



Report to the Chairman of the  
Subcommittee on Worker and Family  
Support, Committee on Ways and  
Means, House of Representatives

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April 2022

# FOSTER CARE

## Further Assistance from HHS Would be Helpful in Supporting Youth's LGBTQ+ Identities and Religious Beliefs

Accessible Version

# GAO Highlight

Highlights of [GAO-22-104688](#), a report to the Chairman, Subcommittee on Worker and Family Support, Committee on Ways and Means, House of Representatives

## Why GAO Did This Study

Studies suggest that LGBTQ+ youth are over-represented in foster care. Further, youth in foster care may not be placed with families who share their religious beliefs. GAO was asked to review related protections and supports for foster youth.

This report examines (1) state protections against discrimination on the basis of sexual orientation, gender identity, and religion in foster care; (2) promising practices for providing supportive care to LGBTQ+ youth and youth of various religious beliefs in foster care; and (3) challenges selected states reported facing in supporting LGBTQ+ identities and religious beliefs among foster youth, and how HHS assists states in supporting these youth.

To address these objectives, GAO surveyed child welfare agencies in 53 states and territories and interviewed officials and reviewed documentation in five states selected for their variation in reported discrimination protections, state child welfare framework, and region. GAO also conducted a literature review that included peer-reviewed studies by a range of experts, reviewed HHS documentation and relevant federal laws and regulations, and interviewed HHS officials.

## What GAO Recommends

GAO is making two recommendations that ACF provide additional information to states on (1) data collection for LGBTQ+ foster youth and how youth's gender identity should inform placement decisions; and (2) supporting the religious beliefs of youth in foster care. HHS agreed with the recommendations.

View [GAO-22-104688](#). For more information, contact Kathryn A. Larin at (202) 512-7215 or [larink@gao.gov](mailto:larink@gao.gov).

April 2022

# FOSTER CARE

## Further Assistance from HHS Would be Helpful in Supporting Youth's LGBTQ+ Identities and Religious Beliefs

### What GAO Found

A majority of all states had some protections from discrimination in place for youth in foster care on the basis of sexual orientation, gender identity, and religion as of February 2021, based on state survey responses that GAO corroborated. The sources of these protections ranged from state laws to child welfare agency policies or practices. Officials in several states indicated that their protections on the basis of sexual orientation and gender identity for youth and parents continue to evolve. While some states are expanding protections, other states are debating the appropriateness of certain services for LGBTQ+ youth.

Literature GAO reviewed and interviews with officials from five selected states and stakeholder groups highlighted several promising practices for supporting lesbian, gay, bisexual, transgender, queer or questioning (LGBTQ+) youth in foster care (see figure). Promising practices for supporting youth of various religious beliefs are generally limited to enabling youth to practice their beliefs.

#### Selected Promising Practices for Supporting LGBTQ+ Youth in Foster Care



Source: GAO review of literature and interviews with selected states and stakeholders. | [GAO-22-104688](#)

Selected states and stakeholders identified several challenges with supporting LGBTQ+ youth and the religious beliefs of youth in foster care, and information provided by the Department of Health and Human Services (HHS) to help states support youth does not fully address states' challenges. According to officials in selected states, one challenge with supporting LGBTQ+ youth is limited data on youth's sexual orientations and gender identities and difficulties collecting these data. Another challenge is providing appropriate placements for transgender youth.

HHS helps states support LGBTQ+ youth in foster care by funding research and providing information, according to officials from the Administration for Children and Families (ACF) within HHS. In March 2022, ACF also issued an Information Memorandum on LGBTQ+ youth, but it did not fully address states' challenges related to data collection and how youth's gender identity should inform placement decisions. Regarding youth's religious beliefs, selected states and stakeholders noted a lack of specific practices or services to support this aspect of youth identity, and identified challenges with recruiting foster families from religious minority groups. ACF officials said they do not provide assistance to states specifically related to supporting youth in foster care of various religious beliefs. Without providing information that specifically addresses challenges with supporting LGBTQ+ youth in foster care and the religious beliefs of youth in foster care, ACF will not have assurance that states are equipped to promote the wellbeing of these youth, as called for in HHS's strategic plan.

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# Contents

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GAO Highlight	2
<b>Why GAO Did This Study</b>	2
<b>What GAO Recommends</b>	2
<b>What GAO Found</b>	2
Letter	1
Background	5
Reported State Protections against Discrimination on the Basis of Sexual Orientation, Gender Identity, and Religion in Foster Care Vary Widely	15
Several Promising Practices Exist for Supporting LGBTQ+ Youth in Foster Care, but Practices for Supporting Youth's Religious Beliefs Are Limited	26
Selected States Reported Challenges Providing Supports for LGBTQ+ Youth and Youth of Various Religious Beliefs, and HHS Guidance Does Not Address All Challenges	36
Conclusions	51
Recommendations for Executive Action	52
Agency Comments and our Evaluation	53
Appendix I: Scope and Methodology	55
State Survey and Corroboration	55
Appendix II: Supplemental Information on Certain Discrimination Protections in Five Selected States	65
Colorado	65
Appendix III: Selected Studies Related to Supports for LGBTQ+ Youth and Youth of Various Religious Beliefs in Foster Care	73
Appendix IV: Supplemental Examples of HHS Assistance to States on Supporting LGBTQ+ Youth in Foster Care	78
Appendix V: Comments from the U.S. Department of Health and Human Services	80
Appendix VI: GAO Contact and Staff Acknowledgments	84
GAO Contact	84
Staff Acknowledgments	84

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Tables

Table 1: Selected Examples Identified by State Child Welfare Officials of Protections from Discrimination on the Basis of Sexual Orientation or Gender Identity for Youth in Foster Care, Prospective Foster Parents, or Both, as of January 2022	
Table 2: Selected Examples Identified by State Child Welfare Officials of Protections from Discrimination on the Basis of Religion for Youth in Foster Care, Prospective Foster Parents, or Both, as of January 2022	24
Table 3: Selected States and Selection Criteria	60
Table 4: Selected Studies Discussing Promising Practices for Supporting LGBTQ+ Youth and Youth of Various Religious Beliefs in Foster Care	76
Table 5: Examples of Department of Health and Human Services (HHS) Assistance to States on LGBTQ+ Youth in Foster Care	78

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Figures

Figure 1: Number of States with Reported and Corroborated Protections from Discrimination, by Population and Characteristic, as of February 2021	17
Figure 2: Examples of Administration for Children and Families Publications Related to Working with Lesbian, Gay, Bisexual, Transgender, and Queer or Questioning (LGBTQ+) Youth and Families	45

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**Abbreviations**

ACF	Administration for Children and Families
AFCARS	Adoption and Foster Care Analysis and Reporting System
CAPTA	Child Abuse Prevention and Treatment Act
HHS	Department of Health and Human Services
LGBTQ+	Lesbian, gay, bisexual, transgender, queer or questioning
NSCAW	National Survey of Child and Adolescent Well-being
OCR	Office for Civil Rights
SAMHSA	Substance Abuse and Mental Health Services Administration
SOGI	Sexual Orientation and Gender Identity
SOGIE	Sexual Orientation, Gender Identity, and Expression
Title IX	Title IX of the Education Amendments of 1972
QIC	National Quality Improvement Center on Tailored Services,

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Placement Stability, and Permanency for Lesbian, Gay,  
Bisexual, Transgender, Questioning, and Two-Spirit  
Children and Youth in Foster Care

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April 20, 2022

The Honorable Danny K. Davis  
Chairman  
Subcommittee on Worker and Family Support  
Committee on Ways and Means  
House of Representatives

Dear Mr. Chairman:

More than 630,000 children were served by the foster care system in fiscal year 2020, according to the most recent federal data available. While nationwide numbers are not known, studies in some localities indicate that up to 30 percent of youth in foster care identify as lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ+), higher than the approximately 10 percent estimated for the general population of youth in some research.<sup>1</sup> According to several studies, LGBTQ+ youth are more likely to experience abuse and neglect, and those who enter foster care are more likely to have a range of adverse experiences and outcomes.<sup>2</sup>

There is comparatively less research on the religion and spirituality of youth in foster care, although religion may also affect the experiences of

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<sup>1</sup>See, for example, L. Baams, B.D.M. Wilson, and S.T. Russell, "LGBTQ Youth in Unstable Housing and Foster Care," *Pediatrics*, vol. 143, no. 3 (2019); Institute for Innovation and Implementation, University of Maryland School of Social Work, *The Cuyahoga Youth Count: A Report on LGBTQ+ Youth Experience in Foster Care*, (Baltimore, MD: 2021); B.D.M. Wilson and A.A. Kastanis, "Sexual and Gender Minority Disproportionality and Disparities in Child Welfare: A Population-Based Study," *Children and Youth Services Review*, vol. 58 (2015): 11-17, and K.J. Conron, "LGBT Youth Population in the United States," (Los Angeles, CA: UCLA School of Law, Williams Institute, Sept. 2020). In this report we use LGBTQ+, while recognizing that a number of variations on this acronym are currently in use to describe individuals with diverse sexual orientations and gender identities. The "plus" is meant to be inclusive of identities that may not be covered by the acronym LGBTQ, such as asexual, intersex, non-binary, and two-spirit. We use variations on this acronym, such as LGBTQ, when they were used in specific research or agency programs or policies we discuss.

<sup>2</sup>See, for example, Andrew Burwick et al., *Human Services for Low-Income and At-Risk LGBT Populations: An Assessment of the Knowledge Base and Research Needs*, OPRE Report Number 2014-79 (Washington, D.C.: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services, 2014).

these youth. For example, youth who enter foster care may not be placed with foster families who share their religious beliefs, particularly if the youth are religious minorities.<sup>3</sup> Some youth in foster care may be affected by both of these factors, as LGBTQ+ youth may be religious, or may wish to abstain from religious practice.

When children are removed from their homes due to abuse or neglect, state or local child welfare agencies are typically responsible for coordinating their placement and provision of services. At the federal level, programs related to child protection and foster care are administered by the Department of Health and Human Services (HHS).

You asked us to review issues related to state protections and supports for foster youth and for prospective foster parents who are LGBTQ+, as well as those who are religious.<sup>4</sup> This report examines:

1. information on state protections against discrimination on the basis of sexual orientation, gender identity, and religion for youth in foster care and prospective foster parents;
2. promising practices for providing supportive care to LGBTQ+ youth and youth of various religious beliefs in foster care; and
3. challenges selected states reported facing in supporting LGBTQ+ identities and religious beliefs among foster youth, and how the

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<sup>3</sup>The United Nations Office of the High Commissioner for Human Rights defines a religious minority as any group of persons that constitutes less than half of the population in a jurisdiction and whose members share common characteristics of religion. In 2020, about 70 percent of Americans identified as Christian; using this definition, individuals of non-Christian faiths as well as those who are not religiously affiliated would be considered religious minorities. Public Religion Research Institute, *The 2020 Census of American Religion* (Washington, D.C.: July 8, 2021).

<sup>4</sup>Our consideration of protections on the basis of religion in this report is limited to state protections for individuals—specifically, youth in foster care and foster parents—and does not include the religious rights of faith-based organizations. With respect to foster parents, the scope of our review is generally limited to protections from religious discrimination that would prevent them from being licensed or certified. However, we also consider the religious rights of licensed foster parents as they may relate to, or conflict with, providing supportive care to LGBTQ+ youth or youth of other religious beliefs. When we discuss nondiscrimination protections and supports for youth of various religious beliefs in foster care, this includes youth who are not religious and/or do not wish to engage in religious practice. We use the term “youth” in this report, because the issues discussed are generally more relevant to older children, teens, and young adults. However, unless otherwise noted, the policies and practices we discuss apply to children of all ages.

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Department of Health and Human Services (HHS) assists states in supporting these youth.

To address our first objective, we conducted a web-based survey of child welfare administrators in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.<sup>5</sup> On this survey, we asked whether the state prohibits discrimination—by child welfare agencies or other agencies that place foster children—against children and youth in foster care or prospective foster and adoptive parents on the basis of each of our categories of interest.<sup>6</sup> We received responses from 49 states and all of the territories included in our survey. To corroborate states' survey responses, we compared them to publicly available research from two civil rights groups and followed up with some states to clarify their responses.<sup>7</sup>

In this report, we present information for the 29 to 44 states (depending on the category) in which we were able to corroborate whether any discrimination protections for our categories of interest were in place.<sup>8</sup> We did not conduct an independent legal review to identify relevant state laws or regulations or to supplement states' survey responses. However, we reviewed selected state laws and regulations identified by state officials to provide illustrative examples.

We also interviewed child welfare officials and reviewed documentation on state protections from discrimination in five states: Colorado, Kansas, Mississippi, New Jersey, and Ohio. We selected these states based on variation in protections and supports for LGBTQ+ and youth of various religious beliefs and prospective parents reported on our survey, child welfare services framework (state- or county-administered), geographic

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<sup>5</sup>For the purposes of presenting our survey data in this report, we refer to the District of Columbia, Puerto Rico, and the U.S. Virgin Islands as states.

<sup>6</sup>We did not provide states with a definition of discrimination, but rather we asked them to identify whether they prohibit discrimination on the basis of each of our categories of interest.

<sup>7</sup>We compared state survey responses to state-level information published by the Human Rights Campaign Foundation and Lambda Legal. See S. Warbelow, C. Avant, and C. Kutney, *2020 State Equality Index*, (Washington, DC: Human Rights Campaign Foundation, 2021); and Lambda Legal, *State-by-State Analysis of Child Welfare Systems*, accessed Nov. 9, 2021 from <https://www.lambdalegal.org/child-welfare-analysis>.

<sup>8</sup>We were unable to corroborate state survey responses on religious protections for prospective parents against publicly available information. For more information on how we determined these responses were sufficiently reliable to include in our analysis, see appendix I.



region, as well as the rate of youth in foster care and percentage of youth in poverty in each state. In each of these five states, we asked child welfare officials to identify laws, regulations, policies, or other requirements related to protecting youth in foster care or prospective foster parents against discrimination on the basis of sexual orientation, gender identity, religion or (for parents) marital status. The information obtained from these five states is not generalizable to all states, and is meant to provide illustrative examples.

To address our second objective, we reviewed literature published from 2011 through 2021 on promising practices for providing supportive care to LGBTQ+ youth and youth of various religious beliefs. We also reviewed HHS-funded publications on promising practices to provide supportive care to LGBTQ+ and youth of various religious beliefs in foster care. In our selected states, we asked state child welfare officials about programs and services offered to these youth, as well as their perspectives on promising practices to provide supportive care. In Mississippi and Ohio, we interviewed local-level officials in two counties each, selected to reflect different levels of access to programs and resources, urban versus rural locales, and demographic characteristics. We also spoke with private providers in Mississippi and Ohio, including faith-based agencies.

In addition, we interviewed representatives of stakeholder groups, including groups engaged in advocacy and research on LGBTQ+, religious, and foster care issues, to obtain their views on promising practices for serving these youth. Last, we held two discussion groups with young people 18 and older who have experienced foster care. One of these discussion groups focused on experiences of LGBTQ+ youth (10 participants) and the second focused on experiences related to the youth's religious beliefs (a different group of 5 participants). While we obtained a range of views on promising practices for providing supportive care to LGBTQ+ youth and youth of various religious beliefs, we did not independently assess the effectiveness or suitability of those practices because it was outside the scope of our work. For example, we did not assess the various options for providing gender-affirming care for transgender youth, including the medical implications of that care for these youth.

To address our third objective, we interviewed and requested written responses from HHS officials representing the Children's Bureau; the Office of Planning, Research and Evaluation; the Substance Abuse and Mental Health Services Administration; the Office for Civil Rights; and the Office of the Assistant Secretary for Planning and Evaluation. We asked

these officials about their roles in monitoring and providing technical assistance or other resources to states related to protections and supports for LGBTQ+ youth and youth of various religions in foster care. We reviewed relevant HHS documentation and applicable federal laws and regulations. In our interviews with selected states, we also asked officials about challenges they encountered supporting LGBTQ+ youth and youth of various religious beliefs, their awareness and use of related HHS guidance and resources, the helpfulness of those resources, and any additional assistance that would help them better support these youth.

This report focuses on existing state protections, supports, promising practices, and challenges for foster youth and for prospective foster parents who are LGBTQ+, and those of various religious beliefs. This includes examining HHS's role, actions, and guidance in the context of current federal law and policy. The report does not address all of the physical, mental, spiritual, and medical considerations facing foster youth and prospective foster parents who are LGBTQ+, and those of various religious beliefs. These considerations are complex and the appropriate course of action varies according to the unique circumstances of each foster youth and prospective foster parent. For more information on our methodology, see appendix I.

We conducted this performance audit from December 2020 to April 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### LGBTQ+ Youth

LGBTQ+ youth may be more at risk for abuse and neglect than their peers, according to a 2014 report funded by HHS.<sup>9</sup> More recently,

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<sup>9</sup>Burwick et al., *Human Services for Low-Income and At-Risk LGBT Populations: An Assessment of the Knowledge Base and Research Needs*.

research in one state found that LGBTQ+ youth were significantly more likely than non-LGBTQ+ youth to report victimization and a range of other adverse experiences. Another study found that transgender youth were especially at risk for experiencing multiple forms of victimization.<sup>10</sup> These higher rates of maltreatment and victimization may have a range of negative consequences on youth well-being and outcomes. For example, research has found higher rates of depression and of thinking about or planning suicide among gay, lesbian, and bisexual youth than heterosexual youth.<sup>11</sup>

In addition, a 2020 national survey found that more than half of transgender and non-binary youth reported that they had seriously considered suicide, and more than one in five had attempted suicide in the past year.<sup>12</sup> Further, in a California study, LGBTQ youth were over-represented among those who were in unstable housing.<sup>13</sup> (See glossary below for a definition of key terms related to sexual orientation and gender identity.)

Research also indicates that when LGBTQ+ youth enter foster care they have more negative experiences and outcomes than non-LGBTQ+ youth. Studies of current and former foster youth in specific states and localities

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<sup>10</sup>See L. Baams, "Disparities for LGBTQ and Gender Nonconforming Adolescents," *Pediatrics*, vol. 141, no. 5 (2018): 5-6. This study analyzed data from a survey of more than 80,000 students in grades 9 through 11 in Minnesota, but it is unclear how representative the sample is of all students in these grades across the state. Unless otherwise noted, the studies we cite in this section on LGBTQ+ identities and religious beliefs among youth in foster care are not generalizable to all youth in the population studied, or the generalizability was unclear. See also P. R. Sterzing, G.A. Ratliff, R.E. Gartner, B.L. McGeough, and K.C. Johnson, "Social Ecological Correlates of Polyvictimization among a National Sample of Transgender, Genderqueer, and Cisgender Sexual Minority Adolescents," *Child Abuse & Neglect*, vol. 67 (2017): 7.

<sup>11</sup>M.P. Marshal et al., "Suicidality and Depression Disparities between Sexual Minority and Heterosexual Youth: A Meta-Analytic Review," *Journal of Adolescent Health*, vol. 49, no. 2 (2011): 115-123. This study conducted a meta-analysis of 24 studies.

<sup>12</sup>The Trevor Project, *National Survey on LGBTQ Youth Mental Health*, accessed December 1, 2021 from <https://www.thetrevorproject.org/survey-2020/>.

<sup>13</sup>Baams et al., "LGBTQ Youth in Unstable Housing and Foster Care." This study classified participants as living in unstable housing if they reported living somewhere other than a home with one or more parents or guardians, another relative's home, a foster home or group care, or a home with more than one family. While we generally use LGBTQ+ in this report to describe individuals with diverse sexual orientations and gender identities, we use variations on this acronym, such as LGBTQ in this instance, when they were used in specific research or agency programs or policies we discuss.

have found that LGBTQ+ youth are more likely to report being mistreated while in the foster care system, experience a greater number of placements and time in foster care, and are less likely to be placed in family-based settings.<sup>14</sup> These experiences may add to the trauma that many children experience when removed from their homes and placed in foster care.<sup>15</sup> In the California study mentioned above regarding foster care, LGBTQ youth were more likely to be depressed than heterosexual youth, and reported more victimization at school, such as being hit or kicked, than either heterosexual youth or LGBTQ youth who were not in foster care.<sup>16</sup>

Negative experiences among LGBTQ+ youth in foster care may also have implications for their ability to achieve self-sufficiency. An analysis of data on youth aging out of foster care in three Midwestern states found that youth identifying as lesbian, gay, or bisexual were more likely to report economic hardships than their heterosexual peers.<sup>17</sup>

**Glossary of Terms Used in this Report Related to LGBTQ+ Youth**

**Asexual:** A term used to describe a person who has a lack (or low level) of sexual attraction to others and/or a lack of interest or desire for sex or sexual partners. Asexuality exists on a spectrum and asexual people may experience no, little, or conditional sexual attraction.

**Bisexual:** A term used to describe a person emotionally, romantically, or sexually attracted to more than one sex, gender, or gender identity, though not necessarily simultaneously, in the same way, or to the same degree.

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<sup>14</sup>B.D.M. Wilson and A.A. Kastanis, "Sexual and Gender Minority Disproportionality and Disparities in Child Welfare: A Population-Based Study," S. Shpiegel and C. Simmel, "Functional Outcomes Among Sexual Minority Youth Emancipating from the Child Welfare System," *Children and Youth Services Review*, vol. 61 (2016): 101-108. HHS's Title IV-E regulations require, among other things, that each child's case plan include a discussion of how it is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available. 45 C.F.R. § 1356.21(g)(3). The Bipartisan Budget Act of 2018 amended certain provisions of title IV-E and IV-B of the Social Security Act. Among other things, these amendments placed certain limitations on the use of federal funds for non-family-based foster care settings. Pub. L. No. 115-123, div. E, tit. VII, § 50741(a), 132 Stat. 64, 253. We previously reported on state efforts to reduce the use of non-family-based settings. See GAO, *Foster Care: HHS Could Do More to Support States' Efforts to Keep Children in Family-Based Care*, [GAO-16-85](#) (Washington, D.C.: Oct. 9, 2015).

<sup>15</sup>We previously reported on federal and state supports for children affected by trauma. See GAO, *Children Affected by Trauma: Selected States Report Various Approaches and Challenges to Supporting Children*, [GAO-19-388](#) (Washington, D.C.: Apr. 24, 2019).

<sup>16</sup>Baams et al., "LGBTQ Youth in Unstable Housing and Foster Care."

<sup>17</sup>A. Dworsky, *The Economic Well-Being of Lesbian, Gay, and Bisexual Youth Transitioning Out of Foster Care*, (Princeton, NJ: Mathematica Policy Research, January 2013). This study did not examine the experiences of transgender youth.

**Gay:** An adjective used to describe a person whose enduring physical, romantic, emotional, and/or relational attractions are to people of the same sex. Also used as an umbrella term to refer to the LGBTQ+ community as a whole, or as an identity label for anyone who does not identify as heterosexual.

**Gender expression:** Refers to all of a person's external characteristics and behaviors—such as dress, grooming, mannerisms, speech patterns, and social interactions—that are socially identified with a particular gender. Typically, transgender people seek to make their gender expression match their gender identity, rather than their sex assigned at birth. Gender expression does not necessarily indicate sexual orientation.

**Gender identity:** A person's innate, deeply felt psychological sense of gender, which may or may not correspond to the person's sex assigned at birth. Gender identity is distinct and separate from sexual orientation.

**Genderqueer:** A term people use to describe their own gender identity. People who identify as "genderqueer" may see themselves as being both male and female, neither male nor female, or as falling completely outside these categories.

**Intersex:** Describes people born with reproductive or sexual anatomies that are not considered "standard" for either male or female, including variations in genital or chromosomal makeup. Some intersex individuals are recognized at birth and others come into an understanding that they are intersex at puberty or later in adulthood.

**Lesbian:** A woman who has emotional, physical, spiritual, and sexual attractions to other women.

**Non-binary:** An adjective describing a person who does not identify exclusively as a man or a woman. Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all non-binary people do.

**Queer:** An umbrella term to refer to all LGBTQ+ people, considered a simple label to explain a complex set of sexual behaviors and desires. For example, a person attracted to multiple genders may identify as queer. Some LGBTQ+ people feel the word has been hatefully used against them and are reluctant to embrace it.

**Questioning:** A term used to describe people who are in the process of exploring their sexual orientation or gender identity.

**Sex assigned at birth:** The sex—male, female, or intersex—that a doctor or midwife uses to describe a child at birth based on their external anatomy.

**Sexual orientation:** An inherent or immutable enduring emotional, romantic, or sexual attraction to other people. Sexual orientations include "heterosexual/straight," "gay," "lesbian," and "bisexual." An individual's sexual orientation is independent of their gender identity.

**SOGI/SOGIE:** Acronyms for sexual orientation and gender identity (SOGI) or sexual orientation, gender identity, and expression (SOGIE).

**Transgender:** A term used to describe people whose psychological self ("gender identity") differs from the social expectations for the physical sex with which they were born. Transgender people may have any sexual orientation.

**Transition/transitioning:** A series of processes that some transgender people may undergo in order to live more fully as their gender identity. This may include social transition, such as changing name and pronouns; medical transition, which may include hormone therapy or gender-affirming surgeries; and legal transition, which may include changing legal name and sex on government identity documents. Transgender people may choose to undergo some, all, or none of these processes.

**Two-spirit:** An umbrella term traditionally used by Native American people to recognize individuals who possess qualities or fulfill roles of both genders. In most tribes, these individuals were traditionally considered neither men nor women; they occupied a distinct, alternative gender status. The terms used for these individuals and their roles vary across different Native American cultures.

Source: Adapted from Capacity Building Center for States, *Toolkit to Support Child Welfare Agencies in Serving LGBTQ Children, Youth, and Families* (Washington, D.C.: Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, 2016); Human Rights Campaign, *Glossary of Terms*, accessed October 29, 2021 from <https://www.hrc.org/resources/glossary-of-terms>; and Indian Health Service, "Two-Spirit," accessed February 28, 2022 from <https://www.ihs.gov/lgbt/health/twospirit/>. | GAO-22-104688

Note: This glossary focuses on terms used in this report, and does not include all LGBTQ+ identities or terms used to describe those identities.

## Religion and Spirituality

One study found that nearly 95 percent of surveyed youth in foster care believed in a God or a higher power, about 83 percent reported that

spiritual activities helped them in their daily lives, and about 25 percent participated in spiritual activities two or more times per week.<sup>18</sup> Another study found that the religious service attendance of youth in foster care was highly correlated with their caregiver's attendance, and that foster parents reported attending religious services at a higher rate than biological parents involved in the child welfare system.<sup>19</sup>

The different parties involved in foster care—biological or legal parents, foster parents, and youth themselves—may all have their own religious beliefs that a child welfare agency may need to balance. For example, biological parents may retain some rights to have their religious preferences considered in the care of their child.<sup>20</sup> In some instances, however, these preferences may differ from foster parents' religious views. In addition, some youth may be placed in residential facilities run by faith-based groups that include religious activities as part of their program. Children placed in foster care may have their own religious beliefs and preferences, which could differ from those of their biological parents, foster parents, or residential facilities.<sup>21</sup>

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## Prospective Foster Parents

Adults seeking to become foster parents must generally be licensed or otherwise approved by a state, local, or private agency, depending on the jurisdiction. In 2018, we reported that 49 surveyed states contracted with

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<sup>18</sup>Casey Family Programs, *Mental Health, Ethnicity, Sexuality, and Spirituality Among Youth in Foster Care* (Seattle, WA: Sept. 17, 2007). LGBTQ+ youth and religious youth are not distinct groups; LGBTQ+ youth may also be religious.

<sup>19</sup>J.C. Schreiber and T.P. Cross, *Religious Attendance of Child Welfare-Involved Caregivers and Youth* (Children and Family Research Center, University of Illinois at Urbana-Champaign, Urbana, IL: June 2012). This study used data from the second cohort of the National Study of Child and Adolescent Well-Being, a longitudinal study of a nationally representative sample of children involved in child protective service investigations.

<sup>20</sup>In addition, some states and localities may have laws granting religious rights to parents, foster parents, and children in foster care.

<sup>21</sup>For the purposes of this report, residential facilities refer to settings such as residential treatment centers that may provide therapeutic services, education, and other forms of daily living assistance for youth with higher-level treatment needs, as well as group homes and other residential settings that provide placements for youth with lower-level needs.

private providers to recruit and retain foster families.<sup>22</sup> Some states have laws allowing private providers, which may be faith-based organizations, to refuse services to individuals based on religious or moral objections. Some of these laws could allow private providers to refuse to license or place children with foster parents who are, for example, LGBTQ+.

The process to become licensed as a foster parent generally includes a home study to assess the suitability of the prospective parents, including their health, finances, and criminal history, and pre-service training on topics such as the effects of trauma on a child's behavior. The agency that licenses the foster family may provide them support if a child is placed in their home, such as ongoing training classes and regular visits from child welfare agency caseworkers.

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## Relevant Federal Funding and Assistance

The Children's Bureau within HHS's Administration for Children and Families (ACF) administers, among other things, several funding sources dedicated to supporting state and local child welfare programs, including foster care. These funding sources include:

- **Title IV-E of the Social Security Act.** This is the largest federal program supporting foster care. The Consolidated Appropriations Act, 2021, provided HHS \$9.9 billion in definite budget authority for Title IV-E.<sup>23</sup> These funds support foster care, adoption assistance, and guardianship assistance for children meeting family income and other requirements. As of fiscal year 2020, states may opt to use Title IV-E funds to provide selected evidence-based foster care prevention services, such as mental health services or parenting education.
- **Title IV-B of the Social Security Act.** This provides federal funding for child and family services, including those to support, preserve, and

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<sup>22</sup>GAO, *Foster Care: Additional Actions Could Help HHS Better Support States' Use of Private Providers to Recruit and Retain Foster Families*, [GAO-18-376](#) (Washington, D.C.: May 30, 2018).

<sup>23</sup>Pub. L. No. 116-260, div. H, tit. II, 134 Stat. 1182, 1567-98. Federal fiscal year 2021 costs under Title IV-E could have exceeded that amount due to temporary COVID-19-related changes, including those in the Supporting Foster Youth and Families through the Pandemic Act. Congressional Research Service, *Child Welfare: Purposes, Federal Programs, and Funding* (Washington, D.C.: January 19, 2021).

reunite families and promote and support adoption. Total fiscal year 2021 funding for the components of Title IV-B was \$781 million.<sup>24</sup>

- **The Child Abuse Prevention and Treatment Act (CAPTA).** This law provides, among other things, grants to states to improve child protective services and for community-based efforts to prevent child abuse and neglect. For fiscal year 2021, CAPTA-appropriated funding totaled \$186 million, which included \$35 million for research and technical assistance to states.<sup>25</sup>

The Children’s Bureau assists states by issuing guidance on child welfare topics and by providing training and technical assistance to child welfare agencies. The Children’s Bureau also monitors state child welfare services. As part of its monitoring activities, the agency collects case-level data from states on all children in foster care. These data are maintained in the Adoption and Foster Care Analysis and Reporting System (AFCARS). AFCARS includes demographic information on children and youth in care, but does not currently include fields on the religious affiliation, sexual orientation, or gender identity of either children or foster parents. In 2016, the Children’s Bureau issued a final rule related to collecting data through AFCARS on the sexual orientation of child welfare-involved youth 14 and older.<sup>26</sup> However, after postponing the compliance and effective dates, the agency ultimately issued a new final rule that eliminated the addition of these data fields in AFCARS in May 2020.<sup>27</sup>

Other HHS component offices also conduct work and provide assistance that may be relevant to state and local child welfare agencies’ work with youth in foster care and prospective foster parents who are LGBTQ+ or of different religions. For example, the Substance Abuse and Mental Health

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<sup>24</sup>Congressional Research Service, *Child Welfare: Purposes, Federal Programs, and Funding*.

<sup>25</sup>Congressional Research Service, *Child Welfare: Purposes, Federal Programs, and Funding*.

<sup>26</sup>Adoption and Foster Care Analysis and Reporting System, 81 Fed. Reg. 90,524 (Dec. 14, 2016).

<sup>27</sup>Adoption and Foster Care Analysis and Reporting System, 83 Fed. Reg. 42,225 (Aug. 21, 2018); Adoption and Foster Care Analysis and Reporting System, 85 Fed. Reg. 28,410 (May 12, 2020). HHS determined that in accordance with Office of Management and Budget guidance and comments from some state child welfare agencies, AFCARS was not the appropriate vehicle for collecting sexual orientation information on youth in foster care.



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Services Administration leads public behavioral health efforts, and the HHS Office for Civil Rights enforces federal civil rights laws within HHS-funded programs.

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## Nondiscrimination Requirements

States are primarily responsible for administering their child welfare programs, consistent with applicable federal laws and regulations. States and localities must follow, and require contracted private agencies to follow, certain federal laws and HHS regulations prohibiting discrimination in child welfare activities.<sup>28</sup> For example, the Multiethnic Placement Act of 1994, as amended, prohibits delaying or denying placement of a child based on the child or prospective parent's race, color, or national origin; and Title VI of the Civil Rights Act of 1964 (Title VI), prohibits discrimination based on race, color, or national origin by recipients of federal funds.<sup>29</sup>

With respect to discrimination on the basis of religion or sexual orientation and gender identify (SOGI), recent federal court decisions continue to affect certain requirements to be followed by HHS, states and localities. There have been challenges to requirements imposed by states or localities based on SOGI by faith-based organizations asserting certain requirements violate their First Amendment rights to exercise their religious beliefs. For example, in *Fulton v. City of Philadelphia*, the U.S. Supreme Court held that the City of Philadelphia's refusal to contract with a faith-based agency for the provision of foster care services, unless the

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<sup>28</sup>Unless otherwise clear from context, references to "discrimination" in this report refer to unlawful discrimination, within the meaning of applicable federal, state, and local statutes and regulations and federal court decisions. We are not making any determinations about whether conduct described by any source constituted discrimination.

<sup>29</sup>Additionally, HHS regulations implementing Title VI are codified at 45 C.F.R. Part 80.

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faith-based agency agreed to certify same-sex couples as foster parents, violated the Free Exercise Clause of the First Amendment.<sup>30</sup>

Federal courts have also interpreted federal laws related to employment and Title IX of the Education Amendments of 1972, as amended (Title IX). For example, the U.S. Supreme Court has interpreted Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits certain employers from discriminating in employment because of race, color, religion, sex, or national origin, as prohibiting an employer from firing an individual merely for being gay or transgender.<sup>31</sup> As HHS carries out its enforcement activities and as states and localities administer their child welfare programs, their actions will need to be consistent with the holdings and legal decisions articulated by these and other applicable court decisions.

HHS's Office for Civil Rights has the authority to investigate sex-based discrimination in child welfare settings only if an allegation of discrimination involves a health or educational component covered under Section 1557 of the Patient Protection and Affordable Care Act or Title IX. In May 2021, following a number of federal court decisions, HHS's OCR issued a notification of interpretation and enforcement stating that, consistent with the U.S. Supreme Court decision in *Bostock* and federal circuit court decisions on prohibiting discrimination based on sex in Title IX, it would interpret a prohibition on sex discrimination in Section 1557 of the Patient Protection and Affordable Care Act as applying to

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<sup>30</sup>*Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1882 (2021). In *Fulton*, the city of Philadelphia informed a faith-based agency that it would no longer refer children to the agency for placement in foster care, stating that the agency's refusal to certify same-sex couples violated a nondiscrimination provision in its contract with the city. Additionally, the city stated that it would not enter a full foster care contract with the agency in the future unless the agency agreed to certify same-sex couples. The Court found that the city's actions burdened the agency's religious exercise, and because the contract provision provided a mechanism for individual exemptions, the provision was not generally applicable; thus, it was subject to strict scrutiny, under which a government policy can survive only if it is narrowly tailored to achieve "interests of the highest order." Reasoning that the city offered no compelling reason why it had a particular interest in denying the agency an exemption under the contract provision, the Court concluded that the actions of the city violated the Free Exercise Clause of the First Amendment.

<sup>31</sup>*Bostock v. Clayton County, GA*, 140 S. Ct. 1731, 1754 (2020). While Title VI prohibits discrimination based on race, color, or national origin by recipients of federal funds, Title VII prohibits certain employers from discriminating in employment because of race, color, religion, sex, or national origin.

discrimination on the basis of sexual orientation and gender identity.<sup>32</sup> HHS also stated it would comply with the Religious Freedom Restoration Act of 1993, and all other legal requirements and court orders.<sup>33</sup>

Prior to HHS's May 2021 notification of interpretation and enforcement, in January 2021, the President issued Executive Order No. 13988 on "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation," which, among other things, directs agencies to review all policies that implement federal laws that prohibit sex discrimination, such as Title IX, and consider actions to extend the enforcement of these laws to SOGI. This Executive Order also directs agencies to consider other actions they should take to prevent and combat discrimination on the basis of SOGI. In addition, in January 2021, the President issued Executive Order No. 13985 on "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," which directs federal agencies to advance equity in access to benefits and opportunities under selected federal programs for underserved communities, including LGBTQ+ individuals.<sup>34</sup>

In December 2016, HHS issued a final rule updating its grant regulations to add SOGI to the list of factors that HHS grantees could not use to discriminate or otherwise deny services to potential participants, as well as a requirement that HHS grantees treat same-sex marriages as valid.<sup>35</sup>

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<sup>32</sup>Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972, 86 Fed. Reg. 27,984, 27,985 (May 25, 2021). HHS also cited to the memorandum of March 26, 2021, issued by the Civil Rights Division of the U.S. Department of Justice to Federal Agency Civil Rights Directors and General Counsel concluding that the Supreme Court's reasoning in *Bostock* applies to Title IX of the Education Amendments of 1972.

<sup>33</sup>The Religious Freedom Restoration Act of 1993 prohibits the government from substantially burdening a person's free exercise of religion, unless the government demonstrates that the application of such burden to the person is the least restrictive means of furthering a compelling governmental interest.

<sup>34</sup>As of December 2021, HHS's action plans for addressing both executive orders were under review, and therefore, had not been publicly released, according to HHS officials.

<sup>35</sup>Specifically, this change was made to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards. See Health and Human Services Grants Regulation, 81 Fed. Reg. 89,393 (Dec. 12, 2016), codified at former 45 C.F.R. § 75.300(c). With respect to same-sex marriage, the updated regulations stated: "In accordance with the Supreme Court decisions in *United States v. Windsor* and in *Obergefell v. Hodges*, all recipients must treat as valid the marriages of same-sex couples. This does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law as something other than a marriage."

These same regulatory provisions also prohibited HHS grantees from discriminating on the basis of religion.<sup>36</sup> On January 12, 2021, HHS issued a final rule to rescind the 2016 changes to the anti-discrimination provisions in its grant regulations.<sup>37</sup> As of January 2022, implementation of the 2021 rule changes had been delayed due to ongoing litigation.<sup>38</sup>

In addition to federal laws and regulations, states and localities may establish their own discrimination protections in law, regulation, or child welfare agency policy. These discrimination protections may be specific to youth in foster care or prospective foster parents, or they may have more general protections that apply to these populations and others. Some state and local protections have been challenged in court and those rulings will also impact discrimination protections and requirements.

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## Reported State Protections against Discrimination on the Basis of Sexual Orientation, Gender Identity, and Religion in Foster Care Vary Widely

A majority of all states reported some protections from discrimination in place for youth in foster care on the basis of sexual orientation, gender identity, and religion. At least half of states had such protections in place for prospective foster parents as of February 2021, based on responses

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<sup>36</sup>In February 2018, the governor of South Carolina requested a waiver of this requirement for faith-based agencies that receive funding from the state to recruit foster families and base their recruitment on families' religion. HHS granted this waiver in January 2019. We reported on HHS's process for granting this waiver. GAO, *Child Welfare: Various HHS Offices Provided Input on Decision to Grant Exception from Religious Nondiscrimination Requirement*, [GAO-20-69R](#) (Washington, D.C.: Oct. 25, 2019). In November 2021, HHS announced that it was rescinding this waiver, and two other waivers of nondiscrimination requirements based on religious objections.

<sup>37</sup>Health and Human Services Grants Regulation, 86 Fed. Reg. 2,257 (Jan. 12, 2021). The Religious Freedom Restoration Act is codified at 42 U.S.C. §§ 2000bb–2000bb–4. HHS previously issued a notice of nonenforcement of these grant regulations. Notification of Nonenforcement of Health and Human Services Grants Regulation, 84 Fed. Reg. 63,809 (Nov. 19, 2019).

<sup>38</sup>The plaintiffs in the case allege that the January 12, 2021 final rule, which rescinded the 2016 changes to the anti-discrimination provision in the grant regulations, violates the Administrative Procedure Act. *Facing Foster Care in Alaska et al. v. HHS*, 21-cv-00308 (D.D.C. filed Feb. 2, 2021).

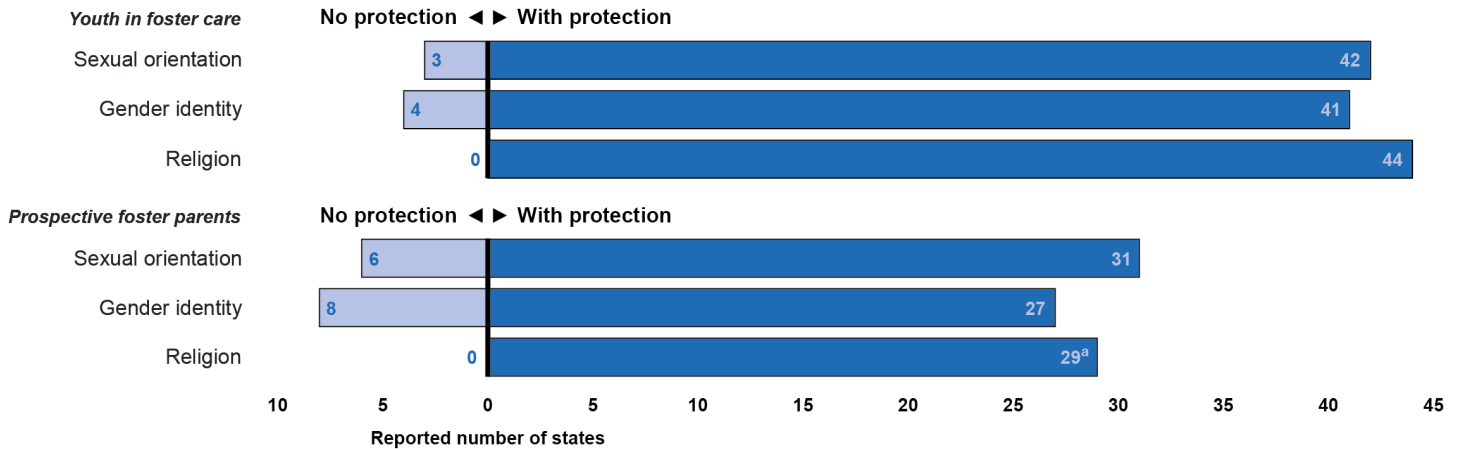
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to our national survey of state child welfare agencies that we compared to publicly available information.<sup>39</sup> (See figure 1.) The source of these sexual orientation and gender identity (SOGI) and religious protections—such as state laws, regulations, or policies—and the specific language states used in their protections varied widely. Officials in our five selected states told us their discrimination protections were the same whether the agency used state or federal funds for youth’s care.

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<sup>39</sup>To corroborate state survey responses, we compared them to published information and followed up via email or interview with some states. We did not conduct an independent legal review to identify relevant state laws or regulations or to supplement states’ survey responses. However, we reviewed selected state laws and regulations identified by state official to provide illustrative examples. See appendix I for more information on our methodology for surveying states and corroborating their responses. Our survey asked about states’ discrimination protections for both prospective foster and prospective adoptive parents. Because protections for these two groups may differ, we refer here to protections for prospective foster parents only. See appendix II for further information on protections in our five selected states, including information on their protections for prospective adoptive parents. Protections for prospective adoptive parents cited in the appendix pertain to public adoptions—that is, adoptions of children involved in the foster care system. Protections for parents seeking to adopt privately—for example, to adopt a newborn put up for adoption or an international child—were outside the scope of our review.

**Figure 1: Number of States with Reported and Corroborated Protections from Discrimination, by Population and Characteristic, as of February 2021**



Source: State survey responses; GAO review of published research; and follow-up communication with state officials. | GAO-22-104688

**Accessible Data Table for Figure 1 (part 1 of 2)**

**Youth in foster care**

	Reported number of states with no protection	Reported number of states with protection
Sexual orientation	3	42
Gender identity	4	41
Religion	0	44

**Accessible Data Table for Figure 1 (part 1 of 2)**

**Prospective foster parents**

	Reported number of states with no protection	Reported number of states with protection
Sexual orientation	6	31
Gender identity	8	27
Religion	0	29 <sup>a</sup>

Note: Numbers with protections include states reporting protections in law, regulation, policy, practice, or based on legal interpretation. To corroborate state survey responses, we compared them to published information and followed up via email communication with some states. We were unable to corroborate all states' survey responses, so the actual number of states with such protections—or without any protections—may be higher. We did not conduct an independent legal review to identify relevant state laws or regulations or to supplement states' survey responses. See appendix I for more information on our corroboration process.

<sup>a</sup>The external sources we consulted to corroborate states' survey responses on protections based on foster youth's sexual orientation and gender identity, prospective foster parents' sexual orientation and gender identity, and youth's religion did not include information on protections for parents based on religion. We determined that state responses on religious discrimination protections for foster parents' religion were reliable for our purposes if we were able to corroborate the state's response on protections for youth and prospective parents in other categories. We obtained additional information on these protections in our five selected states.

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## Sexual Orientation and Gender Identity

State sources of protections from discrimination on the basis of SOGI for youth in foster care and prospective foster parents ranged from state laws to agency practice, according to state survey responses.<sup>40</sup> States may have protections from discrimination in multiple sources.

- **State law.** Some states reported having laws protecting both youth in foster care and prospective foster parents from discrimination on the basis of their sexual orientation and gender identity. Among our five selected states, Colorado and New Jersey had such protections in law.
  - **Legal interpretation of state law.** Among our selected states, Kansas child welfare officials told us they interpret a state law prohibiting discrimination based on sex as applying to discrimination based on SOGI as well.
- **State agency regulation.** Other states reported that some SOGI protections exist in state agency regulations. For example, Mississippi has general nondiscrimination regulations in place prohibiting discrimination on the basis of sexual orientation, which state officials said would apply to prospective foster parents. The regulations also state that youth in foster care have the right to receive care and services that are free from of discrimination based on SOGI. Ohio's regulations prohibit discrimination based on SOGI for both youth in foster care and prospective foster parents.
  - **Legal interpretation of state agency regulation.** In survey follow-up communication, a child welfare official in South Carolina noted that his agency interprets its regulations as prohibiting discrimination on the basis of SOGI, even though this is not explicitly stated. Specifically, this official said the agency's regulations require compliance with civil rights jurisprudence,

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<sup>40</sup>For some states, we were able to corroborate that they had a nondiscrimination protection in place, but not the specific source of protection. Here we discuss the subset of states for which we were able to corroborate the protection source. See appendix I for more information on this process. Here we generally discuss the highest level of protection we could corroborate that a state had in place (state law, followed by regulation, then policy). However, states with protections in law could also have protections in regulation and/or policy, for example.

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which includes U.S. Supreme Court decisions regarding SOGI discrimination.<sup>41</sup>

- **State agency policy or practice.** Another group of states reported that SOGI protections exist in agency policy or practice. For example, North Carolina’s child welfare agency issued a guidance document to its counties regarding workers’ treatment of LGBTQ+ youth, according to survey follow-up communication from a North Carolina official. This official also said there was no such written policy or guidance regarding fair treatment for prospective foster parents, but that the state agency approves LGBTQ+ individuals and couples as foster parents as long as they meet the state’s other requirements.<sup>42</sup>
- **State executive order.** Officials in multiple states, including Kansas, reported that their governors issued executive orders instructing state agencies to take steps to protect individuals they serve from discrimination on the basis of SOGI, among other factors.
- **No known protections.** A few states, including Arkansas, Georgia, and Texas, reported no SOGI protections in state law, regulation, or policy, and did not specify whether they have any practices in place to protect foster youth or prospective foster parents.

In addition, two of our selected states—Kansas and Mississippi—reported having laws in place giving private providers the ability to refuse to certify LGBTQ+ individuals as foster parents based on the provider’s religious beliefs. Officials in these states told us that, in practice, they were not aware of these laws affecting individuals’ efforts to become foster parents. However, officials said the laws could affect prospective foster parents if private providers elect to use these exemptions.<sup>43</sup>

The wording of protections on the basis of SOGI also varied in our five selected states. For example, protections identified in some states

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<sup>41</sup>Specifically, this official cited *Bostock v. Clayton County* and *Obergefell v. Hodges* as the basis for their interpretation.

<sup>42</sup>According to the National Foster Parent Association, typical state requirements to be licensed or certified as a foster parent include the ability to provide 24-hour care for a child on a daily basis, care for oneself financially without a foster care stipend, have a home free of fire and safety hazards, and pass a criminal background check.

<sup>43</sup>In Mississippi, the state child welfare agency licenses the majority of foster parents, according to state officials. These officials said that they only contract with private providers for therapeutic foster care and residential care. Our survey did not ask about state religious exemption laws, which may affect the implementation of state protections against discrimination.



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prohibited specific behaviors by agencies of foster parents, while others protected against discrimination more generally. See table 1 for example language from our five selected states.

**Table 1: Selected Examples Identified by State Child Welfare Officials of Protections from Discrimination on the Basis of Sexual Orientation or Gender Identity for Youth in Foster Care, Prospective Foster Parents, or Both, as of January 2022**

Source	State and protection
<b>Protections for youth</b>	
State law	<p><u>Colorado</u>:</p> <p>(1) The general assembly finds and declares that youth in foster care...should enjoy the following: ...</p> <p>(t) Having fair and equal access to available services, placement, care, treatment, and benefits based on his or her treatment plan and not being subjected to discrimination or harassment on the basis of actual or perceived...sexual orientation, gender identity...<sup>a</sup></p>
State agency regulation	<p><u>Mississippi</u>:</p> <p>Workers must also recognize inherent Rights of Children and Youth in Foster Care from the child's or youth's perspective:...</p> <p>A. As a Child or Youth in Foster Care, I Have the Right: To fair treatment, whatever my gender identity...or sexual orientation.<sup>b</sup></p> <p><u>Ohio</u>:</p> <p>(B) A foster caregiver shall not discriminate in providing care and supervision to foster children on the basis of ... sexual identity, sexual orientation...</p> <p>(D) A foster caregiver shall not subject a foster child to verbal abuse or swearing; to derogatory remarks about foster children and their... sexual identity, sexual orientation...or to threats of physical violence or removal from the foster home.<sup>c</sup></p>
State agency policy	<p><u>Kansas</u>: The Case Management Provider shall accept all referrals from [the state child welfare agency] of children in the custody of the Secretary and in need of out of home services, regardless of ...gender, sexual preference...<sup>d</sup></p> <p><u>New Jersey</u>: Your out-of-home placement shall not discriminate against you based on your ...gender identity, gender expression...or sexual orientation.<sup>e</sup></p>
<b>Protections for prospective foster parents</b>	
State law	<p><u>Colorado</u>:</p> <p>(3) In addition...a service provider that receives state money to provide placement-related services shall not:</p> <p>(a) Deny any person the opportunity to become an adoptive or a foster parent solely on the basis of a real or perceived...sexual orientation, gender identity, gender expression...<sup>f</sup></p>
State agency regulation	<p><u>Ohio</u>:</p> <p>(E)(1) The agency shall not consider the ...sexual identity, sexual orientation, ...of a family for whom the agency is conducting a homestudy in determining whether to recommend the applicant be certified as a foster caregiver or whether to place a child with the foster caregiver.<sup>g</sup></p>
State agency practice	<p><u>Kansas</u>: State child welfare officials said that private providers in the state license LGBTQ+ adults as foster parents, provided they meet the state's other foster parent requirements.</p>

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Letter

Source	State and protection
<b>Protections that apply to both foster youth and prospective foster parents</b>	
State law	<p><u>Kansas:</u></p> <p>(c) It shall be an unlawful discriminatory practice:...</p> <p>(3) For any person, to refuse, deny, make a distinction, directly or indirectly, or discriminate in any way against persons because of the...sex...of such persons in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof.<sup>h</sup></p> <p><u>New Jersey:</u> The Legislature further declares its opposition to such practices of discrimination when directed against any person by reason of the...gender identity or expression, affectional or sexual orientation... of that person or that person's family members...in order that the economic prosperity and general welfare of the inhabitants of the State may be protected and ensured.<sup>i</sup></p>
State agency regulation	<p><u>Mississippi:</u></p> <p>L. Notice of Non-Discrimination Policy</p> <p>[the child welfare agency] prohibits discrimination and/or the exclusion of individuals from its facilities, programs, activities and services based on the individual person's...sexual orientation...<sup>j</sup></p>

Source: GAO review of state laws, regulations, and policies identified by child welfare officials in five selected states. | GAO-22-104688

Notes: These are examples and do not include all of these states' laws, regulations, and policies related to discrimination against youth in foster care or prospective foster parents on the basis of sexual orientation or gender identity. See appendix II for more information on protections in these five states.

<sup>a</sup>Colo. Rev. Stat. § 19-7-101(1)(t).

<sup>b</sup>18 Code Miss. R. Pt. -6, A II XIV.

<sup>c</sup>Ohio Admin. Code 5101:2-7-09(B and D). Ohio officials told us that the term "sexual identity" is used to refer to gender identity.

<sup>d</sup>Kansas Department for Children and Families Prevention and Protection Services Policy and Procedure Manual, Section 5208 – Case Management Provider Referral Responsibilities.

<sup>e</sup>New Jersey Department of Children and Families, Division of Child Protection and Permanency, Youth Bill of Rights.

<sup>f</sup>Colo. Rev. Stat. § 19-1-130(3)(a).

<sup>g</sup>Ohio Admin. Code 5101:2-5-20(E)(1). Ohio officials told us that the term "sexual identity" is used to refer to gender identity.

<sup>h</sup>Kan. Stat. § 44-1009(c)(3). Kansas officials said they interpret the protections in this law against discrimination on the basis of sex as extending to sexual orientation and gender identity.

<sup>i</sup>N.J. Stat. § 10:5-3.

<sup>j</sup>18 Code Miss. R. Pt. 6, I III(L).

In three of our five selected states, officials cited factors affecting their protections for LGBTQ+ youth or prospective parents and barriers to strengthening protections, such as limited or inconsistent support from state leadership. For example, in Kansas, officials told us their future ability to implement and sustain their protections and inclusive practices for LGBTQ+ youth and prospective parents would depend on state leadership support.

Officials from several states indicated that their SOGI protections for youth and parents continue to evolve. For example, in April, Colorado's

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state legislature passed a law granting additional protections, including prohibiting private providers receiving state funding from discriminating against foster youth or prospective foster parents based on SOGI and other factors. Officials in Ohio also said they developed a youth bill of rights that includes rights based on SOGI, among other factors, which took effect in November 2021.

### Religion

State protections against discrimination for foster youth and prospective foster parents on the basis of religion also varied, according to state survey responses.<sup>44</sup>

- **State law.** Some states reported having these protections in law. For example, among our selected states, Colorado and Kansas had laws prohibiting religious discrimination.
- **State agency regulation.** Other states, including Mississippi, New Jersey, and Ohio, reported having these protections in regulations.
- **State agency policy.** Still other states reported religious protections in agency policy. For example, Indiana officials commented on our survey that their state has a Bill of Rights for youth in foster care that includes their right to not be discriminated against based on religion, as well as SOGI. The officials also said that the state child welfare agency's code of conduct prohibits its staff from discriminating against individuals based on religion or SOGI.
- **State executive order.** Officials in some states also reported that their state had executive orders addressing discrimination on the basis of religion. For example, the executive order issued by the governor of Kansas prohibits religious discrimination, as well as discrimination on the basis of SOGI and other factors.

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<sup>44</sup>The external sources we consulted to corroborate states' survey responses on protections based on foster youth's SOGI, foster parents' SOGI, and youth's religion did not include information on protections for parents based on religion. We determined that state responses on religious discrimination protections for foster parents' religion were reliable for our purposes if we were able to corroborate the state's response on protections for youth and prospective parents in other categories. We obtained additional information on these protections in our five selected states. We were not able to corroborate some states' reported religious protections. However, there were no states where we corroborated that no religious protections were in place.

As with protections on the basis of SOGI, the wording of protections from discrimination for youth in foster care and prospective foster parents on the basis of religion varied in our five selected states. (See table 2.)

**Table 2: Selected Examples Identified by State Child Welfare Officials of Protections from Discrimination on the Basis of Religion for Youth in Foster Care, Prospective Foster Parents, or Both, as of January 2022**

Source	State and protection
<b>Protections for youth</b>	
State law	<p><u>Colorado:</u></p> <p>(1)The general assembly finds and declares that youth in foster care...should enjoy the following:...</p> <p>(i)Being free to attend religious services and activities; ...</p> <p>(t)Having fair and equal access to available services, placement, care, treatment, and benefits based on his or her treatment plan and not being subjected to discrimination or harassment on the basis of actual or perceived...religion.<sup>a</sup></p>
State agency regulation	<p><u>Mississippi:</u></p> <p>B. Actual Placement...</p> <p>(11) Every effort to continue the child’s religious traditions will be made. A child’s religion should be considered in determining appropriate placement for the child.<sup>b</sup></p> <p><u>Ohio:</u></p> <p>(A) No agency, foster caregiver, residential facility or any employee of an agency or residential facility shall in any way violate any of the following rights of children: ...</p> <p>(1) The right to enjoy freedom of thought, conscience, and religion or to abstain from the practice of religion.<sup>c</sup></p>
State agency policy	<p><u>New Jersey:</u> Your out-of-home placement shall not discriminate against you based on your ...religion. [General rights include the right] to practice my religion or spiritual exercises of my choice.<sup>d</sup></p>
<b>Protections for prospective foster parents</b>	
State law	<p><u>Colorado:</u></p> <p>(A) In addition...a service provider that receives state money to provide placement-related services shall not:</p> <p>(a) Deny any person the opportunity to become an adoptive or a foster parent solely on the basis of a real or perceived...religion<sup>e</sup></p>
State agency regulation	<p><u>Ohio:</u></p> <p>(E)(1) The agency shall not consider the ...religion...of a family for whom the agency is conducting a homestudy in determining whether to recommend the applicant be certified as a foster caregiver or whether to place a child with the foster caregiver.<sup>f</sup></p>
<b>Protections that apply to both foster youth and prospective foster parents</b>	
State law	<p><u>Kansas:</u></p> <p>(c) It shall be an unlawful discriminatory practice:...</p> <p>(3) For any person, to refuse, deny, make a distinction, directly or indirectly, or discriminate in any way against persons because of the...religion...of such persons in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof.<sup>g</sup></p>

Letter

Source	State and protection
State agency regulation	<p><u>Mississippi:</u> L. Notice of Non-Discrimination Policy [the state child welfare agency] prohibits discrimination and/or the exclusion of individuals from its facilities, programs, activities and services based on the individual person's...religion...<sup>h</sup></p> <p><u>New Jersey:</u> (b) Neither the [state child welfare agency] nor any contract agency providing resource care services shall discriminate with regards to the licensing of a resource parent or to providing resource care...on the basis of ... religion, against:</p> <ol style="list-style-type: none"> <li>1. Any person who requests information about becoming a resource parent;</li> <li>2. A resource parent applicant;</li> <li>3. A licensed resource parent;</li> <li>4. A child needing placement in a resource home; or</li> <li>5. A child placed in a resource home.<sup>i</sup></li> </ol>

Source: GAO review of state laws, regulations, and policies identified by child welfare officials in five selected states. | GAO-22-104688

Notes: These are examples and do not include all of these states' laws, regulations, and policies related to discrimination against youth in foster care or prospective foster parents on the basis of religion. See appendix II for more information on protections in these five states.

<sup>a</sup>Colo. Rev. Stat. § 19-7-101(1)(i and t).

<sup>b</sup>18 Code Miss. R. Pt. 6, D VII(B)(11).

<sup>c</sup>Ohio Admin. Code 5101:2-5-35(A)(1).

<sup>d</sup>New Jersey Department of Children and Families, Division of Child Protection and Permanency, Youth Bill of Rights.

<sup>e</sup>Colo. Rev. Stat. § 19-1-130(3)(a).

<sup>f</sup>Ohio Admin. Code 5101:2-5-20(E)(1).

<sup>g</sup>Kan. Stat. § 44-1009(c)(3).

<sup>h</sup>18 Code Miss. R. Pt. 6, I III(L).

<sup>i</sup>N.J. Admin. Code § 3A:14-1.5(b).

**Reported Protections for Prospective Foster Parents on the Basis of Marital Status**

Among our five selected states, Colorado, New Jersey, and Ohio had protections for prospective foster parents on the basis of marital status in law or regulation, according to child welfare officials. Officials in all five states said they allowed married couples or single individuals to become foster parents. However, Mississippi officials said they did not allow unmarried couples to foster, except in certain cases where the foster caregivers are relatives of the child. Officials in Kansas told us that unmarried couples in their state may serve as foster parents, but that state law does not allow such couples to adopt.

Source: GAO interviews with child welfare officials in five selected states. | GAO-22-104688

Officials in some states also reported recent changes to religious-based protections. For example, Colorado's recent laws granting additional SOGI-based protections to foster youth and prospective foster parents also added religious-based protections for youth and parents. In Ohio, officials told us that in the last few years, the state child welfare agency had revised its regulations to add a reference to children's rights to abstain from religion.

Nondiscrimination requirements alone do not prevent discrimination from occurring, according to stakeholder groups. Officials we interviewed from two of these groups said that written protections against discrimination do not necessarily translate into agency practices that protect and support youth in foster care. Similarly, officials from another group, which advocates for youth in foster care, told us that some young people they work with lived in jurisdictions that prohibited discrimination on the basis of sexual orientation or gender identity, but had caregivers who did not

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abide by those policies. At the same time, other young people lived in states without such nondiscrimination policies, but were supported and affirmed by caregivers and agency staff, according to the same officials.

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## Several Promising Practices Exist for Supporting LGBTQ+ Youth in Foster Care, but Practices for Supporting Youth’s Religious Beliefs Are Limited

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### Practices for Supporting LGBTQ+ Youth Included Establishing Inclusive Policies, Collecting Data, and Developing Staff and Foster Parent Skills

The literature and HHS publications we reviewed and our interviews with stakeholder groups, selected states, and HHS officials highlighted promising practices for supporting LGBTQ+ youth in foster care.<sup>45</sup> We categorized these approaches into five areas: (1) establishing and implementing inclusive nondiscrimination policies, (2) collecting and analyzing data on SOGI, (3) developing and increasing staff and foster parent skills through training and coaching, (4) recruiting and establishing connections to supportive adults, and (5) supporting coordination and

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<sup>45</sup>We describe these practices as “promising” because they are identified in the literature we reviewed and by stakeholders we interviewed as practices that may reduce harmful effects experienced by LGBTQ+ youth in foster care. We did not independently assess the effectiveness of each promising practice identified, or the various options for implementing these practices.

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service referrals.<sup>46</sup> See appendix III for more information on the studies discussed in the sections below.

### Establishing and Implementing Inclusive Nondiscrimination Policies

Establishing inclusive nondiscrimination policies and standards for providing care is a promising practice according to literature and HHS publications we reviewed, and two stakeholder groups we interviewed. Specifically, studies recommended establishing and implementing policies that prohibit discrimination on the basis of sexual orientation and gender identity, as well as any forms of harassment, victimization, denial of services, or disrespectful treatment, such as the use of slurs. One study noted that establishing written policies and practice standards is helpful, as they can provide child welfare staff with clear guidance on acceptable and unacceptable behaviors.<sup>47</sup> As previously discussed, nondiscrimination protections for LGBTQ+ youth varied across our selected states.

Including a variety of stakeholders, such as youth and community partners, in the development of policies for working with LGBTQ youth can help agencies better welcome and affirm the LGBTQ youth they serve, according to an HHS publication for child welfare agencies on serving LGBTQ youth and families.<sup>48</sup> Representatives from one

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<sup>46</sup>Studies we reviewed found limited examples of existing evidence-based practices designed to improve the well-being of LGBTQ+ youth in foster care. See, for example, J.K.P. Greeson et. al., "Interventions for Youth Aging Out of Foster Care: A State of the Science Review," *Children and Youth Services Review*, vol. 113 (2020); and Marlene Matarese, PhD, Elizabeth Greeno, PhD, and Aaron Betsinger, PhD, *Youth with Diverse Sexual Orientation, Gender Identity and Expression in Child Welfare: A Review of Best Practices*, (Baltimore, MD: Institute for Innovation & Implementation, University of Maryland School of Social Work, 2017). For the purposes of this review, we describe the practices identified in the literature and from our interviews with stakeholder groups and selected states as "promising" because they are based on early or limited evidence, and in some cases solely testimonial evidence. Studies we reviewed also noted that additional methodologically rigorous research is needed to understand the unique needs of LGBTQ+ youth, and to identify evidence-based best practices to meet those needs.

<sup>47</sup>Micki Washburn, PhD, et. al., *Implementing System Wide Policy and Practice Improvements to Support LGBTQ+ Youth and Families with Child Welfare System Involvement* (University of Houston Graduate College of Social Work, 2021).

<sup>48</sup>Capacity Building Center for States. *Toolkit to Support Child Welfare Agencies in Serving LGBTQ Children, Youth, and Families* (Washington, D.C.: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, 2016). Unless otherwise noted, this HHS publication and other HHS publications referred to in this report did not include original research.



stakeholder group we spoke with and one study we reviewed similarly stated that obtaining youth input can help inform policy development.<sup>49</sup> Selected state officials also noted that their processes for developing nondiscrimination policies and standards of care included obtaining input from stakeholders. For example:

- A state agency official in New Jersey reported that the agency's LGBTQI policy, which was adopted in 2016, was heavily informed by recommendations from the state's Youth Advisory Board that is made up of youth from 16 to 21 with experience in foster care.<sup>50</sup> Documented policies that the Youth Advisory Board helped develop include respecting youth's gender identities and chosen names, and providing youth in gender-segregated residential facilities with room assignments according to their gender identity.
- State agency officials in Colorado and New Jersey and private providers in Kansas reported working with a national civil rights organization to assess and develop their nondiscrimination policies and practices. For example, officials in Colorado said that their work with the organization led to the state including affirming, nondiscriminatory language in their contracts with private providers.<sup>51</sup>

To ensure that nondiscrimination policies are implemented, a few studies also recommended developing accountability systems, including feedback mechanisms, appropriate responses to reports of violations,

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<sup>49</sup>Matarese et. al., *Youth with Diverse Sexual Orientation, Gender Identity and Expression in Child Welfare: A Review of Best Practices*.

<sup>50</sup>As mentioned previously, in this report we generally use LGBTQ+ to describe individuals with diverse sexual orientations and gender identities. We use variations on this acronym, such as LGBTQI in this instance, when they were used in specific research or agency programs or policies we discuss. The "I" in this version of the acronym stands for intersex.

<sup>51</sup>According to the civil rights organization, the Human Rights Campaign Foundation, establishing written nondiscrimination policies is an important first step in building a foundation for LGBTQ inclusion. The organization's nondiscrimination benchmarks focus on three policies: (1) agencies' client nondiscrimination policies are inclusive of SOGIE and are communicated to staff and clients, (2) agencies' employment nondiscrimination policies are inclusive of SOGI, and (3) agencies' contract language includes explicit LGBTQ nondiscrimination standards.

and evaluation processes.<sup>52</sup> Regarding feedback mechanisms, state agency officials in all five selected states and local officials in two of these states discussed obtaining youth feedback as one method for ensuring that youth receive supportive care and for monitoring potential violations. For example, state agency officials in the five selected states, and local officials in two of these states said that caseworkers visit with youth regularly and if the youth have concerns about mistreatment based on their SOGI, they may share those concerns with their caseworkers.

### Collecting and Analyzing Data on SOGI

Collecting data on foster youth's SOGI and reporting or using that data to inform service delivery is also a promising practice, according to our literature review and interviews with three stakeholder groups. Several studies emphasized that collecting adequate data on youth's SOGI is critical for planning, assessing, and improving the services offered to youth. HHS officials also told us that collecting data on youth's SOGI is a promising practice. Further, in its 2016 final rule on data collection for the Adoption and Foster Care Analysis and Reporting System (AFCARS), HHS noted that such data would help move closer toward HHS's goal to better support LGBTQ youth in foster care, and ensure that foster care placement resources and services are designed appropriately to meet their needs.<sup>53</sup> Officials in Ohio also said SOGI data would help them analyze and report on youth's characteristics, demonstrate the need for tailored services, and ensure they can meet those needs.

Additionally, studies discussed considerations for safely and thoughtfully collecting SOGI data. For example, one study discussed using age-

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<sup>52</sup>See Rosalynd Erney and Kristin Weber, "Not all Children are Straight and White: Strategies for Serving Youth of Color in Out-of-Home care who Identify as LGBTQ", *Child Welfare*, vol. 96, no. 2 (2018); Leann Down, Rosalynd Erney, and Megan Martin, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare Through Cross-System Collaboration*, (Washington, D.C.: Center for the Study of Social Policy, 2016); and June C. Paul "Exploring support for LGBTQ youth transitioning from foster care to emerging adulthood" *Children and Youth Services Review*, vol. 119 (2020).

<sup>53</sup>In May 2020, the agency issued a new final rule that eliminated the addition of data on sexual orientation in AFCARS. In June 2021, HHS officials told us they had previously determined that in accordance with Office of Management and Budget guidance and comments from some state and local child welfare agencies, AFCARS was not the appropriate vehicle for collecting sexual orientation information on youth in foster care. See Department of Health and Human Services, Administration for Children and Families, *Adoption and Foster Care Analysis and Reporting System*, 85 Fed. Reg. 28,410 (May 12, 2020).

appropriate techniques to gather the information, ensuring that any documentation of youth's SOGI remains current, and putting safeguards in place to protect and minimize disclosure of the information.<sup>54</sup>

State agency officials in Colorado and New Jersey, and state and local officials in Ohio said that SOGI data is an important tool for working with LGBTQ+ youth, and noted that some caseworkers and other staff obtain information about youth's SOGI so they can identify their needs. Local officials in one Ohio county also reported conducting a survey of youth to determine the prevalence of LGBTQ+ youth in their jurisdiction (see textbox).

#### The Cuyahoga Youth Count

In 2019, the Institute for Innovation and Implementation at the University of Maryland's School of Social Work, in partnership with the Cuyahoga County, Ohio Division of Children and Family Services, conducted a survey to assess the sexual orientation and gender identity (SOGI) of youth in foster care. Survey participants were 251 foster youth, ages 12 to 21, in Cuyahoga County. The study reported that lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ+) youth in the county are overrepresented in foster care, and experience disparities in their treatment. Specifically, the study found:

- Thirty-two percent of survey respondents identified as LGBTQ+. Approximately 10 percent of respondents indicated they may have diverse gender identities, and 26 percent reported having diverse sexual orientations.
- Approximately half of survey respondents who identified as lesbian, gay, bisexual, or as another sexual orientation other than heterosexual reported that their social worker knew about their sexual orientation, with the remainder indicating their social worker did not know (23 percent) or they were unsure whether their social worker knew (27 percent).
- A larger proportion of LGBTQ+ survey respondents reported adverse or discriminatory experiences than non-LGBTQ+ respondents, including being treated with less respect, being treated as if they are not smart, and being insulted or called names, in a range of settings, such as group homes, schools, and family settings.

Source: Marlene Matarese, PhD, et. al., *The Cuyahoga Youth Count: A Report on LGBTQ+ Youth's Experience in Foster Care* (Baltimore, MD: The Institute for Innovation & Implementation, University of Maryland School of Social Work, 2021). | GAO-22-104688

Note: Due to the response rate of 31 percent, the results of the survey may not be generalizable to all youth in foster care in Cuyahoga County.

#### Developing and Increasing Skills through Training and Coaching

Ongoing and actionable training and coaching are needed to help child welfare staff, foster parents, and other stakeholders develop the cultural competency to support LGBTQ+ youth, according to our literature review. Three stakeholder groups we spoke with also discussed providing training and educational resources to child welfare staff and caregivers on LGBTQ+ youth as a promising practice. Similarly, an HHS publication we reviewed recommended that child welfare staff and foster parents receive LGBTQ competency training to better support these youth, and noted that

<sup>54</sup>Andrew Burwick et.al., *Human Services for Low-Income and At-Risk LGBT Populations: An Assessment of the Knowledge Base and Research Needs*, (2014).

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training should be an ongoing process rather than a one-time event.<sup>55</sup> Studies suggested a number of topics to cover in training, such as racial and gender disparities and intersectional identities, myths and stereotypes associated with LGBTQ+ youth, micro- and macro-aggressions, and the specific experiences and needs of certain subpopulations, such as transgender youth.<sup>56</sup> A few studies also recommended continuing instruction and coaching beyond initial training and directly addressing instances where participants may have implicit bias to increase the effectiveness of these efforts (see textbox).<sup>57</sup>

**The Los Angeles Lesbian, Gay, Bisexual, and Transgender (LGBT) Center’s Recognize, Intervene, Support and Empower (RISE) Initiative Training Evaluation**

The Los Angeles LGBT Center, with funding from the Department of Health and Human Services, developed the RISE Initiative to serve youth who identify as lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ+) in child welfare settings. RISE included a training intervention to educate public and private child welfare staff on becoming more competent when serving LGBTQ+ youth. An evaluation of the training concluded that child welfare staff need coaching and follow-up instruction after any initial training to effectively decrease any anti-LGBTQ+ bias among staff and reduce mistreatment of LGBTQ+ youth. Key findings included:

- Training participants demonstrated relatively high levels of knowledge on LGBTQ+ issues prior to the trainings, but some also exhibited bias during the trainings. Based on this finding, the study proposed that knowledge may not necessarily correspond to an absence of bias.
- A majority of participants who reported not using the information from the training linked their lack of use to the information not being relevant to their clients. The study suggested that participants may have considered the information irrelevant because they were not aware that they likely had LGBTQ+ clients on their caseloads.

Source: A. Weeks, et. al., "Strengthening the Workforce to Support Youth in Foster Care who Identify as LGBTQ+ through Increasing LGBTQ+ Competency: Trainers' Experience with Bias," *Child Welfare*, vol. 96, no. 2 (2018).| GAO-22-104688

Officials in all five selected states said that they generally hold trainings for child welfare staff and foster parents that discuss LGBTQ+ identities and encourage nondiscriminatory practices, though training requirements and delivery vary. For example:

- State agency officials in New Jersey said that they require all state and local child welfare staff and foster parents to take trainings on

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<sup>55</sup>Capacity Building Center for States, *Toolkit to Support Child Welfare Agencies in Serving LGBTQ Children, Youth, and Families* (U.S. Department of Health and Human Services, 2016).

<sup>56</sup>The term intersectional identities refers to the theory that various, overlapping social identities (e.g. race, gender, sexuality, and class) contribute to the specific experiences and systemic discrimination experienced by an individual or group. Micro-aggressions refer to subtle but offensive comments or actions directed at a member of a marginalized group that expresses a prejudiced attitude towards that group. Macro-aggressions refer to more large scale, overtly offensive actions directed toward a marginalized group.

<sup>57</sup>Implicit bias refers to attitudes, behaviors, and actions that occur automatically and unintentionally, and are prejudiced in favor of or against one person or group compared to another.

LGBTQ+ cultural competency. According to officials, trainings cover a variety of topics, including sexual orientation, gender identity, and gender expression (SOGIE) terms and definitions, and using affirming and inclusive language.<sup>58</sup>

- State agency officials in Mississippi said that the frontline child welfare staff who conduct youth assessments are required to take training on LGBTQ+ youth; they also said that the training is available to all frontline staff. The training covers how to have supportive and affirming conversations with LGBTQ+ youth and how to ask youth about their identities.
- Local officials and private providers in Ohio and Kansas said that they provide a mix of required and elective training and coaching to their staff and foster parents that address LGBTQ+ youth, in addition to state training requirements.

### Recruiting and Establishing Connections to Supportive Adults

Recruiting foster parents who are supportive of a young person's SOGIE, including relatives when possible to serve as caregivers or to maintain family connections, is a helpful support according to literature we reviewed. Studies and HHS publications also discussed identifying LGBTQ+ caregivers for placements and helping youth maintain long-term, stable connections to supportive adults.<sup>59</sup> One study we reviewed stated that targeted recruitment of LGBT prospective parents can potentially expand the pool of foster and adoptive parents and improve the outcomes of LGBT youth in care by increasing the number of affirming placements available to these youth.<sup>60</sup> Another study proposed establishing a system to track affirming homes for LGBTQ youth and including statements about

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<sup>58</sup>In prior sections of this report, we generally used the acronym SOGI (sexual orientation and gender identity) where applicable to discuss states' protections and insights on data collection. In this section and sections that follow, we use the term SOGIE (sexual orientation, gender identity, and expression) where applicable when our discussions with selected states, stakeholders, and HHS officials also acknowledged gender expression.

<sup>59</sup>See Capacity Building Center for States. *Considerations for LGBTQ children and youth in foster care: Exploring normalcy as it relates to P.L. 113-83*, (Washington, D.C.: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, 2016) and Department of Health and Human Services, Administration for Children and Families, *Lesbian, Gay, Bisexual, Transgender, and Questioning Youth in Foster Care*, ACF Memorandum ACYF-CB-IM-11-03 (Washington, D.C.: 2011).

<sup>60</sup>Burwick et.al., *Human Services for Low-Income and At-Risk LGBT Populations: An Assessment of the Knowledge Base and Research Needs*, (2014).

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providing affirming care to the youth regardless of their SOGI in the forms that foster parents sign when they agree to accept a young person into their home.<sup>61</sup> HHS officials and an HHS publication we reviewed also stated that it is important to house LGBTQ+ youth where they feel safest and most affirmed, and to develop mechanisms to recruit families who can provide safe, loving placements for these youth.<sup>62</sup>

**Lesbian, Gay, Bisexual, Transgender, Queer, or Questioning (LGBTQ+) Youth Discussion Group Comments on Connections to Supportive Adults**

In a discussion group we held with LGBTQ+ youth with lived experience in foster care, a few participants reported positive experiences with supportive adults while in foster care. These included caregivers supporting youth attending LGBTQ+ Pride events, providing youth with resources to aid with gender transition, and helping youth find community members to connect to with similar identities, so that the youth felt less isolated.

Source: GAO analysis of a discussion group with 10 LGBTQ+ youth with lived experience in foster care. Information obtained from the discussion group is based on a non-representative sample and may not be generalizable to the experiences of all LGBTQ+ youth in foster care. | GAO-22-104688

Officials in three selected states discussed a variety of actions they take to identify safe and affirming homes for LGBTQ+ youth. Specifically, state agency officials in Colorado, New Jersey, and Ohio discussed conducting targeted foster parent recruitment through partnerships with organizations like LGBTQ+ community centers, or using home studies or training sessions to determine prospective foster parents' willingness to accept LGBTQ+ youth. Officials in New Jersey and Ohio also discussed matching youth with placements that meet their needs. For example, an official in New Jersey said that several years ago the state child welfare agency began recruiting foster parents who are affirming of LGBTQ+ youth and flagging those parents in their data system so LGBTQ+ youth could be placed with them. The official said the agency began this initiative after receiving feedback from their Youth Advisory Board that they needed to more actively identify prospective parents' willingness to care for LGBTQ+ youth, and anecdotally hearing stories about foster parents who were actively hostile to LGBTQ+ youth in their care. As of May 2021, officials said that in the past year they had licensed 120 new foster homes that indicated they would be accepting of LGBTQ+ youth.

Supporting Coordination and Service Referrals

Coordinating and advocating with and within schools, homeless shelters, health care systems, and other community agencies to ensure that youth have access to SOGIE-affirming supports is another promising practice,

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<sup>61</sup>Hannah Hussey, *LGBTQ Youth in the Massachusetts Child Welfare System: A Report on Pervasive Threats to Safety, Wellbeing, and Permanency* (Massachusetts Commission on Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Youth, 2021).

<sup>62</sup>Department of Health and Human Services, Administration for Children and Families, ACF Memorandum ACYF-CB-IM-11-03.

according to our literature review.<sup>63</sup> HHS publications we reviewed similarly suggested that it is important to help youth access LGBTQ+ community programs, if desired, as well as appropriate physical and mental health care, and education services that promote their development and self-esteem.<sup>64</sup> Studies we reviewed also discussed the importance of providing supportive services to transgender and non-binary youth, such as legal assistance with name changes, inclusive medical and mental health care, and safe transportation options. HHS officials also told us that ensuring transgender and non-binary youth's access to inclusive mental and medical health care and other supportive resources is a promising practice.<sup>65</sup>

Officials in four selected states discussed leveraging a variety of community resources to support LGBTQ+ youth, including mental health counseling, group therapy tailored to LGBTQ+ youth, or referrals to clinics that provide gender-affirming health care and safe sex resources.<sup>66</sup> For example, state agency officials in Kansas said they leverage the services and resources offered by a specialized clinic in Kansas City for LGBTQ+ youth, including mental health services and support groups for families

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<sup>63</sup>In 2021, we reported on students' experiences of hostile behaviors at schools nationwide and found that students experienced a range of hostile behaviors based on sexual orientation and gender identity, among other aspects of their identities. For example, of students who were bullied in school year 2018-19, about one in four experienced bullying related to their sexual orientation, or other identities such as their gender, race, national origin, religion, or disability. We also found that the estimated percentage of schools where students were sexually harassed or experienced harassment related to their sexual orientation or gender identity increased from school years 2015-16 to 2017-18. GAO- K-12 Education: *Students' Experiences with Bullying, Hate Speech, Hate Crimes, and Victimization in Schools*, GAO-22-104341 (Washington, D.C.: Nov. 24, 2021).

<sup>64</sup>See Child Welfare Information Gateway, *Supporting LGBTQ+ youth: A guide for foster parents* (Washington, D.C.: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, 2021) and Capacity Building Center for States, *Considerations for LGBTQ children and youth in foster care: Exploring normalcy as it relates to P.L. 113-83*.

<sup>65</sup>Inclusive medical care for transgender and non-binary youth can encompass various treatments, and decisions about the treatments provided to youth can involve a range of stakeholders, according to officials we spoke with in our selected states. For example, officials said that authorizing such treatments may involve consultation with medical professionals, state and local child welfare staff, birth parents (if they retain parental rights), and may require court approval in some instances.

<sup>66</sup>Gender-affirming health care refers to treatments typically for gender dysphoria for transgender and non-binary individuals. Treatments can include hormone therapy, puberty blockers, and surgery, among other treatments.

caring for LGBTQ+ youth. State agency officials in Colorado reported using a variety of community resources to serve LGBTQ+ youth, including peer support groups, organizations that help youth change their names and gender identifiers on official identification documents, and a transgender center that partnered with a health center to offer on-site evaluations for gender-affirming medical care.

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### Identified Practices for Supporting Youth’s Religious Beliefs Are Limited, Although Studies Suggest That Religion Can Be a Protective Factor for Foster Youth

There is little research available on supports for youth of various religious beliefs. However, studies we reviewed suggested that religion is important to consider and can be a protective factor for some youth in foster care.<sup>67</sup> The studies noted that religion can provide social support and coping mechanisms to some youth involved in child welfare systems, and may positively affect their well-being. In one study, researchers noted that to provide culturally sensitive casework, child welfare staff should understand a young person’s religion and support their religious beliefs, and identify foster parents’ religion-based expectations about parenting.<sup>68</sup>

A researcher we spoke with from one stakeholder group said that maintaining youth’s connections to their own religions while in foster care can help them stay connected to their community and benefit from the strengths of the religion. Another researcher from the same group reported that it can be helpful to identify homes for youth that match the religious affiliation of their birth parents. However, if such placements are not available then alternative plans could be helpful, such as visitation rights that allow biological parents the opportunity to continue the religious instruction of their child.

Officials in three selected states discussed efforts to find supportive homes and adults to support youth’s religious beliefs. For example:

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<sup>67</sup>Protective factors are conditions or attributes in individuals, families, communities, or the larger society that reduce the risk of negative outcomes, thereby increasing the well-being of children and families. Development Services Group, Inc., & Child Welfare Information Gateway, *Promoting protective factors for children and youth in foster care: A guide for practitioners* (Washington, D.C.: U.S. Department of Health and Human Services, Administration on Children, Youth and Families, Children’s Bureau, 2015).

<sup>68</sup>Jill Schreiber and Michael Culbertson, “Religious Socialization of Youth Involved in Child Welfare,” *Child Abuse & Neglect*, vol. 38 (2014), 1208–1220.



- Local agency officials in Ohio discussed efforts to conduct faith-based recruitment, including reaching out to a variety of different congregations to recruit more foster homes.
- State agency officials in New Jersey mentioned localized efforts to match youth with homes that support their religious beliefs. For example, officials said that child welfare workers in a county with high concentrations of Hasidic and Orthodox Jewish communities typically work with rabbis in those communities to find foster homes from the rabbis' congregations for youth who are in state custody.
- Local officials in Mississippi provided a few examples of their efforts to continue the religious traditions of youth in foster care, consistent with state policy in this area. For example, officials said that they include broad questions in the home study assessment to learn about prospective parents' spiritual beliefs and activities, and how their faith affects their approach to parenting foster children of different faiths.

Officials said that during this assessment, most families agree to accommodate youth of different faiths placed in their homes, such as by providing transportation so youth can attend their preferred religious services with an adult member of their congregation. Local officials in Mississippi also discussed steps they take to support youth's right to abstain from religious services. For example, officials said that if young people do not want to attend church services, their foster parents cannot make them attend and must have an alternative plan in place. Typically, the alternative plan involves allowing the youth to stay home with another family member while the family attends church.

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## Selected States Reported Challenges Providing Supports for LGBTQ+ Youth and Youth of Various Religious Beliefs, and HHS Guidance Does Not Address All Challenges

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Selected States and Stakeholders Reported Challenges Providing Supports for Youth's LGBTQ+ Identities and

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## Religious Beliefs, and Said More Federal Resources Are Needed

Selected states and stakeholders we spoke with reported several challenges related to supporting LGBTQ+ youth in foster care. These include: (1) collecting data on the youth's sexual orientation and gender identity, (2) providing supportive placements and health care for transgender youth, (3) providing comprehensive services and resources to LGBTQ+ youth, and (4) addressing discomfort in working with LGBTQ+ youth among child welfare staff and caregivers. Selected state officials and stakeholders also reported challenges supporting youth's religious beliefs, such as limited religious diversity among foster families. In addition, these officials said that more guidance and resources are needed to better support LGBTQ+ youth and youth of various religious beliefs.

### Challenges Supporting LGBTQ+ Youth in Foster Care

#### **Collecting data on youth's sexual orientation and gender identity.**

Officials in selected states and stakeholder groups reported that data on LGBTQ+ youth are limited. For instance, while officials from three of the selected states discussed some efforts to identify LGBTQ+ youth in foster care, no officials in the five selected states said that they collect statewide data on youth's SOGI.<sup>69</sup> Officials in Colorado, New Jersey, and Ohio reported that they previously added voluntary fields to their state child welfare information systems to collect data on youth's sexual orientation when HHS issued a final rule in 2016 to add these fields to AFCARS in the future. However, officials in these three states said that they do not require sexual orientation data to be collected since HHS eliminated this requirement in 2020 before it became effective. Officials in Colorado and Ohio said collecting these data statewide is difficult, in part, because there is no federal requirement to do so.

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<sup>69</sup>On our survey, nine states reported that they collect data on youth's sexual orientation and nine reported that they collect data on youth's gender identity. States' responses to our survey did not indicate whether they required data on youth's sexual orientation or gender identity to be reported, or whether the information they collected on these characteristics resulted in reportable data.

**Lesbian, Gay, Bisexual, Transgender, and Queer or Questioning (LGBTQ+) Foster Youth Discussion Group Comments on Sharing Sexual Orientation Information**

In a discussion group we held with LGBTQ+ youth with lived experience in foster care, participants said that in some instances, information about their sexual orientation and gender identity was shared without their approval. For example:

- One participant said that his caseworker “outed” him as gay to his foster mother. He said when his foster mother learned about his sexual orientation, she told him to leave her home.
- Another participant said that his foster mother discovered he was transgender and bisexual after reading his journal. He said his foster mother shared this information with his school guidance counselor, who told others at the school without his permission.

Source: GAO discussion group with 10 LGBTQ+ youth with lived experience in foster care. Information obtained from the discussion group is based on a non-representative sample and may not be generalizable to the experiences of all LGBTQ+ youth in foster care. | GAO-22-104688

Officials in Colorado and Ohio also said that understanding how to safely and accurately collect and use SOGI data can be challenging. For example, Colorado state agency officials said that it can be complicated to ask youth about their gender identity in a manner that is not intimidating, and that local officials in some jurisdictions may not understand the appropriate terminology to use, or the rationale for collecting SOGI data.

Officials also noted concerns about keeping data safe so that information on sexual orientation is not revealed without youth’s consent. We heard similar concerns in our discussion group about keeping SOGI information safe (see sidebar). Still, officials from one stakeholder group noted that without SOGI data, it is difficult to assess states’ protections and supports for LGBTQ+ youth. Officials from another stakeholder group, which represents state and local public child welfare agencies, said that its members are having ongoing conversations about collecting more data on youth’s SOGI. Officials said that the group’s members want more information on how to ask youth the right questions, use current terminology, and collect SOGI data appropriately. Additionally, state agency officials from Colorado and New Jersey said they may continue to collect SOGI data moving forward, and would like more federal guidance to ensure that they collect the data appropriately.

**Providing supportive placements and health care for transgender youth.** Officials in three selected states said that they do not have consistent, statewide policies and practices guiding the placement of transgender youth in residential facilities. Substance Abuse and Mental Health Services Administration (SAMHSA) officials told us that residential facility staff should speak with transgender and non-binary youth to find out where they feel most comfortable being housed, and that it is important that housing assignments for youth are not mandated by their sex assigned at birth.

State agency officials in Kansas and local officials and private providers in Ohio and Mississippi said that some gender-segregated residential facilities may place youth by their sex assigned at birth, rather than their gender identity. A private provider in Mississippi said that determining where to place transgender youth in gender-segregated residential

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facilities is difficult, due in part to concerns about the safety and comfort of both cisgender and transgender youth.<sup>70</sup>

A stakeholder group we spoke with said that the safety of transgender youth is especially important to consider, and noted instances of transgender girls being in substantial danger when placed with boys in residential facilities with limited staff supervision and training. Kansas state officials said that some residential facilities are not comfortable accepting transgender youth, and that they do not force facilities to accept these youth due to concerns about how the youth will be treated.

Officials in Kansas also said that finding affirming placements for transgender youth can be a life or death issue, since the mental health of transgender youth may suffer if they are not in affirming homes. Further, research has found high rates of thinking about or planning suicide among transgender youth. State agency officials in New Jersey told us that transgender youth in their state are housed according to their gender identity.

Officials in four selected states discussed challenges providing health care for transgender youth. At the same time, some states are currently debating the appropriateness of certain health care services for transgender youth. For example:

- In Kansas, one private provider said that determining how to support transgender youth interested in medical options for transitioning would cause confusion among their staff, and that staff are afraid to request these types of services for youth. Another private provider said that they have been able to obtain gender-affirming health care for youth in some instances, but the ability to obtain these services depends on various circumstances. For example, the opinion of the judge involved in the youth's child welfare case can determine access to these services, according to another private provider.
- Local officials in Mississippi discussed an instance where a young person in care requested hormone therapy and gender-affirming surgery, but officials refused the request because they view such

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<sup>70</sup>Cisgender refers to an individual whose sense of personal identity and gender corresponds with their sex assigned at birth.

treatments as outside of the scope of medical services that they authorize.<sup>71</sup>

- Officials in our selected states said that decisions about medical treatment for transgender youth can involve consultation with medical professionals, state and local child welfare staff, birth parents (if they retain parental rights), and may require court approval in some instances. State agency officials in New Jersey said that obtaining biological parents' consent is the biggest challenge when transgender youth under the age of 18 want to medically transition. When parents refuse consent, these cases may go through litigation, according to state agency officials.
- Several states have taken action to prohibit certain medical services for transgender youth due to concerns about the appropriateness of such services, among other factors. As of March 2022, there is ongoing litigation related to this issue.

Increasing understanding among child welfare staff and foster caregivers about ways to support transgender youth and establishing more thoughtful protocols for serving these youth would be helpful, according to two stakeholder groups that we interviewed. Further, state agency officials in Ohio and Colorado said that they have received questions from local officials and private providers on how to best serve transgender youth and youth with diverse gender identities. Officials in Ohio noted that they previously reached out to the HHS Administration for Children and Families (ACF) for guidance in this area. ACF referred the state agency officials to a few other states for assistance, which officials said they found helpful.

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<sup>71</sup>According to the Congressional Research Service, the majority of youth in foster care are eligible for Medicaid, a program funded jointly by federal and state governments to provide health care coverage to low-income individuals who meet the program's eligibility criteria. Gender-affirming care is not expressly included in the definition of medical assistance required under federal statute for Medicaid programs. According to a report by the Williams Institute, some states have chosen to include coverage for gender-affirming care under their Medicaid programs, while other states exclude such care or have not explicitly addressed whether their programs cover gender-affirming medical services. See C. Mallory, and W. Tentindo, *Medicaid Coverage for Gender-Affirming Care* (Los Angeles, CA: The Williams Institute, UCLA School of Law, 2019).

### Lesbian, Gay, Bisexual, Transgender, and Queer or Questioning (LGBTQ+) Foster Youth Discussion Group Comments on Other Aspects of Identity

In a discussion group we held with LGBTQ+ youth with lived experience in foster care, participants said their experiences in foster care were affected by both their SOGIE and other aspects of their identity, such as their race or ethnicity. For example:

- A genderqueer and Black participant said that their community was affirming of their sexual orientation, but their foster parents made racist comments and were transphobic. As a result, they said they did not feel fully supported, and felt that they could not fully explore their identity.
- Another participant said that he immigrated to the U.S. as a child. After coming out as transgender, he said he has faced barriers updating his permanent resident card to reflect his name. Additionally, he is Hispanic and said that he experienced some backlash to his SOGIE from staff in his placements that shared his ethnic and religious background.

Source: GAO discussion group with 10 LGBTQ+ youth with lived experience in foster care. Information obtained from the discussion group is based on a non-representative sample and may not be generalizable to the experiences of all LGBTQ+ youth in foster care. | GAO-22-104688

### Providing comprehensive services and resources to LGBTQ+ youth.

Over half (35) of states we surveyed reported offering programs, services, or other resources to support youth in foster care based on their SOGI. However, in four selected states, officials said that the extent of resources for LGBTQ+ youth varies substantially by county, with urban areas typically having more options available. For example, in Mississippi, state agency officials said that many parts of the state lack resources, and that they have had to place LGBTQ+ youth out of state to access the services they need. Officials said that rural counties in particular may be a few hours away from LGBTQ+ centers and other resources. State officials told us that additional federal guidance and resources would help them address these resource challenges. For example, state agency officials in Kansas and Mississippi suggested that “cheat sheets” on best practices or comprehensive lists of resources and services that child welfare workers could refer to would be useful.

### Addressing discomfort in working with LGBTQ+ youth among child welfare staff and caregivers.

While all five of our selected states had some nondiscrimination protections in place for LGBTQ+ youth, officials in four of these states noted that some foster parents and staff are not comfortable working with LGBTQ+ youth. Local officials in Mississippi said that some foster families and child welfare staff in residential facilities are not accepting of LGBTQ+ identities. State agency officials in Mississippi also said that more coaching is needed to shift the culture in the state to provide a more affirming environment to LGBTQ+ youth in foster care. Additionally, officials from a private provider in Ohio said that they frequently experience county child welfare agencies exhibiting non-affirming behavior, such as refusing to provide funding for clothing or undergarments that correspond to youth’s gender identity. Officials in four selected states said that youth can raise any concerns related to mistreatment based on their SOGIE, and that caseworker visits with youth can help identify any concerns. However, officials from one stakeholder group we spoke with and officials in Kansas said that youth may be less likely to report mistreatment due, in part, to concerns about their safety and where they may be placed if they raise issues. Our discussion group with LGBTQ+ youth with experience in foster care similarly raised some concerns about mistreatment by caregivers and caseworkers based on their SOGIE, reluctance to report mistreatment, and other adverse experiences (see textbox). These youth suggested that there should be better, ongoing training for child welfare staff and foster caregivers to address these issues.

**Lesbian, Gay, Bisexual, Transgender, Queer, or Questioning (LGBTQ+) Foster Youth Discussion Group Comments on Challenges Experienced in Foster Care**

In a discussion group we held with LGBTQ+ youth with lived experience in foster care, participants provided insights on a few areas where they faced challenges. For example:

- **Disclosing sexual orientation and gender identity.** Participants said their caseworkers did not proactively ask about their SOGIE. Participants who chose to share this information with their caseworker or another adult involved in their care said they faced negative consequences, including termination of placements and being “outed” to others against their wishes.
- **Experiencing mistreatment from foster caregivers.** When asked about negative experiences in foster care placements, the majority of participants said they experienced mistreatment due to their SOGIE. For example, some participants said they received more supervision due to their SOGIE, were isolated from other youth in their homes, received insulting comments from caregivers, and were encouraged to attend conversion therapy—that is, the practice of attempting to change a person’s SOGIE.
- **Reporting mistreatment.** Participants said that they had negative experiences when they shared information with their caseworkers about mistreatment from foster caregivers due to their SOGIE. Some participants noted that their concerns were not believed or taken seriously.
- **Effects on mental health.** Multiple participants said that negative experiences related to their SOGIE in foster care had serious negative effects on their mental health, including trauma. One participant said he had attempted suicide multiple times as a result of these experiences.

Source: GAO analysis of a discussion group with 10 LGBTQ+ youth with lived experience in foster care. Information obtained from the discussion groups is based on a non-representative samples and may not be generalizable to the experiences of all LGBTQ+ youth in foster care. | GAO-22-104688

Officials from selected states and one stakeholder group we spoke with discussed challenges balancing the rights of LGBTQ+ youth and the rights of foster families. For example, state agency officials in Colorado said that if prospective families say they cannot support LGBTQ+ youth because of their religion, they cannot discriminate against those families on the basis of their spiritual or religious beliefs. Officials from Colorado said that one county in the state does not allow families to foster any youth if they cannot be supportive of LGBTQ+ youth. In contrast, officials said some counties in the state address this challenge by not placing LGBTQ+ youth with non-LGBTQ+ affirming families. However, officials stated that it may not be possible to know if a young person will identify as LGBTQ+ at the time of placement, and expressed concerns about appropriately balancing foster parents’ beliefs and LGBTQ+ acceptance. State agency officials in Mississippi and Kansas said more resources to educate child welfare staff and foster caregivers would be helpful.

Challenges Supporting Religious Beliefs among Youth in Foster Care

Officials in all five selected states said that they do not have specific practices or services for supporting the religious beliefs of youth in foster care, other than making accommodations so that youth can participate in religious activities of their choice, or abstain from religious practice if preferred. For example, state and local agency officials said child welfare staff take actions to provide foster families with information on a youth’s religious background, and may make arrangements for youth to attend

religious services with local community members if the youth practice different religions than their foster families.

However, officials in three states said that they predominantly partner with Christian faith-based organizations to recruit foster families, and have few or no partnerships with non-Christian faith-based organizations, which may limit the religious diversity of the families they recruit. As a result, there may be limited options for placing children who are religious minorities or those who abstain from practicing a religion with a family who has shared beliefs. State agency officials in Ohio said they have previously received and addressed reports that youth in foster care may not have been given the opportunity to attend religious services of their choice.

Officials from three stakeholder groups we spoke with also raised concerns about the religious rights of youth in foster care. For example, a representative from one group said that youth in foster care often do not have freedom to choose their religious practice, or to raise concerns about being forced to attend church, as the child welfare system generally prioritizes ensuring youth have somewhere to live over youth's religious beliefs. A representative from another group said that there are tensions between the religious rights of foster youth, their biological parents, and their foster parents. The representative said that conducting spiritual assessments to facilitate matching and clarify the expectations of all parties would be helpful, but such assessments are not often conducted because child welfare workers are overwhelmed with other duties.

One study we reviewed similarly suggested that child welfare staff should do more to understand youth's religious preferences.<sup>72</sup> New Jersey officials said that federal guidance on balancing the autonomy of youth, foster parents, and biological parents on issues related to religion would be helpful. Additionally, in our discussion group with youth of various religious beliefs with experience in foster care, participants raised similar issues about child welfare workers' awareness of youth's religious beliefs, and youth's participation in religious activities (see textbox). These youth suggested that there should be better education and federal guidance for foster caregivers on supporting youth's religious beliefs.

<b>Foster Youth Discussion Group Comments on Religious Experiences in Foster Care</b>
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<sup>72</sup>See Jill Schreiber and Michael Culbertson, *Religious Socialization of Youth Involved in Child Welfare*.



In a discussion group we held with youth with various religious beliefs with lived experience in foster care, participants provided insights on two areas where youth in foster care face challenges related to religion. Challenges included:

- **Sharing information on religious beliefs.** Some participants said they did not feel comfortable practicing their religious beliefs because they wanted to be accepted by their caregivers and felt there was an expectation to follow their caregivers' religious practices. Most participants said their caseworker did not proactively ask about their religious affiliation or preferences, and that they did not raise issues related to religion with their caseworkers.
- **Participating in religious activities.** Several participants said their religious faith helped them through challenging experiences in foster care. However, some participants said that they felt forced to engage in religious activities with their foster families, and one participant said that even when placed with foster families that shared her religious affiliation, she felt constrained because of the families' expectations about spiritual activities and customs that should be observed. Some participants said that opportunities to freely learn about and explore their religious beliefs would have been helpful. Participants suggested that foster caregivers should be educated about addressing boundaries around religion, and not forcing their own religious beliefs and practices on youth in their care.

Source: GAO analysis of a discussion group with five youth of various religious beliefs with lived experience in foster care. Information obtained from the discussion group is based on a non-representative sample and may not be generalizable to the experiences of youth of all religious backgrounds in foster care. | GAO-22-104688

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## HHS Disseminates Information on LGBTQ+ Youth, but Guidance Does Not Address All Key Challenges Involving These Youth, and is Lacking on Supporting Youth's Religious Beliefs

### Resources on LGBTQ+ Youth

HHS officials told us that the agency assists states in supporting LGBTQ+ youth in foster care by funding and conducting research, and providing guidance and technical assistance, among other activities (see figure 2 and appendix IV for examples).<sup>73</sup> For example, in April 2011, HHS issued an Information Memorandum to states on LGBTQ youth in foster care. The memorandum was intended to encourage child welfare agencies, foster and adoptive parents, and other stakeholders to ensure that LGBTQ youth are supported, and discussed topics like training staff to serve LGBTQ youth, and placing youth with supportive foster families. HHS subsequently issued a new memorandum in March 2022 to provide information to child welfare agencies on Title IV-B and Title IV-E provisions that can guide their work and case planning for LGBTQI+

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<sup>73</sup>ACF officials said that they use multiple funding sources to assist states in supporting LGBTQ+ youth. ACF officials reported that the agency's demonstration projects on this topic are funded under Title IV-B of the Social Security Act. They said that ACF's technical assistance projects are funded through a variety of sources, including the Child Abuse Prevention and Treatment Act, and Titles IV-E and IV-B of the Social Security Act. Officials also noted that assisting states in supporting LGBTQ+ youth is only one potential use of each of these funding streams, and there is no authorizing language specifically directing any of these funding streams to be used for this purpose.

youth.<sup>74</sup> The 2022 memorandum addressed some challenges facing these youth. For example, it urged child welfare agencies to consider youth’s SOGIE to ensure that youth have access to developmentally appropriate activities, such as SOGIE-based affinity groups within their schools.

**Figure 2: Examples of Administration for Children and Families Publications Related to Working with Lesbian, Gay, Bisexual, Transgender, and Queer or Questioning (LGBTQ+) Youth and Families**



- Provides foster parents with resources for learning about basic terms and definitions familiar to the LGBTQ+ community.
- Discusses research on LGBTQ+ youth in the child welfare system.
- Suggests tips for creating affirming homes for youth, such as using gender-neutral language when asking youth about their relationships.
- Provides states and territories with links to knowledge- and skill-building resources, including sample training curricula and tip sheets.
- Refers to “best practice” resources for supporting LGBTQ youth and families, including resources related to promoting normalcy, health and well-being, and creating safe and affirming educational environments.
- Presents statistics and other information on LGBTQ youth victimization, mental health challenges, and their disproportionate representation in the child welfare system.
- Provides examples of harmful practices and healthy approaches for working with LGBTQ youth. For example, the fact sheet states that it is harmful when child welfare systems do not help LGBTQ youth find resources related to transitioning.

Source: GAO review of U.S. Department of Health and Human Services (HHS) documentation. | GAO-22-104688

ACF and SAMHSA officials also discussed forthcoming actions that may further assist states’ efforts to provide supportive care to LGBTQ+ foster

<sup>74</sup>Department of Health and Human Services, Administration for Children and Families, ACF Information Memorandum ACYF-CB-IM-11-03 (Washington, D.C.: 2011) and Department of Health and Human Services, Administration for Children and Families, ACF Information Memorandum ACYF-CB-IM-22-01 (Washington, D.C.: 2022). As previously stated in this report, we use variations on the LGBTQ+ acronym, such as LGBTQ or LGBTQI+, when they were used in specific research or agency programs or policies we discuss. The “I” in the acronym used in ACF’s 2022 memorandum stands for intersex.

youth, and may address some of the challenges identified by states and stakeholders in serving this population. These include:

- **Research dissemination.** ACF officials said that the National Quality Improvement Center on Tailored Services, Placement Stability, and Permanency for Lesbian, Gay, Bisexual, Transgender, Questioning, and Two-Spirit Children and Youth in Foster Care (QIC), which is funded through an ACF grant, is planning to issue a series of reports on its research efforts after the end of the project cycle, in September 2022.<sup>75</sup> ACF is planning to distribute the QIC’s forthcoming reports to child welfare agencies through peer groups, a quarterly newsletter on Children’s Bureau grant programs, and various listservs.
- **Funding.** HHS reported that the Children’s Bureau will highlight the needs of LGBTQI+ youth in announcements for funding opportunities that support youth in or transitioning from foster care. HHS stated that where applicable, the Children’s Bureau will ask jurisdictions to report available data and information about how the child welfare services they provide are responsive to the needs of LGBTQI+ youth.
- **Training.** SAMHSA officials said that the SAMHSA-funded Center of Excellence on LGBTQ+ Behavioral Health Equity, which provides training and technical assistance opportunities to behavioral health practitioners on supporting LGBTQ+ people, is developing a series of modules on best practices for meeting the needs of that population. As of December 2021, the modules were publicly available through the National Center on Youth with Diverse Sexual Orientation, Gender Identity, and Gender Expression.<sup>76</sup>
- **Information.** HHS reported that SAMHSA is updating a 2015 publication it issued on ending conversion therapy and supporting and affirming LGBTQ youth to reflect more recent research. According to

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<sup>75</sup>For example, see Marlene Matarese, PhD, et. al., *The Cuyahoga Youth Count*. This study is one of the QIC’s first publications on its research efforts.

<sup>76</sup>The National Center on Youth with Diverse Sexual Orientation, Gender Identity, and Gender Expression (National SOGIE Center) is an initiative of the University of Maryland School of Social Work’s Institute for Innovation & Implementation that launched in fall 2021. According to its website, the National SOGIE Center intends to provide a centralized site for accessing resources (e.g., training, technical assistance, research, best practice guidelines, etc.) on providing supportive care to LGBTQ+ youth and their families across systems, including child welfare, juvenile justice, mental health, housing, and homelessness. In addition to offering training resources through the National SOGIE Center, SAMHSA maintains the National Suicide Prevention Lifeline—(800) 273-8255. The Lifeline is a network of over 150 crisis centers nationwide that offer free, confidential support from trained counselors for individuals in crisis.

officials, updates will include information on health inequities among LGBTQI+ communities, as well as recommended therapeutic interventions and supports for sexual and gender minority youth, their families, and communities.<sup>77</sup>

HHS officials also said that the agency is exploring other actions related to LGBTQ+ youth. For example, officials said that HHS is in the process of implementing two executive orders related to this issue. First, Executive Order No. 13988 on “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,” which directs agencies to among other things, consider actions they should take to prevent and combat discrimination on the basis of SOGI.<sup>78</sup> Second, Executive Order No. 13985 on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” which directs agencies to advance equity in access to benefits and opportunities under selected federal programs for underserved communities, including LGBTQ+ individuals.<sup>79</sup>

### Limitations of HHS Resources on LGBTQ+ Youth

HHS has resources with information on providing supportive care to LGBTQ+ youth in foster care; however, some HHS resources do not fully address key challenges identified by selected states and stakeholder groups. Specifically, ACF’s 2011 and 2022 memorandums provide limited information about collecting data on youth’s sexual orientation or gender identity. The 2011 memorandum does not address this topic, while the 2022 memorandum states that child welfare agencies should consider whether their data can inform services for LGBTQI+ youth. However, the 2022 memorandum does not discuss specific strategies agencies can use to address the challenges selected states and stakeholders identified related to collecting data on these youth. A stakeholder group that represents public child welfare administrators also told us that formal

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<sup>77</sup>Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth*, HHS Publication No. (SMA) 15-4928 (Rockville, MD: October 2015).

<sup>78</sup>Executive Order No. 13988 also directs agencies to review all policies that implement federal laws that prohibit sex discrimination, such as Title IX, and consider actions to extend the enforcement of these laws to SOGI.

<sup>79</sup>As of December 2021, HHS’s action plans for addressing both executive orders were under review, and therefore, had not been publicly released, according to HHS officials.

communication from HHS that clarifies their intentions for issues like collecting data on youth's SOGI would be helpful.

In addition, while the two memorandums encourage agencies to place youth in settings that support and affirm their sexual orientation and gender identity, neither memorandum offers specific, actionable guidance on how youth's gender identity should inform placement decisions. Both of these issues were raised by selected states and stakeholder groups, and identified as promising practices by HHS officials and studies we reviewed.<sup>80</sup>

The 2011 and 2022 memorandums did address other key challenges raised by selected states and stakeholder groups. For example, the 2022 memorandum states that agencies should consider how to provide services and supports that are tailored to youth's needs, including those related to their SOGIE, and states that providing gender-affirming medical care is in the best interest of youth who need it.<sup>81</sup> Additionally, both the 2011 and 2022 memorandums discuss training staff to better support LGBTQ+ youth, which is also a promising practice. Further, the 2022 memorandum states that child welfare agencies can use Title IV-E funds for trainings for agency staff and foster and adoptive parents to address bias against LGBTQI+ youth.

Although ACF has taken these recent actions, agency officials told us prior to the release of the 2022 memorandum that additional strategic efforts are needed to help child welfare staff and foster parents develop more comfort providing supportive care to LGBTQ+ youth. ACF officials also reported plans to provide additional resources (e.g., research publications, e-newsletters, etc.) on supporting LGBTQ+ youth in foster

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<sup>80</sup>As previously mentioned, SAMHSA officials told us that it is important to speak with transgender and non-binary youth to find out where they feel most comfortable being housed, and that housing assignments for youth should not be mandated by their sex assigned at birth.

<sup>81</sup>In March 2022, the Secretary of HHS released a statement confirming HHS's commitment to ensuring transgender youth's access to gender-affirming care, and highlighting ACF's 2022 Information Memorandum. The statement also introduced an OCR notice that discusses OCR's commitment to ensuring transgender youth's access to health care services, when medically appropriate and necessary, as well as federal civil rights protections and health privacy laws that apply to gender-affirming care. The Secretary's statement noted that the release of the memorandum and OCR notice, among other planned agency actions, are intended to support LGBTQI+ youth. Additionally, these actions are intended to remind states of the federal protections that exist for transgender youth.

care through ACF's ongoing outreach methods, such as its Child Welfare Information Gateway webpage. It remains unclear whether these resources will provide information to states to address the challenges raised by selected states and stakeholder groups related to data collection and placement decisions.<sup>82</sup>

In addition to the two recent executive orders directing federal agencies to address equity issues related to LGBTQ+ individuals, HHS's fiscal year 2018-2022 strategic plan states the importance of supporting the well-being of youth in foster care.<sup>83</sup> Specifically, the plan states that the department's strategies for supporting the healthy development of adolescents and young adults include supporting efforts to ensure the well-being of youth in foster care.

Taking additional actions to ensure the well-being of LGBTQ+ youth in foster care is consistent with the aims of the executive orders and HHS's strategic plan. In the absence of targeted communication from HHS that addresses emerging challenges like data collection and providing placements for transgender youth, states may not have sufficient information to identify and provide affirming care to these youth. Further, without affirming care, research has shown that LGBTQ+ youth are at greater risk of experiencing placement disruptions, trauma while in care, increased length of time in care, and a lower likelihood of achieving permanency, all of which could be harmful to their well-being.

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<sup>82</sup>As previously mentioned, HHS officials also commented that they are continuing to review and finalize the agency's action plans to implement the two relevant executive orders, which may address services and supports for LGBTQ+ youth. According to HHS, they do not expect to release their action plan for the order on preventing and combating SOGI discrimination, but their action plan for the order on advancing racial equity and support for underserved communities will be released in spring 2022. HHS officials also said that they began a project in January 2022 to plan for potential future data collection on the SOGI of youth in foster care and foster and adoptive parents. Officials said the project will result in a findings memo for HHS, and will generate options for ACF to consider on how it can support states in implementing collection of SOGI data in their child welfare administrative data systems. The project is expected to be completed in September 2022.

<sup>83</sup>Federal internal control standards also call for entities to externally communicate necessary quality information to achieve the entity's objectives. See GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

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Resources on Youths' Religious Beliefs and Limitations of HHS Resources

ACF officials said they have provided some limited information to states related to youth's religious beliefs. However, officials said they have not provided any research, guidance, technical assistance, or other information specifically targeted to supporting the religious beliefs of youth in foster care. Officials said that an ACF resource guide on promoting normalcy for children provides some general guidance for facilitating dialogue on essential topics such as religious expression.<sup>84</sup> ACF also collected some information related to youths' religious beliefs through the National Survey of Child and Adolescent Wellbeing (NSCAW), a nationally representative longitudinal survey of children and families who have been the subjects of investigation by Child Protective Services. Specifically, NSCAW included questions about whether youth attended religious services with their caregivers and the frequency of their attendance. ACF officials stated that this information is collected, in part because religious attendance and other factors related to religiosity have been considered protective factors, and research has found that these factors are associated with improved outcomes in children, youth, and caregivers.

ACF officials said they do not provide technical assistance or guidance to states on practices for supporting the religious beliefs of youth in foster care because such assistance is based on states' and localities' needs and requests. However, ACF officials also said they have identified challenges in this area, particularly with states' foster family recruitment efforts. Specifically, the officials said that many states rely heavily on partnerships with predominately Christian faith-based organizations to recruit foster families, which may limit the recruitment of a diverse array of foster parents. For example, officials said potential foster parents may perceive that they will not be welcomed if they are not Christian. ACF officials also said that several states face challenges because staff recruiting foster families may not reflect the diversity of the communities in which they are conducting outreach. This could limit their ability to develop relationships and conduct outreach to potential foster families with diverse religious affiliations. For example, state agency officials in Colorado told us that it has been challenging to identify and partner with

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<sup>84</sup>Department of Health and Human Services, Capacity Building Center for States, *Having the Normalcy Conversation: A Guide for Discussing Developmentally Appropriate Services for Children, Youth, and Young Adults in Foster Care* (Washington, D.C.: 2016).

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Jewish and Muslim faith groups to recruit foster families, in part because most of their recruitment staff are not affiliated with these faiths.

Given that HHS has not taken steps to provide states with information on providing supportive care to youth of various religious beliefs and did not specify any plans to offer such assistance, the agency may not be positioned to help states support the spiritual and religious beliefs and practices of youth in foster care. The executive order on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” directs executive agencies to take steps to advance equity in accessing benefits and opportunities under selected federal programs for underserved communities, including religious minorities. HHS’s strategic plan also states that the department’s strategies for supporting the well-being of youth include helping youth establish and maintain healthy connections with peers and caring adults through evidence-based or evidence-informed programs, including programs provided by faith-based and community organizations.

Additionally, federal internal control standards state that agencies should externally communicate necessary quality information to achieve an agency’s objectives.<sup>85</sup> Without further information from HHS on ways to provide supportive care to youth of various religious beliefs, states may not be fully equipped to promote the well-being of youth in foster care.

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## Conclusions

Research suggests that LGBTQ+ youth are both overrepresented in the child welfare system and are at risk for a variety of adverse experiences while in the system, which can lead to poor outcomes when they transition out of foster care. We found that a majority of states have nondiscrimination requirements of some kind in place to protect these youth, but these requirements may not always prevent mistreatment from occurring.

While there are currently few evidence-based practices for effectively supporting these youth, research studies, stakeholders, and HHS and state officials have identified promising practices related to collecting data, providing training, and coordinating services, among other areas. However, officials in the states we interviewed also reported challenges

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<sup>85</sup>GAO, *Standards for Internal Control in the Federal Government*.



with ensuring LGBTQ+ youth receive support while in foster care. HHS has funded research and the development of various resources for child welfare and other agencies on providing supportive care for these youth, but these resources offer limited guidance on the challenges identified by states related to collecting data on LGBTQ+ youth and providing gender-affirming placements for transgender youth. Further, based on the views of some state officials we interviewed, more information on promising practices for supporting LGBTQ+ youth would be helpful. Given the ongoing risks to the well-being of LGBTQ+ youth in foster care and the complexity and variety of issues that must be considered in ensuring that the needs of LGBTQ+ youth are appropriately met, clear communication from HHS to help states increase their capacity to effectively care for this population is essential.

Religious practice can play a protective role for youth in the foster care system. At the same time, foster parents, biological parents, and youth themselves may have different religious beliefs, and child welfare agencies must balance their respective religious rights. However, HHS has provided child welfare agencies with minimal information on ensuring that youth remain connected to their religious faith while in foster care, or are allowed to abstain from religious practice if that is their choice. This area is another opportunity for HHS to help states better promote the well-being of youth in foster care—a stated priority for the agency.

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## Recommendations for Executive Action

We are making the following two recommendations to ACF:

The Assistant Secretary for ACF should provide additional information to state child welfare agencies on addressing challenges related to data collection for LGBTQ+ foster youth, and how youth's gender identity should inform placement decisions. (Recommendation 1)

The Assistant Secretary for ACF should develop, identify, and disseminate information to state child welfare agencies on ways to support youth of various religious beliefs in foster care. (Recommendation 2)

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## Agency Comments and our Evaluation

We provided a draft of this report to HHS for review and comment. In its letter, which is reproduced in appendix V, HHS concurred with the report's recommendations and identified actions the agency is taking to implement them. HHS also provided technical comments, which we incorporated as appropriate.

In a draft report we sent to HHS in February 2022, our first recommendation stated that ACF should provide additional information to address a range of issues related to serving LGBTQ+ youth in foster care. In March 2022, HHS released its memorandum on LGBTQI+ youth, OCR's notice on gender-affirming care, and the Secretary's statement on supporting LGBTQI+ youth. In response to the first recommendation in our draft report, HHS stated that it planned to provide additional information on key issues related to serving LGBTQ+ youth in its new Information Memorandum. After reviewing the memorandum, OCR notice, and Secretary's statement, we subsequently revised our recommendation to focus on the two key issues related to serving LGBTQ+ youth that were not fully addressed by HHS's recent actions—challenges collecting data on these youth, and ensuring gender-affirming placements. As HHS continues to take actions to support LGBTQ+ youth, it is also important that HHS provide states with information on these challenging areas. Taking these steps would help HHS increase states' capacity to provide supportive care for this population.

In response to our second recommendation, HHS stated that ACF's Child Welfare Capacity Building Center for States provides assistance to states and jurisdictions on supporting youth of various religious beliefs in foster care, typically upon request. For example, the Capacity Building Center can identify existing resources on ways to support youth of various religious beliefs, and disseminate these resources through its webpage and email listservs, among other methods. HHS also stated that it collects data on youth's religious attendance through the National Survey of Child Adolescent Well-being, and that it will continue to disseminate research findings from studies that use its survey data. As HHS implements our recommendation, we maintain it is also important for the Department to proactively provide information to states on ways to support youth of various religious beliefs, in addition to providing assistance upon request. Providing such information would help HHS assist states in better promoting the well-being of all youth in foster care.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to relevant congressional committees, the Secretary of Health and Human Services, and other interested parties. In addition, this report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or [larink@gao.gov](mailto:larink@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VI.

Sincerely yours,

A handwritten signature in black ink that reads "Kathryn A. Larin". The signature is written in a cursive, flowing style.

Kathryn A. Larin, Director  
Education, Workforce, and Income Security Issues

## Appendix I: Scope and Methodology

This report examines: (1) information on state protections against discrimination on the basis of sexual orientation, gender identity, and religion for youth in foster care and prospective foster parents; (2) promising practices for providing supportive care to lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ+) youth and youth of various religious beliefs in foster care; and (3) challenges selected states reported facing in supporting LGBTQ+ identities and religious beliefs among foster youth, and how the Department of Health and Human Services (HHS) assists states in supporting these youth.

We used several approaches to address these objectives, including surveying state child welfare directors and interviewing officials and reviewing documentation in five selected states. In addition, we reviewed literature on promising practices, interviewed stakeholder groups, and conducted discussion groups with young people who have experienced foster care. We also interviewed officials and reviewed documentation from several HHS offices: the Children’s Bureau; the Office of Planning, Research and Evaluation; the Substance Abuse and Mental Health Services Administration; the Office for Civil Rights; and the Office of the Assistant Secretary for Planning and Evaluation. Finally, we reviewed relevant federal laws and regulations.

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### State Survey and Corroboration

To address our first objective, we conducted a survey of child welfare directors in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The survey was conducted between December 2020 and February 2021. We received 52 responses to our survey for a response rate of 98 percent.<sup>1</sup> On this survey, we asked whether the state prohibits discrimination—by child welfare agencies or other agencies that place foster children—against children and youth in foster care or

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<sup>1</sup>We received responses from all states and territories except Oklahoma. During the time period we distributed the survey, Oklahoma officials said they were unable to respond due to competing priorities.

prospective foster and adoptive parents on the basis of each of our categories of interest.<sup>2</sup> We also asked states whether they had any programs, services, or resources in place to specifically support children and youth in foster care based on their religion, sexual orientation, or gender identity, and whether they collect data on these characteristics for youth in foster care or prospective foster and adoptive parents.<sup>3</sup>

The practical difficulties of conducting a survey may introduce errors, commonly referred to as nonsampling errors. For example, difficulties in interpreting a particular question can introduce unwanted variability into the survey results. We took steps in developing the questionnaire, collecting the data, and analyzing them to minimize such nonsampling error. For example, we pretested the questionnaire with four states that vary in their percentage of children in foster care out of the nationwide total, child welfare administration systems (e.g., state- versus county-administered), and geographic location. We conducted the pretests to check (1) the clarity and flow of the questions, (2) the appropriateness of the terminology used, (3) if the information could be easily obtained and whether there were concerns about the reliability of data that would be collected, and (4) if the survey was comprehensive and unbiased. We revised the questionnaire based on the pretests.

To corroborate states' survey responses, we compared them against publicly available research from the Human Rights Campaign Foundation and Lambda Legal on state protections against discrimination on the basis of sexual orientation and gender identity (SOGI).<sup>4</sup> Specifically, the Human Rights Campaign Foundation's report includes information on whether each state had laws or regulations prohibiting discrimination against youth in foster care or prospective foster parents on the basis of

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<sup>2</sup>We did not provide states with a definition of discrimination, but rather we asked them to identify whether they prohibit discrimination on the basis of each of our categories of interest.

<sup>3</sup>We also asked about discrimination protections and data collection on prospective foster and adoptive parents' marital status.

<sup>4</sup>See S. Warbelow, C. Avant, & C. Kutney, *2020 State Equality Index*, (Washington, DC: Human Rights Campaign Foundation, 2020); and Lambda Legal, *State-by-State Analysis of Child Welfare Systems*, accessed Nov. 9, 2021 from <https://www.lambdalegal.org/child-welfare-analysis>. Both sources include information on the District of Columbia. Lambda Legal's website includes information on Puerto Rico, but the Human Rights Campaign Foundation's report does not. Neither source includes information on the U.S. Virgin Islands. We did not conduct an independent legal review of state laws, regulations, or policies.

SOGI.<sup>5</sup> Officials from the Foundation told us the information in their report was current as of the end of calendar year 2020.

Lambda Legal's website catalogs each state's laws, regulations, and policies pertaining to discrimination against youth in foster care on the basis of SOGI. The website also includes information on a state's protections for youth against discrimination on the basis of religion, if those protections are part of a general nondiscrimination statement that also includes SOGI. As a result, we were able to use this source to corroborate the majority of states' survey responses about religious protections for youth in foster care. Officials from Lambda Legal told us that they were updating their website on an ongoing basis as we were doing our work. We used the information they had posted as of November 2021 in our analysis. We interviewed both organizations about their processes for researching and reporting on state protections and determined that their information on these protections was sufficiently reliable for purposes of corroborating state survey responses.

In comparing state survey responses on discrimination protections to these two sources, we collapsed two survey questions—one that asked about state protections in law and one that asked about protections in other sources, such as regulations or policy. We therefore looked to see whether there were discrepancies between a state's survey response and the two other sources in terms of whether the state had any nondiscrimination protection in place. We followed up by email—or interview, in the case of our five selected states—with those states whose responses regarding SOGI protections for youth conflicted with both sources, and obtained additional information from state child welfare officials.<sup>6</sup>

With respect to SOGI protections for both youth and parents, and religious protections for youth, we considered a state's response to be corroborated if it was consistent with at least one of the other sources, or if the state was able to provide more information to explain their

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<sup>5</sup>The Human Rights Campaign Foundation's report did not distinguish between protections found in law and those in regulation. The report included separate indicators for protections for youth on the basis of sexual orientation and on the basis of gender identity, but did not distinguish between these two factors in terms of protections for prospective foster parents.

<sup>6</sup>We also followed up with some states regarding their responses on data collection. Specifically, if a state reported collecting data on the gender identity of youth or prospective parents but not sexual orientation, we asked for more information on their definition of gender identity.

response. For these categories of protections, the number of states whose responses we ultimately corroborated ranged from 35 states for gender identity protections for parents, to 45 states for both sexual orientation and gender identity protections for youth.

Because we had no external sources to check state responses about their religious protections for prospective foster parents, we included these responses in our analysis only for the 29 states where we were able to corroborate the state's responses on discrimination protections for all other groups.

In the report, we also discuss the sources of states' protections (e.g., state law, regulation, or policy), but we were not able to corroborate the specific source of protections from discrimination in all states. We therefore limit our discussion of specific sources of discrimination protections to our selected states, as well as a few surveyed states where we were able to corroborate the protection source.

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## Selected States

To obtain illustrative examples of state protections from discrimination and child welfare agency experiences providing supports to youth in foster care who are LGBTQ+ and of different religions, we conducted interviews and reviewed documentation in five states: Colorado, Kansas, Mississippi, New Jersey, and Ohio. Our criteria for selecting states included:

- Variation in protections and supports reported by state child welfare staff on our survey for youth in foster care and prospective foster parents who are LGBTQ+ and of various religions. We selected states to reflect those with:
  - *Substantial protections and supports* – states that reported prohibiting discrimination through laws and other requirements (e.g. regulation or policy) for all of our groups of interest, and in most instances offering programs, services, and other resources to specifically support youth in foster care based on their SOGI;
  - *Some protections and supports* – states that reported prohibiting discrimination for most of our groups of interest through requirements or state law, and in some instances reported offering programs, services, and other resources to specifically support youth in foster care based on their SOGI; and

- *Few to no protections and supports* – states that reported prohibiting discrimination through laws and other requirements for a subset of our groups of interest, or reported that they do not prohibit discrimination against any of our groups of interest in state laws or requirements, and generally reported they do not offer any specific programs, services, or other resources specifically for youth in foster care based on their SOGI.



For states that reported having few to no protections and supports in place, we prioritized those states with reported laws permitting private agencies that receive government funding to refuse to provide adoption and foster care services in certain instances for purposes related to their religious beliefs.<sup>7</sup>

In selecting states, we also considered:

- variation in child welfare services framework (state- or county-administered, or hybrid),
- geographic variation (states that reflect each of the four major Census regions),
- the rate of youth in foster care in 2018, and
- the percentage of youth in poverty in 2019 (most recent state level data available).

**Table 3: Selected States and Selection Criteria**

State	Census region	Reported protections and supports <sup>a</sup>	Reported laws permitting refusal of services <sup>b</sup>	Child welfare framework	Rate of youth in foster care (per 1,000 children, 2018)	Rate of youth in poverty (2019)
Ohio	Midwest	Some	No	County	6	18%
Colorado	West	Substantial	No	County	4	11%
Kansas	Midwest	Few to none	Yes	State	11	15%
Mississippi	South	Few to none	Yes	State	6	28%
New Jersey	Northeast	Substantial	No	State	3	12%

Source: Department of Commerce, Census Bureau, "2010 Census Regions and Divisions of the United States," (Revised Oct. 8, 2021), accessed Feb. 4, 2022 at <https://www.census.gov/geographies/reference-maps/2010/geo/2010-census-regions-and-divisions-of-the-united-states.html>; GAO review of survey documentation, child welfare and poverty statistics reported by the Annie E. Casey Foundation Kids Count Data Center, and Warbelow, S., Avant, C. and Kutney, C. 2020 *State Equality Index: A Review of State Legislation Affecting the Lesbian, Gay, Bisexual, Transgender and Queer Community and a Look Ahead in 2021* (Washington, D.C.: Human Rights Campaign Foundation, 2020). | GAO-22-104688

<sup>a</sup>"Substantial" refers to states that reported prohibiting discrimination through state laws and other requirements (e.g. regulation or policy) for all of our groups of interest, and in most instances offering programs, services, and other resources to specifically support youth in foster care based on their sexual orientation and gender identity (SOGI). "Some" refers to states that reported prohibiting discrimination for most of our groups of interest through requirements or state law, and in some instances reported offering programs, services, and other resources to specifically support youth in foster care based on their SOGI. "Few to none" refers to states that reported prohibiting discrimination through laws and other requirements for a subset of our groups of interest, or reported that they do not prohibit discrimination against any of our groups of interest in state laws or requirements, and generally reported they do not offer any specific programs, services, or other resources specifically for youth in foster care based on their SOGI.

<sup>7</sup>See Warbelow, S., Avant, C. and Kutney, C. 2020 *State Equality Index: A Review of State Legislation Affecting the Lesbian, Gay, Bisexual, Transgender and Queer Community and a Look Ahead in 2021* (Washington, D.C.: Human Rights Campaign Foundation, 2020).

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<sup>b</sup>For states that reported having few to no protections and supports in place, we prioritized states with reported laws permitting private agencies that receive government funding to refuse to provide adoption and foster care services in certain instances for purposes related to their religious beliefs.

In each of these states, we conducted interviews with child welfare officials to obtain information on programs, services, and promising practices for serving LGBTQ+ youth and youth of different religious beliefs. We also asked child welfare officials in each state to identify laws, regulations, policies, or other requirements related to protecting youth in foster care or prospective foster parents against discrimination on the basis of sexual orientation, gender identity, religion or (for parents) marital status.

Within two of the selected states—Ohio and Mississippi—we conducted local-level interviews with two counties each, selected to reflect variation in (1) access to programs, services, or other resources tailored to LGBTQ+ and religious youth in foster care, per recommendations from the state child welfare agency; (2) urban versus rural locales; and (3) demographic characteristics, such as the poverty rate and race/ethnicity. In each county, we interviewed public child welfare agency officials. We also spoke with private providers in three of the four counties, including faith-based agencies.<sup>8</sup>

We did not conduct an independent legal review to identify relevant state laws or regulations or to supplement states' survey responses. However, we reviewed selected state laws and regulations identified by state officials to provide illustrative examples. The information obtained from our selected states is not generalizable to all states.

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## Literature Review

To identify promising practices for providing supportive care to LGBTQ+ youth and youth of various religious beliefs in foster care, we conducted a literature review and reviewed HHS publications. For the literature review, we identified some studies for review through online research, including two studies funded by HHS. To identify a more comprehensive range of studies, we also searched a number of research databases for relevant

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<sup>8</sup>Two private providers in one Mississippi county did not respond to our interview requests.

studies, reports, and papers on this topic.<sup>9</sup> We restricted this search to literature published from 2011 through 2021. Our search included peer-reviewed scholarly materials, working papers, trade or industry articles, and association and think tank publications. We used a range of search terms related to foster care and adoption; religion and specific religious beliefs; SOGI and specific LGBTQ+ identities; and best, leading, or promising practices, innovative strategies, and lessons learned.

Our initial search returned 55 documents, 43 of which we found through research databases, and 12 through internet searches and citations in the documents. The documents were independently reviewed by two analysts to determine their relevance. This review identified 20 relevant documents—17 related to promising practices for supporting LGBTQ+ youth in foster care, and three related to supporting youth of different religious beliefs. Two research specialists reviewed the selected studies to identify any methodological limitations to findings used as support for promising practices, which we incorporated into our findings.

While we obtained a range of views on promising practices for providing supportive care to LGBTQ+ youth and youth of various religious beliefs, we did not independently assess the effectiveness or suitability of those practices. For example, we did not assess the various options for providing gender-affirming care for transgender youth, including the medical implications of that care for these youth.

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## Discussion Groups

We held two virtual discussion groups with youth 18 and older with experience in foster care to learn about their perspectives on available protections and supports and promising practices. One discussion group focused on LGBTQ+ youth's experiences in foster care and the second focused on experiences related to the youth's religious beliefs. To identify and recruit participants for these discussion groups, we worked with FosterClub, a nonprofit organization that provides a peer support network for children and youth in foster care. FosterClub recruited participants

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<sup>9</sup>Databases we searched include ProQuest, Scopus, EBSCO, DIALOG, and the Harvard Kennedy Think Tank Search. We also searched for recent literature cataloging state protections against discrimination on the basis of religion in foster care or parents' marital status for use in corroborating our survey responses, but did not find any literature meeting these criteria.

among its Lived Experience Leaders, who advise the organization on its work.

The discussion group on LGBTQ+ youth's experiences included 10 participants who represented a range of sexual orientations and gender identities among the LGBTQ+ community. The discussion group on religious-based experiences included five participants—four from various Christian backgrounds and one who was Muslim. Both groups included youth who experienced foster care in a range of states and reflected a variety of racial and ethnic backgrounds and foster care placement settings. Both discussion groups were held via video conference, and were led by a GAO analyst. FosterClub staff members advised us on establishing protocols for the discussion groups that would help the participants feel comfortable discussing sensitive personal experiences. One or more FosterClub staff members were also present in each discussion group to serve as resources for any participants who felt distress discussing these topics.

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## Stakeholder Group Interviews

We interviewed representatives of the following stakeholder groups engaged in advocacy and research on LGBTQ+, religious, and foster care issues to obtain their views on promising practices for serving these youth:

- American Public Human Services Association, National Association of Public Child Welfare Administrators;
- Children's Rights;
- Council on Social Work Education, Religion and Spirituality Work Group;
- FosterClub;
- Human Rights Campaign and Human Rights Campaign Foundation;
- Lambda Legal;
- National Foster Parent Association; and
- National Quality Improvement Center on Tailored Services, Placement Stability, and Permanency for Lesbian, Gay, Bisexual, Transgender, Questioning, and Two-Spirit Children and Youth in Foster Care, University of Maryland School of Social Work.

We identified these groups by researching groups doing relevant work.

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We conducted this performance audit from December 2020 to April 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix II: Supplemental Information on Certain Discrimination Protections in Five Selected States

The following protections against discrimination—on the basis of sexual orientation and gender identity (SOGI), religion, and (for prospective foster and adoptive parents) marital status—were identified by child welfare officials in our five selected states.<sup>1</sup> These officials confirmed that the protections were current as of January 2022. These protections may protect against discrimination on the basis of other factors, but we have highlighted only the factors relevant for purposes of this report: SOGI, religion, and (for prospective foster and adoptive parents) marital status. We did not conduct an independent legal review to identify relevant state laws or regulations and the protections identified below do not necessarily encompass all relevant laws, regulations, and/or policies in these states.

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### Colorado

Colorado has state laws protecting youth in foster care and prospective foster and adoptive parents from discrimination on the basis of SOGI and religion, and protecting prospective parents from discrimination on the basis of marital status, including a new law which became effective in April 2021. Prior to the passage of the new law, Colorado had an existing law stating protections for youth in foster care, which included having fair and equal access to services and treatment based on SOGI and religion. State officials told us in August 2021 that they were in the process of developing regulations to implement the new state law.

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<sup>1</sup>Protections for prospective adoptive parents cited in this section pertain to public adoptions—that is, adoptions of children involved in the foster care system. Protections for parents seeking to adopt privately—for example, to adopt a newborn put up for adoption or an international child—were outside the scope of our review and may differ from those discussed here.

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## Protections for Youth

- A Colorado law on Protections for Youth in Foster Care states:
  - (1) The general assembly finds and declares that youth in foster care...should enjoy the following:...
  - (i) Being free to attend religious services and activities;...
  - (t) Having fair and equal access to available services, placement, care, treatment, and benefits based on his or her treatment plan and not being subjected to discrimination or harassment on the basis of actual or perceived...religion...sexual orientation, gender identity.<sup>2</sup>
- Colorado's new law prohibits service providers that receive state money to provide placement-related services from harassing or discriminating against children and youth in foster care on the basis of their SOGI, gender expression, or religion when providing any placement-related services. The law further prohibits service providers from delaying or denying an adoption or foster care placement of a child or youth on the basis of these factors. It states that any denial to care for a child or youth based on one of these factors must document how the denial relates to the ability to meet the needs of the child or youth, and the denial to care must not be detrimental to their health or welfare.<sup>3</sup>

## Protections for Prospective Parents

- Colorado's new law prohibits entities that receive state money to provide placement-related services from denying any person the opportunity to become an adoptive or a foster parent solely on the basis of the SOGI, gender expression, religion, or marital status of the person or a member of their household. It also prohibits service providers from requiring different or additional screenings, processes, or procedures for adoptive or foster placement decisions solely on the basis of the prospective parent's SOGI, gender expression, religion,

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<sup>2</sup>Colo. Rev. Stat. § 19-7-101(1)(i and t).

<sup>3</sup>Colo. Rev. Stat. § 19-1-130.

or marital status, unless they are necessary to determine if the placement is detrimental to the health or welfare of the child or youth.<sup>4</sup>

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## Kansas

Kansas has a state law prohibiting discrimination in the provision of public services on the basis of a number of factors, including religion.<sup>5</sup> State child welfare officials told us they interpret the law broadly as prohibiting discrimination on the basis of factors, including SOGI, that the law does not explicitly name, and that the law applies to both youth in foster care and prospective foster and adoptive parents. State officials also reported that a 2019 executive order by the Kansas governor explicitly prohibited discrimination in the provision of state services on the basis of an individual's SOGI, religion, or marital status. State officials told us that their practice of nondiscrimination on the basis of SOGI predates this executive order. Another Kansas state law prohibits the state child welfare agency from requiring private providers to participate in the foster or adoptive placement of a child if that placement conflicts with the provider's sincerely held religious beliefs, according to state officials. These officials said they were not aware of any private providers in the state using this exception to refuse to work with any prospective foster or adoptive parents on the basis of their SOGI or religion.

### Protections for Youth

- The policy and procedure manual for Kansas' state child welfare agency states that private providers of case management services "shall accept all referrals from [the state child welfare agency] of children in custody...and in need of out of home services, regardless of...religion...sexual preference."<sup>6</sup>

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<sup>4</sup>Colo. Rev. Stat. § 19-1-130.

<sup>5</sup>Kan. Stat. § 44-1009(c)(3).

<sup>6</sup>Kansas Department for Children and Families Prevention and Protection Services Policy and Procedure Manual, Section 5208 – Case Management Provider Referral Responsibilities.



### Protections for Prospective Parents

- Kansas state officials and private providers we interviewed said that in practice they do not deny prospective foster or adoptive parents on the basis of SOGI or religion.
- With respect to prospective parents' marital status, state law allows single individuals or married couples, but not unmarried couples, to adopt, according to state officials. The officials said that state licensing regulations for foster parents do not include this requirement, and that unmarried couples in the state can serve as foster parents.

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## Mississippi

Mississippi regulations address the rights of children and youth in foster care and include a general nondiscrimination statement that applies to prospective foster and adoptive parents, according to state officials.<sup>7</sup> Mississippi officials reported that the state has a law prohibiting the state government from taking action against a religious organization involved in adoption or foster care if that organization declines to provide a service based on its religious objections to same-sex marriage or recognizing some gender identities.

### Protections for Youth

- Mississippi regulations state that children and youth in foster care have a right to fair treatment, regardless of their SOGI, gender expression, or religion.<sup>8</sup>
- Regulations also state that every effort is to be made to continue the child's religious traditions, and the child's religion should be considered in determining an appropriate placement. If a child is not able to be placed with a family of the same religious beliefs and/or

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<sup>7</sup>According to state officials, these regulations were promulgated under the state's previous child welfare agency. Officials from the current state agency told us they are in the process of implementing new regulations, but that the previous regulations remain in effect until they do. They also stated they do not plan to change the nondiscrimination provisions.

<sup>8</sup>18 Code Miss. R. Pt. 6, A II XIV.

affiliations, then opportunities will be provided for the child to participate in the religious activities consistent with the child's beliefs.<sup>9</sup>

### Protections for Prospective Parents

- Mississippi regulations state that the child welfare agency “prohibits discrimination and/or the exclusion of individuals from its facilities, programs, activities and services based on the individual person’s ...religion,...sexual orientation.”<sup>10</sup>
- According to state officials, a 2010 Mississippi law prohibited same-sex couples from adopting, but following a lawsuit, in 2016 a judge granted a permanent injunction preventing the state from enforcing this law. Mississippi officials said their state agency licenses LGBTQ+ prospective parents to foster or adopt children, provided they meet the state’s other requirements. They said that these requirements include that the prospective parents be either single or a married couple; licensure requirements do not allow unmarried couples to foster or adopt.<sup>11</sup>

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## New Jersey

New Jersey has a state law declaring opposition to discrimination on the basis of SOGI and marital status.<sup>12</sup> The law does not explicitly prohibit religious-based discrimination, but state officials told us they interpret it as doing so. New Jersey’s state child welfare agency includes nondiscrimination language in its regulations, which officials said govern the conduct of its contractors and grantees, and in its internal policies, which officials said govern the conduct of state employees. New Jersey also has a Youth Bill of Rights and an LGBTQI Policy that include nondiscrimination language.<sup>13</sup>

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<sup>9</sup>18 Code Miss. R. Pt. 6, D VII(B)(11).

<sup>10</sup>18 Code Miss. R. Pt. 6, I III(L).

<sup>11</sup>State officials said that in some instances they make exceptions to expedite the placement of children with unmarried couples who are their relatives.

<sup>12</sup>N.J. Stat. § 10:5-3.

<sup>13</sup>The “I” in this version of the acronym stands for intersex.

### Protections for Youth

- New Jersey’s Youth Bill of Rights states “your out-of-home placement shall not discriminate against you based on...gender identity, gender expression, religion, or sexual orientation.” It further states that youth in out-of-home placements have the right “to practice my religion or spiritual exercises of my choice.”<sup>14</sup>
- The state’s LGBTQI policy includes similar nondiscrimination language, and adds that “staff and DCF contracted providers are prohibited from attempting to persuade an LGBTQI individual to reject or modify his/her sexual orientation, gender identity or expression. This includes imposing personal or religious beliefs.”<sup>15</sup>

### Protections for Prospective Parents

- New Jersey regulations state that neither public nor private providers may discriminate against prospective foster parents on the basis of religion or sexual orientation.<sup>16</sup>

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## Ohio

Ohio’s state child welfare agency has regulations protecting youth in foster care and prospective foster and adoptive parents from discrimination and other negative actions. In addition to sexual orientation and religion, these regulations prohibit discrimination and other actions on the basis of “sexual identity,” which state officials told us is meant to refer to gender identity. The officials said that in June 2021, Ohio’s state legislature passed a law requiring the state child welfare agency to establish bills of rights for both foster youth and resource (foster) families.<sup>17</sup> They said the agency incorporated these bills of rights into its regulations, and they became effective in November 2021.

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<sup>14</sup>New Jersey Department of Children and Families, Division of Child Protection and Permanency, “Youth Bill of Rights,” rev. August 2019.

<sup>15</sup>New Jersey Department of Children and Families Policy Manual, LGBTQI Policy, effective August 30, 2016.

<sup>16</sup>N.J. Admin. Code § 3A:14-1.5(b).

<sup>17</sup>Ohio’s definition of “resource” families also includes any relatives, by blood or adoption, who are caring for a foster child in place of the child’s parents.

### Protections for Youth

- Ohio's Foster Youth Bill of Rights includes statements on the rights of foster youth to enjoy freedom of religion or to abstain from the practice of religion, according to officials. They said it also gives youth the right to protection from discrimination or harassment on the basis of gender identity, sexual orientation, or religion.
- Other regulations prohibit foster caregivers from subjecting foster children to verbal abuse or derogatory remarks on the basis of their sexual orientation, "sexual identity," or religion, or to threats of physical violence or removal from the foster home. Foster caregivers are also to provide foster children with adequate personal toiletry supplies appropriate to the child, including to their sexual orientation and "sexual identity."<sup>18</sup>
- Regulations also prohibit public or private child welfare agencies from considering the sexual orientation, "sexual identity," or religion of a child that may be placed with the foster caregiver in determining whether an applicant be certified as a foster caregiver or whether to place a child with the foster caregiver.<sup>19</sup>

### Protections for Prospective Parents

- Ohio's Resource Family Bill of Rights gives resource parents the right to be free of discrimination on the basis of religion, gender identity or expression, or sexual orientation, according to state officials.
- Other regulations prohibit public or private child welfare agencies from considering the sexual orientation, "sexual identity," religion, or marital status of prospective foster parents in determining whether to approve their home study, accept their application to become a foster parent, or place a specific child with a foster parent.<sup>20</sup> State officials told us that, with respect to adoption, regulations prohibit agencies from considering the sexual orientation or "sexual identity" of prospective parents in approving them to adopt, but do not prohibit the consideration of their religion or marital status.

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<sup>18</sup>Ohio Admin. Code 5101:2-7-09.

<sup>19</sup>Ohio Admin. Code 5101:2-5-20(E)(2).

<sup>20</sup>Ohio Admin. Code 5101:2-5-20(E)(1).

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**Appendix II: Supplemental Information on  
Certain Discrimination Protections in Five  
Selected States**

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- According to state officials, Ohio law states that an unmarried adult or a “husband and wife” may adopt a child. A November 2015 procedure letter from the state child welfare agency clarified that, based on the U.S. Supreme Court decision recognizing same-sex marriages, all state benefits and requirements related to married couples also apply to married same-sex couples.<sup>21</sup>

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<sup>21</sup>Ohio Family, Children and Adult Services Procedure Letter No. 297.

## Appendix III: Selected Studies Related to Supports for LGBTQ+ Youth and Youth of Various Religious Beliefs in Foster Care

To provide additional information on promising practices for providing supportive care to lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ+) youth and youth of various religious beliefs in foster care, we reviewed 20 studies through a formal search of the literature published from 2011 to 2021. See appendix I for details about how we conducted our literature review; see below for the list of studies.

- Burwick, Andrew, Gary Gates, Scott Baumgartner, and Daniel Friend. *Human Services for Low-Income and At-Risk LGBT Populations: An Assessment of the Knowledge Base and Research Needs*, Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services, December 2014.
- Capous-Desyllas, Moushoula and Sarah Mountz. "Using Photovoice Methodology to Illuminate the Experiences of LGBTQ Former Foster Youth." *Child and Youth Services*, vol. 40, no. 3 (2019).
- Erney, Rosalynd and Kristen Weber. "Not all Children are Straight and White: Strategies for Serving Youth of Color in Out-of-Home care who Identify as LGBTQ." *Child Welfare*, vol. 96, no. 2 (2018).
- Forge, Nicholas, Robin Hartinger-Saunders, Eric Wright, and Erin Ruel. "Out of the System and onto the Streets: LGBTQ-Identified Youth Experiencing Homelessness with Past Child Welfare System Involvement." *Child Welfare*, vol. 96, no. 2 (2018).
- Greeson, Johanna K.P., Antonio R. Garcia, Fei Tan, Alexi Chacon, and Andrew J. Ortiz. "Interventions for Youth Aging Out of Foster Care: A State of the Science Review." *Children and Youth Services Review*, vol. 113 (2020)
- Hussey, Hannah. *LGBTQ Youth in the Massachusetts Child Welfare System: A Report on Pervasive Threats to Safety, Wellbeing, and Permanency*. Massachusetts Commission on LGBTQ Youth, July 2021.

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**Appendix III: Selected Studies Related to Supports for LGBTQ+ Youth and Youth of Various Religious Beliefs in Foster Care**

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- Lorthridge, Jaymie, Marneena Evans, Leanne Heaton, Andrea Stevens, and Lisa Phillips. “Strengthening Family Connections and Support for Youth in Foster Care who Identify as LGBTQ: Findings from the PII-RISE Evaluation.” *Child Welfare*, vol. 96, no. 1 (2018).
- Makanui, Kalani P., Yo Jackson, and Stephanie Gusler. “Spirituality and Its Relation to Mental Health Outcomes: An Examination of Youth in Foster Care.” *Psychology of Religion and Spirituality*, vol. 11, no. 3 (2019).
- Martin, Megan, Leann Down, and Rosalynd Erney. *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare Through Cross-System Collaboration*. Center for the Study of Social Policy, 2016.
- Matarese, Marlene, Angela Weeks, Elizabeth Greeno, and Paige Hammond. *The Cuyahoga Youth Count: A Report on LGBTQ+ Youth’s Experience in Foster Care*. Institute for Innovation & Implementation, University of Maryland School of Social Work, 2021.
- Matarese, Marlene, Elizabeth Greeno, and Aaron Betsinger. *Youth with Diverse Sexual Orientation, Gender Identity and Expression in Child Welfare: A Review of Best Practices*. Baltimore, MD: Institute for Innovation & Implementation, University of Maryland School of Social Work, 2017.
- Paul, June C. “Exploring support for LGBTQ youth transitioning from foster care to emerging adulthood.” *Children and Youth Services Review*, vol. 119 (September 2020).
- Salazar, Amy M., Kevin P. Haggerty, Susan E. Barkan, Rachel Peterson, Madeline E. Furlong, Eunsam Kim, Janice J. Cole, and Jessica M. Colito. “Supporting LGBTQ+ Foster Teens: Development of a Relationship-Focused, Self-Guided Curriculum for Foster Families.” *Sexuality Research and Social Policy*, vol. 17 (2020).
- Salazar, Amy, Kristin J. McCowan, Janice J. Cole, Martie L. Skinner, Bailey R. Noell, Jessica M. Colito, Kevin P. Haggerty, and Susan E. Barkan. “Developing Relationship-Building Tools for Foster Families Caring for Teens who are LGBTQ2S.” *Child Welfare*, vol. 96, no. 2 (2018).
- Schreiber, Jill C. and Michael J. Culbertson. “Religious Socialization of Youth Involved in Child Welfare.” *Child Abuse and Neglect*, vol. 38 (April 2014).
- Scott Jr., Lionel D., David R. Hodge, Tony White, Michelle R. Munson. “Substance use among older youth transitioning from foster care: Examining the protective effects of religious and spiritual capital.” *Child and Family Social Work*, vol. 23 (2018).

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**Appendix III: Selected Studies Related to Supports for LGBTQ+ Youth and Youth of Various Religious Beliefs in Foster Care**

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- State of Illinois, Office of the Auditor General. *Performance Audit: Department of Children and Family Services, LGBTQ Youth in Care*, February 2021.
- Washburn, Micki, Shauna Lucadamo, Kristen Weber, Bill Bettencourt, and Alan J. Dettlaf. *Implementing System Wide Policy and Practice Improvements to Support LGBTQ+ Youth and Families with Child Welfare System Involvement*. University of Houston, Graduate College of Social Work, May 2021.
- Weeks, Angela, Danielle Altman, Andrea Stevens, Jamie Lorthridge, and Leanne Heaton. "Strengthening the Workforce to Support Youth in Foster Care who Identify as LGBTQ+ through Increasing LGBTQ+ Competency: Trainers' Experience with Bias" *Child Welfare*, vol. 96, no. 2 (2018).
- Wilber, Shannan. *Guidelines for Managing Information Related to the Sexual Orientation & Gender Identity and Expression of Children in Child Welfare Systems*. Putting Pride into Practice Project, Family Builders by Adoption, 2013.

As discussed previously in this report, for the purposes of this review we describe the practices identified in the literature as "promising" because they are based on early or limited evidence, and in some cases solely testimonial evidence. Studies we reviewed also identified other limitations to their research, such as small sample size limitations and non-generalizable findings, and noted that additional methodologically rigorous research is needed to understand the unique needs of LGBTQ+ youth, and to identify evidence-based best practices to meet those needs. See table 4 below for the promising practices discussed in each study for working with LGBTQ+ youth and youth of various religious beliefs in foster care. Studies listed below may address other topics and promising practices beyond those noted in the table.



**Appendix III: Selected Studies Related to Supports for LGBTQ+ Youth and Youth of Various Religious Beliefs in Foster Care**

**Table 4: Selected Studies Discussing Promising Practices for Supporting LGBTQ+ Youth and Youth of Various Religious Beliefs in Foster Care**

	Promising practices discussed					
	Establishing and implementing inclusive nondiscrimination policies	Collecting and analyzing data on sexual orientation and gender identity	Developing and increasing skills through training and coaching	Recruiting and establishing connections to supportive adults	Supporting coordination and service referrals	Supporting religious beliefs
<b>Selected studies</b>						
Burwick, Gates, Baumgartner, and Friend. <i>Human Services</i> , 2014.	Yes	Yes	Yes	Yes	Yes	
Capous-Desyllas, and Mountz. "Photovoice Methodology" (2019).			Yes		Yes	
Erney, and Weber. "Not all Children are Straight and White" (2018).	Yes	Yes	Yes	Yes	Yes	
Forge, Hartinger-Saunders, Wright, and Ruel. "Out of the System" (2018).			Yes	Yes		
Hussey. <i>LGBTQ Youth in the Massachusetts Child Welfare System</i> , 2021.	Yes	Yes	Yes	Yes		
Lorthridge, Evans, Heaton, Stevens, and Phillips. "Strengthening Family Connections" (2018).		Yes	Yes	Yes		
Makanui, Jackson, and Gusler. "Spirituality and its relation to mental health outcomes" (2019).						Yes
Martin, Down, and Erney. <i>Out of the Shadows</i> , 2016.	Yes	Yes	Yes	Yes	Yes	
Matarese, Weeks, Greeno, and Hammond. <i>The Cuyahoga Youth Count</i> , 2021.		Yes	Yes		Yes	
Matarese, Greeno, and Betsinger. <i>Youth with Diverse Sexual Orientation</i> , 2017.	Yes		Yes	Yes	Yes	
Paul, "Exploring support for LGBTQ youth" (2020).	Yes	Yes	Yes	Yes	Yes	

**Appendix III: Selected Studies Related to Supports for LGBTQ+ Youth and Youth of Various Religious Beliefs in Foster Care**

	Promising practices discussed					
	Establishing and implementing inclusive nondiscrimination policies	Collecting and analyzing data on sexual orientation and gender identity	Developing and increasing skills through training and coaching	Recruiting and establishing connections to supportive adults	Supporting coordination and service referrals	Supporting religious beliefs
Salazar, Haggerty, Barkan, Peterson, Furlong, Kim, Cole, and Colito. "Supporting LGBTQ+ Foster Teens" (2020).			Yes			
Salazar, McCowan, Cole, Skinner, Noell, Colito, Haggerty, and Barkan. "Developing Relationship-Building Tools" (2018).			Yes		Yes	
Schreiber, and Culbertson. "Religious Socialization of Youth" (2014).						Yes
Scott Jr., Hodge, White, Munson. "Substance use among older youth" (2018).						Yes
State of Illinois, Office of the Auditor General. <i>LGBTQ Youth in Care</i> . 2021.	Yes	Yes	Yes	Yes		
Washburn, Lucadamo, Weber, Bettencourt, and Dettlaf. <i>Policy and Practice Improvements to Support LGBTQ+ Youth</i> , 2021.	Yes	Yes	Yes		Yes	
Weeks, Altman, Stevens, Lorthridge, and Heaton. "Trainers' Experience with Bias" (2018).			Yes			
Wilber, Shannan. <i>Guidelines for Managing Information</i> , 2013.		Yes				

Source: GAO review of selected literature. | GAO-22-104688

Note: As discussed earlier in this report, studies we reviewed found that there are limited evidence-based practices designed to improve the well-being of lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ+) youth in foster care. One of those studies did not identify promising practices related to supporting LGBTQ+ youth in foster care and is not included in the table above; however, we included the study in our review based on its findings related to the lack of evidence-based practices available. See, J. K.P. Greeson et al., "Interventions for Youth Aging Out of Foster Care: A State of the Science Review," *Children and Youth Services Review*, vol. 113 (2020).

# Appendix IV: Supplemental Examples of HHS Assistance to States on Supporting LGBTQ+ Youth in Foster Care

**Table 5: Examples of Department of Health and Human Services (HHS) Assistance to States on LGBTQ+ Youth in Foster Care**

<b>Research</b>	<ul style="list-style-type: none"> <li>In 2016, the Administration for Children and Families (ACF) awarded a grant for a 5-year project to the National Quality Improvement Center on Tailored Services, Placement Stability, and Permanency for Lesbian, Gay, Bisexual, Transgender, Questioning, and Two-Spirit Children and Youth in Foster Care (QIC). The QIC selected four local implementation sites to conduct an evaluation of 15 interventions and initiatives for lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ+) youth, their families, and child welfare professionals.<sup>a</sup></li> <li>In 2010, ACF awarded a grant to the Los Angeles LGBT Center’s Recognize Intervene Support Empower (RISE) Demonstration Project and Evaluation. RISE aimed to reduce the number of LGBTQ+ youth in foster care and improve permanency, and measured promising practices for supporting LGBTQ+ youth and their families.</li> <li>ACF is overseeing data collection for the third cohort of the National Survey of Child and Adolescent Well-being (NSCAW III), a nationally representative longitudinal survey of child welfare-involved youth and families. This includes collecting data for the first time on the training caseworkers have received on working with LGBTQ youth, and on the sexual orientation, gender identity of youth ages 11+, as well as how often they attend religious services. The results from NSCAW III are due in 2023. Prior NSCAW surveys have collected some sexual orientation data on youth in care to provide national estimates of youth’s sexual orientation.<sup>b</sup></li> </ul>
<b>Guidance and Technical Assistance</b>	<ul style="list-style-type: none"> <li>In 2011 and 2022, ACF issued Information Memorandums (memorandums) to states on LGBTQ+ youth in foster care.<sup>c</sup> The 2011 memorandum encouraged child welfare agencies, foster and adoptive parents, and other stakeholders to ensure that LGBTQ+ youth are supported and discussed topics like training staff to serve LGBTQ+ youth, and placing youth with supportive foster families. The 2022 memorandum provided information to child welfare agencies on Title IV-B and Title IV-E provisions that can guide their work and case planning for LGBTQI+ youth.</li> <li>ACF’s Child Welfare Information Gateway includes a webpage that centralizes guidance and other resources on working with LGBTQ+ youth and families. For example, the webpage refers to a guide released in June 2021 for foster parents on supporting LGBTQ+ youth, as well research from RISE.</li> <li>ACF’s Capacity Building Center for States (Center for States) can provide coaching and consultation on projects related to LGBTQ+ youth, and responds to information requests on this topic. For example, the Center for States reported that in 2020, it responded to a request from one state for information regarding how other states and private providers identify supportive placements for LGBTQ+ youth.</li> <li>The Substance Abuse and Mental Health Administration (SAMHSA) funds related grant programs and initiatives, including awarding a grant in 2020 to fund the Center of Excellence on LGBTQ+ Behavioral Health Equity (CoE). The CoE provides behavioral health providers with webinars and technical assistance on meeting the needs of LGBTQ+ youth. SAMHSA is also developing training on serving LGBTQ+ youth—to provide to the public free-of-charge—through the National Center for Young People with Diverse Sexual Orientation and Gender Identity (National SOGIE Center).<sup>d</sup></li> </ul>

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**Appendix IV: Supplemental Examples of HHS Assistance to States on Supporting LGBTQ+ Youth in Foster Care**

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| <b>Other Activities</b> | <ul style="list-style-type: none"><li>• The Office for Civil Rights (OCR) investigates complaints regarding discrimination, which may include allegations of discrimination on the basis of religion, sexual orientation, or gender identity. OCR has jurisdiction over religious nondiscrimination in a variety of block grant programs, but Title IV-E does not contain a religious nondiscrimination provision. Additionally, OCR’s jurisdiction over sex-based discrimination is limited to education and health programs and activities. In child welfare settings, OCR’s authority applies to limited settings and circumstances, such as when youth in foster care are housed in residential treatment centers, or when potential foster parents are taking required training.<sup>e</sup></li></ul> |
|-------------------------|---|
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Source: GAO analysis of interviews with HHS officials and review of HHS documentation. | GAO-22-104688

<sup>a</sup>The QIC is a collaboration with the Institute for Innovation and Implementation at the University of Maryland School of Social Work. Chosen implementation sites for the QIC are Prince George’s County, Maryland; the state of Michigan; Cuyahoga County, Ohio; and Allegheny County, Pennsylvania.

<sup>b</sup>NSCAW examines various child and family well-being outcomes to relate those outcomes to experience with the child welfare system, family characteristics, community environment, and other factors. Two cohorts of children were enrolled in the survey prior to NSCAW III.

<sup>c</sup>Department of Health and Human Services, Administration for Children and Families, ACF Information Memorandum ACYF-CB-IM-11-03 (Washington, D.C.: 2011) and Department of Health and Human Services, Administration for Children and Families, ACF Information Memorandum ACYF-CB-IM-22-01 (Washington, D.C.: 2022).

<sup>d</sup>The CoE and the National SOGIE Center, similar to the QIC, are led by the Institute for Innovation and Implementation at the University of Maryland School of Social Work. The National SOGIE Center, launched in fall 2021, provides a centralized webpage for accessing resources on providing supportive care to LGBTQ+ youth and their families across systems, including child welfare, juvenile justice, mental health, substance use systems, and housing and homelessness. The Center also offers training, technical assistance, and implementation support. The National SOGIE Center is not funded by HHS.

<sup>e</sup>HHS OCR officials said their office’s authority to investigate sex-based discrimination—and therefore SOGI-based discrimination—in child welfare settings is limited to allegations of discrimination that involve a health or educational component covered under Section 1557 of the Patient Protection and Affordable Care Act or Title IX, respectively.

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# Appendix V: Comments from the U.S. Department of Health and Human Services

**Appendix V: Comments from the U.S.  
Department of Health and Human Services**



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation  
Washington, DC 20201

March 11, 2022

Kathryn A. Larin  
Director  
Education, Workforce, and Income Security Issues  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Ms. Larin:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, ***"Foster Care: States Need Further Assistance from HHS on Supporting Youth's LGBTQ+ Identities and Religious Beliefs"*** (GAO 22-104688).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

*Melanie Anne Egorin*

Melanie Anne Egorin, PhD  
Assistant Secretary for Legislation

Attachment

**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED – FOSTER CARE: STATES NEED FURTHER ASSISTANCE FROM HHS ON SUPPORTING YOUTH'S LGBTQ+ IDENTITIES AND RELIGIOUS BELIEFS (GAO-22-104688)**

The U.S. Department of Health & Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on this draft report.

**Recommendation 1**

The Assistant Secretary for ACF should provide additional information on key issues related to serving LGBTQ+ youth through its upcoming Information Memorandum on LGBTQ+ youth in foster care, or a future memorandum. These issues include addressing challenges related to data collection; providing supports for transgender and other LGBTQ+ youth, including supportive placements and affirming treatment; and addressing bias among child welfare staff and caregivers.

**HHS Response**

HHS concurs with GAO's recommendation.

Research and best child welfare practices clearly demonstrate that every child and youth in foster care should be affirmed and supported, including children and youth who are LGBTQI+ or who have a non-conforming gender identity or expression. Supporting and affirming LGBTQI+ children and youth in foster care is an overarching equity issue for each title IV-B and IV-E agency and for Children's Bureau, and we encourage each agency to approach serving these children and youth with both a programmatic and an equity lens. The Assistant Secretary for ACF will provide additional information on key issues related to serving LGBTQ+ youth in the updated Information Memorandum on LGBTQ+ youth that we anticipate issuing in March 2022.

**Recommendation 2**

The Assistant Secretary for ACF should develop, identify, and disseminate information to state child welfare agencies on ways to support youth of varying religious beliefs in foster care.

**HHS Response**

HHS concurs with GAO's recommendation.

ACF is developing, identifying, and disseminating information to State child welfare agencies on ways to support youth of varying religious beliefs in foster care. The technical assistance that the Children's Bureau provides through the Child Welfare Capacity Building Center for States is most often crafted and delivered in response to requests from States and jurisdictions for assistance on a topic or to assist them in achieving an outcome. The Capacity Building Center for States assists state and territorial child welfare agencies with building capacity to improve child welfare practices and achieve better outcomes for children, youth, and families. Available services include:

- Identification of existing resources that are available on ways to support youth of varying religious beliefs in foster care
- Dissemination of resources to state child welfare agencies via its webpage, general dissemination messages through its primary listserv, targeted dissemination messages to

Page 1 of 2

**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED – FOSTER CARE: STATES NEED FURTHER ASSISTANCE FROM HHS ON SUPPORTING YOUTH'S LGBTQ+ IDENTITIES AND RELIGIOUS BELIEFS (GAO-22-104688)**

specific peer groups (such as the State Foster Care Program Managers) via listservs and applicable peer group events, and in direct communication with state child welfare agency contacts through its tailored services.

ACF has also included questions related to religious attendance in the National Survey of Child and Adolescent Well-being (NSCAW) survey. Overall, NSCAW is utilized by ACF and the child welfare field to better understand the characteristics, well-being outcomes, and services needs and utilization for children and families, who come into contact with the child welfare system at a national level. Multiple studies using the NSCAW data on religious attendance have been published. ACF will continue to disseminate research findings through the CB-funded Child Welfare Information Gateway.



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## Appendix VI: GAO Contact and Staff Acknowledgments

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### GAO Contact

Kathryn A. Larin, (202) 512-7215, [larink@gao.gov](mailto:larink@gao.gov)

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### Staff Acknowledgments

In addition to the contact named above, the following staff members made key contributions to this report: Andrea Dawson and Elizabeth Morrison (Assistant Directors), Lauren Gilbertson (Analyst in Charge), Aimée Elivert, and Maia O'Meara. Also contributing to this report were Elizabeth Calderon, Sarah Cornetto, Pamela Davidson, and Adam Wendel.

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