

HHS Foster Care Rule

Designated Placement Requirements Under Titles IV-E
and IV-B for LGBTQI+ Children

Natalie Dodson
Policy Analyst and Scholar
HHS Accountability Project



Overview of the Rulemaking Process

- The proposed rule is under review by the relevant agencies and the Office of Management and Budget.
 - EO 12866 meetings with the Office of Information and Regulatory Affairs (OIRA).
- The Notice of Proposed Rulemaking (NPRM) is published in the Federal Register.
 - The public submits written public comments on the NPRM before the deadline.
- The agency reviews the submitted comments, drafts a response, and updates the rule.
- The final rule is under review by the relevant agencies and the Office of Management and Budget.
 - EO 12866 meetings with OIRA.
- The rule is finalized and published in the Federal Register with an effective date.

Background and Timeline of the Foster Care Rule

- September 28, 2023: NPRM.
- November 27, 2023: Comment deadline Monday after Thanksgiving.
 - Received 13,768 comments, most of the form comment letters opposed the rule.
- April 30, 2024: Final Rule.
- October 1, 2026: Implementation date.
 - This timeframe is more than two fiscal years away to allow agencies to avoid any shortage of providers.
- “This rule finalizes requirements under titles IV-E and IV-B for children in foster care who are LGBTQI+ (an umbrella term used in this regulation)...This final rule requires agencies to ensure that placements for all children are free from harassment, mistreatment, and abuse. The final rule requires that title IV-E and IV-B agencies ensure a Designated Placement is available for all children who identify as LGBTQI+ and specifies the Designated Placement requirements.”

Need for Rulemaking?

- Throughout the rule, it is claimed that LGBTQI+ kids face particular harms and risks and are “especially vulnerable.”
 - Title IV-E funds serve over 600,000 children annually.
- The final rule cites “evidence.”
 - Self-reported survey data.
 - The Trevor Project.
 - Substance Abuse and Mental Health Service Administration (SAMHSA) report.
- But the final rule ignores conflicting evidence.
 - The Cass report.

Designated Placement Requirements

- Safe and appropriate.
- Designated Placements.
 - This rule clarifies how agencies can meet safe and appropriate requirements for LGBTQI+ kids, namely through “Designated Placements” (“DPs”).
- Three DP requirements.
 - Designated Placement must satisfy three conditions, each of which goes beyond the general requirements that apply to all placements.
 1. The provider must commit to establishing an environment that supports the child's LGBTQI+ status or identity.
 2. The provider must be trained with the appropriate knowledge and skills related to the child’s LGBTQI+ status.
 3. the provider must facilitate the child's access to age- or developmentally-appropriate resources, services, and activities that support their health and well-being.

Other Requirements and Issues Raised in Public Comments

- Notification of the availability of DPs, process, and retaliation process.
 - Removing children from the home due to familial conflict about their sexual orientation, gender identity, gender expression, or sex characteristics.
- Conversion therapy.
 - It is not safe and appropriate.
 - It is unclear if “conversion therapy” includes talk therapy, which would raise concerns under the First Amendment.
- Kinship.
- Parental rights.
 - There are multiple references to entering foster care because of a conflict with family over LGBTQI+ identity or status.
- Sex-specific spaces.

Religious Freedom, Conscience, and Free Speech

- ACF “values” faith-based organizations.
- Commitment to respect religious freedom.
 - Including relevant laws such as the First Amendment and the Religious Freedom Restoration Act.
- The accommodation process.
 - On a case-by-case basis.
- Impact on faith-based organizations and providers?

Procedural Issues

- Benefits and costs.
 - Agencies must expand efforts to recruit and identify DPs.
 - Training on procedural requirements and for DPs.
 - The rule projects costs of over \$40 million over three fiscal years.
- Future guidance.
 - The rule mentioned multiple times that ACF intends to provide more information and clarity through technical assistance.