February 8, 2019

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

Dear Secretary Azar,

On behalf of the American Bar Association, I am writing to commend you and your leadership team at the Department of Health and Human Services (HHS) for your recent decision to update the Child Welfare Policy Manual, Section 8.1. Consistent with federal law, this policy change now allows States to match their own investments in child and parent counsel with federal support. This action will produce better outcomes for countless children, courts, and child welfare agencies throughout the country.

Simply put, HHS’s decision represents good governance at its most fundamental level.

At a time when the rates of children in foster care have been steadily rising throughout the United States, it is especially important to recognize and invest in methods such as legal services that work to minimize time in care and prevent unnecessary entry into the system in the first instance. Research over the last ten years has consistently shown that investing in child and parent counsel reduces delays in case processing, increases parties’ participation in the case plan, informs better judicial decision-making, produces cost savings for child welfare agencies and courts, and, most importantly, helps children reach permanency (reunification, adoption, guardianship) sooner with more stable long-term outcomes.

For example, a 2008 child representation study in Florida found that foster children with legal representation had a significantly higher rate of exit to permanent families. Similarly, in a 2015 child representation study funded by HHS, children represented by trained legal counsel were 40% more likely to reach permanency (reunification, adoption, guardianship) within six months of placement in foster care as compared to a control group.

A 2011 study of parent representation in Washington State found that children’s exit to reunification was 11% higher in counties that provided high quality parent representation. The rate of adoptions and guardianships was also significantly higher (83% higher for adoption, and 102% higher for guardianships). Another evaluation of multidisciplinary parent representation in Detroit demonstrated that when families with a substantiated allegation of child abuse or neglect, but no filed petition or court proceeding, were provided with a legal team that included counsel and a
social worker they were able to address and resolve many of the underlying issues that had led to child welfare involvement. As a result, the multidisciplinary legal teams prevented the need for dependency petitions and obviated the need for court engagement in nearly 93% of all cases handled.

Investing in counsel to prevent or reduce unnecessary time in foster care and facilitate children’s exit to permanent homes not only helps the individuals in each case, it also creates substantial social and financial benefits for state and federal taxpayers. This kind of investment could not come at a more important time. As recently reported in the 2017 Child Maltreatment Report produced by your Office, rates of reported maltreatment have increased by as much as 40-80% in some states between 2013 and 2017. Legal representation will not solve all the underlying issues affecting child maltreatment, but it does produce enormous benefits in the system’s overall functionality by increasing efficient and effective case processing so that child welfare courts and agencies can focus resources on the most complex cases.

The ABA has longstanding policy supporting child and parent counsel in child welfare cases for all of the reasons outlined above and we believe that by helping States invest in legal representation, the Administration has communicated to the country that families and communities can work together to benefit children, while also making a sound fiscal decision. We commend this recent update to the Child Welfare Policy Manual and your leadership and initiative in making it happen.

Sincerely,

Robert M. Carlson