

November 27, 2023

Kathleen McHugh  
Director, Policy Division, Children's Bureau  
Administration for Children and Families  
Department of Health and Human Services  
330 C Street, SW  
Washington, DC 20201

**Re: RIN 0970-AD03, "Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B"**

Dear Director McHugh,

As a journalist who has spent several years to investigating issues of child welfare and policies surrounding foster care and adoption—and as a senior fellow at the American Enterprise Institute, a public policy research institution dedicated to defending human dignity and promoting a freer, safer world—I respectfully submit the following comment regarding the notice of proposed rulemaking (NPRM) issued by the Administration for Children and Families (ACF) in the US Department of Health and Human Services titled "Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B."<sup>1</sup>

State and Tribal Title IV-E and IV-B agencies are required by law to ensure "safe and proper care" for every foster child. The proposed rule, citing unique challenges faced by LGBTQI+ children who enter the foster system, would require state and county agencies to follow a series of steps to ensure these children are placed in safe and appropriate environments, where providers facilitate children's access to "services that are necessary to support their health and well-being." According to the NPRM, these requirements are meant to "clarify how title IV-E/IV-B agencies must meet IV-E and IV-B statutory requirements, including for the case review system and case plan, to appropriately serve children in foster care who identify as LGBTQI+."<sup>2</sup>

While federal law requires safe and proper care for foster children, the proposed rule would enforce a narrow definition of this requirement that usurps a state's constitutional authority to determine what is in the best interests of a child in its foster care system. The NPRM recognizes the religious freedom of faith-based child welfare organizations, stating that the proposed rule "would not require any faith-based provider to seek designation as a safe and appropriate provider for LGBTQI+ children." However, the proposed rule would

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<sup>1</sup> US Department of Health and Human Services, Administration for Children and Families, "Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B," *Federal Register* 88, no. 187 (September 28, 2023): 66752–69, <https://www.govinfo.gov/content/pkg/FR-2023-09-28/pdf/2023-21274.pdf>.

<sup>2</sup> US Department of Health and Human Services, Administration for Children and Families, "Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B."

require agencies to ensure that their child welfare networks as a whole include sufficient numbers of providers that are willing to supply safe and appropriate placements for LGBTQI+ children so that all children who request such a placement will receive an appropriate one.<sup>3</sup>

Enforcing this requirement on state agencies constitutes federal overreach.

In practice, this proposed rule would almost certainly reduce the number of foster parents and foster care services available to children who enter the system. Religious families currently do the heaviest lifting in our foster care system. More than one-fifth of foster parents say they are motivated to do this work because of their faith.<sup>4</sup> However, many of these parents are already being denied foster care licenses because of their religious beliefs.

Michael and Kitty Burke, a Catholic couple in Massachusetts, were denied licenses because they said they would not support surgery or hormone therapy for transgender youth.<sup>5</sup> Jessica Bates, a single mother of five in Oregon, was denied the opportunity to adopt a child out of foster care since she would not agree to take a child to receive hormone shots or to avoid religious services that did not support a gender transition.<sup>6</sup>

This rule is part of a long campaign to alienate faith-based providers and require child welfare agencies to adhere to progressive ideology, despite there being little hard evidence that providing the types of services the rule suggests will actually alleviate the struggles of LGBTQI+ youth in the foster system. More than half of all states saw a significant decline in licensed foster homes last year.<sup>7</sup> Continuing to enforce this ideology at the federal level will only continue to alienate the very families that are helping fill this concerning void and providing safe, loving homes for children that need them.

As Jedd Medefind of the Christian Alliance for Orphans notes,

A rule like this would undoubtedly have a chilling effect on the willingness of people of earnest faith to serve through the child welfare system. In a time when we desperately need more caring families serving children in foster care, this rule would almost certainly lead to fewer.<sup>8</sup>

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<sup>3</sup> US Department of Health and Human Services, Administration for Children and Families, “Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B.”

<sup>4</sup> Cheryl Buehler, et al, “Foster Parents’ perceptions of Factors that Promote or Inhibit Successful Fostering,” *Qualitative Social Work*, 2(1): 61-83, 2003.

<sup>5</sup> Kirsten Fleming, “Trans Zealots Would Rather Children Stay in Care Than Be Fostered by Loving Parents Who Won’t Embrace Extremism,” *New York Post*, August 17, 2023. <https://nypost.com/2023/08/18/trans-zealots-would-rather-children-stay-in-care-than-be-fostered>.

<sup>6</sup> Taylor Penley, “Christian Mother Sues State for Denying Adoption over Her Gender Beliefs,” *New York Post*, April 5, 2023. <https://nypost.com/2023/04/05/jessica-bates-sues-oregon-for-denying-adoption-over-gender-beliefs>.

<sup>7</sup> Imprint, Total Licensed Foster Homes: 2018–2023, <https://www.fostercarecapacity.com/data/total-licensed-foster-homes>.

<sup>8</sup> Jedd Medefind (president, Christian Alliance For Orphans), in discussion with author. October 6<sup>th</sup>, 2023.

The NPRM requires that state agencies ensure their child welfare networks include sufficient numbers of providers willing to supply care the federal government deems “safe and appropriate” for LGBTQI+ youth. It also states that

the Department [of Health and Human Services] believes that IV/B/IV–E agencies will be able to meet this requirement through outreach, training and other supply-building activities to build their provider networks, and can do so without imposing substantial burdens on religious exercise of providers.<sup>9</sup>

ACF provides no examples or evidence for agencies’ ability to accomplish this in a climate where religious providers are increasingly facing attacks.

Federally imposing progressive ideologies on state agencies is unconstitutional and dangerous to foster youth. Continuing to discourage faith-based organizations and parents from entering the child welfare system will have disastrous effects on an already struggling system. For the reasons stated above, I urge ACF to withdraw the proposed rule.

Respectfully submitted,

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<sup>9</sup> US Department of Health and Human Services, Administration for Children and Families, “Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B.”