



1300 17TH STREET NORTH, SUITE 340, ARLINGTON, VA 22209

TEL (202) 682-0100

FAX (202) 204-0071

WWW.APHSA.ORG

December 28, 2020

Re: Regulatory Relief to Support Economic Recovery; Request for Information (Docket Number 2020-25812)

To Whom It May Concern:

The American Public Human Services Association (APHSA) respectfully submits these comments in response to the Notice of Proposed Rulemaking on ***Regulatory Relief to Support Economic Recovery*** published on November 25, 2020. As the bipartisan membership association representing state and local human services agencies, APHSA has worked closely with agency executive leaders and the subject matter experts that help to carry out their mission by adapting services to preserve access and respond to heightened need for assistance due to the COVID-19 pandemic. With regards to waivers and flexibilities authorized for HHS programs, APHSA's work has been centered through our affinity groups comprised of program administrators in key human services areas – child welfare (the National Association of Public Child Welfare Agencies, or “NAPCWA”), child care (the National Association of State Child Care Administrators or “NASCCA”), TANF (the National Association of State TANF Administrators or “NASTA”), and Information Technology (IT Solutions Management for Human Services or “ISM”). This response reflects the feedback received from each affinity group in consultation with additional leaders in APHSA's membership community.

Regulatory Changes Made During the Public Health Emergency and Recommended Use of Flexibilities Moving Forward

Child Welfare

Guidance received from the Children's Bureau has been critically important to help child welfare agencies support children and families during the pandemic. Specifically:

- New **guidance on caseworker visits** allowed states to temporarily modify face-to-face caseworker visits. Paired with guidance that clarified the **use of IV-E funding to purchase cell phones and other technology** for families, youth, and birth parents, these flexibilities proved pivotal to help agencies monitor child safety, continue working towards permanency, and support children and parents while prioritizing their health. These principles similarly apply to flexibilities to conduct **virtual court hearings**, which have been essential for maintaining access to timely family court hearings. The pandemic has revealed promising practices through this work that should inform appropriate accommodations for children and parents post-pandemic that would help support child and family well-being through virtual visits and technology supports. Additional investments to research efficacy of virtual service delivery models and appropriate training or retraining of staff and judicial representatives interacting with families through use of virtual tools, with appropriate balance of child safety and service accessibility for families, should be prioritized post-pandemic. A review of options for expanding ongoing flexibilities or modifications to the statutory requirements should be conducted.

American Public Human Services Association advances the well-being of all people by influencing modern approaches to sound policy, building the capacity of public agencies to enable healthy families and communities, and connecting leaders to accelerate learning and generate practical solutions together.

INFLUENCE. BUILD. CONNECT.

- Flexibilities that allowed for the **provisional licensure of foster family homes** and **permitted name-based criminal background checks** for prospective foster parents and care providers ensured agencies could maintain the needed pipeline of foster family homes and reasonably assess appropriateness of placements despite temporary disruptions to business operations due to the pandemic. These flexibilities were critical in ensuring ongoing recruitment of staff at public and private child welfare service providers throughout the pandemic. These flexibilities should continue to be made available through the duration of the public health emergency as public health conditions continue to affect local providers and the ability to perform in-person home inspections. Furthermore, HHS should consider whether these flexibilities on foster family home licensure should be modified and made permanent for kinship caregivers as a means to help promote keeping children in the least restrictive, family-based setting with limited disruption for emergency kinship placements while completing full licensure requirements.
- Modifications to **education and employment requirements for older youth** served through the Chafee program have been important to ensure youth transitioning out of foster care can continue receiving the support they need despite barriers to work and access to education due to the pandemic. Similarly, **administrative flexibilities to serve youth 18 and older** that provided states simplified processes to opt into the IV-E extended foster care program have been important to help child welfare agencies prioritize providing stability for older youth. These flexibilities should continue through the duration of the public health emergency and be reassessed for continuation post-pandemic based on economic conditions and lessons learned from state and local agencies. Flexibilities that are extended should be coordinated to dually apply to work requirements in other programs older youth may receive support through, such as SNAP.
- Recent guidance that allows child welfare agencies to **modify IV-E prevention programs and services to fit a virtual environment** reflects an important step in the right direction as more states approach implementation of the Family First Prevention Services Act (FFPSA). HHS should invest resources and/or provide states support to assess their fidelity in adapting programs to virtual implementation to ensure that agencies have all the tools available to offer prevention services in ways that are accessible and responsive to the needs of families post-pandemic.

In addition to the child welfare flexibilities already exercised by HHS, the public health emergency has had significant effects on FFPSA implementation that HHS should take action to help mitigate roadblocks for states. The past year was a pivotal time for agencies to build capacity among their provider community and to build the infrastructure needed to launch their IV-E prevention programs through FFPSA; however, the public health emergency response, major disruptions in service models, and the severe financial impacts on state and local agencies have collectively exacerbated existing challenges agencies faced and created new ones. HHS should consider federal actions that would help states successfully transition into FFPSA implementation, including:

- The *Supporting Foster Families Through the Pandemic Act*, attached to the federal appropriations and COVID relief package passed by Congress on December 21st, waives state match requirements for IV-E programs during the public health emergency. While this policy is welcomed relief to those already implementing IV-E programs through FFPSA, the vast majority of states are unlikely to begin implementation until after expiration of the public health emergency. The fiscal impacts of the pandemic on state and local budgets are expected to endure well beyond the conclusion of the public health

emergency and fall sharply on child welfare agencies just as they seek to scale up their IV-E prevention services. HHS should work with states in the IV-E planning process to consider the fiscal impacts of the pandemic on early implementation and **consider options to extend flexibilities on match requirements until economic conditions in states are stabilized.**

- Similarly, delays in FFPSA implementation that the public health emergency has contributed to have minimized the value of prior guidance permitting the use of transitional payments for IV-E services which states have evaluated but have not yet been reviewed by the IV-E Clearinghouse. To help child welfare agencies generate and utilize evidence-based programs that reflect the needs in their communities, HHS should **extend the timeline to submit evidence for transitional payments** for an additional 24 months. Furthermore, if states are required to provide match for IV-E services post-pandemic, HHS should at least **provide 100% federal match for IV-E evaluation activities** in the early years of FFPSA implementation as a way to help accelerate generation of evidence for services that families need which have yet to be reviewed for eligibility for IV-E reimbursement. Such actions will help agencies make available and build a pipeline for a suite of evidence-based programs that meet the needs of communities.
- HHS should also issue guidance for how **housing and economic support interventions could be considered eligible for IV-E Clearinghouse review and reimbursement.** The financial strain the COVID-19 pandemic has caused for millions of families further reinforces the importance of making these supports available to work in partnership with families to reduce the incidence of child maltreatment stemming from financial crises. While acceptance of programs such as motivational interviewing in the IV-E Clearinghouse have provided states the ability to offer evidence-based case management services to families experiencing crises, the ability of states to leverage IV-E funding to help families with the hard costs of financial emergencies they are experiencing that heighten the risk of child maltreatment represents an important step in further moving child welfare systems upstream.
- The disparate health and economic effects of the public health emergency on communities of color and historically underserved communities highlight the importance of being able to provide child welfare services that are attuned to these communities' specific needs. As such, HHS should **provide flexibility in evidence standards for culturally responsive evidence-based programs** for communities that are not easily evaluated through randomized control trials. This is a critical step to help child welfare agencies provide evidence-based programs that can be adapted to the culture and context of different communities. Similarly, federal action should be taken that **exempts services for tribal communities from evidence standards** in states that operate a IV-E program pursuant to an agreement with a tribal government. Services for these communities should be consistent with evidence standards used by programs operated directly by tribal governments.

Child Care

Flexibilities provided by the Office of Child Care have been key in supporting state and local child care administrators and providers to sustain service delivery throughout the public health emergency. Flexibilities that have had particular impact at state and local levels include:

- Adapting oversight of child care facilities to reflect disruptions due to the COVID-19 pandemic by **waiving on-site health and safety inspections** and **permitting name-based criminal background checks** in

lieu of fingerprint background checks. Both of these flexibilities should be continued through the duration of the pandemic and be phased out over a transitional period after conclusion of the public health emergency to allow programmatic operational capacity and regulatory oversight to stabilize to meet these requirements.

- Providing relief to families receiving child care subsidies by **waiving the 12-month continuing eligibility requirement** and allowing states to **waive co-pays for families**. Both of these flexibilities helped states lift undue financial burden for families suffering during the pandemic and ensure access for emergency workers. HHS should extend these waivers for a period of time after the public health emergency to support families that are recovering from the economic impacts of the pandemic without imposing an unsustainable burden on subsidy systems that cannot indefinitely support these actions.
- Ensuring child care providers can maintain a stable workforce by **provisionally hiring workers pending completion of interstate background checks**. This flexibility should be continued through the duration of the public health emergency. Furthermore, HHS should consider how to permanently resolve the barriers the interstate background check process creates for hiring child care workers. The extended timeline to complete this review for low-wage workers will continue to depress hiring in the child care industry and extended flexibility for provisional hires or a more expedited interstate background check process is needed to permanently address the problem. State and local agencies and their providers within child welfare services have faced similar challenges as well, which HHS should additionally consider in its review of these issues.

TANF

As a block grant with broad discretion in how states administer their programs, TANF agencies have been able to adapt their methods of service delivery without the need for extensive guidance and waivers. Common approaches taken by states during the public health emergency, which the Office of Family Assistance should further evaluate to distill best practices for future use, include shifts to telephonic signatures, modifications to certification periods, and virtual and remote employment and training services.

While HHS does not have statutory authority to waive state Work Participation Rate (WPR) requirements, guidance that the agency will exercise broad authority to provide penalty relief for states unable to comply with the WPR due to the public health emergency is an essential step that allows states to prioritize helping families meet their basic needs while they face structural barriers to engaging in eligible work activities. HHS should continue exercising this authority for the 2020 and 2021 WPR, as the social, economic, and health effects of the pandemic continue to impact how states engage with TANF recipients.

Furthermore, the multifaceted economic and familial pressures facing TANF recipients during the public health emergency have reinforced the need for HHS to consider alternatives to the narrow set of allowable work activities that current TANF policy is centered around. Structural shifts in the economy point to the need for a deeper level of training and investment to help individuals facing barriers to work achieve upward mobility. And the heightened pressures of home schooling and day care disruptions during the pandemic further reveal the need to build connections between TANF, child welfare, and other people-serving systems through a whole family approach to promoting well-being and addressing root causes of intergenerational poverty. HHS should examine



1300 17TH STREET NORTH, SUITE 340, ARLINGTON, VA 22209

TEL (202) 682-0100

FAX (202) 204-0071

WWW.APHSA.ORG

potential administrative actions it can take through guidance and Section 115 demonstration waivers to help states focus on family well-being and sustained, long-term employment outcomes.

Lastly, while WPR penalty relief helps states avoid financial penalties due to public health conditions outside their control, many TANF recipients risk timing off TANF benefits during the public health emergency due to the 60-month time limit, which remains in effect. This in turn has a trickle-down effect on states, who are left in a position where they must use state funds if they opt to cover the additional months of assistance families need while continuing to weather the effects of the pandemic. While current statute permits states to continue providing benefits for a small portion of TANF recipients beyond the 60-month time limit, the extended nature of the pandemic is pushing many states beyond this threshold. Although Congressional action is needed to resolve the issue, the inability to exclude months during the public health emergency from counting against a family's 60-month time limit remains a significant challenge for TANF agencies and the clients they serve.

APHSA looks forward to working with HHS in the coming months to learn from the human services response to the public health emergency to inform future decisions on regulatory relief that advance HHS' mission to promote the economic and social well-being of children, families, individuals, and communities. For any questions or follow-up on this matter, please contact Matthew Lyons, Director of Policy & Research, at mlyons@aphsa.org.

Respectfully,

Matthew Lyons

A handwritten signature in black ink, appearing to read "Matthew Lyons", with a stylized flourish at the end.

Director, Policy & Research
American Public Human Services Association

Duke Storen

A handwritten signature in black ink, appearing to read "Duke Storen", with a stylized flourish at the end.

Commissioner, Virginia Department of Social Services
Chair, APHSA Leadership Council