



November 25, 2023

The Honorable Jeff Hild
Acting Assistant Secretary | Principal Deputy Assistant Secretary
Administration for Children and Families
Mary E. Switzer Building
330 C St. SW, 4th Floor
Washington, DC 20201

Re: [Federal Register :: Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B](#)

Dear Assistant Secretary Hild:

NAMI appreciates the opportunity to submit comments in support of the proposed rule, Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B. NAMI, the National Alliance on Mental Illness, is the nation's largest grassroots mental health organization and is dedicated to building better lives for people affected by mental illness.

Overall, NAMI strongly supports the proposed rule which would require that child welfare agencies ensure that each child in their care who identify as lesbian, gay, bisexual, transgender, queer or questioning, intersex, as well as individuals who are non-binary, or have non-conforming gender identity or expression (LGBTQI+) receive a safe and appropriate placement and services that help them thrive. If finalized, we believe these rules will improve the mental health and wellbeing of LGBTQI+ children and youth in foster care. At the same time, NAMI offers suggestions for strengthening the proposed rule to 1) secure access to all age and clinically appropriate health care services for LGBTQI+ youth, and 2) ensure that all LGBTQI+ youth in foster care have access to the same processes and protections. Our detailed comments are articulated below.

LGBTQI+ Children and Youth, Mental Health, and the Foster Care Experience

NAMI represents the interests of all people with, or at risk of developing, mental health conditions, regardless of age, gender, gender identity, race or ethnicity, national origin, religion, disability, language, socio-economic status, or sexual orientation. While an individual's sexual

orientation or gender identity is not a mental illness, LGBTQI+ individuals may face discrimination, denial of civil and human rights, harassment and family rejection that can increase rates of mental health conditions and create more barriers to accessing mental health care. These challenges can be even more difficult for people with intersecting racial, ethnic, social, or socioeconomic identities.

LGBTQI+ youth are at particular risk. Youth of diverse sexual orientation and/or gender identity are at elevated risk for mental illness and substance use disorder due to experiences of discrimination and a lack of support from families, school systems, and communitiesⁱ. Youth of diverse sexual orientation and gender—and particularly those youth of color—are overrepresented among youth experiencing homelessness and state-based systems like foster careⁱⁱ. Youth living in foster care are much more likely to self-identify as LGBTQ than youth in a nationally representative sampleⁱⁱⁱ, and LGBTQ youth in foster care report more mental health issues compared with LGBTQ youth in stable housing and heterosexual youth in foster care^{iv}. Many LGBTQ youth enter foster care with complex needs and trauma related to the discrimination and stigma, yet their specific health and well-being needs are often unmet.

Extensive research indicates that even just one supportive adult, such as a family member, teacher, or mental health provider, can have a positive impact on the mental health of youth of diverse sexual orientation and/or gender identity and that such support can reduce adverse mental health impacts, including suicide attempts^v. Moreover, interventions that increase family and community support and understanding while decreasing rejection directed at LGBTQI+ youth are recommended by experts in behavioral health, research, education, and policy^{vi}.

Federal law requires that state and tribal title IV–E/IV–B agencies ensure that each child in foster care receives “safe and proper” care and has a case plan that addresses specific needs to support their health and wellbeing. However, currently, agencies serving LGBTQI+ foster children take varying approaches to providing supportive services, and safe and appropriate placements. It is important to have consistent regulations and policies across states because family or caregiver, peer, school, and community support for LGBTQI+ youth promote positive development and emotional resilience^{vii}. Enacting protective policies that safeguard individuals from discrimination and violence can help improve physical and mental health for LGBTQI+ youth. Without such laws or policies, agencies may not adequately meet statutory requirements that guarantee a safe and appropriate placement.

NAMI strongly supports federal efforts within this proposed rule to ensure appropriate placement for, and treatment of, LGBTQI+ children and youth. We agree this will facilitate

access to age-appropriate resources, services, and activities that support their health and well-being.

NAMI Comments

Requirements of a Safe and Appropriate Placement

NAMI supports the proposed case plan requirements for a safe and appropriate placement for LGBTQI+ children and youth, which include an environment that is (1) free from hostility, mistreatment, or abuse, (2) with a provider trained to support the needs of an LGBTQI+ child, and (3) will facilitate access to age-appropriate resources, services, and activities. Caregiver behaviors and attitudes have significant effects on the mental health and wellbeing of youth with diverse sexual orientation and/or gender identity. Caregivers working with these youth can benefit from guidance and resources to increase support for sexual- and gender-diverse groups and to reduce stigma and discrimination.

We note that the agency anticipates that all title IVE/IVB agencies will need to develop or revise their training curriculum to meet the proposed provider training requirements, and that no specific curriculum will be required at this time. To ensure all LGBTQI+ children and youth can benefit from this new requirement, we encourage ACF to provide guidance and oversight to states on curriculum development. This may include providing sample curricula, templates, and/or a list of training resources.

Notification and Requests for Safe and Appropriate Placements

NAMI supports the proposal for notification of, and requests for, safe and appropriate placements. We strongly believe that having a process through which a child identifying as LGBTQI+ may request a safe and appropriate placement, will positively contribute to the mental health and wellbeing of LGBTQI+ children. We believe it is important to have a broad notification process to ensure that these protections will reach all LGBTQI+ children and youth.

Reporting and Responding to Concerns About Placements That Are Not Safe or Appropriate

NAMI supports the proposal to require title IV-E/IV-B agencies to implement a process for children identifying as LGBTQI+ to report concerns about any placements that do not meet the requirements. This includes requiring age-appropriate verbal and written notices to the child explaining how to report concerns about placements. NAMI supports requiring the agency to align this proposed process with existing timelines for agency child abuse and neglect reporting and investigating procedures, generally defined as within 12 hours if serious harm is indicated, within 24 hours for cases where the child is in imminent danger, and within 72 hours for all

other cases. Given the increased risk of self-harm and suicide in the LGBTQI+ youth population, we urge ACF to encourage agencies to classify LGBTQI+ concerns as “imminent danger.”

Protection From Retaliation

NAMI supports the proposal to require that the title IV–E/IV–B agency have a procedure to ensure that no child or youth in foster care experiences retaliation when they have disclosed their LGBTQI+ identity, they are otherwise reported or perceived to have an LGBTQI+ identity, have requested a safe and appropriate placement, or have reported concerns that their placement is not meeting statutory requirements. Retaliation is defined as “imposing negative consequences on the child because of the child's disclosure of their LGBTQI+ identity, perceived LGBTQI+ identity, request, or report,” and can be committed by agency personnel, the agency's contractors, or foster care providers.

Access to Supportive and Age-Appropriate Services

NAMI supports ACF’s proposal to require that the title IV–E/IV–B agency ensure that children who identify as LGBTQI+ have access to age-appropriate services that support their needs related to their sexual orientation and gender identity or expression.

We appreciate the Administration’s concern over possible exposure to conversion therapy, a practice that NAMI strongly opposes^{viii}. Research continues to support that conversion therapy is a harmful, contraindicated, discredited practice, and has potential risks to LGBTQ+ youth including depression, anxiety, and self-destructive behavior^{ix}. However, NAMI is concerned that the proposal’s narrow definition of “clinically appropriate” services only includes “mental and behavioral health supports,” not physical health care services. We suggest expanding the definition in paragraph (a)(5) to include “clinically appropriate health care services.” This would ensure access to a wide range of mental health prevention and early interventions, including gender-affirming care, when clinically appropriate. Studies have shown that access to gender-affirming care can improve mental health outcomes^x, including when initiated in adolescence^{xi}. Moreover, including a more inclusive definition of health care services would align with ACF’s previous guidance to states “Guidance for Title IV-B and IV-E Agencies When Serving LGBTQI+ Children and Youth,” which encouraged title IV-B/IV-E agencies to ensure LGBTQI+ children and youth have access to affirming medical care^{xii}.

Placement Requirements for Transgender, Gender Non-Conforming, and Intersex Children

NAMI supports ACF’s proposal to require that 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 in consultation with the child.

Training and Informational Requirements

NAMI supports the proposal to require that title IV–E/IV–B agencies ensure that appropriate employees are trained to implement the requirements of this proposed rule and to appropriately serve LGBTQI+ children and youth. NAMI also strongly supports the proposal to require that agencies ensure all placement providers for LGBTQI+ foster children are informed of the procedural requirements necessary to comply with this proposed rule.

Ensuring Compliance Through the Child and Family Services Review

NAMI strongly supports the proposal to revise the Child and Family Services Review (CFSR) regulations to make clear that the CFSR process will assess agencies on their compliance with the requirements of these proposed regulations.

Concerns Regarding Contractor and Subrecipient compliance

NAMI urges ACF to clarify that all LGBTQI+ children and youth will be afforded these same processes and protections regardless of whether they are receiving services through title IV-E/IV-B agencies or subcontractors. NAMI understands that state and local child welfare agencies frequently contract with private child welfare agencies to administer child welfare services. By 2011, at least 30 percent of states had at least some privatization of case management services, and there are two states where the practice is system-wide (KS, FL)^{xiii}. While many states have had a positive experience working with private agencies, there have been reports of questionable behavior by private for-profit agencies, abuse and neglect by foster parents working for those providers, and in some instances, abuse and neglect which caused children’s deaths. In 2017, a report by the U.S. Senate Committee on Finance concluded, “As the role of private for-profit and non-profit providers of foster care services has grown, oversight of these entities by State agencies—as well as Federal oversight of the States—has been inadequate”^{xiv}. NAMI believes that all LGBTQI+ children and youth in foster care deserve equal access to placements where they feel safe and supported to promote positive mental health and well-being; therefore, encourage ACF to explicitly apply these new requirements on title IV-E/IV-B agency contractors and subrecipients.

Conclusion

Thank you for the opportunity to provide comments on this important issue. We strongly believe that by fulfilling existing statutory requirements that place children in safe care, this will increase LGBTQI+ foster children and youth’s access to support and resilience across their daily environments. By decreasing exposure to stigma and discrimination in communities and healthcare systems, more LGBTQI+ foster children and youth can achieve optimal mental health and well-being. We encourage you to finalize this rule and urge clarification regarding the roles

and responsibilities of contractors and subrecipients. If you have any questions or would like to discuss this issue, please do not hesitate to contact Jennifer Snow, NAMI National Director of Government Relations and Policy at jsnow@nami.org.

Sincerely,



Hannah Wesolowski
Chief Advocacy Officer
NAMI

ⁱ Mark Hatzenbuehler and John E. Pachankis, “Stigma and Minority Stress as Social Determinants of Health Among Lesbian, Gay, Bisexual, and Transgender Youth: Research Evidence and Clinical Implications,” *Pediatric Clinics of North America*, Vol. 63, No. 6, pp. 985-997 (2016), [Stigma and Minority Stress as Social Determinants of Health Among Lesbian, Gay, Bisexual, and Transgender Youth: Research Evidence and Clinical Implications - ScienceDirect](#).

ⁱⁱ Laura Baams, Bianca Wilson, and Stephen Russell, “LGBTQ Youth in Unstable Housing and Foster Care,” *Pediatrics*, Vol. 143, No. 3, e20174211 (2019), [LGBTQ Youth in Unstable Housing and Foster Care - PubMed \(nih.gov\)](#); Soon Kyu Choi *et al.*, “Serving Our Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness,” The Williams Institute with True Colors Fund, June 2015, [Serving Our Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness \(escholarship.org\)](#).

ⁱⁱⁱ Baams, Wilson and Russell, *op. cit.*

^{iv} *Ibid.*

^v Amy Green, Myeshia Price-Feeney, and Samuel Dorison, “Association of Sexual Orientation Acceptance with Reduced Suicide Attempts Among Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Youth,” *LGBT Health*, Vol. 8, No. 1 (2021), [Association of Sexual Orientation Acceptance with Reduced Suicide Attempts Among Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Youth | LGBT Health \(liebertpub.com\)](#).

^{vi} Substance Abuse and Mental Health Services Administration (SAMHSA), “Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth,” 2023, [Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth \(samhsa.gov\)](#).

^{vii} *Ibid.*

^{viii} National Alliance on Mental Illness (NAMI), “Conversion Therapy,” accessed November 2023, [Conversion Therapy | NAMI: National Alliance on Mental Illness](#).

^{ix} American Psychological Association, “Task Force on Appropriate Therapeutic Responses to Sexual Orientation,” 2009, <http://www.apa.org/pi/lgbcc/publications/therapeutic-resp.html>.

^{xx} Jaime Swan *et al.*, “Mental health and quality of life outcomes of gender-affirming surgery: A systematic literature review,” *Journal of Gay & Lesbian Mental Health*, Vol. 27, No. 1 pp. 2-45 (2023), [Mental health and quality of life outcomes of gender-affirming surgery: A systematic literature review: Journal of Gay & Lesbian Mental Health: Vol 27, No 1 \(tandfonline.com\)](#).

^{xi} Jack Turban *et al.*, “Access to gender-affirming hormones during adolescence and mental health outcomes among transgender adults,” *PLOS ONE*, Vol. 18, No. 6, e0287283 (2022), [Access to gender-affirming hormones during adolescence and mental health outcomes among transgender adults | PLOS ONE](#).

^{xii} Administration for Children and Families (ACF), “Information Memorandum: Guidance to title IV-B and IV-E agencies when serving LGBTQI+ children and youth who are involved with the child welfare system,” Log No: ACYF-CB-IM-22-01, March 3, 2022, [Guidance for Title IV-B and IV-E Agencies When Serving LGBTQI+ Children and Youth \(acf.hhs.gov\)](#).

^{xiii} National Conference of State Legislatures (NCSL), “Privatization in Child Welfare,” February 2018, [march2018-ncsl-cps-privatization-report.pdf \(mt.gov\)](#).

^{xiv} Committee on Finance, United States Senate, “An Examination of Foster Care in the United States and the Use of Privatization,” October 2017, [R:\DOCS\26354.000 \(senate.gov\)](#).