



NICWA

National Indian Child Welfare Association

October 1, 2018

Ms. Kathleen McHugh, Director
Policy Division
Children's Bureau
330 C Street, SW
Washington, DC 20201

RE: Comments regarding Proposed Model Family Foster Home Licensing Standards—Federal Register Vol. 83, No. 148, August 1, 2018, pp. 37495-37500

Dear Ms. McHugh:

The National Indian Child Welfare Association (NICWA) respectfully submits these comments regarding the Proposed Model Family Foster Home Licensing Standards. Our comments focus on issues specific to the impact of these proposed standards upon American Indian and Alaska Native (AI/AN) children and families, as well as the tribal and state programs that serve them.

NICWA is a private, nonprofit organization headquartered in Portland, Oregon, and is governed by an all-AI/AN board of directors. Our mission is dedication to the well-being of American Indian and Alaska Native children and families. We conduct community development services with tribal communities to improve programs and services for AI/AN children and families, training to child welfare professionals, advocacy and policy development to improve services to AI/AN children and families, and research to increase the availability of information to support improved services to AI/AN children and families. We partner closely with national and regional child organizations, both tribal and non-tribal, in pursuit of our mission, and seek to collaborate with any entity that wishes to improve services to AI/AN children and families.

General Comments

While we understand the mandate that the Department of Health and Human Services (DHHS) is under to develop national foster family standards, we have concerns regarding the decision to publish only one standard for both tribal and state IV-E agencies. Core safety concerns for children in care may be similar but the details of how these are addressed in policy for tribes and states can be significantly different. In passing the Indian Child Welfare Act (25 USC§1931[b]), Congress acknowledged the need for tribal standards to be accepted by states for the purposes of qualifying for federal assistance in program like Title IV-E, even though tribal standards might be different in some aspects than state standards. Children's Bureau policy also recognizes the importance and right of tribes to develop their own community-based standards as separate from those established by state agencies. Given that tribes operating Title IV-E will be asked to compare these standards to their standards, we think it would be more effective if they were responding to standards that were more well suited to their communities' needs overall. The development of model tribal foster care standards would need to be done in close coordination with tribal governments and Indian organizations with expertise in this area.

We appreciate the work DHHS did to review foster care standards that have been developed by other organizations, including NICWA's foster care standards document developed in 2000. As a point of clarification, NICWA was not involved in developing or reviewing foster care standards for the Council on Accreditation. Several years ago, NICWA helped the Council on Accreditation develop culturally competent standards for programs related to services for AI/AN children and families, including adherence to ICWA, but not foster care standards specifically. The *Federal Register* notice stated that NICWA had assisted the Council on Accreditation in developing their foster care standards. In addition, NICWA did a brief review of a close-to-final draft of National Association for Regulatory Association (NARA) standards and several of our comments were incorporated in their final document, but this did not constitute a full and comprehensive review with opportunity to contribute to the document as part of the drafting team. NICWA appreciates the opportunity afforded us to contribute to the NARA document, but the timeline did not allow us the opportunity to do more in-depth research of tribal foster care standards and provide this information during the review.

NICWA's foster care standards document addresses the process for conducting a community-based process for developing foster care standards in tribal communities. Our firm belief is that engaging community stakeholders and partners around the question "what does a safe child look like in our community?" ensures that standards will be reflective of community values with greater sustainability long term. Within jurisdictions that have not engaged community stakeholders and partners well, we typically see the kinds of standards that do not advance child safety significantly and instead create additional barriers to families qualifying to be foster families. We appreciate DHHS's statement encouraging states and tribes to adhere to best practices and the example of engaging tribal communities, and we hope that DHHS will continue to urge states to follow this practice in DHHS-sponsored technical assistance and training.

Our last general comment is regarding the future impact of the DHHS-proposed foster care standards on tribal community development of standards. Tribal communities that have been successful in developing sustainable standards with lasting value have always come from community-based processes based in efforts to decolonize tribal child welfare—that is to say, efforts to revitalize and institutionalize tribal cultural values in programs and services, as opposed to adapting mainstream models. NICWA has concerns that after the establishment of the DHHS foster care standards, these standards will become, intentionally or unintentionally, the standard that DHHS uses when engaging tribes in technical assistance or training, as well as for future policy development at DHHS. We have seen this occur with other child welfare policy at DHHS over the years and it has impeded tribal efforts to develop culturally based child welfare policy and practice within their communities. Our comment earlier regarding concerns related to applying a primarily mainstream model of foster care standards to tribal communities is underscored by this experience, and we strongly urge DHHS to engage tribes differently and with more intentionality to support tribal cultural practices and policy than has been done in the past.

Specific Comments Regarding the Proposed National Model Family Foster Care Standards

A. Foster Home Eligibility

The proposed standards cover basic criteria for applicants that include age of applicant, financial stability, and communication with the child and providers. Many foster family applicants in Indian Country have challenges related to securing needed economic, health, and language resources and would benefit from assistance from the placement agency to help them. Our experience has been that it is helpful to include the responsibilities of the placement agency to the applicants in the standards, as our NICWA foster care standards document does. It clarifies that it is a relationship where both the applicant and agency have responsibilities and what the expectations are for both parties.

In meeting the needs of tribal children, as well as other children, cultural needs must also be a factor in understanding the skills and knowledge of the applicant family in regards to meeting the child's needs. Having applicants that are accepting of cultural differences in the children they provide care to and their culture are important to providing the child with a positive experience in

foster care. Cultural needs can include things like dietary preferences, religious practices, language, and norms for social interaction. These should be considered basic needs and have a great impact on the ability of a child to feel safe and develop meaningful relationships with their caregiver. We recommend the standards include language that requires the licensing agency to assess the child's cultural needs and the foster care applicant's skills and knowledge in these areas, and provide assistance to the applicant as needed.

The proposed standards require an applicant to have had a recent physical exam within the last 12 months indicating the applicant is capable of caring for an additional child or children. As we mentioned earlier, health services can be difficult to access in many parts of Indian Country with long waiting lists and long distances to travel to access those services. We recommend the proposed standards use a different standard that requires a physical exam recently or a statement from a licensed health care professional that indicates the applicant is receiving necessary care for any health-related issues. We would also note some concern with the language in the proposed standards that asks the health care professional to indicate if the applicant is capable of caring for an additional child or children. In our experience, health care professionals are not necessarily qualified to make these types of assessments and many would not be comfortable making this type of assessment. Asking for an assessment of general health is different than asking for an assessment of whether someone is capable of caring for a child. We recommend DHHS remove this standard.

In NICWA's foster care standards, we have indicated that we believe if a person is alcohol- or substance-dependent, a person has 12 months of sobriety before being granted a foster care license. This standard recognizes the treatment process and best practices in terms of not overloading individuals in recovery with additional responsibilities. The proposed standards ask for an assurance from the applicant that they will not abuse alcohol or prescription medicines or use illegal substances while providing care. We feel that using the NICWA and DHHS standards would provide the most certainty for ensuring the safety of the child and recommend adopting NICWA's standard in this area.

The DHHS-proposed standard requires that all applicants have both relative and non-relative references. The NICWA foster care standards also require references, but do not specify who the references may come from (i.e., from relatives or non-relatives). Extended family definitions and relationships in many tribal communities extend well past the typical definitions and relationships that we see in many non-Indian communities. In small tribes, these can include most of the people within the community in some cases when you consider clan or fictive kin relationships, which can be viewed as relatives. Extended family members within tribal communities will have the most information with regard to the capability of the applicant to care for a child, so NICWA would urge DHHS to not specify that some of the references must come from non-relatives and instead just require references that speak to the capability of the applicant to care for the child in foster care.

To ensure tribal children have access to the full range of services and benefits as tribal citizens, it is important to make sure they have assistance in securing their tribal membership, especially in situations like you find in child welfare where birth parents may not be fully capable of facilitating this process. These services and benefits include health care, social services, income assistance, housing, and so forth. We believe that foster parents as well as the placement agency have a role to play in helping a child become a tribal citizen. We recommend a DHHS standard for tribal children that requires foster parents, where able, to support and assist the process of a tribal child becoming a member of their tribal nation.

H. Foster Parent Assurances

The DHHS-proposed standard prohibits the use of tobacco by the applicant in a vehicle, in the foster family home, and generally in the presence of the child. While many tribal communities actively campaign against social tobacco use, there is a distinction between this type of tobacco use and that which occurs in religious ceremonies that many tribes observe. This latter type of

tobacco use is highly regulated within ceremonies and does not subject children to unsafe exposure to tobacco products. We would recommend that DHHS adopt a more flexible and specific tobacco exposure prohibition that allows tribal children to participate in religious ceremonies and be in the presence of adults that may be using tobacco for these purposes.

B. Foster Family Home Health and Safety

The DHHS-proposed standards require that the applicant must have a working phone or access to a working phone. While we think this is ideal in many rural areas, such as those where tribal communities reside, there can be very limited access to cell phone and land line service. These are structural barriers that applicants cannot change on their own, but have learned to adapt to in order to have functional and safe lifestyles. Our greatest concern with the DHHS-proposed standard in this case is how access to a working phone might be interpreted under the circumstances we described above. We are inclined to recommend that DHHS consider developing a revised standard that uses language that requires reasonable and reliable means for communication in circumstances where structural barriers exist, similar to what NICWA has listed in our standards.

The DHHS-proposed standards requires proper trash and recycling disposal. We agree that proper trash disposal should be required and homes and the premises should be free from rubbish, but we do not believe the recycling requirement is consistent with child safety issues, although it is a recommendable practice where available. Many rural areas where tribes reside also don't have reliable recycling disposal. Therefore, we recommend that DHHS remove the recycling disposal requirement.

C. Foster Home Capacity

We support the concept that an applicant should not have more than six foster children in their home at one time, except under certain circumstances, but also recommend that DHHS consider language that requires the placement agency to look at the experience and circumstances of the applicant in making decisions about the number of foster children to be placed in that home.

D. Foster Home Sleeping Arrangements

We understand and support the concept of equitable sleeping conditions for foster children and birth children, but also think there are circumstances where a foster child may need to sleep in a living space such as a living room with a birth child, while other children sleep in a bedroom. This may be dictated by a number of factors, including the configuration of the house, sex and age of children living in the house, and social history of the foster children or birth children in the home. We are not recommending a change in this DHHS standard as proposed, but we have some concern on how it could be interpreted. We are raising this as an issue for further consideration.

F. Transportation

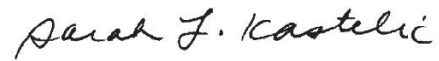
The DHHS-proposed standards require an applicant to have reliable, legal, and safe transportation and only allow an adult in the home to transport the foster child. The example that DHHS uses to define reliable transportation is, "a properly maintained vehicle or access to reliable transportation." As was stated earlier, many remote rural areas do not have the same level of infrastructure as urban areas, including public transportation. Tribal communities have adapted to this by finding other safe and reliable ways to access transportation so people can conduct their lives. NICWA's foster care standard requires that the applicant have reliable means of transportation and a written transportation plan on file with agency without specifying what type of transportation this must include or not include. We recommend that DHHS revise this standard to reflect the realities of remote rural communities and allow placement agencies to make these decisions locally.

Conclusion

We appreciate having the opportunity to comment on these DHHS-proposed foster family standards and hope you will find our comments helpful to you as you consider changes or modifications to the proposed standards. If you have any questions regarding our comments,

please contact NICWA Government Affairs and Advocacy Director David Simmons at desimmons@nicwa.org. Thank you in advance for considering our comments and recommendations.

Sincerely,

A handwritten signature in black ink that reads "Sarah F. Kastelic". The signature is written in a cursive style with a large initial 'S'.

Sarah Kastelic, PhD (Alutiiq)
Executive Director