



DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR PART 1355

RIN 0970-AD19

Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children; Rescission

AGENCY: Children’s Bureau (CB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking

SUMMARY: The Administration for Children and Families (ACF) proposes to remove the requirements issued in the final rule *Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children* (89 FR 34818) that was published on April 30, 2024. The final rule required title IV-E/IV-B agencies to ensure that a Designated Placement is available for all children who self-identify with an alternative sexual orientation or self-identify as something other than their sex in foster care who request or would benefit from such a placement. On June 13, 2025, the U.S. District Court for the Eastern District of Texas vacated the final rule in its entirety, *State of Texas v. United States Department of Health & Human Services*, 770 F. Supp. 3d 940 (E.D. Tex. 2025), concluding that the final rule exceeded the Department of Health and Human Services’ statutory authority and conflicted with the text of title IV-E. As a result of the court’s decision, the final rule is no longer in effect or enforceable, and to ensure clarity for the public and regulated entities, ACF proposes to remove the provisions from the Code of Federal Regulations.

DATES: Comments on this proposed rule must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit written comments, identified by docket number ACF-XXXX-XXXX and/or Regulatory Information Number (RIN) 0970-AD19, through the Federal eRulemaking Portal: <https://www.regulations.gov> on or before the due date. Follow the

instructions for submitting comments. All comments received will be posted without change to www.regulations.gov, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Jennifer Haight, Children’s Bureau, 202-329-6464, Administration for Children and Families, Department of Health and Human Services, cbcomments@acf.hhs.gov.

SUPPLEMENTARY INFORMATION:

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I. Statutory Authority

This Notice of Proposed Rulemaking (NPRM) is published under the authority granted to the Secretary of HHS (the Secretary) by Section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302, which authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions entrusted to the Secretary under the Act.

II. Background

Designated Placements Final Rule

The Administration for Children and Families (ACF) proposes to remove the requirements issued in the final rule *Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children* that was published on April 30, 2024 (89 FR 34818) (final rule). The final rule added § 1355.22 to 45 CFR Part 1355, requiring State and Tribal agencies

administering or supervising the administration of title IV-E and IV-B of the Social Security Act (“agencies”) to ensure that a Designated Placement is available for all children who self-identify with an alternative sexual orientation or self-identify as something other than their sex in foster care who request or would benefit from such a placement. It established procedural steps for title IV-E/IV-B agencies to implement Designated Placements and added requirements for foster care providers of these placements. The final rule also amended § 1355.34(c)(2)(i) requiring agencies to monitor compliance with Designated Placement requirements through the Child and Family Services Reviews (CFSR).

Legal Challenge and Current Status

***State of Texas v. United States Department of Health & Human Services*, 770 F. Supp. 3d 940 (E.D. Tex. 2025)**

On September 24, 2024, the State of Texas Attorney General’s Office filed a lawsuit against HHS alleging the final rule:

- Exceeds HHS's statutory authority,
- Violates the Spending Clause, and
- Is arbitrary and capricious.

The plaintiff asked the court to vacate the final rule and requested an immediate stay of the final rule’s effective date under 5 U.S.C. 705. On March 13, 2025, the court concluded that the State of Texas is likely to succeed on the merits of the case because the final rule “violates the APA in two independent ways.” 770 F. Supp. 3d at 948. First, HHS “lacked rulemaking authority to issue the Final Rule,” and second, the final rule “conflicts with the text of Title IV-E.” *Id.* The court stayed the final rule in its entirety nationwide, pending the conclusion of proceedings in that case, finding that the final rule imposed requirements on agencies not authorized by the statutory provisions governing the title IV-E and IV-B programs. *Id.* at 948–

50. HHS notified title IV-E/IV-B agencies of the nationwide stay through emails and an Information Memorandum (IM) ACF-ACYF-CB-IM-25-03 issued April 15, 2025.

On June 13, 2025, the U.S. District Court for the Eastern District of Texas issued a final judgment, vacating the final rule in its entirety. *See Texas v. U.S. Dep't of Health & Hum. Servs.*, Case No. 6:24-cv-348-JDK (E.D. Tex.), Doc. 37 (filed June 13, 2025) (Order and Final Judgment). For the reasons stated in the initial stay of the final rule, the court concluded that the rule exceeded HHS's statutory authority and conflicted with the text of title IV-E.

The court's decision vacated the final rule in its entirety, meaning that the rule is no longer in effect and has no legal force. Due to the court's final judgment, ACF will not enforce the provisions of the final rule and has notified title IV-E/IV-B agencies of the court's decision through ACF-ACYF-CB-IM-25-03.

III. Purpose of Proposed Rule

We propose to remove 45 CFR 1355.22 and rescind the amendment to § 1355.34(c)(2)(i) made in the final rule, i.e., to remove the cross references to the Designated Placements requirements of § 1355.22(b) and (d). The purpose of this proposal is to ensure clarity for the public and regulated entities by formally removing the final rule's requirements from the regulations because the court's decision vacating the final rule rendered it ineffective and unenforceable. Removing the requirements from the Code of Federal Regulations will eliminate any uncertainty, provide clarity for regulated entities on the requirements applicable to them, and ensure that the regulations are accurate. This NPRM does not propose new requirements or change existing obligations under the title IV-E or IV-B programs. ACF invites public comments on this proposal.

IV. Regulatory Impact Analysis

Regulatory Planning and Review of Executive Orders 12866, 13563, and 14192

Executive Orders 12866 and 13563 direct agencies to assess all benefits and costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Management and Budget (OMB) has determined that this NPRM is a significant regulatory action under section 3(f) of Executive Order 12866. Executive Order 14192 requires that any new incremental costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations.” This NPRM if finalized is expected to be a deregulatory action as defined by Section 3 of Executive Order 14192.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 requires Federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term “small entities,” as defined in the RFA, comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue on at least 5 percent of small entities. The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96-354), that this rulemaking will not result in a significant impact on a substantial number of small entities. This rule does not affect small entities because it is applicable only to state and tribal title IV-E/IV-B agencies and those entities are not considered to be small entities for purposes of the Regulatory Flexibility Act. Therefore, an initial regulatory flexibility analysis is not required for this rulemaking.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) was enacted to avoid imposing unfunded Federal mandates on state, local, and Tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. In 2025, that threshold is approximately \$187 million. This rulemaking does not contain mandates that will impose spending costs on state, local, or Tribal governments in the aggregate, or on the private sector, in excess of the threshold.

Executive Order 13132 on Federalism

Executive Order 13132 on Federalism requires that Federal agencies consult with state and local government officials in the development of regulatory policies with Federalism implications. In accordance with section 6 of Executive Order 13132, it is determined that this NPRM does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Alternatives Considered

There are no alternatives to issuing this NPRM because the final rule was vacated by the court and is no longer in effect.

Assessment of Federal Regulations and Policies on Families

The Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being (sec. 654, Pub. L. 105-277, 112 Stat. 2681). If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF concluded it is not necessary to

prepare a family policymaking assessment because this rulemaking would not have any impact on the autonomy or integrity of the family as an institution.

Paperwork Reduction Act

This NPRM does not affect any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501-3520.

Costs and Benefits

In the final rule, ACF estimated that the costs to the Federal Government would be \$10,827,381 over a three fiscal year period (FYs 2027-2029) for title IV-E/IV-B agencies to meet the requirements in the final rule (89 FR 34855-34859). Projected agency costs used to calculate the total are outlined in the final rule and include increased recruitment costs and additional training of caseworkers and supervisors. ACF estimated that the combined total Federal and agency costs over three fiscal years would be \$45,743,070. For the purposes of quantifying the economic impacts of the removal of section 1355.22 and amendment to section 1355.34(c)(2)(i), we adopt these estimates as costs that would be incurred under an analytic baseline scenario of no further regulatory action. Compared to this baseline, the impact of this NPRM is to avert these costs, resulting in cost savings of a similar magnitude. To quantify the cost savings of the NPRM under Executive Order 14192, we adjust the estimates to 2024 dollars using the GDP deflator and calculate present value and annualized cost savings using a 7 percent discount rate, using 2024 as the base year for discounting. Our analysis indicates this deregulatory action if finalized would result in a present value of cost savings of about \$35.5 million or annualized cost savings of about \$2.5 million.

V. Tribal Consultation Statement

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, requires agencies to consult with Indian tribes when regulations have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes and either impose substantial direct compliance costs on tribes or preempt state law. Similarly, ACF's Tribal Consultation Policy provides that consultation is triggered for a new rule adoption that significantly affects tribes, meaning the new rule adoption has substantial direct effects on one or more Indian tribes, on the amount or duration of ACF program funding, on the delivery of ACF programs or services to one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The final rule did not meet either standard for consultation, as indicated in the preamble at 89 FR 34818, and consequently this NPRM does not either.

List of Subjects in 45 CFR Part 1355

Adoption and foster care, Child Welfare, Grant Programs-Social Programs

(Catalogue of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services-State Grants).

For the reasons set forth in the preamble, ACF proposes to amend 45 CFR part 1355 as follows:

PART 1355—GENERAL

1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq., 42 U.S.C. 1302.

2. Remove and reserve § 1355.22.

3. Amend § 1355.34 by revising paragraph (c)(2)(i) to read as follows:

§ 1355.34 Criteria for determining substantial conformity.

* * * * *

(c) * * *

(2) * * *

(i) Provide, for each child, a written case plan to be developed jointly with the child's parent(s) that includes provisions: for placing the child in the least restrictive, most family-like placement appropriate to his/her needs, and in close proximity to the parents' home where such placement is in the child's best interests; for visits with a child placed out of State/Tribal service area at least every 12 months by a caseworker of the agency or of the agency in the State/Tribal service area where the child is placed; and for documentation of the steps taken to make and finalize an adoptive or other permanent placement when the child cannot return home (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(A) of the Act);

* * * * *

Robert F. Kennedy, Jr.,

Secretary

Department of Health and Human Services