



November 27, 2023

Via Federal eRulemaking Portal

Secretary Xavier Becerra
U.S. Department of Health and Human Services,
Administration for Children and Families
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue S.W.
Washington, DC 20201

Re: The U.S. Department of Health and Human Services, Administration for Children and Families (ACF) proposed rule titled, "Safe and Appropriate Foster Care Placement Requirements for Titles IV–E and IV–B."
45 CFR Part 1355 - RIN: 0970-AD03

Dear Secretary Becerra:

The Christian Medical & Dental Associations® (CMDA) founded in 1931 is the largest Christian membership organization comprised of healthcare professionals serving throughout the United States and overseas. We provide programs and services supporting its mission to "change hearts in healthcare." CMDA promotes positions and addresses policies on healthcare issues, and advocates on behalf of its members. We educate our membership on current issues of the day from a federal and state perspective. We coordinate with our network of Christian healthcare professionals for fellowship and professional growth, and we sponsor student ministries in medical and dental schools across the country. Our members provide excellent care for all patients from everything from cancer to the common cold.

Our overseas work is also far-reaching. We conduct short-term missions trips to medically underserved regions of the world and provide healthcare composed of medical, dental, and surgical teams. In addition, our overseas focus includes our Medical Education International (MEI) program. This short-term missions program provides academic teaching and clinical training upon requests from governments, healthcare professional training institutions, and

hospitals while building relationships with local colleagues. We strive to model compassion and care to those in need. MEI serves primarily in low-and middle-income countries.

We respectfully submit comments regarding the Notice of Proposed Rulemaking (NPRM) titled “Safe and Appropriate Foster Care Placement Requirements for Titles IV–E and IV–B.” We **oppose** the revisions of the foster care regulation and strongly urge the Department to not finalize this NPRM.

On September 28, 2023, HHS issued a [Notice of Proposed Rulemaking](#) (NPRM) proposing three new requirements for states receiving Title IV-E and Title IV-B funding. The regulation would require states to ensure that LGBTQI+ children in foster care are placed only with “safe and appropriate” providers.

Under subsection (a)(1) of the proposal, the three requirements below would qualify a provider to be one who is “safe and appropriate” in the government’s eyes. Please see the following:

- The provider will establish an environment free of hostility, mistreatment, or abuse based on the child’s LGBTQI+ status.
- The provider is trained to be prepared with the appropriate knowledge and skills to provide for the needs of the child related to the child’s self-identified sexual orientation, gender identity, and gender expression. The training must reflect evidence, studies, and research about the impacts of rejection, discrimination, and stigma on the safety and well-being of LGBTQI+ children, and provide information for providers about practices that promote the safety and wellbeing of LGBTQI+ children; and
- The provider will facilitate the child’s access to age-appropriate resources, services, and activities that support their health and well-being. And “may include, but are not limited to” (i) “facilitating access to behavioral health supports respectful of their LGBTQI+ identity”; (ii) “interacting with LGBTQI+ mentors and peers”; (iii) “joining and participating in affinity groups”; and (iv) “connecting the child to available LGBTQI+ supportive resources and events, appropriate services and supports.”

The **first** requirement is vague and uses terms loosely. There are no concrete definitions of what “abuse, hostility, etc. are in this circumstance. Essentially, it leaves no room for a foster parent or agency to give any meaningful input or guidance to a child who may be gender confused.

The **second** requirement says the provider must be “trained” but there is no “official federal training available and agreed upon by authorities nationwide in this area. Foster care training curriculum is administered by state and county authorities, and enforcing this training would violate individual state statutes.

The **third** requirement is vague and unclear. The question we pose to ACF is what do they define as supportive resources and events? What are appropriate services and supports? Do these include cross sex hormones, even surgeries for minors? Do the biological parents have a say in these procedures? Beyond the foster care system, will these so-called “safeguards” eventually be required of every family in the United States? The legal and ethical implications are complicated, and we believe this NPRM is overreaching and is beyond the scope of its

decision making authority.

Additionally, the NPRM would require that states:

- Implement a process through which children can request a safe and appropriate placement.
- Implement a process through which children may report placements that are not safe and appropriate.
- Implement a procedure to ensure no LGBTQ child experiences retaliation for disclosing their identity or requesting a safe placement. Retaliation is defined to include “unwarranted placement changes including unwarranted placements in congregate care facilities, restriction of access to LGBTQI+ peers, or attempts to undermine, suppress, or change the sexual orientation or gender identity of a child, or other activities that stigmatize a child’s LGBTQI+ identity.”
- Ensure that, when placing LGBTQI+ children in sex-segregated situations, children are placed consistent with their gender identity.
- Train employees to have “the appropriate knowledge and skills” to serve an LGBTQ child.
- Ensure that all contractors and subrecipients with responsibility for placing children or providing services are informed of the requirements and non-retaliation provisions.
- Require states to ensure that their child welfare networks include sufficient numbers of providers willing to provide safe and appropriate placements for LGBTQI+ children.

Crisis in the Foster Care System

This NPRM would place an undue burden on an already stretched and fragile system. There is a crisis with America’s children and families which has resulted in over 391,000+ children languishing in the foster care system often with no way out. [Each year](#) approximately 20,000 kids age out of the foster care without a permanent, adoptive family. 20% will be homeless at age 18, and 97% will never graduate from college. Also, sadly, 30 – 50% of foster parents leave the system each year, which diminishes the number of viable foster care families in which to place kids in need.

Faith-Based Organizations and Concerns with Religious Liberty

Faith-Based agencies/families play a vital role in the U.S. Foster Care system and has for over 200 years. They are the backbone of society, providing services, often well before the government is aware of the need. Faith-based organizations are a critical partner with government entities in providing, safe and stable care to vulnerable children.

This NPRM does not address the dire situation many of these children are in, but rather would exacerbate the problem by creating a dual system of “safe” vs. “unsafe” for children at risk. Also, it seems to demean people of faith by calling them “unsafe” if they hold certain religious views. This fact is disturbing and holds many religious liberty concerns if people of faith are labeled arbitrarily “unsafe” if they do not adhere with an ideology that is contrary to a personally held religious worldview. In an article authored by [Christian Alliance For Orphans](#), they state that “Faith-based organizations offer other critical services also, from family reunification and preservation programs, to mentoring of aging-out youth, to foster family retention. For example, while it is estimated that 50% of foster families drop out within the first year, church-based support for foster families has been shown to result in [more than 90% of supported families continuing beyond the one-year mark](#). The point in this is not that faith-motivated organizations

and foster parents are always “better,” but that they are invaluable partners in any serious effort to meet the needs of vulnerable children and families.”

Fiscal Impact

The cost of creating this dual system will no doubt be detrimental to the entire foster care system which is already in a precarious situation. [Another quote](#) from CAFO “For example, 2013 research by Barna Research reported in the book, [Becoming Home](#), found that practicing Christians are twice as likely to foster and to adopt as the general population. They are also more likely to welcome sibling groups and children with special needs. It will drive away faith-based foster care families that are the majority who foster and adopt, and the resources they provide will no longer be available to those who need it most.

In an [article](#) in The Federalist Society, they state that “ACF acknowledges that its proposal will have costs as it “anticipate that a majority of states would need to expand their efforts to recruit and identify providers and foster families that the state or tribe could designate as safe and appropriate placements for a LGBTQI+ child.” The proposed rule projects costs over \$40 million. This cost to the system is not sustainable nor feasible.

Conclusion

All children in the foster care system are vulnerable. Finalizing this NPRM would seem to disregard this fact, highlighting certain populations ahead of the rest, and would place an undue burden on the entire system. We strongly urge you to reconsider and withdraw enacting this NPRM.

Sincerely,
Anna Pilato, MA
Director of Federal Public Policy
Christian Medical & Dental Associations
Washington, D.C. Office
Anna.pilato@cnda.org
www.cnda.org