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MEMORANDUM

TO: New York State Office of Children and Family Services

DATE: March 30, 2020

**RE: Comments on proposed rulemaking: Host Family Homes
(I.D. No. CFS-04-20-00009-P)**

This memo offers comments on the New York State Office of Children and Family Services (OCFS) proposed rulemaking that would add a new 18 NYCRR Part 444 - Approval and Supervision of Host Family Homes. We appreciate the opportunity to comment on the proposed amendment.

Establishing Standards for the Approval and Administration of Host Family Homes

Currently, numerous methods exist under the law for parents who find themselves in the untenable situation of being unable to care for their children, either temporarily or permanently. The three main procedures are the granting of custody or guardianship; the “transfer of care and custody of children” to an authorized agency pursuant to Social Services Law (SSL) § 384-a; and the “power of parent to designate a person in parental relation” pursuant to General Obligations Law § 5-1551.

The proposed rulemaking would “establish standards for the approval and administration of host family homes.” If approved, the regulations would amend 18 NYCRR 444.1 (and add new sections 444.2-442.15), giving parents the option of placing their children with an approved host family pursuant to a voluntary placement agreement for up to 12 months and in some cases longer.

The Notice of Proposed Rule Making states that the “proposed regulations would afford parents/guardians the ability to obtain short term residential care for their children without the need to place the child in public foster care.” However, the notice does not acknowledge that alternatives already exist. Nor does it provide a justification for creating an entirely new administrative process and host family home industry. Given the already existing options, we do not see the necessity for the proposed rulemaking.

If OCFS moves forward with adopting these regulations, we strongly advocate that OCFS correct some glaring gaps prior to adoption of the proposal.

A. Voluntary Placement Agreements

If OCFS adopts the proposed rule, we ask that safeguard provisions be added that would require the OCFS “authorized agency” to meet obligations commensurate with what is required in a “voluntary placement agreement” under SSL §§ 358-a and 384-a. Namely, the authorized agency should be obligated to locate the child’s other parent (if applicable); and locate suitable relatives, including grandparents, and any other relative identified by a child over the age of 5, as a relative who plays or has played a significant positive role in his or her life” As provided in Social Services Law § 384-a, there must be a provision that all siblings should be placed together (where appropriate), and that regular visitation (preferably with a schedule) shall occur between the placed child and parent(s), as well as siblings and half siblings.

Also, the regulations must require that the “host family placement agreement” (contract) itself have both a date that the child(ren) will be returned, as well as a provision that the parent may request and shall be granted return of the child(ren) at any time prior to the expiration of the host agreement. Further, the regulations must enumerate the remedy for the failure of the host family or authorized agency to return the child upon request. Without such specificity in the regulations, it is unclear whether the remedy is a writ or custody application to Family or Supreme Court, a breach of contract in Supreme Court, or something different. What is the remedy for a parent who finds out after the fact that their child has been placed with a host family, if they oppose such an action? These are all critical issues that are addressed in SSL § 384-a, and it is inexplicable as to why they are not be included in this proposed rulemaking. Without these added protections, the potential for harm to children and families is great. Desperate parents may find themselves unwittingly coerced by a well- intentioned person into giving their child to a stranger “host family,” without understanding the ramifications that go along with that decision because the regulations do not mandate a clear, unambiguous the host family contract.

B. Keeping Families Apart

We realize that these proposed regulations, together with the lack of court involvement, may seem like a welcome alternative to parents who are having difficulty, and believe they are not currently in a position to care for their children. However, we fear that an unintended consequence of these regulations will be the creation of a “back door foster care system,” where overworked child protective services workers will encourage parents to place their children with a “host family,” rather than providing services that could address the problems that caused the family to reach the point of needing help.

We acknowledge that under certain circumstance a caseworker may recommend a “host family” situation instead of bringing a neglect petition. The broader policy question, one that has not been addressed by the legislature, is whether the creation of a host family home industry is an appropriate alternative to neglect proceedings, which involve court oversight, mandatory services, and the goal of keeping the family together. Without a more extensive structure for this entirely new system, it is our position that a neglect proceeding is preferable to a host family agreement, which may keep a family apart for a year or longer, and will almost certainly and permanently weaken the family structure.

C. The Pandemic

The Notice of Rule Making was published in the *State Register* on January 29, 2020. Although New York State was not dealing with the coronavirus pandemic at that time, the pandemic has understandably consumed the attention of many organizations and individuals that otherwise may have submitted comments on the proposed regulations. Organizations and individuals are focused on critical tasks that will help maintain the health and safety of families during the state of emergency. Under the circumstances, we urge OCFS to give the public more time to address this significant proposal and delay final action until after the state of emergency in New York has ended.

Conclusion

As set forth above, we urge OCFS to withdraw the proposed rulemaking. In the alternative, we ask that OCFS extend the time for public comment so that organizations and individuals that may want to comment on the proposal, but were unable to do so before the state of emergency was declared in New York, have the full opportunity to do so. Finally, should OCFS choose to take action on the proposal now, we ask OCFS to make modifications that will provide more clarity and transparency, particularly with regard to the host family agreement, so that parents considering this option will be able to understand the legal ramifications of such an agreement. If you have any questions regarding these comments, please do not hesitate to contact Susan Bryant, Executive Director, or Kimberly Bode, Family Court Staff Attorney, New York State Defenders Association, at 518-465-3524.