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May 22, 2014

Miranda Lynch Thomas
Children's Bureau
Administration on Children, Youth and Families
Administration for Children and Families
1250 Maryland Avenue SW., 8th Floor
Washington, DC 20024

Re: Notice of Statewide Data Indicators and National Standards for Child and Family
Services Reviews [79 Federal Register 78 (Apr. 23, 2014), pp. 22604–22615]

Dear Ms. Lynch Thomas,

The Children's Advocacy Institute (CAI), of the University of San Diego School of Law, works to improve the health, safety, and well-being of children. In addition to its academic component, CAI engages in legislative and regulatory advocacy, impact litigation, research and analysis, and public education at the state and federal levels in order to ensure that children's interests are represented effectively whenever government makes policy and budget decisions that will impact them.

We appreciate the opportunity to comment on the proposed statewide data indicators and national standards that the Children's Bureau (CB) proposes to utilize for Round 3 of the Child and Family Services Review (CFSR) process. Prior to addressing the specific proposed changes as noticed by the CB, we would like to provide you with some of our more global concerns about the CFSR process.

In 2011, we were heartened to see that the CB was soliciting and considering ways to improve the CFSR process. As the CB itself explains, one of the primary goals of the CFSR process is to enable the CB to "ensure conformity with federal child welfare requirements."¹ It has long been a concern to CAI that the CFSR process has completely failed to meet that goal — in that after two full rounds of the CFSR, no state has ever been found to be in substantial conformity with all of the outcomes and factors evaluated as part of the process. Even a state's successful completion of a Performance Improvement Plan (PIP) does not guarantee that the state is in substantial conformity with federal child welfare requirements, since the PIP process allows states and the CB to set lower expectations for the state to meet. It is especially illuminating that following Round 1, in which no state was found to be in substantial conformity with all 7 outcomes and 7 factors measured, every state implemented and completed a PIP — and yet in Round 2, CB *again* found no state to be in substantial conformity with all 7 outcomes and 7 factors. It is an unavoidable conclusion that without a major overhaul, the CFSR process is not going to ensure states' conformity with federal child welfare requirements in Round 3 any more than it did in the first two rounds.

It has also been a concern to CAI that through the CFSR process, the CB does not require states to demonstrate conformity with *all* federal child welfare requirements — and it instead limits its review to states' performance in a few selected areas. For example, federal law requires that states provide foster care

¹ See <http://www.acf.hhs.gov/programs/cb/monitoring/child-family-services-reviews>.

maintenance payments to licensed foster parents that “cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, and reasonable travel to the child’s home for visitation.”² We are aware of no effort by the CB, either through the CFSR process or through any other form of monitoring and/or enforcement, to ensure states’ compliance with this federal child welfare requirement — and this is but one of many areas of federal child welfare law that are not a part of the CFSR or any other CB/HHS review.

Thus, we were hoping that the CB would respond to these shortcomings by significantly expanding the scope of federal child welfare requirements included in the CFSR process, while implementing stricter penalties, including sanctions, for states that fail to comply with these federal laws. Instead, the CB has proposed to tweak the process for developing statewide data indicators, national standards, and program improvement plans for Round 3 of the CFSRs. With regard to the changes that have been proposed, we offer the following comments:

- 1) With regard to Safety Outcome 1, Safety Performance Area 1: Maltreatment in Foster Care, we are concerned about the proposed exclusion of children in foster care for less than 8 days and any report that occurs within the first seven days of removal. The Notice indicates that the first week in care is being excluded “to allow for a potential lag time between an incidence of maltreatment and report of maltreatment.” However, this exclusion will result in an artificially low figure by eliminating from the count any and all actual incidents of maltreatment that do in fact occur in foster care during the first week. Instead of ignoring actual incidents of maltreatment in foster care to avoid a “potential” lag time problem in reporting, CB should instead *require* (instead of encourage) states to report all incident dates in NCANDS. This would allow the CB to eliminate the proposed exclusion of children in foster care for less than 8 days and any report that occurs within the first seven days of removal — and provide it with the actual number of incidents of maltreatment in foster care.
- 2) The integrity of the entire CFSR process (in fact, the integrity of almost everything the CB does in terms of state monitoring and enforcement) relies upon states submitting high-quality, consistent, complete data to AFCARS and NCANDS. However, it is our understanding that for the past 13 years, ACF has not found a single state to be in full compliance with the AFCARS standards during ACF’s AFCARS Assessment Reviews. And in light of HHS’s choice to make NCANDS a voluntary data-reporting system, the veracity and thoroughness of state responses is questionable, to say the least.³ The CB’s response to this problem appears to be the establishment of a rather complex and convoluted system that attempts to identify the states that present data quality issues and then work around them in one fashion or another. Given that the data in question directly impacts our ability to protect the safety and well-being of abused and neglected children, we would prefer to see a response that puts the onus on the states to produce the high-quality, consistent and complete data in the first place — perhaps by immediately re-commencing the imposition of financial penalties for state noncompliance with AFCARS reporting requirements, subjecting states to AFCARS Assessment Reviews on a regular basis (no less than once every five years), and mandating the reporting of NCANDS data.
- 3) By requiring states to merely perform up to a “national standard” level that is “similar to the average performance across all states,” the entire CFSR process as implemented by the CB will *never* ensure that states child welfare programs are in substantial conformity with federally-mandated (under parts under parts B and E of title IV) state plan requirements —

² 42 U.S.C. § 675(4)(A).

³ See, e.g., U.S. Government Accountability Office, *Child Maltreatment: Strengthening National Data on Child Fatalities Could Aid in Prevention* (GAO-11-599) (July 2011): “Questions have been raised as to whether the federal National Child Abuse and Neglect Data System (NCANDS), which is based on voluntary state reports to the Department of Health and Human Services (HHS), fully captures the number or circumstances of child fatalities from maltreatment.”

as is mandated by 42 USC § 1320a-2a. We believe that the congressional intent of § 1320a-2a requires the HHS Secretary to adopt a regulatory scheme that will determine whether states are in substantial conformity with the minimum floor established by Parts B and E — not one that determines if states are in conforming to a national average that falls *below* that federal floor.

- 4) Regarding the re-report of maltreatment, we are encouraged by the proposals to expand the scope of this measure to include all children with screened-in reports of alleged maltreatment, instead of just children who were victims in a substantiated or indicated maltreatment allegation, and to expand the time period examined to twelve months instead of six months. But we believe that the goal of this measure should be to assess whether the agency took the necessary actions to prevent a future report of maltreatment for *all* children who were previously brought to the attention of CPS agencies — not just for those children whose initial referrals were screened in. We believe that an additional revealing measure would use the number of children with screened out referrals as the denominator, with the numerator being the number of those children who were the subject of screened-in reports of alleged maltreatment during a twelve-month period. Child welfare agencies screen out approximately 40% of all referrals of alleged maltreatment, meaning that they take no further action whatsoever (other than perhaps diverting the source of the referral to another agency). A screened-in report of maltreatment occurring within twelve months of a screened-out referral may indicate that the agency needs to review and revise its criteria for screening reports; change or increase the training of screeners; and/or take some other affirmative action to improve its screening process.

We appreciate the opportunity to comment on the proposed changes, and we look forward to working closely with the Children's Bureau in the future to improve the monitoring and enforcement of — and ensure actual state compliance with — all federal child welfare laws.

Sincerely,



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