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Executive Director

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Kathleen McHugh
Director, Policy Division
U.S. Department of Health and Human Services
Administration for Children and Families (ACF)
Washington, D.C.

Re: Foster Care Legal Representation NPRM
Document Number: 2023-20932
RIN: 0970-AC89

Dear Director McHugh:

Thank you for providing us with the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) for Foster Care Legal Representation. We greatly appreciate the Children's Bureau's support for high-quality legal representation for all parties¹ and this effort to codify federal funding under Title IV-E for legal services.

Lawyers For Children (LFC) is a not-for-profit legal corporation dedicated to protecting the rights of individual children in New York City and compelling system-wide child welfare reform. Since 1984, LFC has provided free legal and social work services to children in more than 30,000 court proceedings involving voluntary foster care, abuse, neglect, termination of parental rights, adoption, guardianship, custody, visitation, juvenile justice and PINS. This year, our attorney-social worker teams will represent nearly 3,000 children and youth in the New York City Family Courts. Each child represented by LFC is assigned an attorney and a social worker to help advocate not just in the family court child welfare proceeding, but also to address ancillary issues, including legal advocacy related to educational services, immigration issues, eligibility for public benefits, access to housing, problems with consumer and educational debt, and name changes. LFC's interest in these regulations is borne of nearly 40 years providing high quality representation to children and youth in child welfare matters.

While New York has not accessed Title IV-E funding for legal services pursuant to the 2019 change to the Child Welfare Policy Manual,² we are hopeful that codifying the availability of this

¹ U.S. Department of Health and Human Services, Administration of Children and Families. (January 2017). *High Quality Legal Representation for All Parties in Child Welfare Proceedings*, Log No: ACYF-CB-IM-17-02.

² Children's Bureau Child Welfare Policy Manual, Section 8.1B, Questions #30, #31& #32.

funding will strengthen, accelerate and further embed the important work of legal representation into state practice. As the preamble to the proposed rule explains, facilitating legal representation for children, parents, kin and tribes helps Title IV-E grantees meet their mandate. Research has shown that legal counsel prevents unnecessary foster care placement³, expedites reunification and other permanency pathways⁴, promotes placement with kin⁵, and reduces unnecessary school disruptions.⁶ Moreover, providing legal counsel to parents and children in civil cases such as housing and benefits can prevent family separation and help swiftly stabilize and support youth, parents and families experiencing foster care court cases. In addition to these positive outcomes, attorney representation is endorsed by lived experience experts⁷ and has been recognized by the Children’s Bureau as a “powerful tool for parent and youth voice.”⁸

LFC writes to express our support for this important rule and also to suggest modifications with respect to several key points to strengthen and clarify the final rule.

Request to Specify that Legal Representation Includes Professionals Working with an Attorney

The proposed new rule would allow reimbursement for the cost of “independent legal representation *provided by an attorney*. . .” (emphasis added). However, the NPRM states, “Consistent with Children’s Bureau policy, a title IV-E agency may claim title IV-E administrative costs of paralegals, investigators, peer partners or social workers that support an attorney providing such independent legal representation to the extent that they are necessary to support the attorney.” (p. 6). As drafted, the proposed rule appears to restrict reimbursement only to the costs of work done by an attorney – and not these other important professionals. We urge you to modify the proposed rule to be consistent with Children’s Bureau policy and the preamble, clearly reflecting the scope of administrative costs that are eligible for reimbursement.

Lawyers For Children employs the interdisciplinary model envisioned by the Children’s Bureau, pairing each client with a licensed social worker, as well as an attorney. This model helps our attorneys develop a legal strategy tailored to the clients’ needs, provides critical additional support for the clients, and facilitates referrals to services and benefits that prevent foster care placement and expedite the discharge from foster care. Our staff also includes Youth Advocates - staff with lived experience in foster care who assist clients as they transition into adulthood by

³ Sankaran, Vivek. "Case Closed: Addressing Unmet Legal Needs and Stabilizing Families." M. L. Raimon, co-author. Center for the Study of Social Policy (2014).

⁴ Duquette, Donald N., How to Improve Legal Representation of Children in America's Child Welfare System (February 8, 2022). U of Michigan Public Law Research Paper No. 22-002, U of Michigan Law & Econ Research Paper No. 22-002; See also Zinn, A. E. & Slowriver, J. (2008) *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*. Chicago: Chapin Hall Center for Children at the University of Chicago.

⁵ Lucas A. Gerber, et al., Effects of an interdisciplinary approach to parental representation in child welfare, 102 *Child. & Youth Services Rev.* 42 (2019).

⁶ Washington State Center for Court Research, (2021) *Evaluation of the Washington State Dependent Child Legal Representation Program*. Olympia, WA: Administrative Office of the Courts.

⁷ “A Historic Opportunity to Reform the Child Welfare System: Youth & Alumni Priorities on Older Youth Successful Transition to Adulthood.” The National Foster Care Youth and Alumni Policy Council. December 2020.

⁸ U.S. Department of Health and Human Services, Administration of Children and Families. (August 2019). *Engaging, Empowering, and Utilizing Family Voice in All Aspects of Child Welfare to Drive Case planning and System Improvement*, Log No: ACYF-CB-IM-19-03.

connecting them to community resources, arranging for access to services, and ensuring they have essential items for independent living.

The value of including these other professionals is well-established. A multi-year study of nearly ten thousand families found that those who were represented by organizations employing an interdisciplinary model had better outcomes, including children spending almost four months less time spent in foster care, than their counterparts represented solely by an attorney.⁹

Accordingly, we urge you to ensure that the final adopted rule encourages the use of an interdisciplinary model by clearly specifying that the costs of other professionals working with the attorney may be eligible for reimbursement under Title IV-E.

Request to Clarify the Definition of Independent Legal Representation

“This NPRM proposes that the title IV-E agency may determine what ‘independent’ means for purposes of providing such legal representation.” (p. 7). However, Title IV-E agencies do not and should not have authority to regulate the practice of law. To avoid a conflict with state law and practice, we strongly recommend that the finalized rule state that the term “independent legal representation,” is to be defined by the state entity/rules that regulate attorney practice, such as state bar associations, rules of professional responsibility (including attorney-client privilege and confidentiality, and conflicts of interest), pertinent ethical opinions, state statutes and court administration.

In addition, the preamble’s definition of independent legal representation refers to an attorney who: “...does not accept compensation for representing a client from someone other than the client unless the client gives informed consent;...” We recommend that this language be removed from the definition because in every case in which Title IV-E funds would be used for legal representation, the money would originate from an entity other than the client. Requiring client education and consent to these systems-level funding arrangements at the outset of every attorney appointment is impractical and unnecessary – particularly when representing a child client.

Request to Clarify the Types of Legal Services that are Eligible for Reimbursement

The NPRM’s preamble provides an array of excellent examples of legal services that could be funded with IV-E administrative funds. We recommend that the Children’s Bureau clarify and affirm that each of the following phases of work are included under the finalized rule:

- (1) preventive legal representation¹⁰ *prior to a petition being filed* to assist a parent, child, or kinship caregiver in *the course of a CPS investigation*;
- (2) preventive legal services *prior to a petition being filed* to assist a parent, child, or kinship caregiver with *non-CPS civil legal needs*, such as housing, public benefits, intrafamily violence, special education, etc.;
- (3) *post-petition* legal representation *in a dependency case* from the time a petition is filed through the entire trajectory of the case (including a youth’s time in extended foster care and appeals), for a child, parent, or intervening tribe;

⁹ Gerber, et al., fn 5, above.

¹⁰ “How is Pre-Petition Legal Representation Critical to the Continuum of Legal Advocacy?” Casey Family Programs. (August 2021). Available at <https://www.casey.org/pre-petition-legal-advocacy/>.

- (4) *post-petition* civil legal services for a child or parent to address ongoing ancillary civil legal aid needs;
- (5) legal representation for youth in extended foster care both *in the dependency case* and in *ancillary civil legal matters* as they transition from foster care to adulthood;
- (6) *post-discharge representation* for older youth who have left foster care, but may be at risk of returning to placement.¹¹

We further recommend that the list of examples of the type of legal representation that could be funded with IV-E administrative funds includes the following:

- Providing independent legal representation to an eligible child to address the child's immigration status, including proceedings related to obtaining Special Immigrant Juvenile status, and renewal/replacement of immigration documents, to help the youth transition safely out of foster care.

Finally, the Children's Bureau should remind states that Title IV-E funding should be used to supplement, not supplant, State funding for legal services. The federal Court Improvement Program (CIP) requires grantees to maintain at least one initiative focused on Quality Legal Representation, so these projects and partners offer a common starting point for a discussion about reinvestment of funding for quality improvement.

Thank you for your leadership in ensuring high-quality legal representation is integrated into federal rules and funding streams.

Sincerely,



Karen Freedman
Founder and President



Betsy Kramer
Public Policy Project Director

¹¹ In New York, youth over the age of 16 who have been discharged from foster care may return to placement in certain circumstances until age 21, without the filing of a new petition.