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## DEPARTMENT OF HUMAN SERVICES

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June 13, 2018

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

SUBJECT: Docket Number 2018-05042 / RIN # 0970-AC72

Dear Ms. McHugh:

Utah appreciates the opportunity to provide comments and respectfully submits this letter in response to the Advanced Notice of Proposed Rulemaking pertaining to 45 CFR Part 1355, the Adoption and Foster Care Analysis and Reporting System (AFCARS), published in the Federal Register on March 15, 2018.

Utah agrees with the findings of the Regulatory Reform Task Force created by Presidential Executive Order 13777, that the AFCARS regulation is one in which the reporting burden imposes costs that exceed benefits. Although Utah is committed to the collection of quality data, after thorough review of the AFCARS elements, we have concluded that the volume and comprehensive nature of the new elements are excessively burdensome without providing measurable benefits.

The NPRM dated February 9, 2015 states that ACF estimates that the cost to states to implement the AFCARS regulations would not be significant. However, given the volume

of new data elements added to AFCARS under the regulations and the intricacy of many of the data elements, Utah does not believe this statement to be accurate for our system.

Utah has spent a significant amount of time reviewing the AFCARS final rule that was published on December 14, 2016 (81 FR 90524) and has thoroughly assessed the systemic changes that would need to be made in order to implement the requirements stipulated in the rule. Each element was analyzed in detail, and based on the analysis, we have determined that we cannot support the addition of any new data elements at this time. Our analysis included consideration of increased workload burden for frontline staff (which would result in reduction of quality of services to children and families and would place further strain on a struggling child welfare workforce); information technology system capacity as the State moves to CCWIS; timing in relation to competing capacity demands necessary for implementing the Family First Prevention Services Act; requirements for data outside of the Title IV-E agency, including ICWA data; and increasing overall administrative burden, including for quality assurance.

#### **Increased Workload Burden for Frontline Staff**

Workload burden for frontline staff is increased in multiple ways with the addition of numerous data elements to AFCARS. Many of the data elements require caseworkers to gather and report new information in ways that are not intuitive or beneficial in client engagement and are excessive in nature. It does not appear possible to have caseworkers gather and document all of the new AFCARS elements in a way that actually supports or enhances the objectives of improving outcomes for children and families. Caseworkers will be required to spend considerable time gathering information and entering data elements into a data system, which reduces time they are able to spend engaging with families and performing critical caseworker activities. We considered other options to minimize the burden on caseworkers, such as creating capacity for staff with technical expertise to help gather and input data for technical health care, ICWA , and education information; however, this also increases burden as it requires hiring additional staff for a purpose that does not improve family outcomes.

Other factors related to workload burden:

- Some of the data elements are ambiguous, unclear, and overlapping, which will cause confusion for caseworkers and lead to poor data quality. In addition, experience has demonstrated that the quality and reliability of the data declines as we increase the amount of information that caseworkers are required to gather and input.

- As is true for most states, Utah currently struggles with high turnover in the workforce and retention of qualified staff. Higher turnover in the child welfare workforce impacts ability to get quality data, as it takes time for workers to become skilled at understanding and completing data gathering and system entry requirements.
- Additional burden is incurred related to ensuring data quality through a data quality plan, as well as training and mentoring staff and partners. It will take time and resources to produce materials and provide training on 153 new items to agency staff and community partners successfully. Successful implementation requires us to be thorough and methodical, utilizing implementation science principles, to ensure that requirements are met. Even with an extended timeline for implementation, this will be very difficult to accomplish and unnecessarily burdensome.

### **Challenges For Information Technology (IT) System**

Utah's child welfare IT application, called SAFE, is participating as a Comprehensive Child Welfare Information System (CCWIS). Utah's proposal to meet CCWIS regulations includes building 8 to 12 modular automated functions. In reviewing proposed AFCARS regulations, it appears that many of these automated functions will include data related to AFCARS. During the next year we are planning to complete an analysis, develop a data quality plan and an automated functional prototype. This information will be used to estimate the remaining timeline as well as ensure that our proposed framework will meet the needs of our child welfare system. Currently, we estimate it will take 5 - 7 years to build these automated functions.

The numerous new AFCARS elements require significant time and programming capacity in order to modify the existing data systems to capture and report data. With AFCARS reporting changes required to be made during the same period states are transitioning into CCWIS, inefficiencies will occur if AFCARS programming timeframes can only be met by changing legacy systems (and then have to be completed again as part of CCWIS development). The precise nature of the proposed elements would require us to rebuild portions of our legacy system to facilitate reporting these additional data points during a period when we are looking at moving away from that platform to move to a CCWIS system. It would also require time to modify programming to generate reports from the legacy system and then again from the CCWIS system.

Modifying the legacy SACWIS system to meet the AFCARS implementation timeline is an inefficient and costly burden for several reasons. First, the SACWIS system is built on aging technology. Due to limitations in the software, it has become more and more difficult

to meet business needs as well as address issues arising with changing technology. Since these AFCARS elements would be contained throughout the legacy application, it would require a significant investment in an our outdated legacy system as well as diverting resources needed for CCWIS development.

Additionally, these modifications in the legacy system will not address needed changes that better support case practice and agency goals. While the legacy system could be modified to support changes related to AFCARS, it would not address needed changes essential to support improved practice. Ultimately, we believe following CCWIS requirements are better for our child welfare agency, since it reduces the lifespan of the legacy system which in turn will allow us to better support agency needs.

As stated in Utah's response regarding the April 16 Notice of Proposed Rulemaking (NPRM) to delay reporting issued by the Children's Bureau, we support the delay of compliance and effective dates for changes in AFCARS elements, but are concerned that limiting the extension to two years will not provide sufficient time for states to take all steps needed to implement changes for reporting and to ensure data quality. This is particularly true if no additional changes are made to simplify reporting and to reduce the numerous required elements.

We recommend that any state electing to participate in the CCWIS system be given further time extensions to allow for incorporation of new AFCARS elements in the design and implementation of the CCWIS system, so it may be done in a logical and efficient way.

#### **Family First Prevention Services Act**

Recent changes to Federal law with the passage of the Family First Prevention Services Act (FFPSA) requires significant changes in practice that will also require IT system programming changes. It is critical for Title IV-E agencies to be able to focus resources on implementing these changes as they directly impact work with children and families, and to comply with provisions of the law. FFPSA also adds additional data elements that will have to be incorporated into Federal financial and data reporting. The timeframes for making practice changes for FFPSA implementation overlaps with the current proposed timeframe for AFCARS changes, making an undue burden for states.

#### **Information Not Under the Authority of the IV-E Agency**

A number of AFCARS elements must be obtained from data systems outside of the IV-E agency. Utah's child welfare agency does not have authority over the information overseen by non IV-E agencies, and as such is unable to compel these agencies to prioritize gathering and entering the required data for the new AFCARS elements or modifying or developing interfaces according to our timelines. This creates barriers to compliance and data quality.

Additionally, CCWIS requires our system to interface with numerous other agencies to exchange relevant data, including data that may benefit IV-E agencies and data exchange partners in serving clients and improving outcomes. A goal of the data exchange requirement is to reduce duplicative work, promote comprehensive and coordinated services, and improve data quality. In order to achieve this goal, we will need to coordinate with our partner agencies and dedicate significant resources to analyze and develop system interfaces with these goals in mind. This is another example of inefficiencies and delays if AFCARS programming has to occur in the legacy system and then again as components under CCWIS.

Furthermore, Utah's child welfare agency is a separate entity from Juvenile Justice Services (JJS) that serves a small portion of the IV-E funded children that need to be included in the AFCARS reporting population. It would be a significant burden to JJS to incorporate the collection of the dramatically increased data under new AFCARS regulations into their separate IT system. This is a prime example of a data exchange process that would need to be implemented per CCWIS which does not currently exist, incurring additional burden and cost to our data system and potential duplication in the legacy system if this cannot be delayed until it can be included in CCWIS development.

### **ICWA**

We agree that collection and reporting of meaningful data on Native American and Alaska Native children (AI/AN) is integral to ICWA implementation. However, data collection requested through AFCARS is excessive and requires significant data that falls under the jurisdiction of the juvenile courts and Attorney General's Office. Currently, juvenile courts are not collecting a majority of the ICWA data elements required under the new regulations. Child and Family Services does not have access to the data that is collected by the courts nor the authority to compel the courts to modify their data collection systems to add additional ICWA elements, and we cannot ensure the quality of data from the courts. Additionally, if the courts collected the information, we would need to build a data exchange system for these elements, which would be better built as CCWIS is developed, which needs a longer time frame. Noncompliance with these elements will put our funding at risk even though these elements are not within the control of the IV-E agency. We recommend that the ICWA data elements be reduced in number, simplified, and tied directly to the work that the IV-E agency has control over. We welcome the opportunity to work with other states, tribes, and relevant departments in the Federal government to identify those data elements.

### **Quality Assurance**

Due to the increased number of data elements required for AFCARS compliance, the current capacity of our data quality assurance process is not sufficient. The new elements create additional burden to Utah's child welfare system due to the need to significantly expand the data quality assurance process.

### **Specific Examples of Problematic Data Elements**

There are a number of specific data elements that would be very difficult and burdensome to collect. We also question whether the data elements provide significant value to the work we do, and if they would be accurate, valid, reliable, and worth taking staff away from performing other essential activities with families. Examples include, but are not limited to the following:

- *Data Elements: Child Sexual orientation 1355.43(B)(2)(iii), First foster parent sexual orientation 1355.44(e)(19), Second foster parent sexual orientation 1355.44(e)(25)*

Utah has concerns about the data elements regarding sexual orientation. The stated purpose of the sexual orientation questions is to help meet the needs of LGBTQ youth in foster care; however, these data elements are highly sensitive and have the potential to engender fear and/or offense in youth and foster parents by asking the question.

Furthermore, we have substantial concerns about youth feeling comfortable enough to disclose their sexual orientation to the caseworker, especially before they have had the ability to develop a trusting relationship. Caseworkers do engage with youth in conversations about sexual orientation when youth are comfortable to disclose this information voluntarily, but we do not feel that it should be mandatory to obtain and report this information. Utah is also concerned about asking this question at a time when youth are still developing their sexual identities.

Utah also expects that requiring workers to gather and report information regarding these sensitive issues when it isn't voluntarily shared by youth or foster parents will create resistance among a workforce that has a very complex job and already high turnover rates.

As a result, we suspect that the data gathered from these questions may actually be inaccurate and/or under-represent the needs of the LGBTQ population and the resources needed to serve them. We believe this is a question that may best be

answered in the NYTD survey.

- *Data Element: Child has ever fathered or bore a child. 1355.44(b)(17)(ii)*

Youth in foster care may be reluctant to truthfully report if they have ever fathered or bore a child. While we believe this information is valuable at an individual level in order to serve the needs of the child, we question the purpose of being required to report this data on an aggregate level. Furthermore, we believe this element would have more value if collected through the NYTD survey rather than adding this burden to caseworkers.

- *Data Element: Total number of siblings 1355.43(b)(23)*

Total number of siblings: Whereas information about the total number of siblings in foster care would be easily obtained, requiring a report of the total number of siblings when that may include siblings not involved in the child welfare system is more complicated. It may not be possible for the caseworker to obtain information of whether other siblings exist when family composition may be complicated. This information is difficult to collect and we question the purpose of adding this burden to caseworkers. We question whether the data would be reliable and valid as it does not account for the complexity of family relationships.

- *Data Elements: 1355.44(b)(19)(ii) Prior adoption date and 1355.44(b)(19)(i) Prior adoption intercountry. 1355.44(b)(20)(i) Prior guardianship and 1355.44(b)(20)(ii) Prior guardianship date*

Currently our data is not structured in a way that would allow us to easily obtain this information for reporting on prior adoption or prior guardianship. Our data structure would have to be reorganized significantly in order to aggregate this information for reporting. It would add significant amount of time for someone to research this data, and if the prior adoption or guardianship did not occur as a result of child welfare involvement, it may be difficult to obtain reliable and valid information.

- *Data Elements: 1355.44(b)(12) Health assessment and timely, 1355.44(b)(13) Health, behavioral or mental conditions*

We are concerned with the difficulty of interpreting detailed and technical health information received from the qualified professional into the categories required for

AFCARS reporting. It will require us to build the capacity within our system in order to report this in an ongoing, aggregate fashion. Placing this responsibility on caseworkers without medical expertise would be difficult; other methods would require the support of additional specialized staff. There is not enough information in the definitions to distinguish between mental/emotional disorders and serious mental disorders to determine that one or the other applies. Further, the response options are conflicting when the youth have multiple health problems under the same health element name (such as 'other diagnosed conditions').

- *Data Elements: Caseworker visit dates and location 1355.44(f)(6)-(7)*

Currently caseworker visitation information is not captured in a way that can be aggregated for reporting in the way requested. Caseworkers are currently entering this information through qualitative text entry on individual cases, and requiring them to capture this information in a quantitative way would be duplicative and would not capture the richness of the information that we need on a case-level. Therefore, this would create further burden on caseworkers and would be additional workload. We believe that requiring caseworkers to comply with data entry on this element would place unwanted emphasis on compliance rather than on meaningful activities that support the child and family.

- *Data Elements: Victim of sex trafficking prior to entering foster care 1355.44(d)(7), Report to law enforcement 1355.44(d)(7)(i), Date 1355.44(d)(7)(ii)*

Currently, the data that is collected on sex trafficking is not structured in a way that can be easily aggregated and reported, and creating that structure would require significant alterations to our database, which is unnecessarily burdensome. It is difficult to collect valid and reliable information about whether the child has been a victim of sex trafficking, especially prior to entering foster care.

It is difficult to quantify the total burden for implementation of AFCARS changes as it applies to practice and system impact and costs; however, we believe that it is significant. Utah estimates that costs specific to increased time burden for caseworkers to gather and enter data needed for new AFCARS elements is at least \$2.63 million in new funding (the majority being ongoing costs) in order to effectively gather the information for the new AFCARS data elements. The cost analysis includes expenditures associated with training and implementation, and is based on a conservative estimate that it will take caseworkers up to 3 minutes per element to gather each of the new data elements, and one minute per



element for caseworkers to enter it into the child welfare database. It also includes costs to the Juvenile Justice system, which serves a small number of youth that are included in the AFCARS population, and does not currently have a way to support collection of the new data elements.

That fiscal impact amount would be multiplied several times when also considering costs for system programming changes, report extract programming changes, and submission of data to the Children's Bureau in the required format. This estimate also does not include the costs of additional staff, which we believe would be necessary for quality data collection in a way that will allow us to sustain current levels of practice.

Not only do the new AFCARS regulations impose a financial strain, but Utah's extensive assessment of each new element also determined that they will be overly burdensome to our child welfare system in ways that may or may not be quantifiable.

In closing, Utah supports continuing to strive for a more efficient and valid process for collecting data in order to determine outcomes and improve child welfare practice for children and families. However, the expanded AFCARS requirements create extensive burden for Utah's child welfare system, which would redirect resources from work with families and does not result in a corresponding benefit. This is contrary to 42 U.S.C. §679(c)(1) which states any data collection system implemented must avoid unnecessary diversion of resources from agencies responsible for adoption and foster care. We would support further analysis of AFCARS elements in order to reduce and simplify additional requirements so they can be collected in an efficient and manageable way within existing organizational structures and resources.

Thank you for consideration of these comments.

Sincerely,



Diane Moore  
Director