

**Comments on Health and Human Services Proposed Rule: Adoption and Foster
Care Analysis and Reporting System
RIN: 0970-AC72**

April 23, 2020

Family Equality submits these supplementary comments in addition to our June 18, 2019 letter on the above rule (RIN 0970-AC72) to address developments since then, including the COVID-19 pandemic and recently published research.

In these comments, we build on the data presented in our June 18, 2019 comments on RIN 0970-AC72¹. Since then, additional research has pointed to the urgent need for sexual orientation and gender identity data collection for foster youth and parents, collection of ICWA data elements, and collection of educational stability and health assessment data elements. Further, we show how the COVID-19 pandemic is increasing the need for collecting these data elements, both now and in the future.

The COVID-19 Pandemic Newly Illuminates and Deepens Existing Disparities for LGBTQ and Tribal Foster Youth and Parents, and Confirms the Urgent Need for Sexual Orientation, Gender Identity, and ICWA Data Collection

The experiences of LGBTQ and tribal foster children, youth, parents, and guardians during the COVID-19 pandemic reaffirms the importance of retaining sexual orientation and ICWA data elements related to the Indian Child Welfare Act.

Hundreds of comment letters for the Notice of Proposed Rulemaking (NPRM) for RIN 0970-AC72 highlighted the need for data collection on LGBTQ foster youth, parents, and guardians, as well as tribal foster children, parents, guardians, and families. Commenters pointed out the worse outcomes in foster care for LGBTQ and tribal youth relative to their non-LGBTQ and non-tribal counterparts; the need for LGBTQ and tribal adoptive and foster families to care for these youth; and the need for affirming services for LGBTQ and tribal families of origin to ensure successful reunification.

The COVID-19 pandemic reveals that in times of great social stress, disparities in experiences of LGBTQ and tribal foster youth and families increase, confirming the urgent need for data collection on these populations.

Secretary Azar himself has recognized the current pandemic as “an unprecedented threat.”² As COVID-19’s death toll in America ticks past 50,000, Americans are living under emergency public health orders that have closed schools and workplaces. Staff of countless state, local, and private agencies and other key stakeholders are unable to work due to illness, caring for ill or vulnerable loved ones, closures of schools and childcare, and closures of their own workplaces. Stay-at-home orders, rampant rates of

¹ Available at <https://www.regulations.gov/document?D=ACF-2018-0003-0358>

² HHS.gov “Secretary Azar Statement on Launch of Phase 1 COVID-19 Vaccine Trial” *Health and Human Services Press Office* (March 16, 2020) <https://www.hhs.gov/about/news/2020/03/16/hhs-secretary-azar-statement-on-launch-of-phase-1-covid-19-vaccine-trial.html>

unemployment, the resultant trauma, and the closures of schools and workplaces all have a devastating impact on the child welfare system, exposing existing disparities and confirming the strong need for sexual orientation and ICWA data points in AFCARS.

Jayme Coffman, medical director at Cook's Children's Hospital's in Fort Worth, Texas, predicts the cumulative effects of the COVID-19 pandemic will lead to more child abuse and mistreatment:

"People have so much increased stress right now," "they've got financial stress. Some people have lost their jobs or are worried about keeping their jobs. They've lost income. You've got stress from being overcrowded. Everyone's cooped up together. They feel like they can't get away from each other. **These stressors can lead to abuse.**"³

Those fears are well-founded. In a 2019 systematic literature review of 11 studies, the authors found that "emergencies and natural disasters escalate the risk" of violence against children because families "face greater social and economic pressures."⁴ An increase in child abuse during a crisis stresses an already overburdened child welfare system. Erica Fener Sitkoff, executive director of Voices for Georgia's Children, told local Atlanta media that "even without the COVID-19 pandemic the division is always in need of foster homes, especially for teens, large sibling groups and children with special needs."⁵ As noted in our previous comments, LGBTQ parents are more likely to foster and adopt these hard to place groups – older foster children, sibling groups, and children with special needs - than their non-LGBTQ counterparts⁶.

Since research has found that LGBTQ children are at an increased risk for parental abuse, they are sure to be disproportionately affected by the conditions of this crisis. In a "meta-analysis of adolescent school-based studies that compared the likelihood of childhood abuse among sexual minorities vs sexual nonminorities", researchers found that **"sexual minority individuals were on average 3.8, 1.2, 1.7, and 2.4 times more likely to experience sexual abuse, parental physical abuse, or assault at school or to miss school through fear, respectively."**⁷ The disproportionate experience of child abuse by LGBTQ children will likely be compounded by the increase in child abuse

³ Riley, Naomi Schaefer "Children in Jeopardy: The Covid-19 lockdown will greatly strain the U.S foster-care system." *City Journal*. April 3, 2020 <https://www.city-journal.org/covid-19-lockdown-foster-care-system>

⁴ Seddighi, Hamed, et al. "Child Abuse in Natural Disasters and Conflicts: A Systematic Review." *Trauma, Violence, & Abuse*, Mar. 2019 <https://www.ncbi.nlm.nih.gov/pubmed/30866745>

⁵ Staples, Gracie Bonds, "Why surge in foster care placement will follow COVID-19 pandemic" *The Atlanta Journal-Constitution* April 07, 2020 <https://www.ajc.com/lifestyles/why-surge-foster-care-placement-will-follow-covid-pandemic/NKtnijOQwZpfsL8XypJsrl/>

⁶ D.M. Brodzinski & Evan B. Donaldson Adoption Institute, *Expanding Resources for Children III: Research-Based Best Practices in Adoption by Gays and Lesbians*, EVAN B. DONALDSON ADOPTION INSTITUTE (2011), available at: https://www.adoptioninstitute.org/wp-content/uploads/2013/12/2011_10_Expanding_Resources_BestPractices.pdf.

⁷ Friedman, Mark S et al. "A meta-analysis of disparities in childhood sexual abuse, parental physical abuse, and peer victimization among sexual minority and sexual nonminority individuals." *American Journal of Public Health* vol. 101,8 (2011): 1481-94. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3134495/>

during this pandemic. Now more than ever, data collection on the sexual orientation and gender identity will be critical to understanding and responding effectively to the particular needs and experiences of LGBTQ children.

The COVID-19 pandemic, causing families to stay in close proximity during stay at home orders, could exacerbate the family rejection and abuse faced by LGBTQ children at home. Family rejection and abuse based on their sexual orientation or gender identity are primary causes for LGBTQ youth entering foster care or being homeless. In a position statement on LGBTQ children and youth in foster care and adoption, the North American Council on Adoptable Children, claims **“many LGBTQ youth are in care solely because of their family’s reaction to their sexual orientation or gender identity.”**⁸ And in an analysis of data from The Lesbian, Gay, Bisexual, and Transgender (LGBT) Homeless Youth Provider Survey, Laura E. Durso and Gary J. Gates found that **46% of homeless LGBTQ youth ran away because of family rejection of their sexual orientation or gender identity, 43% were forced out by their parents because of such rejection, 32% left home because of physical, emotional, or sexual abuse, and 17% aged out of the foster care system.**⁹ Sexual orientation and gender identity data collection could help identify if the disproportionate rejection of LGBTQ children increases during this time of crisis, and help agencies develop more effective responses to ensuring children’s safety and well-being.

Secondly, the closure of schools due to the COVID-19 pandemic will likely lead to significant underreporting of child maltreatment. Debi Grebenik, ex-Director of foster care agency Maple Star Colorado told *City Journal*, a Manhattan Institute publication, that “one of the main ways that we find out about child abuse and neglect is from teachers’ reports.”¹⁰ Star Allen-Pettway told local Detroit news that “when kids are going to school or they’re involved in community activity, there are more people who have access to kids to be able to determine if there are instances of abuse or neglect.”¹¹ The coupled effect of increased abuse and maltreatment, with reduced reporting opportunities due to school closures, is truly unprecedented.

The predictable consequence is that the current period of underreporting will be “followed by a big spike when things get back to normal,” according to Grebenik.¹² Cheryl Williams, assistant branch director of Bethany Christian Services Georgia told one reporter that “once kids start going back to school, there will be a major increase in

⁸ North American Council on Adoptable Children Positions on Key Issues “LGBTQ Children and Youth in Care” *North American Council on Adoptable Children* (Last Visited April 26, 2020)

<https://www.nacac.org/advocate/nacacs-positions/lgbtq-children-and-youth/>

⁹ Durso, L.E., & Gates, G.J. (2012). “Serving Our Youth: Findings from a National Survey of Service Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth who are Homeless or At Risk of Becoming Homeless.” Los Angeles: The Williams Institute with True Colors Fund and The Palette Fund. <https://escholarship.org/uc/item/80x75033>

¹⁰ Riley, 2020 <https://www.city-journal.org/covid-19-lockdown-foster-care-system>

¹¹ FOX 2 Detroit “COVID-19 crisis increasing the need for foster parents in Michigan” *FOX 2 Detroit* (April 2, 2020) <https://www.fox2detroit.com/news/covid-19-crisis-increasing-the-need-for-foster-parents-in-michigan>

¹² Riley, 2020 <https://www.city-journal.org/covid-19-lockdown-foster-care-system>

referrals.”¹³ And it is unlikely the child welfare system will be able to prepare sufficiently for the increase in children that will be flowing into the system soon. The Child Welfare League of America reports that “Child welfare offices and agencies have been forced to shut their doors in order to prevent staff members from becoming ill or because staff have tested positive for the virus.”¹⁴ In response to this unprecedented current and future pressure on the child welfare system, it is more important than ever that we ensure all willing and qualified parents are able to care for children in need of loving homes. As detailed below, LGBTQ parents are extremely willing foster and adoptive parents: same-sex couples are seven times more likely to be raising foster and adoptive children than different-sex couples.¹⁵ Collecting sexual orientation and gender identity data on these parents will help agencies with recruitment of more foster parents as the need surges, and provide a pool of affirming parents for LGBTQ children awaiting placements.

The COVID-19 crisis is revealing and likely deepening existing health and economic disparities and inequities between LGBTQ and non-LGBTQ populations. In a survey of 1,000 U.S. adults conducted by the Human Rights Campaign and research analytic group PSB in April 2020, LGBTQ individuals reported being “much worse off” at almost twice the rate of the general population.¹⁶ They were 36 percent more likely than the general population to have lost work after the closing of nonessential businesses around the country.¹⁷ LGBTQ families, including families of origin and foster and adoptive families, will have increased needs for supportive and preventative services. Just as demographic data is essential in a health care crisis for ensuring an effective health care response, so demographic data is needed in a socioeconomic crisis to ensure an effective child welfare and family services response.

The COVID-19 pandemic and new Data Confirm: The Data Elements Related to the Indian Child Welfare Act Should Be Retained to Protect Youth and Ensure Compliance with Federal Law.

LGBTQ people are not the only demographic disproportionately affected by the COVID-19 pandemic. In normal times, tribal communities already suffer from high rates of

¹³ Staples, 2020 <https://www.ajc.com/lifestyles/why-surge-foster-care-placement-will-follow-covid-pandemic/NKtnijOQwZpfsL8XypJsrl/>

¹⁴ James-Brown, Christine “In Troubled Times, Advocating for Children and Young People who are Vulnerable” *Child Welfare League of America* (April, 2020) <https://www.cwla.org/wp-content/uploads/2020/04/Editorial-Letter- COVID19.pdf>

¹⁵ Shoshana K. Goldberg & Kerith J. Conron, How Many Same-Sex couples are Raising Children?, WILLIAMS INST. (July 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Parenting-Among-Same-Sex-Couples.pdf>

¹⁶ Lang, Nico. “Coronavirus Finance Troubles Have Hit LGBTQ People Extra Hard” *Vice News* (April 23, 2020) https://www.vice.com/en_us/article/y3myq5/coronavirus-finance-troubles-have-hit-lgbtq-folks-extra-hard

¹⁷ Lang, 2020 https://www.vice.com/en_us/article/y3myq5/coronavirus-finance-troubles-have-hit-lgbtq-folks-extra-hard

substance abuse, “one of the top three reasons a child is removed from their home” according to Erica Fener Sitkoff, executive director of Voices for Georgia’s Children.¹⁸

Tribes will be especially hard hit during the COVID-19 pandemic. Like other nonessential businesses, tribal Casinos have been forced to close as part of State lockdowns and stay-at-home orders. Unlike other nonessential businesses however, tribal Casinos “are the sole source of commercial revenue for dozens of tribes,” according to Reuters.¹⁹ **The prospect of drawn out closures of these casinos pose particularly grave dangers to tribal communities, and thus tribal youth and by extension the child welfare system.** Tribes are already vulnerable to issues like substance abuse mental and health disorders²⁰, increasing the risk for child maltreatment and thus placement into foster care. Economic devastation only amplifies this risk.

In addition to these especially dire economic conditions, tribal populations are also at a disproportionate health risk. As Stacy Bohlen, the head of the National Indian Health Board, told ABC News: “We know that we have that vulnerability because of our health disparities.”²¹ Bohlen told ABC News that Native Americans have three times the rate of diabetes as non-Hispanic white people, and suffer from higher rates of asthma and cardiovascular disease: all conditions which put them at especially high risk for death by coronavirus.

Furthermore, a recent study in the *American Journal of Public Health* analyzed data from AFCARS, the National Child Abuse and Neglect Data System and population counts from the Centers for Disease Control and Prevention to analyze trends in confirmed child maltreatment and foster care placements in the US between 2011 and 2016. Their analysis “confirmed **child maltreatment and foster care placement continued to be experienced at high rates in the United States in 2012 through 2016, with especially high risks for American Indian/Alaska Native children.**”²² This

¹⁸ Lang, 2020 https://www.vice.com/en_us/article/y3myq5/coronavirus-finance-troubles-have-hit-lgbtq-folks-extra-hard

¹⁹ Hay, Andrew. “As American Indian casinos close for coronavirus, industry seeks \$18 billion aid” *Reuters News* (March 17, 2020) https://www.reuters.com/article/us-health-coronavirus-usa-nativeamerican/as-american-indian-casinos-close-for-coronavirus-industry-seeks-18-billion-aid-idUSKBN214467?fbclid=IwAR1mr25_wPssS4U5gKtkpl74NcDFhWpzUI9KrXUB6rNtK9mgLjp_o5rKANQ

²⁰ TIP 61 Behavioral Health Services for American Indians and Alaska Natives February, 2019 Available for download at: <https://store.samhsa.gov/product/TIP-61-Behavioral-Health-Services-For-American-Indians-and-Alaska-Natives/SMA18-5070> “American Indians and Alaska Natives are less likely to drink than White Americans; however, those who do drink are more likely to binge drink and to have a higher rate of past-year alcohol use disorder than other racial and ethnic groups.” (p. 6) and “American Indians and Alaska Natives experience some mental disorders at a higher rate than other Americans (e.g., anxiety disorders).” (p. 7)

²¹ Ebbs, Stephanie and Haslett, Cheyenne “Indian Country faces higher risks, lack of resources in COVID-19 fight” *abc News* (April 3, 2020) <https://abcnews.go.com/Politics/indian-country-faces-higher-risks-lack-resources-covid/story?id=69957760>

²² Youngmin Yi, Frank R. Edwards, and Christopher Wildeman “Cumulative Prevalence of Confirmed Maltreatment and Foster Care Placement for US Children by Race/Ethnicity, 2011–2016” *American Journal of Public Health* 110 (2020) p. 704-709 <https://ajph.aphapublications.org/doi/10.2105/AJPH.2019.305554>

is just the most recent confirmation of disparities that have long been known: the same disparities that prompted Congress to pass the Indian Child Welfare Act in the first place. Accurately monitoring this trend requires AFCARS to continue collecting national data on American Indian/Alaska Native youth. As discussed in our previous comments, the ICWA data elements are urgently needed to provide effective services to tribal families and youth, services needed now more than ever.

New Data Confirms: Data Elements Related to Educational Stability Should Be Retained to Protect Youth and Ensure Compliance with Federal Law.

Educational stability is of central importance to youth facing family instability. During current cancellations of the school classes due to COVID-19, educational stability is at even greater risk, and the instability caused during these cancellations will likely persist into the future, impacting foster youth, including their eligibility for critical benefits. In the April 16, 2020 Virtual Town Hall for Older Foster Youth hosted by the United States Children's Bureau and Think of Us, one participant voiced concerns about school stability during the Q & A: "given school work is suspended, those in care are worried that they will lose placements and services because they can no longer meet the requirements."²³

Research released following the closing of the comment period on this rule provides more evidence for the conclusion that education instability is detrimental to the well-being of foster youth. One recent study found that "connection with a caring adult, enrollment in school, and employment were inversely related to risk of homelessness."²⁴ That is, **education stability decreases the likelihood of homelessness after transitioning out of foster care.** This is congruent with prior research underscoring "the detrimental effects of co-occurring placement changes and school moves in case planning for students in foster care".²⁵

Without the educational stability data point, the Children's Bureau, States, Tribes, and child welfare providers will be hampered in their ability to accurately track the trends and analyze the repercussions of educational instability, or measure the effectiveness of services provided to enhance that stability. It is paramount foster care systems continue to develop and improve interventions aimed at maximizing educational stability. To do so, thorough and accurate data concerning the educational stability of children in care should be collected, and the educational stability data point should be retained.

²³ Q&A, Virtual Town Hall for Older Foster Youth, United States Children's Bureau and Think of Us (April 16, 2020) <https://www.youtube.com/watch?v=0YTTou2pWoA>

²⁴ Sneddon, D. *Community-level and Individual-level Predictors of Variation in Rates of Homelessness among Youth Transitioning Out of Foster Care* (Doctoral dissertation, 2019) <https://archive.hshsl.umaryland.edu/handle/10713/11612>

²⁵ Clemens, E. V., Klopfenstein, K., Lalonde, T. L., & Tis, M. (2018). "The effects of placement and school stability on academic growth trajectories of students in foster care." *Children and Youth Services Review*, 87, 86-94. <https://files.eric.ed.gov/fulltext/ED593232.pdf>

New Research Confirms: Eliminating the Data Element Related to Foster Youth's Sexual Orientation Would Negatively Impact the Safety, Permanency, and Well-being of Children.

AFCARS data elements relating to foster youth's sexual orientation and gender identity are critical to ensuring the safety, permanency, and well-being of LGBTQ youth in the child welfare system.

Existing research and ACF itself recognize that LGBTQ youth are disproportionately represented in out-of-home care, and experience poor treatment at higher rates.²⁶ New research from Chapin Hall released following the June 2019 closing of the comment period for this rule, based on multiple data sources, confirms that homeless youth "who had been in foster care were... more likely to identify as LGBTQ."²⁷ The journal of the Child Welfare League of America, *Child Welfare*, dedicated an entire 2018 issue to the need for data on the sexual orientation and gender identity (SOGI) of youth in the child welfare system, explaining that serving "an especially vulnerable group of children... who have not, in general, [been] served well" requires "infus[ing] the findings of data into our efforts."²⁸ These AFCARS sexual orientation data element for foster youth is critical to meeting that widely recognized need.

Recent research continues to confirm the particular vulnerability of LGBTQ youth. Several new studies published in the past year **find disproportionately high levels of suicidal ideation and attempts**. A new analysis of twenty years of data from the Youth Risk Behavior Survey (YRBS) found that, despite a general decline in suicidal ideation among both sexual minority and heterosexual youth in the past two decades, it "remained consistently elevated"²⁹ among sexual minority youth compared to their peers. Another new analysis of YRBS data found that disparities extend to actual suicidal attempts: "disparities in suicide attempts persist for sexual minority youth as well."³⁰

²⁶ See Administration for Children and Families, ACYF-CB-IM-11-03, Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care (April 6, 2011), <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf> and <https://cssp.org/wp-content/uploads/2019/08/Policy-AdvancingHealthyOutcomes-Website-1.pdf>: "Children and youth who identify as lesbian, gay, bisexual, transgender, or queer/questioning (LGBTQ+) experience both disproportionate involvement with child welfare, and once involved, disparate outcomes including placement instability and longer stays in foster care."

²⁷ Dworsky, A., Gitlow, E., Horwitz, B., & Samuels, G.M. (2019). *Missed opportunities: Pathways from foster care to youth homelessness in America*. Chicago, IL: Chapin Hall at the University of Chicago. https://www.chapinhall.org/wp-content/uploads/Chapin-Hall_VoYC_Child-Welfare-Brief_2019-FINAL.pdf

²⁸ Feild, T. (2018). "It is Time to Start Counting Kids Who are LGBTQ in Child Welfare." *Child Welfare*, 96(1), XIII-XX. <https://search.proquest.com/openview/7a2f876120268afc7c3931ad4337a109/1?pq-origsite=gscholar&cbl=40853>

²⁹ Richard T. Liu, Rachel F.L. Walsh, Ana E. Sheehan, Shayna M. Cheek and Sarina M. Carter. "Suicidal Ideation and Behavior Among Sexual Minority and Heterosexual Youth: 1995–2017" *Pediatrics*. Vol. 145(3) (March 1, 2020) <https://pediatrics.aappublications.org/content/145/3/e20192221>

³⁰ Julia Raifman, Brittany M. Charlton... Margaret McConnell "Sexual Orientation and Suicide Attempt Disparities Among US Adolescents: 2009–2017" *Pediatrics*. Vol. 145(3) (March 1, 2020) <https://pediatrics.aappublications.org/content/145/3/e20191658>

New analyses of YRBS data also confirm that **“sexual and gender minority (SGM) youth are more likely to use alcohol than their heterosexual cisgender peers.”**³¹ And while their mental health and substance abuse differs, LGBTQ foster youth of color are in an even more precarious situation than their white counterparts, according to a literature review published in February 2020. Here, the authors concluded that the precarity of **LGBTQ foster youth stems from their “increased risk for social isolation and family rejection,”**³² funneling them into the child welfare system, and possibly accounting for their disproportionate representation there. “This is particularly true in African American communities,” the authors concluded, “where there is an increased lack of social support and acceptance for LGBTQ youth from their biological families, communities, churches, schools and healthcare systems.”³³

A March 2020 paper from the Annie E. Casey Foundation and the National Implementation Research Network on “Developing an Evidence-Based Child Welfare Preventive Practice Model” recommends **“targeted services to address risk and protective factors and evidence-based programs that meet the specific goals and needs of families.”**³⁴ The authors of the recent new research on LGBTQ suicide attempt disparities advise applying this principle “developing and implementing approaches” specific to sexual minority youth.³⁵ Similarly a recent paper from the Center for the Study of Social Policy (CSSP) points out that **LGBTQ youth often are placed in “inappropriate placements in congregate care settings”** because the feelings of rejection due to a lack of affirming care and family placements is “pathologized” precisely because “systems are not always equipped to identify or address the feelings of rejection.”

Current research shows that **LGBTQ+ youth are more likely to be removed from their homes due to conflicts with their caregivers.** Given these trends, states must assess gaps in their current service continuum and implement prevention services to meet these youth’s needs. States should assess which evidence-based programs have been found to be effective to address these needs and, where there is a gap, **states should invest in building the**

³¹ Watson, R.J., Fish, J.N., Poteat, V.P. et al. “Sexual and Gender Minority Youth Alcohol Use: Within-Group Differences in Associations with Internalized Stigma and Victimization.” *Journal of Youth and Adolescence* 48, 2403–2417 (2019). <https://link.springer.com/article/10.1007/s10964-019-01130-y>

³² Jamal Hailey, Whitney Burton & Joyell Arscott “We Are Family: Chosen and Created Families as a Protective Factor Against Racialized Trauma and Anti-LGBTQ Oppression Among African American Sexual and Gender Minority Youth” *Journal of GLBT Family Studies*. Vol. 16(2), 176-191 (2020) <https://www.tandfonline.com/doi/full/10.1080/1550428X.2020.1724133>

³³ Jamal Hailey, Whitney Burton & Joyell Arscott “We Are Family: Chosen and Created Families as a Protective Factor Against Racialized Trauma and Anti-LGBTQ Oppression Among African American Sexual and Gender Minority Youth” *Journal of GLBT Family Studies* Vol. 16(2), 176-191(2020) <https://www.tandfonline.com/doi/full/10.1080/1550428X.2020.1724133>

³⁴ Annie E. Casey Foundation *Putting Family First: Developing an Evidence-Based Child Welfare Preventive Practice Model* (March 20, 2020) <https://www.aecf.org/resources/putting-family-first/>

³⁵ Julia Raifman, Brittany M. Charlton et al. “Sexual Orientation and Suicide Attempt Disparities Among US Adolescents: 2009–2017” *Pediatrics*. Vol. 145(3) (March 1, 2020) <https://pediatrics.aappublications.org/content/145/3/e20191658>

evidence for promising and innovative approaches to ensure solutions have a strong fit with the experiences of LGBTQ+ youth and families.³⁶

As another recent study concludes, developing targeted approaches with a strong fit includes “the importance of culturally responsible treatment delivery.”³⁷ This includes ensuring foster parents understand and are prepared to help children address the unique challenges they face. As a policy paper from a coalition of child welfare and child health experts states, “A major cause of premature placement disruption is the foster parent’s dissatisfaction, associated with a lack of preparation for the type and severity of problems presented by children in their care, and their lack of ability to effectively manage those challenges.”³⁸

Given the particular needs of LGBTQ foster youth, it is no surprise that they experience greater placement instability, and thus, on average, more placements than their heterosexual counterparts. A recent literature review describes such placement instability as “a devastating experience” and finds that **“higher levels of placement stability have been linked with less positive mental health outcomes and increased rates of emergency room admissions.”**³⁹ A recent study based on AFCARS and other data sources also found that placement instability has **“a positive relationship with risk of homelessness.”**⁴⁰

Identifying those States and those practices that are serving this vulnerable population well is only possible if we have national data to make State-by-State comparisons. By contrast, removing sexual orientation data points from AFCARS will continue to obscure and hide the experiences and needs of this vulnerable population, making it impossible to track any systemic improvements and draw accurate conclusions about effective treatments.

New Research Confirms: Excluding Data Elements Related to Foster and Adoptive Parents’ Sexual Orientation Would Negatively Impact the Safety, Permanency, and Well-being of Children.

The need to recruit as many parents into the system as possible remains strong: every year, thousands of children age out of the system without parents, and congregate care

³⁶ Alexandra Citrin and Megan “Martin Advancing Healthy Outcomes “Eight Ways to Promote the Health and Well-Being of LGBTQ+ Youth Involved with Child Welfare through FFPSA” *Center for the Study of Social Policy* (August 2019) <https://cssp.org/wp-content/uploads/2019/08/Policy-AdvancingHealthyOutcomes-Website-1.pdf>

³⁷ Ayanda Chakawa, William Frye, Jamie Travis and Elizabeth Brestan-Knight. “Parent-child interaction therapy: Tailoring treatment to meet the sociocultural needs of an adoptive foster child and family” *Journal of Family Social Work* Vol. 23(1) (2020) <https://www.tandfonline.com/doi/full/10.1080/10522158.2019.1681336>

³⁸ *CHAMPSPolicy Playbook*, 2nd ed. (January 2019) <https://playbook.fosteringchamps.org/wp-content/uploads/2019/01/champs-playbook.pdf>

³⁹ Donna F. Ossorio, Jackson de Carvalho “Foster Care Placement and the Impact of Placement Instability” *International Journal of Humanities and Social Science Review* Vol. 5(4) (December 2019) <http://www.ijhssrnet.com/uploads/volumes/1577287331.pdf>

⁴⁰ Sneddon, D. <https://archive.hshsl.umaryland.edu/handle/10713/11612>

use remains prevalent. Simply put, there are not enough families to welcome foster youth, and adopt them if they are unable to return to their families of origin.

LGBTQ parents are extremely willing foster and adoptive parents: same-sex couples are seven times more likely to be raising foster and adoptive children than different-sex couples.⁴¹ Meanwhile, almost half of millennial LGBTQ individuals are planning on having a family. More than 40% are considering foster care and adoption to do so.⁴² But despite significant interest in foster care and adoption from the LGBTQ community, new research based on interviews with LGBTQ prospective parents finds that they continue to “face multiple challenges to parenthood because of barriers such as discriminatory legislation and policies” and denial of services.⁴³

This study concluded that **anti-LGBTQ “attitudes and discrimination can lead to debilitating and enduring harm upon the economic, emotional, and relational well-being of growing LGBTQ+ families.”**⁴⁴ Another new study of 337 LGBTQ adults in the United States who reported delays or disruptions in the adoption or foster care process found that anti-LGBTQ attitudes and practices **discourage prospective parents from entering the system, or prevents and delays them from actually parenting children.**⁴⁵ In particular, they concluded that “placement delays and disruptions discourage LGBTQ people from adopting.”⁴⁶

Collecting basic demographic data about these parents would help States effectively address barriers to recruiting them, first and foremost by sending a positive signal to these parents by giving them confidence that they will not be discriminated against. In the healthcare field, a recent paper based on interviews with health care administrators found growing agreement that routinely collecting SOGI data in fact makes these minorities feel more welcome and seen, as well as allowing the providers to provide better care for these patients.⁴⁷ Given the common experiences of discrimination in both healthcare and child welfare services, there is strong reason to suppose that collecting

⁴¹ Shoshana K. Goldberg & Kerith J. Conron, How Many Same-Sex couples are Raising Children?, WILLIAMS INST.

(July 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Parenting-Among-Same-Sex-Couples.pdf>

⁴² Family Equality (2019) LGBTQ Family Building Survey. <https://www.familyequality.org/fbs> (April 21, 2019) <https://www.familyequality.org/wp-content/uploads/2019/02/LGBTQ-Family-Building-Study-Summary-1.pdf>

⁴³ Levitt, H. M., Schuyler, S. W., Chickerella, R., Elber, A., White, L., Troeger, R. L., ... & Collins, K. M. (2020). “How discrimination in adoptive, foster, and medical systems harms LGBTQ+ families: Research on the experiences of prospective parents.” *Journal of Gay & Lesbian Social Services*, 1-22. <https://www.tandfonline.com/doi/abs/10.1080/10538720.2020.1728461>

⁴⁴ *Ibid.* “Findings indicate that heteronormative attitudes and discrimination can lead to debilitating and enduring harm upon the economic, emotional, and relational well-being of growing LGBTQ+ families.”

⁴⁵ Abbie E. Goldberg, Reihonna L. Frost, Liam Miranda, Ellen Kahn “LGBTQ individuals' experiences with delays and disruptions in the foster and adoption process.” *Children and Youth Services Review*, Vol. 106 (2019) <https://www.sciencedirect.com/science/article/pii/S0190740919305791>

⁴⁶ *Ibid.*

⁴⁷ The Fenway Institute and NORC “Helping Your Organization Collect Sexual Orientation and Gender Identity Data” *The Fenway Institute* 2019 https://fenwayhealth.org/wp-content/uploads/TFI-54_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_HelpingYourOrganization.pdf See page 2

data on the sexual orientation of foster and adoption parents would likewise have a dual benefit. First, the data would allow child welfare providers, like health care providers, to better serve these parents. As with LGBTQ foster youth, only thorough data allows targeted responses. Second, these parents would feel more welcome and experience less discrimination if data collection is coupled with staff cultural competency training as health care providers suggest.

Given the need for more parents in foster care and adoption remains strong, the child welfare system stands to benefit from doing everything it can to welcome as many parents into the system as possible. Any exclusion of qualified, willing, and able parents constitutes a detriment to the safety, permanency, and well-being of the children these parents could care for. To welcome more LGBTQ parents, discrimination and stigma against them, and their particular needs, must be addressed. The experience of health care providers sets a clear precedent: effective treatment started with thorough data collection. National AFCARS data will be important for research affecting the safety, permanency, and well-being of children. A better understanding of, for example, how often LGBTQ parents foster disabled children and sibling groups, will allow the child welfare system to better serve children in need.

New Research Confirms: HHS Should Refine Sex Data Elements to Collect Data on Transgender Youth and Parents.

Sexual orientation is not the only data AFCARS should collect to better serve LGBTQ children in the child welfare system. An estimated 1.4 million US adults are transgender, as are hundreds of youths of youth.

Recent research in *Children and Youth Services Review* identifies specific barriers that transgender adults face in adopting and fostering children. The authors conclude that **“Trans adults report more fears about discrimination than cisgender sexual minorities,”** whilst also being **“more open to older children and trans children than cisgender sexual minorities.”** Hence, the authors suggest that, “Trans parents could be a unique asset to children involved in child welfare who are most vulnerable.”⁴⁸

Transgender parents thus have even greater fears of discrimination and could serve particularly vulnerable children. Transgender youth also face extraordinary barriers that can be even greater than those facing cisgender sexual minority youth. A recent study in the journal *Pediatrics* including 1,148 transgender adolescents found that this group had **“higher odds of all suicidality outcomes than their cisgender peers.”**⁴⁹

By refining sex data elements to collect data on both sex assigned at birth and gender identity, AFCARS data would enable the Children’s Bureau, States, Tribes, and all child

⁴⁸ Abbie E. Goldberg, Samantha Tornello, Rachel Farr, JuliAnna Z. Smith, Liam Miranda. “Barriers to adoption and foster care and openness to child characteristics among transgender adults.” *Children and Youth Services Review*, Vol. 109 (2020)

<https://www.sciencedirect.com/science/article/pii/S0190740919311144>

⁴⁹ Brian C. Thoma, Rachel H. Salk, Sophia Choukas-Bradley, Tina R. Goldstein, Michele D. Levine, Michael P. Marshal, “Suicidality Disparities Between Transgender and Cisgender Adolescents.” *Pediatrics* Nov 2019, 144 (5) <https://pediatrics.aappublications.org/content/144/5/e20191183>

welfare providers to better serve transgender foster youth, and to more effectively recruit and support transgender parents. Doing so will improve the safety, permanency, and well-being of children insofar as it would improve the safety, permanency, and well-being of transgender youth in care, and open up more homes for all children. Only comprehensive data through AFCARS can provide the necessary data to properly evaluate the needs and treatments of transgender youth and parents in the child welfare system

New Data Confirms: The Data Elements Related to Health Assessments Should Be Retained to Protect Youth and Ensure Compliance with Federal Law.

According to recent research by the National Conference of State Legislatures, issued since the June 2019 closing of the comment period for this rule, **mental health is a critical issue in foster care**.⁵⁰ Eighty percent of foster youth have mental health issues, and they fare worse in areas ranging from substance and alcohol abuse, to post traumatic stress disorder. Given the dire mental health needs of foster youth, timely health assessments are absolutely critical to their safety and well-being. Without data on whether such health assessments are being conducted, however, we simply do not know the extent to which this need is being met. Nor do we know how different states compare in addressing this need.

This is especially worrying for LGBTQ foster youth, since, as proven by research cited above, they fare even worse in amongst other things, substance abuse and suicidal ideation and attempts. Other health disparities, including mental health, also remain.⁵¹ Thus, it is incredibly important to the well-being of foster youth that AFCARS continues to collect data both on the provision of health assessments, and on sexual orientation and gender identity of children in care. Such data would allow the child welfare system to confidently draw conclusions about the particular needs and experiences of children in care, develop appropriate and targeted treatments to address these needs and experiences, and evaluate the relative success of such treatments.

New Research and Expert Recommendations Confirm: Collecting LGBTQ Demographic Data Is Not Overly Burdensome.

New research and expert recommendations also confirm that the collection of SOGI data is not burdensome. In June 2019, The Fenway Institute and NORC at the University of Chicago released three briefs on the collection of SOGI data in health care settings.⁵² According to their research, based on interviews with health care administrators:

⁵⁰ National Conference of State Legislatures *Mental Health and Foster Care* (Nov 1, 2019) <https://www.ncsl.org/research/human-services/mental-health-and-foster-care.aspx>

⁵¹ Emma C. Potter and Charlotte J. Patterson "Gay, and Bisexual Adults: The Burden of Health Disparities in 2016 Behavioral Risk Factor Surveillance System Data" *LGBT Health*. Oct 2019. p. 357-369. <https://www.liebertpub.com/doi/10.1089/lgbt.2019.0013>

⁵² The Fenway Institute and NORC, "Helping Your Organization Collect Sexual Orientation and Gender Identity Data!" (June 2019), https://fenwayhealth.org/wp-content/uploads/TFI-54_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_HelpingYourOrganization.pdf; The Fenway Institute and NORC, "Eight Tips for Building Coalition Support and Moving SOGI Data Collection Forward in Your

SOGI questions are widely understood and accepted by diverse patient populations from across the country, and that that providers often overestimate the number of patients who will be uncomfortable or offended by SOGI questions. For example, a survey of 1,516 patients and 429 providers found that while approximately 80% of providers thought that patients would refuse to answer SO questions, only 10% of patients said that they would refuse to answer.⁵³

Those findings and recommendations are in line with previous research on data collection in health care, which found that “patients feel routine SO/GI collection allows for recognition of individual identity and improved therapeutic relationships in the ED”.⁵⁴ One major study found that: “Collection of SOGI data as a part of the routine clinical patient intake process is not distressing to 97 percent of patients who are heterosexual, cisgender, and older than 50 years.”⁵⁵ Other research “found a high response rate to questions about sexual orientation and gender identity” and also argues that such “data can help organizations identify health inequities related to sexual orientation and gender identity.”⁵⁶

Thus, there is overwhelming evidence that collection of SOGI data is possible, and that those who are surveyed do not find the collection of such data burdensome.

New Research Confirms: Collecting the Data Elements in the Final Rule will Decrease Costs in the Child Welfare System by Improving Outcomes for LGBTQ Youth.

High placement instability among LGBTQ youth means more time spent in congregate care. Congregate care, of course, is less optimal for children and more expensive to the child welfare system than stable foster care placements or adoption. A study released in 2020 found that “**residential treatment and group home placements and services**

Organization” (June 2019), https://fenwayhealth.org/wp-content/uploads/TFI-54_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_EightTips.pdf; The Fenway Institute and NORC, “The Nuts and Bolts of SOGI Data Implementation: A Troubleshooting Toolkit” (June 2019), “https://fenwayhealth.org/wp-content/uploads/TFI-54_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_NutsAndBolts.pdf.”

⁵³ The Fenway Institute and NORC

⁵⁴ Kodadek, L. M., Peterson, S., Shields, R. Y., German, D., Ranjit, A., Snyder, C., ... & Haider, A. H. (2019). “Collecting sexual orientation and gender identity information in the emergency department: the divide between patient and provider perspectives.” *Emergency Medicine Journal*, 36(3), 136-141. <https://emj.bmj.com/content/36/3/136.abstract>

⁵⁵ Rullo, J. E., Foxen, J. L., Griffin, J. M., Geske, J. R., Gonzalez, C. A., Faubion, S. S., & van Ryn, M. (2018). “Patient acceptance of sexual orientation and gender identity questions on intake forms in outpatient clinics: a pragmatic randomized multisite trial.” *Health Services Research*, 53(5), 3790-3808. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6153164/>

⁵⁶ Pinto, A. D., Aratangy, T., Abramovich, A., Devotta, K., Nisenbaum, R., Wang, R., & Kiran, T. (2019). “Routine collection of sexual orientation and gender identity data: a mixed-methods study.” *CMAJ*, 191(3), E63-E68. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6336479/>

were also associated with having high costs.”⁵⁷ Meanwhile another study analyzed how states are currently using therapeutic foster care, suggesting that this “is more cost-effective than congregate care.”⁵⁸

Insofar as the collection of SOGI data through AFCARS will allow the child welfare system to better serve LGBTQ foster youth and therefore decrease their placement instability, such data collection will reduce costs to the child welfare system by reducing the requirement for congregate care, and the reduction in the costs associated with each new placement.

Informed and well-prepared foster parents and social workers facilitate permanency. But we can only inform and prepare foster parents and social workers in the child welfare system if we have thorough and accurate data on the needs and experiences of foster youth. A complete understanding of the needs and experiences of youth in care must include SOGI data, given their distinct experiences. Effective leveraging of such data into better treatments, reducing the placement instability of LGBTQ foster youth and the system’s dependence on congregate care to care for them, will reduce the overall cost to the system.

AFCARS remains the most appropriate vehicle for collecting this data and no other adequate system exists to do so.

AFCARS is the only available vehicle to collect this kind of national and state-based data on foster youth and parents. The lack of nation-wide SOGI data on foster youth in the absence of AFCARS collecting it, only exemplifies the fact that AFCARS remains the only existing vehicle to collect it. Considering AFCARS’ existing infrastructure to readily collect nation-wide data on the foster care system, and the high barriers to developing and implementing a new system, AFCARS is the most appropriate vehicle for collecting any data that is essential to improving the functioning of the child welfare system by improving children’s’ safety, permanency, and well-being.

Thorough data is critical to the child welfare system, as evidenced by the Children’s Bureau’s own reliance on this data for everything from determining funding, the strengths and weaknesses of programs, analyzing and tracking trends, to developing the annual report to Congress.

Following the closing of the comment period for this rule, CSSP conducted **a study asking Federal, State, and local government officials “to reflect on what evidence they had used in reaching” the most important decisions in the past year. First**

⁵⁷ Yampolskaya, S., Robst, J., & Armstrong, M. I. (2020). “High cost child welfare cases: Child characteristics and child welfare services.” *Children and Youth Services Review*, 111 (2020) <https://www.sciencedirect.com/science/article/pii/S0190740919312423>

⁵⁸ Seibert, J., Romaine, M., Cowell, A., Hinde, J., Mills, M., Cool, A., ... & Orlebeke, B. (2019). “Patterns of Treatment/Therapeutic Foster Care and Congregate Care Placements in Three States” *Office of the Assistant Secretary for Planning and Evaluation, Office of Human Services Policy - U.S. Department of Health and Human Services* (August 2019) https://pdfs.semanticscholar.org/e000/79e22718c5b90b66c46a8d9c82a1fd8b2d61.pdf?_ga=2.224428506.1505451321.1587505100-1995808140.1587505100

and foremost was “data from agency operations, typically in order to better understand the characteristics of the populations being served and the results of their encounters with the system or organization,” specifically **“national trend data, for example about changes in... [the] composition of the foster care population.”**⁵⁹ And another recent paper from Chapin Hall finds that, “If Congress and HHS invested in research on the factors that drive youth of color and LGBTQ youth to run away from foster care at disproportionate rates, and on developing and testing data-driven interventions, child welfare systems and practitioners can be better prepared to prevent this from occurring.”⁶⁰

Only through AFCARS can standardized national data be collected, allowing for accurate state-by-state comparisons to determine effective treatments and problem areas. Only if AFCARS collects such national data can the Children’s Bureau accurately analyze trends in foster care, provide a comprehensive and accurate analysis of foster care to Congress, and know when and where state reviews are in order so as to develop Program Improvement Plans to improve the care for especially vulnerable foster youth.

OMB review should be extended, and publication of a final rule delayed, during the unprecedented COVID-19 National Emergency.

As noted above, most Americans across the country, including staff of countless state, local, and private agencies and other key stakeholders, are unable to work due to illness, caring for ill or vulnerable loved ones, closures of schools and child care, and closures of their own workplaces. These conditions mean that the vast majority of individuals and organizations in this country have faced massive disruptions in their ability to participate in any public comment period; to participate in the public input process through the Office of Management and Budget required by Executive Order 12866 for proposed and final rules; or to prepare for implementation of any regulatory changes.

Here, the circumstances of the current COVID-19 National Emergency prohibit many stakeholders from meaningfully participating in the OMB public input process established by Executive Order 12866. For this reason alone, OMB should extend its review process for non-emergency rules such as this one through at least 30 days after the termination of the current COVID-19 National Emergency, as declared by President Trump on March 13, 2020.

⁵⁹ Steven D. Cohen “The Evidence Decision-Makers Wants” *Center for the Study of Social Policy* (December 2019) <https://cssp.org/wp-content/uploads/2019/12/FutureofEvidenceReport-Dec-2019.pdf>

⁶⁰ Morton, M. H. & Horwitz, B. (2019). *Federal actions to prevent & end youth homelessness: Recommendations based on research and a national convening of experts and stakeholders*. Chicago, IL: Chapin Hall at the University of Chicago. <https://www.chapinhall.org/wp-content/uploads/Federal-actions-to-prevent-and-end-youth-homelessness-final.pdf>