</sup>



## CONCLUSION

In sum, 16 states have explicit immigration requirements for full foster care licensure, and an additional 18 states have licensing standards that may present barriers to licensure for undocumented immigrants. While most of these standards are codified in regulations, some appear in state policy manuals and guides. Arkansas, Massachusetts, and New Jersey are the only states that explicitly exempt kinship caregivers from their

immigration requirement. Notably, California, Indiana, and New York City provide examples of how child welfare agencies may accommodate undocumented relative caregivers to ensure that immigration status does not prevent otherwise acceptable kinship placements. Lastly, at least nine of the 16 states with explicit immigration requirements have waiver provisions or alternative approval methods that undocumented relatives and fictive kin might be able to take advantage of to provide care for foster children.

## Endnotes

1. Federal law permits waiver of nonsafety standards for relative foster parents on a case-by-case basis. 42 U.S.C. § 671(a)(10)(D).

2. California (Cal. Welf. & Inst. Code § 361.4(d) (2022)) (“An identification card from a foreign consulate or foreign passport shall be considered a valid form of identification for conducting a criminal records check”); Indiana (Ind. Dep’t Child. Servs., Child Welfare Policy, ch. 13 § 5 (2021)) (“A request to COBCU should be emailed to [cobcuinquiry@dcs.in.gov](mailto:cobcuinquiry@dcs.in.gov), when the undocumented individual is unable to provide verification of identity. For the purposes of non-emergency placement, a Social Security number (SSN) is not required to register for fingerprints.”).

3. Arizona (Ariz. Admin. Code § 21-6-301(A)(2) (2016)); Arkansas (Ark. Dep’t Human Servs., Div. Child. & Fam. Servs., Policy and Procedure Manual, § VII-C (2022)); Colorado (12 Colo. Code Regs. § 2509-6:7.500.31(G) (2016)); Hawaii (Haw. Dep’t Human Servs., Child Welfare Services Procedures Manual, § IV-1.2.1 (2019)); Indiana, Ind. Dep’t Child. Servs., Child Welfare Policy, ch. 12, § 1 (2019); Kentucky (922 Ky. Admin. Regs. § 1:350); Maryland (Md. Code Regs. § 07.02.25.04(B)); Massachusetts (110 Mass. Code Regs. §§ 7.100(4)(i), 7.104(6)); Michigan (Mich. Admin. Code regs. §§ 400.9201(l), 400.9202(1)(d)); Mississippi (18 Miss. Admin. Code Pt. 6, F-II) (Miss. Dep’t Child Prot. Servs., MDCPS Policies & Procedures Foster Care Licensure § 2.2(6) (2020)); Missouri (Mo. Code Regs. 13, § 35-60.030(2) (2019)); New Jersey (N.J. Admin. Code § 3A:51-5.3(a)(1)(ii) (2019)); North Carolina (N.C. Dep’t Health & Human Servs., Child Welfare Manual § VIII(l) (2020)); Tennessee (Tenn. Dep’t Child.’s Servs., Administrative Policies and Procedures § 16.4 (2022)); Utah (Utah Admin. Code R. § 501-12-5(1)(f) (2020)); West Virginia (W. Va. Dep’t Health & Human Servs., Home Finding Policy § 1.2 (2022)).

4. Hawaii, *supra* note 3 (“U.S. citizen or legal resident of the U.S.”); Michigan, *supra* note 3 (“residing in the

U.S. legally”); New Jersey, *supra* note 3 (“legal residency”).

5. Kentucky, *supra* note 3 (“United States citizenship or legal immigrant status”); Missouri, *supra* note 3 (“citizen of the United States” or “lawful immigration status”); North Carolina, *supra* note 3 (“citizens of the United States” or “lawful immigration status”); Utah, *supra* note 3 (“legal residential status”).

6. Arizona, *supra* note 3 (“lawfully present in the United States”); Colorado, *supra* note 3 (“lawful presence in the United States”).

7. Arizona, *supra* note 3.

8. Arkansas, *supra* note 3 (“United States citizen or a legal permanent resident”); Maryland, *supra* note 3 (“United States citizen or alien lawfully admitted for permanent residence”); Massachusetts, *supra* note 3 (“Citizen of the United States or been granted legal permanent resident status, asylum, refugee, or other indefinite legal status by the U.S. Immigration Officials”); Tennessee, *supra* note 3 (“United States citizen” or “Legal Permanent Resident”); West Virginia, *supra* note 3 (“United States citizen”).

9. Massachusetts, *supra* note 3.

10. Mississippi (18 Miss. Admin. Code Pt. 6, F-II).

11. Cal. Welf. & Inst. Code § 309(a) (2022).

12. N.M. Admin. Code § 8.26.4.8(G).

13. Arizona, *supra* note 3; Colorado, *supra* note 3; Kentucky, *supra* note 3; Maryland, *supra* note 3; Massachusetts, *supra* note 3; Michigan, *supra* note 3; Mississippi, *supra* note 10; Missouri, *supra* note 4; New Jersey, *supra* note 3; Utah, *supra* note 3.

14. Arkansas, *supra* note 3; Hawaii, *supra* note 3; Indiana, *supra* note 3; Mississippi, Miss. Dep’t Child Prot. Servs., *supra* note 3; North Carolina, *supra* note 3; Tennessee *supra* note 3; West Virginia, *supra* note 3.

15. Mississippi, *supra* note 10.

16. Arkansas, *supra* note 3 (“[P]ersons who [sic] undocumented may be considered as a resource home applicant for their relatives or fictive kin.”).

17. 110 Mass. Code. Regs. 7.105A (“The requirement set forth in 110 CMR 7.104(6) [citizenship/immigration requirement] may be waived for an applicant for a child-specific or kinship home . . . provided the applicant otherwise meets the eligibility criteria set forth for child-specific and kinship applicants and a determination is made that it would be in the child’s best interest to be placed in the applicant’s home.”).

18. N.J. Dep’t Child. & Fams., *Policy Manual* § IV-A-11-200 (2019) (“A child may be placed with kinship caregivers who are undocumented immigrants or otherwise do not have permanent legal status in the United States when the placement is in the child’s best interest.”).

19. Ariz. Dep’t Child Safety, *Kinship Foster Care Relatives Caring for Children in DCS Custody* (accessed June 28, 2022) (“Standards about criminal and DCS histories or the legal residency of the caregiver and other persons residing in the home cannot be waived”); *see also* Ariz. Dep’t Child Safety, *Policy and Procedures Manual*, ch. 4, § 3 (2021) (“Document the following about potential kinship caregivers . . . legal name, DOB . . . citizenship status . . .”).

20. 18 Miss. Admin. Code, pt. 6, D-V(G)(1)(e) (2016) (“These standards are NOT to be waived as a matter of general practice when licensing relative caregivers and require the above documentation in respective case records: U.S. Citizenship, only if the potential Resource Parent is a qualified alien”).

21. Mo. Code Regs. 13, § 35-60.080(2) (2021).

22. Colorado (12 Colo. Code. Regs. § 2509-8:7.708.7 (2016)); Hawaii (Haw. Code R. § 17-1625-5 (2010)); North Carolina (10a N.C. Admin. Code 70L.0102); Tennessee, *supra* note 13; Utah (Utah Admin. Code r. 501-12-15 (2020)); West Virginia (W. Va. Code R. § 78-2-5.43) (2021)).

23. Hawaii, *supra* note 3 (§ IV-1.2.7); Indiana, *supra* note 3; Kentucky (922 Ky. Admin. Regs. 1:130 (2020)); Maryland (Md. Code Regs. 07.02.25.10); North Carolina (N.C. Gen. Stat. § 131D-10.3 (2017); *see also* 10A N.C. Admin. Code 70E.0709 (temporary provisional licensure)); Utah (Utah Human Servs. Code 62A-2-117.5; *see also* Utah Dep’t Health & Human Servs., Child & Fam. Servs., *Practice Guidelines* §§ 502–04).

24. Further research is needed to determine whether Michigan has a waiver provision or alternative approval procedure that may create an exception for caregivers without citizenship or legal immigration status.

25. For example, North Carolina (N.C. Gen. Stat. § 131D-10.3 (2017)) (“Persons licensed or seeking a license who are temporarily unable to comply with a rule or rules may be granted a provisional license”).

26. Alabama (Ala. Admin. Code r. 660-5-29-.02(1), (4) (2002)); Alaska (Alaska Dep’t Health & Soc. Servs., Off. Child.’s Servs., *Application Form for Foster Care Licensing* (2015)); Connecticut (Conn. Dep’t Child. & Fams., *Policy Manual* § 24-1, 3 (2019); *see also* Conn. Dep’t Child. & Fams., *Immigration Practice Guide* 21-13 (2017)); Delaware (14 Del. Admin. Code §§ 936-38.0, 936-39.0 (2020)); Florida (Fla. Admin. Code r. 65C-45.003(3)(a) (2020)); Georgia (Ga. Comp. R. & Regs. 290-9-2-.07 (2008); Illinois (Ill. Admin. Code tit. 89, § 402.12(c)-(d) (2020)); Iowa (Iowa Admin. Code r. 441-113.12(5) (2022)); Maine (10-148 Me. Code R. ch. 016 §§ 2, 9 (2010)); Nebraska (395 Neb. Admin. Code ch. 3 §§ 3-4 (2022)); Nevada (Nev. Admin. Code § 424.225(18) (2021)); New Hampshire (N.H. Code Admin. R. He-C 6446.04(b) (2015)); North Dakota (N.D. Admin. Code 75-03-14-04(1) (2022)); Ohio (Ohio Admin. Code 5101:2-7-02(B) (2022)); South Carolina (S.C. Code Ann. Regs. 114-550(G) (2022)); South Dakota (S.D. Admin. R. §§ 67-42-05-06(1), 67-42-05-06(10) (2022)); Texas (26 Tex. Admin. Code §§ 749.2447(2), 749.2447(5) (2021)); Virginia (22 Va. Admin. Code §§ 40-141-30 (2006), 40-141-60 (2005)).

27. Iowa, *supra* note 25 (“The foster parent shall . . . be able to communicate with the licensing agency and health care and other service providers”); Nebraska, *supra* note 25, ch. 3 §4 (“At least one of the relative or kinship caregivers in the home must be able to communicate with the child in the child’s own language . . . ”); Nevada, *supra* note 25 (“Foster parents and staff must . . . be able to communicate with any child placed in the foster home . . . ”); New Hampshire, *supra* note 25 (“The applicant, or at least one applicant if more than one person is applying together, shall . . . [b]e able to communicate in English”); Ohio, *supra* note 25 (“A foster caregiver or applicant is to be able to communicate with: (1) Any child placed in the home . . . ”); South Carolina, *supra* note 25 (“Applicants must be able to communicate with the licensing agency and health care and other service providers”); Texas *supra* note 25 § 749.2447(2) (“ensure that each foster parent: . . . [i]s able to communicate with the child in the child’s own language . . . ”); Virginia, *supra* n. 25, §40-141-60(A) (“The provider and any assistants left alone with the child shall be able to speak, read, and write in English . . . ”).

28. Alabama, *supra* note 25, § 660-5-29-.02(1) (“Foster Parents shall be able to: (i) Read and write”); Delaware, *supra* note 25, § 936-39.0 (“A licensee shall ensure an

applicant has functional literacy . . . "); Illinois, *supra* note 25, § 402.12(d) ("[C]onsider at least the following criteria, which are non-waivable . . . whether at least one applicant for foster home licensure can read and write . . . "); Iowa, *supra* note 25 ("The foster parents shall . . . Have functional literacy . . . "); Nebraska, *supra* note 26, ch. 3 § 3 ("At least one applicant must have Functional Literacy"); North Dakota, *supra* note 25 ("An applicant for licensure must . . . [h]ave functional literacy"); Ohio, *supra* note 25 ("A foster caregiver or applicant shall have functional literacy . . . "); South Dakota, *supra* note 25, § 10 ("At least one applicant in the home shall have the ability to read and write"); Texas, *supra* note 25 ("[E]nsure that each foster parent . . . meets basic competencies that would otherwise be met by a high school diploma or G.E.D., including basic reading, writing, and math.").

29. Connecticut, Conn. Dep't Child. & Fams., *Policy Manual* § 24-1, 3 (2019) ("A person may apply for a foster care license if he or she: is a resident of Connecticut"); Maine, *supra* note 25, § 2(B)) ("An applicant . . . must reside in Maine"); New Hampshire, *supra* note 25 ("The applicant . . . shall: (1) Be a legal resident of the state of New Hampshire"); South Dakota, *supra* note 25, §§ 67-42-05-06(1) ("The applicant or foster parent shall . . . reside in a single family home in South Dakota").

30. Alaska, *supra* note 25; Delaware, *supra* note 25, § 936-38.0; Florida, *supra* note 25.

31. Texas, *supra* note 25, § 749.2447(5) ("[The agency] must document the . . . [c]itizenship of the prospective foster parents.").

32. Illinois, *supra* note 25, § 402.12(c); Maine, *supra* note 25, ch. 16 § 9(2).

33. The following are examples of states with education requirements: New Hampshire, *supra* note 25 ("The applicant . . . shall . . . have a high school diploma or its equivalent"); Texas, *supra* note 25 (A licensing agency must "[r]equire that foster parents have a high school diploma or a G.E.D. high school equivalency" or meet "the basic competencies that would otherwise be met by a high school diploma or G.E.D.").

34. Alabama, *supra* note 25, § 660-5-29-.02(4)(c)(3) (IV).

35. Cal. Sen. Bill No. 1064 (2012).

36. Cal. Welf. & Inst. Code § 361.2.

37. Cal. Welf. & Inst. Code § 361.4.

38. Indiana, *supra* note 3.

39. *Id.* ch. 13, § 9.

40. *Id.* ch. 13, § 5.

41. N.Y.C. Admin. Child's Servs., *Immigration and Language Guidelines for Child Welfare Staff*, 2d ed., 1 (2020).

42. *Id.* at 7.



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