December 16, 2019

TO: Office of the Assistant Secretary for Financial Resources; Health and Human Services Grants Regulation

RE: Comments RIN 0991–AC16
Department proposes to repromulgate provisions of 45 CFR part 75 that were set forth in a final rule published in the Federal Register at 81 FR 89393 (Dec. 12, 2016) (Final Rule).

To Whom It May Concern:

We need to have a discussion about child welfare. We need to talk about foster care and the need for more appropriate foster care placements.

We need more family foster care homes while we seek to appropriately reduce the number of children and youth in care.

These two needs are not mutually exclusive, but the rhetoric in recent years around the needs of children in foster care has been focused on anything but children and families. The Administration should be leading this discussion on how to both build the needed capacity for appropriate care while reducing the need for foster care placements—always with children and families as the primary focus.

On November 19, 2019, the Administration announced a significant change to federal non-discrimination policy in regard to the Department of Health and Human Services' (HHS) execution of a number of human service programs under the Department's authority. The Department of Health and Human Services is now seeking to repeal parts of 75.300 as amended at 81 FR 89395, Dec. 12, 2016, regarding non-discrimination in placement and recruitment protections.

This proposed repeal of certain non-discrimination protections, rules, or laws as they apply to child welfare placements is not helping to create the kind of national discussion we need and is hindering the nation's ability to care for more than 687,000 children who will spend at least part of their year in foster care.

We urge the Administration to pull back this notice and instead offer up a serious discussion of what our next steps are in 2020. These next steps should involve the full continuum of care: primary prevention; intervention services that prevent out-of-home placements; permanency services that can reunify families; support ongoing relative care or promote and support adoptions in the creation of new families; and services that can support young people still in care in their teen years.

The Child Welfare League of America will enter its 100th year in 2020. Throughout that history, our membership has included many private and faith-based agencies, as well as public agencies, all in service to these children and their families. We, and all of our member organizations, have changed with the times. There are practices and standards that existed in 1920 that would simply be inappropriate today, even if they were well-intentioned or based on what we knew then.

One factor that has been consistent for the past 100 years is the fact that those agencies always sought, and do seek, to place children first. Placing children first, and their "best interests" first, has meant changing from past practices.

Over time, we have benefited from scientific advancement that has led to a better understanding of brain development a better understanding of child and youth development; and an always evolving societal and political history that has resulted in cultural, racial, ethnic and religious changes. These changes, in many instances, involved the rejection of prejudice and practice based on racial, ethnic, religious, and tribal differences. Rejection of these prejudices have made us stronger as a nation and has allowed us to place the primacy of children and youth first.

The "best interests" of children, as written into federal law under Title IV-B and Title IV-E of the Social Security Act, cannot be served if we turn this into a political fight that is more about which providers receive federal money and who can win the votes while children wait for their best interests to be served.

We urge HHS to withdraw this NPRM and work to implement the final rule of December 12, 2016, based on the following analysis and comments:

BACKGROUND ON THE ADMINISTRATION NPRM

On November 19, 2019, the Administration announced a significant change to federal non-discrimination policy in regard to the Department of Health and Human Services (HHS) execution of a number of human service programs under the Department's authority. The Department of Health and Human Services is now seeking to repeal parts of 75.300 as amended at 81 FR 89395, Dec. 12, 2016.

In effect, the Administration proposes to eliminate the non-discrimination provisions and protections in regard to the administration of HHS programs—and most specifically, as highlighted in the notice of proposed rule-making (NPRM). These provisions deal with child welfare services under Title IV-B and Title IV-E of the Social Security Act. First fully implemented in 2016, the provisions are an important effort to strengthen the child welfare system by assuring that the best interests of children covered by Title IV-B and Title IV-E are addressed.

Under the rule, HHS is proposing to change CFR 45 § 75.300 (c) and (d) by striking out parts of the 2016 rule. The following indicates how the Administration proposes to change this rule:

§ 75.300 Statutory and national policy requirements.

(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: Including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR part 25 and 2 CFR part 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2324 and 2409, and 41 U.S.C. 4304, 4310, and 4712.

(c) It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services ~~based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation. Recipients must comply with this public policy requirement in the administration of programs supported by HHS awards.~~ To the extent doing so is prohibited by federal statute.

(d) ~~In accordance with the Supreme Court decisions in United States v. Windsor and in Obergefell v. Hodges, all recipients must treat as valid the marriages of same-sex couples. This does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law as something other than a marriage.~~ HHS will follow all applicable Supreme Court decisions in administering its award programs.

<u>THE RATIONALE FOR THE NPRM</u>

The Federal Register notice offers this rationale for the changes:

"*Some federal grantees have stated that they will require their subgrantees to comply with the non-statutory requirements of 75.300 (c) and (d) even if it means some subgrantees with religious objections will leave the program (s) and cease providing services rather than comply. The Department believes that such an outcome would likely reduce the effectiveness of the programs funded by federal grants by reducing the number of entities available to provide services under these programs. The Department is also aware that certain grantees and subgrantees that may cease providing services if forced to comply with 75.300 (c) and (d) are providing a substantial percentage of services pursuant to some Department – funded programs and are effective partners of federal and state government in providing some such services."* Further in its NPRM, under the request for comment section, states:

"The Department seeks comment on this proposed rule, including its likely impact as compared to the previous final rule. The Department is particularly interested in comments related to the comparative effects and impact of its own enforcement discretion, specifically where the

previous Final rule to be fully enforced, as well as whether HHS were to fully exercise enforcement discretion regarding the Final rule."

Further into the NPRM under the *Regulatory Flexibility Act,* HHS states:

The Department has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (RFA)(5 U.S.C. 601-612). The RFA requires an agency to describe the impact of a proposed rulemaking on small entities by providing an initial regulatory flexibility analysis unless the agency expects that proposed rule will not have a significant impact on a substantial number of small entities, provide a factual basis for this determination, and proposes to certify the statement…

…For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue and at least five percent of small entities as discussed...

The Department seeks comment on this analysis of the impact of the proposed rule on small entities, and the assumptions that underlie this analysis.

The NPRM inappropriately frames the discussion in term of how it will affect agencies. Missing from this is a request to comment on the potential impact on children, youth, and families if discriminatory practices are a part of placement practice.

Our 100-year history began in recognition of the role of agencies. Agencies first came together in an informal way in 1915, and more formally in December 1920. The first charter of CWLA included 68 member agencies, both public and private, across 29 states, all coming together so that they could improve practices, services, and standards. CWLA was not formed just as a collection of agencies, but as a collection of agencies across the states that would be held to a higher standard. As a prerequisite for membership in CWLA, an agency was required to meet minimal standards, even though there were no formal accreditation standards in existence at that time.

A preliminary statement from our initial standards in 1921 stressed, *"that the mere conformity to standards was insufficient to insure good work. Rather, the quality of personnel* ***and the final result in the lives of children for whom care was given was the true test."***

We urge HHS to withdraw this NPRM because it fails to meet this final result—which is just as relevant today as it was in 1921.

Specific comments on this NPRM:

THE MACRO (CHILD WELFARE AGENCY) IMPACT

The Federal Register includes comments by HHS that argue that the non-discrimination provisions as finalized in 2016, and their impact on "small entities" defined as agencies and small governmental units, "*would likely reduce the effectiveness of the programs funded by federal grants by reducing the number of entities."* Further stated, "*HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue and at least five percent of small entities as discussed...*

This definition of a significant impact on agencies if "[there is] *at least a three percent impact on revenue and at least five percent of small entities as discussed..."* is notable in light of recent HHS budget proposals and the ongoing loss of federal funding support as documented in recent HHS budgets.

In particular, HHS noted in its FY 2020 Budget Justification the shrinking level of financial support by the federal government through Title IV-E for foster care funding. As noted in this document:

"Agencies can claim reimbursement for title IV-E eligible children, which are children whose biological families would have qualified for the AFDC program under the 1996 income standards, not adjusted for inflation. Fewer families meet these static income standards over time, thereby reducing the number of children who are eligible for title IV-E foster care maintenance payments. This also means that the percentage of children in foster care who receive federal support through the title IV-E Foster Care Program has declined. ***Approximately 51.8 percent of all children in foster care in FY 2000 received maintenance payments through the title IV-E Foster Care Program***. ***In FY 2018, this rate****, known as the penetration rate, had* ***declined to just below 40 percent*** *of all children in foster care.*"

In other words, six in ten children and youth in foster care will not be covered by federal funding in 2020. The number of children in care has increased over time. This continual decline in financial support by the federal government places an ever-increasing strain on state and local child welfare budgets, which directly impacts the reimbursement rates to and financial support of nonprofit (including faith-based) agencies and small government units. This shrinking commitment on the part of the federal government places strain not just on these providers, but also constrains the ability of state child welfare agencies to address a continuum of child welfare services, starting with primary prevention and intervention services, that might reduce the need for foster care placements.

If the repeal of non-discrimination protections for parents and children is merely driven by concern over potential costs to agencies and units of local government then HHS should be seeking to remedy the dwindling federal funding support resulting from the link to AFDC. Over time it has reduced financial support to child welfare agencies by the more than three to five percent benchmark used by HHS in this NPRM as a justification for repealing non-discrimination protections.

In addition to these growing financial constraints, put in place in 1996, the last several proposed budgets by the HHS offers two proposed reforms that directly impact on the financial support for the child welfare services:

1) The Child Welfare Flexible Funding Option. Title IV-E agencies would be able to use Title IV-E foster care maintenance payments for funding to prevent child maltreatment by converting Title IV-E funding into a fixed block of funds. The challenge would be to address the level and amount of care for foster care placements while also attempting to use the funds for primary community-based prevention of child abuse and neglect.

2) The budget (for FY 2020, 2019 and 2018) includes proposals to eliminate the Social Services Block Grant (SSBG) for a savings of $1.7 billion per year. SSBG is a bigger funding source for child protective services (CPS) than any other federal source and according to recent surveys of states by *Child Trends*, it provides approximately 11 percent of total child welfare spending (including some foster care funding) across the fifty states.

In recent years, CWLA analysis of SSBG spending has documented at least $600 million in SSBG funding that is specific to child welfare services, including adoption, foster care, child protection, and youth services. A deeper analysis including prevention and case management services would show even more funding decided to child welfare services.

If there is a spending reduction threshold of three to five percent, which will have a significant impact on providers of child welfare services, then the proposed elimination of SSBG will easily bypass the HHS measure of reduced services.

Taken in their totality, these budget actions will have a far greater impact on the ***quantity*** of foster care placements than enforcing anti-discrimination regulations that attempt to enhance the well-being of children and families.

A continued reduction in federal funding will result in understaffing and higher caseloads. That in turn has an impact on recruitment of foster families, both through outreach and support for those families, which has an impact on foster family retainment.

In short, it is inappropriate to assess the financial impact of the implementation of nondiscrimination laws in protection of children and prospective foster and adoptive parents when active federal budgets and budget proposals seek to cut funding for these services and agencies—but to a much great extent than three to five percent.

THE IMPACT ON CHILDREN AND YOUTH

What is the impact on the children and youth most directly affected by discriminatory practices imposed by a particular agency or caseworker? Here are the real-life experiences of two young men who participated in the Congressional Coalition on Adoption Institute (CCAI) Foster Youth Internship Program in 2016 and 2018. This is just a small example of how discrimination in placement has an impact.

Note that both of their lives in care took place before anti-discrimination practices were put into place in 2016:

In 2018, Terrence Scraggins, a Capitol Hill intern, who combined both his experiences while in foster care and his internship submitted a policy report as part of the 2018 Foster Youth Internship Program® Congressional Reports. As part of his recommendations, he said:

"Although I didn't quite understand the terminology, around age 13 I knew I identified as homosexual. Growing up in a very conservative Boise, Idaho presented many barriers to my development as an adolescent. As a bi-racial gay male with a state population that was only 0.8% African-Americans, I struggled with acceptance and felt different compared to my peers. During the six years I spent in foster care, I lived in more than 20 placement settings. It was not until I was placed with my grandparents at age sixteen that anyone asked me about my sexual orientation or for my input on where I would prefer to be placed.

While in foster care, I frequently felt I was treated differently because of my sexuality, even though I never openly stated how I identified. For example, one of my foster parents told me that my male friends couldn't share a blanket with me in the living room. Another one of my foster parents even said to me: "Gay people are sinners who have no direction in life." When moving from one placement to the next, I was informed that my previous foster parents consulted with my foster-parents-to-be about my sexuality, which led to discrimination and tension before I even arrived. None of my foster parents had any education or training on how to support me during the discovery of my sexuality, and my consent and input on placement were rarely valued or even asked. My quality of life within the child welfare system would have been drastically more positive had there been individuals whom I could turn to during times of need. To feel support rather than ridicule and judgment would have made all the difference in my development as a teenager."

He also cited several state and national studies: "According to the National Survey of Child and Adolescent Well-Being-II (NSCAW-II) approximately 22.8 percent of children in out-of-home care identified as LGBTQ+ (Martin, Down, & Erney, 2016). Research also shows that LGBTQ+ youth are overrepresented in foster care. According to a recent study in Los Angeles County, for example, approximately one out of every five foster youth identified as LGBTQ+ (Human Rights Campaign, 2015). Studies also show that youth in foster care who identify as LGBTQ+ have lower self-esteem and a much greater chance of health problems as adults (Child Welfare Information Gateway [CWLA], 2013). They are more than three times more likely to abuse illegal substances, three times more likely to be at high risk for contracting HIV and other STDs, almost six times more likely to experience high levels of depression, and more than eight times more likely to attempt suicide than their peers in foster care who do not identify as LGBTQ+ (CWLA, 2013)."

In 2016 David Rivera, also an intern through the CCAI's Foster Youth Internship Program® Congressional Report offered his policy report and personal experiences:

"I entered the foster care system at birth and have spent nearly all of my 21 years in foster care, including 18 different foster home placements. Much of the instability came after the age of 14

when I was "outed" as gay by a peer. When the news reached my foster family, I was abruptly told to leave their home. My social worker came to pick me up and so began a series of unstable placements as foster family after foster family asked for me to be removed because they felt uncomfortable with my sexual orientation. I am grateful for the successes I have achieved in life and all of the hurdles I have overcome as a foster youth, but ultimately, the only thing that ever mattered to me was finding a connection to a loving, stable, forever family. It is difficult enough for teenagers in the foster care system to find stability, yet for LGBTQ foster youth like myself, stable placements are even harder to come by. Fortunately for me, when I was 17, I found the family I had always wanted, and this year my adoption will be finalized. I think back to feeling unwanted and it inspires me to make sure other LGBTQ foster youth do not experience the same placement instability I did."

He went on to offer additional research: "This at-risk population will experience an average of "6.35 placements by the time that they achieve permanency, a rate that nearly doubles that of straight youth" (McCormick, Schmidt & Terrazas, 2016, p. 70). Data from the National Survey of Child and Adolescent Wellbeing — II demonstrates almost 20 percent of LGBTQ youth in foster care were requested by their caregiver or foster family to be moved from their first placement, whereas only 8.6 percent of non-LGBT youth were requested to be removed (Martin, Down & Erney, 2016). According to a California report on LGBTQ youth and child welfare, the following are disturbingly common practices, deeming these youth 'unadoptable;' blaming their being 'out' for the harassment and abuse from others . . . repeated placement moves resulting from the discomfort of a caregiver; or disciplining LGBTQ youth for engaging in age appropriate conduct that would not be punishable were it between youth of different sexes. (Wilber, Ryan & Marksamer, 2006, pp. 6-8)"

What goes unsaid is that these two resilient young people represent a small percentage of the population of youth that exit care. The vast majority will not make it to college, and a significant percentage won't experience a high school graduation day; some may experience homelessness and unemployment. Stories of discrimination and multiple placements will go untold and not considered in evaluating this NPRM.

In addition to these first-person comments:

A new report just published by the Department of Health and Human Services, as a result of 2014 legislation reauthorizing the Title IV-B programs, provides an analysis of factors associated with youth who run from foster care. Regarding sexual orientation the report stated:

"Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth are more likely than heterosexual youth to run from home in the general population, and preliminary evidence suggests a similar pattern among the foster care population. A large, longitudinal study of youth in state custody assessed runaway behavior among youth with issues related to sexual development, defined broadly as "difficulties related to sexual development, including sexual behavior, sexual identity, sexual concerns, and the reactions of significant others to any of these factors" (Taylor, 2013). Such youth were 17 percent more likely than other youth to run from care and were also more likely to have an increased number of days on the run. These findings are consistent with findings that youth in the general population who identify as LGBTQ are

overrepresented in the homeless population, and are more likely than youth who identify as heterosexual to be runaways or throwaways (i.e., evicted from their homes by parents; Cochran, Stewart, Ginzler, & Cauce, 2002; Corliss, Goodenow, Nichols, & Austin, 2011; Whitbeck, Chen, Hoyt, Tyler, & Johnson, 2004). Sexual orientation and gender identity may be particularly critical factors to examine among runaway youth, because they often emerge in middle to late adolescence—a time of high running risk (Nesmith, 2006)."

In the 2010 CWLA Press publication *LGBTQ Youth Issues: A Practical Guide for Youth Workers Serving Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, author Gerald P. Mallon states that:

"There must be a system-wide recognition of the fact that negative attitudes toward homosexuality and discrimination against LGBTQ youth contribute significantly to the difficulties that these youth encounter. Youth care professionals need to acknowledge the existence of young LGBTQ people and develop ways to educate themselves—as well as the families of children in care—in order to understand the significance of sexual orientation in young peoples' lives."

This NPRM should be repealed because it contradicts this practice.

THE NEED FOR A STRATEGY TO INCREASE APPROPRIATE FOSTER FAMILY RECUITMENT

Writing in a March 1961 issue of CWLA's *Child Welfare* journal, CWLA Director of Research David Fanshel wrote:

"Without systematic research to test child welfare practice theory, crucial decisions are often made about foster children under conditions of great uncertainty, and sometimes on an almost trial and error basis. Many of these youngsters have already suffered serious trauma by virtue of being separated from their natural parents. Unfortunately, every "trial" that turns out to be an "error"—a placement that does not take—exacerbates an already unhappy situation."

Although these words were written more than a half century ago, they still hold true. Placing children and youth not based on what they need, but *"under conditions of great uncertainty, and sometimes on an almost trial and error basis… exacerbates an already unhappy situation."*

We need a comprehensive national strategy to expand the availability of a continuum of foster family homes that are appropriate to each child. This becomes even more urgent in light of new limitations placed on residential or group care and the creation of the Quality Residential Treatment Program (QRTP) through the Family First Prevention Services Act.
Rather than framing this challenge as a fight over "religious freedom," with children and families in the middle of the battlefield, we need a declaration of need. **We propose that the Administration withdraw this NPRM and instead post a request for comments on strategies to increase the number of appropriate foster family placements and increased placements for the approximate 125,000 waiting to be adopted.**

The child welfare agency plays a significant role in the recruitment of families not just for the children and youth that identify as LGBTQ+, but also for sibling groups, adolescents and teens, children with disabilities, and children with diverse backgrounds including different religious beliefs and practices. To fill this need, even with efforts to reduce the number of children in care, we need to be working together on a strategy that first and foremost is about the children, youth and their families with placements appropriate to children, youth, and their families. That cannot happen in a political environment that sets aside foster care and adoption in exchange for a debate over how we define religious freedom.

As an example of this great need, in 2014, 42 states told the Government Accountability Office (GAO) that they were having difficulty in finding homes for sibling group placements. Fostering Connections to Success Act of 2008 directed states to keep sibling groups together so that children will not be isolated from their brothers and sisters. The GAO report *HHS Needs to Improve Oversight of Fostering Connections Act Implementation,* described specific evidence:

"The lack of available placements for sibling groups was a challenge identified in all four states we visited. One local office noted that this can be particularly challenging in high-cost urban areas where potential resource families have limited space. Additionally, siblings may have different needs that may require separate housing, as when one sibling has severe behavioral issues that require a higher level of care. Caseworkers in two states noted that groups in which siblings have different fathers can complicate placement with relatives. One group of foster parents we interviewed reported that the child welfare agency does not do enough to facilitate visitation between separated siblings, which is left to the foster parents to arrange."

The agency can and should be a part of the strategy to maintain a diversity of placement options. In addressing the needs of youth who identify as LGBTQ+, the system and agencies supporting this population needs to develop guidelines and policies that are appropriate and affirming of youths' sexual orientation, gender identity, and expression (SOGIE).

CWLA's best practice guidelines for this population highlight that agency policies should: limit the use of independent living as a case goal; limit the use of congregate care; develop a youth-driven permanency model; and train all staff in permanency strategies and overcoming barriers to permanence for these youth.

In regard to addressing the needs of youth who identify as LGBTQ+, agencies should employ targeted recruitment strategies to identify potential caregivers for each individual youth. In some instances, extended family members, friends of the youth or family, and other adults known to the young person may identify an adult willing to provide a home for the young person.
It is not best practice to make placement decisions based on available beds rather than the young person's individual characteristics and needs; this approach can lead to disastrous results for the youth and for the family.

THE ARGUMENT OVER RELIGION

In a ruling on September 20, 2019, Federal District Court in Maryland rejected a challenge to Maryland's recent law that prohibits conversion therapy of minor children. A Maryland

psychotherapist claimed that the law violated *his* religious freedom. The Maryland law bans the practice of conversion therapy on any child or youth under age 18. The therapist claimed that the new law targets his:

"*sincerely held religious beliefs regarding human nature, gender, ethics, morality, and counseling to eliminate, reduce, or resolve unwanted same-sex attractions, behaviors, or identity" by prohibiting him from "offering . . . counseling that is consistent with [those] religious beliefs."*

In her ruling, federal Judge Deborah Chasanow stated:

The First Amendment provides that "Congress shall make no law respecting an establishment of religion or prohibiting the Free Exercise thereof." The First Amendment does not, however, provide absolute protection to engage in religiously motivated conduct…[A] *neutral, generally applicable law does not offend the Free Exercise Clause, even if the law has an incidental effect on religious practice."*

The judge further ruled, "…the statute is, at a minimum, facially neutral…As applied, Plaintiff has failed to provide facts indicating that the "object of (the law) was to burden practices because of their religious motivation…. *Plaintiff's bare conclusion that (the law) displays hostility towards his religious convictions is not enough, acting alone, to state a claim that (the law) violates his free exercise rights."*

We would argue that federal child welfare law, as dictated by Title IV-B and Title IV-E of the Social Security Act, does not display hostility to religion, but does emphasize the best interests of the child to be primary.

The CWLA *National Blueprint for Excellence in Child Welfare* standard on the rights of children states that "c*hildren should be protected from discrimination on the basis of race, color, age, disability, gender, familial status, religion, sexual orientation, gender identity, genetic information, language, religion, national, ethnic or social origin, political beliefs, or citizenship."*

The *National Blueprint* standard on race, ethnicity, and culture states that '*all entities, communities, and families should ensure that resources are available to help children, and youth understand their heritage, preserve their connections to culture and religion, learn and preserve their traditions, and have positive role models".*

Resource families, including child-serving agencies, potential adoptive families, and foster parents, are responsible for the care, safety, and well-being of every child/youth that has an encounter with the child welfare system. When we allow agencies to prioritize their personal beliefs over the best interests of children and youth, we essentially are negating the individual needs of the child and their families. Over the past few years, child welfare has not always served all children well, including older youth, youth who are LGBTQ+, youth who do not identify as religious, youth of color, and youth with disabilities. Youth are more likely to be

placed in congregate care settings and are more likely to age out of the foster care system to homelessness, incarceration, and no connections or permanency.

Children and youth in foster care are incredibly diverse and are represented across every state and district in America. An agency with a narrow focus in serving thousands of children and families in need is not reflective of all children, or of the needs of many communities that struggle to recruit and retain qualified foster parents. Having adequate and skilled foster parents is a significant need for every state in America.

The National Foster Care Youth & Alumni Policy Council (Foster Youth Council), consisting of current and former foster youth from across the U.S. with a broad range of diversity, expressed their concerns with federal policy and procedures that would deprive children of placements in families of their same cultural background including nationality, ethnicity, and religious customs. The Foster Youth Council recommendations regarding family foster home licensing standards state that an "applicant must not be denied due to age, ethnicity, national origin, race, religion, sexual orientation, gender identity or expression, marital status, veteran's status, or the presence of a disability." This recommendation is based upon the youth in foster care's experiences with public and private agencies' failure to place every child in an appropriate, quality placement setting that is specific to the needs of the child and their family. Incorporating a model family foster home licensing standard "should not create unnecessary barriers," and this proposed rule is, in fact, a culprit of an unnecessary barrier to the child welfare system.

The Foster Youth Council recommends that "[foster parents] will affirm and support the identity of children and youth placed in their home, including (age-appropriately) race, cultural and ethnic identity, religion, and sexual orientation, gender identity, and expression."

Ensuring that the child welfare system protects and nurtures the identity of every child and their family of origin's culture and religion is vital for the development and health of the children placed in foster care. When the child welfare system ignores youth and family voices that are central to the case plan and efforts for permanency and safety, it is a disservice to the family's first model.

When foster youth and alumni share their experiences in the foster care system with stakeholders, including Congress, the Administration, and public and private child welfare agencies, they always talk about the improvements that need to happen with the system—and two issues always emerge. First, they talk about their placement experiences and the need to be included in these decisions from the beginning, including recruitment and training qualified foster parents that are diverse and open to the various needs of each child in foster care. Second, they express the desire for normalcy and family that can only be achieved in a system that protects youth from discrimination by affirming and supporting the individual identity of every child and their family. The perspective of those with lived experience should guide conversations around changes in foster care, including child welfare services, adoption and post-adoption services.

CONCLUSION

Faith-based providers have a long and important history of providing essential services in foster care and the larger child welfare system. At times throughout our history, they provided services when federal, state, and local services were lacking. However, best practice demands that we remember the child and family are our clients—thus, their needs are paramount.

In 1959 CWLA participated in an analysis of the nation's foster care system and some of the shortfalls. That landmark study, *Children in Need of Parents*, examined foster care to assist in the development of legislation, policy and practice. The study looked at 4281 children and youth in foster care out of the 250,000 children in foster care across the country. Eight communities in different geographic, urban, metropolitan and rural setting were examined. Among the many challenges the study looked at, it examined how some communities provided care. At the time CWLA highlighted one example at a regional conference. The survey found that in Jamestown its 13 agencies each limited their services to specific populations based on religion, race and age.[1]

In highlighting the overall findings of the 1959 study, A *Child Welfare Journal* summation in 1961 said this, "…we can tackle the difficult problems posed by this study—and do so at once—for, in Mr. Reid's (CWLA's Executive Director) words, *'Children need what they need when they need it. Providing it 'later' is always too late.*

The *National Blueprint for Excellence in Child Welfare* serves as the foundation and framework for achieving the vision that all children will grow up safely, in loving families and supportive communities. They must have the resources needed to flourish, including connections to their culture, ethnicity, race, and language, and support for their sexual orientation and gender identity. This vision requires that all children, whether or not they receive child welfare services or are at risk for child abuse or neglect, will grow up with safety, well-being, and permanence. Families, individuals, communities, providers, and other organizations can create the greatest opportunities for all children and youth to succeed and flourish. It is only by achieving a vision for all children and youth those who are most vulnerable can flourish. This means working together to better serve and protect children and support their families and permanence. This requires collaboration between families, individuals, communities, service providers, and policymakers to ensure the best possible opportunities for all children and youth.

We don't need to take steps backwards in child welfare in 2020 where we segregate children by category for budget purposes as this NPRM suggests. Children need what they need when they need it. Stop this backward movement and repeal this NPRM

[1] According to the study the agencies in Jamestown divided care by: Foster care/adoption children 0-21; institutional care for white children 6-14; institutional care for Negro children 6-12; Institutional care for white Catholic school age children; Adoption for children 0-10; Institutional care for white Baptist children 0-16; Family foster care and adoption for Catholic children 0-18; Institutional care for white children 7-18; Institutional care white Episcopalian children, 6 through high school; Institutional care for white Methodist children 6 to adulthood; Institutional care for white children 4 to adulthood; Institutional care for Negro girls 4 years through high school; Foster family care Jewish children of all ages