YOUTH SERVICES

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White House Announces Slate of Actions on Child Welfare

Biden administration finalizes new support for kinship caregivers, proposes new rules on legal representation and safe places for LGBTQI+ youth

BY JOHN KELLY

The Biden administration announced a mix of final and proposed rules on child welfare policy today that cover the placement of foster youth with relatives, legal representation for parents and children involved with the system, and the placement of LGBTQI+ youth in foster care.

Department of Health and Human Services Secretary Xavier Becerra called the rules "a historic package that underlines the Biden-Harris Administration's steadfast commitment to putting children's well-being first."

Here's a breakdown of the three actions taken today.

Kinship Care

As The Imprint's Michael Fitzgerald reported in February, the administration proposed a rule that allows states to create an alternative path to licensing or approving relatives as foster parents, and enabling states to use the federal Title IV-E child welfare entitlement to pay these caregivers. The administration is projecting that this will increase the percentage of kinship placements covered in part by federal dollars from 28% to 42%.

Mark Testa, a former University of North Carolina professor and widely cited expert on the topic, called the proposed regulation "the most important advance the federal government has made in kinship care policy in the last 40 years."

The administration has now finalized this rule, which "creates some opportunity to disregard the income, transportation, literacy issues, and the some of the room size requirements" that can be barriers for kin, said Rebecca Jones Gaston, commissioner of the Administration on Children, Youth and Families, on a Zoom event about the new rules this afternoon.

No changes were made to February's original proposal, and the final rule notes that the overwhelming majority of comments favored the new path to approval and payment.

Youth Services Insider knows that a big group of commenters jointly asked the administration to allow IV-E funds for kinship caregivers once an in-state background check was completed, as opposed to waiting for the results of an FBI fingerprint search and any out-of-state checks of child abuse and neglect registries. Those can take months to complete, and many kinship caregivers are asked to take children in an emergency circumstance with little time to prepare.

While the administration projects this to increase IV-E spending by $3 billion over 10 years, that is really contingent on states taking advantage of this rule and working with more kin in the realm of formal foster care. Currently, an unknowable but assumed-to-be large portion of relative caregivers are not licensed and are either not financially supported by child welfare agencies at all, or are connected to child-only welfare payments through the federal Temporary Assistance for Needy Families block grant.

Worth noting: While the rule leaves it open for states to create their own process for approving kin, a group of national advocates have been working on a model standard for that and plan to release it early next week.

Legal Representation

During the Trump administration, the use of IV-E funds to pay for legal counsel was greatly expanded. Whereas before federal funds could only help pay for the child welfare agency's lawyers, as of 2018 it could also be used to pay for 50% of the cost of lawyers for both parents and children involved in child welfare cases.

This proposed rule by the Biden administration, which really got started by child welfare leaders during the Trump tenure, goes further to allow IV-E to flow for costs related to what is often called "pre-petition" support: legal assistance aimed at mitigating situations that, left unaddressed, could lead to a foster care removal.

The policy-speak on this rule says that "allowable administrative costs of an attorney providing independent legal representation in other civil legal proceedings may include facilitating, arranging, brokering, advocating, or otherwise linking clients with providers and services as identified in the child's case plan." But the proposed rule lists out some examples to make it more clear what this could frequently be used to cover:

- Parents who need help with housing
- Paternity tests
- Getting an order of protection against a violent partner whose presence is the issue that might lead to foster care
- Legal proceedings around access to a child's educational records and school stability
- Youth in foster care who need help securing housing as they face the prospect of aging out

The proposed rule would also permit a child welfare agency to tap into IV-E to pay for the legal costs incurred by an Indian tribe that is party to a child welfare case by way of permissions under the Indian Child Welfare Act.

The proposal drew immediate praise from legal advocates who have pushed for expanded federal support of legal support for families.

"Families facing eviction, utility shutoffs, or benefit terminations deserve concrete legal help rather than unnecessary child welfare intervention," said Kathleen Creamer, managing attorney of the Family Advocacy Unit at Community Legal Services in Philadelphia. She said the proposed rule reflects "the value of offering families legal representation that is holistic and tailored to their actual and diverse legal needs."

Interestingly, the administration notes that it considered making the provision of legal counsel for parents and children mandatory through the rulemaking process, but that "IV-E does not provide authority to require agencies to provide such representation or to claim…for administrative costs." As it stands, this would open up a 50% federal match for states that actually want to bolster their approach to preventing foster care; making it mandatory surely would have drawn concerns from states around the cost and scope of doing so in all places and cases.

Safe Placements

The administration is proposing to require that state child welfare agencies "implement specific processes and requirements" to ensure that youth who identify as LGBTQI+ — those with a different sexual orientation, gender identity or gender expression — are in safe and appropriate foster homes or other placements.

What does it mean for a placement to be safe and appropriate? The proposed rule describes it as an "environment free of hostility, mistreatment, or abuse based on the child's LGBTQI+ status." The provider of these safe and appropriate options must — and here it appears to be more focused on a government or private entity as opposed to individual foster homes — route youth to supportive resources.

One obvious challenge here is that children do not walk around with their LGBTQI+ status printed on a badge. The proposed rule attempts to tackle this by requiring a safe place for any youth who proactively requests it, and more broadly, requires that systems notify at least all children 14 or older of the availability of safe placements.

The proposed rule stops short of requiring every foster care provider from offering safe and appropriate placements. Instead, it requires that state child welfare systems "in totality" have enough safe placements for the number of LGBTQI+ youth in their care.

The decision to use a more general requirement, as opposed to a more targeted one, probably will stem off what surely would have been a barrage of comments in opposition from some faith-based child welfare providers and states that have moved to protect those providers' ability to discriminate.

But in Youth Services Insider's opinion, this proposed rule might still draw a healthy dose of commentary because it does force a supply requirement on states without a distinction as to where in the continuum it will exist. Can all of a state's "safe and appropriate" placements be in group homes or institutions, as opposed to in family homes? Is a potential kinship caregiver who might not fit the bill of "safe and appropriate" the favored choice over a group home that has been verified as such?

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