



November 27, 2023

Administration for Children and Families
US Department of Health and Human Services
Attention: Kathleen McHugh, Director – Policy Division, Children’s Bureau
330 C Street SW
Washington, DC 20201

Submitted via: <https://www.regulations.gov/>

**RE: RIN Number 0970-AD03: CFR Part 1355
Notice of Proposed Rulemaking (NPRM) on Safe and Appropriate Foster Care
Placement Requirements for Title IV-E and IV-B**

Dear Director McHugh:

The Child Welfare League of America (CWLA) thanks the Department of Health and Human Services (HHS) for the Notice of Proposed Rulemaking regarding safe and appropriate foster care placements for LGBTQI+ youth in care.

CWLA is a coalition of hundreds of private and public agencies that since 1920 has worked to serve children and families who are vulnerable. Our expertise, leadership and innovation on policies, programs, and practices help improve the lives of millions of children across the country. Our impact is felt worldwide.

Overall, CWLA supports the main tenets of the proposed rule, believing that the suggested changes will have a positive impact on LGBTQI+ children and youth in foster care. In our comments below, we highlight areas of consideration and clarification where the proposed rule can be further strengthened.

CWLA Promotion of LGBTQI+ Rights: History

CWLA has a long history of advocating for safe and appropriate care for youth involved in the child welfare system who identify as LGBTQI+. In 2002, CWLA joined the Lambda Legal Education and Defense Fund to create the Fostering Transitions Project. Over the course of three years, the project sponsored a series of regional forums in which project staff convened youth, caregivers, child welfare workers, legal professionals, and other interested individuals to discuss the experiences of LGBTQI+ children and youth in foster care and to make recommendations for systemic reforms. The Fostering Transitions Project published a report summarizing the findings of the regional “listening forums” and making recommendations aimed at child welfare policymakers and practitioners (CWLA & Lambda Legal, 2006).

CWLA also submitted an amicus brief to the Supreme Court in support of the petitioners in the 2004 case, *Lofton v. Secretary of the Department of Children & Family Services*, urging the



Supreme Court to overturn the decision from the United States Court of Appeals for the Eleventh Circuit upholding Florida's ban of adoption of children by gay persons as enforced by the Florida Department of Children and Families. The amicus brief argued, "Florida's policy is contrary to the best interests of the thousands of children in Florida awaiting a permanent home. It bears no rational relationship to the stated goals of Florida's adoption statute or any other child welfare aim."¹

In 2006, CWLA published the CWLA Best Practice Guidelines: Serving LGBT Youth in Out-Of-Home Care. These best practice guidelines grew out of the Model Standards Project, the goal of which was to improve services and outcomes by giving child welfare and juvenile justice agencies accurate, up-to-date information about the best practices for providing competent services to LGBTQI+ youth, based on the knowledge and practical experience of experts in the field. The best practice guidelines provide direction to agencies responsible for the care of LGBTQI+ youth in out-of-home care in both the child welfare and juvenile justice systems.

The CWLA National Blueprint for Excellence in Child Welfare (National Blueprint) was published in 2013. The National Blueprint provides a vision for child welfare that "all children will grow up safely, in loving families and supportive communities." In particular, one of the standards for the principle on race, ethnicity, and culture is that individuals, families, communities, organizations, and systems should develop expertise in understanding the unique perspectives and needs of LGBTQ children, youth, and adults. It elaborates that "Children and youth who identify as LGBTQ often face discrimination and expulsion from their homes, communities, and the programs that serve them. Each entity should include LGBTQ identity and issues among the core components of cultural competence training. Providers may develop a cohort of staff with expertise in serving this population of children, youth, and families. Children, youth, and families that identify as LGBTQ may need specialized services and supports that do not currently exist in many communities. These children, youth, and families should be supported in advocating for development of appropriate services and supports."²

In more recent years, CWLA published a two-volume special issue of the *Child Welfare Journal*, "Sexual Orientation, Gender Identity/Expression, and Child Welfare," in 2018, which, "highlights the impact for the population of children and youth that identify as LGBTQ when these principles and standards are not in place, gives voice to the experiences of the youth and the need for their involvement in any research and service development, and highlights the need for focusing on effective practices for identifying and serving this population of youth to meet the vision of the National Blueprint."³

¹ Motion of the Child Welfare League of America for Leave to File Brief Amicus Curiae in Support of Petitioners and Brief Amicus Curiae. Child Welfare League of America. Retrieved from <https://www.cwla.org/wp-content/uploads/2014/05/cwlaamicusbrief.pdf>

² *The National Blueprint for Excellence in Child Welfare*. Child Welfare League of America. P 115.

³ "Sexual Orientation, Gender Identity/Expression, and Child Welfare." Vol. 1. *Child Welfare Journal*. Child Welfare League of America. p. vi. Washington, D.C. 2018



CWLA was also one of 11 organizations asked by the late Representative John Lewis and Representative Danny Davis to provide expert testimony in the 2019 Congressional investigation into a waiver the Department of Health and Human Services (HHS) granted South Carolina that allowed federally funded child welfare providers in the state to discriminate against potential foster and adoptive parents on the basis of their sexual orientation, gender identity, or religion.⁴

We will draw from this body of work in our comments on the current proposed rule.

Background

CWLA strongly agrees with the values and principles of the proposed rule and we feel that more progress needs to be made in this area of practice. We wrote in our 2019 testimony for the House Ways and Means Committee investigation that an important issue to consider for LGBTQ children and youth is the need to create a safe space for them to discuss or disclose their status or gender identity. As noted in the special issue on SOGIE of CWLA's Child Welfare journal (Volume 96, Number 1):⁵

“Recent studies have found that the number of youth in foster care who are LGBTQ may be close to double the rate of individuals who are LGBTQ in the general population (Wilson, et.al., 20, 2011). While all children in foster care face considerable trauma and stress, LGBTQ youth encounter a layer of societal heterosexuality and trans bias along with family rejection and norms in the child welfare system that diminish their self-worth. Not surprisingly, then, youth in foster care who are LGBTQ are at risk for behavioral health difficulties, contact with the criminal justice system, and other experiences of victimization (Child Welfare Information Gateway, 2013; Grant, Mottet, & Tranis, 2011).”

At the time, we stated that best practices for agencies and providers serving LGBTQ young people should: (1) develop policies and practices governing the care of these children and youth who are in out-of-home care; and (2) provide guidance to professionals and caregivers serving these individual children and youth in out-of-home (foster) care. The proposed rule helps outline the expectations for agencies in these areas.

As expressed through our CWLA Best Practice Guidelines,⁶ states and agencies should address the integration of child welfare and juvenile justice agencies and focus on:

- the specific needs of youth in out-of-home care;

⁴ https://www.postandcourier.com/politics/congressional-probe-finds-sc-christian-foster-care-discrimination-harms-lgbtq-families/article_e89fc95c-e214-11ea-8e1a-23a180dad0e6.html

⁵ Greif-Hackett, M.L., & Gallagher, S. (2018). Creating Safer Spaces for Youth who are LGBTQ in Broward County, Florida: Collecting SOGIE Data for Life Coaching Services. *Child Welfare*, 96(1), 27-51.

⁶ Wilber, S., Ryan, C., Marksamer, J.,: CWLA Best Practice Guidelines, 2006, Child Welfare League of America, CWLA Publication, Washington DC.



- an organizational culture that is inclusive;
- a family-centered approach that focuses on family-centered care;
- permanence for the young person;
- the promotion of positive adolescent development;
- collection and management confidential information so that the young person is in “safe space” for youth that choose to communicate their gender identity;
- policies that address the safety and appropriateness of group settings which may be more appropriate for some youth;
- providing appropriate health, mental health, and educational services to LGBTQ youth;
- matching each young person with the foster family with the requisite skills to meet their specific needs; and
- ensuring that all services are culturally responsive.

We also recognize the intersectionality and nuances of the changes and directions encompassed in this proposal. The regulation is overly simplistic considering the complexity of the issue of caring for LGBTQI+ children and youth, and it is lacking clarification of best practice at various child welfare decision making points. Our aim below is to highlight the need for additional clarification and support from the Administration in implementing the proposed changes.

Required Protections for LGBTQI+ Children in Foster Care To Receive Safe and Appropriate Placements

“Title IV–E establishes case plan requirements in sections 471(a)(16), 475(1) and 475(5)(A) and (D) of the Act and [45 CFR 1356.21\(g\)](#), assuring that a child in foster care receives safe and proper care consistent with the best interest and special needs of the child, and that the case plan provide a discussion of the safety and appropriateness of the child's placement. To ensure that LGBTQI+ youth receive safe and proper care consistent with their best interests and special needs, in paragraph (a), ACF proposes procedural requirements that the title IV–E/IV–B agency must meet for each child in foster care who self-identifies as LGBTQI+ or who has entered the child welfare system, in whole or in part, because of familial conflict related to their LGBTQI+ identity.”

CWLA supports the regulatory change proposed here, that all Title IV-E/IV-B agencies must meet the needs of LGBTQI+ children and youth. We recognize that as written, this new regulation will place the burden on children and youth to self-identify as LGBTQI+ and to request a placement that will respect and honor that disclosure. As other advocacy organizations have indicated, a child or youth shouldn't be required to “come out” as LGBTQI+ in order to be safe in foster care, as some of these children may not feel safe or comfortable self-identifying to their caseworker.



Other comments will propose that in order to rectify this concern and ensure that all individuals who identify as LGBTQI+ are safe while in care, regardless of whether or not they have disclosed that information, the Administration should require that all placements be required to become safe and appropriate. CWLA agrees with the spirit and concept of this recommendation - of course we want to move our system toward the goal of every single placement being safe and appropriate for individual children and youth with a range of identities, including LGBTQI+ - but we also recognize the reality of where our system is at this moment and the unrealistic expectations of overnight or quick change.

The child welfare system is currently made up of a broad array of providers of foster care placements, including family foster care, kinship providers, and child care settings, and among those providers are foster parents and agencies that are not currently equipped to be safe and appropriate caregivers for LGBTQI+ children and youth. Some of these providers may be willing and able to be trained, but others, because of religious or cultural beliefs and biases, will never be able to meet this requirement. Requiring that every placement be deemed safe and appropriate for LGBTQI+ children and youth would require agencies to exclude foster parents, kinship caregivers, and other providers that cannot meet this standard at a time when there simply are not enough providers available to care for the number of children in foster care.

Foster families in particular are in short supply, and in some instances in a crisis circumstance, exacerbating placement concerns for many agencies around the country. There is a need for every agency to develop a cadre of providers to meet the specialized and specific needs of the children in its care, including children with serious and fragile medical needs, large sibling groups, older youth, and LGBTQI+ children and youth. Agencies faced with a shortage of placement options often struggle with having an array of placements that meets the needs of every child entering care. Excluding a portion of current providers that may be appropriate to meet the needs of other specialized population would further reduce the capacity of agencies to match children with appropriate caregivers that can meet and respect the needs of these children and their families with whom they will hopefully be reunited.

Rather than setting the threshold that all current placements must be safe and appropriate, **CWLA recommends that this proposed rule indicate that states should begin by requiring that all foster families are accepting of and willing to learn about meeting the needs of LGBTQI+ children and youth in care.** This standard should be implemented going forward with requirements that all new foster parents receive awareness level training and that specialized training also be made available to placement resources seeking to specialize in the care of LGBTQI+ children and youth. Additionally, **CWLA recommends that HHS include funding for technical assistance and training to help agencies develop a process that will meet this goal.**



CWLA inquires whether HHS will provide training and technical assistance for agencies to implement new recruitment and training strategies to increase the number and quality of foster care providers who are safe and appropriate.

Requirements of a Safe and Appropriate Placement

1. A Placement That Is Free From Hostility, Mistreatment, or Abuse

“Title IV–E provides that each child in foster care must receive a placement that is safe. In paragraph (a)(1)(i) we propose that the agency must place the child with a placement provider (e.g., foster family home, child care institution) who will establish an environment free from hostility, mistreatment, or abuse based on the child's LGBTQI+ identity and status.”

CWLA agrees that all children have the right to live in a place that is free from hostility, mistreatment, and abuse. As part of this proposed change, the Administration notes that, “a provider who attempted to undermine, suppress, or change the sexual orientation, gender identity, or gender expression of a child, including through the use of so-called ‘conversion therapy’ would not be a safe and appropriate placement.” This specific area is one place in which **CWLA encourages the Administration to go a step further and ban conversion therapy for all placements, not just those that will be considered safe and appropriate for LGBTQI+ children and youth.** The research, as cited in the preamble of the proposed rule, is clear that conversion therapy is damaging and harmful. By making this blanket change, it will be a step in the direction of ensuring that all LGBTQI+ children and youth are safe from this practice, regardless of whether or not they have self-identified.

2. A Placement with a Provider Trained to Provide for the Needs of an LGBTQI+ Child

“For a placement to be considered safe and appropriate for children who identify as LGBTQI+, we propose in paragraph (a)(1)(ii) that the agency must place the child with a placement provider who is trained to be prepared with the appropriate knowledge and skills to provide for the needs of the child related to the child's self-identified sexual orientation, gender identity, and gender expression. This includes foster family home providers and staff who work in child-care institutions (CCIs) as defined in [45 CFR 1355.20](#).”

CWLA agrees with this proposed change requiring training about the specific needs of LGBTQI+ children and youth in care. We appreciate that the Administration particularly notes that this applies to both family foster care providers and staff who work in child-care institutions. **CWLA recommends that HHS include licensed kinship care providers in this list of providers that must receive this training.** While many kinship caregivers may already be safe and affirming for LGBTQI+ children and youth even those who may not be able to meet these



basic requirements yet could be provided the tools, information, and skills necessary to be considered a safe placement for kin, provided that they are open to training and education on the issue. **CWLA encourages HHS to include and make more widely available the work of Caitlyn Ryan and the Family Acceptance Project⁷ and others that have focused on and demonstrated the success of expanding the capacity of parents and family members to be more accepting and less rejecting of their LGBTQI+ children and youth that will enhance their overall health and mental health wellbeing.**

“Some states already provide training of practices to serve children who identify as LGBTQI+, as noted on the Child Welfare Information Gateway’s State Statutes Search.¹⁴⁵¹ Many agencies have not yet incorporated provider training addressing the needs of a child who identifies as LGBTQI+ into their curriculum. We anticipate that all title IVE/IVB agencies will need to develop or revise their training curriculum to meet the proposed provider training requirements in this NPRM.”

We recognize that it takes substantial time and resources for states and agencies to implement successful and effective new training procedures for its providers. **CWLA inquires whether HHS will provide additional resources, funding, and guidance to states, tribes, and counties to implement new training for foster care providers.**

The NPRM specifically cites the National SOGIE Center as a leading entity with specialized knowledge on this topic; **CWLA inquires whether ACF will provide additional resources to the National SOGIE Center to ensure that it can meet the demand for new and expanded training for states, tribes, and counties that are not just relevant when a LGBTQI+ child or youth are in care but also for staff to use with the families of origin or the family that adopted them.** It is critical that there also be a focus on helping these family members learn behaviors that can help their children and youth grow and have health and mental health wellbeing while remaining with them or being able to quickly be reunified with them.

3. A Placement That Will Facilitate Access to Age-Appropriate Resources, Services, and Activities

“To ensure that children have their special needs met, we propose in paragraph (a)(1)(ii)(B) that the agency must place the LGBTQI+ child with a placement provider will facilitate the child’s access to age-appropriate resources, services, and activities that support the child’s health and wellbeing, which may include services and supports related to their sexual orientation or gender identity. This proposal will ensure specifically that a child who identifies

⁷ <https://familyproject.sfsu.edu/about>



as LGBTQI+ will have access to a range of services and activities that addresses their specific health and wellbeing needs.”

CWLA supports the inclusion of this provision in the proposed rule. It is essential that children and youth who identify as LGBTQI+ be afforded the opportunity to explore their identity and establish a sense of cultural belonging while in foster care. **CWLA encourages HHS to provide information to states regarding virtual resources, services, and activities that can be accessed by LGBTQI+ children and youth in rural and other resource limited areas and to provide the resources needed to address technological barriers to these virtual supports.**

Notification and Requests for Safe and Appropriate Placements

“Specifically, at a minimum, the agency must provide notice to a child aged 14 and over, and a child under age 14 if the child was removed, either in whole or in part, as a result of familial conflict about their actual or perceived LGBTQI+ identity, or if the child's LGBTQI+ identity is otherwise known to the agency... Nothing in this proposed rule would preclude agencies from notifying children earlier of the availability of safe and appropriate placements.”

CWLA supports HHS in establishing a baseline age at which all children and youth must be informed of the availability of safe and appropriate placements. We recognize that in most cases, children well below the age of 14 will have an understanding of their own SOGIE and that it would be helpful and appropriate for caseworkers to broach the topic much sooner in their work with the child; however, these conversations require significant expertise and discretion on the part of the caseworker, and as each child and circumstance is unique, it is difficult to impose a different age at which this requirement must be met for all children in all circumstances.

CWLA supports the rule’s direction that age 14 is the “floor” or maximum age for implementation of this direction but that depending on workforce and contextual issues with each individual child/family, agencies are encouraged to draw on the research and develop best practices that would start younger when it’s appropriate and helpful.

We discuss workforce concerns further down in our comments, but it must be noted that implementation of this practice will only be successful when the workforce is well-trained, equipped, and experienced in having these conversations with children and youth. **It is essential that HHS and ACF develop training, technical assistance, and resources to help agencies recruit and retain high-performing staff to carry out these tasks.**



Placement Requirements for Child who are Transgender, Gender Non-Conforming, and Intersex

“To meet these statutory requirements, in paragraph (b), ACF proposes to require when the title IV–E/IV–B agency is placing a transgender, gender non-conforming, and intersex child with a safe and appropriate provider that is a sex segregated child-care institution, that they must make placements consistent with the child's self-identified gender identity.”

CWLA supports the proposal that when agencies must place children in a sex-segregated child-care placement, they must make placements consistent with the child’s self-identified gender identity. This requirement will help to mitigate the trauma and stress associated with children and youth being forced to use facilities and services that do not align with their identities.

CWLA also recognizes that a number of states have passed laws that prohibit or restrict access to gender affirming care for children and youth, and states may have laws that would make placements such as the ones referenced above difficult or impossible. **CWLA asks HHS to put forward guidance or information regarding the access to gender affirming care for children and youth in foster care.**

Training and Informational Requirements

“In paragraph (c), ACF proposes to require that title IV–E/IV–B agencies ensure that their employees who have responsibility for placing children in foster care, making foster care placement decisions, or providing services are trained to implement the procedural requirements of this proposed rule and to appropriately serve LGBTQI+ children. Such training should adequately prepare caseworkers and supervisors with the appropriate knowledge and skills to address the needs of foster children on their caseload related to sexual orientation, gender identity, and expression. The training should also ensure that all agency caseworkers and supervisors are prepared to implement and fulfill the requirements of this proposed rule.”

CWLA supports the inclusion of training for the current child welfare workforce to equip relevant staff to best implement the regulations put forward under this proposed rule. As we noted in our testimony to the House Ways and Means Committee, agencies responsible for developing and implementing these strategies and actions must ensure that staff and volunteers are comfortable talking with LGBTQI+ children and youth. It is incumbent on agencies to provide opportunities for staff that lack experience working with the LGBTQ population to gain experience and cultural competence before engaging in decision making for LGBTQ+ children and youth. An agency must have a means of educating staff to be culturally competent and communicate that expectation.



Again, we recognize that it takes substantial time and resources for states and agencies to implement successful and effective new training procedures for their staff. **CWLA inquires whether HHS will provide additional resources, funding, and guidance to states, tribes, and counties to implement new training for child welfare staff.**

The NPRM specifically cites the National Center for Youth with Diverse Sexual Orientation, Gender Identity & Expression (The National SOGIE Center) as a leading entity with specialized knowledge on this topic; **CWLA inquires whether ACF will provide additional resources to the National SOGIE Center to ensure that it can meet the demand for new and expanded training for states, tribes, and counties.**

CWLA recommends that HHS include a requirement for the specified training to include the experience and perspective of LGBTQI+ people and have lived expertise in child welfare.

We also recognize that there are significant challenges in maintaining a well-trained workforce in child welfare agencies. It must be stated that the implementation of the policies and practices indicated in the proposed rule will rely on good clinical practice from the child welfare workforce. Difficult and insightful conversations, competent decision-making, and respectful treatment of LGBTQI+ children and youth happens at the level of the referral assessment worker and ongoing caseworker, the front line staff people that are often the least experienced, least resourced and lowest paid staff in the agency. Turnover and vacancy rates in child welfare agencies remain high, making it extremely difficult to maintain a well-trained and well-prepared workforce. Agencies can offer regular training on a variety of topics and procedures, but if staff continue to leave their roles at high rates, it will be difficult to ensure that all investigators and caseworkers have the skills necessary to meet the standards laid out in this proposed rule.

System-wide policy reform is necessary and helpful, and leadership commitment to change is a useful starting point, but if reform is not embraced and practiced by individual staff, it will not have the intended impact on children and families. It is imperative that we address the turnover rate of child welfare staff and support both public and private agencies in recruiting and retaining high-quality and high-performing workers. **CWLA inquires whether HHS will dedicate thought, time, and resources to helping states, counties, territories and tribes in addressing the persisting workforce concerns that will stymie progress in addressing the unique needs of LGBTQI+ children and youth and in other reforms.**

Kinship Caregivers

“We note that a title IV–E agency shall consider giving preference to an adult relative over a non-related caregiver when determining an out-of-home placement for a child, provided that the



relative caregiver meets all relevant state or tribal child protection standards (section 471(a)(19) of the Act).”

CWLA has long supported and promoted kinship care as an important permanency option for children and families, as is evidenced in our rich history of research, practice standards, and advocacy for policies that support relative caregivers. CWLA affirms the preference for kinship care over other out-of-home care options provided that the relative caregiver meets protection standards. We also recognize that each child and family is unique and that individualized placement decisions must be made by the child welfare staff based upon their assessment of whether or not the kinship provider can meet the needs of the child. This assessment should include whether or not the kinship caregiver can meet the unique needs of LGBTQI+ children and youth when appropriate.

Again, **CWLA recommends that HHS include licensed kinship care providers in the list of providers that must receive training.** While many kinship caregivers may already be safe and affirming for LGBTQI+ children and youth, even those who may not be able to meet these basic requirements yet could be provided the tools, information, and skills necessary to be considered a safe placement for kin, provided that they are open to training and education on the issue.

Recruitment of Safe and Appropriate Providers

“In order to comply with the requirements in this proposed rule, we anticipate that a majority of states would need to expand their efforts to recruit and identify providers and foster families that the state or tribe could designate as safe and appropriate placements for a LGBTQI+ child to ensure that the totality of their child welfare system includes enough safe and appropriate placements to meet the needs of LGBTQI+ children in care. To support states and tribes in meeting these recruitment needs, ACF allows sharing costs between the Federal Government and state and tribal governments, providing Federal title IV–E funding for 50 to 75 percent of the administrative, recruitment and training costs of this NPRM.”

CWLA agrees that an additional challenge is finding appropriate families who will care for LGBTQI+ children and youth. The child welfare agency plays a significant role in the recruitment of families for this population. The agency can and should be a part of the strategy to maintain a diversity of placement options. In addressing the needs of LGBTQI+ children and youth, the system and agencies supporting this population need to develop guidelines and policies that are appropriate and affirming of their SOGIE.

CWLA’s best practice guidelines for this population of youth highlight that agency policies should: limit the use of independent living as a case goal; limit the use of congregate care; develop a youth-driven permanency model; and train all staff in permanency strategies and overcoming barriers to permanence for these youth. In regard to addressing the needs of



LGBTQI+ children and youth, agencies should employ targeted recruitment strategies to identify potential caregivers for each individual youth. In some instances, extended family members, friends of the youth or family, and other adults known to the young person may identify an adult willing to provide a home for the young person.

LGBTQ children and youth are particularly vulnerable to experience failed or disrupted placements, multiple rejections, and frequent transitions. There can be many reasons for this, but one of the most obvious is a shortage of caregivers with the requisite competence to address the needs of this population. It is essential to have a model of practice that plans for recruitment, develops qualified families, and provides ongoing supports for foster families. Development of a cadre of families to address the diverse needs of children in care is based upon an assessment of the needs of children entering care and their families. This includes LGBTQ children and youth.

Agencies need to work with the young person to identify the setting that meets his or her needs. Agencies faced with a shortage of placement options cannot make these decisions tailored to the needs of the young person. Agencies and states should employ targeted recruitment strategies to identify potential caregivers. The state and agency need to take affirmative steps to recruit caregivers, providers, and staff who share the goal of providing excellent care to all children and youth in care, including LGBTQI+ children and youth.

As stated earlier, part of that recruitment strategy includes support for these caregivers. That includes training that discusses developmental and adolescent sexuality issues, working with the families of the children and youth, and accessing community-based services that serve LGBTQI+ children and youth.

CWLA believes the cost sharing proposal is a good start, but requests that HHS provide additional support and guidance for states and agencies to recruit and retain foster parents that are equipped to care for this population of children and youth in the form of providing training, developing and distributing best practices, convening work groups or learning collaboratives, and making available additional financial resources to support foster families.

Additional Concerns

CWLA supports and endorses the overall proposed rule, with the various requests and recommendations highlighted above. Additionally, there are two areas that are not covered by the proposed rule that we believe HHS must attend to: family preservation and reunification, and best practices for sibling placement.



Family Preservation and Reunification

We know that children do best when they are with their families. Separation of a child from their family of origin is never the first goal of the child welfare agency; family preservation should always be prioritized when it is safe and possible to keep children and youth within their own home. Additionally, when a child or youth has been separated, reunification is the first permanency goal. However, this proposed rule does not address the need for supportive services and training for parents and families of LGBTQI+ children and youth who have become involved in the child welfare system to better facilitate family preservation and reunification.

There is a growing body of research that suggests that helping parents and caregivers to move from outright rejecting their LGBTQI+ children and youth to being slightly more accepting can be enough to allow children and youth to remain safely in their homes and can produce better outcomes for these children than if they had been removed into foster care.⁸ **CWLA asks HHS to include the provision of services and training to parents and families of origin as well as those who have already adopted a LGBTQI+ child or youth as part of this proposed rule to better support family preservation and reunification. CWLA encourages HHS to include the work of Caitlyn Ryan and others that have focused on and demonstrated the success of expanding the capacity of parents and family members to be more accepting and less rejecting of their LGBTQI+ children and youth.**

With a focus on addressing the inequities experienced by LGBTQI+ children and youth in child welfare, **CWLA strongly encourages HHS to provide a waiver of the Title IV-E Clearinghouse (well-supported, supported, and promising) requirement for programs and services, such as the Family Acceptance Project (FAP) and the Trauma Focused Cognitive Behavioral Therapy combined with the FAP, and others that are developed specifically for this population.** This would allow states, counties, and tribes to be able to draw down Title IV-E funds to serve these children and youth, especially those of color who are overrepresented in out of home care to prevent them from going into out of home care in the first place and to reduce their lingering in foster care by reunifying quickly.

To ensure that there are no unintended consequences to the new regulations, **CWLA also encourages HHS to be working with its counterparts across education, healthcare, behavioral health, early care, prevention of child abuse and neglect, and other family serving systems to educate and support families so that they are less rejecting of and able to care for and support the health and mental health wellbeing of their LGBTQ+ children**

⁸ Substance Abuse and Mental Health Services Administration, A Practitioner's Resource Guide: Helping Families to Support Their LGBT Children. HHS Publication No. PEP14-LGBTKIDS. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014. Retrieved from: <https://familyproject.sfsu.edu/sites/default/files/documents/FamilySupportForLGBTChildrenGuidance.pdf>



and youth despite their own beliefs. This coordination, education and support will help prevent them from needing out of home care.

Sibling Placement

In the proposed rule, HHS does not address the complexity of placing siblings in out-of-home care. It is considered best practice and, since 2008, federal law that siblings be placed together whenever possible, but what about cases in which one sibling requests to be moved to a safe and appropriate placement as a LGBTQI+ child or youth and the other sibling does not wish to be moved? How should agencies and caseworkers prioritize the needs of both children in this decision making process?

We raise this example to highlight the need for continued conversation about and support to address the complexities involved in child welfare decision making. There are clinical decisions that have to reflect the individual preferences and needs of all of the children involved, and these processes have to include space for informed clinical judgment. Specialized services and resources could be created and offered as supports for caseworkers, so that they are able to draw on the expertise of others when making these decisions.

CWLA requests that HHS produce guidance about what supports are available or should be made available to make the best possible choices in difficult, complicated circumstances.

Conclusion

We thank HHS for the opportunity to offer these comments and questions in response to the Notice of Proposed Rulemaking regarding safe and appropriate placements for LGBTQI+ children and youth in foster care. As the nation's oldest and largest membership coalition of child welfare service providers, and as a national advocacy and standard-setting organization, for many decades CWLA has supported the effort to strengthen protections in this area and to prevent discrimination in placement decisions on behalf of children and perspective guardians, caretakers and parents, and we look forward to working with the relevant federal, state, and local partners in implementing meaningful reform to better serve children and families.