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Foster Parent Liability Risk

Abstract

There are more than 400,000 children currently placed in foster care in the U.S. Many of these children are cared for by non-relative adults who serve as foster parents. The foster parents are trained, evaluated and licensed by state authorities. In addition to the emotional and financial challenges, foster parents also face significant risk. For example, foster parents could be held responsible for the actions of their foster children. If a foster child is accidentally injured while in their care, foster parents could be sued by the biological parent. A homeowners policy provides limited protection to foster parents in these scenarios. Most states have enacted some form of protection for foster parents, though the types of programs vary widely. Thirteen states do not have any protection for foster parents. The purpose of this paper is to raise awareness and provide an overview of the programs to make the topic more understandable to legislators and regulators facing this issue.
Introduction

Raising children under the best of circumstances can be a challenging situation. Taking responsibility for someone else’s child, about whom you often know very little, is even more challenging. As a society, we are encouraged to serve as foster parents, but lost in the midst of the numerous training hours for a foster parent license is a candid conversation about foster parents’ liability exposures.

Foster parents could face claims for damages resulting from the actions of their foster child, or for accidental injury to the foster child while in their care. Many foster parents assume they have protection against negligent acts under their homeowners policy. This is not surprising given the complex nature of the problem and the inadequate advice provided to foster parents. For example, statements provided by foster care agencies and similar organizations across the country when advising foster parents include: “Foster parents are responsible for obtaining their own liability insurance”; “Some homeowners [policies] may have endorsements to protect foster parents”; and “Check with your insurance carrier.”

In this paper, we will first review the potential liability risk and provide examples from past cases. We will then examine the homeowners policy and identify the areas where coverage exists and where it is excluded. It is our opinion that there likely is coverage for foster parents when held responsible for damages caused by the actions of foster children. However, because a foster child is considered an insured by definition under the homeowners policy, injuries sustained as a result of the named insured’s (foster parents) negligence are not covered. Thus, when these actions are brought by the biological parents of the foster child, the cost of litigation and defense is left to the foster parents.

With nearly half of the 400,000 foster children in the system living in non-relative foster care homes and the litigious nature of our society, the liability exposure across the county is vast.1 This exposure is significant and requires the action of state legislators and regulators to develop a solution. Many states have already taken action to at least partially protect foster parents, though the form and effectiveness of the solution varies considerably. Other states have not addressed the issue at all, and foster parents are completely unprotected. We will provide an overview of the state programs and relevant legislation.

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Background and Scope of the Liability Risk

In this paper, we focus on two scenarios. The first is on lawsuits that can be filed against the foster parent for the acts of the foster children. For example, the foster child is playing with matches and accidently burns down the neighbor’s house. The neighbor may decide to sue the foster parents for the damages. In the section below, we discuss the validity of this type of action.

The second scenario is on lawsuits filed against foster parents for accidental injuries to the foster children. For example, the foster child is playing in the home and injures his head when he falls down a flight of stairs. The resulting traumatic brain injury leaves him permanently disabled, and the biological parent sues the foster parents.

Lawsuits Against Parents for Act of Child

Under common law, parents are typically not automatically held liable for damages caused by their children, or they are protected by the parental immunity doctrine, which bars a child from bringing a lawsuit against a parent for tortious conduct. On the other hand, parents can be held liable in situations involving knowledge of a particular behavior, negligent supervision and statutory liability (Hollister, 1982). In a recent case, V.B. v. Flemington-Raritan Regional School District, a boy was bullied from the fourth grade through the 10th grade. The boy and his parents brought a lawsuit against the school. The school sought to include the parents of the bullying children in the lawsuit, citing there was evidence the parents were aware of the negative behavior but failed to act. The New Jersey Superior Court agreed with the school and allowed the parents to be included in the action.

While some courts are reluctant to hold parents responsible for the direct actions of their children, many courts are willing to hold parents responsible for their actions as a parent. Most states will impose liability for negligent supervision on parents who fail to exercise their duty of care while monitoring their children. Additionally, liability may be imposed if parents are aware of certain dangers, such as firearms in the home, and fail to secure that risk. The Kentucky Supreme Court once stated, “It is not negligent supervision per se for parents to fail to monitor their teenager 24 hours a day when the parents are not aware of, and have no reason to be aware of, any particular risk necessitating such intensive monitoring. Parents owe no duty to third parties to supervise or control their minor child to prevent the child from harming others unless the parents know, or should know, of the need and opportunity to exercise such control, and the parents have the ability to exercise such control. The mere fact that the parents do not have the

ability to exercise control is not, in and of itself, proof that the parents violated a
duty to control their child to prevent him from harming others."

Many states impose liability for negligent supervision by statute. Almost
every state has parental responsibility laws that allow the victim to sue the parents
for the negligent acts of their children (Matthiesen, Wickert & Lehrer, 2014). The
purposes of these laws are to increase the likelihood victims will be compensated
for their injuries, as well as encourage parental control and responsibility.

In Abrams v. Maloney, a foster child struck another foster child living in the
home. The parents of the child sued the foster child, as well as the foster parents
under a statute that allowed parents to be held liable for willful and malicious
conduct of their minor child. In representing the foster parents, the state sought
summary judgment claiming that liability should be limited to parents and
guardians not to include foster parents. The court refused the state’s argument,
citing that they could not as a matter of law fall to the purely linguistic
interpretation of the word “guardian” given the fact that the whole purpose of the
statute was to place an obligation on parents and guardians to control minors
entrusted to their care so they would not harm others.

In another recent case in Illinois, a 12-year-old foster child set several vehicle
fires, causing more than $200,000 in damage. One couple, who lost two cars and
acquired more than $37,000 structural damage to their home, filed suit against the
foster parents, citing negligent supervision of the foster child (Ziezulewicz, 2013).

While the exposure to liability as a natural parent seems vast, imagine the
liability exposure of a foster parent in these situations. Many children entering into
foster care have developmental delays and serious emotional problems, and it may
seem unfair to hold foster parents responsible for a foster child’s conduct that they
have had under their watch for, on average, less than two years (U.S. Department
of Health and Human Services, 2013).

Lawsuits Resulting from Injuries to Foster Children

As discussed earlier, foster parents face a liability risk from accidental injuries
to foster children while in their care. In order to sue for negligence, one element
the plaintiff must show is that the person breached a duty of care. Usually, the duty
of care involves acting as a reasonable person, but sometimes it encompasses
special affirmative duties as a result of special relationships such as the parent-
child relationship. The plaintiff must also show that the actions of the person were
the actual and foreseeable causes of the plaintiff’s injuries. Finally, the plaintiff

3. Hugenberg v. West American Insurance Company, NO. 2004-CA-001472-MR (April 7,
2006).
4. CONN. GEN. STAT. §52-572 (1955), which states that “the … parents or guardian …
of any emancipated minor … shall be liable for any injuries caused by the willful and malicious
conduct of the minor.”
5. Abrams v. Maloney, 19 Conn. L. Rptr. 410 at 412. Foster child 1 struck another child
living in the home. The parents of the other child sued child 1 and the foster parents pursuant to
CONN. GEN. STAT. §52-572 (1955).
has to show damages such as property damage, physical injury, pain and suffering, or a combination thereof. With few exceptions, a negligence cause of action may be brought against anyone, even if the tortfeasor is the plaintiff’s parent (Cross & Miller, 2012).

In *Merchants Mutual Ins. Co. vs. Artis*, the Artis’ foster home caught on fire, resulting in the death of four of 17 foster children. The fire was intentionally set by an 11-year-old foster child living in the home. She claims she started the fire in retaliation against another resident (Artis’ nephew) who had slapped her a few weeks prior (Landry & Terry, 1989). The estates of the children sued the U.S. Department of Health & Human Services (HHS), as well as the Artises, and a judgment in the amount of $1.6 million was awarded.

In cases where the child is allowed to sue the parents, the parents may have at least partial immunity from lawsuits filed by their children. Parental immunity dates back to the late 19th century, when the Supreme Court of Mississippi held family harmony would be disrupted by allowing a child to bring suit against his or her parent (Hollister, 1982). In the following years, several other courts came to agree with the application of parental immunity but for different reasons. In *McKelvey v. McKelvey*, the court relied on a parent’s common law right to control and chastise his or her child. In *Roller v. Roller*, the daughter, in seeking damages from her father’s sexual improprieties, was denied based on the possibility that the father could inherit her award should she precede him in death. Over the years, all but eight states adopted the parental immunity doctrine in some form (Hollister, 1982). Courts today often find the doctrine difficult to apply consistently. However, an even more challenging issue arises when attempting to apply the doctrine to nontraditional parental relationships such as foster parents. Generally, the doctrine does not apply to foster parents for reasons mentioned later in the paper.

**Coverage Under the Homeowners Insurance Policy**

Foster parents are often encouraged to obtain coverage under their homeowners policy or seek an endorsement. We reviewed the policy language and consulted with experts in the North Carolina Department of Insurance (NCDDOI), the Independent Insurance Agents of North Carolina (IIANC), and the

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7. As part of the settlement structure, the Estates gave up their rights to pursue the Artis’ personal assets in exchange for an assignment of the Artis’ claims against their insurance company, Merchant’s Mutual. See *Merchants Mut. Ins. Co. vs. Artis*, 907 F.Supp. 886, 889.
8. 77 S.W. 664 (1903).
9. 79 P. 788 (1905).
Independent Insurance Agents & Brokers of America (IIABA). We conclude that under the first scenario of lawsuits against parents for the acts of foster children, there is likely coverage under the ISO Special Form Homeowners policy. The form provides protection in Section II – Liability, Coverage E – Personal Liability: “If a claim is made or a suit brought against an insured for damages because of bodily injury or property damage caused by an occurrence to which this policy applies…”

The key point is whether the foster child meets the definition of an insured and thereby has coverage under the insuring agreement. According to policy definitions, the term "insured" includes “other persons under the age of 21 and in the care of any person named above.” Because foster children are 18 years or younger and are in the care of the named insured, foster children are an insured under the definition.

The severability of insurance condition often comes up in conjunction with the exclusion to liability coverage for bodily injury or property damage that is either expected or intended by an insured (Richardson, 2011). Courts vary on their application of the condition but generally hold that while the child’s actions are intentional, the parents’ actions are a result of negligence and, therefore, extend liability coverage to the claim against the parents.11

Although it initially appears that the foster child meeting the definition of an insured is a good thing, it actually creates a significant gap in coverage for the second scenario focusing on lawsuits resulting from injuries to foster children. The foster parents would not be protected under the homeowners policy based on the Bodily Injury to Insured exclusion. 12 The Insurance Services Office (ISO) homeowners form states the following:

10. The relevant policy language is consistent for all of the commonly used ISO Homeowners Insurance Policy Forms (HO-3 (Special Form), HO-4 (Renters Insurance), and HO-6 (Condo Unit Owners)).

11. In Catholic Diocese of Dodge City vs. Raymer, 825 P.2d 1144 (Kan. Ct. App. 1992), the insured’s child vandalized the school, and the school sued the parents. The appeals court held that the severability of insurance clause implied that the policy exclusions be applied only against the insured who committed the excluded act. In Worcester Mutual Insurance Company v. Marnell, 496 N.E.2d 158 (Mass. 1986), the insured’s son had a party, got drunk, drove his car and caused an accident, killing another person. The estate for the decedent sued the parents for negligent supervision of their son. The vehicle was owned by the son; therefore, the motor vehicle exception did not apply, and the parents were entitled to defense. The current reading of the motor vehicle exception includes negligent supervision. Some courts find the expected or intended exclusion “clearly and unambiguously expresses an intention to deny coverage to all insured when damage is intended or expected as a result of the actions of any insured.” See Chacon v. American Family Mutual insurance Company, 788 P.2d 748, 752 (Colo.1990).

12. In Merchants, the court upheld the insurance company’s denial of coverage due to the “resident insured” exclusion citing that the plain meaning and common meaning of “in the care of” and “resident” makes it clear that the foster children were insureds under the Artis’ homeowners policy and, thus, not entitled liability coverage and defense.
“This exclusion also applies to any claim made or suit brought against you or an ‘insured’ to:

a. Repay; or
b. share damages with;

another person who may be obligated to pay damages because of ‘bodily injury’ to an ‘insured.’”

The American Association of Insurance Services (AAIS) form contains the following similar language: “liability coverage is excluded for: any claim made or suit brought against an ‘insured’ seeking 1) reimbursement of; or 2) contribution toward; damages for which another person may be liable because of ‘bodily injury’ to an ‘insured.’”

In summary, because the foster child meets the definition of an insured, coverage is likely provided for claims resulting through his or her actions. However, there is no coverage provided to the foster parents should they be sued for accidental injuries to the foster child.  

### State Programs to Protect Foster Parents

Because of the lack of private insurance coverage, many states have taken action to protect foster parents. Not all states have addressed the issue, and the scope of the programs varies considerably. Our research has found that these programs can be generally grouped into the following four different approaches:

- The purchase of a foster parent liability policy to provide protection for licensed foster parents.
- The state provides a trust to indemnify foster parents for their losses.
- The state offers foster parents immunity from civil liability unless in the presence of gross misconduct, such as sexual improprieties.
- Foster parents are treated like state employees. Generally, this change in the statutory definition of who constitutes a state employee allows the foster parent to seek refuge against civil liability, absent gross negligence or conduct outside the scope of their job duties.

Table 1A and Table 1B provide a summary of state programs. (Refer to the Appendix for a more detailed look at state programs.)

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13. Although we found many recommendations to obtain an endorsement, there is no appropriate endorsement at this time. The ISO Technical Affairs Committee is reviewing this topic and conducting preliminary research. It is set as a formal agenda item for 2015.
Table 1A and Table 1B: Summary of State Programs

Table 1A: Foster Parent Coverage for the Foster Child’s Negligent Acts

- Insurance: 48%
- Self Insurance/Trust Fund: 17%
- Parental Immunity: 8%
- State Employee Protection: 2%
- None: 25%

Table 1B: Foster Parent Coverage for Their Negligent Acts

- Insurance: 45%
- Self Insurance/Trust Fund: 18%
- Parental Immunity: 6%
- State Employee Protection: 8%
- None: 23%
Overview of State Models to Provide Protection to Foster Parents

Foster Parent Liability Insurance

Foster parent liability policies are available for purchase by group homes, foster agencies or state/local governments. The policies provide defense and sums that foster parents are deemed to be legally liable for bodily injury and property damage. The policies are provided through both the admitted market and the excess and surplus lines market.

In South Carolina, the Department of Social Services (DSS) purchases a policy from Princeton E&S. The policy is offered on a claim-made basis and has many of the same exclusions one would find in a typical general liability policy and an exclusion specifically for criminal and dishonest acts. The occurrence limit is $300,000 per person.

In Oklahoma, liability insurance is provided to foster parents for damages incurred by the child in the custody of the Oklahoma Department of Human Services (OKDHS). According to the OKDHS website, the insurance provided has two parts: 1) for liability claims made against the foster parents; and 2) for property damage caused by a foster child. Coverage is, of course, subject to the conditions and exclusions contained in the insurance policy. James River Insurance Company (excess and surplus) provides the coverage.

The decision for a state to purchase liability insurance protection for foster parents is prompted by several factors. First, the decision may be governed by state law. Second, a proactive state risk manager may provide the necessary leadership. Lastly, states have an ongoing challenge in finding enough properly qualified foster parents, and this can be used a recruiting tool. In fact, the state of Oklahoma recently enacted legislation that promotes the provision of liability insurance.14

One of the significant barriers to other states adopting this approach is the cost. Although we had difficulty obtaining premium information, we did learn that in South Carolina, the premium is approximately $230,000 annually. The cost is a barrier in an era of limited state budgets and cutbacks to social services.

Trust Fund

Several states have a trust that is supported from funds appropriated for the operation of state departments or agencies and often controlled by a financial

These funds are either set aside for potential claims or used in part to purchase an insurance policy. As long as the trust funds are adequately financed, this approach provides appropriate protection to foster parents. However, the protection is not adequate if there are also low limits on the recovery amount (Alaska & New York).

In Maine, the Department of Health and Human Services provides financial support to a self-insurance fund administered by the Bureau of General Services – Risk Management Division. The self-insurance program began in 1989 following an uninsured claim made against a foster parent. The annual contributions from the Department of Health and Human Services are approximately $100 per foster child, though it was considerably higher when the program began.

**Immunity**

A few states, such as Georgia and Alabama, hold that foster parents are immune from liability under the state’s parental immunity statute as they are acting “in the place of the parent” to the foster children. One court in Illinois found in favor of applying the doctrine to foster parents because of the policy considerations favoring “the preservation of parental authority and discipline.” On the other hand, states such as Arizona and Michigan hold that foster parents do not qualify for parental immunity. Many of the arguments against allowing foster parents immunity under this doctrine surface around the type of arrangement associated with foster parents. Some courts argue the foster parent relationship is significantly different from the natural parent relationship as foster parents are compensated for their expenses and are brought together with the state by contract vs. blood, marriage or adoption. Additionally, these courts cite the relationship as

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16. For Alaska See 7 AAC 53.100, For New York See 18 NYCRR Part 427.
17. The birth parents of a foster child sought damages from a foster parent alleging abuse. The foster parent’s homeowners insurer denied coverage. The state foster parent association indicated that many of the foster children in their care would be quickly returned to the Department of Health and Human Services if the state did not provide protection. This led to the creation of the self-insurance fund in the Maine Statutes - Title 5: Part 4: Chapter 152: 4. Directed services. Notwithstanding the provisions of subsection 2, the director may provide insurance advice or services for family foster homes as defined in Title 22, section 8101, subsection 3; specialized children's homes, as defined in Title 22, section 8101, subsection 5.
18. According to David Fitts, in the Risk Management Division, the loss ratio (without any incurred but not reported (IBNR) consideration) for the past 20 years is about 51%. This is based on roughly $770,000 in premiums collected over the past 20 years. The loss ratio for the past 10 years is 128%, two-year loss ratio is 96%, and this past year’s loss ratio is 108%.
“temporary” as the children are not “stuck with their foster parents” as they are their natural parents.\footnote{22. \textit{Commerce Bank}, 680 N.E.2d at 822.}

In Virginia, foster parents may have limited protection under the state’s Good Samaritan provisions. This immunity from liability, however, is limited to the rendering of medical care.\footnote{23. Chapter 493, Section 8.01-225 of the Code of Virginia.} This would not apply to other claims of negligence against the foster parent.

A limited number of states—including Alabama, Colorado, South Dakota and Washington—enacted foster parent immunity statutes to protect foster parents for these reasons. The Commerce Court stated, “Foster parents are nearly as much in need of leeway… as are natural parents … Exposure to suit for negligence in supervising and disciplining the children in their custody would be a deterrent to the best performance by the foster parents … .”

We believe that giving foster parents immunity—whether through the parental immunity doctrine or through specific foster parent immunity treatment—is not the best solution. Applying blanket immunity may prevent deserving victims from receiving compensation. Each situation is different as one child may fall down the stairs and break an arm despite the foster parents’ best efforts, while another child may fall down the stairs due to the foster parents’ borderline gross negligence. Therefore, each case should be examined before applying an immunity provision.

\textit{Protect Foster Parents as State Employees}

Several states treat foster parents as state/public employees when it comes to tort liability. Georgia and Massachusetts specifically include foster parents in their definition of state employee. Arkansas gives partial treatment to foster parents in situations where the foster parent was negligent; if the foster child is found negligent, the state turns to a separate agency for claim coverage.\footnote{24. There are yet unresolved concerns over the impact of the federal Affordable Care Act (ACA) if foster parents are treated as state employees. For example, would the state be required to offer health insurance to foster parents if they were considered to be employees? We contacted state agencies in Massachusetts, Oregon and Georgia to inquire if they have been affected by the ACA, but they were unable to provide meaningful guidance at this time.}
In North Carolina, the Defense of State Employees Act provides for the defense, representation and indemnification of state employees who are acting within the course and scope of their assigned duties and are sued in their official or individual capacities, whether criminally or civilly. The North Carolina Attorney General has the sole discretion to decide whether to defend. An employee must request representation. We believe that giving a foster parent liability protection similar to that of state employees offers several advantages, and this is the approach we are advocating in North Carolina. This would protect all licensed foster parents on a state level. The administration of the foster parent system is fragmented in North Carolina, and much of the operation is run on the county level. Although the purchase of a group foster parent liability insurance policy could work and certainly would be an improvement over the current situation, the organizational structure in North Carolina would require that each county or foster home purchase individually. Given the state budget cutbacks and lack of resources, the financial limitations would be difficult to overcome. The county-level employees also may not have the level of expertise to purchase and manage the coverage. Lastly, the protection provided by the state would be greater since the insurance coverage has limits ($300,000 per person in South Carolina, for example). This could provide greater compensation to victims in the event of severe injuries.

Conclusion

Serving as a foster parent is inherently challenging and an emotionally draining process. There is an overwhelming need for additional foster parents who can provide the time and resources to help our nation’s most vulnerable children. It is imperative that our state governments support and encourage those willing to serve. We hope that the knowledge gained from this research will make the topic more understandable to legislators and regulators, and help provide guidance in their search for a solution.

26. The Attorney General may refuse to defend if the act or omission is not within the scope and course of employment, fraud, or there would be a conflict of interest with the State. Currently, when a state employee is sued in their official capacity, they request representation from their employer. The employer then sends a request to the Attorney General’s office to review. The Attorney General’s office reviews the case for grounds for refusal, conflict of interest and situations not in the best interest of the state. Once the Attorney General’s office has made its decision on representation, a referral is made to an outsourced law firm for representation (L. Nance, NC Attorney General Office, personal communication, July 9, 2014).
## Appendix A.1

### Overview of State Programs Providing Protection to Foster Parents: Alabama, Alaska, Arizona and Arkansas

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<tr>
<td>Alabama</td>
<td>Foster parents are covered by the state of Alabama General Liability Trust Fund. The fund provides basic liability indemnification for deaths, injury or damage arising out of negligent or wrongful acts or omissions committed by a covered individual while in the performance of their duties in the line and scope of their employment.</td>
<td>State-funded</td>
<td>Trust fund/state employee Possible parental immunity application to foster parents. See Mitchell v. Davis, 536 So.2d 801.</td>
</tr>
<tr>
<td>Alaska</td>
<td>The state reimburses foster parents up to $5,000 for damage if the damage resulted from a foster child’s deliberate and malicious or grossly negligent act, the foster parents exercised adequate supervision, and the damage is not covered by the foster parents’ insurance. The state also limits parental liability for acts of minor children and applies language to foster parents as well.</td>
<td>State-funded</td>
<td>7 AAC 53.100 (1978)</td>
</tr>
<tr>
<td>Arizona</td>
<td>Liability coverage is provided by the state-funded Provider Indemnity Program.</td>
<td>State-funded</td>
<td>Arizona §41-621b; foster parents do not qualify for parental immunity.</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Foster parents are to look to their homeowners policy first, and what is not filed is with the Arkansas Claims Commission. The state provides immunity unless there was malicious, willful, wanton or grossly negligent conduct.</td>
<td>State-funded claims commission Standards for Approval of Family Foster Homes, Section 13.0</td>
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### Appendix A.2

**Overview of State Programs Providing Protection to Foster Parents: California, Colorado, Connecticut, Delaware, Florida and Georgia**

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<tr>
<td>California</td>
<td>The Foster Family Home and Small Family Home Insurance Fund provides statutory insurance coverage to licensed foster parents. The fund will pay, on behalf of foster homes, the &quot;claim of foster children, their parents, guardians or guardians ad litem resulting from occurrences peculiar to the foster-care relationship and the provision of foster-care services.&quot;</td>
<td>State funded-cap at $300,000/year</td>
<td>Health &amp; Safety Code 1527</td>
</tr>
<tr>
<td>Colorado</td>
<td>Foster parents must turn into their homeowners policy first, County-certified foster parents are covered. The state carries a catastrophic insurance plan, which is the last payer of last resort. It is excess insurance, with a $5,000 deductible.</td>
<td>Insurance</td>
<td>Colorado’s bill (HB 1119) for immunity originally failed after highly publicized case with death of a child</td>
</tr>
<tr>
<td>Connecticut</td>
<td>The state does not provide additional coverage.</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Delaware</td>
<td>The state does not provide additional coverage.</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Florida</td>
<td>The state relies on self-insurance to cover certain civil liabilities of foster parents.</td>
<td>General liability coverage. Abuse or any action committed outside scope of responsibilities is not covered.</td>
<td>State-funded</td>
</tr>
</tbody>
</table>
| Georgia   | The state provides coverage.                                                                                                  | The Division of Family and Children Services purchases self-insurance to cover certain liabilities including suit against foster parents by birth parents and “incidental malpractice” as well as other injury claims. | Self-insurance                      | OCGA §50-21-22 (2010)  

Additionally, parental immunity applied to foster parents as well in Brown v. Phillips 178 GA. Ct. App. 316
## Appendix A.3

**Overview of State Programs Providing Protection to Foster Parents: Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas and Kentucky**

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<tbody>
<tr>
<td>Hawaii</td>
<td>Unknown</td>
<td>General liability for damages outside of the home and FPs HO to cover damage within home²</td>
<td>Unknown</td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td>The state does not provide additional coverage.</td>
<td>NA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>Coverage is state-funded, via a coordinator.</td>
<td>The state covers losses not covered by the foster parents’ own insurance. However, discretion of coverage is left to the Department of Children and Family Services.</td>
<td>State-funded</td>
<td></td>
</tr>
<tr>
<td>Indiana</td>
<td>The state has liability protection available for purchase. The foster parent liability insurance does not cover any claims from the use, maintenance or ownership of a vehicle or watercraft, and does not cover injury or death of the foster parent, or adopted or birth children. The program limits property damage to $5000.</td>
<td>Partially funded through foster care agency and the Indiana Foster Care &amp; Adoption Association (IFCAA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iowa</td>
<td>The state provides coverage.</td>
<td>The state provides coverage.</td>
<td>Foster home insurance fund, via Risk Management Agency</td>
<td></td>
</tr>
<tr>
<td>Kansas</td>
<td>The state does not provide additional coverage. It may present a claim before a special legislative committee to be considered.</td>
<td>NA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kentucky</td>
<td>The state provides private insurance plans.</td>
<td>Insurance</td>
<td></td>
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</tbody>
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## Appendix A.4

**Overview of State Programs Providing Protection to Foster Parents:**
*Louisiana, Maine, Maryland and Massachusetts*

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<tbody>
<tr>
<td>Louisiana</td>
<td>The state provides limited liability for damages caused by a foster child. A claim may be paid to foster parents when the placing worker knew the child was destructive and failed to share this information with the foster parents.</td>
<td>The state does not provide additional coverage.</td>
<td>State-funded</td>
<td></td>
</tr>
<tr>
<td>Maine</td>
<td>The state insures against claims made by third parties against foster parents because of the acts of a foster child, a foster child against foster parents, which arises directly out of foster parent activities; and foster parents for damages or losses caused by a foster child to the property of the foster parents or respite care provider.</td>
<td>Department of Health and Human Services provides $10,000 annually to Self-Insurance Fund</td>
<td>MRS Title 5: Administrative Procedures and Services Part 4: Finance, Chapter 152</td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>The state requires liability coverage by foster parents and covers up to $5,000 of what their insurance policy does not cover.</td>
<td>The state does not provide additional coverage.</td>
<td>State-funded</td>
<td></td>
</tr>
<tr>
<td>Massachusetts</td>
<td>The state provides coverage as foster parents are considered public employees.</td>
<td>$50,000 pool set up by Department of Social Services helps cover cost for damages to foster parents’ property</td>
<td>Mass. Gen. Law 258 §1 Kerins v. Limon (1997), 680 Northeast 2nd 32 holds foster parents are not parents within the meaning of the Parents’ Liability Statute Mass 231§85G</td>
<td></td>
</tr>
</tbody>
</table>
### Appendix A.5

**Overview of State Programs Providing Protection to Foster Parents: Michigan, Minnesota, Mississippi, Missouri and Montana**

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<tbody>
<tr>
<td>Michigan</td>
<td>Property damage from a foster child can be considered with care rate. The legal cost from actions of a foster child may also be considered.</td>
<td>The state does not provide additional coverage.</td>
<td>Unknown</td>
<td></td>
</tr>
<tr>
<td>Missouri</td>
<td>The state does not provide additional coverage.</td>
<td></td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Montana</td>
<td>The state’s self-insurance program covers foster care property and third-party claims because of intentional acts of foster children.</td>
<td>The state does not provide additional coverage</td>
<td>Self-insurance program</td>
<td></td>
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</table>
## Appendix A.6

**Overview of State Programs Providing Protection to Foster Parents: Nebraska, Nevada, New Hampshire and New Jersey**

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<tbody>
<tr>
<td>Nebraska</td>
<td>Self-insurance/ foster parent fund pays for liability or property damage incurred or caused by a foster child.</td>
<td>The state does not specifically address this exposure.</td>
<td>Self-insurance</td>
<td>Neb. Rev. Stat., §43-1320 (1992)</td>
</tr>
<tr>
<td>Nevada</td>
<td>The state does not provide additional coverage</td>
<td></td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>New Hampshire</td>
<td>State-funded</td>
<td>Limited coverage for property damage claims ($5000) and personal injury claims ($5000) by foster child. This amount may also cover legal expenses, but not additional judgments.</td>
<td>State-funded</td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>The Division of Family Services provides a Resource Parent Liability Program consisting of two distinct components: 1) property damage/loss; and 2) legal representation. The program is intended to provide protection for: 1) damages or loss to the foster parents’ property caused by a child in placement; 2) claims made by third parties against the foster parents because of the acts of a child in placement; 3) claims made against foster parents by third parties, including children in placement or persons acting on their behalf, alleging negligence on the part of the foster parents.</td>
<td>State-funded</td>
<td></td>
<td></td>
</tr>
</tbody>
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## Appendix A.7

**Overview of State Programs Providing Protection to Foster Parents:**

New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon and Pennsylvania

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<tbody>
<tr>
<td>New Mexico</td>
<td>The state does not provide additional coverage.</td>
<td>NA</td>
<td>State-funded up to $1000 every two-year period</td>
<td>18 NYCRR Part 427</td>
</tr>
<tr>
<td>New York</td>
<td>Coverage is limited to $1000.</td>
<td>Coverage is limited to $1000.</td>
<td>State-funded</td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>The state does not provide additional coverage.</td>
<td>NA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Dakota</td>
<td>The state provides coverage.</td>
<td>The state provides coverage.</td>
<td>State-funded</td>
<td>Insurance</td>
</tr>
<tr>
<td>Ohio</td>
<td>The state permits the county to provide/purchase insurance for foster parents. No additional information was provided.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Foster parents have liability and limited property insurance provided by a private insurer.</td>
<td></td>
<td>Insurance</td>
<td></td>
</tr>
<tr>
<td>Oregon</td>
<td>Claims resulting from willful, malicious or intentional damage caused by a foster child can possibly be reimbursed up to $5000.</td>
<td>The state classifies foster parents as employees.</td>
<td>State-funded ORS 650.260 (5)</td>
<td>The scope of a public employee or agents common law immunity and the immunity afforded by this section are the same. Pickett v. Washington County, 572 F2d 1070 (1977)</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>The Department of Health and Human Services (DPHHS) purchases an insurance policy. The deductible is paid by the DPHHS.</td>
<td>The DPHHS may provide liability insurance for civil matters.</td>
<td>State-funded insurance</td>
<td></td>
</tr>
</tbody>
</table>
# Appendix A.8

## Overview of State Programs Providing Protection to Foster Parents: Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia and Washington

<table>
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<tbody>
<tr>
<td>Rhode Island</td>
<td>The state does not provide additional coverage.</td>
<td>NA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Carolina</td>
<td>The state provides liability insurance policies for foster parents who are licensed by an agency.</td>
<td>Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Dakota</td>
<td>Foster parent immunity</td>
<td>NA</td>
<td>SDLC 25-5-23-3</td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>The state provides coverage of acts of a foster child only when negligent acts can be proven.</td>
<td>The state does not provide additional coverage.</td>
<td>State-funded</td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>The state does not provide additional coverage.</td>
<td>NA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utah</td>
<td>The state does not provide additional coverage.</td>
<td>NA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vermont</td>
<td>The state does not provide additional coverage.</td>
<td>NA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Virginia</td>
<td>Foster parents have limited immunity when providing medical care under the state’s Good Samaritan provisions.</td>
<td>NA</td>
<td>Chapter 493 Sections • 8.01-225 of the Code of Virginia</td>
<td></td>
</tr>
<tr>
<td>Washington</td>
<td>The Foster Parent Reimbursement Plan (FPRP) provides limited coverage with variable amounts of coverage based on occurrence through the Department of Health &amp; Human Services.</td>
<td>Under the Foster Parent Liability Plan (FPLP), payments are limited to $25,000 per occurrence, and legal defense is available through Attorney the General’s office.</td>
<td>State-supported up to $500,000</td>
<td>RCW 74.14b.080 Pickett v. Washington County 572 P.2d 1070 (or, 1977)</td>
</tr>
</tbody>
</table>
## Appendix A.9

### Overview of State Programs Providing Protection to Foster Parents:
Washington, D.C.; West Virginia; Wisconsin; and Wyoming

<table>
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<tr>
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<tbody>
<tr>
<td>Washington, D.C.</td>
<td>Unknown</td>
<td>The state does not provide additional coverage.</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>West Virginia</td>
<td>The state provides liability insurance that protects foster parents from acts of their foster children. Foster parents are responsible for a $300 deductible.</td>
<td>The state does not provide additional coverage.</td>
<td>State-funded</td>
<td>W. Va. Code §63.2-911 (1978)</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Foster parents are reimbursed for damages or loss they might experience that are caused by acts or omissions of children placed in their care and that are not covered by private insurance policies.</td>
<td>The state provides foster parent immunity.</td>
<td>State-funded</td>
<td></td>
</tr>
<tr>
<td>Wyoming</td>
<td>The state does not provide additional coverage.</td>
<td>NA</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 Since its inception to 2007, 19 claims were made in which nine involved payment.
2 Unclear what defines “damages outside of home.”
3 Oklahoma House Bill 3475 was signed in 2014 to help inform foster parents about the available liability insurance provided by the state.
References

Abrams v. Maloney, 19 Conn. L. Rptr. 410.
McKelvey v. McKelvey, 77 S.W. 664 (1903).

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References to published literature should be inserted into the text using the “author, date” format. Examples are: (1) “Manders et al. (1994) have shown. . .” and (2) “Interstate compacts have been researched extensively (Manders et al., 1994).” Cited literature should be shown in a “References” section, containing an alphabetical list of authors as shown below.


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