

**November 27, 2023**

Kathleen McHugh  
Director, Policy Division  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Washington, D.C.

**Re: FRN Doc. 2023-20932: Foster Care Legal Representation [RIN: 0970-AC89]**

Dear Director McHugh,

Thank you for the opportunity to comment on the notice of proposed rulemaking (NPRM) regarding Foster Care Legal Representation. Think of Us is grateful for the Children's Bureau's continued support of high-quality legal representation and shares the administration's focus on keeping children together with their families through prevention and kinship. We affirm the importance of this rule's codification of federal funding for legal representation under title IV-E. When finalized, this rule will build on the already substantial impact of the 2019 changes to the Child Welfare Policy Manual.

Think of Us is a research and design lab dedicated to fundamentally rearchitecting the child welfare system, with the children, families, and communities that have been impacted by the system at the center of shaping what it should be. Founded and co-led by people with lived experience in foster care, Think of Us looks system-wide to identify opportunities for the greatest impact. Through participatory research, virtual support services, proximate policy, and innovative partnerships with state and local governments, Think of Us has worked with and learned from more than 40,000 people with lived experience since 2020. Our comments below are drawn from the experiences and expertise shared with us by children, youth, and families impacted by the child welfare system.

Think of Us strongly supports this NPRM's interpretation of title IV-E administration and encourages swift implementation of this rule. As stated in the preamble to the proposed rule, there is a vast body of research showing that improved access to high quality legal representation has substantial benefits for children, parents, kin, and tribes, as well as for the system itself. Research overwhelmingly indicates that access to high-quality legal representation prevents the unnecessary placement of children in foster care, accelerates

reunification processes, and encourages placement with kin, along with myriad other benefits for children's outcomes and experiences.

Upstream access to high-quality legal representation in civil matters, such as maintaining housing or accessing benefits, can prevent family separation, stabilize families, and promote the lasting well-being of children and their families. This is not surprising, as many of the key drivers of child welfare involvement are civil in nature, including housing, domestic violence, and material deprivation (often labeled as "neglect"), and can be addressed through legal support instead of family separation. When safely possible, preventing family separation is in the best interest of the child and the state, as research has clearly shown that, even when necessary, removal from one's family of origin and placement into foster care is extremely traumatic, leading to serious, potentially lifelong downstream consequences.

While we know that legal representation is helpful, it is costly, presenting a serious barrier. We have seen, time and again, in our virtual support services ("VSS") work helping youth and families navigate interactions with the child welfare system, instances when legal representation would be helpful but is out of reach for families. In fact, legal aid and advocacy is consistently one of the top requested areas for support, while other top common requests are either financial in nature or able to be addressed financially. This contributes to the dramatic overrepresentation of lower income communities in child welfare and the disproportionate representation of communities of color that have been historically marginalized, denied resources, and systematically excluded from opportunities to build generational wealth.

Think of Us would also like to affirm the importance of making these legal services available to kin. Historically, and especially in the years since the opioid epidemic began, kin have been the bulwark against entry into the child welfare system. For children who do enter foster care, decades of research shows overwhelmingly that they have better outcomes and experiences when placed with the people who know and love them. Still, kin caregivers need support with the same civil legal needs as parents, along with unique needs related to how the system treats kin. While we know that there are members of the community who oppose the inclusion of kin caregivers because they believe it shows a preference for kin caregivers over parents, we have, time and again, heard from kin who are denied services that would help them care for a child. We, therefore, believe that provision of high-quality legal representation for kin is crucial, and applaud the administration for their inclusion.

Think of Us is grateful to the Children's Bureau for promulgating this rule. We urge swift finalization and request that the Children's Bureau do everything in its power to encourage states to take up this option. We further request that the Children's Bureau remind states that the expectation of title IV-E funding is that these funds are meant to supplement, not supplant, state funding for services.

Additionally, we request that, in the interest of encouraging states to take up this option, the Children's Bureau should provide clarity that this rule applies to representation in every phase of a child welfare case. This should include:

*Pre-petition representation during CPS investigations*

Not only do the findings of CPS investigations determine the course of children and families' lives, the investigations themselves have profound impacts on their well-being. In 2022, Think of Us conducted research with young people who had been subject to CPS investigations. This research revealed numerous instances in which legal representation would have been a benefit for children, including interrogation tactics and asymmetrical power dynamics that young people found coercive, lack of transparency, bias on the part of investigators, and little understanding of their own rights. Young people found these investigations to be destabilizing and pointed to far-reaching impacts on their relationship to their self, family, and community. It is imperative that they be offered legal representation to prevent this harm.

*Pre-petition representation for civil legal needs*

Knowing that children often come to the child welfare system on account of needs that could be addressed with material support or other intervention that does not include removal, civil legal representation is crucial. This is true of a wide range of civil legal needs, including housing needs, intrafamily violence, and help navigating special education. Through our VSS work, Think of Us has encountered many caregivers who reach out asking for legal support to navigate the process of obtaining public benefits, either because the relevant social service agency is making the application process difficult or because caregivers are being denied benefits for which they are eligible and they need an attorney or legal professional to help with appeals. Additionally, we regularly hear from kin caregivers seeking pre-petition support for the legal guardianship process, so that children can avoid coming to the child welfare system in the first place.

*Post-petition representation related to child welfare proceedings*

Child welfare proceedings are extremely complex and children, parents, and caregivers often

experience it as coercive or harmful. Providing legal representation throughout this process is a moral imperative, and available options are not sufficient. Help seekers contacting our VSS program regularly reported that they needed an attorney to support them, either because they could not otherwise access legal representation or because they felt the public defender they were assigned was not actually working on their behalf. Additionally, help seekers and research participants identified needing legal support related to myriad other case-specific issues, including:

- Expungement of criminal record for kin, so that they can be licensed to provide care for children in the system;
- Power of attorney to make health and education decisions for kin youth in their care;
- Establishing paternity for the purpose of kinship placement with paternal relatives;
- Responding to unreasonable requests from caseworkers, such as the suggestion that they maintain two homes to avoid endangerment risks; and
- Holding caseworkers and other child welfare professionals accountable for making referrals and otherwise supporting caregivers with completing their service plans.

#### *Post-petition representation for ancillary civil legal needs*

Beyond the specifics of their child welfare case, children, parents, and kin caregivers have various ancillary civil legal needs that profoundly impact the well-being of children in care and that span the entire course of their case. Kinship caregivers we encounter through VSS and our research work report myriad legal support needs related to housing, including housing instability on account of the financial toll of caring for children with complex needs and difficulties with landlords due to their changing circumstances. Additionally, parents and caregivers report needing civil legal support navigating benefits not provided by the child welfare system, including school-related supports for children with disabilities, overly complex benefit applications, unexplained benefit reductions or cuts, and unlawful denial of services for which they are entitled.

#### *Representation for youth in extended care*

Youth in extended foster care transitioning to adulthood have various legal needs related to their cases and to ancillary civil legal matters. Transition-age youth and young adults who request support through VSS regularly identify the need for legal representation and support to navigate housing and health benefits. Accessing housing vouchers from the FYI program is a common concern requiring legal support, with young people, including some who are

experiencing homelessness, identifying poor implementation, lack of assistance, and difficulties with navigating complex eligibility requirements. Others request legal support with accessing health benefits, particularly in cases where the child welfare system did not help young people apply in advance of leaving care. Still others request legal support with obtaining or correcting documentation, a challenge that is more pressing for youth who are not citizens.

Thank you for the opportunity to comment on this proposed rule. We commend the Children's Bureau for your leadership in integrating high-quality legal representation into federal rules and funding streams. If you have further questions, please contact Steven Olender, Senior Director for Strategic Policy Initiatives at [steven@thinkofus.org](mailto:steven@thinkofus.org).

In service,

A handwritten signature in black ink, appearing to read "Sixto M. Cancel".

**Sixto M. Cancel**

Chief Executive Officer, Think of Us