

American Humane Association™

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May 20, 2011

Jan Rothstein
Division of Policy
Children's Bureau
Administration on Children, Youth and Families
1250 Maryland Ave SW
Washington DC, 20024-2141

RE: 45 CFR Parts 1355, 1356 and 1357
Federal Monitoring of Child and Family Services Programs:
Request for Public Comment

Dear Commissioner Samuels:

The American Humane Association appreciates the opportunity to comment on the federal monitoring of Child and Family Services Programs under the jurisdiction of the Administration for Children and Families (ACF) and the Administration on Children, Youth and Families (ACYF). These programs, that we will collectively refer to as the child welfare system, refers to a range of services and funding sources that deal with children in foster care and the movement of those children from out of home care back to their original families, into kinship settings or into adoptive families. It also includes the actions and services that led to that placement (child protective services) and services that may continue through independent living and some limited post-permanency supports. Over approximately three decades these services have evolved due to changes in federal law, regulation and changes resulting from recognition that these children and families are impacted by programs beyond just those included in Title IV-B and Title IV-E of the Social Security Act and the Child Abuse Prevention and Treatment Act (CAPTA).

While this system is influenced and driven in part by the design of federal and state funding, oversight is a critical component and it has not always been as comprehensive as it should be. More than five years ago a review of state child welfare systems found that 35 states were under various court oversight agreements or decrees. An updated review would likely find a similar number of instances where courts are monitoring the successes or failures of these state services. We feel that a comprehensive system of review would be a more effective approach of assuring that this nation's most vulnerable children and families would be better served. That is why the amount and form of federal oversight is so critical and why this opportunity to comment is so important.

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Current Status

After some dramatic increases in foster care placements in the 1990s, this past decade has experienced a significant decline in placements, decreasing from more than 564,000 children in care in 1999 to approximately 423,000 in 2009.

This progress however should not distract from the need to accomplish a great deal more. Every year 200,000 infants and toddlers aged zero through three come into contact with child welfare services and more than 76,000 of these children will be placed into foster care. Science has demonstrated just how critical these early years are and as a result we need to implement and measure new policies that can address this high number of maltreated infants and toddlers. At the other end of the age spectrum, far too many youth fourteen and older are entering foster care. It is also true that the decline in foster care placements is in part due to the fact that nearly 30,000 youth will exit foster care not because they have found a permanent family but because they are too old for continued support. Finally the dramatic increases in adoptions from foster care cannot ignore the remaining 115,000 children in foster care awaiting adoption.

Current Monitoring and Review

The current monitoring system places an emphasis on process measures. The bulk of more than thirty state plan requirements under Title IV-E are based on states making assurance that they will take certain steps or actions. Those requirements and assurances are not necessarily evaluated in terms of their effectiveness or actual outcomes. For example each state is to have a process for cross-state placements and many would argue the current agreement between states has not been effective in assuring appropriate placement across state borders. In 1994 Congress established a new review process that resulted in the current Child and Family Services Reviews (CFSRs). Many policymakers at the state and local level will highlight the positive impact the CFSR process has had in engaging key stakeholders at the state level. That is an important result.

The current CFSR includes seven important outcome measures around safety, permanence and well-being but at times there appears to be a lack of connection between measuring these outcomes and the actual results. For example well-being outcome number 2 “children receive services to meet their educational needs” is an important need but we know that there are too many children in foster care not having their educational needs met. In fact the shortfall in this area resulted in Congress modifying federal law in 2008 to mandate specific action by the child welfare agency regarding access to education. Similarly, the outcome measure number one, that children are protected from abuse and neglect may not truly evaluate a state’s child protection services system beyond the two items considered: timeliness to investigation and repeat maltreatment.

Despite the current shortfalls and gaps with the CFSR process and its accompanying Program Improvement Plan (PIP) it is important to once again point out that it has set in place a regular review process that we believe has helped to focus the attention of some state level policymakers around some very specific issues. As a result we can learn from the lessons of the two rounds of CFSR reviews and build on these lessons. Similarly, since so many states have been under consent decrees within their child welfare system, we should attempt to create a new or improved system that can build on the CFSRs and replace the confrontational approach that may take place

through consent decree negotiations. We need a system of oversight that is focused on the unique needs and shortfalls with each of the states and do it in a fashion that is rigorous, with accountability and in partnership between federal and state governments.

Adjusting the Review Process

The Administration on Children, Youth and Families (ACYF) has asked a series of questions on how to improve the current review process. In your first question you ask how to promote and measure continuous quality improvement through the review. You have also asked the public to comment on how other stakeholders: local and tribal agencies, other programs, the courts and clients should be involved in setting targets.

We concur with some of the recommendations submitted by the National Association of Public Child Welfare Administrators (NAPCWA). Specifically we believe it is possible to better align some of the current review tools and to create a system that allows for annual on-going evaluation and improvement based on these reviews. They have suggested the alignment of the review process by folding the Child and Family Services Review (CFSR) and the resulting Program Improvement Plan (PIP) into a new version of the current Child and Family Services Plan (CFSP) with an Annual Progress and Services Report (APSR). Under this proposal states would design a five year plan that examines the strengths and weaknesses of that state's current system. It would then be evaluated each year as part of the APSR. Wrapped around this approach would be technical and on-going federal assistance that would help in the planning. Later this technical assistance would help address the shortfalls that may be found in the APSR or to re-direct attention to different problem areas.

Under such an on-going process it would allow the ACYF and the states to work together to design an effective strategy that could incorporate best practices and some fundamental approaches to assisting the families touched by the child welfare system. For example, it would allow ACYF and states to engage in how to best implement important practices such as differential response adhering to the eight core elements and to ensure such practices would be implemented in a way that ensures that safety and risk assessments are completed on all families served in both the assessment and investigation response pathways.

Another important example would be the ability of ACYF to help states employ family engagement strategies in child welfare systems including child protective services. States could be encouraged to create child welfare practices that actively engage family groups in developing plans to address safety and well-being needs and possibly prevent further CPS and child welfare involvement.

Under such a plan we believe it is possible to have a planning process that more fully engages other stakeholders in the creation of the plan and the setting of outcomes. To see real improvement in child welfare outcomes will require more than just the state child welfare agency. It is clear that the fate and well-being of these children and families are dependent on several other critical parties. The courts play a critical role as outlined in several parts of federal law. Courts need to be involved in the creation and execution of a state five year plan.

In addition many of the families and children in this system are in need of critical services such as health care and behavioral health services. A partnership that is rigorous would allow the federal government to provide needed guidance and assistance as the Affordable Care Act is

implemented so that the children and families in the child welfare system can benefit from the expanded access to health and mental health services.

It is critical that any five year planning and annual review be a genuine process that extends beyond a list of assurances or written policy based on state plan requirements. It must be an active review and measurement of how policies are actually being executed and practiced and an evaluation of actual impact on families and children in care.

In regard to data and the questions raised by ACYF we would also agree with some of the recommendations of NAPCWA particularly the need to define specific measures to evaluate how Indian children are being treated by the state child welfare system and to develop these measures in collaboration with tribes and tribal organizations. This collection of data would also assist in any review process of how a state is addressing the needs of Indian children in a state where a Tribe has not taken the option to run its own Title IV-E program. We agree that data needs to be evaluated in the context of how states collect that data and the differences in state definitions. We encourage ACYF to work with states in a way that may facilitate the collection of data across systems such as child welfare, education, health care and juvenile justice.

American Humane Association also feels that it is important to have a clearer understanding of the disproportionate representation of certain racial or ethnic groups within child welfare and the differences that exist between states and regions. Data may be able to help inform this review and as a result help to implement policies that can remedy disproportionality. Finally we would agree on the elimination of data elements that do not result in the collection of data that does not inform practice or provide important information.

As ACYF considers strategies around incentives, supports and penalties, as we stated earlier, ACYF should wrap technical assistance around the planning and annual evaluation process. This could help states to implement improvements and changes best targeted to that state's specific or unique needs. Additionally we urge ACYF to consider methods around the re-investment of penalties. This may be a challenge in light of the current structure of federal funding and the fact that states have multiple sources to fund child welfare. A possible model may be the Supplemental Nutritional Assistance Program (SNAP). Over the years, if a state's eligibility system for food assistance has resulted in an error rate that is considered too high a state would be penalized but the amount a state was penalized was re-invested into a plan to address the error rate. The current penalty structure of child welfare penalties makes little sense in that if a state is failing to meet a requirement they could lose funding at a time when they may need to make a greater investment. A more useful approach would require a reinvestment to correct any errors or in this case failed outcome goals. We believe that there are methods to collecting how much a state invests in child welfare related services and that this could serve as a basis to judge how to structure such a reinvestment penalty structure.

Once all comments have been reviewed, the American Human Association urges ACYF to implement any changes or new review process in as rapid a fashion as permissible. We recognize that building consensus is time consuming but we also feel that any new system of oversight needs to recognize the absolute importance this has for the families and children in the child welfare system.

The American Humane Association appreciates the opportunity to offer these comments.

Please do not hesitate to contact us for additional material and assistance. Thank you for your consideration.

Sincerely,

John Sciamanna
Director, Policy and Government Affairs, Child Welfare