

December 3, 2019

Alex Azar, II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Jennifer Moughalian
Acting Assistant Secretary for Financial Resources and Acting Chief Financial Officer
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Financial Resources
200 Independence Avenue, S.W.
Washington, D.C. 202

Dear Secretary Azar and Acting Assistant Secretary Moughalian,

We are writing to you as young people who've experienced foster care and who are now advocating on behalf of children currently placed in care. We are gravely concerned for the safety and wellbeing of young people who identify as LGBTQ+ and Two Spirit youth within the United States foster care system.

As you may know, at any given time, there are roughly 437,000 children and youth in foster care. Recent studies suggest that more than one in five foster youth identify as LGBTQ+ and/or Two Spirit (over two times their representation in the general youth population).¹ A recent HHS-funded study shows that LGBTQ+ and Two Spirit foster youth report twice the rate of poor treatment while in care, as well as greater rates of placement in foster care facilities (including congregate care) rather than in family settings, multiple foster family placements, hospitalization for emotional reasons, involvement in the criminal justice system, and homelessness.² For example, a 2017 survey of over 2,500 foster youth showed that LGBTQ foster youth of color were 65% more likely to report over ten placements than their white, non-LGBTQ counterparts.³ Lesbian, gay, and bisexual foster youth are more than twice as likely

¹ See Laura Baams, Bianca D.M. Wilson & Stephen T. Russell, LGBTQ Youth in Unstable Housing and Foster Care, 143(3): e20174211 *Pediatrics*(2019), available at:

<https://pediatrics.aappublications.org/content/pediatrics/early/2019/02/07/peds.2017-4211.full.pdf>;
Megan Martin, Leann Down, & Rosalynd Erney, Out of the Shadows: Supporting LGBTQ youth in Child Welfare Through Cross-System Collaboration, Center for the Study of Social Policy(2016), available at:
<https://cssp.org/resource/out-of-the-shadows/>.

² Bianca D.M. Wilson, Khush Cooper, Angeliki Kastanis & Sheila Nezhad, Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles, The Williams Institute: UCLA School of Law(2014), available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_ExecutiveSummary_Aug_2014.pdf.

³ Jeffrey M. Poirier, Sandra Wilkie, Kristin Sepulveda, & Tania Uruchima, *Jim Casey Youth Opportunities Initiative: Experiences and Outcomes of Youth who are LGBTQ*. 96 *Child Welfare*1 (2018).

than heterosexual foster youth to be moved from their first placement at the request of their caregiver or foster family.⁴ This indicates a grave failing in securing appropriate and affirming placements.

We express our strongest opposition to the November 19, 2019 Notice of Proposed Rule Making (NPRM), RIN 0991-AC16 from the U.S. Department of Health and Human Services (HHS) that would remove all those protected categories that are not explicitly listed in a statute passed by Congress and to the HHS Notice of Nonenforcement which, effective immediately, ceases all enforcement of the nondiscrimination protections provided under 45 CFR § 75.300(c) and (d), including protections from discrimination based on sex, sexual orientation, gender identity, being in a same-sex marriage, and religion.

Nonenforcement of the current rule and the proposed new rule eliminating protections from discrimination based on sex, sexual orientation, gender identity, and, for foster and adoptive parents, being in a same-sex marriage, and religion, will result in LGBTQ+ and Two Spirit children and youth in foster care being directly discriminated against, and foster children being placed with families that do not support their religious and spiritual beliefs, particularly religious minority or secular children. We are further concerned that the rule will lead to young people in foster care being subjected to conversion therapy, a medically discredited practice attempting to change a young person's sexual orientation or gender identity - a practice one of us was subjected to while in foster care.

Without protections, young people like us will be placed in homes that reject who we are, who we love, and what we believe. Such non-affirming placements will only worsen the poor outcomes LGBTQ+ and Two Spirit youth experience in foster care described in the data cited above and our own experiences outlined below. Miracle Hill Ministries, a federally funded faith-based foster care agency in South Carolina, has utilized the religious waiver provided by HHS to require all foster parent applicants to agree in writing that they believe marriage is between a man and a woman and that God creates each person as male or female. We worry greatly that the LGBTQ+ and Two Spirit foster youth served by Miracle Hill Ministries and placed into families that have signed such a statement will experience some of the same terrible results of such beliefs that we have described from our own experiences in care in the quotes below. We want LGBTQ+ and Two Spirit foster youth currently in care to have better experiences than we did - not similar mistreatment, sanctioned by rules, exemptions or waivers of the U.S. Department of Health and Human Services.

Improving foster care services including placement stability and quality for the over 20% of foster youth who identify as LGBTQ+ is critical for meeting Congressionally mandated goals of foster care. These statutory goals include safety, well-being, and permanency for foster youth⁵ as well as ensuring that children in foster care are placed in the least restrictive and most family-like settings.⁶ The nationwide

⁴ Megan Martin, Leann Down, & Rosalynd Erney, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare Through Cross-System Collaboration*, Center For The Study of Social Policy (2016), available at: <https://cssp.org/resource/out-of-the-shadows/>.

⁵ The Adoption and Safe Families Act, Pub. L. No. 105-89, H.R. 867, 105th Cong. (1997), available at: <https://www.congress.gov/bill/105th-congress/house-bill/867/text?q=%7B%22search%22%3A%22H.R.+867%22%7D&r=10&s=6>.

⁶ Family First Prevention Services Act of 2018, passed as Title VII of the Bipartisan Budget Act, Pub. L. No. 115-123, H.R. 1892, 115th Cong. (2018), available at: <https://www.congress.gov/bill/115th-congress/house-bill/1892/text>.

reversal of key nondiscrimination regulations 45 CFR § 75.300 (c) and (d) in the NPRM and nonenforcement of these regulations will greatly undermine these goals for LGBTQ+ and Two Spirit foster youth. Furthermore, in February of 2018, Congress passed the bipartisan Family First Prevention Services Act (Family First), as part of Division E in the Bipartisan Budget Act of 2018 (H.R. 1892). Family First specifically directs state child welfare agencies to enact measures that will reduce inappropriate use of foster care facilities, group homes, and other non-family placements (often called “congregate care”) for foster youth. The NPRM and nonenforcement of the current nondiscrimination protections, will result in more discrimination against and mistreatment of LGBTQ+ and Two Spirit youth in foster care, fewer available foster homes due to discrimination against qualified potential parents, and increased use of congregate care simply due to lack of options, not a young person’s needs. Young leaders with lived experience in foster care have confirmed that inappropriate congregate care placement can be detrimental to a young person’s well being. Further, we know from our collective lived experiences that few foster care facilities have policies prohibiting discrimination on the basis of sexual orientation or gender identity or provide training for staff on how to create safe and welcoming environments for LGBTQ+ and Two Spirit youth.

Lucina, who experienced foster care in Minnesota, shared:

“I grew up around openly LGBTQ and Two Spirit black foster children, and I saw first hand how they were treated, I was fearful of becoming one of those forced into treatment facilities just for being open about who I was, so I lied about my identity. I told everyone I was heterosexual and Christian, even my social workers.”

Tristan, who experienced foster care in Nevada, shared:

“Without a system that makes it optional to give marginalized youth their dignity, in my experience my mom and her boyfriend rejected me after I came out, which provoked my entrance into the foster care system, and even in foster care my caregivers used the words “freak” and “transvestite” to refer to me while I packed my belongings in garbage bags.”

Schylar, who experienced foster care in Montana, shared:

“I found out early on that if I really showed who I was that, that could be weaponized and used against me. That who I was was not acceptable by the standards within Montana. That every time I showed a piece of vulnerability or a piece of emotion, that it was something that was wrong. I was labeled as gay before I ever knew that I was actually gay. I didn't understand what that meant. All I knew was that I was just experiencing not having a family.”

Many LGBTQ+ and Two Spirit youth in the foster care system experience verbal harassment and physical or sexual abuse because of their sexual orientation or gender identity. In one of the only studies of its kind, 100% of LGBTQ youth in New York City foster care facilities reported that they were verbally harassed while in congregate care and 70% reported physical violence due to their sexual orientation or

gender identity. This abuse is perpetrated not only by youth peers, but also by facility staff and social workers.⁷

Kristopher, who experienced foster care in Texas shared:

“[B]ecause of the nature of these kinds of placements where doors are locked by powerful magnetic strips, children are typically home schooled, or they attend school on campus. Staff tells you when to eat, when to take your meds, when to go to bed. Phones are kept behind locked doors. There was no way for me to even report what was happening to me.”

Ernesto, who experienced foster care in Texas, shared:

“[Staff and Social Workers] didn't know how to approach me and tell me that I was safe, that it was okay to be who I was, and in that sense, I didn't feel safe. I didn't feel comfortable to talk about who I was or even come out.”

Children in foster care have been entrusted to the state for care, stability, and safety. Adoption and foster care agencies that accept government funds to serve these children have a duty to act in the best interests of each child. Using a religious litmus test, other non-merit-related criteria, or outright discrimination to reject qualified and caring parents who want to foster and adopt, however, makes it even more difficult for these children to find a loving home. Therefore, eliminating non-discrimination protections and/or expanding exemptions such as those granted to South Carolina will result in increased use of congregate care, placing thousands of foster children in settings where they will almost certainly endure the grueling cycle of abuse.

We ask that you meet with us about the NPRM and Notice of Nonenforcement reversing HHS' critically needed nondiscrimination policies, 75.300 (c) and (d). Additionally, we urge you to always meet with young people with recent lived experience in foster care and/or children and youth currently in care, prior to developing any new foster care policies to ensure those policies will actually benefit the best interests of those whom foster care is supposed to serve, as required by statute - children in care. Our contact information is provided below.

Sincerely,

The LGBTQIA+ & Two Spirit Foster Alumni & Advocate Team

About the LGBTQIA+ & Two Spirit Foster Alumni & Advocate Team

The Team convenes to promote diversity, inclusion, and affirmation of young people in foster care. The Team currently consists of seven members geographically distributed across the country, reflecting a range of diversity encompassing, but not limited to: ethnicity, location of residency, religion, sexual orientation, gender identity, and child welfare experiences. The Team engages by contributing to,

⁷ Al Desetta, *In the System and In the Life: A Guide for Teens and Staff to the Gay Experience in Foster Care* 46-47 (Youth Communications 2003).

advising and supporting the national Every Child Deserves a Family Campaign, educating and engaging policymakers, and building public awareness and creating recommendations for best foster care practices at both the federal and state levels.

Current Team Members:

Schylar Baber, Washington, DC, formerly of Montana

Lucina Kayee, Minnesota

Ernesto Olivares, Jr., Texas

Kristopher Sharp, New York, formerly of Texas

Tristan Torres, Nevada

Cc: Lynn Johnson, Assistant Secretary for the Administration for Children and Families,

Elizabeth Darling, Commissioner of the Administration on Children, Youth and Families,

Jerry Milner, Associate Commissioner, Children's Bureau

To contact members of the Leadership Team, you can email Ed Harris, Chief Communications Officer, Family Equality, at eharris@familyequality.org.