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DIVISION OF CHILD AND FAMILY SERVICES
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Manual Transmission Letter (MTL)
Family Programs Office: Statewide Child Welfare Policy Manual

MTL # 1605-01112019
01112019

TO: Timothy Burch, Administrator - Clark County Department of Family Services
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FROM: Reesha Powell, Deputy Administrator, Division of Child and Family Services

POLICY DISTRIBUTION:

Enclosed find the following policy for distribution to all applicable staff within your organization:

- 1605 Use of Waivers – Foster Care and Adoption
- FPO 1605A: Waiver Application for Foster Care or Adoption Standards

This policy is/was effective: 03/01/2019

- This policy is new. Please review the policy in its entirety
- This policy replaces the following policy(s): MTL # _____ - _____ Policy Name: _____
- This policy has been revised. Please see below for the type of revision:
- This is a significant policy revision. Please review this policy in its entirety.
 - This is a minor policy revision: (List page number & summary of change):
 - A policy form has been revised: (List form, page number and summary of change):
 - FPO 1605A – Waiver Application for Foster Care or Adoption Standard
This is a significant change place review form in its entirety.

NOTE:

- Please read the policy in its entirety and note any areas that are additionally required by your agency to be in compliance with the policy enclosed.
- This is an **All STAFF MEMO** and it is the responsibility of the person listed above to disseminate the policy enclosed to appropriate staff within his/her organization and to ensure compliance.
- The most current version of this policy is posted on the DCFS Website at the following address: <http://dcfs.nv.gov/Policies/>. Please check the table of contents on this page for the link to the chapter you are interested in.

1605 Use of Waivers – Foster Care and Adoption

Policy Approval Clearance Record

<input type="checkbox"/> Statewide Policy	<input type="checkbox"/> New Policy
<input checked="" type="checkbox"/> Administrative Policy	<input type="checkbox"/> Modified Policy
<input type="checkbox"/> DCFS Rural Region Policy	<input checked="" type="checkbox"/> This policy supersedes: 1002 Waivers – Foster Care and Adoption (12/11/2011)
Date Policy Effective:	03/01/2019
Attorney General Representative Review:	07/06/2018
DCFS Deputy Administrator Approval	09/24/2018
DMG Original Approval	12/11/2011
DMG Approved Revisions	01/04/2019

STATEMENT OF PURPOSE

Policy Statement and Purpose: Nevada Child Welfare Agencies will ensure investigations are conducted pursuant to requirements for foster care licensure per [NRS 424](#) and [NAC 424](#); and for adoptions per [NRS 127](#) and [NAC 127](#); and that the standards within the [NAC 127](#) or [NAC 424](#) are adhered to, as applicable. When it is determined to be in the best interests of a child, a Child Welfare Agency may request the Division of Child and Family Services (DCFS) Administrator to waive a specific standard to facilitate the placement or adoption of a foster child.

As written in the [Federal SSA, Sec. 471\(a\)\(10\)\(D\)](#): *a waiver of any standards established pursuant to subparagraph (A) may be made only on a case-by-case basis for non-safety standards (as determined by the State) in relative foster family homes for specific children in care*; additionally, per [NAC 424.800](#) and [NAC 127.420](#), the DCFS Administrator or DCFS Administrator’s designee may, on a case-by-case basis, waive a specific requirement of [NAC 424](#) – Foster Homes for Children or [NAC 127](#) – Adoption of Children, if the waiver is for the betterment of the foster care program and is in the best interests of a foster child or for a foster child’s placement into a permanent guardianship or adoptive home. A waiver shall not be in violation of any state or federal law.

The purpose of this policy is to educate Nevada Child Welfare Agencies in the procedures for requesting a waiver for certain foster care licensure and/or adoption standards as well as identify the fiscal ramifications of using a waiver, which can affect IV-E eligibility or non-eligibility for reimbursement of funding through the federal government.

AUTHORITY

Federal: [ASFA – P.L. 105-89](#); [Fostering Connections Act – P.L. 110-35](#); [45 CFR Ch. XIII 1356.30](#); [Social Security Act Section 471\(a\)\(10\)\(D\) & \(20\)\(A\)](#); [45 CFR 1355.20\(a\)](#)
NAC: [NAC 127.420](#); [NAC 424.800](#)
NRS: [NRS 127.281](#); [NRS 424.031](#); [NRS 424.033](#); [NRS 424.0335](#)

DEFINITIONS

Administrator: The Administrator of the Division of Child and Family Services (DCFS).

Adoption and Safe Families Act (ASFA): Federal law that emphasizes the safety of the child, shortened timeframes for permanent placement, provides for adoption incentives, addresses geographical barriers to adoption and lists outcome measures to assess state’s performance.

CCDFS: Clark County Department of Family Services.

DCFS: The Division of Child and Family Services of the Department of Health and Human Services of the State of Nevada.

Director: Child welfare agency Director in a county whose population is 100,000 or more.

Fostering Connections Act: Fostering Connections to Success and Increasing Adoption Act of 2008. A federal law that emphasizes permanency for children in foster care.

NAC: Nevada Administrative Code (regulations promulgated by the Nevada Revised Statutes).

Non-Safety Related Waiver: A waiver is categorized as a non-safety related waiver, when the measures or actions taken when implementing the waiver mitigate any concerns or risk that existed or may have increased due to such waiver.

NRS: Nevada Revised Statutes (as enacted by the Nevada Legislature).

Relative: A person related through birth, marriage or adoption.

Safety Related Waiver: A waiver is categorized as a safety related waiver if measures or actions have not been taken to mitigate concerns or risks to a child or if it is in violation of [SSA Sec. 471\(a\)\(20\)\(A\)](#) -- specified felony convictions.

Standards: Specific to this policy, the term "Standards" refer to the Nevada Administrative Code (NAC) [Chapter 424](#) or [Chapter 127](#).

State: An alternate word for the Division of Child and Family Services (DCFS) or Family Programs Office (FPO).

Variance: A variance is a mechanism to meet a standard for licensure in a way other than is specified in the NAC. The variance ensures the purpose and intent of the licensing standard is achieved and maintains the safety of the child. A variance constitutes an alternative equivalent method to meet a licensing standard.

WCHSA: Washoe County Human Services Agency

STANDARDS/PROCEDURES

Background and Waiver Procedures:

1. The [Child Welfare Act of 1980 \(P.L. 96-272\)](#) was amended by the [Adoption and Safe Family Act of 1997 \(ASFA\) \(P.L. 105-89\)](#) and the [Fostering Connections Act \(P.L. 110-351\)](#), which clarified that the health and safety of children served by the Child Welfare Agency must be paramount along with establishing specific timeframes to move children in foster care more quickly into permanency through safe reunification, adoption or kinship guardianship.
2. **Exception to Waivers:** Enactment of the 1997 ASFA law established the requirement for criminal and CANS background checks for all prospective foster and adoptive parents. The law also identifies certain felony convictions that prohibit eligibility of perspective foster or adoptive parents under Federal Title IV-E. An override of the below felony convictions by a child welfare agency will make a foster or relative home ineligible for federal reimbursement of foster care maintenance payments. These felony convictions include:
 - a. Child abuse or neglect;
 - b. Spousal abuse;
 - c. Any crime against children, including child pornography;
 - d. Any crime involving violence, including rape, sexual assault or homicide, but not including any other physical assault or battery; or
 - e. Physical assault, battery, and/or a drug-related offense, if the assault, battery, and/or drug-related offense was committed within the last 5 years.
3. The DCFS Administrator will not approve any [NAC 424](#) waiver if there has been an override by a child welfare agency of a felony ASFA convictions as listed in § 2.

4. The 2008 Fostering Connections Act codified federal regulations allowing states to waive non-safety related, foster care licensing standards on a case-by-case basis for **relatives** seeking to become foster parents, and to seek Title IV-E reimbursement for eligible children placed with such relatives ([Fostering Connections Act – P.L. 110-351 Sec. 104](#)). The Act specifically states that the “non-safety standards” are “as determined by the state.”
5. To comply with the “case-by-case” requirement of the Fostering Connections Act, any **relative** home that is applying for foster care licensure that does not meet the standards of the Nevada Administrative Code (NAC), may be approved for a “non-safety related waiver” if no safety concerns are identified or have been fully mitigated. Any requirement of the NAC, which identifies requirements related to substantiation histories found in the Central Registry, and requirements related to the residence, may be waived if it is determined that the use of a waiver does not impact the safety of the child. A relative foster home is eligible for federal reimbursement through Federal Title IV-E when issued a non-safety related waiver for the purpose of licensing.
6. The Nevada Revised Statute (NRS) [Chapter 424](#) cannot be waived due to it being state statute (law) established by the Nevada Legislature. The Nevada Administrative Code (NAC) [Chapter 424](#), developed through the executive branch, may be able to be waived, if it can be established that use of a waiver does not create any safety risk or threat to a child.
 - a. **NOTE:** Each Child Welfare Agency must develop an internal review and approval process to assess safety and to guide a decision on whether or not to issue a license when an offense listed in [NRS 424.031](#) is identified in the background of a potential foster parent applicant.

Only the adult licensee applicants may be approved through the permissive language in [NRS 424.033](#). All other adults, to include, employees of the foster home, a resident (18 years of age or older) of a foster home, or any other person who is 18 years or older who routinely supervises a child in a foster home (non-primary), who has been convicted of a crime listed in [NRS 424.031](#), are disqualified as participants for or within the foster home and must be terminated or removed if needed (see [NRS 424.0335](#)).

Considerations: Safety vs. Non-Safety Related Waivers:

1. Foster care and adoption regulations are based on minimum standards for safety and child well-being. Standards provide the foundation for the establishment of a safe and nurturing environment by the foster, adoptive and relative caregivers. Adherence to standards assists in reducing the risk of physical or emotional harm to a foster child.
 - a. Some standards include regulations that directly address the health and safety of a child.
 - b. Other standards may support the overall well-being of a child and do not directly impact the health or safety of the child.
2. Prior to requesting a waiver, the licensing worker must determine if the NAC requirement to be waived is related to a child’s health/safety or overall wellbeing:
 - a. If it is a health or safety standard, the licensing worker must determine specifically what steps and/or actions must be taken to mitigate any health or safety concerns for the child. Documented evidence of the licensing worker’s mitigating actions must be provided along with the waiver request.
 - b. If the waiver being requested is determined to only address a wellbeing standard that does not directly or indirectly impact the child’s health or safety, mitigating evidence is not required.
3. It is also important for the licensing worker to scrutinize from all aspects when waiving a standard, to determine if any other standards may be affected based upon the original waiver, which could create additional potential for risk/harm to a child(ren). If so, those standards must also be addressed in the original waiver along with providing documented evidence mitigating any additional risks with the original waiver request.

NOTE: See EXAMPLES of waivers at the end of this policy document.

Other Considerations:

When determining to waive any NAC requirement that a relative is unable to meet, the following types of information and questions should be considered:

1. Are there particular values and advantages the caregiver's home brings to the child(ren)?
2. Is there any jeopardy to health or safety by placing the child(ren) in the home?
3. Are there other equally suitable relative(s) or caregiver(s) that would not require a waiver?
4. Was the child(ren) already placed in the home based upon an assessment of safety that yielded no safety concerns at the time of placement?
5. How long has the child(ren) been in the home?
6. Does this placement ensure extracurricular activity, education, cultural, sibling visitation (if applicable) and/or religious needs are met?
7. How does this placement option assist in achieving permanency for the child(ren)?
8. Would siblings have to be separated to be placed in an alternative home without the use of a waiver (if applicable)?
9. If the waiver is not approved, what will be the alternative?

Use of a Variance instead of a Waiver:

1. Use of a variance is an alternative means to meet a licensing standard rather than requesting a waiver. Use of a variance rather than a waiver allows the licensed placement to remain eligible for IV-E reimbursement, regardless of caregiver type (relative, fictive kin, or non-relative).
2. To ensure appropriate use of variances, each child welfare agency needs to provide to FPO a copy of the documentation for each licensing variance issued to include the specific alternative methods used to meet the intent of the licensing standard.

NOTE: See EXAMPLES of variances at the end of this policy document.

Submitting the Waiver Request for Approval by the DCFS Administrator:

1. If, after assessment of the afore mentioned requirements the local Child Welfare Agency deems the relative home is safe and has compiled documented evidence of all mitigating factors to ensure child safety, the local Child Welfare Agency shall submit an electronic waiver application using FPO 1605A: Waiver Application for Foster Care or Adoption Standards form attached to statewide policy 1605 Waivers – Foster Care and Adoption.
2. The Child Welfare Agency must include in the Waiver Application a comprehensive written narrative which identifies all actions and/or measure that will be taken by the caregiver to mitigate any potential safety concerns surrounding the use of the waiver. Mitigating safety information will provide documented verification that a waiver can be categorized as a non-safety waiver for a relative home or to support the use of a waiver in a non-relative foster home.
 - a. When the DCFS Administrator requires additional information to validate the child(ren)'s safety, based upon questions that arise from reviewing the waiver request, DCFS will directly contact the person submitting the waiver request to DCFS.
3. The waiver shall be submitted to the DCFS Administrator or designee via email at waiverrequest@dcfs.nv.gov. The DCFS Administrator, or designee, will then review the information and make a determination within three (3) business days. The prospective applicant should be notified in writing of any licensing decisions made on their behalf, within two (2) business days of the decisions being made.
4. **Note**, per [NAC 424.185](#), the decision of the licensing authority to deny an initial application may be subject to review by the Administrator or designee. However, such denials are not subject to the appeal process. Foster home licensure occurs at the discretion of the licensing authority.

Eligibility for IV-E Reimbursement:

1. A waiver can be approved for a relative or non-relative foster and adoptive parents. The safety and best interest of the child is the paramount concern in the decision making to submit a waiver for final approval by the Administrator.
 - a. Waivers eligible for IV-E reimbursement –
 - i. A waiver for non-safety standards for a **relative** caregiver
 - b. Waivers **NOT** eligible for IV-E reimbursement include:
 - i. A waiver for non-safety standards for non-relative or fictive kin caregivers
 - ii. A waiver for safety-related standards for relative, fictive kin, or non-relative caregivers

If the foster home is not IV-E eligible, foster care maintenance costs will be the responsibility of the local Child Welfare Agency requesting the waiver.

- c. The use of variances does not impact IV-E eligibility or reimbursement.

Child Welfare Agency Action: Procedures:

1. The Child Welfare Agency directors in WCHSA, CCDFS, and the Rural Region Managers have designated authority to deny a waiver and discretion to not forward to the Administrator for approval. However, when a waiver is authorized for approval, the waiver must be submitted to the DCFS Administrator for final approval and signature.
2. The Child Welfare Agency internally will utilize a structured review process to ensure each waiver request meets the mandatory safety requirements to ensure child safety in a home licensed through the use of a waiver. (See attachment **FPO 1605B – Waiver Structure Review Process**),
3. All waiver requests submitted to the DCFS Administrator **MUST** be submitted on a form designated as an attachment to this policy (refer to attachment FPO 1605A).
4. Placement of the child and/or foster care licensure of the home is not to occur until the Child Welfare Agency receives an approved waiver back from the DCFS Administrator.
 - a. **Exception:** Placement of a child can occur prior to waiver approval only in the case of a non-licensed relative or fictive kin who has been approved as an unpaid placement and has passed the CPS home safety inspection and required background clearances. Submission of a waiver request does not guarantee licensure approval. (See attachment **FPO 1605C – CPS Emergency or Safety Plan Placement Requirements**)
5. When utilizing a wavier for relative licensure, the actual relative foster home license must specify the name of each relative child placed in the home.
6. The Child Welfare Agency shall update the need for a waiver at minimum annually, or at any earlier point that a waiver is no longer needed or valid. The UNITY licensing windows must be updated to reflect all changes to support IV-E funding and reviews.

Timeline: As required per policy and licensing.

Documentation: Documentation of waiver requests and dispositions for each request shall be maintained for purposes of case and quality assurance reviews.

Case File Documentation (paper)

File Location	Data Required
<ul style="list-style-type: none"> • Written information will be located in adoption and foster home licensing files. 	<ul style="list-style-type: none"> • Applications for waiver; attachments cited on the application and required for waiver review and approval consideration; written disposition of the waiver request (approval/denial by DCFS Administration).

UNITY Documentation (electronic)

Applicable UNITY Screen	Data Required
<ul style="list-style-type: none">• CFS 447 Adoption Approval Maintenance Window• CFS 175 Provider/Facility License Maintenance Window	<ul style="list-style-type: none">• Date criminal waiver approved by DCFS.• Date waiver issued. <p>Note in "Explain" box for each screen, the nature of the waiver granted.</p>

JURISDICTIONAL ACTION

Supervisory Responsibility: Review foster home licensing and adoption home studies and conduct case file reviews to ensure compliance with this policy.

Federal Reports and/or Reviews:

1. The Child Welfare Agency will maintain their records in the licensing case file and in UNITY to demonstrate compliance with all requirements.
2. The Child Welfare Agency will update DCFS when a waiver is revised or dismissed within five (5) business days. Notification is to be provided through email at waiverrequests@dcs.nv.gov.

STATE RESPONSIBILITIES

Review Process:

1. FPO staff, familiar with NAC 424 standards will review all waiver requests within two (2) business days.
2. If additional information is required to fully understand the ramifications of the request for the DCFS Administrator to make an informed decision, FPO staff will contact the child welfare agency staff whom submitted the waiver to request additional information.
3. Once all required written information is obtained to understand the implications of the waiver request, it will be forwarded to the DCFS Administrator for a decision.
4. The DCFS Administrator or designee will make a determination within three (3) business days.
5. The prospective licensee should be notified by the Child Welfare Agency in writing of any licensing decisions within two (2) business days of the decision being made.

Federal Reports and/or Reviews:

DCFS will maintain copies of documents used to determine approval or denial and IV-Eligibility/Non-IV-Eligibility, to demonstrate compliance with the requirement for use of non-safety standard waivers for the purposes of reports and on-sight reviews.

POLICY CROSS REFERENCE

Policies: N/A

History and Updates: This policy supersedes policy 1002 Waivers – Foster Care and Adoption effective date 12/11/2011, policy was reformatted 12/14/2007, and original DCFS Administrator approval was 03/31/2004.

ATTACHMENTS

- a. FPO 1605A – Waiver Application for Foster Care or Adoption Standards

WAIVER EXAMPLES

Examples of various waiver requests:

1. A safety issue that cannot be mitigated is an **unacceptable waiver**:
 - A waiver from [NAC 424.375\(1\)](#) would create a safety issue. This standard does not allow the use of a stairway hall storage room as a bedroom for a foster child, regardless of the size of the space. Use of such a room would increase the risk of harm to a child during an emergency or fire, due to having only one door and no window or exit to the outside of the home to use as an alternate escape route. A second standard, [NAC 424.370\(2\)](#) requires a window exit from a bedroom. The ability to mitigate the risk created by issuing such a waiver would be negligible at best.
2. A standard that is not specific to safety is an **acceptable waiver** –
 - NAC 424.375(6) requires a foster child's bed to be elevated off the floor. If this standard was waived, it would be considered a non-safety related standard as it does not actually increase the risk of harm to a child.
3. A standard is specific to safety, but may be an **acceptable waiver** –
 - NAC 424.190(1) Requires that an applicant with a substantiated CANS must be denied a license. If placing with a relative regardless of substantiated CANS, the CW agency needs to have documented justification of why the CANS substantiation does not pose a risk to the child's safety, as the risk is mitigated based upon multiple factors: Substantiation is at least 10 years old, the use of drugs/alcohol were significant to the finding of abuse or neglect and the relative applicant has now been sober for the past 8 years, routinely attends AA, has been employed for a number of years with the same employer, has references from his/her church pastor and members, which he/she has attended for the past 5 years, etc. These factors demonstrate that poor past decision making has been mitigated and stabilized through behavior change and a change in lifestyle.

VARIANCE EXAMPLES

Examples of using a variance may include, but are not limited to:

1. [NAC 424.130\(5\)](#): A foster home uses an individual well for their home water system and it is determined the water is safe for all purposes except for drinking. A variance could be issued that the foster home will use bottled water for drinking and cooking. Use of this variance allows the foster home to meet the standard for drinking water in an alternative way.
2. [NAC 424.375\(5\)](#): The foster parents sleep in the master bedroom on the first floor and all other bedrooms are on the second floor, therefore the foster child, who is under the age of 5, would need to sleep in a bedroom on the second floor. If there is another responsible adult that sleeps in another bedroom on the second floor (adult resident or adult relative), then a variance could be issued that would allow this other adult to meet the immediate needs of the child, along with alerting the foster parent to any unresolved needs. Use of a variance allows the foster home to still meet the standard of a responsible adult sleeping on the second floor, who is able to meet the child's immediate safety and wellbeing, if the need should arise.
3. NAC [424.160\(4\)](#): Requires that care cannot be provided for more than two children under 18 months of age or four children under age 5, including the foster parent's own children. When this standard cannot be met, a variance can be used as long as the intent of the standard in regards to child health and safety are met through alternative means. In this particular variance, several other standards must also be taken into consideration to ensure the intent is met. If the other standards are not taken into consideration to ensure they are being met, the variance could not meet the intent of the original standard. Other standards would include, but are not limited to:
 - NAC 424.375 Sleeping accommodations
 - NAC 424.490 Transportation of foster children.
 - NAC 424.615 [\(1\)\(a\)](#) Plan for responding to emergencies