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Commissioner

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Dear Ms. McHugh:

Thank you for the opportunity to comment on the United States Department of Health and Human Services Administration for Children and Families ("ACF") Title IV-E Adoption Assistance Program's Suspension and Termination Policies.

New York City Administration for Children's Services ("ACS") strongly supports publicly financed adoption subsidy funds being spent on the support and welfare of adoptive children. Recent adoption subsidy fraud cases, however, demonstrate that there are individuals who can and will abuse the adoption subsidy process. Unfortunately, the current system in place to recertify families is woefully short of authority to do even the most cursory check of whether "any support" is provided. This gaping hole allows for some parents to exploit the payment system to collect public monies without providing any discernible real support to their children. For this reason, we urge ACF to revise its interpretation of the meaning of "any support," and to allow for the suspension and termination of adoption subsidies in situations where the parent is not providing an adequate level of support to an adopted child, fails to respond to a recertification letter, or where an adopted child returns to foster care.

The United States Code specifically allows an adoption subsidy payment to be withheld "if the State determines that the child is no longer receiving any support from the parents or relative guardians, as the case may be." 42 USCS § 673(a)(4)(A)(iii). ACS encourages ACF to interpret the term "any support" to mean any *reasonable* support. We ask that ACF allow the local social service districts to require, at the very least, parents to demonstrate a threshold level of support, which should include some documented use of the adoption subsidy payments for food, clothing, medical, education and/or shelter needs of the children. While ACS respects the privacy of the adoptive family, the legislative intent could not have had in mind the protection of utterly *de minimis* support, or support that cannot be verified because the adoptive parent refuses or neglects to send back the annual recertification form, as satisfying the "any support" mandate.

New York State's Kinship Guardianship Assistance program, created pursuant to the Fostering Connections to Success and Increasing Adoptions Act of 2008, does not leave the term "support" open to such broad interpretation. Any support is clearly defined: Any support means actual documented use of at

least 50 percent of the monthly kinship guardianship assistance payment by the relative guardian for food, clothing, medical, education and/or shelter needs of children. (See 18 NYCRR § 436.5). Therefore, we recommend that the term "any support" in adoption assistance should be consistent with kinship guardianship subsidy criteria, and mean "actual documented use of at least 50 percent of adoption assistance payments by the adoptive parent for the child's food, clothing, medical, educational and/or shelter needs of the child."

To illustrate, the lack of guidance provided in the area of monitoring adoption subsidy payments provides fraudsters with ample opportunities to take advantage of the process for their own gain. In July 2014, Pamela Keller, of Dover, Delaware, was arrested in New York City after investigations revealed that she stole approximately \$121,000.00 in adoption subsidy payments. She was charged with Grand Larceny in the Second Degree, a class C felony, and 49 counts each of Forgery in the Second Degree and Criminal Possession of a Forged Instrument in the Second Degree, both class D felonies. It was uncovered that Keller had cashed checks made to a deceased adoptive parent, who was receiving adoption subsidy payments for the care of three children she adopted. The adoptive parent passed away in June 2008, but Keller obtained the checks and cashed the checks until June 2012. In this case, we learned that no recertification letter was returned to ACS after the adoptive parent passed away. ACS, however, is hamstrung from suspending subsidy payments even if the adoptive parent fails, or neglects, to return the recertification form. In another case, Katrina Perry of Brooklyn, New York was arrested in February 2013 for cashing a total of 42 ACS adoption subsidy checks amounting to \$33,007.90. After the death of an adoptive parent in August 2006, Perry stole the identity of the adoptive parent and opened a checking account in the adoptive parent's name to cash the ACS adoption subsidy checks. She continued to do so until ACS learned of this and suspended payments in April 2012. If ACS had the opportunity to take earlier action in both these cases, such as suspend payments when the recertification letter was not received, ACS could have curtailed the fraudulent payments. These cases demonstrate that precautions are needed to ensure that ACS and other local social services districts do not continue to pay out tax funds to parents providing unknown or questionable support, or payments going to the wrong recipients. ACS's inability to enforce the return of the annual adoption recertification forms prevents us from obtaining the necessary information to determine if a parent is still providing any support for the child.

Regarding the recertification letter, we make the following proposal: First, in the recertification letter, we will request that the parent respond within thirty days of receipt of the letter. We will inform them if they fail to respond we may suspend their subsidy payments. Second, if we do not hear from them after thirty days we will send a follow-up letter informing them that the payments will be suspended thirty days from the date of the second letter unless the required information is provided. We will also inform the parent that after the suspension they can restore the subsidy by complying with our request with documents that are verifiable.

Furthermore, in an alarming number of adoptive families, the adopted children are placed back into foster care. Even more concerning is that in many of these cases, the adoptive parent continues to receive adoption subsidies payments while these children remain in foster care.

During the payment month of February 2014, ACS made adoption subsidy payments for 143 adopted children who were in foster care at the time. And in these 143 cases, ACS is prohibited from suspending payments or seeking an explanation of what support is being provided to these children in foster care by the adoptive parents. In subsidized adoptions between 1993 and 2011, 2,050 children were placed back into foster care after the adoption was finalized (or 4.3 percent of the 48,157 subsidized adoptions that occurred during this time frame). These children are returned to foster care via voluntary placements agreements signed by the adoptive parent, neglect/abuse proceedings, juvenile delinquency proceedings, or persons in need of supervision proceedings. These are instances where ACS clearly knows the adoptive children are physically not with the

adoptive parent and the support, if any, provided to these children is very questionable, and may be non-existent.

Similar to our proposal concerning the failure to return the recertification letter, we make the following proposal when adoptive children are returned to foster care: First, ACS will send the parents a letter informing them that within thirty days they must provide us with some documentation demonstrating their reasonable support of the child while in foster care. We will inform them that if they fail to respond or fail to provide adequate documentation, we may suspend their subsidy payments while their child remains in foster care. Second, if we do not hear from them after thirty days we will send them a follow-up letter informing them that the subsidy payments have been suspended. If we receive inadequate documentation, we will send a follow-up letter requesting additional documentation and we will inform parents that the subsidy will be suspended thirty days from the date of the second letter unless the required documentation is provided. We also will inform parents that if subsidy payments are suspended, they can restore the subsidy by contacting ACS after the child is discharged from foster care and submitting documents that are verifiable that demonstrate reasonable support of the child.

Like adopted youth returning to foster care, guidance could also be provided in instances where the adoptive child is confined to a special education school that provides a therapeutic and residential setting for children with developmental disabilities who require 24-hour supervision, such as an Intermediate Care Facility (ICF), a residential Office for People With Developmental Disabilities (OPWDD) facility where youth with varied developmental disabilities reside and attend school up until age 21. ACS is aware of one particular ICF where youths are placed by either the county of residence or the school district into this 24-hour ICF, but the adoptive parents continue to receive adoption subsidies while the youths are residents of the ICF year round. In fact, some of these parents received adoption subsidies at the exceptional rate.

We strongly believe that ACS' proposed process is very much in line with ACF's goals. Our inquiry seeks to confirm that the adoptive child is provided with actual support and that his or her long term goal of permanency is not compromised. We want to assure ACF that ACS is not seeking an intrusive inquiry requiring an accounting of expenditures. ACS merely wants assurances that adoption subsidy funds, including children or youth placed back into government care, are spent to support and provide for the well-being of the adoptive children so that long-term permanency goals remain intact. We know that ACF shares this same goal, and we look forward to working collaboratively with the ACF in pursuing this vision.

Sincerely,



Gladys Carrión, Esq.
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