State of Rhode Island and Providence Plantations
OFFICE OF THE CHILD ADVOCATE

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December 30, 2016

The Office of the Child Advocate's Testimony Regarding the Proposed Amendments to the Foster Care and Adoption Regulations for Licensure

The Office of the Child Advocate is submitting the following written testimony in response to the proposed changes submitted by the Department of Children, Youth and Families to the Foster Care and Adoption Regulations for Licensure, dated July 29, 2016. The Department of Children, Youth and Families is presently operating under the proposed changes pursuant to §42-35-2.10, which provides agencies with the opportunity to "…take prompt regulatory action in instances of imminent peril to the public or loss of federal funding." The Department initially filed these changes on an emergency basis and has been operating under these changes for the past one hundred and twenty (120) days. Prior to filing on an emergency basis, the Office of the Child Advocate (hereinafter "OCA") requested to meet with the Department on numerous occasions in an attempt to offer our insight regarding the changes and the potential impact they may have on the safety and well-being of children in state care. Unfortunately, the OCA was not directly informed of the potential changes, in fact, our office was initially informed by an anonymous caller. The OCA's request to meet was not fulfilled and the changes were subsequently filed on an emergency basis. Due to this, the OCA took great care in preparing our written testimony to highlight our concerns.

Additionally, it is worth noting that the Office of the Child Advocate has received numerous varying copies of the proposed changes. The OCA received the initial copy of the changes when requesting the aforementioned meeting. It was the understanding of this office that this copy reflected all of the changes. However, on December 2, 2016, an email was distributed by Jamia MacDonald, which reflected a lengthier list of changes than initially provided, this prompted additional research into the proposed changes. On December 13, the date of the public hearing, the OCA was provided with the copy filed with the Secretary of State's office and discovered the red-lined copy on the Department's website. Each of these copies reflect different changes. In fact, the copy filed with the Secretary of State's website does not reflect the changes outlined in Ms. MacDonald's email. In an abundance of caution, our testimony will provide our office's insight on the changes as reflected in the red-lined copy of the rule, posted on the Department's website, which reflected the most substantial changes to the licensing regulations.

The OCA understands the importance of acquiring foster families to provide for children in state care. The OCA also understands the desire of the Department to streamline their licensing process, however, this cannot be done at the expense of the safety and well-being of children in state care. This is an attempt to expedite the licensing process and clear the licensing backlog, without appropriate vetting of potential foster or adoptive parents. It is the position of the Office of the Child Advocate that greater attention should be provided to recruitment, development and retention of foster parents opposed to sweeping changes to the regulations enacted to ensure the safety of children. Outlined below are some of the concerns the OCA has with the proposed changes. Please note that our reference to the sections in which we are commenting on are the sections as they previously were in the October 8, 2013 licensing regulations.

I. Guidance Document

It is the understanding of this office that much of the language removed from the prior regulations will be compiled in to a "guidance document" pursuant to §42-35-2.12. A guidance document provides agencies with the ability to inform the public regarding their interpretation of a policy or regulation, however this document cannot be enforced. In the Administrative Procedures Act Regulatory Manual, a guidance document "...does not have the force of law, as such they do not create or confer any rights and do not bind the public." The OCA interprets this to mean that although some of the more extensive licensing standards would be compiled in this guidance document, the Department would not have the ability to enforce these standards and foster families would not be bound by these standards. It would merely be a suggestion. After considering the language that is being removed and placed in to this document, the OCA remains extremely concerned that these standards would merely become a suggestion opposed to remaining in the regulations, which require their enforcement.

II. Licensing Provisions—Home Study and Health History

a. Part I. B, 1 (a) Home Study—Criminal Record Checks

As previously stated, the red-lined copy and the copy that was filed with the Secretary of State reflected differing changes. This section is one area where the changes were inconsistent, therefore, we are commenting on the copy with the more egregious changes. One of the most concerning sections where these changes are inconsistent is the section outlining the requirements to be fulfilled for criminal record checks. In the red-lined copy, the only language remaining in this section was, *"Criminal Records Checks for all household members age 18 and older."* First, this office maintains that it is vital for the licensing process that criminal checks be completed for ***any and all members of the household***, regardless of age, not just those household members who are over the age of eighteen. Completion of these criminal record checks are of the utmost importance to ensure the safety of foster children. In compliance with state and federal law, the criminal record checks should be both local and nationwide searches. Additionally, the legal names, aliases and birthdates and fingerprints of *all* household members should be provided to ensure that the criminal checks are thorough and accurate. There are significant risks that could be present to children in state care if criminal record checks are not thoroughly completed. For example, if there is an individual who is seventeen years old in the home and has been convicted of a crime that would present a risk to the safety and well-being of children, this would not be highlighted in the application process.

b. Part I. B, 1 (b) Home Study—Department Clearances

Also, of concern to the OCA is the removal of the requirement for DCYF record checks for all members of the household. The requirement under the proposed changes is for these searches to only be completed for household members over the age of eighteen. These vital checks are completed to determine whether any member of the household has substantiated allegations of abuse or neglect, or has a child that has a history with the Department. Again, as mentioned for the criminal record checks a thorough search of ***any and all members of the household***, is vital to ensuring the safety of children in state care. Additionally, the removal of B(1)(b)(IV) which reads,*" in compliance with federal law, all applicants and household members age eighteen and older who have lived in another state in the preceding five years must be checked and cleared throughout the Child Abuse and Neglect State Central Registry of that state. The applicant may be denied if the record check indicates that a protective services investigation is pending or if there is a substantiated report of child abuse or neglect on any member of the household.*" It is troubling that the removal of this section removes the wording ensuring compliance with federal law. Additionally, there should be no time limitation for when these searches should be conducting. If anything, we would propose that this language remain in the regulations and be expanded to include if an applicant has ever lived in another state, not just the preceding five years, they must be cleared through the Child Abuse and Neglect State Central Registry of that state. We can never be too cautious when seeking to protect the children in the foster care system in Rhode Island. Additionally, by removing this requirement the Department will be opening the door to potential inappropriate caregivers by not completing a comprehensive check.

c. Part I. B, 1 (c) (d) Home Study (continued)

The updated sections c and d also remove some language which this office feels is necessary. Regarding section c which requires applicants to provide, *"Identifying information on all household members, including minor children and the current needs of each child. All members of the household must be available for interviews."* This office maintains that all members of the household should be made available for interviews and that the individual needs of all children in the house are examined and reviewed. By completing this process, the Department can ensure that the applicant and all household members will provide an environment that is appropriate for a foster child and ensure that the applicant will be able to provide for the needs of their children in addition to the needs of a foster child. In addition, section d, which previously provided for the "Assessment of applicant's parenting ability…". This requirement provided for the assessment of a variety of items including the motivation for becoming a foster parent; family relationships, attitudes and expectations; and the family's ability to accept the relationships of the child in care with his or her biological family. These are incredibly important to consider! The OCA believes that the assessment of an applicant's parenting ability should remain as part of the process, including the motivation for becoming a foster or adoptive parent. This office feels that the assessment of a potential foster or adoptive parent needs to include a discussion or evaluation about how accepting or open the family is to LBGTQQI children, for example.

Additionally, vetting how accepting and supportive a potential foster family may be of a foster child's relationship with their biological family, including visitations and assisting with progression towards reunification or other permanency goals, is certainly vital to evaluate as this is often a challenge faced by many families. Ensuring the support of a child's relationship with their biological family is of the utmost importance when the goal appropriately remains reunification. Foster families frequently struggle with this premise and the OCA oftentimes receives complaints from foster parents

angered and saddened by the concept of reunifying the child with their family. Although we are sympathetic to these wonderful families who have bonded with their foster child, we must ensure the foster family's ability to support a child in their progression towards reunification, not create barriers and conflict.

Also, in section g, this office is concerned that information regarding past and present marriage and/or partnership relationships could be absent from future licensing applications of foster parents. Without this information, the DCYF may be unaware of any underlying issues such as domestic violence, mental health or substance abuse. It is senseless to remove children from their families for issues such as these to be then placed with foster families where these issues could also be present if not properly vetted.

d. Part I. B, 1 (h) Home Study—Health History

Under the former licensing regulations, the health history requirements read as follows:

i. Current and past medical and psychological conditions, including any addiction to drugs or alcohol or any applicant that may be detrimental to the health and welfare of children.
ii. Each health history should include a physician's statement regarding the applicant's general health, specific illnesses or disabilities, alcohol or other drug problems, infectious diseases or other relevant health conditions and a comment on the applicant's ability to foster or adopt.
iii. If requested, the applicant must submit the name of a physician or mental health professional who is familiar with the applicant's mental health history and who is available to comment on the applicant's mental health status and ability to foster or adopt.
iv. The Department may obtain the health and mental health status and history of all members of the household to ensure that no member has an illness or condition, including alcohol and drug abuse that presents a health or safety risk to any child and may interfere with the caregiver's ability to provide satisfactory care.

In the red-lined version of the regulations, all of language was removed. The removal of these requirements were also highlighted in the list of changes circulated by Ms. MacDonald on December 2, 2016, however these changes are not reflected in the copy filed with the Secretary of State. Maintaining these requirements as a prerequisite to obtaining a foster care license is absolutely necessary to ensure the safety and well-being of children in the foster care system. Disclosure of this information is essential in order to make the determination whether an applicant is physically, emotionally and mentally fit to be a foster parent. Why would we not want to verify this information? In addition, some of these children have been removed from their families for similar issues including, mental illness and substance abuse. However, not ensuring whether similar risks may be present in a foster home is reckless. To remove a child from their parents to only place them in a home with the same issues would be traumatic and absolutely detrimental to the child. These requirements need to remain in the regulations.

The Office of the Child Advocate understands that not every individual may have an identified primary care physician who would be willing to write a physician's reference. The OCA suggests that the Department create a partnership with any of the local hospitals to develop a clinic to provide this service and expedite this aspect of the licensing process.

III. Determination

a. Part A (1)(a) and (b)

This section A(1)(a) reads as follows, *" A Foster Care and Adoption License will apply only to the place of residence occupied by the applicant at the time of issuance."* This language remains in the proposed change, which the OCA is in agreement with. However, section A(1)(b), which was removed, reads as follows, "*If the caregiver moves to a new residence, the Department conducts an address-change licensing visit and fire and safety inspection at the new home prior to re-issuance of the Foster Care and Adoption License*." Due to the removal of this section, it now remains unclear as to what process the applicant would need to go through to be provided with a new license upon disclosing the intent to move residences. There should be a clear timetable of when the applicant must notify the Department of their intent to move and indicate that the applicant must re-initiate the licensing process for their new residence to ensure that the new home is appropriate.

b. Part A (2)(a) through (g) and Section A(3)

This section outlines numerous reasons that a license could be denied. This section does remain in the proposed changes, however, how can any of these reasons be validated if disclosure of such information has been eliminated from the licensing process? For example, if you are not required to disclose information regarding substance abuse history, how will this be a disqualifier for your license? Also, this office questions how an applicant will be notified moving forward as the requirement that an applicant will be notified of the licensing decision in writing has been removed.

IV. Variance and Waiver

a. Part A (1) through (3)

The proposed change to this section states, *"The DCYF Director or designee may grant a variance for a specific timeframe when the situation does not the situation does not jeopardize the health, safety and well-being of the children in care."* This office is concerned about the oversight of foster homes and would want an exact time frame in the language of the regulation opposed to just reading as "specific time frame". Also, this office is interested in learning who will be overseeing the unlicensed homes during the variance and licensing process to ensure that the placement continues to justify the issuance of the variance or the license in general. Removing the requirement that the issuance of a variance needs to be recorded in RICHIST is absolutely troubling, as RICHIST is the Department's main database for recordkeeping and any changes in status regarding the providers serving our youth should be maintained in this system. Additionally, the Office of the Child Advocate is tasked with providing oversight to the Department and accesses its information through RICHIST. This would not provide the OCA with the opportunity to effectively monitor the issuance of variances, know at any given time how many variances have been issued or ensure compliance with all regulations.

V. Revocation and Other Licensing Actions

a. Part C(2)(e)—Procedure for review relating to possible licensing actions

This referenced section states, *"[a] copy of both notices will be sent simultaneously to the Office of the Child Advocate"*. The notices referenced here are the notices of a licensing action being initiated

against a foster parent. In the proposed changes, this section has been removed. As previously mentioned, the Office of the Child Advocate is the oversight agency to the Department of Children, Youth and Families. It is unclear as to why the Department would believe it is appropriate to remove the OCA from this process. Pursuant to **§42-73-9—Rights and powers of advocate**, the OCA shall *"...have access, including the right to inspect, copy and/or subpoena records held by the clerk of the family court, law enforcement agencies, agencies, and institutions, public or private, and other agencies, or persons with whom a particular child has been either voluntarily or otherwise placed for care, or has received treatment within or without the state."* Notice of licensing actions would most certainly fall within this statutory provision mandating the inspection of such records by our office. In addition, this would hinder our ability to carry out our statutory mandate provided in **§42-73-7(4),** which outlines the duties of this office and specifically states that we shall *"Periodically review the facilities and procedures of any and all institutions and/or residences, public or private, where a juvenile has been placed by the family court or the Department of Children, Youth and Families."* Hindering the transparency of actions taking place by the Department is in violation of aforementioned statute and should certainly continue to be required going forward.

VI. <u>Renewal</u>

First, this office is interested in learning who will be ensuring and monitoring compliance with the licensing regulations during the two year pendency of the license. This is most certainly a process that should be taking place.

Additionally, under the proposed changes, the licensing renewal will require an updated home study, with which the OCA is absolutely in agreement. However, what the OCA would like to clarify is that as part of this home study we would want to ensure that both criminal record checks and Department clearances are completed both in state and nationwide, for all members of the household, not just those individuals are over the age of eighteen. As previously noted, this specification for both a local and nationwide clearances and criminal record checks was removed in the red-lined copy.

VII. <u>Licensing Standards</u>

a. Section I(A)(3)—General Requirements

This section formerly required that *"all children and adults residing in the household are considered to determine how they may be affected by, or have an effect upon, a foster or pre-adoptive child placed in the home"*. This language has been removed. This is a process that should still be taking place. The Department needs to ensure that the family is an appropriate fit for the child and their needs and that the child is a good fit for the family. This will ensure stability with the placement.

b. Section I (C)(1) and (2)—Health

Section I (C)(1) states as follows: *"Caregiver and any household member must not have a physical, behavioral or mental health condition that the Department determines may adversely affect the child in care or the child's care."* Section II (C)(2), which has been removed from the regulations in the proposed changes provides that *"The Department may obtain the health and behavioral and/or mental health status of the caregiver and any members of the household to ensure there are no illnesses or conditions that may present a health or safety risk."* Although Section I(C)(1) remains in

the proposed changes, without the requirement to provide this information, how will it ever be determined that such a condition exists? As previously mentioned, this information should still be required as part of the licensing process to ensure that the proposed caregiver is emotionally, mentally, behaviorally and physically stable to provide the care required by the child. Additionally, this will also ensure the safety and well-being of the child with all members of the household. It is vital that this information be required.

c. Section I (D)(1) and (2)—Income and Fiscal Management

This section formerly required applicants to demonstrate that *"...the household has sufficient income and appropriate fiscal management to maintain its stability and security without a monthly foster maintenance payment."* Additionally this section required that the applicant provide *"[w]ritten verification of income and expenses [to] be provided to the Department upon request."* These two requirements have been removed in the proposed changes. Removing this section requiring financial information to be supplied by the potential foster or adoptive parent is not prudent. Financial status of a family is extremely important to consider to ensure financial stability prior to placement of a child in a home. A foster family should absolutely have to provide written documentation of income and expenses to ensure that they are meeting the needs of their family and are able to accommodate the addition of a foster child to their family unit. Furthermore, reviewing financial status prior to placement often times can shed light upon potential inappropriate motives for seeking a foster child.

d. **Section II, Safety and Well-being (A) (5), (10), (11) and (12)—General Safety Requirements**

Each of these requirements have been removed from the proposed changes. These ensured that foster parent would provide the child with essentials such as clean drinking water; that the residence must always be adequately heated, safely lit and well ventilated; and that an appropriate, bathroom with indoor plumbing must be accessible by the child. Although these providing such essentials should go without saying, however, this office believes that these regulations can never be too descriptive or expansive when it comes to ensuring the safety and well-being of children in state care. Additionally, leaving this language in the regulations provides an enforcement mechanism should it be claimed that these essentials are not being provided.

e. Section II (B)—Fire and Safety Inspections

Sweeping changes have been made to this section. Formerly the regulations required that the fire and safety inspection must be in accordance with state law. However, under the proposed rules, the fire and safety inspection must only comply with "these regulations". The amended regulations provide merely for smoke and carbon monoxide detectors removing all other essential requirements such as room size minimums, proper controls on heating equipment and sleeping areas that comply with state fire and buildings codes, just to name a few, have all been eliminated. The OCA finds this absolutely troubling and believes that removal of the requirement to comply with state law would place children in state care at risk. This office maintains that all fire and safety inspections should be completed by an inspector qualified to complete such work and licensed by the state of Rhode Island. In addition, it is of the utmost importance that all homes that we place children in are in compliance with state law. Adherence to fire and building codes is paramount to ensuring the safety of children

placed in the home. This office recognizes that some of the former requirements may cause a burden to both DCYF and potential foster parents. However, this office believes that most of the former requirements which have been removed still need to be considered when licensing the home. Any changes to this section should be amended with the assistance and guidance of state fire and building officials and adhere to state law.

f. Section II (D)—Lead Paint Safety

The OCA is pleased to see that this section still requires the adherence to state law. The only item worth mentioning is that the inspection and abatement of lead during the licensing process should be completed by qualified professionals licensed by the state of Rhode Island to ensure that this work is completed properly.

g. Section II (E)—Firearm and Weapon Safety

This section requires that any *"firearm, air rifle, hunting slingshot, other projectile weapon, or self-defense weapons (e.g. pepper spray or taser) must be stored in an area inaccessible to a child."* The OCA would recommend the change that firearms and weapons should be stored and ***locked*** in an area inaccessible to a child. This addition of this requirement is of the utmost importance to ensuring the safety of children and should absolutely be added to the regulations.

h. Section III (C)—Supervision

The proposed changes remove the requirement that a caregiver must provide the child's DCYF primary worker with the names and dates of birth of all babysitters who care for the child on a regularly scheduled basis for extended periods. Additionally, it removes the requirement that BCI and DCYF clearances should be completed by the child's DCYF primary worker for all regularly schedule babysitters. Removing these requirements could leave children in state care at risk of harm if left with an inappropriate caretaker. These children are in the custody of the Department, therefore it should absolutely be the Department's responsibility to ensure that any caretaker of the child is a competent and appropriate individual to care for the child. These requirements should remain in the regulations.

i. Section III (D)(3) (a) through (o)—Behavior Management

The proposed changes to this section are to remove this list of punishments, which would be inappropriate to inflict upon a foster child or any child. This provides a clear and descriptive list of punishments, which would be deemed inappropriate under this section. Without this list, it would leave too much open to interpretation of what would constitute "harsh, cruel or unusual treatment of a child". In addition, having these behaviors delineated in the regulations clearly provides an enforcement mechanism to take action against any foster parent who would resort to such behavior. If anything, this further ensures the appropriate treatment of children in care and provides for their safety. What is the benefit to removing such a requirement?

As mentioned in our introduction, this office sought to be a part of the amendment process prior to the Department enacting these changes on an emergency basis. This request was not honored and since the emergency filing, the Department has been licensing homes through the application of the revised regulations, which we have just pointed out present many concerns. It should be noted that the very purpose of putting the initial licensing regulations in effect was in response to the highly publicized, gruesome murder of a foster child, TJ Wright. These regulations were enacted to put expansive procedures in place to ensure that when a child is placed in a foster home that the home would be equipped with appropriate caretakers for the child and that home would be a safe environment for the child. Removing much of the language outlined above does achieve an expedited licensing process, however does not properly provide for the safety and well-being of children in state care. Therefore, the Office of the Child Advocate would request the following, in addition to the changes outlined above:

1) That any and all homes licensed under the changed regulations be reviewed under the prior regulations to ensure that the home is an appropriate home for the placement of a child. After understanding the full extent of the proposed changes, this prompted additional research by our office. The OCA found that homes that were previously deemed unable to be license since there were risks present that could not be mitigated, have since been licensed and children placed in the home. Additionally, individuals who have had their licenses closed and were on track for revocation have also be re-licensed under the amended regulations. Each home licensed under the emergency status of these changed regulations should be re-evaluated.
2) That in the future, the Department should be more forthcoming with the exact proposed changes due to the fact that to date, this still remains unclear.
3) That going forward, pursuant to the statutory mandate of the Office of the Child Advocate outlined in § 42-73-1 et seq., the OCA should be a participant in the amendment process of any and all DCYF policies, not just invited to provide comment after the changes have been drafted.

We are hopeful that our concerns will be thoroughly considered and prevent permanent enactment of the concerning changes that have been proposed. The Office of the Child Advocate hopes that we will be provided the opportunity to work with the Department of Children, Youth and Families to appropriately revise these regulations to create an efficient process while still ensuring the safety and well-being of children in state care.

Respectfully submitted by,

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