

This submission by Andrew Barclay and Christopher Church is in response to the April 5, 2011 Department of Health and Human Services (HHS) Request for public comment regarding Federal Monitoring of Child and Family Service Programs.

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Overview:

The Child and Family Services Review (CFSR) has led to more net-positive outcomes for children and families than any child welfare innovation of the past 20 years. It has established data-driven evaluation of child outcomes as the cornerstone of program success. A government program that is forced to strike a balance so fundamental as to weigh a parent's right to raise her child against a State's interest in protecting the welfare of a child must be informed by objective data and continuously evaluated, an opportunity the CFSR provides. Our next section will offer two overarching principles that will improve Federal Monitoring of Child and Family Service Programs. The remainder of our comment will offer specific answers to enumerated questions in the Request.

HHS Funding and Performance Measurement Should Align to Maximize the Time that Child Victims Spend in Safe, Permanent Families

As a protective intervention for victims of child maltreatment, foster care is extremely effective. Child victims removed to foster care are very safe, in terms of subsequent victimization, relative to victims who are not removed to foster care. However, the data tell us that only 1 out of 5 child victims are removed to foster care. Decision makers are balancing the added risk to those 4 out of 5 victims who do not enter foster care against the potentially negative effects of removal and time without a permanent family. However, the success or failure of those critical decisions is not currently reflected in the CFSR. Furthermore, the Congressionally mandated periodic National Incidence Studies demonstrate the continued struggle of our child welfare systems to accurately capture child victims. To borrow the authors' language from the most recent NIS, our CPS practices reach only "the tip of the iceberg." We believe that funding and monitoring the safety, permanency and well-being of all child victims is consistent with Congressional intent, not just the 1 out of 5 *identified* victims that enter foster care.

The safety outcome of those 4 out of 5 victims, along with the other 1 out of 5, is reflected in a single CFSR safety measure. We will not argue that, since the safety of all victims is aggregated into a single CFSR measure, their permanency (with those 4 out of

5 reunified in 0 days and with 0 placement settings) should be also be aggregated. Instead, we would prefer the CFSR be modified to serve as the states' principal measurement tool for judging the success of all responses to child maltreatment. The responses need to be categorical, but, at this early stage in the development of non-foster care responses, the categories should trade specificity for broad definitions that encourage innovative design. Foster care and non-foster care might even suffice.

We encourage HHS to apply the same safety/permanency/well-being rubric to all state responses to child maltreatment. At first glance, permanency might seem immaterial to children not removed, but we should track the quality (if not the timeliness) of their permanency in terms of subsequent foster care entries in the same way we track foster care reentries. Child victims not removed to foster care make up the vast majority of state child welfare agencies service population. Those child victims receiving services outside of foster care that are not subsequently victimized represent some of the fastest and highest quality permanency efforts of the state child welfare agency: minimally intrusive and limited in duration.

The judiciary's role in differential response (DR) systems is still forming, but the added threat to constitutional rights looms large enough that we encourage HHS to add a due-process (both procedural and substantive) dimension to the CFSR measurement framework.

Lest we repeat our past mistakes, the shift to differential responses to child maltreatment should make every effort and take advantage opportunities to synchronize financial, measurement, and statutory frameworks. Modifications to funding streams that incorporate DR should be accompanied or preceded by modifications to the measurement and statutory frameworks. HHS should also encourage states to align policies and statutes to envision and regulate an array of responses to child maltreatment. This encouragement could build on lessons learned from Fostering Connections to Success and Increasing Adoptions Act as well as the Foster Care Independence Act of 1999. We suggest shifting some of the burden (and the encouragement) for the creation and implementation of state statutory changes to HHS's Court Improvement Programs.

The current CFSR weights compliance with reunification and adoption outcomes equally. That weighting is inappropriate. Systems that seek to maximize the time that child victims spend in safe, permanent families should pursue options that maximize time along both of those dimensions. If the cost of a particular permanency option is 2-3 times as many months without a permanent family (as in the case of adoption), the outcome measurement framework should reflect the added cost. If a permanency option requires the government to destroy a family and create another, the outcome framework should reflect that cost. If a permanency option carries an additional benefit to society in terms of stronger families, the outcome framework should reflect that benefit. If the permanency cost is offset by gains in safety, the outcome framework should reflect the safety benefit. HHS should only favor one form or permanency over another when it is justified in terms of safety, permanency, well-being, and due-process.

The Statewide Assessment Must Become Synonymous with Technical Assistance

This submission makes a basic assumption: data raise questions, they do not answer them. Child welfare data provide context in a complex scheme of government intervention that begins with an allegation of maltreatment and may continue well beyond a child's eighteenth birthday. Families and children that interact with a state child welfare system have radically variable experiences. Their experiences are influenced by the nature and severity of the allegations, family function, demographics, federal laws, state laws, local regulations, agency policy, local resources, community values, and many other factors. In such a complex scheme, data raise questions, they do not answer them.

AFCARS and NCANDS data from State SACWIS can be used to identify localized strengths and challenges that can provide the basis for developing a PIP. Yet prior to developing a PIP, a state must walk down the inevitable path of nonconformity by way of the Statewide Assessment. While the Statewide Assessment has the capacity to provide invaluable context to state child welfare professionals about the state of their child welfare practices, it is currently underutilized as a coercive means to an end: the development and implementation of the PIP. To date, no state has been determined to be in substantial conformity with the Statewide Assessment. Put slightly differently, every state has failed the CFSR Statewide Assessment. HHS has begun every CFSR conversation by telling the State they are not in substantial conformity. This sends the wrong message to the states, and sets a dangerous tone for the CFSR conversation. As the Statewide Assessment becomes more synonymous with technical assistance, outcome measures from AFCARS and NCANDS can inform a conversation rather than be the basis for penalty. Please see our response to Question 6 for a discussion of the appropriate basis of a penalty scheme, an admittedly critical component of the CFSR.

The Statewide Assessment should utilize the full AFCARS and NCANDS datasets to provide a comprehensive profile that can be reported on the state and county level. Fostering Court Improvement longitudinally processes over 100 statistics for 13 states from bi-annual AFCARS and NCANDS submissions. The reports are integral to a training and facilitation process that closes the feedback loop to local child welfare stakeholders, and assists in identifying strengths and challenges that form the basis for localized, meaningful program improvement. The conversation begins with an understanding that data provide context. Assessing substantial conformity is inappropriate at this stage of the CFSR. The Statewide Assessment should provide context, information, and become synonymous with technical assistance. Otherwise, HHS is leading with the wrong foot in assessing substantial conformity based on 2 safety measures and 4 permanency composites, which together measure the outcomes of a very small proportion of child victims and soon-to-be victims.

The CFSR has been aptly described as 'the perfect instrument of torture.' That description was coined by one of our most successful child welfare executives, someone with the experience and insight to recognize the CFSR's strengths and weaknesses in

managing toward improved outcomes. Our profession is in need of a culture change around the CFSR. The Statewide Assessment is your agent of change.

Response to Questions:

- 1. How could ACF best promote and measure continuous quality improvement in child welfare outcomes and the effective functioning of systems that promote positive outcomes for children and families?*

Setting national standards has provided a great deal of value in our work. However, the methods by which the national standards were formulated were excessively complicated, opaque and riddled with flawed logic and errors. We have spent far too much of our time explaining and defending that process, and this was avoidable. For our purposes, we can get nearly as much value from simple national medians that all stakeholders can understand quite easily. A ranking of state performance provides a great deal more value than national standards, yet it is difficult to come by today. The variance across states has little or no utility to us, or, we think, to anyone else, and it should not play a central role in setting standards.

For the purpose of judging conformity and improvement, we endorse the use of individual state goals set relative to individual state baselines using the variability across time (not across states) within the individual state (derived from a decade-plus of historical data).

We have struggled with the use of weights in the permanency composites. Weighting positive against negative outcomes is indispensable. However, we are forced to conclude the principal components analysis and other procedures used were inadequate, but we cannot offer a viable alternative. We know the answer does not lie in any covariance matrix. Mathematics will not help us assign a weight to the decision of a state actor to cause harm to a child in the hope of avoiding a future harm. How many days without permanency is one day of safety worth? The weights probably need to be drawn from either a national practice consensus (deriving weights from aggregated national practice decisions) or from some other, less quantitative, consensus process.

Whatever method is used for judging conformity, it must be transparent, it should be parsimonious, it must balance positive and negative outcomes, it must account for the experience of all or nearly all victims, and it must account for an individual state's variability across time (CA simply cannot change as quickly as WY).

It is very important to the legitimacy and rigor of the conformity process that all steps used in all calculations are made public. This was not true of the CFSR Round 2 process. There is a simple reason that the defect rate in open-source code is so much lower than that in proprietary code – more eyes makes better software.

Review results should be analyzed by leading professionals using the best methods available and disseminated as widely as possible for learning. The current CFSR review documents site, http://basis.caliber.com/cwig/ws/cwmd/docs/cb_web/SearchForm, is

inadequate. It is an example of the improper use of a database-backed website where a simple tree-structured site would provide easier access and greater transparency. Imagine the use-case of a state administrator trying to track other states' reports as they are completed, without knowing the order of completion. State-to-state comparisons could be very instructive, but the formatting of the information precludes many comparisons. The new outcomes site, <http://cwoutcomes.acf.hhs.gov/data/>, is an example of the appropriate use of a database-backed website.

State-to-state peer TA is, in our experience, the best form of TA. The heterogeneity of different state approaches to the problem area can be advantageous, like 52 nearly-independent experiments. With HHS promoting more cross-pollination, all 52 experiments can evolve into more uniform, more robust, and more effective systems.

Finally, public recognition of major improvements or major milestones and public shaming of failures are effective forces for change.

2. *To what extent should data or measures from national child welfare databases be used in a Federal monitoring process and what measures are important for State/Tribal/local accountability?*

The AFCARS and NCANDS datasets provide more than ten years worth of standardized data. These data should continue to form the basis for the data profile of the Statewide Assessment. We propose 3 minor modifications to AFCARS and NCANDS in our response to question 3 below.

We have trained thousands of stakeholders in over 300 local court gatherings in Georgia and other states using outcome measures on the Fostering Court Improvement (FCI) website. These measures include all of the CFSR Round 2 measures, plus about 100 other measures with greater utility for local courts. We have found that reorienting measures to a "positive" direction is subjective and confusing to audiences, so HHS should abandon that practice. Below are the measures we propose for judging CFSR Round 3 conformity (baseline + % annual improvement). The CFSR conformity measures should avoid diagnostics and over-specification (e.g. separate timelines for each type of permanency). All measures are calculated from state AFCARS and NCANDS submissions going back to 1998. We have field-tested most of these for 4 or more years:

1. 6-Month Recurrence of Maltreatment (disposition-based cohort)
Notes: Because record inclusion in NCANDS is based on disposition date, the current measure undercounts recurrences later in the year. Some states take up to 6 months median to dispose cases, so the current CFSR recurrence rate grossly underestimates their rate. This bias can be minimized by a slight modification to the cohort from "children maltreated during the first 6 months" to "children in cases disposed during the first 6 months."
2. % Maltreated 6 Months After Removal to Foster Care
Notes: Need removal dates recorded in NCANDS records to calculate this.

3. % Maltreated 6 Months After Unsubstantiated Investigation
4. % Maltreated 6 Months After Non-Investigative Response
5. % Removed to Foster Care 30+ Days After Response
Notes: The median days from incident to removal among FCI states ranges from 1 to 60 days. The choice of a 30-day window is somewhat subjective and open for refinement.
6. % Maltreated in Foster Care (all perpetrators, use child-years in denominator)
Notes: HHS should measure safety in foster care, and therefore should be agnostic to perpetrator relationship. The majority of maltreatment in foster care in FCI states is perpetrated by parents & relatives (excluded from current CFSR measure). Incident dates must be during a foster care episode. The time of exposure to the hazard can and should be measured directly and used as the denominator in units of child-years. Counts of children served during the period are a poor proxy to exposure time in states that remove large proportions of children for short times (e.g. 30% or more < 3 days). We do not use this measure locally, because the measurement of rates this close to zero is too problematic, but we do think the measure is important to CFSR conformity. HHS should consider using a 2 or 3 year time frame for this measure in smaller states: one additional maltreatment in NH or VT would have doubled their FFY2009 rate – that is unacceptable variability.
7. % of Foster Care Entries Permanent within 1 Month
Notes: Our experience using entry cohort survival analysis in 13 states has led us away from the use of quartiles as summary statistics for length of stay. The shapes of entry cohort survival to permanency curves vary radically between jurisdictions, most especially in the initial 6 months of the curve. One extreme example is the large practice difference between HI and IL, which is not adequately conveyed using quartiles. The proportions discharged at 1 and 12 months better capture the shape of the entry cohort survival to permanency. When we wish to dictate the shape of the curve, we have proposed targets of less than 20% permanent by 1 month and more than 50% permanent by 12 months.
8. % of Foster Care Entries Permanent within 12 Months
9. % of Children in Care 12+ Months Permanent within 12 Months
10. % of Children in Care 24+ Months Permanent within 12 Months
11. % of Children in Care at Age 15 who Emancipate

Notes: Use cohort with 36 months of follow up. CFSR composite measure 3-3 fails to account for the prevention of emancipation exits, penalizing states that avoid emancipation for older youth.

12. % of Exits of Legal Orphans that were to Non-Permanency

13. % of Exits Reentering Foster Care within 12 Months

Notes: A bug in the federal SPSS code causes double counting (in both the numerator and denominator) of records of children with the following sequence: discharged during the previous report period, reentering during the previous report period, and not discharged during the previous report period. This bug raises reentry rates by as much as 2% in some states. We can provide SPSS code to correct the problem. The larger issue is that there is no mechanism for us to report such bugs.

14. % of Children Served 30+ Days in Foster Care During the Period Either (1) with 2 or Fewer Placement Settings or (2) in Current Setting 6 Months or More

Notes: Children in care less than 30 days have nearly zero risk of 3+ placements. Some states remove large proportions of children for very short times. If the underlying construct we are trying to measure is attachment, then the duration of the most recent placement is a better proxy for attachment than exposure time denominator (e.g. length of stay in current setting during the period) gives us.

Or a single alternate for all of these: % of days during the year that children spent safe in a permanent family. However, the use of such a bottom-line measure forces us to answer the question: How many days without permanency is one day of safety worth? We do not claim to have that answer.

We are developing a measure that will reflect placement moves toward (and away from) permanency, but field testing is just beginning. In above timeliness measures, we encourage permanency to be measured from the child's perspective, using the date the child entered the permanent home (e.g. placement in pre-adoptive or trial-home setting). In above timeliness and quality of permanency measures we would not distinguish among types of permanency for purposes of conformity. The CFSR Statewide Profile should include many diagnostics for use in local TA and monitoring PIP strategies.

3. What role should the child welfare case management information system or systems that States/Tribes/local agencies use for case management or quality assurance purposes play in Federal monitoring process?

We support the APHSA proposal that Federal monitoring rely on local case management and QA systems to the greatest extent possible. We support this not only for the elimination of redundancies, but also for the improvement of data quality. We have found that the more data systems are used for public reporting, especially when reports are

central to local child welfare stakeholder training, data quality improves, often dramatically. We encourage strong HHS oversight of state QA systems through data audits and occasional shared reviews to ensure their legitimacy. We regard strong, independent, competent, well-financed QA systems as vital to the operation of a state child welfare system.

We propose 2 minor modifications to AFCARS submissions:

1. Allow states the option of including all removal episodes during the period in their AFCARS submissions, rather than just the most recent removal episode.
2. Allow states the option of including all placement episodes during the period in their AFCARS submissions, rather than just the most recent placement episode.

These 2 modifications to AFCARS will allow us to make our reentry and stability calculations far more meaningful and reliable with minimal state effort.

We propose HHS require submission of the NCANDS child file with a minimal set of required fields from all states. We also propose an additional required field in the NCANDS child file: When AFCARS record numbers are reported, require the removal date. The AFCARS “record number” field is, in practice, a child identifier. It does not uniquely identify a removal episode record in AFCARS submissions.

4. *What roles should State/Tribal/local child welfare agencies play in establishing targets for improvement and monitoring performance towards those targets? What role should other stakeholders, such as courts, clients, and other child-serving agencies play?*

Unfortunately, local stakeholders often engage in local squabbles. Rather than shying away from local squabbles, HHS should engage as a neutral. When HHS shares penalty letters, SACWIS IAPDs, and other key oversight documents only with state executive branch agencies, HHS cedes neutrality. HHS should take a page from the judiciary and avoid ex-parte communication by sharing all key oversight documents with all parties via a public website. State legislators, judges, and child advocates should not be forced to rely on FOIA requests for key public documents. In addition, we have observed unprofessional and overtly biased behavior from HHS staff and contractors first-hand on many occasions. This behavior should be curtailed through clear policy and training, and monitored by facilitating stakeholder reporting of unprofessional behavior to HHS, rather than relying on back-channels. Greater transparency and public reporting by HHS should be used to avoid the natural alignment of HHS with state executive branch agencies.

We have found that the public sharing of comprehensive local outcome reports like those on FosteringCourtImprovement.org/state_websites.php has served to diffuse some local contention by offering an objective, third-party source of good quality outcome information. In 6 years of public reporting, we are aware of no negative consequences; all of our fears have been unfounded, so far. We have dozens of examples of positive press and other positive uses of the public reports. Stakeholders outside of the executive branch agency, including judges, generally do not have access to current, comprehensive outcomes reporting, so they rely solely on agency goodwill, and, in some cases, local

statutorily mandated access. If HHS could find a way to share similar reports with all local courts, this would supply a great deal of momentum to local stakeholders seeking improved outcomes.

The legal community is critical to assuring positive outcomes for children and families that interact with the child welfare system. Attorneys that represent parents, children, and the agency as well as judges that preside over civil child abuse and neglect proceedings have a great responsibility to protect the vital legal interests at stake. In addition, we have found judges to be enthusiastic early adopters of outcomes measures. They are a particularly receptive (and influential) audience for high-quality TA. The CFSR Onsite Assessment should facilitate the legal community’s involvement by reporting on measures directly related to the legal process.

A number of composites could be developed to provide information to the state and local communities that would recognize the legal community’s role in assuring positive outcomes. For example, federal law requires a judicial finding of probable cause for every involuntary transfer of custody to the state agency within 72 hours of the removal. Table 1 demonstrates one example of a composite that could be developed to ensure due process for the families of children removed to state custody.

Component	Definition
<i>Timeliness of Hearing</i>	<i>Of all children removed to foster care, how many removals were judicially reviewed within 72 hours of removal?</i>
<i>Attorney Appointment Order</i>	<i>Of all caretakers for whom custody of their children was temporarily transferred to the state agency, how many were appointed an attorney prior to the judicial proceeding authorizing removal?</i>
<i>Notice to Caretaker</i>	<i>Of all caretakers for whom custody of their legal children was temporarily transferred to the state agency, how many received legally sufficient notice – pursuant to state law – of the judicial proceeding authorizing removal?</i>
<i>Contrary to Welfare Finding</i>	<i>For all children removed to foster care, how many orders contained a contrary to the welfare finding in the court order authorizing removal?</i>
<i>Discharged w/in 72 Hours of Removal</i>	<i>For all children removed to foster care, how many were discharged from custody within 72 hours of removal?</i>

Such a composite would provide a valuable feedback loop to the state child welfare agency and legal community regarding compliance with due process rights of children

and families involved in civil child abuse and neglect proceedings. Similar measures could be developed for TPR proceedings, for which parental rights are most at stake, or for permanency hearings, at which the state's bottom line of providing children with a safe and permanent family is the principal concern.

The continued use of composite measures can prove invaluable when HHS is able to clearly identify which outcomes should be prioritized. For instance, let's assume the outcomes in Table 1 are ones we agree will ensure due process for parties: timely notice, legal representation, few 72-hour discharges, etc. Let's assume further that a Statewide Assessment identified due process at the 72-Hour Hearing as an area in need of improvement for a jurisdiction. At this stage, a state could identify the characteristics of cases that negatively impact due process at the 72-Hour Hearing by running a multivariate regression analysis on state AFCARS and NCANDS data. Once validated, the model could be applied to current foster care cases to identify those most likely to negatively impact the composite. Review of these cases could tie into the established state quality assurance system to maximize program improvement.

Utilizing multivariate analysis to improve child welfare practices on the local level is not hypothetical. Shortly after the second round of the CFSR in Georgia, GA CIP partnered with the State child welfare agency to identify children statistically most likely to negatively impact Permanency Composite 3. This project, known as the 'Cold Case Project' was Georgia's effort to comply with our PIP goal to improve on Permanency Composite 3. Multivariate Logistic Regression identified seven characteristics from a pool of 65 AFCARS variables that predicted those children most likely to negatively impact Composite 3, with 90% accuracy. CIP funds were then used to conduct file reviews of over 200 cases that were identified by application of the predictive model to current foster care cases that had been open for at least two years. A final report describing the project and discussing the findings in greater detail is available at www.gajusticeforchildren.org.

This level of technical assistance should be routine to the PIP and ongoing quality assurance efforts. It is our observation that the current technical assistance network and state quality assurance schemes are unable to provide this level of assistance.

5. In what ways should targets and performance goals be informed by and integrated with other Federal child welfare oversight efforts?

HHS should give serious consideration to requesting amicus briefs from the US Solicitor General in federal child welfare class action settlement hearings. Communicating the executive branch monitoring goals and procedures to federal courts would aid the Court and the parties in aligning settlement agreements with the CFSR.

We support the APHSA proposal regarding the streamlining of federal reporting.

6. *What specific strategies, supports, incentives, or penalties are needed to ensure continued quality improvement and achievement of positive outcomes for children and families that are in substantial conformity with Federal child welfare laws?*

A CFSR process that utilizes that Statewide Assessment as a tool for providing information and context related to how a state child welfare system treats children and families admittedly lacks the important incentive and penalty structure of the current CFSR. However, reclassifying the PIP as the accountability agent enables HHS to prioritize meaningful program improvement as a non-adversarial shared priority with the local child welfare community, all the while ensuring continued quality improvement and accountability.

In theory, a state could achieve substantial conformity on the CFSR and avoid developing and implementing a PIP plan under federal oversight. In practice, this scenario is unlikely. Under the new CFSR, the PIP should be required. The Statewide Assessment should highlight areas in need of improvement, and the PIP should be developed collaboratively between the states and HHS, with technical assistance, to develop and implement meaningful localized plans to improve outcomes in these areas, much in the same way the PIP works now. However, HHS could monitor progress on the PIP and assess penalties for states that do not make a good faith effort to implement the plans.

7. *In light of the ability of Tribes to directly operate title IV-E programs through recent changes in the statute, in what ways, if any, should a Federal review process focus on services delivered to Indian children?*

We have very little experience working with Tribes. Use of the Statewide Assessment as a TA tool, customized to the tribal law, policy and practice, would seem to be a good strategy.

Conclusion:

We thank HHS for the opportunity to comment. We are happy to provide further feedback or clarity if necessary:

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