

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

MELISSA BUCK; CHAD BUCK;
SHAMBER FLORE; and
ST. VINCENT CATHOLIC
CHARITIES,

Plaintiffs,

v.

ROBERT GORDON, in his official
capacity as the Director of the
Michigan Department of Health
and Human Services; JOOYUEN
CHANG, in her official capacity as
the Executive Director of the
Michigan Children's Services
Agency; DANA NESSEL, in her
official capacity as Michigan
Attorney General; ALEX AZAR, in
his official capacity as Secretary of
Health and Human Services; and
UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN
SERVICES,

Defendants.

No. 1:19-cv-00286

HON. ROBERT J. JONKER

**NOTICE OF INTENT TO
CITE DOCUMENT**

NOTICE OF INTENT TO CITE DOCUMENT

Plaintiffs file this notice to alert the Court and the parties of their intention to refer to a document filed in *Catholic Charities of West Michigan v. Gordon*, No. 2:19-cv-11661 (E.D. Mich. Aug. 7, 2019), ECF

No. 25-2, which State Defendants have noted as a related case. *See* ECF No. 38 at PageID.1457-1458. This document, which was submitted in that case on August 7th, was not previously known to Plaintiffs and therefore not previously submitted in this case. The five-page document, PageID.1390-1395 in that case, is a corrective action plan submitted by Catholic Charities of West Michigan and accepted by State Defendants in 2017. *See id.* Because State Defendants have raised their enforcement actions against Catholic Charities of West Michigan as part of their defense in this case, Plaintiffs hereby give notice that they may refer to this document in the course of rebutting the State Defendants' arguments at the hearing on August 22.

Dated: August 19, 2019

Respectfully submitted,

/s/ Lori Windham

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121 Franklin Street, S.E., 3rd Floor
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January 27, 2017

RE: Catholic Charities West Michigan
Corrective Action Plan
License Number CB610201023

Dear Colleague:

Please find following our amended corrective action plan subsequent to your most recent findings dated January 13, 201 and subsequent correspondence of January 23, 2017. If you have any questions or concerns regarding our intended actions, please do not hesitate to contact us. Catholic Charities West Michigan regrets the delayed response leading to this investigation and trusts that the corrective actions detailed below will help ensure adoptions are accepted and completed in line with the DHHS contract and our sincerely held religious beliefs moving forward.

APPLICABLE RULE	
A12-61001	Contractor Responsibilities

2.9 Compliance Requirements

a. The Contractor shall comply with all applicable MDHHS policy and MDHHS policy amendments including fingerprint-based criminal history policy. MDHHS policies and MDHHS policy amendments/bulletins are published on the following internet link: <http://www.michigan.gov/mdhhs-manuals>

c. The Contractor shall comply with the MDHHS non- discrimination statement:

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs or disability.



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www.ccwestmi.org

The above statement applies to all applications filed for adoption of MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

d. The Contractor accepts a referral from MDHHS under this Agreement by doing either of the following:

- 1) Submitting to MDHHS a written agreement to perform the services related to the particular child or particular individuals that the Department referred to the Contractor, or*
- 2) Engaging in any other activity that results in MDHHS being obligated to pay the Contractor for the services related to the particular child or particular individuals that the Department referred to the Contractor.*

How Compliance will be achieved	Persons responsible	Target Date
CCWM will implement revised program statement clarifying that CCWM will serve children and families through the placement and adoption of children with individuals, Including single parents, meeting our sincerely held Catholic social teachings and beliefs and married couples made up of two parents of the opposite sex.	Pam Cohn, Interim CEO Kelli Arrendondo, Senior Child Welfare Director Moira Monahan, Muskegon Child Welfare Director Child Welfare Adoption Managers and Workers	January 28, 2016

Action Steps:

1. CCWM program statement is revised as attached to include eligibility requirement of individuals, including single parents, meeting our sincerely held Catholic social teachings and beliefs and married couples made up of two parents of the opposite sex.
2. CCWM will update the program statement information on all informational materials and documents.
3. CCWM will create a "Statement of Faith" and distribute to all new adoptive parent inquiries and current adoptive parents.
4. CCWM will conduct internal training for adoption managers and workers related to the revised program statement and "Statement of Faith" by February 1, 2017.
5. CCWM will have weekly documented collaboration with foster care and adoption staff regarding any cases pending permanent ward status (e.g. foster cases with potential goal of termination) to assess the potential adoption referral and acceptance based on identified adoptive placements.
6. At the time of the adoption referral (internal and external), if there are no identified adoptive placements or the family does not meet CCWM sincerely held religious beliefs, CCWM will not accept the adoption case and rather, will refer it back to the local DHHS office of wardship. CCCWM would maintain the foster care case until the child(ren) is adoptively placed.
7. CCWM Adoption managers will review all new adoption referrals and ask clarifying questions, using the attached revised checklist, within the contractual time frames to determine if the referral meets the sincerely held religious beliefs for acceptance/rejection.
8. Consultation with our DCWL consultant and/or DHHS monitor/supervisor will occur when a case is assessed as presenting potential conflicts with our sincerely held religious beliefs.
9. CCWM has reviewed current adoption cases and none conflict with its sincerely held religious beliefs.
10. CCWM Senior CW Director will meet with all DHHS Directors, within 45 days of the accepted CAP, in the 11 county dioceses, to inform them of our revised program statement and adoption referral acceptance process moving forward.

Action Steps for Continued Compliance
<p>Action Steps:</p> <ol style="list-style-type: none"> 1. Effective immediately, CCWM will not accept new adoption referrals, pursuant to contractual terms and procedures, in conflict with its sincerely held religious beliefs and program statement consistent with PA 116, thus preventing a repeat violation of the above citations.

APPLICABLE RULE	
PA 116	Child Care Organizations

722.124e Legislative findings and declaration; requirement to provide services that conflict with child placing agency’s religious beliefs prohibited; adverse action against child placing agency prohibited; information to be provided to applicant; defense in administrative or judicial proceeding; ability of another child placing agency to provide services not limited; definitions.

- (1) *The legislature finds and declares all of the following:*
 - (a) *When it is necessary for a child in this state to be placed with an adoptive or foster family, placing the child in a safe, loving, and supportive home is a paramount goal of this state.*
 - (b) *As of the effective date of the amendatory act that added this section, there are 105 licensed adoption and foster care agencies in this state that are authorized to participate in and assist families with adoption and foster parent placements of children.*
 - (c) *Having as many possible qualified adoption and foster parent agencies in this state is a substantial benefit to the children of this state who are in need of these placement services and to all of the citizens of this state because the more qualified agencies taking part in this process, the greater the likelihood that permanent child placement can be achieved.*
 - (d) *As of the effective date of the amendatory act that added this section, the adoption and foster care licensees of this state represent a broad spectrum of organizations and groups, some of which are faith based and some of which are not faith based.*
 - (e) *Private Child placing agencies, including faith-based child placing agencies, have the right to free exercise of religion under both the state and federal constitutions. Under well-settled principles of constitutional law, this right includes the freedom to abstain from conduct that conflicts with an agency’s sincerely held religious beliefs.*
 - (f) *Faith-based and non-faith-based child placing agencies have a long and distinguished history of providing adoption and foster care services in this state.*
 - (g) *Children and families benefit greatly from the adoption and foster care services provided by faith-based and non-faith-based child placing agencies. Ensuring that faith-based child placing agencies can continue to provide adoption and foster care services will benefit the children and families who receive publicly funded services.*
 - (h) *Under well-established department contracting practices, a private child placing agency does not receive public funding with respect to a particular child or particular individuals referred by the department unless that agency affirmatively accepts the referral.*
 - (i) *Under well-settled principles of constitutional law distinguishing “private action” from “state action”, a private child placing agency does not engage in state action when the agency performs private-adoption or direct-placement services. Similarly, a private child placing agency does not engage in state action relative to a referral for services under a contract with the department before the agency accepts the referral.*
- (2) *To the fullest extent permitted by state and federal law, a child placing agency shall not be required to provide any services if those services conflict with, or provide any services under circumstances that conflict with, the child placing agency’s sincerely held religious beliefs contained in a written*

- policy, state of faith, or other document adhered to by the child placing agency.*
- (3) *To the fullest extent permitted by state and federal law, the state or a local unit of government shall not take an adverse action against a child placing agency on the basis that the child placing agency has declined or will decline to provide any services that conflict with, or provide any services under circumstances that conflict with the child placing agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the child placing agency.*
 - (4) *If a child placing agency declines to provide any services under subsection (2), the child placing agency shall provide in writing information advising the applicant of the department's website, the Michigan adoption resource exchange or similar subsequently utilized websites, and a list of adoption or foster care services providers with contact information and shall do at least 1 of the following:*
 - (a) *Promptly refer the applicant to another child placing agency that is willing and able to provide the declined services.*
 - (b) *Promptly refer the applicant to the webpage on the department's website that identifies other licensed child placement agencies.*
 - (5) *A child placing agency may assert a defense in an administrative or judicial proceeding based on this section.*
 - (6) *If a child placing agency declines to provide any services under subsection (2), the child placing agency's decision does not limit the ability of another child placing agency to provide those services.*
 - (7) *For the purpose of this section:*
 - (a) *"Adverse action" includes, but is not limited to, denying a child placing agency's application for funding, refusing to renew the child placing agency's funding, canceling the child placing agency's funding, declining to enter into a contract with the child placing agency, refusing to renew a contract with the child placing agency, canceling a contract with the child placing agency, declining to issue a license to the child placing agency, refusing to renew the child placing agency's license, canceling the child placing agency's license, taking an enforcement action against a child placing agency, discriminating against the child placing agency in regard to participation in a government program, and taking any action that materially alters the terms or conditions of the child placing agency's funding, contract, or license.*
 - (b) *"Services" includes any service that a child placing agency provides, except foster care case management and adoption services provided under a contract with the department.*

History: Add. 2015, Act 53, Eff. Sept. 9, 2015

722.124f Decision to accept or not referral; defense in administrative or judicial proceeding; "adverse action" defined.

- (1) *If the department makes a referral to a child placing agency for foster care case management or adoption services under a contract with the child placing agency, the child placing agency may decide not to accept the referral if the services would conflict with the child placing agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the child placing agency. Before accepting a referral for services under a contract with the department, the child placing agency has the sole discretion to decide whether to engage in activities and perform services related to that referral. The department shall not control the child placing agency's decision whether to engage in those activities or perform those services. For purposes of this subsection, a child placing agency accepts a referral by doing either of the following:*
 - (a) *Submitting to the department a written agreement to perform the services related to the particular child or particular individuals that the department referred to the child placing agency.*
 - (b) *Engaging in any other activity that results in the department being obligated to pay the child placing agency for the services related to the particular child or particular individuals that the department referred to the child placing agency.*

History: Add. 2015, Act 53, Eff. Sept. 9, 2015

Action Steps for Continued Compliance		
How Compliance will be achieved	Persons responsible	Target Date
CCWM will implement revised program statement clarifying that CCWM provides adoption services will serve children and families through the placement and adoption of children with individuals, including single parents, meeting our sincerely held Catholic social teachings and beliefs and married couples made up of two parents of the opposite sex.	Pam Cohn, Interim CEO Kelli Arrendondo, Senior Child Welfare Director Moir Monaghan, Muskegon Child Welfare Director Child Welfare Adoption Managers and Workers	January 28, 2016
<p>Action Steps:</p> <ol style="list-style-type: none"> 1. CCWM program statement is revised as attached to include eligibility requirement of individuals, including single parents, meeting our sincerely held Catholic social teachings and beliefs and married couples made up of two parents of the opposite sex. 2. CCWM will update the program statement information on all informational materials and documents. 3. CCWM will create a "Statement of Faith" and distribute to all new adoptive parent inquiries and current adoptive parents. 4. CCWM will conduct internal training for adoption managers and workers related to the revised program statement and "Statement of Faith" by February 1, 2017. 5. CCWM will have weekly documented collaboration with foster care and adoption staff regarding any cases pending permanent ward status (e.g. foster cases with potential goal of termination) to assess the potential adoption referral and acceptance based on identified adoptive placements. 6. At the time of the adoption referral (internal and external), if there are no identified adoptive placements, CCWM will not accept the adoption case and rather, will refer it back to the local DHHS office of ward ship. CCCWM would maintain the foster care case until the child(ren) is adoptively placed. 7. CCWM Adoption managers will review all new adoption referrals and ask clarifying questions, using the attached revised checklist, within the contractual time frames to determine if the referral meets the sincerely held religious beliefs for acceptance/rejection. 8. Consultation with our DCWL consultant and/or DHHS monitor/supervisor will occur when a case is assessed as presenting potential conflicts with our sincerely held religious beliefs. 9. CCWM has reviewed current adoption cases and none conflict with its sincerely held religious beliefs. 10. CCWM Senior CW Director will meet with all DHHS Directors, within 45 days of the accepted CAP, in the 11 county dioceses, to inform them of our revised program statement and adoption referral acceptance process moving forward. 		
<p>Action Steps:</p> <ol style="list-style-type: none"> 2. Effective immediately, CCWM will not accept new adoption referrals, pursuant to contractual terms and procedures in conflict with its sincerely held religious beliefs and program statement consistent with PA 116 thus preventing a repeat violation of the above citations. 		

Respectfully Submitted,



Pamela Cohn
Interim President/CEO