



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
CHILDREN'S ADMINISTRATION
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June 13, 2018

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

RE: Washington State's Comments on ANPRM
Adoption and Foster Care Analysis and Reporting System (AFCARS)
Docket number 2018-05042; RIN number 0970-AC72

Dear Ms. McHugh:

The State of Washington Children's Administration (CA) submitted responses to both the NPRM and SNPRM in 2015 prior to the issuance of the 2016 final rule and requests the ACF review those earlier responses. Washington recently submitted a response to RIN 0970-AC47 in support of the two-year implementation extension based on additional staff burden for training and data collection required in the 2016 Final Rule, and the costly and extensive changes to a fragile SACWIS system as we work toward a new/modernized Comprehensive Child Welfare Information System (CCWIS).

Washington now respectfully submits the following comments in response to the Advanced Notice of Proposed Rulemaking in the Federal Register issued by the Administration on Children, Youth and Families (ACYF) on March 15, 2018.

Washington has a strong relationship with our tribal partners and holds a very high value in complying with the Indian Child Welfare Act. Washington continues to support collection and reporting of essential Indian Child Welfare Act (ICWA) data and recognizes data is necessary in understanding compliance and technical assistance needs in an effort to improve outcomes for AI/AN children who are in foster care, adoption, and guardianship programs.

Washington also supports incorporating other federal data requirements into the AFCARS elements to simplify mandatory state reporting to the Children's Bureau (e.g. social worker monthly visits with children and commercially sexually exploited children data).

We sincerely hope our comments offer insight as to the challenges faced by state agencies in implementing these requirements, with the hope that ACYF might offer additional resources and greater system coordinated planning.

While Washington concurs with the need to ensure ICWA is consistently applied and that data is necessary to measure compliance as clearly outlined in the Department of Interior, Bureau of Indian Affairs NPRM issued in April 2015, we propose that AFCARS penalties should be waived for elements that rely on the action(s) and data of another entity. Data elements that fall in this category are:

- **18 – 20. (b.5) Court determination that ICWA applies**
- **24. (b.7) Request to transfer to tribal court – ICWA**
- **25 – 28. (b.8) Denial of transfer – ICWA**
- **166.(e.10) Good cause under ICWA**
- **167 - 171. (e.11) Basis for good cause**
- **267. (h.22) Good cause under ICWA**
- **268 – 272. (h.23) Basis for good cause**

As indicated in previous comments from 2015, Washington continues to have concerns with our ability to comply with reporting educational and medical data and information collected and maintained by other entities such as the WA Office of the Superintendent of Public Instruction (OSPI) and WA Health Care Authority (HCA).

Washington's Department of Social and Health Services Children's Administration and (OSPI) continue to work on a cooperative data share agreement, which has faced significant legal barriers related to federal law (e.g. Family Educational Rights and Privacy Act). We have recently reached agreement on a foundational data share agreement for a bidirectional interface to authorize an exchange of data to be used for individual child case management. However, we have yet to work through challenges/concerns regarding use of the data. In particular, OSPI and their legal counsel cite FERPA as restricting the use of these data by the public child welfare agency for summary reporting or to comply with federal reporting requirements (e.g. AFCARS). Washington recommends that the following data elements be removed from the AFCARS reporting requirements or that AFCARS penalties not be applied to these data elements until the Administration for Children Youth and Families and the federal Department of Education issue clear joint policy that grants child welfare agencies access to use data about foster children, which is currently interpreted by the education agency to be restricted from such use by FERPA.

Educational elements:

- **53. (b.14) school enrollment**
- **54. (b.15) Educational level**
- **55. (b.16) Educational stability**

- **66. (b.18) Special Education**

While new CCWIS rules require an educational data exchange, states should not incur penalties for information that they are unable to report until they are able to work through issues around FERPA interpretation and allowances. We recommend the ACF continue to work with the Department of Education to establish clear and consistent guidance at the federal level for all states.

Current AFCARS reporting, along with the 2016 Final Rule, also pose challenges due to HIPPA concerns the public child welfare agency's ability to access a child's medical information, particularly if the child is over the age of 12 and declines release of the information. There are no reporting options to account for this circumstance and can result in increased error rates, which under the new rules, will also result in penalties against the state.

- **41. (b.13) Health, behavioral or mental health conditions.**

In addition to reporting concerns, there are opportunities to streamline reporting. Unless there are specific business needs for higher specificity, elements like the health, behavioral or mental health conditions should be reviewed to determine if they could be streamlined:

- **42. (b.13.i) Intellectual disability**
- **47. (b.13.vi) Mental/emotional disorders**
- **49. (b.13.vii) Serious mental disorders**
- **50. (b.13.ix) Developmental delay**
- **51. (b.13.x) Developmental disability**

Could be streamlined to:

- Intellectual delay or disability
- Mental/Emotional disorder

- **(d.6) Child and family circumstances at removal.**

- The existing Circumstances Associated with Removal currently has 17 identified circumstances, the 2016 Final Rules expand this under the Child and Family circumstances at removal to 34 separate circumstances. Each circumstance must be accounted for in the extraction code and mapped to "applies" or "does not apply".

- **136. (d.6.xxix) Parental Immigration detainment or deportation**

The parent is or was detained or deported by immigration officials.

- Incarceration of caretaker covers this sufficiently and is already an existing option under Circumstances Associated with Removal and continues to also be an option under the new 2016 final rules within the Child and Family Circumstances at

Removal. What is the reporting need to identify parental deportation separately from incarceration? Washington strongly disagrees with the collection and reporting of this information. In the 2016 proposed rules, Parental Immigration Detainment or Deportation was identified as a separate data element, which was opposed by many states. Unfortunately, in the 2016 rules, while it is moved as a selection under an overall data element of circumstances at removal, it still represents an attempt to collect this data.

- **(d.6.xxx) Family conflict related to child's sexual orientation, gender identity, or gender expression.**
 - Child sexual orientation is self-reported. We will address concerns regarding this data collection, however specific to circumstances at removal, we feel this can be captured as it currently is under the existing parent/child conflict option.

It is Washington's policy to record information about foster and adoptive parents that is relevant to our decision to approve a home study or that is a major determinant in the decision to place a child in the home. We do not consider a caregiver's sexual orientation, marital status, or gender in either of these determinations; therefore, the state is not supportive of asking about or recording this information in the electronic information system. The following is a list of the data elements that we recommend removing for this reason and other issues as noted:

- **184. (e.18) Gender of first foster parent**
 - WA now allows for Gender X, which is not accounted for in this reporting (only M or F).
- **185. (e.19) First foster parent sexual orientation**
- **196. (e.24) Gender of second foster parent**
 - WA now allows for Gender X, which is not accounted for in this reporting (only M or F).
- **197. (e.25) Second foster parent sexual orientation**
- **172. (e.12) Marital status of the foster parent(s)**
- **243. (h.7) Gender of first adoptive parent or guardian**
 - WA now allows for Gender X, which is not accounted for in this reporting (only M or F).
- **255. (h.13) Sex of second adoptive parent, guardian, or other member of the couple**
 - WA now allows for Gender X, which is not accounted for in this reporting (only M or F).
 - We also question the wording inconsistency between h.7 and h.13.
- **256. (h.14) Second adoptive parent, guardian, or other member of the couple sexual orientation.**
 - We also question the wording inconsistency between e.25 and h.14.
- **24. (h.1) Marital status of the adoptive parent(s) or guardian(s).**

While we concur that the sexual orientation of the youth and that of the foster and/or adoptive parents may help agencies better understand the experiences and outcomes of LGBTQ youth, we feel that information can be discussed under case planning for individual youth and are concerned that questioning youth and caregivers could result in negative impacts and a perception of bias.

The Final Rule is admirable in its intent to use administrative data to improve outcomes for children and families, however the new AFCARS requirements pose a significant impact to states and creates an undue burden at a time when limited resources are needed to support casework practice. This impact is summarized in the table below, indicating that 60 percent of the data elements in the final rule will require system modifications just to be available for reporting and more than 60 percent will require new extraction code to be developed.

Analysis of the overall level of effort around changes specific to the data elements.

Level of Effort Required to Come into Compliance with New AFCARS Requirements	Number of NEW AFCARS Elements with NO Crosswalk to Current Elements	Number of NEW AFCARS Elements that Federal Crosswalk Linked to Current Elements	Total
Requires NEW fields and functionality to be added to system. Much of the information is only available in narrative.	102	21	123
Requires MODIFICATIONS to the system for existing information to be reported as required.	19	29	48
Currently AVAILABLE in the system; some will require new extraction code to meet new requirements.	30	90	120
TOTAL	151	140	291

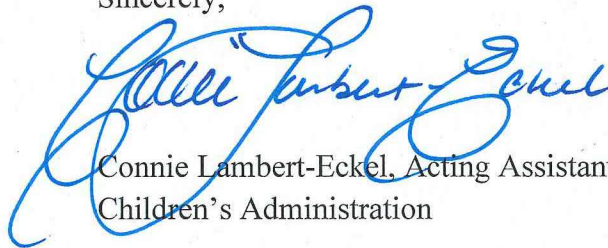
In Summary, Washington concludes with the following overall recommendations:

- Concur with incorporating other reporting requirements under IVE in to AFCARS (e.g. SW visits), ICWA elements that fall under the child welfare responsibilities for compliance and adding in reporting elements related to newer federal legislation (e.g. commercially sexually exploited children). However, the extensive changes and additions that fall outside of these reporting responsibilities needs to be carefully reviewed and should be supported by an identified business justification.

- Recommend further work between ACYF, states and tribes to thoroughly review all data elements, develop clear definitions and standards to ensure consistency in reporting and comparisons, and determine relevance of collecting each data element.
 - Recommend the convening of a special workgroup comprised of all states/tribes with direct AFCARS reporting responsibilities to work together with the ACF to review and streamline AFCARS data collection/reporting with a focus on federal requirements and outcomes. We believe there are a number of opportunities to streamline the data collection requirements under AFCARS to meet federal, tribal and state business needs in measuring compliance and outcomes.
- Penalties – Washington currently has an AFCARS improvement plan to address deficiencies identified during our most recent AFCARS review. Implementing the penalties section outlined in the proposed rules would negatively impact our ability to complete work timely by further reducing our resources.
 - Any data collection/reporting on elements that do not specifically fall into ensuring compliance around rules and outcomes, at the very least, should not be subject to penalties.
 - Should consider availability of the data, particularly when the data is based on the action or under the authority of a 3rd party.
 - Recommend that penalties be waived as long as the state is in compliance with an approved AFCARS Improvement Plan.
- Data collection should be assessed for negative impacts.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Connie Lambert-Eckel", is written over the typed name and title.

Connie Lambert-Eckel, Acting Assistant Secretary
Children's Administration