



Texas Department of Family and Protective Services

Commissioner
H. L. Whitman, Jr.

May 29, 2018

Kathleen McHugh, Director
Policy Division
United States Department of Health and Human Services,
Administration for Children and Families
330 C Street SW, Washington, DC 20024

*Via the Internet: <http://www.regulations.gov/>
Via Regular and Certified Mail*

RE: Advanced Notice of Proposed Rulemaking (ANPRM)
Adoption and Foster Care Analysis and Reporting System (AFCARS)
45 CFR Part 1355
Posted on Federal Register Vol. 83, No. 51 / Thursday, March 15, 2018

Dear Ms. McHugh:

The Texas Department of Family and Protective Services (DFPS) respectfully submits this comment letter regarding the Advanced Notice of Proposed Rulemaking (ANPRM) with Comment Period on the *Adoption and Foster Care Analysis and Reporting System (AFCARS)* published in the *Federal Register* (45 CFR Part 1355) on March 15, 2018, for the Administration for Children and Family Services (ACF) of the U.S. Department of Health and Human Services.

Texas is in agreement with the Regulatory Reform Task Force created by Presidential Executive Order 13777 in its identification of the AFCARS regulation as one in which the reporting burden imposes costs that exceed benefits. The AFCARS final rule, published December 14, 2016 (81 FR 90524), requires DFPS to make extensive, costly changes to our Statewide Automated Child Welfare Information System (SACWIS), and also places an arduous burden upon the staff who will be responsible for the gathering, data entry, and technology implementation of these additional elements.

Previously, on April 7, 2015, Texas submitted comments to ACF in response to the Notice of Proposed Rulemaking (NPRM) with Comment Period on AFCARS published in the Federal Register

(80 FR 7132) on February 9, 2015. Texas' position, as clearly stated in the 2015 comment letter, still stands today; however, a more thorough and specific cost and burden estimation has been added to this comment letter herein. For section-by-section comments, including comments on individual data elements, please see the attachment entitled Provisions of the AFCARS Final Rule. DFPS appreciates the opportunity to provide this information for consideration.

Throughout the NPRM dated February 9, 2015, ACF estimated that the costs to states would not be significant. However, given the vast scope of the NPRM—and subsequently the final rule published on December 14, 2016 —ACF insufficiently determined and articulated the cost estimates and burdens on states. Additionally, ACF did not realistically assess the costs that Texas and other states must incur to train staff, nor does ACF realistically assess the costs related to the number of caseworkers and their time needed to collect and enter the extensive data required.

As required by 42 U.S.C. §679(c)(1), any data collection system implemented must avoid unnecessary diversion of resources from agencies responsible for adoption and foster care. Complete implementation of the final rule will certainly continue to divert much needed resources from child protective agencies that would be significantly better spent on direct services to children and families. Thorough compliance with this ANPRM's request (i.e., deep dive into each data element) places a tremendous burden to the State of Texas as it is overly burdensome and cost-prohibitive.

Increased Burden on Caseworkers

Workers continually report significant increases in their workloads associated with case documentation related to federal expectations of data collection. With so many demands already competing for their time, even tenured and experienced caseworkers find they cannot adequately serve children and families with complex and often immediate needs along with having to perform extensive documentation for AFCARS. To fully meet the new data requirements and expectations of the final rule, Texas will need to add an additional number of staff. Some of the new data elements simply require additional time needed to document the information in a collectable format. Other new data elements, however, will add extensive time to individual client interviews due to the nature of the question(s) necessary for collecting the required information. For example, questioning a caregiver or youth about his or her sexual orientation may require additional time spent building rapport, and would likely result in further dialogue, including an explanation of why that question must be asked and why it must be collected.

To analyze the impact of the new data elements upon a caseworker's time, Texas assumed a conservative average of one additional minute per data element needed for the actual collection of data and/or one additional minute for the entry of the data into the SACWIS system. Accounting for the time required to ask a question and receive an answer, staff with the supervisor, and document the information into SACWIS, the agency estimated the need for an additional \$32,526,547 for 170 additional staff (caseworkers, supervisors and infrastructure). This information is based on the current number of caseworkers, children being served, and time to complete all current state and federal expectations, including the data collection of AFCAR elements as well as other tasks associated with case management services.

Increased Complexity of Information Technology (IT)

SACWIS, particularly from an IT perspective, is complex; adding a large number of new data collection elements increases the complexity, reliability, and consistency of the system, without consideration of all future SACWIS enhancements, as well. This includes, but is not limited to, system capability to case and person merge, case file print, auditing, and training. Increasing the complexity of Texas' SACWIS system to meet the demands of the final rule places a significant burden on the state's IT resources, requiring more staff resources and more state monetary resources than currently available.

New data elements require vast modifications of Texas' SACWIS system and a complete re-write of the state's AFCARS extraction code. Of the 272 new AFCARS data elements created by the final rule, Texas must implement 139 of them into its SACWIS system. Texas started the process of implementing the 27 data elements related to the Preventing Sex Trafficking and Strengthening Families Act, Public Law (P.L. 113-183), and the total business cost of implementation, training, and maintenance of these elements alone amounted to approximately \$8,182,393.00. With 106 remaining elements not currently covered or budgeted through the state legislative process, it is anticipated that it will cost Texas an estimated \$30 million to fully cover the implementation, training, and maintenance of these additional data elements.

The insertion of new data fields into Texas' case management system follows a specific process to ensure the changes meet federal requirements, prevent unintended data integrity issues within the system and to other corresponding systems, and meet other program requirements. In addition, once the agency updates the case management system with these changes, IT further updates the AFCARS data extraction. DFPS Program and IT must coordinate the implementation of the SACWIS changes while still remaining mindful of existing project schedules, which often consist of many legislative mandates.

The detailed process to implement changes within Texas' SACWIS system, called IMPACT, is not an easy undertaking. While the final rule outlines the data elements to be collected, it underestimates the time and funds necessary to integrate new data elements. For the State of Texas, when its child welfare program, Child Protective Services (CPS), identifies a need for a new data field, IT initially performs research to see if the data can currently be obtained from the IMPACT system. If the data is already being collected by IMPACT, IT implements changes to the AFCARS Extract Transform Load (ETL) process and deploys the changes to production. If the data field does not yet exist in the system, IT first must gather and document the requirements for the new data field. Next, IT adds and tests the new data field in the IMPACT application and database. After the data field has been successfully tested, IT will implement changes to the AFCARS ETL process. Once the AFCARS ETL process properly includes all of the needed data, the changes will be deployed to production. As outlined, this is a very time consuming, expensive, and tedious process to ensure data quality and integrity.

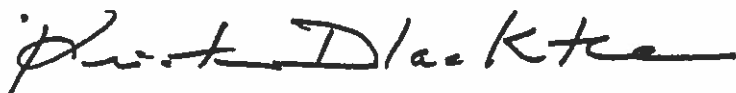
In closing, Texas supports all efforts to streamline the AFCARS data elements and remove the undue financial burdens placed upon states to collect data that may not improve child welfare practice or outcomes for children and families. Any new requirements should be cost-efficient with respect to the child welfare workforce capacity and SACWIS system requirements.

Thank you for the opportunity to comment on this ANPRM. If you have additional questions, please contact Elizabeth "Liz" Kromrei, Child Protective Services Director of Services, who serves as the DFPS lead on this matter. She can be reached by phone at (512) 438-3291 or by email at ELIZABETH.KROMREI@dfps.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Whitman", with a stylized flourish at the end.

Hank L. Whitman, Commissioner
Texas Department of Family and Protective Services

A handwritten signature in black ink, appearing to read "Kristene Blackstone", with a stylized flourish at the end.

Kristene Blackstone, Associate Commissioner for Child Protective Services
Texas Department of Family and Protective Services

Attachment

Provisions of the AFCARS Final Rule

Note: These comments submitted to ACF by DFPS on April 7, 2015, in response to the NPRM dated February 9, 2015, have been amended and updated to reflect the final rule published December 14, 2016.

Texas strongly supports the position that the Indian Child Welfare Act of 1978 (ICWA), P.L. 95-608 is outside of the scope of AFCARS and specific data on ICWA implementation and compliance cannot be collected through AFCARS. In addition, Texas continues to support a tribal agency setting up its own Title IV-E program, if that is the desire of the tribe.

Section 1355.41: Scope of the Adoption and Foster Care Analysis and Reporting Systems. Texas DFPS believes the proposed foster care reporting populations will improve consistency across the country.

Section 1355.43: Data Reporting Requirements.

Texas DFPS supports submitting data files on a semi-annual basis, which is a continuation of the current AFCARS rule. Additionally, Texas is fervently in support of maintaining the 45 day reporting period. Texas has solid performance on data integrity and needs to maintain the 45 day period in order to ensure quality data. If the period is shortened, we would need to make significant and costly modifications to our monthly data warehouse population process in order to create and submit the AFCARS data files in a timely fashion.

Section 1355.44(a): Out-of-Home-Care Data File Elements.

Overall, Texas DFPS is extremely concerned with the extensive increase in the required data elements. While longitudinal information relating to foster care episodes and placement events can be valuable, the value of the specificity of such information needs to directly correlate to achieving positive outcomes for the children and families we serve. In addition, the value of the data needs to be carefully weighed against the burdens on caseworkers to collect and enter that data into the SACWIS, as doing so takes away precious time needed for face-to-face interactions with children and families.

Further, states differ in how they define various terms, such as the types of homes or living arrangements, and these differences make it challenging to effectively and accurately gather and analyze data from a national perspective. State differences must be considered in the utility of collecting such types of data that have definitional variances across the country. Any national research that is based on data containing differing definitions will produce skewed results, which could lead to inaccurate conclusions concerning child welfare issues

Data analysis is only as good as the quality of the data collected. From our perspective, data collection projects should perform interrater reliability tests to ensure accuracy of data collection. With the release of the NPRM and subsequent final rule, it is apparent that this important step was overlooked. It must be completed for quality data to be collected uniformly across the states. Finally, much of the new information sought is already collected by Texas DFPS, but it is currently collected

in narrative form and would require extensive caseworker time to transform the child and family information into data files for AFCARS. The narrative form is an important casework tool because it explains the significant *why* and *how* surrounding the unique child and family dynamic. Casework is not data and it is not data entry. If the ultimate focus is truly on positive child and family outcomes, then the data system should be built to help caseworkers and managers accomplish their work, and not to just generate information. If the desire is to have greater detail in foster care information on the federal level for research purposes, policy development, or other appropriate purposes, then additional federal funding needs to be provided to states in order to collect and enter such data without impeding upon crucial caseworker practice.

Texas DFPS offers these comments on the following specific data elements:

Section 1355.44(b)(9)(vii): Race Abandoned.

Abandoned is not a race or ethnicity. If a child is abandoned and too young to self-identify with a race, then, the response selected should be 'Unknown.' At a later time when the child is able to self-determine a race, the caseworker would select the appropriate race or races. This same comment applies to all other elements where "Abandoned" is used in this manner, including in the Adoption and Guardianship Assistance Data File. Furthermore, neither the National Youth in Transition Database (NYTD) nor the National Child Abuse and Neglect Data Systems (NCANDS) collect abandoned children as a race category. We recommend consistency between the race and ethnicity responses where possible in all federally required data submissions.

Section 1355.44(b)(12): Timely Health Assessment.

States have different time frames for Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) and health assessment schedules. As a result, gathering this information on a national basis does not provide a qualitative picture on health assessments. Further, the guidance accompanying the NPRM implies that the purpose of this new element is mainly to determine if states are timely meeting the requirement at 42 U.S.C. § 622(b)(15)(A). Rather than adding another element to AFCARS, this information or regulatory assessment would be much better assessed or implemented as part of the CFSR (or another type of qualitative review) that focuses on child well-being outcomes.

Section 1355.44(b)(13): Health, Behavioral or Mental Health Conditions.

There are too many response options for this element. We strongly recommend including only the following options: "Child has a diagnosed condition," "Child does not have a diagnosed condition," and "Unknown." The proposed response option of "Exam or assessment conducted but results not received" should be eliminated, as the caseworker effort required to capture this particular response would be higher than any value achieved from the information. If the date of the health assessment is populated and "Unknown" is the response for this element, then, it is apparent that the results have not yet been received.

Section 1355.44(b)(13)(i)-(xi): List of Conditions with the Responses of "Existing/Previous/Does Not Apply."

Texas DFPS recommends that the list of health, behavioral or mental health conditions have only two response options: "Existing Condition" and "Does Not Apply." Data submissions over time would

create a history of any diagnosed conditions for each child. Thus, the proposed response option of "Previous Condition" is not needed since the previous conditions can be ascertained by comparing the answers to each condition using the history of previous submissions.

Section 1355.44(b)(14) & Section 1355.44(b)(16)-1355.43(b)(16)(vii): School Enrollment and Educational Stability.

School enrollment is redundant if states are also collecting educational level. Texas DFPS proposes deleting the school enrollment element and just reporting the educational level. Additionally, the reasons a child changes schools are far more complex than the listed options offered for the educational stability element. Most importantly, listed options are not reflective of the need to make school changes to ensure positive permanency outcomes for children. Therefore, this information is best assessed in a qualitative review such as the CFSR.

Section 1355.44(b)(19)-1355.44(b)(19)(ii): Prior Adoption(s), Prior Adoption Date(s), and Prior Adoption Intercountry.

Information regarding private adoptions and out-of-state public adoptions can be difficult to collect, as the adoptive parent may be unwilling to disclose such information. If this information is collected, Texas recommends deleting the response option of "Abandoned" and adding response options of "Declines" and "Unknown" for when it cannot be determined. The selection of "Declines" would apply only when the individual refuses to give the information and the state agency cannot otherwise obtain the information. Further, prior adoption date(s) and prior adoption intercountry are discretionary reporting components under 42 U.S.C. § 679(d). Considering the final rule already proposes numerous new elements and because the caseworker effort required to collect this information would be higher than any value achieved, any discretionary reporting elements should be removed.

Section 1355.43(b)(14)-1355.43(b)(14)(iii): Prior Guardianship(s) and Prior Guardianship Date(s).

Information regarding private guardianships and out-of-state guardianships can be difficult to collect, as the guardian may not be willing to disclose such information. If this information is collected, Texas recommends deleting the response option of "Abandoned" and adding response options of "Declines" and "Unknown" for when it cannot be determined. The selection of "Declines" would apply only when the individual refuses to give the information and the state agency cannot otherwise obtain the information. Further, prior guardianship date(s) is a discretionary reporting components under 42 U.S.C. § 679(d). Considering the final rule already proposes numerous new elements and because the caseworker effort required to collect this information would be higher than any value achieved, any discretionary reporting elements should be removed.

Section 1355.44(f)(6)-(7): Caseworker Visit Dates and Location.

The guidance accompanying the final rule indicates that these elements are included mainly as a regulatory compliance tool for 42 U.S.C. § 624(f). Requiring caseworkers to enter all face-to-face visit dates and locations creates unwanted emphasis on caseworkers engaging in data collection rather than on the important clinical case work. Clinical case work is where the true problem-solving occurs and where safety, permanency, and well-being issues are resolved—emphasis should be

placed accordingly. Thus, this type of information is best reviewed in a qualitative review such as the CFSR, and Texas highly recommends that this data not be collected in AFCARS.

LGBTQ Data:

Section 1355.44(b)(2)(ii): Child's Sexual Orientation.

There are important concerns with including this information in AFCARS: (1) LGBTQ youth do not always feel comfortable enough to disclose their sexual orientation to their caseworkers, and nor should they be made to; and (2) many youth in the AFCARS population are still struggling with sexual identity issues. Therefore, collecting LGBTQ data will yield a serious undercount and an undercount will not serve this population well. Discounting the number of youth in the LGBTQ population will drive resources away from this group and their specific issues. Consequently, Texas DFPS strongly recommends not including this element in the AFCARS file. Rather, ACF should consider including LGBTQ information in the NYTD survey. NYTD would be the more appropriate database for the following reasons: (a) the participants are at least 17 years of age and may be more sure of their identities; (b) in follow-up surveys, there are participants that are no longer associated with the child protective agency and may feel more comfortable being open about such issues; and (c) the survey is voluntary so the information is more likely to be useful in learning about LGBTQ experiences in foster care.

Section 1355.44(e)(19) and (e)(25) and Section 1355.44(h)(8) and (h)(14): Sexual Orientation of First and Second Foster Parents and of First and Second Adoptive Parents or Legal Guardians.

As noted in Section 1355.44(b)(2)(ii): Child's Sexual Orientation, collecting LGBTQ data will yield a serious undercount and an undercount regarding foster and/or adoptive parents and legal guardians. To include information in the file for individuals who identify as lesbian, gay, bisexual, transgender, and questioning (LGBTQ) is best suited in case narrative and home assessments.

Compliance and Penalties:

Section 1355.46: Compliance.

Texas DFPS firmly agrees with maintaining the 45 day data submission timeline as opposed to shortening the timeline to 30 days. Having 15 more days to ensure data quality is crucial, not only for states but for any entity that uses the information in AFCARS to conduct research.

Further, Texas DFPS strongly recommends that the new requirements proposed by the final rule be delayed to allow Texas the opportunity to succeed. Texas provided comments on the NPRM Adoption and Foster Care Analysis and Reporting System (AFCARS) 45 CFR Part 1355 that posted on Federal Register/Vol.83, No.51/Thursday, March 15, 2018. The code extractions to report the required data elements are extremely complex and play a significant role in compliance. The complexity of code extractions coupled with an undefined file format makes it challenging, if not impossible, to accurately project the cost or staffing levels necessary to implement these proposed changes.

In addition, Texas DFPS strongly supports the expressed intent to close out all current AFCARS Improvement Plans without penalties in order to allow state staff to focus on the changes needed for compliance with the final rule, which would also allow ACF staff to spend their time providing consultation and support to states during the implementation process.

Section 1355.47: Penalties.

Given the extensive new requirements, Texas strongly recommends that any penalties not be imposed until states have been given a meaningful and realistic amount of time to make the required changes and implement the new requirements. Furthermore, additional funding will be required to comply with this mandate, and this funding will need to be requested and appropriated from our state legislature, which meets every other year