



March 3, 2008

Kathleen McHugh
Director, Division of Policy, Children's Bureau
Administration for Children and Families
U.S. Department of Health and Human Services
Attention: 45 CFR Part 1355
1250 Maryland Avenue, SW, Suite 800
Washington, DC 20024

Re: 45 CFR Part 1355 Adoption Foster Care Analysis and Reporting System

To Whom It May Concern:

The American Public Human Services Association and its affiliate, the National Association of Public Child Welfare Administrators, respectfully submit this comment letter regarding the Notice of Proposed Rule Making with Comment Period on the *Adoption and Foster Care Analysis and Reporting System*, published in the *Federal Register* on January 11, 2008 (73 FR 2082) for the Administration for Children and Family Services of the U.S. Department of Health and Human Services.

Please be assured that APHSA and NAPCWA share ACF's commitment to producing reliable longitudinal data for the child welfare system. We are happy to see that ACF is moving in this direction. However, APHSA and NAPCWA are concerned that this regulation places a significant burden on states without providing additional funding and support. The penalty structure in the NPRM does not allow states flexibility in implementing the complex and vast changes proposed. In addition, the shortened timeframe for states to submit data makes it improbable for them to meet the proposed 100 percent accuracy benchmarks. APHSA and NAPCWA are requesting that ACF reconsider the necessity of all the proposed data elements, timeframes, error rates, and penalties included in the proposed regulation.

States currently collect data on all children in foster care, but these data elements vary widely from state to state. Standardizing all of the proposed data elements in the NPRM would, therefore, place a burden on states. States are also in various stages of implementing their Statewide Automated Child Welfare Information Systems. The changes in the NPRM will require many states to overhaul their SACWIS systems, placing further strain on an already costly and time-consuming effort. These changes are likely to take several years and

extensive resources, yet the NPRM does not propose any implementation process, funding strategies or timeframe for the changes.

States identified several major areas of concern regarding provisions of this NPRM, including:

- The large expansion of the reporting population and the necessity of dependence on state human service systems other than child welfare to collect these data, such as juvenile justice and mental health;
- The reduction of the state data reporting window from 45 to 15 days;
- The large amount of data that states are required to submit;
- Significantly expanded and newly required data elements;
- The proposed error rates;
- The proposed penalties;
- The huge administrative impact and cost to states.

We appreciate the opportunity to provide you with the following comments.

Provisions of the Proposed Rule

§1355.40 Scope of the Adoption and Foster Care Analysis and Reporting Systems

The AFCARS definition for out-of-home care would require states to report on children in living arrangements outside of the direct control of state child welfare systems. This poses several concerns for states that are described in the section below.

States support submitting data files on a semi-annual basis, a continuation of the current AFCARS rule.

§1355.41 Reporting Populations

ACF proposes extending reporting to include children “under the placement and care responsibility of the State agency.” This change in definition increases the number of placement settings to be included in the submission, some of which may be outside the control of the foster care agency. The proposal includes children under the placement and care of the child welfare agency who are in juvenile justice and other non-IV-E-reimbursable placements, such as psychiatric treatment facilities. It would continue to include children under the placement and care responsibility of another public agency that claims foster care maintenance payments.

This section of the NPRM casts a broad net around placement settings that are non-IV-E-reimbursable and require reporting. While some examples are given, e.g., juvenile justice facilities and psychiatric settings, ACF clarifies that the list is not intended to be comprehensive. As such, it extends the reach for information to systems where the child welfare agency may or may not have data exchange protocols. States would be completely reliant upon non-child welfare agencies to report information in a timely manner.

State child welfare agencies are concerned about being held accountable for accurate, complete and timely data when the means of obtaining these data relies on an outside party.

States are very concerned about delays and inaccuracies in data from other systems, such as juvenile justice and mental health, due to the challenges of creating approved interfaces with these other placement entities; yet another complication emerges in obtaining and submitting these data.

The NPRM also proposes changing the definition of when to stop reporting a child in AFCARS. In this proposal, children who go home on trial discharge would no longer be reported to AFCARS. The theory is that these children, while possibly still under supervision of the agency, are no longer fully in the care of the state agency. The change in definition may have a significant effect on the national standards related to length of stay in foster care as well as re-entry rates. States feel strongly that trial home visits should continue to be reported.

§1355.42 Data Reporting Requirements

The NPRM proposes two six-month reporting periods, consistent with the current AFCARS regulations; states support continuing this procedure.

The NPRM also proposes that the state agency submit data files within 15 days of the end of the report period, a reduction from the current 45-day window. Both state- and county-administered systems will have difficulty assessing the quality of the data and submitting it within 15 days, especially as data may be entered into a state's system within 15 days of occurrence, making the most current data eligible for data entry available on the very day of transmission. In addition, the files will grow in size based on the new requirements proposed in the regulation, and states would need additional time to process, analyze and clean data before they are submitted. States recommend that the final rule be altered to allow at least a 45-day window, and preferably a 60-day window, to submit data files.

States need to allow time for other systems, such as juvenile justice and mental health, to submit their records. States also need to ensure the quality of the data being submitted from data systems that are beyond the control of the child welfare agency. The compliance rates and penalties discussed in later sections require extremely high levels of accuracy that are nearly impossible to achieve in any time period, let alone a shortened period of 15 days. Since the new AFCARS requirements include a much larger data set, states should be allowed more time than they currently have to submit these data. The sheer volume of data contained in the new reporting files should be taken into consideration when determining allowances for errors and time.

Reporting additional data elements for children in foster care prior to the finalization of the rule would be an additional burden for states. We want to confirm that there are no requirements in addition to the current AFCARS requirements and that no penalties will be included.

Several states also have AFCARS Improvement Plans that have been approved and are in place that do not align with the new regulatory requirements. The new requirements will, therefore, force states to be out of compliance with their current AIPs.

§1355.43 Out-of-Home Care Data File Elements

The out-of-home care data file proposed in the NPRM includes a vast array of additional data and research elements for states. Although longitudinal data collection is a priority for states and they recognize its importance, it is unclear how many of the proposed elements would ensure positive outcomes and would represent quality data.

The magnitude of these new elements would overwhelm workers and would probably lead to inaccurate data collection. States are also concerned about the new elements and the different definitions applied between AFCARS and the National Child Abuse and Neglect Data System.

States have specific concerns about the data elements required to assess the child's language and verbal communication levels. The subjective nature of these assessments may lead to workers requiring different standards be met for each determination. Also, because health officials already collect and record immunization records, the NPRM creates a mandatory duplication of effort across systems. In addition, the reporting requirements for the permanency plan reporting are extremely long and detailed. This information may not be available at the time the state submits the data file, which might result in state penalties.

Many of the new elements would require some states to move from collecting narrative information to capturing discrete data elements; a huge undertaking for affected states. The new elements would also require states to restructure policies, procedures and technological investments currently active in states to be SACWIS-and-AFCARS compliant.

The NPRM states that "...having this information will be a greater benefit to ACF and the States than the relatively low burden on caseworkers in collecting the data." The NPRM also states that the new elements regarding education are "...relatively simple for a State agency to collect and report." States contest the accuracy of these statements. We believe these new elements represent an onerous burden to workers, systems and funding resources. Although some states collect additional data elements, their procedures are not necessarily aligned with the collection and submission process that ACF proposes. The NPRM also fails to consider that current policies allow states a wide variety of levels of data collection; and the proposed regulation would also have a significant financial impact as states would now be required to restructure their information systems, training procedures and data collection policies for compliance without allowing an implementation timeframe, plan or funding to support these actions. This section includes research questions that are not necessary for the benefit of longitudinal data; states assert that this proposed data collection poses more challenges than benefits to states and ACF.

§1355.44 Adoption Assistance and Guardianship Subsidy Data File Elements

States support not imposing penalties based upon the second data file on adoption assistance and guardianship. However, states are concerned about the content of the data file. It seems unnecessary to submit a file containing information on every child for the period that the child is in subsidized guardianship, which might be as long as 20 years for children with special needs. In addition, this reporting could be considered contrary to Public Law 101-126 regarding the oversight states are allowed with the adoptive family.

States also need clarification on what candidates should be included in the file. The NPRM is not clear about the requirements for which children should be included from other countries and for children that are involved in private adoptions.

In addition, states are concerned that these proposed changes would require significant state-level policy changes. These changes may also lead to problems with federal policies on adoption assistance by creating different sets of standards. States would face a huge burden in programming and changing their SACWIS system, not only increasing the burden on states substantially, but also affecting the ability of states to reach SACWIS deadlines.

§1355.45 Compliance

The NPRM states that data files will be subject to evaluation in compliance, errors, missing data, invalid data, internally inconsistent data, cross-filing errors and timeliness. ACF proposes that the demographic data collected and submitted be 100 percent accurate. This requirement is impossible for states to meet; even hospitals follow a 99 percent accuracy rate. Having this unrealistic requirement may lead workers to enter inaccurate data in order to ensure that there are no missing data. The NPRM also states that the out-of-home care data file must have no more than 10 percent of missing, inaccurate, tardy or internally inconsistent data. APHSA and NAPCWA recommend that a 99 percent accuracy rate is put into place regarding the demographic data.

These compliance requirements must all be met within a shorter timeframe for AFCARS data file submissions. States will be unable to meet these standards, especially without a grace period to implement the proposed policies. The proposed data collection is significantly more than states currently track, and to ensure data quality, they would require additional time to process, analyze and assess data before submission. States recommend that the proposed 15-day data submission window either remain at 45 days or be increased to 60 days.

The recently released National Youth in Transition Database Final Rule requires states to submit data files within a 45-day time period. States request that they be allowed a minimum of 45 days for submitting AFCARS data, mirroring the NYTD requirements.

In addition, states suggest that the new requirements be implemented in phases so that states have an opportunity to succeed. This would allow states and the federal government to test a 60-day timeframe to make an informed decision regarding the most effective time period to ensure accurate data collection.

States would have to rewrite SACWIS and may have to make policy and regulatory changes within the state to promulgate the rule as written, which would require rulemaking processes at the state level. These rulemaking processes require public notification and comment periods, and as such, could not be immediately implemented.

The changes to SACWIS systems would be comprehensive, and states would also be required to train staff and implement these new procedures. As mentioned before, many states have active AFCARS Improvement Plans that are not in line with the proposed regulations. These rule changes would also affect states that have automated Title IV-E

determinations by adding to the necessary overhaul of their current systems. Many state legislatures are already facing deficits and would be unable to appropriate additional money to support these needed changes. In the final NYTD rule, ACF states that the agency understands the challenges in obtaining state funding for SACWIS changes and that “providing less time than two years will not serve us or the states well in our mutual goals to understand and serve older youth.” This rationale should also be employed in determining the timeframe for implementation of the AFCARS final rule.

§1355.46 Penalties

According to the NPRM, strict penalties would go into effect at the time of the final regulation. This does not allow any flexibility for states as they completely overhaul their current AFCARS and SACWIS systems. States would need at least two to four years to implement this proposed regulation. During that time, it is essential that penalties not be enacted. In addition, states will require additional funding to comply with the mandate. The proposed penalties would only exacerbate state fiscal demands and difficulties for implementation.

States strongly suggest that ACF develop an implementation process and plan for states. The NPRM does not address an implementation process or plan. States also recommend that ACF include the National Youth in Transition Database development and regulations with the AFCARS changes. Since both data collection systems pose heavy burdens to states, ACF should allow a strategic and progressive implementation of these systems to ensure that the purpose of accurate and useful longitudinal data collection is met.

Considering the NYTD final rule was released on February 26, 2008, with a compliance date of October 1, 2010, states are facing several years of redevelopment of their SACWIS systems. States are required to reconfigure their SACWIS systems within two years to meet the NYTD requirements. They would be required to go through this entire process again at the time of the release of the AFCARS final rule. The requirements of both of these regulations are closely aligned and should be done simultaneously in order to best utilize state time and resources. In addition, states should be given assurance that ACF will expedite the Advanced Planning Document process.

States object to the proposed penalty structure and suggest a reconfiguration of this structure. The current structure imposes the same penalty on a state that has one error as for a state with several errors. This is not a system that motivates improvement since the proposed penalty remains the same regardless of the magnitude of error. Penalties should be commensurate with the degree of error to allow incremental improvements. An incentive program for states should be considered: ACF states that the “law requires that we assure that the data submitted to us is reliable and consistent and authorizes us to utilize appropriate requirements and incentives to ensure that the system functions reliably.” According to this statement, there is flexibility for ACF to alter the penalty structure and implement an incentive policy.

The NYTD final rule allows states to “submit corrected data no later than the end of the subsequent reporting period” before a penalty is enforced. States request that the same leeway be granted in the final AFCARS rule.

States also emphasize that ongoing support and guidance for AFCARS is critically important. The current NCANDS structure could be used as a blueprint. The NYTD final rule is clear that states will receive intensive technical assistance during the two-year implementation timeframe. This assistance will also be necessary for the successful implementation of the AFCARS final rule.

In addition, the data collection process and the data analysis plan are not clearly outlined. Several research entities are already collecting these data and could help ACF in determining a well-planned structure and implementation process. States suggest that involving these outside stakeholders would be beneficial to ACF and states.

Fiscal Impact

ACF estimates that the state costs to implement this rule would not be significant. The Office of Management and Budget estimates that state costs will be \$36 million annually for the first five years of implementation, but that half of that will be reimbursed as allowable costs under Title IV-E. States disagree with the cost estimate in the NPRM, and estimate the cost would be two to four times more than the ACF estimate. In addition, the NPRM does not take into account a realistic assessment of the hours required for training staff. Finally, the impact of this regulation on state SACWIS systems is not portrayed accurately.

Regardless of the cost estimate of this proposed regulation, it is an enormous burden on states. States are facing budget crises and cannot sustain such additional costs. States urge ACF to provide enhanced funding to implement the final AFCARS regulation.

Also not mentioned in the NPRM is the need for data retention, back-up plans, and disaster planning. Failure to consider these implementation needs does not accurately reflect the total cost and burden for states and is potentially detrimental for data collection.

Thank you for the opportunity to comment on this regulation. If you have any additional questions, please contact Anita Light, NAPCWA director, at (202) 682-0100.

Sincerely,

A handwritten signature in black ink that reads "Jerry W. Friedman". The signature is written in a cursive style with a large, stylized initial "J".

Jerry W. Friedman
Executive Director