



Ontario Association of
Children's Aid Societies

ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES SUBMISSION TO
THE MINISTRY OF CHILDREN, COMMUNITY AND SOCIAL SERVICES

**Oversight of Children's Licensed Out-
of-Home Care: *Amendments to the Child,
Youth and Family Services Act and
Regulations***

SEPTEMBER 01, 2023

About the Ontario Association of Children's Aid Societies

The Ontario Association of Children's Aid Societies (OACAS) is a provincial membership organization representing 47 of Ontario's 50 mandated children's aid societies and Indigenous Child and Family Well-Being Agencies, as well as 2 pre-mandated Indigenous Child and Family Well-Being Agencies. We support members by providing practice tools, educational opportunities, and training, as well as communication and advocacy supports to help achieve improved, equitable outcomes for children, youth, and families.

OACAS and our members welcome the opportunity to provide input on the proposed changes to the *Child, Youth and Family Services Act, 2017* (CYFSA), and associated regulations, to strengthen oversight of children's licensed out-of-home care. We appreciate the Ministry of Children, Community and Social Services (MCCSS) providing an extension until September 2, 2023, to allow for continued consultation and consideration.

Introduction

The OACAS submission is informed by feedback from our members, as well as youth with lived and living experience in the Ontario child welfare system. OACAS held four virtual engagement sessions with MCCSS and gathered written feedback from senior sector leadership. We are grateful to everyone who shared their reflections and insights with OACAS and MCCSS.

The proposed legislative and regulatory changes to strengthen oversight of children's licensed out-of-home care represent an important step forward in the implementation of the Ontario Child Welfare Redesign Strategy. Alongside Ontario, we remain committed to building a child and family services system that supports all children and youth to grow and thrive through the consistent delivery of high-quality, trauma-informed, culturally relevant care.

The CYFSA and related regulatory framework can be improved to better promote high-quality care in children's licensed out-of-home care settings. While these legislative and regulatory changes will help advance efforts to redesign the Ontario child welfare system, it is important to recognize the emphasis the changes place on compliance measurement rather than measurements related to improved, equitable outcomes or the consistent delivery of high-quality, trauma-informed, culturally relevant care.

OACAS and our members are concerned the legislative and regulatory changes will have unintended negative consequences on family-based, kinship, and alternative care, as well as the capacity of children's aid societies and Indigenous Child and Family Well-Being Agencies to ensure the delivery of high-quality, trauma-informed, culturally relevant care. More broadly, members caution the legislative and regulatory changes may undermine service principles and best practices that seek to promote continued connections to family, kin/kith, community, and culture. These service principles and best practices are integral to

the Ontario Child Welfare Redesign Strategy, which strives to prioritize family- and community-based placements.

OACAS would like to highlight that this is caused, in part, by the totalizing framework of the CYFSA. The CYFSA and its regulations do not differentially regulate children's aid societies, Indigenous Child and Family Well-Being Agencies, and family-based, kinship, and alternative care from for-profit organization operating groups. Our members have stressed the urgent need for a balanced, responsive legislative and regulatory framework, as well as policies, tools, and protocols that truly support the efforts of family, kin/kith, alternative caregivers, caring adults, and communities in promoting and maintaining the health, safety, and well-being of children and youth in their care.

It is critical that the legislative and regulatory framework guiding service delivery in the child welfare sector does not undermine family-based care nor frustrate placements with family, kin/kith, alternative caregivers, and community. The Ontario government is currently engaged in the first legislative review of the CYFSA since proclamation and we strongly encourage the province to explore statutory amendments that would allow for the development of a more nuanced, responsive legislative and regulatory framework as it relates to family-based care and placements with family, kin/kith, alternative caregivers, and community. We address this in the OACAS submission for the 2023 CYFSA review. Please click [here](#) to review a copy.

Additionally, we urge Ontario to consider the impact the legislative and regulatory changes will have on the fiscal sustainability and operations of children's aid societies and Indigenous Child and Family Well-Being Agencies. It is also important to consider the potential risk of the increase in administrative tasks with the proposed amendments, which will contribute to and result in increased workload pressures. This is concerning given how pressure from the increased workload could impact the capacity of direct service staff to form meaningful connections with the children, youth, and families they support. We encourage MCCSS to reduce, where possible, the administrative impact associated with the proposed amendments.

Finally, OACAS and its members strongly urge MCCSS to engage the child welfare sector in determining a phased implementation timeline. We appreciate the implementation date is to be determined, with an in-effect date no sooner than January 1, 2024. OACAS and our members would welcome the opportunity to explore implementation timelines with MCCSS to ensure a timely, smooth implementation process.

In this submission, we focus on five issues related to the rights of Indigenous children, youth, families, and communities; child and youth rights; the delivery of trauma-informed, culturally relevant, family-based, kinship, and alternative care; and implementation.



Issues & Analysis

1. The need to bring the legislative and regulatory amendments into alignment with federal legislation, namely *An Act respecting First Nation, Inuit, and Métis children, youth, families and communities*, as well as *the United Declaration on the Rights of Indigenous Peoples* and *Calls to Action* from the *truth and Reconciliation Commission of Canada*.

An Act respecting First Nation, Inuit, and Métis children, youth, families and communities (the Act), affirms the rights of First Nation, Inuit, and Métis communities in relation to child and family services. The Act is part of the Government of Canada's ratification of the *United Convention on the Rights of the Child* and commitments to implementing the *United Declaration on the Rights of Indigenous Peoples*, and the *Truth and Reconciliation Commission of Canada's Calls to Action* (Calls to Action).

We urge MCCSS to review and refine the proposed legislative and regulatory amendments to ensure they are consistent with the Act and uphold the inherent jurisdiction of First Nation, Inuit, and Métis communities as it relates to child and family services. For example:

- *Legislative Amendment #18: Power to Exclude Persons from Questioning*: MCCSS is proposing to amend s. 276(6) to permit an inspector to exclude any person from questioning except a lawyer for a child being questioned. While the proposed amendment seeks to promote more effective and efficient interviews and inspections, it does not clearly outline the rights of First Nation, Inuit, and Métis communities in instances where an Indigenous child or youth is being questioned.

The proposed amendment, as written, could permit an inspector to exclude a First Nation, Inuit, or Métis representative. This is inconsistent with the Act, as well as Calls to Action, and broader federal and provincial efforts to support First Nation, Inuit, and Métis communities in exercising their inherent jurisdiction over child and family services.

- *Regulatory Amendment #10: Amendment to s.97 and s.121(7) related to Bedrooms Requiring Doors*: The ministry is proposing to amend s.97 (requirements re: premises) and s.121 (re: foster parent home) to introduce a new requirement for all rooms designated as bedrooms to have doors – such that it is prohibited to remove and/or not have them in place. We recognize that this amendment aims to address concerns regarding licensed premises, including foster homes, as well as concerns regarding the privacy of children and youth in licensed settings.

In some circumstances, family, kin/kith, and other caring community members may not reside in spaces with multiple bedrooms and/or settings where a space without a door, such as a den, has been converted into a living space for a child or youth.



Indigenous Child and Family Well-Being Agencies across the province have highlighted how this will undermine community-based care and placements with family, kin/kith, and other caring community members for First Nation, Inuit and Métis children and youth.

OACAS and our members urge MCCSS to remove *Regulatory Amendment #10* from the package of proposed regulatory changes. Further consultation is required to refine this proposed amendment to ensure it does not undermine the inherent jurisdiction of First Nation, Inuit and Métis communities or efforts to maintain continued connections to family, kin/kith, community, and culture. Should MCCSS proceed with *Regulatory Amendment #10*, we call on MCCSS to ensure Indigenous children and youth placed with family or their community are exempt.

Additional legislative and regulatory changes of concern include:

- *Legislative Amendment #2: Compliance Order*
- *Legislative Amendment #21: Decisions on Maximum Capacity fall within the sole discretion of the Director*

The above legislative and regulatory changes limit key decision-making processes to the scope of a ministerial Director and do not speak to the role of a First Nation, Inuit, or Métis representative. Again, this is inconsistent with the Act and must be addressed.

OACAS and our members recognize that broader statutory amendments to the CYFSA may be required to bring the proposed legislative and regulatory changes into complete alignment with the Act. Given the Ontario government is currently engaged in the first legislative review of the CYFSA since proclamation, we strongly encourage MCCSS to explore the necessary statutory amendments.

It is incumbent upon Ontario to refine the CYFSA, as well as these proposed legislative and regulatory amendments, to truly uphold the rights of First Nation, Inuit, and Métis children, youth, and families, and support the inherent jurisdiction of Indigenous communities over child and family services.

2. The unclear requirements for service providers, including the Ministry and child welfare agencies, to uphold the rights of children and youth when inspecting a children's licensed out-of-home care setting and utilizing the enhanced enforcement tools.

The proposed amendments to the CYFSA, and associated regulations, gives MCCSS increased, oversight and enforcement tools. The proposed legislative and regulatory changes, as written, do not directly address the rights of children and youth. For example:



- *Regulatory Amendment #2: Prohibited Practices and Associated Amendments:* MCCSS is proposing amendments to s.109 of O. Reg 156/18 to add new provisions to set out a list of prohibited practices, as well as persons who must comply with the rules on prohibited practices (beyond licensees). We urge MCCSS to directly prohibit the use of homophobic, biphobic, transphobic, and cis-heteronormative language. *Regulatory Amendment #2* must prioritize the health, safety, and well-being of 2SLGBTQ+ children and youth by ensuring *Regulatory Amendment #2* upholds their rights. This is critical to addressing the persistence of hetero-cisnormativity within systems serving children, youth, and families, including the child welfare sector. This is of critical importance during a time of rising 2SLGBTQ+ hate.

Additionally, we would like to note that, during one of the MCCSS Engagement Sessions with youth with lived and living experience, a young person described instances wherein access to food was withheld punitively. It is essential to address this as well through *Regulatory Amendment #2*.

- *Proposed Legislative Amendment #4: Order Requiring Management:* MCCSS is proposing a new provision in Part IX authorizing a Director to order a licensee to retain, at the licensee's expense, a person, or persons to act as managers or assist in managing the licensed residential setting. The proposed legislative change would also authorize the Director to provide notice of the order to: (a) placing agencies or other persons who have a child placed in the licensed out of home care setting; and (b) in the case of a child who is First Nation, Inuit, or Métis child, to a representative chosen by their respective communities.

Children and youth have a right to be told why and how decisions that affect them were made. The appointment of additional staff to help manage a licensed out-of-home care setting would impact children and youth receiving care. As a result, young people should also be informed of such an order.

- *Proposed Regulatory Amendment #7: Requirements for Information Sharing and Service Coordination Between Societies:* MCCSS is proposing new provisions that would increase requirements for information-sharing between societies, interagency service agreements, and assessments by placing agencies related to their capacity to provide care. Children and youth have the right to be consulted on the services provided to them as well as be told why and how decisions that affect them have been made, as well as be involved in related discussions.

During one of the MCCSS Engagement Sessions with youth with lived and living experience, a young person shared that moves and changes between licensed out-of-home care settings are common, frequent, and often without sufficient notice to prepare. They shared abrupt changes in placements lead to heightened feelings of confusion, stress, and anxiety. This has also been well documented in reports on the



lived and living experiences of young people in the Ontario child welfare system, such as *Searching for Home: Reimagining Residential Care* (2016).

It is critical MCCSS refine *Regulatory Amendment #7* so that it directly acknowledges the rights of children and youth to be consulted when a children's aid society or Indigenous Child and Family Well-Being Agency is assessing their capacity to provide care and/or the decision to place them in the care of another child welfare agency. This would also ensure *Regulatory Amendment #7* better aligns with regulatory changes associated with the *Quality Standards Framework*. To support workers directly delivering services, we suggest that MCCSS develop complementary principles that will guide implementation of this change.

We would like to highlight that *Regulatory Amendment #7* may impact interprovincial placements by Ontario children's aid societies and Indigenous Child and Family Well-Being Agencies. We strongly urge the Government of Ontario to engage their provincial/territorial counterparts in a review of the Interprovincial Protocol to ensure it remains consistent with evolving best practices and regulatory requirements within child welfare sectors across the country. (The Interprovincial Protocol is to be formally reviewed every five years, with the last review having been in 2016).

- *Proposed Legislative Amendment #18: Power to Exclude Persons from Questioning:* MCCSS is proposing to amend s.276(6) to permit an inspector to exclude any person from questioning (except a lawyer) for a child being questioned. While the proposed amendment seeks to promote more effective and efficient interviews and inspections, it does not speak to the right of a young person to be consulted.

Children and youth must play a role in informing the decision of an inspector as it relates to an interview. This is of particular importance for First Nation, Inuit, and Métis children and youth who may wish to have a representative from their community present. We suggest MCCSS develop criteria to inform the use of this power to ensure application remains consistent, equitable, trauma-informed, and culturally relevant.

Accordingly, OACAS urges the provincial government to deeply embed the rights of children and youth where possible across the proposed legislative and regulatory changes. Ontario has taken important steps to centre the rights of children and youth in licensed out-of-home care settings through the *Quality Standards Framework*. It is essential that MCCSS build on this work through these proposed legislative and regulatory changes. We encourage MCCSS to clearly acknowledge the rights of children and youth, where possible, across all proposed amendments to the CYFSA and associated regulations.



3. The impact of the Ministry's enhanced oversight and enforcement tools on responsive decision-making, and the capacity of direct service staff to ensure the delivery of high-quality, trauma-informed, culturally relevant care.

OACAS and our members recognize the critical role a strong, comprehensive regulatory framework plays in guiding service delivery. We welcome MCCSS's efforts to improve the experiences of children and youth in licensed out-of-home-care settings and promote accountability within the Ontario child welfare system. However, the proposed legislative and regulatory changes reflect an emphasis on measuring compliance rather than qualitative measurements that are linked with improved, equitable outcomes for children and youth and the consistent delivery of high-quality, trauma-informed, culturally relevant care.

Our members are concerned that the legislative and regulatory changes, due to their rigidity, will have unintended consequences on family-based, kinship, and alternative care. Further, members are also concerned that service principles and best practices within the child welfare sector integral to keeping children and youth connected to family, kin/kith, community, and culture will be undermined.

Members have cautioned the changes may have unintended consequences as they frustrate the capacity of inspectors and staff directly delivering services to engage in the nuanced, responsive decision-making critical to centring the voices of children, youth, families, kin/kith, alternate caregivers, and community members. For example:

- *Proposed Legislative Amendment #1: Mandatory Action for Non-Compliances:* This new provision would require an inspector to take at least one of a set of defined actions if they find a licensee has not complied with a requirement under the CYFSA, its regulations, a directive or licence condition. We recognize the importance of taking immediate action to address instances of non-compliance and ensure the safety of children and youth where there is risk of harm. However, we are concerned about how this could impact family-based care and placements with family, kin/kith, alternative caregivers, and community.

At times, flexibility is required to preserve placements with family, kin/kith, alternative caregivers, foster caregivers, and community. This proposed legislative amendment, as written, may undermine nuanced, responsive decision-making by mandating set courses of action. While the amendment does not require the inspector to act in circumstances where the licensee remedies the non-compliance (to the inspector's satisfaction), members anticipate instances wherein the licensee may not be able to immediately address the concern of the inspector. This is of particular concern given the strengthened enforcement mechanisms (i.e., compliance orders, financial penalties, suspensions, etc.) and the introduction of new prohibited offences, particularly those related to education and training.



Members are concerned that the impact of *Legislative Amendment #1*, combined with the other proposed regulatory changes, will lead to increased closures of foster homes and disruptions in care for children and youth placed with family, kin/kith, alternative caregivers, and community. Further, members are concerned the proposed amendments will have a chilling effect on the willingness of family, kin/kith, alternative caregivers, community members, and foster caregivers to take in children and youth in circumstances where they cannot remain with their primary caregivers.

Research has shown that children and youth who are supported and cared for by people they know feel safer, happier, and have better long-term outcomes. By placing children and youth with a caring adult they are connected to, they can maintain relationships integral to their well-being, including community and culture, as well as receive identity affirming care. Family- and community-based placements are a critical part of the work to rectify the overrepresentation and disparities in outcomes for Indigenous, Black, racialized and 2SLGBTQ+ children and youth.

We strongly urge MCCSS to refine this proposed legislative change, alongside related regulatory changes, to allow for greater flexibility or departures that will allow for a nuanced, individualized approach to decision-making that centres the strengths of families, kin/kith, alternative caregivers, foster caregivers, and communities, as well as the best interests of the children and youth in their care.

- *Proposed Legislative Amendment #21: Decisions on Maximum Capacity fall within the sole discretion of the Director:* MCCSS is proposing to amend s.259 and s.260 to clarify that decisions made by a Director respecting the maximum number of children that may receive out-of-home care under the authority of the licence fall within the sole discretion of the Director and are not subject to an appeal. In narrowing decisions regarding the maximum number of children to the scope of the Director, sibling and/or family placements could be undermined.

Once again, research shows continued connections to family, kin/kith, community, and culture are linked with improved outcomes for children and youth. This legislative amendment could frustrate the efforts of children's aid societies and Indigenous Child and Family Well-Being Agencies to maintain such connections. Our concern is compounded by the absent paths for recourse (i.e., no opportunity to appeal the decision of a Director). We strongly urge MCCSS to refine this amendment and ensure sibling and/or family placements will not be undermined, as well as provide a mechanism for appeal.

- *Proposed Regulatory Amendment #6: Increased Visits by Societies:* MCCSS is proposing to amend s.51 of O. Reg. 156/18 to require societies to visit a child, at a minimum, at least once within 7 days after a placement, with an additional visit at

least once within 30 days of the placement, and then at least once every 30 days thereafter in the placement. OACAS and its members acknowledge this proposed regulatory change is consistent with the *Ontario Protection Standards, 2016* and current best practice in the sector. However, we strongly encourage MCCSS to allow for greater flexibility and/or departure based on the society's assessment of the child or young person's needs as it relates to the timing of visits and their location.

There are instances wherein societies may not be able to visit every 30 days. This is of particular concern when considering the enhanced enforcement measures and ministerial powers as it relates to non-compliance. Additionally, staff directly working with children and youth need to have flexibility in assessing and meeting the individualized needs of a child or young person.

For example, during one of the MCCSS Engagement Sessions with youth with lived and living experience, a young person shared that private visits within the licensed out-of-home care setting do not always foster open, transparent conversations. They emphasized that young people, at times, may not feel safe nor comfortable sharing feedback regarding their placement within the licensed setting, even if in a private area of the setting.

Youth also highlighted that visits are critical to forming meaningful relationships with their worker; they expressed a desire for increased frequency and consistency in visits. This regulatory change will help promote greater consistency and frequency. However, *Regulatory Change #6* must ensure that workers have capacity to make nuanced decisions responsive to the unique needs of the children and youth they support. Responsiveness, alongside frequency and consistency, is critical to the development of strong, meaningful relationships.

MCCSS is also considering requiring that unannounced visits be conducted based on the society's assessment of the child or young person's needs or other circumstances to be specified. We encourage MCCSS to develop criteria and provide guidance to determine when unannounced visits may be required. The criteria should be informed by the *Child Protection Standards, 2016*. For instance, circumstances including but not limited to the following:

- The worker has been unable to contact the caregiver or young person to schedule visits;
- There is a child protection concern reported, and the report does not meet the threshold for a child protection investigation, but further follow-up is advised by the worker;
- The worker, in consultation with a supervisor, has determined an unannounced visit is necessary to address specific concerns related to the young person's well-being;



- The worker has identified repeated quality of care concerns and/or violation of child and youth rights; or,
- A serious occurrence and/or Ombudsman report has been filed.

OACAS would like to highlight that youth with lived and living experience also urgently called for MCCSS licensing inspections to be conducted unannounced. Based on their experiences in care, youth observed that often licensees prepare for MCCSS inspections to ensure they appear compliant at the time of inspection. Youth called for enhanced oversight through increased unannounced visits from MCCSS inspectors between scheduled licensing reviews. Youth suggested this would help address poor living conditions, violations of child and youth rights, and promote the consistent delivery of high-quality, trauma-informed, and culturally relevant care.

Increased and unannounced visits and inspections must be conducted in a way that is trauma-informed and culturally relevant. The overrepresentation and disproportionality of racialized communities within the Ontario child welfare system, particularly the overrepresentation of Indigenous and Black children and youth, results from systemic colonialism, racism and oppression, over-surveillance, over-policing, and over-reporting.

MCCSS must introduce measures to ensure increased and unannounced visits and inspections do not exacerbate continued over-surveillance, over-policing, and over-reporting. Additionally, it is essential for MCCSS to ensure this regulatory change does not undermine family- and community-based care; continued connections to family, kin/kith, alternative caregivers, community, and culture; nor bolster persisting systems of oppression within the Ontario child welfare system.

- *Regulatory Amendment #10: Amendment to s.97 and s.121(7) related to Bedrooms Requiring Doors:* As mentioned in a previous section, MCCSS is proposing to amend s.97 (requirements re: premises) and s.121 (re: foster parent home). This is a point of concern as, in some circumstances, family, kin/kith, and alternative caregivers do not reside in spaces with multiple bedrooms and/or settings where a space without a door, such as a den, has been converted into a living space for a child or youth. This is becoming increasingly common amid the housing and cost of living crisis across Ontario. Members anticipate this will undermine placements and/or disrupt existing placements with family, kin/kith, alternative caregivers, and community. Again, this does not align with service principles and best practices that strive to keep children and youth connected to family, kin/kith, alternative caregivers, community, and culture.

OACAS and our members urge MCCSS to remove *Regulatory Amendment #10* from the package of proposed regulatory changes. Further consultation is required to explore a regulatory change that balances the rights of children and youth to privacy,

as well as their right to continued connections to family, kin/kith, alternative caregivers, community, and culture. Should MCCSS proceed with *Regulatory Amendment #10*, we strongly urge MCCSS to ensure children and youth placed with family, kin/kith or their community are exempt.

We urge MCCSS to revisit the proposed legislative and regulatory changes to ensure they align with efforts to prioritize family- and community-based care within the child welfare sector. Part of this work should involve identifying opportunities to build capacity among inspectors, Directors, and workers providing direct services to understand the impact of the amendments and make decisions that balance the new requirements and the strengths of families and alternative caregivers, as well as the best interests of children and youth.

4. The impact of the legislative and regulatory changes, particularly the enhanced oversight and enforcement tools and licensing requirements, will have on the financial sustainability and operations of children's aid societies and Indigenous Child and Family Well-Being Agencies.

OACAS and our members remain committed to working with MCCSS to improve the quality of care children and youth receive in licensed out-of-home care settings. We appreciate that the proposed legislative and regulatory changes are designed to strengthen oversight and enhance compliance. On behalf of members, OACAS would like to highlight how the proposed amendments to the CYFSA, and associated regulations could impact the financial sustainability and operations of children's aid societies and Indigenous Child and Family Well-Being Agencies. We urge MCCSS to be mindful of fiscal and operational impacts on the sector. For example:

- *Regulatory Agreement #1: Licensing/Application Fees:* MCCSS is proposing amendments to s.114 of O. Reg. 155/18 to set new fees. We recognize that the proposed changes have been designed to account for the average time required to undertake a review, analysis, and inspection in respect of applications for a licence and their renewal. However, our members have noted the impact increased fees, as well as new financial penalties, may have on the financial sustainability of their agencies and, more broadly, the child welfare sector.

In 2016, the then Ministry of Children and Youth Services brought together a panel to conduct a [system-wide review](#) of Ontario's child and youth out-of-home care system. In their review, the panel outlined concerns related to the current rate setting methodology, the rate review process, and the use of special rate agreements for out-of-home placements relative to the overall oversight of the system. The panel also observed significant inconsistencies with respect to per diem rates. Members have observed that licensed out-of-home care service providers may build the increased licensing fees, as well as potential for financial penalties, into program and



per diem rates. As a result, children's aid societies and Indigenous Child and Family Well-Being Agencies may encounter increased rates and, in turn, fiscal strain.

It is important to remain mindful that the current funding model does not equitably distribute funding, leaving some agencies better equipped to navigate fiscal pressures than others. Heightened financial strain may undermine the financial stability of agencies and, in turn, the sector. It may also lead to an increase in the use of unlicensed out-of-home-care settings. OACAS urges MCCSS to engage the child welfare sector in the timely development of a funding model that promotes sustainable, equitable funding.

- *Regulatory Amendment #6: Increased Visits by Societies:* As previously outlined, MCCSS is proposing to amend s.51 of O. Reg. 156/18. Mandatory increased visits will come with increased travel and associated costs and, in some circumstances, greater fiscal pressures. Again, the current funding model does not equitably distribute funding. Children's aid societies and Indigenous Child and Family Well-Being Agencies face different challenges, relative to geographical needs. Heightened fiscal strain will be felt acutely by children's aid societies and Indigenous Child and Family Well-Being Agencies serving children, youth, and families in rural and remote areas where significant travel is required, such as fly-in communities. OACAS calls on MCCSS to engage the child welfare sector in the timely development of a funding model that promotes sustainable, equitable funding.

While we await a refined funding model, we strongly encourage MCCSS to introduce a departure, under specified circumstances, that accounts for the unique needs of societies and agencies serving children, youth, and families in rural, remote, and fly-in communities. We acknowledge MCCSS is considering a departure that would permit visits to be conducted virtually if certain conditions are met. We strongly encourage MCCSS to develop criteria that clearly outlines instances where virtual visits are permitted, as well as explore alternative, complementary measures to ensure the unique needs of children's aid societies and Indigenous Child and Family Well-Being Agencies in rural and remote areas are met.

- *Regulatory Amendment #5: Application Forms Approved by the Minister:* MCCSS is proposing to introduce amendments to the license application forms required pursuant to s.254(1)(a) to require applicants/licensees provide a detailed concept statement. We recognize the proposed changes are intended to ensure the Director can make an informed assessment about whether a licence should be issued or renewed and in determining whether a licensee is delivering the program that they state they are providing under the authority of the licence. Further, we appreciate that this information might also be made available to placing agencies to assist in making better and more informed placement decisions to ensure the needs of the child or young person will be met.



Members have observed that this regulatory amendment comes with increased administrative tasks and, by extension, contributes to an increase in workload. They have underscored that this will be further compounded by the increased need for record-keeping and reporting associated with other legislative and regulatory changes. MCCSS may want to consider whether society foster licenses need be subject to this and other provisions. For awareness, additional amendments associated with increased administrative tasks include, but are not limited to:

- *Legislative Amendment #1: Mandatory Action for Non-Compliance*
- *Legislative Amendment #2: Compliance Order*
- *Legislative Amendment #20: Requirement to Report Information to the Ministry Director*
- *Regulatory Amendment #6: Increased Visits by Societies*
- *Regulatory Amendment #7: Requirements for Information Sharing and Service Coordination Between Societies*
- *Regulatory Amendment #8: Society Investigations involving Children in Licensed Out-of-Home Settings – Reporting to the Director*
- *Regulatory Amendment #11: Requirements for Licensees to Ensure their Staff and Foster Parents Comply with Program to be Delivered*

Again, OACAS and our members appreciate that the proposed legislative and regulatory changes are designed to strengthen oversight, enhance compliance, and promote the consistent delivery of high-quality care. However, MCCSS must remain mindful of how these proposed legislative and regulatory amendments will impact the financial sustainability and operations of children's aid societies and Indigenous Child and Family Well-Being Agencies.

Members caution that an increase in administrative tasks will lead to an increase in workload. Members have expressed deep concern regarding the pressure this will apply to direct service staff and how this may undermine their capacity to form meaningful connections with the children, youth, families, kin/kith, alternative caregivers, and communities they support. On behalf of our members, OACAS calls on MCCSS to reduce the administrative impact associated with the implementation of these legislative and regulatory changes and, where possible, introduce departures that would mitigate financial strain.

5. The need to further clarify how proposed legislative and regulatory amendments related to enforcement tools and new ministerial powers, as well as financial penalties, will be operationalized and how decision-makers will ensure consistent, equitable application.

Alongside members, OACAS welcomes the province's efforts to promote system accountability through a strong, comprehensive regulatory framework. We urge MCCSS to

further refine the proposed legislative and regulatory amendments related to enforcement tools, new ministerial powers, and financial penalties by clarifying how they will be operationalized by decision-makers. As written, it is unclear, and some appear to leave room for inconsistent application. For example:

- *Legislative Amendment #1: Mandatory Action for Non-Compliances:* MCCSS is proposing a new provision requiring an inspector to take at least one of a set of defined actions if they find a licensee has not complied with a requirement under the CYFSA, its regulations, a directive or licence condition. The set of defined actions ranges from issuing a written notification to referral to the Director. In circumstances where the licensee remedies the non-compliance or is satisfied the non-compliance caused no harm and created no risk or minimal risk of harm to a child or young person, the inspector would not be required to take a mandatory course of action.

We recognize this enforcement tool aims to ensure timely action is taken to address instances of non-compliance and provide inspectors with additional enforcement tools. However, it is unclear how it will “enhance consistency of enforcement practices,” as intended. It is unclear whether the mandatory action is at the discretion of the inspector or if inspectors will be guided by a scaled tool to assess risk and determine the appropriate response. Currently, the amendment appears to leave room for subjective decision-making in determining the course of mandatory action. Members have raised concerns related to procedural fairness, proportionality, and consistent, equitable implementation.

Members have expressed concerns that this lack of clarity will be exacerbated by *Legislative Amendment #2: Compliance Order*, which would authorize the use of compliance orders as an enforcement tool. The provision would authorize an inspector or Director to make a compliance order where they believe on reasonable grounds that a licensee or person providing residential care on behalf of the licensee has failed to comply with the CYFSA, its regulations, a licence condition, or a directive. We strongly urge MCCSS to clarify what qualifies as “reasonable grounds.”

As outlined in the [OACAS submission](#) for the 2023 CYFSA review, failure to define “reasonable grounds” lends itself to personal discretion and fails to safeguard against biases or assumptions that contribute to over-surveillance, over-policing, and over-reporting. This is particularly concerning given the provision, if passed as written, would not permit an appeal.

We appreciate the rationale underpinning these changes. However, OACAS and our members are deeply concerned that the ambiguity will lead to inconsistent, inequitable application. We strongly urge MCCSS to clarify how these measures ought to be implemented by inspectors and Directors.



- *Legislative Amendment #5: Order that funding be returned or withheld:* MCCSS is proposing a new legislative provision that would permit a Director under Part IX of the CYFSA to make an order requiring the return of public funds provided to or collected by the licensee for the provision of out-of-home care or make an order that public funds be withheld. Members have raised questions related to the implementation of the legislative amendment, if approved. Namely, how the funding will be returned and if there is a timeline associated in instances where the funds are withheld. There is a need to clarify whether there will be a process, with timelines, that clearly delineates the release of funds in circumstances where the licensee rectifies the issue and whether funds would be backdated in such circumstances.

Accordingly, we strongly encourage MCCSS to clarify proposed legislative and regulatory amendments related to enhanced enforcement tools, new ministerial powers, and financial penalties to ensure they will be consistently and equitably applied by decision-makers. The proposed legislative and regulatory changes do not specify how they will be implemented clearly, nor do they clearly outline the roles and responsibilities of MCCSS inspectors, Directors, or child protection workers. We invite MCCSS to revisit the proposed amendments and, where appropriate, provide pertinent information related to operationalization to guarantee a smooth implementation process.

Conclusion

OACAS and our members appreciate the opportunity to provide input on the proposed amendments to the CYFSA, and associated regulations, regarding children's licensed out-of-home care. These proposed regulatory and legislative changes represent a crucial step forward in the implementation of the Ontario Child Welfare Redesign Strategy. Alongside Ontario, we remain committed to building an out-of-home care system that supports all children and youth to grow and thrive.

The CYFSA does not differentially regulate children's aid societies, Indigenous Child and Family Well-Being Agencies, and placements with family, kin/kith, alternative caregivers, and community from for-profit organization operating groups. Our members have observed an urgent need for balanced, responsive, regulatory reform, policies, tools, and protocols that support the consistent delivery of high-quality, trauma-informed, culturally relevant, community-based care.

The province is engaged in its first review of the CYFSA since its proclamation. This is a critical opportunity to address the totalizing framework of the CYFSA and its subsequent impact on family-based, kinship, and alternative care. We call on Ontario to seize this opportunity and make statutory amendments that would facilitate the development of a nuanced, responsive legislative and regulatory framework.

Further, Ontario must ensure that the complementary policies, tools, and protocols that guide service delivery and approaches to care within the child welfare sector also support the prioritization of family- and community-based care. Among others, updating the Eligibility Spectrum is a priority. We urge the Ontario government to work with OACAS and its members, alongside those with lived and living experience receiving services, to refine this tool as soon as possible. Updating this tool is critical to advancing efforts both within and beyond the child welfare sector to shift from a duty to report framework to a focus on the duty to support children, youth, families, kin/kith, alternative caregivers, and communities.

OACAS and our members remain committed to the development and implementation of a sustainable child and family services system that supports all children, youth, and families through high-quality, trauma-informed, culturally relevant, community-based care. While an enhanced legislative and regulatory framework and complementary policies, tools, and protocols is part of this work, further action is required to bring about transformational change.

The effectiveness of the CYFSA, and its associated regulations, is intrinsically linked with the human and community services sector. OACAS and its members strongly urge the province to identify opportunities to take an integrated, whole-of-government approach to bolster the principles of the CYFSA and its objectives. This includes undertaking specific and concrete action to understand service availability and spread across the province. Service system planning, inclusive of out-of-home care settings, will be critical to supporting the intent of these new proposals.

It is critical the province make enhanced investments in community-based care so children, youth, and families have access to holistic, wraparound services that will promote their health, safety, and well-being. Members have observed that enhanced investments are acutely needed in community-based care focused on children and youth with complex social, developmental, emotional, and mental health needs. Investments in the human and community-services sector are essential to the implementation of the Ontario Child Welfare Redesign Strategy, namely *Pillar 1: Supporting Child, Youth, Family and Community Well-Being*.

Ontario must also ensure that families, kin/kith, alternative caregivers, community members, and foster caregivers are well equipped to support the children and youth in their care, including those with complex needs. The province must modernize and ensure caregivers have access to adequate supports and services, from financial assistance to continued education and training, to ensure they are truly supported in their efforts to promote the health, safety, and well-being of children and youth in their care.

As MCCSS considers feedback regarding the proposed legislative and regulatory amendments to strengthen oversight of children's licensed out-of-home care, we



encourage MCCSS to find the right balance of compliance measurement and qualitative measurements that are linked with improved equitable outcomes for children and youth and the consistent delivery of high-quality, trauma-informed culturally relevant care. OACAS and our members would welcome the opportunity to support MCCSS in the development of such measurements. Finding this balance is critical to the successful implementation of the Ontario Child Welfare Redesign Strategy, particularly *Pillar 2: Improving Quality of Care* and *Pillar 4: Improving Stability and Permanency*.

Further, we strongly encourage MCCSS to remain mindful that many of the proposed amendments come with an increase in administrative tasks and, by extension, workload. When refining the proposed changes, we urge MCCSS to identify opportunities to reduce the administrative impact and mitigate the subsequent impact on direct service staff, as well as the children, youth, and families they support.

Once MCCSS has refined the regulatory and legislative changes, OACAS calls on MCCSS to pursue a phased approach to implementation. Moreover, we urge MCCSS to engage the child welfare sector in exploring potential timelines. We appreciate the implementation date is to be determined, with an in-effect date no sooner than January 1, 2024. OACAS and our members would welcome the opportunity to collaborate with MCCSS to explore potential phased implementation timelines.

Additionally, OACAS would like to highlight that these legislative and regulatory changes, if passed, will come with a need for continued training and education. OACAS is pleased to collaborate with MCCSS on learning opportunities to ensure a smooth implementation process.

We encourage Ontario to carefully review and consider feedback submitted by children's aid societies and Indigenous Child and Family Well-Being Agencies across the province, as well as sector partners, including children, youth, and families with lived and living experience.

For more information, or to discuss the OACAS submission, please contact:

Ashleigh Egerton
Director, Practice Transformation
aegerton@oacas.org

