



June 13, 2018

Kathleen McHugh
U.S. Department of Health and Human Services
Administration for Children and Families
Director, Policy Division
330 C Street SW
Washington, D.C. 20024

RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, [RIN: 0970-AC72].

Submitted via email to: CBComments@acf.hhs.gov

Dear Kathleen McHugh,

On behalf of the Child Safety and Permanency Division of the Minnesota Department of Human Services, please accept the following comments regarding the AFCARS proposed rulemaking RIN: 0970-AC72.

1. HHS should maintain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression because our agency wants additional data so we can improve outcomes, identify and fund needed resources, and identify areas for improvement.

- These questions are not overly burdensome and the benefits of collection of these data elements - including cost benefits - outweigh any burden.
- These data elements will help states and tribes meet their primary mission of safety, well-being and permanency of foster youth, particularly the 19% estimated to be LGBTQ.¹

2. Our agency has already taken significant steps to improve our policies and practice to support LGBTQ youth and families and we have already begun/are laying the groundwork for SOGIE-data

¹ *Ibid.*

collection and, therefore, the burden of these data elements in the AFCARS Final Rule is not significant.

- Our state agency is currently in the process of working towards the Human Rights Campaign (HRC) All Children, All Families Certification which promotes LGBTQ inclusive policies and affirming practices among child welfare agencies. Through this process we have begun work examining and adapting our data collection, practice guidance and policies to be inclusive and responsive to the needs of LGBTQ youth and families.

3. The core objectives of safety, permanency, and well-being apply to all children in the custody of our state's child welfare system, including LGBTQ children and the Social Security Act requires collection of data regarding characteristics of all children in care.²

- In April 2011, ACF confirmed and reiterated "the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person's sexual orientation, gender identity or gender expression."³
- ACF further acknowledged that LGBTQ youth are overrepresented in the population served by the child welfare system and in the population of youth experiencing homelessness.⁴

4. LGBTQ children continue to experience worse safety, permanency and well-being outcomes than other foster youth; data at the state level is urgently needed to drive improvements, improve outcomes, reduce costs, and reduce disparities; data at the national level is necessary to inform federal law and policy and funding determinations and to identify best practices for replication.

- Disparate outcomes include placement instability including a greater number of foster care placements, overrepresentation in congregate care, and hospitalization for emotional reasons.⁵ Long-lasting placement instability unrelated to initial individual differences significantly worsens children's behavioral well-being."⁶

² https://www.ssa.gov/OP_Home/ssact/title04/0479.htm

³ Administration for Children and Families, *ACYF-CB-IM-11-03, Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care* (April 6, 2011) <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf>

⁴ Same as 1 above.

⁵ *Ibid.*

⁶ Center for the Study of Social Policies, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare through Cross-System Collaboration*, 2016 <https://www.cssp.org/pages/body/Out-of-the-shadows-current-landscape.pdf>

- This data will help quantify the need for LGBTQ identified foster and adoptive homes and aid in the proper distribution of state level resources for training, outreach and support of those families.
- LGBTQ youth will be inadequately served until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs.
- Reducing instability and achieving permanency for LGBTQ children through placement with affirming, supportive families and providing needed supportive services could provide great cost savings
- Collecting this data nationally will allow the Children's Bureau, states and tribes to identify successes and best practices in improving outcomes for this population and to replicate them to address disparities.

5. HHS should maintain the question related to the reason for removal of a child from a family home due to "family conflict related to child's sexual orientation, gender identity, or gender expression."

- Data regarding the degree to which family conflict impacts removal can drive needed funding for family acceptance work leading to family preservation, a priority of the current ACF administration.
- Remaining safely at home is a cost savings that our state could achieve by helping a child remain with their family of origin through targeted supportive services related to this source of family conflict.
- This data will be crucial to successfully implementing Family First prevention funding aimed at keeping children with their families of origin rather than entering foster care.
- Removing this data point would harm the ability of our state to further work to reduce the over-representation of LGBTQ youth in care, in general, and LGBTQ youth of color, in particular.

6. HHS should retain the voluntary sexual orientation question for adoptive and foster parents and guardians (and add gender identity questions). Resulting data will help states and tribes recruit and support LGBTQ caregivers, increasing the pool of available homes for children including LGBTQ youth, and help identify states and agencies which can do better in recruitment of LGBTQ resource families.

- The LGBTQ community is a significant untapped resource in the effort to find permanent families for all children and youth in foster care. Gay and lesbian foster parents are raising six percent of foster children in the United States, and same-sex couples are six times more likely to be serving as foster parents than their heterosexual

counterparts.⁷ National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.⁸

- In its April 2011 guidance, ACF confirmed that “LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes.”⁹
- Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.¹⁰
- Recruitment of LGBTQ families could provide a source of affirming, supportive homes for LGBTQ foster youth, reducing the costs associated with placement instability that these youth experience.

7. HHS should *add* voluntary gender identity questions for foster youth over 14 and foster and adoptive parents and guardians because this information is important and it is efficient to collect this information along with current elements.

- “Youth who are transgender and/or gender-expansive often have a difficult time in child welfare systems; violence enacted upon people who are LGBTQ is often not because they are “out” as LGBTQ, but because service providers, caretakers, and peers are policing the youth’s gender behaviors (Keuroghlian, Shtasel, & Bassuk, 2014; Saewyc et al., 2006).”¹¹
- Adding gender identity questions for foster youth and foster and adoptive parents and guardians will help programs save costs by identifying affirming placements and reducing placement instability.

⁷ Gary Gates, LGBT Parenting in the United States, The Williams Institute, UCLA School of Law, February 2013, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

⁸ The Williams Institute & The Urban Institute, Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States, (2007).

<https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

⁹ Same as 4 above.

¹⁰ ECDF Act Facts, Family Equality Council (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/

¹¹ Robinson, Brandon Andrew. Forthcoming. “Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality.” *Child Welfare*. Robinson further states that “mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth’s behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006).”

- Collecting gender identity data as well as sexual orientation data will help states and tribes develop “streamlined” comprehensive services with no gaps.
- Collecting this data will be especially useful as new programs are developed with Family First funding, and Title IV-E agencies will benefit from and save money by adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

8. The sexual orientation data elements of foster youth, foster and adoptive parents and guardians can be administered safely, and the Children’s Bureau should provide training and resources to states and tribes to do so.

- The questions directed towards youth over 14 and parents and guardians are voluntary.
- Population-based surveys have successfully collected these data from youth for many years.
- Support the safe and affirming collection of sexual orientation information with the understanding that, as a prerequisite and consistent with federal law and professional standards, states must protect youth and families from discrimination on account of their sexual orientation and gender identity and expression (“SOGIE”), provide training to staff regarding respectful collection of SOGIE information, and implement confidentiality protocols for SOGI information.
- ACF should provide technical assistance to states in developing specific policies to protect confidentiality and prevent unauthorized disclosure and in developing policies and procedures governing the management of sexual orientation and gender identity information, including data storage and disclosure protocols.

Thank you for allowing us the opportunity to provide comments,



Marvin Davis
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