4/17/2023

Kathleen McHugh  
Director, Policy Division, Children’s Bureau  
U.S. Department of Health and Human Services  
Administration for Children & Families  
200 Independence Ave., SW  
Washington, DC 20201  
(202) 401-5789

Re: NPRM Separate Licensing Standards for Relative or Kinship Foster Family Homes  
(RIN #0970-AC91)

Dear Director McHugh,

The American Public Human Services Association (APHSA), the bipartisan membership association representing state and local human services agencies, and its affinity group the National Association of Public Child Welfare Administrators (NAPCWA) appreciate the opportunity to review and provide comment in response to the Notice of Proposed Rule Making on Separate Licensing Standards for Relative or Kinship Foster Family Homes. The feedback detailed in this comment was gathered from state and local human services executive leadership and by the leaders charged with administering child welfare and economic support services.

APHSA strongly supports efforts in the proposed rulemaking to promote and support kinship placements. By proposing this rule, ACF takes a critical step to address and reform longstanding systemic inequities faced by kinship families within the child welfare system. In our comments, we outline several considerations for finalizing the proposed rule in a manner that best supports state child welfare agencies’ efforts to adopt new kinship licensing standards and identify existing and potential new structural issues related to kinship families that ACF should consider in its rulemaking and future guidance.

Background

Relative and fictive kin play an essential role in the well-being of children and communities. Compared to non-relative foster care, children in kinship homes experience less trauma, greater stability, fewer serious mental or physical health conditions, and are less likely to develop substance use disorders.1 However, federal child welfare policies have been constructed in ways that create systemic barriers to promoting kinship caregiver placements due primarily to:

1. Licensing Standards – Until this proposed rule, states have been required to enforce the same licensing standards for kinship caregivers as any other foster family home – with only limited or case by case exemptions despite their ability to provide a safe and familial home for their relative children. Over half of kinship caregivers have incomes below the
federal poverty line and are often ineligible or unable to meet conventional foster home licensing standards to receive IV-E foster care maintenance payments (FCMPs).²

2. **Formal Child Welfare Involvement** – Many families enter into informal voluntary kinship placements – whereby known relatives or fictive kin are asked to take legal custody of a child to prevent them from entering foster care. However, to qualify for IV-E foster care maintenance payments, they must enter the formal foster care system, increasing surveillance and deepening their involvement in a system that should operate as a last resort. Programs such as the Temporary Assistance for Needy Families (TANF) can provide payments to support informal caregiving arrangements outside of the formal foster care system; however, it typically does so at a significantly lower rate that offers inequitable support for kinship families.

The proposed rulemaking takes great strides in addressing the systemic problems of enforcing uniform licensing standards for kinship families. Yet, the broader issue of requiring formal child welfare involvement for kinship caregivers to receive equitable compensation is likely outside the purview of regulatory action. **Accordingly, as an overarching consideration, APHSA recommends that within the final rulemaking and in future guidance and practice, ACF carefully considers the impacts of the rule on disparities in and overall outcomes related to formal child welfare involvement for kinship placements.**

**Recommendations**

APHSA has worked with its members to identify several recommendations for ACF to consider in its final rulemaking and ensuing guidance.

**Clarifications in Establishing Kinship Licensing Standards:**

- **Share Best Practices and Models for Licensing Standards** – While states will need flexibility to adopt kinship licensing standards that reflect their specific communities, ACF should develop a model that reflects best practices and considerations for developing licensing standards and shares examples from a variety of states. The model should explicitly identify considerations for non-safety-related exemptions for kinship licensing standards and be updated on a regular basis to reflect emerging insights and lessons learned from implementation.

- **Provide Guidance on Kinship-Specific Support Considerations** – ACF should provide guidance and develop resources on specific supports child welfare agencies should consider when helping licensed kinship caregivers and their kin prepare for and navigate their shift in relationship.

- **Provide Guidance on Background Check Requirements for Kinship Arrangements** – In particular, ACF should clarify what criminal background check requirements apply for extended family that may not reside in the house but will be in regular contact with children.
Consider Impact of Differing State Standards on Interstate Placements – ACF should conduct a landscape assessment of current interstate policies and practices as it relates to out of state kinship placements. The assessment should include how different kinship licensing standards across states could impact the process for interstate placement of children under the final rule. ACF should use the information collected to work with jurisdictions and provide technical assistance to mitigate delays or disruptions of interstate kinship care placements.

Budget and Cross-Program Analyses

Consider Ways to Reduce Fiscal Barriers to State Policy Adoption – The proposed rule estimates a roughly 20-fold total annual increase in the non-federal share of costs for IV-E foster family home placements – an annual cost increase from $25.7 million in FY 2023 to $504.8 million in FY 2032. APHSA is concerned that the significant added cost burden may present barriers for some state agencies to navigate fiscal and legislative approvals to implement new licensing standards and urges ACF to consider possible actions to mitigate financial barriers to adoption, particularly in early-stage implementation.

Provide Fiscal Analysis on Shifts from TANF to IV-E Payments – The proposed rule does not consider in its analysis how adoption of a kinship licensing standard would potentially shift caseloads and costs from informal care paid through federal TANF funding (via TANF child-only cases) to formal care paid through state/federal matching FCMPs via IV-E funding. ACF should assess these fiscal impacts in its final rulemaking.

Consider Programmatic Impacts of Shift from TANF to IV-E Payments – Further, ACF should consider how a potential reduction in TANF child-only cases as a result of the rulemaking may afford states opportunities to explore other ways to use TANF funding strategically to promote child welfare prevention and support kinship caregivers. Should the rule lead to less TANF spending on direct kinship caregiver assistance, states may be positioned to deploy TANF in other ways that promote child welfare prevention, consistent with the first core purpose of TANF to “provide assistance to needy families so that children can be cared for in their own home or in the homes of relatives.”

Equity Considerations

Assess Voluntary Kinship Diversions and Impacts of the Proposed Rulemaking - ACF should work with states, localities and other federal agencies and affected communities to assess and understand the demographics and population size of families in voluntary kinship arrangements, the options currently being deployed to support them, and the impact over time on the rulemaking on their child welfare system involvement and outcomes. Additionally, ACF should consider the data gaps and possible solutions to better understand the experiences of kinship families across formal and informal care settings.
Review and Clarify Federal Requirements – Federal law related to IV-E eligibility requires that children be in the care and responsibility of a state or local IV-E agency to qualify for foster care maintenance payments. This standard has historically been interpreted by ACF as requiring the state or local agency to be in legal custody of a child. We recommend ACF review federal law related to IV-E eligibility and consider options for state flexibility in the definition of care and responsibility for kinship caregivers. This flexibility could allow states to keep children with kinship caregivers available from entering foster care but still provide FCMPs and ensure safety through the licensing process.

We appreciate your consideration of the recommendations we have made in response to the proposed rule. To have further conversation on the comments presented and ways to engage with state agencies, please reach out to Meg Dygert at mdygert@aphsa.org.

Sincerely,

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