



November 27, 2023

BY ELECTRONIC SUBMISSION

Department of Health and Human Services

Re: Request for Public Comment Concerning Proposed Regulations Regarding Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B; RIN 0970-AD03.

Dear Sir or Madam:

The Ethics & Religious Liberty Commission (ERLC) of the Southern Baptist Convention (SBC) respectfully submits the following comments regarding our concerns with the proposed “Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B.”

The ERLC is the public policy entity of the SBC, which has nearly 14 million members in over 50,000 churches in the United States. We are charged by the SBC with addressing ethical and moral concerns affecting issues such as the sanctity of human life, religious liberty, marriage and family, and human dignity.

The ERLC is deeply concerned with the proposed rule as the Department of Health and Human Services (HHS) distorts the term “safe and proper” foster care as provided in Titles IV–E and IV–B of the Social Security Act to cultivate a narrative that religious and faith-based providers are unable to provide adequate care for children in foster care who identify as LGBTQ. Not only is this factually untrue, but such a position is indicative of prejudice against faith-based foster care providers.

In this regulation, HHS has proposed that states should only place children who identify as LGBTQ through foster care organizations that do not have certain religious views regarding human sexuality and gender. Such a proposed rule will cause undue harm to foster children that HHS has itself indicated are an “overrepresented” and under-resourced population. By needlessly limiting the pool of eligible foster care providers, it is clear that children who identify as LGBTQ, comprising approximately 30% of the foster care population, will be restricted from the care they desperately need, if such care that is provided by faith-based providers is eliminated or blocked as an option.¹

¹ The Cuyahoga Youth Count - University of Maryland, Baltimore. Accessed November 15, 2023. <https://theinstitute.umaryland.edu/media/ssw/institute/Cuyahoga-Youth-Count.6.8.1.pdf>.



Furthermore, this proposed rulemaking discriminates against religious and faith-based foster care providers by forcing such organizations to choose between their deeply held convictions and their desire to live out their faith by caring for some of the most vulnerable children in our society.

Religious and faith-based organizations’ belief in a biblical sexual ethic is not at odds with the ability of foster families to provide “safe and proper care” to foster children from any background.

HHS bases its new regulation on language from the Social Security Act, which requires state and tribal agencies to ensure “safe and proper care” for children in foster care placements. HHS argues that under existing federal law, states must develop a plan to ensure foster children who identify as LGBTQ receive “safe and proper care,” defined as “an environment free of hostility, mistreatment, or abuse based on the child’s LGBTQI+ status.” Additionally, the proposed language requires states and tribal agencies to ensure foster parents are prepared with “the appropriate knowledge and skills to provide for the needs of the child related to the child's self-identified sexual orientation, gender identity, and gender expression.”

Although HHS claims it is not violating the free exercise of religion, the Department is functionally enforcing such discrimination by relying on the false assumption that only “affirmation” of a child’s LGBTQ beliefs is “safe and proper.” Contrary to such assertions by HHS, a foster family should not have to agree with every political, spiritual, and other belief of a child to be deemed “safe and proper.”

A foster parent’s biblical belief regarding sexuality and gender identity does not detract from their ability to warmly welcome a vulnerable child into their home. Inevitably, there will be many beliefs on which the child and family disagree. The deeply held religious beliefs of faith-based organizations are not a result of and do not create a culture lacking in “knowledge and skills” needed to care for foster children. What should remain preeminent in considering foster care placements is whether the foster parent has a physically safe and secure home with access to the resources the child needs while a permanency plan is developed.

Southern Baptists have long prioritized a robust theology of support for foster care, repeatedly stating in resolutions a desire to continue to participate in our nation’s foster care system. In 2022, Southern Baptists resolved “to continue and increase their efforts to serve and support ... foster-care and adoptive families, doing invaluable and often under-recognized work in the care of women and children at every stage of life.”²

² “On Anticipation of a Historic Moment in the Pro-Life Movement.” SBC.net. Accessed November 27, 2023. <https://www.sbc.net/resource-library/resolutions/on-anticipation-of-a-historic-moment-in-the-pro-life-movement/>.



Our deeply held religious conviction to serve and protect vulnerable children has led thousands of Southern Baptists to launch foster care organizations, foster children, and create ministries in their congregations to support the physical and financial needs of foster families. Additionally, congregations across the country have hosted training for foster families to ensure they are trauma informed and have all the knowledge and resources they need to be “safe and appropriate” placements for children in crisis.

Every life is precious and worthy of dignity and protection, and that includes protection from sexual ethics that themselves cause harm to children. As Southern Baptists, it is these very beliefs that lead us to serve the most vulnerable and that make these families a “safe and proper” placement for these children in need.

The cherry-picked statistical “evidence” cited in this proposed rulemaking is both lacking in academic rigor on its own merit and contradicts other peer-reviewed research.

While children who identify as LGBTQ do report significantly higher rates of anxiety, depression, and other comorbidities, contrary to HHS’s argument, these are not removed by the presence of healthcare or family placements that affirm the children’s LGBTQ identity.³ One of the most cited studies, often referred to as demonstrating causation between the affirmation of biological sex leading to increased suicidal behavior and self-harm, acknowledges that it could not actually show causation, only correlation.⁴ Time and again, substantive research indicates that the influence of care or counseling that affirms a child’s biological sex is not significant enough to prove causation.

Furthermore, the greatest predictor of psychological well-being is not significantly changed depending on whether the child was socially transitioned or not, but depends upon a child’s overall relationship to his or her peers.⁵ A similar result was found in a study of German families and children, finding that “claims that gender affirmation through transitioning socially is beneficial for children with GD (gender dysphoria) could not be supported from the present results.”⁶

³ D’Angelo, Roberto, Ema Syrulnik, Sasha Ayad, Lisa Marchiano, Dianna Theadora Kenny, and Patrick Clarke. “One Size Does Not Fit All: In Support of Psychotherapy for Gender Dysphoria.” *Archives of Sexual Behavior* 50, no. 1 (2020): 7–16. <https://doi.org/10.1007/s10508-020-01844-2>.

⁴ Turban, Jack L., Noor Beckwith, Sari L. Reisner, and Alex S. Keuroghlian. “Association between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts among Transgender Adults.” *JAMA Psychiatry* 77, no. 1 (2020): 68. <https://doi.org/10.1001/jamapsychiatry.2019.2285>.

⁵ Wong, Wang Ivy, Anna I. van der Miesen, Tjonnie G. Li, Laura N. MacMullin, and Doug P. VanderLaan. “Childhood Social Gender Transition and Psychosocial Well-Being: A Comparison to Cisgender Gender-Variant Children.” *Clinical Practice in Pediatric Psychology* 7, no. 3 (2019): 241–53. <https://doi.org/10.1037/cpp0000295>.

⁶ Sievert, Elisabeth DC, Katinka Schweizer, Claus Barkmann, Saskia Fahrenkrug, and Inga Becker-Hebly. “Not Social Transition Status, but Peer Relations and Family Functioning Predict Psychological Functioning in a German Clinical Sample of Children with Gender Dysphoria.” *Clinical Child Psychology and Psychiatry* 26, no. 1 (2020): 79–95. <https://doi.org/10.1177/1359104520964530>.



Finally, foster care is designed to be a temporary placement to solve underlying issues preventing parents from adequately caring for their child. As such, the rights of biological parents are worthy of protection—including the right to oppose damaging gender ideology.

As HHS specifically states in this proposed rule, federal law provides that part of the goal of foster care is to “improve the conditions in the parents’ home [and] facilitate return of the child to his own safe home.” This statutory language clearly reflects that the end goal of foster care is not permanent placement or to be repeatedly rehomed except where necessary, but instead, it is to resolve the underlying conditions that made a foster child’s home an unsafe environment for the child to live.

As such, it is crucial to consider the impact that this proposed rule will have on the religious liberty of the parents of children placed in foster care. HHS has not provided sufficient clarity on what will happen if a child is permitted to “gender transition” against their parents’ wishes during their time in foster care. Decisions that permanently impact the physical and spiritual health of a child should not be decided during temporary foster care placements.

We strongly believe that HHS should rescind its proposed rule. The proposed rule will lead to religious discrimination of otherwise qualified foster families and will result in a catastrophic lack of foster care placements for the vulnerable children who need them most.

Thank you for the opportunity to comment.

Respectfully submitted,

Frederick Brent Leatherwood
President
Ethics & Religious Liberty Commission
of the Southern Baptist Convention