



December 19th, 2019

Secretary Alex Azar
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

RE: Proposed rulemaking to repromulgate or revise certain regulatory provisions of the Department of Health and Human Services, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards; RIN 0991-AC16, 84 Fed. Reg. 63831 (Nov. 19, 2019)

Dear Secretary Azar:

The **National Foster Care Youth and Alumni Policy Council**, the foremost National Council that advises child welfare leadership on the collective viewpoint of youth and young adults with personal experience in the U.S. foster care system, is moved to comment on the proposed rule change related to non-enforcement of protections related to discriminatory practices against individuals and families seeking or receiving services administered under U.S. Department of Health and Human Services funding.

The Council advises by:

- Using their lived expertise in child welfare to identify and inform priorities and offer ideas to improve child welfare policy.
- Educating policymakers and other stakeholders about their varied experiences in child welfare.
- Analyzing the effectiveness of programs and policies based on the experiences of youth in child welfare.

The Council is submitting comments due to the direct and drastic impacts of this proposed change on the well-being of children and families affected by child maltreatment (i.e. abuse or neglect) and child welfare system involvement. Youth in foster care have already experienced trauma. By declining to protect them from additional discriminatory practices, this reduces their access to supports and services critical to help these youth heal and thrive. The Council is particularly concerned as this rule change would complicate and contradict the goals of the Family First Prevention Services Act including: ensuring appropriate placement and reducing unnecessary congregate care placement, and increasing supports for older young people in foster care. The points below summarize our most pressing concerns:

- **The proposed rule change will worsen circumstances for families of color.** Individuals involved with child welfare systems (including infants, children, youth, parents, and families) are disproportionately individuals of color who would be directly

impacted by the proposed removal of these protections (e.g., USDHHS, 2019 [AFCARS]).

- **The proposed change will exacerbate risks for sexual- and gender-minority youth and family members.** 1 in 5 youth in foster care identify as LGBTQ+/2S¹² - under the proposed rule change, these youth could be legally denied services, including basic needs (foster placement, medication, healthcare, etc.), without recourse. This would directly contradict past priorities from the Council on improving safety, permanency and well-being for LGBTQ+/2S youth experiencing foster care including:
 - “States should be required to diligently recruit LGBTQ friendly resource families to increase placement options.
 - Don’t delay family placement of youth in foster care based on their sexual orientation, gender identity, or gender expression. Allow youth to express their interest in specific placement options w/LGBTQ resource parents.”³
- The same would be true for families of these youth, as well as families practicing religions viewed as being in conflict with the values of service providing agencies charged with serving as the lifelines for these vulnerable families.

“I was sent to a congregate care setting. Staff at this facility were accepting of who I was and even encouraged me to be myself. This was definitely a weird feeling for me because I had been shunned for so many years now that I didn’t know what it was like to be myself. It was a new experience. I no longer had to hide who I was in order to feel safe.”

- Timothy from Tennessee

- **The proposed change will introduce barriers that will increase risks for termination of parental rights and youth stuck in foster care.** Families receiving child welfare system interventions are referred for services that would be affected by this proposed rule change, including individual and family counseling, substance use treatment, case management, material assistance, etc.
 - For parents working toward reunification with their children in foster care, additional barriers to accessing mandatory services will result in increased rates of parental rights terminations - a trend that has already been on the rise since the implementation of the 15-month time-limit under the Adoption and Safe Families Act (ASFA; PL 105-89) over two decades ago, by HHS’ own count (USDHHS, 2018). Terminations of parental rights result in permanently fractured families, and increased numbers of foster youth - and older foster youth in particular - languishing in foster care until aging out at (or around) age 18.

¹ LGBTQ+2/S refers to lesbian, gay, bisexual, transgender, queer, questioning or two-spirit.

² See Laura Baams, Bianca D.M. Wilson & Stephen T. Russell, LGBTQ Youth in Unstable Housing and Foster Care, 143(3): e20174211 Pediatrics(2019), available at: <https://pediatrics.aappublications.org/content/pediatrics/early/2019/02/07/peds.2017-4211.full.pdf>;

Megan Martin, Leann Down, & Rosalynd Erney, Out of the Shadows: Supporting LGBTQ youth in Child Welfare Through Cross-System Collaboration, Center for the Study of Social Policy(2016), available at: <https://cssp.org/resource/out-of-the-shadows/>.

³ [Improving Policies and Services in Congregate Care Settings: Our Priorities](#), April 2016

- For parents whose parental rights are terminated, any purported access to services halts immediately, often rendering parents in worse condition than when CPS intervention began, with regard to substance use, mental health, physical health, and poverty.
- **This proposed change would limit the abilities of expectant or parenting youth in foster care to safely parent their children.** Allowing providers the ability to refuse to serve youth based on how they choose to identify and live (whether that be their religions, gender, sexual orientation, or gender identity) will make it more difficult for young parents to address mental health needs, overcome addiction, or address environmental challenges that prevent them from safely parenting. It will perpetuate intergenerational involvement in the system and unnecessary removal.
- **This rule change contradicts the priorities of child welfare reform.** Access to services funded by HHS are crucial in preventing child abuse and neglect. As child welfare reform is prioritizing prevention services under the Family First Prevention Services Act of 2018, allowing providers to refuse to engage families in prevention services based on how they identify will hinder parents' ability to safely parent their children and cause an unnecessary increase of removals and placements into foster or congregate care. HHS guidelines iterates that foster children have the possibility of "placement in a setting" "where their religious customs can be maintained." Allowing service providers the ability to prioritize the personal beliefs of foster parents over the behavioral health, well-being and placement needs of the child not only will contribute to placement instability but also undermines the voices of youth leaders with first-hand experience in foster care, who have worked to identify, create, and recommend policies and practices that protect youth in care from discrimination. Keeping youth voice at the center of improvement efforts and child welfare planning was a part of an Information Memorandum (ACYF-CB-IM-19-03) released by the Children's Bureau in August of 2019.
- Failing to implement the protections could cause a reduction in available foster family homes. Research shows that youth and young adults do better when they are in a family-like setting. Additionally, youth and young adults in foster care should be in placements where their identities are affirmed and supported--having a diverse set of foster families trained to be placement options increases the likelihood of placement stability and forming permanent connections.

If you would like to discuss further, please contact Angel Petite at policy@fosterclub.com or 503.717.1552. You can also see additional recommendations from the Council at nationalpolicycouncil.org.

Thank you for the opportunity to offer commentary on the impacts of the proposed rule change for those in (and affected by) foster care and child welfare services. Our comments are based

on the lived experiences of a collective of diverse young people who have lived the consequences of the era before these protections were implemented.

Sincerely,

Members of the National Foster Care Youth & Alumni Policy Council