

CONCERNED WOMEN *for* AMERICA

November 27, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

Re: ACF-2023-0007: Safe and Appropriate Foster Care Placements for Titles IV-E and IV-B, RIN 0970-AD03

Dear Secretary Becerra,

I'm writing on behalf of hundreds of thousands of women and families I represent leading the largest public policy women's organization in the country, many of whom are experienced in the adoption and foster care system. Concerned Women for America (CWA) strongly opposes the Administration for Children and Families (ACF) incomprehensible Notice of Proposed Rulemaking, ACF-2023-0007, "Safe and Appropriate Foster Care Placements for Titles IV-E and IV-B" (Rule). This Rule imposes an indefensible and hypocritical mandate for "safe and appropriate" foster care placement that could endanger vulnerable children.

It goes without saying that foster care providers should provide a safe and appropriate placement for every child in foster care. Such placements should be free from exposures to drug use, including recreational marijuana, explicit sexual material, and social influences that undermine their physical and mental health. Homes should seek to support youth through trauma and challenging years of adolescent development with care and compassion.

Today, too many young people are being influenced by a culture that aims to confuse them about identity, not provide security and understanding in their natural development. This Rule caters one way – to the misguided trend of identifying kids as "trans," "nonbinary," "pansexual," etc., based on a mere declaration of "LGBTQIA+" identity that they may not understand. The Rule imposes unsubstantiated requirements aimed at amplifying, not remedying, a serious and controversial trend of "transgenderism" and the imposition of identity labels that are now irresponsibly declared "fixed" and negatively impact the mental and physical health and well-being of youth.

The Rule states: "For a placement to be considered safe and appropriate for a child who identifies as LGBTQI+, we propose to require that the title IV–E/IV–B agency make available and ensure that a child is placed with a foster care provider (e.g., foster family home, child care institution) who: (1) will establish an environment free of hostility, mistreatment, or abuse based on the child's LGBTQI+ status, (2) is trained to be 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, and (3) will facilitate the child's access to age-appropriate resources, services, and activities that support their health and well-being."

The consequential assumptions underlying this Rule are as flimsy as the authority you claim. What authorizes a mandate to label a young person as “LGBTQIA+ youth” under a false premise that this “identity” is real, enduring, or the key to flourishing? What is ACF’s proof that “safe and appropriate” placement is not in a home that assists children in addressing the underlying issues at the root of gender confusion and in aligning with their actual sex or natural sexuality? Where is ACF’s authority to promote a one-way ideological viewpoint in determining what constitutes “safe and appropriate”?

This Rule is turning a blind eye to the growing evidence of malpractice surrounding the labeling of youth as “trans kids.” California is rapidly becoming the target of opposition for its strident approach to pushing youth with identity crises into foster care, removing custody from concerned parents and charging them with “abuse and neglect” for not buying into an ideology that their kids are “trans kids” and “born in the wrong body.”

For this Rule to be justifiable, it must account for the totality of expertise and experience in this field. Instead, it does more harm than good by imposing a one-sided perspective that effectively labels any contrary view as potentially abusive. You are greasing an imprudent and harmful slippery slope.

Sweeping claims are disputed

The fact that dedicated front-line health care professionals are witnessing treatment of youth in mental health crisis being misled by trans-affirmation and now blowing the whistle as “medically and morally appalling” sets a very high bar redefining “safe and appropriate” placement. How can this Rule justify ignoring this growing alarm? What is the legal justification for siding with an “affirmation-only” viewpoint that requires foster families to assent to experimental, health-damaging medical treatments?

The Rule cites congressional testimony cited from 2021 but it ignores testimony in 2023 from medical professional, Dr. Miriam Grossman, a child adolescent and adult psychiatrist, who voiced the concerns of many before the House Energy and Commerce Committee (See https://d1dth6e84htgma.cloudfront.net/Miriam_Grossman_Witness_Testimony_06_14_23_b3d52ddeb6.pdf?updated_at=2023-06-13T20:45:39.141Z).

How do you defend this Rule in light of Dr. Grossman’s testimony? Her concerns, especially as they relate to young girls, are particularly alarming to us as a women’s organization. She explains, “In U.S. hospitals, young teens’ natural puberties are prevented. Girls as young as twelve are having mastectomies. Minors are also having genital surgeries. *We have no long-term evidence of benefit of these drastic interventions in the current population.*” (Emphasis ours.) Dr. Grossman notes that the uncertainties are so great that other countries are actually turning *away* from the type of “gender-affirming care” you are promoting under color of law with this Rule. She points to Finland, Sweden, the UK, and even France as places who have hit the brakes on this affirmation-first approach “recognizing that its risks are serious and that its benefits are unproven.”

The Rule also makes sweeping, absolutist claims like this to justify the mandate:

“The American Psychological Association (APA) has concluded that *any* behavioral health or gender identity change effort that attempts to change an individual’s gender identity or expression is inappropriate.” (Emphasis added.)

Anytime “any” is used, it better be backed up with definitive, indisputable proof. Where’s that proof?

For ACF to base this Rule on the “conclusion” of a medical lobbying group citing outdated, unscientific research only underscores the Rule as arbitrary and capricious. APA relies on studies [manufacturing](#) preferred outcomes using small sample sizes, self-selection, and opinion surveys. If tested under true scientific methodology, these outcomes would crumble under the weight of their own presumptions. But ACF makes no attempt to respond to the serious and grounded criticism of the positions of the APA, American Medical Association (AMA), American Academy of Pediatrics (AAP), and World Professional Association of Transgender Health (WPATH).

Among the reputable critics is Dr. Erica Anderson, a self-identified transgender woman, member of the APA and WPATH, and lifelong practitioner. Dr. Anderson’s [expert affidavit](#) before a Wisconsin circuit court was decisive in its October ruling in favor of the Kettle Moraine school district policy requiring parental consent and against plaintiffs promoting an “affirmation only” viewpoint similar to the one adopted by this Rule. Among her declarations:

e. Social transition itself is an impactful psychotherapeutic intervention that has the potential to increase the likelihood of persistence of gender incongruence. Transitioning socially can also be psychologically hard to reverse for a child or adolescent. (Section IV).

f. For some children experiencing gender incongruence, social transition is not the best approach. Some cease desiring to transition after an exploratory process and/or therapy to understand the source of their feelings, and some who do transition later come to regret it. (Sections V.A, V.B).

g. Social transition often leads to other medical interventions later in life, some of which are irreversible. (Section V.C).

<https://will-law.org/wp-content/uploads/2023/02/Expert-Affidavit-Erica-Anderson-2023.02.0336.pdf>

How does this Rule account for the expert testimony of Dr. Anderson and others refuting the safety and appropriateness of a blind affirmation approach required here for “safe and appropriate” placement?

By relying on outdated citations, including a review from 1997 when the incidence of “gender dysphoria” was rarely diagnosed in the youth population, APA and this Rule fail to consider the question, why the skyrocketing identity crisis? ACF gives no rigorous analysis to justify that *any* behavioral health or “gender identity change” effort is “inappropriate.”

What is the precise and enforceable definition of so-called “conversion therapy” in the Rule? What exactly is banned? Does it include *any* behavioral health intervention that assists a child in realigning their understanding and identity with their sex? Does it prohibit exploratory therapy, talk therapy, and psychotherapy that would seek to untangle “LGBTQIA+ “identity or gender confusion that is accompanied by depression, anxiety, personality disorders, autism, or sexual abuse? Does it prohibit any support to realign perception with reality? The Rule fails to clearly define and justify requirements of this Rule in a manner that is not arbitrary nor capricious.

The fact is, this Rule cannot be defended because it makes a sweeping judgment about scientifically disputable and controversial approaches to social and medical “gender affirmation” that are experimental, unproven in benefit, and increasingly proving to be harmful.

How is a path to increased suicide risk “safe”?

The Rule fails to stand on any longitudinal scientific research that should be required for locking foster children into lifelong identities that prohibit resolution. APA cites *De Vries, A. L., McGuire, J. K., Steensma, T. D., Wagenaar, E. C., Doreleijers, T. A., & Cohen-Kettenis, P. T. (2014). Young adult psychological outcome after puberty suppression and gender reassignment. Pediatrics, 134(4), 696-704*, which does nothing more than report an outcome one year after treatment and is therefore not valid as conclusive evidence. What APA won't cite is the only longitudinal study to date from Sweden, showing the suicide rate 19 times higher a full ten years after sex reassignment surgery: [Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden](#).

To base such a sweeping Rule on a one-directional assumption of “suicide risk” is reckless and irresponsible. Two teen subjects in the NIH study “Psychosocial Functioning in Transgender Youth after 2 Years of Hormones,” committed suicide after receiving “affirming” treatment. Eleven others reported greater suicide ideation. A Senate committee is seeking answers to the obvious dangers associated with affirmation treatment leading to such morbid outcomes.

(https://www.help.senate.gov/imo/media/doc/nih_trans_letter.pdf)

How can this Rule prove any legitimacy for its rigid requirements for gender affirmation leading to sex change treatments that have shown to result in suicide outcomes? It cannot.

By essentially mandating social interventions that lead to use of unapproved drugs and radical surgeries for sex reassignment to conform to a foster child's unstable perception of self, this Rule could force youth into unsafe and inappropriate placement with the blame squarely on ACF's doorstep.

The fact that youth suicides have happened in connection with receiving the “gender affirmative care” required here proves this Rule is far from a suicide prevention strategy. The Rule cannot justify a blanket “safe and appropriate” placement mandate in *any* way shape or form on that basis.

Furthermore, what exactly does a foster child need to understand and have informed consent over to be given a “safe and appropriate” setting that by your definition requires adherence to a path of potentially irreversible treatment to persist in this “identity” using experimental drugs and surgeries that place them at substantially increased risk of disease and harms their natural development? The truth is, no child has the ability to consent to such life altering treatment imposed merely by a self-expression of “identity.” The law recognizes this in many other areas of law, like contracts, so on what grounds is it ignored here?

Claiming that *any* change efforts to assist a person's gender incongruence is “inappropriate” is wildly irresponsible and dangerously inappropriate in light of this failed federally supported study alone. It certainly stands in opposition to this Rule designed to shackle foster families with government mandates that prohibit certain effective treatment practices that help a child desist from gender dysphoria.

Regretted and dangerous

The “conclusions” informing this Rule keep feeding a cycle of erroneous claims. With the alarming acceleration of transgender identification among young people, we know the contagion and craze is resulting in substantial harm.

The Rule ignores current court cases where [Chloe Cole](#) and [Kayla Lovdahl](#) in California, [Prisha Moseley](#) in North Carolina, and [Luka Hein](#) in Nebraska, are suing health care providers for misleading them about

their “gender identity.” The Department should do everything possible to stop predatory media and medical practice and not precipitate such heartbreaking stories. Instead, the Rule seeks to strangle vulnerable, struggling youth in a foster care system that will send them down the same destructive path these young women detransitioners experienced damaging their bodies and their mental health.

That is why 20 states have passed laws prohibiting minors from receiving “gender affirmation” drugs and surgeries which harm their maturing bodies and result in irreversible damage. Condoning a double mastectomy for a depressed 15-year-old girl asserting a male identity is nothing short of medical malpractice, but that is exactly the path this Rule requires to accommodate the identity demands of a foster child in a “safe and appropriate” placement.

The Rule also ignores that countries like Sweden, Finland, the United Kingdom, and France admit they went too far in “gender-affirming care” as unsafe, inappropriate, unsubstantiated, erroneous, and harmful and are reversing their approach.

This is why the Rule lacks legitimacy and should be scrapped. The APA and activist-minded medical advocacy groups are deflecting the true consequences of so-called “gender affirmative care.” The [AAP is being sued](#) for this malpractice. With complete negligence, this Rule proposes to impose the same biased viewpoint about “trans youth” and turns a blind eye to the real harms.

Bigoted and hypocritical

The Rule observes: “As the Supreme Court has recently made clear, the First Amendment protects faith-based entities that provide foster care services. *See Fulton v. City of Philadelphia*, 593 U.S. ___ (2021). Consistent with this protection, the proposed rule, if adopted, would not require any faith-based provider to seek designation as a safe and appropriate provider for LGBTQI+ children as described in this proposed rule if the provider had sincerely held religious objections to doing so.”

With complete hypocrisy, the Rule carves an exception to “safe and appropriate” placement for faith providers, undermining the very premise of the Rule’s requirements and reflecting an explicit bias against any faith provider as not “safe and appropriate.” In this way, the Rule conveys bigoted viewpoints while admitting the Rule’s requirements are unsubstantiated as essential. The mere existence of this Rule infringes on Americans’ First Amendment liberties.

ACF claims to be respecting decisions of the Court, then turns around and stabs faith-based providers in the back. People of all faiths and no faith believe the current trans identity craze is harming youth – fueling a crisis that is far from safe and appropriate. In too many cases today, children are being estranged from their parents who love them and want them to be restored to health and secure in their natural identity. Activist groups are claiming to be the “safe haven” and isolating youth from loving homes. Too many are becoming pawns in custody battles.

For this Rule to legitimize family conflict around sexual and gender identification as abusive would be a travesty and remove any boundary to the government’s capacity to tear families apart. How does this Rule NOT result in that? Declaring foster care providers are only “safe and appropriate” because there could be conflict about self-declared identities is fully counterproductive. The purpose of the federal foster care program should be to assist youth in troubled circumstances to reckon with identity issues, not lock them into experimental pathways that prevent their ability to flourish.

For all reasons stated, CWA opposes the modification and new requirements of Titles IV-E and IV-B proposed by the Rule.

Sincerely,

A handwritten signature in black ink that reads "Penny Nance". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Penny Young Nance
CEO and President
Concerned Women for America