



PROTECTING KIDS.  
PROVIDING HOPE.

December 4, 2019

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

**Re: RIN 0991-AC16; Fed. Reg. No. 2019-24385; Notification of Non-enforcement of Health and Human Service Grants Regulation, 45 C.F.R. §§ 75.300 (c) and (d)**

Dear Secretary Azar:

Children's Rights appreciates this opportunity provided by the Department of Health and Human Services (HHS) to comment on HHS's proposed changes to 45 C.F.R. § 75.300. The proposed changes were published in the Federal Register on November 19, 2019.

Since 1995, Children's Rights has been advocating for children in broken child welfare, juvenile justice, education, and healthcare systems. Through strategic advocacy and legal action, Children's Rights holds governments accountable for keeping kids safe and healthy. Children's Rights can thus provide valuable insight into the effects of HHS's proposal on children and families.

HHS has proposed a rule that would rescind a 2016 nondiscrimination regulation and permit HHS grant recipients—specifically adoption and foster care agencies—to discriminate against lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals seeking to adopt or foster a child. The proposed rule should be rejected for three principal reasons.

First, it would enshrine discrimination into federal law by allowing child welfare providers to reject prospective families on the basis of non-merit factors such as sexual orientation and religion. Second, given that a greater percentage of same-sex couples are raising adopted children than different-sex couples, the proposed rule would further restrict an [already limited pool of foster and adoptive parents](#). Third, the proposed rule would further harm LGBTQ children in foster care by sending them the message that LGBTQ people are not valued.

Children's Rights urges HHS to withdraw the proposed rule change.

**I. The Proposed Rule Enshrines Discrimination Into Law**

Children's Rights' overarching concern with HHS's proposal is the license to discriminate this rule would enshrine into federal law.

As the proposed rule applies to all HHS grants, the change would extend to a wide range of programs. Based on our expertise in child welfare issues, we believe such government-sponsored discrimination will harm the [more than 440,000 children in foster care](#), many of whom languish in custody in dire need of loving foster and adoptive homes.

This proposed rule change would enable nationwide taxpayer-funded discrimination against same-sex couples, Jews, Catholics, Muslims, and others whose religious beliefs do not comport with those of child placing agencies. We believe, and research supports, that [sexual orientation has no bearing on a parent's ability to foster or adopt a child](#). The proposed rule clearly harms prospective foster and adoptive parents who could be rejected based solely on a child placing agency's religious beliefs. No qualified parent should be denied the opportunity to provide a loving home to children in need because of religious beliefs, gender identity or expression, or sexual orientation.

## **II. The Proposed Rule Deprives Foster Children of Loving Homes**

This proposed government-sanctioned discrimination is harmful to children in care because it reduces the number of available safe and loving homes.

On any given day, more than 440,000 children are in foster care in the United States; on average, [children remain in state care for nearly two years](#); six percent of children in foster care have languished there for [five or more years](#), and approximately [23,000 age out](#) of foster care every year. At a time when thousands of children nationwide are being bounced from one foster care placement to another and many wait for adoption in vain, further limiting the number of loving homes seeking to foster or adopt a child in need will immeasurably harm children in an already broken system.

Additionally, data illustrate that it is particularly harmful to alienate same-sex couples as potential resources because, as a group, they are much more likely to be raising foster or adopted children. According to 2018 research by the [Williams Institute](#), approximately one in five same-sex couples (21.4 percent) are raising adopted children compared to just three percent of different-sex couples, and 2.9 percent of same-sex couples have foster children compared to 0.4 percent of different-sex couples.

## **III. The Proposed Rule Harms Children Who Identify as LGBTQ**

Finally, this proposed rule would harm children identifying as LGBTQ, who represent [30 percent](#) of children in care. These youth are at a higher risk of experiencing violence, rejection, and trauma compared to their non-LGBTQ identifying peers. Under the proposed rule, foster children who are LGBTQ could be denied necessary health care and support services. The United States needs foster care policies and families that support children who identify as LGBTQ.

The proposed HHS rule exacerbates the challenges that foster children—many of whom have experienced physical and sexual abuse, familial drug addiction, and severed family connections—already face by sending the message that LGBTQ adults are unsuitable to provide

loving homes. This creates a [stigmatic harm that trickles down to LGBTQ youth](#), and can make them afraid to come out and realize their identity. It can make them more inclined to hide who they are to avoid rejection by the very providers they depend on.

#### **IV. Conclusion**

Children's Rights encourages HHS to rescind the proposed rule and to reinstate 45 C.F.R. §§ 75.300 (c) and (d). Again, sexual orientation, gender identity and expression, and religious identity have no bearing on a potential parent's ability to provide a loving home. At a time when thousands of children nationwide are awaiting placement in permanent homes, HHS should focus on supporting and expanding the universe of individuals who can provide and care for these children.

Sincerely,



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Sandy Santana  
Executive Director