


<b>OCFP</b> <b>Office</b> <b>of</b> <b>Child and</b> <b>Family</b> <b>Policy</b>	<b>Department of Children and Family Services</b>	
	<b>Index No: 2009.02</b>	<b>Issuance Date: March 11, 2009</b>
	<b>Origin of Request: Office of Child and Family Policy</b>	
	<b>Distribution: Licensing Staff, Administrative Staff (A,L,P)</b>	
	<b>Key Words: 89 IAC 402, Licensing Standards for Foster Family Homes, Adoption, Interstate Compact</b>	
	<b>Approved by:</b> 	

### Interpretation

**Questions:** Are licensed foster family homes completing a private adoption subject to the capacity requirement of Rule 402? Are licensed foster family homes completing a private international adoption when the child is brought to this State for the purpose of adoption subject to the capacity requirement of Rule 402?

**Applicable To:** Foster Family Homes

**Policy Citation:** Adoption Act

Except for children placed with relatives by the Department of Children and Family Services pursuant to subsection (b) of Section 7 of the Children and Family Services Act, placements under this Act shall comply with the Child Care Act of 1969 and the Interstate Compact on the Placement of Children. Placements of children born outside the United States or a territory thereof shall comply with rules promulgated by the United States Department of Immigration and Naturalization.

Rules promulgated by the Department of Children and Family Services shall include but not be limited to the following:

(c) In the case of any foreign-born child brought to the United States for adoption in this State, the following preadoption requirements shall be met:  
(3) Verification that the adoptive family has been licensed as a foster family home pursuant to the Child Care Act of 1969, as now or hereafter amended, shall be provided.

(Source: Adoption Act 750 ILCS 50/4.1)

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**Child Care Act of 1969**

"Foster family home" means a facility for child care in residences of families who receive no more than 8 children unrelated to them, unless all the children are of common parentage, or residences of relatives who receive no more than 8 related children placed by the Department, unless the children are of common parentage, for the purpose of providing family care and training for the children on a full-time basis, except the Director of Children and Family Services, pursuant to Department regulations, may waive the limit of 8 children unrelated to an adoptive family for good cause and only to facilitate an adoptive placement. The family's or relative's own children, under 18 years of age, shall be included in determining the maximum number of children served. For purposes of this Section, a "relative" includes any person, 21 years of age or over, other than the parent, who (i) is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, great-uncle, or great-aunt; or (ii) is the spouse of such a relative; or (iii) is a child's step-father, step-mother, or adult step-brother or step-sister; "relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. The term "foster family home" includes homes receiving children from any State-operated institution for child care; or from any agency established by a municipality or other political subdivision of the State of Illinois authorized to provide care for children outside their own homes. The term "foster family home" does not include an "adoption-only home" as defined in Section 2.23 of this Act. The types of foster family homes are defined as follows:

(c) "Adoptive home" means a foster family home which receives a child or children for the purpose of adopting the child or children.

(Source: Child Care Act of 1969 (225 ILCS 10/2.17))

"Adoption-only home" means a family home that receives only children whose parents' parental rights have been terminated or surrendered for the purpose of adoption only.

(Source: Child Care Act of 1969 (225 ILCS 10/2.23))

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**Rule 402, Licensing Standards for Foster Family Homes**

402.12 (b) An individual may be allowed to share the living arrangements only at the discretion of the supervising agency. The foster family is responsible for reporting to the supervising agency that an individual may be sharing the living arrangements prior to the individual moving into the home or prior to licensure. The individual will be subject to the same requirements as other members of the household, such as health certification and background checks as required in 89 Ill. Adm. Code 385 (Background Checks). The license capacity will be redetermined based on the new family composition.

(Source: Amended at 30 Ill. Reg. 6321, effective March 31, 2006)

402.15(e)(1) A licensed foster family home may receive an expanded capacity license to care for a maximum of eight children (including the foster parent's own children under age 18 and all other children under age 18 receiving full-time care) in order to effect an adoptive placement. The Director of the Department of Children and Family Services may waive in writing the maximum number of eight children to effect an adoptive placement provided the following criteria are met:

- A) a licensed child welfare agency or the Department proposes to place an additional child or children in the home for the purpose of adoption;
- B) a licensed child welfare agency or the Department has documented in the child's case record that this home is the most appropriate choice for an adoptive placement and is consistent with the best interests and special needs of the child or children;
- C) the foster family is otherwise in compliance with the licensing requirements of this Part and can meet licensing standards for the additional child or children; and
- D) the foster family or supervising agency has requested, in writing, that the Director waive the limit of eight children under the age of 18 so that an additional child or children may be placed in their home for purposes of adoption.

(Source: Amended at 22 Ill. Reg. 205, effective December 19, 1997)

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402.18 An adoptive home shall be licensed as a foster family home before placement of an unrelated child for adoption.

(Source: Amended at 20 Ill. Reg. 1589, effective January 10, 1996)

402.29 Unless prohibited by law, the Director of the Department may waive, or may conditionally waive, any requirement under this Part, if doing so is in the best interest of the foster children.

(Source: 26 Ill. Reg. 2624, effective February 11, 2002)

**Discussion:**

Individuals and married couples who are required by law or rule to have a valid foster family house license must meet the requirements set forth in Rule 402, Licensing Standards for Foster Family Homes. The family must comply with the licensing standards as long as they hold the license.

Unless otherwise required by law or rule, a family may privately adopt a child without being licensed as a foster family home. A non-relative family wishing to adopt a child under the guardianship of the Department, a family wishing to adopt a foreign-born child in the State of Illinois or a family completing a private adoptive placement in Illinois must be licensed as a foster family home.

Due to these differences for families wishing to adopt a child, some licensed foster family homes have questioned whether they should be bound by the capacity requirements of Rule 402 if they complete a private adoption.

The capacity of the home is reevaluated when there is any change in the number of children in the home, birth, death, and so forth. The licensing standards have provisions for granting waivers of the capacity requirements and a licensed family foster home is required to comply with the standards to retain its license.

**Response:**

**Licensed foster family homes completing any private adoption are subject to the capacity requirement of Rule 402.**