



ADVANCING AMERICAN FREEDOM

November 27, 2023

Via Federal eRulemaking Portal:

<https://www.regulations.gov/docket/ACF-2023-0007>

Kathleen McHugh
Director, Policy Division
Children's Bureau
330 C Street SW, 3rd Floor
Washington, DC 20201

Re: *Comments regarding the Children and Families Administration's Notice of Proposed Rulemaking regarding Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B, RIN: 0970-AD03 (Docket No. 2023-21274)*

Dear Director McHugh,

Below are comments from Advancing American Freedom ("AAF") on the Children and Families Administration's Proposed Rulemaking regarding Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B, RIN: 0970-AD03, published in the Federal Register on September 28th, 2023.

Introduction

AAF is a 501(c)(4) non-profit organization that advocates for conservative values and policies by developing innovative policy solutions, strategies, coalitions, and messaging that build upon the accomplishments of the last administration and expand freedom for all Americans.

AAF is troubled by this proposed rule as it would violate the religious freedom of foster care families and ultimately make the shortage of families working within the foster care system worse. Faith-based foster care providers will be compromised in their ability to function as this rule is in direct opposition to traditional views of sexuality and gender. The foster care system provides society the opportunity to honor the God-given worth and dignity of all people. When a family is unable or unwilling to care for a child, the foster care system connects children with families who see their value and want to provide for them.

For many, this desire comes from their deeply held religious beliefs. For some states, the rule seemingly conflicts with laws protecting children from irreversible surgeries and chemicals. The radical gender ideology of the Biden Administration is making its way into negatively impacting various state foster care systems.

This Rulemaking Would Violate The First Amendment Right To Religious Freedom.

America's constitutional duty to uphold religious liberty means a person's faith identity should not prohibit them from fully participating in the effort to "provide safe and stable out-of-home care for children and youth until they are safely returned home, placed permanently with adoptive families or legal guardians, or placed in other planned arrangements for permanency."¹ Backed by the HHS, AdoptUSKids lays out three characteristics needed to be a good foster or adoptive parent. These include (1) being stable, mature, dependable, and flexible, (2) having the ability to advocate for children, and (3) being a team player with your family or child welfare worker.² A parent can be all of these without the state denying parents of their religious freedom.

While pairing children with like-minded families is ideal, deeming parents unsafe and inappropriate because of their traditional values and religious beliefs violates the Constitution.

This Rulemaking Would Exacerbate The Shortage Of Foster Care Parents.

The Adoption and Foster Care Analysis and Reporting System (AFCARS) estimates there are 391,000 children in the system in their most recent report in 2021.³ With such high demand, the United States government cannot afford to turn away faith-based providers or individual foster care parents because it attacks their traditional view of human sexuality. According to HHS, there are 8,000 faith-based foster care agencies across the country. Further, Barna Group found that 3 percent of practicing U.S. Christians are foster parents and 31 percent have seriously considered fostering a child. By comparison, 2 percent of all U.S. adults are foster parents while 11 percent seriously considered fostering a child.⁴

In North Carolina, for example, the data shows a sharp 23% drop in the number of licensed foster care homes from 2021 to 2023.⁵ Michelle Crouch, an independent healthcare journalist for the Charlotte Ledger and North Carolina Heath News reports the big reason for the shortage of foster

¹ "Foster Care." The Administration for Children and Families. Accessed November 16, 2023. <https://www.acf.hhs.gov/cb/focus-areas/foster-care>.

² "Who Can Adopt and Foster?" AdoptUSKids. Accessed November 16, 2023. <https://adoptuskids.org/adoption-and-foster-care/overview/who-can-adopt-foster>.

³ Administration for Children and Families . (n.d.). The AFCARS report #29 - ACF. Children's Bureau . <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf>

⁴ "5 Things You Need to Know about Adoption." Barna Group, August 16, 2023. <https://www.barna.com/research/5-things-you-need-to-know-about-adoption/>

⁵ Rexroad, J., Adams, H., & Scraggins, T. (n.d.). *Total licensed foster homes 2018-2023 - who cares: A national count of foster homes and families*. 2018-2023 - Who Cares: A National Count of Foster Homes and Families. <https://www.fostercarecapacity.com/data/total-licensed-foster-homes>

homes in NC is due to a lack of feeling supported by the state. She claims social workers are overworked and have high numbers of cases to work with.⁶ The addition of this ruling will both hinder state capacity and add to the already heavy workload of social workers. A majority of states have seen a decrease in licensed foster care homes over the past two years. We foresee the NPRM contributing to this decrease rather than working to encourage more licensed foster homes.

This Rulemaking Creates A Hostile Environment For Faith-Based Providers.

Under the proposed rule, providers will be required to ensure an environment free of hostility, mistreatment, or abuse based on the child's expressed sexual orientation or gender identity. Although the rule does not explain in further detail the characteristics of a hostile environment, the background of the NPRM cites a study claiming that transgender-identifying youth feel supported by caregivers when the child's proclaimed name and pronouns are used correctly, and their chosen gender expression is supported - including support for transgender chemical and surgical procedures. If adhering to a traditional view of sexuality equates to a hostile environment, faith-based institutions and religious foster parents will not fit the standard.

The proposed rule also requires special training for foster parents paired with a child identifying as "lesbian, gay, bisexual, transgender, queer or questioning, intersex, as well as children who are non-binary, or have non-conforming gender identity or expression (all of whom are referred to under the umbrella term LGBTQI+)". These training sessions are asked to include knowledge and skills on how to serve the needs related to a child's self-proclaimed sexual orientation, gender identity, and gender expression. Under these new rules, children that identify as LGBTQI+ will be allowed to request a new foster family if the child feels in need of a different foster environment. Essentially, this eliminates foster families who believe in the traditional ethic of human sexuality.

The Rulemaking Goes Against Laws Enacted By Nineteen States.

Currently, nineteen states have passed laws surrounding transgender chemical and surgical procedures for children. Five of the nineteen have classified the performance of certain forms of transgender-related surgery on minors as a felony. With states realizing the danger of such surgeries on anyone, especially a minor, should foster parents encourage children in seeking irreversible procedures? How will the NPRM work in conjunction with these state rulings?

⁶ WFAE | By Marshall Terry, & Michelle Crouch | The Charlotte Ledger/NC Health News. (2023, July 10). *There aren't enough foster parents in North Carolina. kids are sleeping in Social Service Offices.* WFAE 90.7 - Charlotte's NPR News Source. <https://www.wfae.org/health/2023-07-10/demand-for-foster-care-in-north-carolina-outweighs-supply#>

This Rulemaking Highlights The Advancement Of Radical Gender Ideology.

The role of a parent in a child's life is very important. Parents should absolutely be involved in conversations with their children surrounding sexuality – both biological and foster parents. The Biden Administration has used its power to pull parents away from these discussions. Some states have followed along with this ideology allowing for schools to exclude parents from knowledge of their child's gender confusion. It is dangerous to force an agenda on young minds and prohibit parents from having any power to stop it. Instituting the NPRM will further the Biden Administration's advancement of radical gender ideology by eliminating foster care homes that disagree with the ideology.

Conclusion

It is important to protect faith-based agencies from regulations that go against their beliefs to ensure a diverse set of agencies to serve a diverse population. Faith-based agencies are known for their ability to place children with specific needs - older children, sibling groups, and children with special needs.

The NPRM will cause more harm than good to foster care, as it has the potential to decrease the number of licensed homes in each state. Children deserve a caring home no matter their identity. This proposed rule puts an ideological agenda above the welfare of children and should be rescinded immediately.

Request For Important Information Regarding NPRM:

- We ask that you provide a clear definition of what you mean by “an environment free of hostility”? Please share information on how agencies will determine if an environment is fit for a child with respect to sexual orientation and gender identity.
- Will States be allowed to create training specifically for faith-based institutions regarding sexual orientation and gender identity? Or will all foster care agencies be required to do the same training? Are faith-based agencies allowed to devise their own training?
- How do you expect this ruling to change the operation of faith-based agencies? What are the burdens placed on religious providers? If there are no “substantial burdens,” what difficulties will this proposal bring?
- How does the rule take into account ongoing litigation regarding minors being removed from the family home over issues related to transgender self-identification and pronoun usage? *See, e.g., In re A.C.*, No. 22A-JC-49, ___ N.E.3d ___ (Ind. Ct. App., Oct. 21, 2022).