Undocumented Caregivers in Texas

Texas has approximately 1.4 million undocumented immigrants in its population according to the Migration Policy Institute,[1] second only to California. One of the ways in which this immigrant population intersects with the child welfare system is when relatives of children in DFPS conservatorship wish to provide care, but have concerns about disclosing their own immigration status.

In accordance with federal law, most states prioritize placement of foster children with relatives or fictive kin over non-relatives. Federal law does not prohibit individuals with undocumented immigration status from becoming licensed foster care providers; however, there are some circumstances in which a foster care provider's immigration status may preclude the use of federal foster care funding to care for the child.[2]

Texas law does not require proof of citizenship or documented immigration status to become either a relative caregiver or a verified foster care provider. However, DFPS policy requires that a foster parent be either a U.S. citizen, permanent resident or other qualified alien[3], and individual child placing agencies may have relevant policies as well. Certain other Texas statutes and policies may present challenges or barriers to undocumented caregivers as well. For example, all states require that caregivers, whether licensed or unlicensed, undergo background checks. Background checks typically require the individual 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.[4]

To become a verified foster parent in Texas, a caregiver must provide certain information to the child placing agency as part of the verification process. Child placing agencies are required to document the language spoken by the caregiver seeking verification as a foster parent, their citizenship status, the length of time spent at their current residence, and whether they have a high school diploma or GED.[5] Although the child placing agency evaluation must include the caregiver's citizenship status, the regulation does not specify what that status must be.

For more information about undocumented caregivers who provide care for children in DFPS conservatorship or to see how Texas law and policy governing undocumented caregivers compared to other states, the ABA Center on Children and the Law has published a guide to the implications of immigration status for foster care licensure which can be found at the links below.

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[1] http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/TX

[2] 8 U.S.C. § 1613(c)(2)(F); Administration of Children and Families, Child Welfare Policy Manual, 8.4B, Question 7.

[3] CPS Handbook 7226.1.

[4] The Texas Department of Public Safety accepts a variety of identity documents for criminal background checks, including a foreign passport or permanent resident card. https://www.dps.texas.gov/administration/crime_records/docs/ProveIdForFingerprinting.pdf

[5] 40 Tex. Admin. Code § 749. 2447 (5)

Summary:
https://www.americanbar.org/content/dam/aba/administrative/child_law/Immig-FosterLicensing-SUMMARY%20June%202017.authcheckdam.pdf

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https://www.americanbar.org/content/dam/aba/administrative/child_law/Immig-FosterLicensing-June%202017.authcheckdam.pdf

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