September 28, 2018

Kathleen McHugh
Director, Policy Division, Children’s Bureau
U.S. Department of Health and Human Services
330 C Street, S.W.
Washington, D.C. 20201

Re: Proposed Rulemaking in 83 FR 37497 on Family Foster Home Licensing Standards

Dear Ms. McHugh:

Thank you for providing an opportunity to share comments regarding the proposed National Model Family Foster Home Licensing Standards (National Standards) as required under the Family First Prevention Services Act of 2018. Pursuant to the notice published in the Federal Register on August 1, 2018 (83 FR 37497), I am hereby transmitting comments from the American Bar Association (ABA) Center on Children and the Law for consideration.

The Center on Children and the Law’s comments on the proposed rules in 83 Federal Register 37497 are based on the Model Family Foster Home Licensing Standards that the Center developed in partnership with other experts operating in the foster care arena in 2014. As stated in those standards, views expressed on this topic derive from substantive expertise at the Center and do not represent formal ABA policy, which requires approval by our House of Delegates. However, we are forwarding the attached comments from the Center knowing they may be useful as you finalize national foster home licensing standards.

Should you have any questions or want additional information concerning these comments, please contact Prudence Beidler Carr, Director, ABA Center on Children and the Law (202-662-1740, prudence.beidlercarr@americanbar.org) or David Eppstein, Legislative Counsel, ABA Governmental Affairs Office (202-662-1766, David.Eppstein@americanbar.org).

Sincerely,

Robert M. Carlson
Memorandum on Proposed Rulemaking 83 FR 37497

As indicated in the Federal Register notice, in partnership with the National Association for Regulatory Administration (NARA) and Generations United, the ABA Center on Children and the Law published Model Family Foster Home Licensing Standards in 2014, with updates in 2018 (NARA Standards). The NARA Standards also included consultation with the National Indian Child Welfare Association (NICWA).

We greatly appreciate the Children’s Bureau’s (CB) recognition that the NARA Standards are “appropriate to use as a main source” for the National Model Family Foster Home Licensing Standards (National Standards). The NARA Standards derive from extensive research and review of family foster home licensing standards in all 50 states and Washington DC. The review process also incorporated details from the Federal child welfare policy manual, and language from national accreditation agencies like Child Welfare League of America, the Council on Accreditation (COA), Joint Commission on Accreditation of Healthcare Organizations (JCAHO), and the Commission on Accreditation of Rehabilitation Facilities (CARF). During the research process, staff from the Center on Children and the Law and Generations United aggregated all the existing standards across the country to identify trends, challenges, and barriers that especially impacted relative caregivers.

Once the research was completed, the Center on Children and the Law and Generations United developed a collection of model standards in close coordination with NARA leadership and
experienced foster home licensors in multiple states throughout the country, including Florida, Ohio and Kansas.

The ABA has long-standing policy recognizing the importance of identifying, supporting and screening kinship caregivers with whom children can live while in foster care. As a result, the NARA Standards placed great emphasis on breaking down barriers that may disproportionately hinder kin caregivers from caring for relatives in the child welfare system. In many instances this means that the Standards are intended to reach a balance between ensuring sufficient screening and safety for all children in foster care while also allowing flexibility to support foster care licensing of family members who are often best-suited to care for children in need.

We appreciate the National Standards’ similar effort to address barriers that relatives can often face in becoming licensed as kin caregivers for children in foster care. As many provisions in the Family First Prevention Services Act of 2018 (FFPSA) highlight, supporting kin caregivers is a critical component of meeting children’s needs in and outside the child welfare system and there are numerous benefits for kin caregivers to be licensed as foster parents, including differential rates of financial support available to help them care for children.

Although the National Standards derive in many ways from the NARA Standards, there are several areas of divergence. There are also several topics where the opportunity for public comment has shined a light on issues that could be improved in both standards to better serve children and families. As a result, in response to the Federal Register request published on August 1, we write here to provide comments in areas where the proposed Standards could be strengthened. We have divided these recommendations by category in keeping with the proposed National Standards.

Significantly, as indicated in the NARA Standards themselves, the views expressed in the following comments represent substantive expertise from staff at the Center on Children and the Law. These views have not been approved by the ABA House of Delegates and, accordingly, should not be construed as representing ABA policy.

**Comments and Recommendations Based on Proposed National Standards**

**Foster Home Eligibility**

**Threshold Requirements**

*Comment:* This provision in the National Standards provides “…Applicants must be able to communicate with the child in the child’s own language and applicants must be able to communicate with the title IV-E agency, health care providers, and other service providers.”
Although both the NARA and National Standards intended to be inclusive of non-English speaking children and foster parent applicants, this language may not meet requirements of other federal laws. For example, the summary provided in the published National Standards indicates a desire for flexible communication standards, but does not propose methods to assist applicants with Limited English Proficiency (LEP) as required by guidance produced by Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973 and their accompanying regulations. These laws require that agencies receiving federal funds may not discriminate or deny participation and must provide language services under the ADA to ensure effective communication. See: https://www.justice.gov/opa/file/903996/download.

**Recommendation:** We propose the following language be considered to ensure compliance with other federal laws: “Applicants must be able to communicate with the child in the child’s own language and applicants must be able to communicate with the title IV-E agency, health care providers, and other service providers. The ability to communicate may include the use of non-verbal communication, competent interpretation and other language services as provided by child welfare agencies.”

**Background checks**

*Comment:* The Adam Walsh Child Protection and Safety Act, P.L. 109-248, July 27, 2006, requires federal background checks and child abuse and neglect clearances. Both the NARA and National Standards strictly adhere to the Adam Walsh Act and prohibit licensing foster parents who have certain criminal histories. Many states go beyond the Adam Walsh Act requirements and bar foster parent applicants from becoming licensed for other crimes, such as misdemeanors that may have occurred in their youth.

*Recommendation:* Include guidance in the National Standards indicating that states may choose to consider additional crimes when assessing the suitability of an applicant and recommendations for how to appropriately assess such non-barrier crimes. See NARA Standard 10.E. for the criteria, which include the type of crime, age of individual at time of conviction, and length of time that has elapsed since conviction.

*Comment:* The National Standards require a check of national crime information databases pursuant to §471(a)(20) of the Social Security Act. The National Standards do not, however, require additional database background checks in state and local criminal databases, adult protective registry and the sexual offender registry.

*Recommendation:* Consider including these additional checks in the National Standards. The National Standards should also follow NARA standard 11.C. by providing guidance to states that choose to prevent licensure for any substantiated
report of child abuse or neglect, beyond those listed in Adam Walsh, involving the applicants or any household member who is an adult age 18 or older. The NARA Standards suggest that these substantiated reports “be assessed on a case-by-case basis, which includes a discussion with the applicants and household members, to determine if the safety of any child in the home will be impacted. If not impacted, the results of the abuse and neglect background check may not prevent licensure.”

Comment: The National Standards do not address the need for the applicant to report any juvenile offenses committed by any members of the household.

Recommendation: We recommend including a requirement for a check of recent juvenile offenses committed by household members, but as in NARA Standard 11.D. we recommend including a caveat that these offenses should not be considered to automatically prevent licensure, but only to determine the suitability of the home.

Comment: There appears to be some language missing in the last sentence in the summary for this standard on page 37497.

Recommendation: We recommend the following language be added to help clarify the intent and reflect §471(a)(20)(B) of the Social Security Act. The sentence should say: “Further, title IV-E agencies must request [child abuse and neglect registry information from] any other state or tribe in which any such applicant or other adult has resided in the preceding five years.”

Home study

Comment: The National Standards require an in-home interview for each household member. Some flexibility may be needed for household members who may not be available.

Recommendation: We recommend providing for some flexibility in instances where not all household members are immediately available. For example, the NARA Practice Guide, page 20, provides alternative methods to interview such household members – “the agency can exercise its discretion and interview the individual via the Internet using Skype or similar technology that allows the agency staff person to see the household member. Telephone only interviews of household members do not meet this standard, unless exceptional circumstances exist.”
Foster Family Home Health and Safety

Living Space

Comment: The National Standards language implies the need for a designated kitchen. This can be problematic for some homes, as they may not have a specific room designated as a kitchen.

Recommendation: We recommend inserting the word “area” after the word kitchen to include studio like apartments that may not have a separate room for the kitchen. Similarly, some homes may have the toilet and sink and bathtub/shower in separate areas and not all in one designated bathroom. Therefore, we recommend a similar language modification.

Foster Home Capacity

Comment: The National Standards state “The total number of children in foster care in a family foster home, must not exceed six (6)…."

The Standard could be interpreted to mean the total number of children in the home, including non-foster children, should not exceed six. Similar language in FFPSA states “foster family home’ means the home of an individual or family— that provides the care for not more than six children in foster care.”

Recommendation: We suggest using language to clarify that the limitation only applies to the total number of foster children not to exceed six, unless one of the listed exceptions in FFPSA is met. NARA Standard 5.A. states – “The total number of children in a family foster home, including the family's own children living in the home, must not exceed 8, of which no more than 6 may be children in foster care. The agency may determine lower capacities based on the family assessment and home study.”

Foster Home Sleeping Arrangements

Comment: The National Standards do not provide guidance on who may share a bed, other than to say foster parents may not co-sleep with infants.

Recommendation: We suggest some language should be included which provides guidance on the need to assess sleeping arrangements based on the foster child’s gender, age and potential background of sexual abuse.
Comment: Additionally, the number of children sharing a sleeping space should be specified in the standards.

Recommendation: We recommend including language similar to the language in the NARA Practice Guide, page 22, which cautions “To ensure a family like environment in the foster home, the number of children assigned to a bedroom or sleeping space must be limited.”

Transportation

Comment: We commend the National Standards for separating out this standard, as it is one that often impedes licensing for appropriate applicants who do not own a vehicle, but are still able to provide safe and reliable transportation for a child. However, the summary to this standard states that only adults in the home having a driving record in good standing may transport the child. This is contrary to the Reasonable and Prudent Parenting Standard, which was established as federal law in the Sex Trafficking and Strengthening Families Act of 2014. As written, this Standard could pose a major issue prohibiting carpools, ride shares, and drivers under age 18 from transporting a child.

Recommendation: To align with the Reasonable and Prudent Parenting Standard, we propose amending this draft Standard to require the foster parent to use good judgment, as they would for their own child, in allowing a foster child to be transported by an adult they deem safe and responsible in a safe and legal vehicle.

Training

Comment: The National Standards require applicants receive training on a list of important topics prior to licensure with no mention of the number of training hours required.

Recommendation: We recommend that a designated number of hours be suggested. Not having a specified hour requirement could cause states and tribes to feel compelled to require full training in the pre-license phase. Many states have a training requirement of more than 20 hours, which if required prior to licensure could delay relative licensing significantly. Alternatively, we suggest adding language clarifying that pre-licensing training should include the listed topics with the understanding that additional training requirements may be imposed after licensure to ensure foster parents receive the guidance and support needed to adequately care for the child.
Foster Parent Assurances

Comment: The listed assurances are not numbered correctly as published. The standards do not address the requirement that the foster parent not subject the child to any type of discrimination or harassment.

Recommendation: We recommend including an assurance that the applicant provide the foster child with fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

Other Areas We Recommend for Inclusion in the National Standards

Definition section – If states do not have terms clearly defined elsewhere in their laws or regulations, we encourage them to consider including the NARA definitions in their state licensing standards.

Emergency Placement Standards – Unlike the NARA Standards, the National Standards do not include emergency placement procedures. The National Standards do not reject these standards; instead they simply state that emergency placement standards are considered outside the scope of FFPSA. We respectfully disagree. Emergency placement standards, also known as provisional licensing standards, are not a separate set of licensing standards and are therefore not outside the scope of FFPSA. Instead, for relatives, these standards are often the first step in the process to becoming fully licensed. The use of a preliminary or provisional set of standards, as a subset of a state’s licensing standards, allows a child to be placed immediately upon removal with a relative while the relative completes the remaining licensing process. Therefore, such provisional or emergency licensing is critical to reducing the trauma of removal and keeping children connected to their family from the onset of the case.

Thank you for your consideration of these comments. Should you have any questions or want additional information concerning our comments, please contact Prudence Beidler Carr, Director, ABA Center on Children and the Law (202-662-1740, prudence.beidlercarr@americanbar.org) or David Eppstein, Legislative Counsel, ABA Governmental Affairs Office (202-662-1766, David.Eppstein@americanbar.org).