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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 7, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Becerra:

On October 4, 2021, the Government Accountability Office (GAO) issued a report entitled, “Better Data and Guidance Could Help States Reinvest Adoption Savings and Improve Federal Oversight” to address two concerns related to oversight by the Children’s Bureau (CB) within the Department of Health and Human Services (HHS) of federal and state funds designated for certain child welfare services.¹ The GAO issued two recommendations, yet to date, HHS has implemented neither.²

Since federal fiscal year 2010, the title IV-E Adoption Assistance program has provided expanded eligibility provisions for “applicable child[ren]” as defined in section 473(e) of the Social Security Act (the Act).³ The increased eligibility provides states additional federal funds for adoption, thus reducing the amount of nonfederal funds to be designated for these services.⁴ This reduction is referred to as “adoption savings.”⁵

The purpose of this program is not to replace state spending, but instead to expand states’ ability to reinvest their funds into important preventative measures to keep children in the home, as well as on post-permanency services to support families in providing proper healthcare and other services for adopted children working through both mental and physical health challenges. These measures are vital to keeping adoptions intact. For that reason, section 473(a)(8) of the Act requires states to spend an amount equal to any savings they earn on other child welfare services permitted under titles IV-B or IV-E of the Act.⁶ Specifically, states must allocate a minimum of 30 percent of their annual savings on post-permanency and preventative services,

¹ U.S. GOV’T ACCOUNTABILITY OFF., GAO-22-6, CHILD WELFARE: BETTER DATA AND GUIDANCE COULD HELP STATES REINVEST ADOPTION SAVINGS AND IMPROVE FEDERAL OVERSIGHT (2021), <https://www.gao.gov/assets/720/716981.pdf>.

² U.S. GOV’T ACCOUNTABILITY OFF., CHILD WELFARE: BETTER DATA AND GUIDANCE COULD HELP STATES REINVEST ADOPTION SAVINGS AND IMPROVE FEDERAL OVERSIGHT (2021), <https://www.gao.gov/products/gao-22-6>.

³ Adoption Savings Data, CHILDREN’S BUREAU, <https://www.acf.hhs.gov/cb/report/adoption-savings-data> (last visited May 25, 2022).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*; see also Adoption and Guardianship Assistance Program, SSA, https://www.ssa.gov/OP_Home/ssact/title04/0473.htm (last visited May 25, 2022).

including at least 20 percent on post-permanency services.⁷ To implement the adoption savings requirements, the CB oversees the program, issues guidance, and collects annual reports from states on compliance.⁸

In October 2021, GAO issued a report with two recommendations. The first (Recommendation 1) suggests that the Assistant Secretary for the Administration for Children and Families (ACF), which oversees the CB, should “develop a method to collect information from states on the year that reinvested state adoption savings were accrued.”⁹ GAO indicates that this will improve oversight of states’ compliance with the reinvestment requirements.¹⁰ HHS did not concur with Recommendation 1, saying that its processes for reviewing state compliance with the 20 and 30 percent requirements provide sufficient information to identify instances where further documentation may be necessary from individual states.¹¹ Further, HHS argued that this would impose a significant burden on states.¹²

However, GAO has identified an instance in which the CB did not identify a state’s potential noncompliance of the 20 percent requirement, and another incident in which the CB misidentified a state as being out of compliance when it was not.¹³ GAO reasserted the need for more specific data in order to avoid such mistakes in the future.¹⁴

The second recommendation (Recommendation 2) calls for “additional guidance or systematic technical assistance to states on examples of services that would count toward the 20 and 30 percent requirements and how to overcome challenges to spending adoption savings in a timely manner.”¹⁵ GAO issued the recommendation to respond to state concerns and confusion over how to meet these requirements and requests for further guidance.¹⁶ HHS concurred with Recommendation 2 and informed GAO that the CB will develop opportunities for states to share experiences and information on best practices and strategies for meeting reinvestment requirements.¹⁷

HHS has not implemented either recommendation.¹⁸ However, these concerns remain and must be addressed in a timely manner. As a result, please respond to the following questions by no later than June 21, 2022.

⁷ U.S. GOV’T ACCOUNTABILITY OFF., GAO-22-6, BETTER DATA AND GUIDANCE COULD HELP STATES REINVEST ADOPTION SAVINGS AND IMPROVE FEDERAL OVERSIGHT, *supra* note 1, at summary.

⁸ *Adoption Savings Data*, CHILDREN’S BUREAU, *supra* note 4.

⁹ U.S. GOV’T ACCOUNTABILITY OFF., GAO-22-6, BETTER DATA AND GUIDANCE COULD HELP STATES REINVEST ADOPTION SAVINGS AND IMPROVE FEDERAL OVERSIGHT, *supra* note 1, at 35.

¹⁰ *Id.* at 35.

¹¹ *Id.* at 35-36.

¹² *Id.*

¹³ *Id.* at 36.

¹⁴ *Id.* at 36.

¹⁵ *Id.* at 35.

¹⁶ *Id.* at 25-33.

¹⁷ *Id.* at 35.

¹⁸ U.S. GOV’T ACCOUNTABILITY OFF., CHILD WELFARE: BETTER DATA AND GUIDANCE COULD HELP STATES REINVEST ADOPTION SAVINGS AND IMPROVE FEDERAL OVERSIGHT, *supra* note 2.

