

NLWJC - Kagan

DPC - Box 026 - Folder 002

Family - Child Welfare Regulations

Child Welfare Monitoring

1. Modify the program improvement plan time frame to a maximum of two years. Provide a limited exception of a three year time frame for States that are so substantially out of compliance that it would be impossible to improve in two years. (Check improvement/time frame reg language)
2. Modify AFCARS to be able to track the three AFSA 15/22 exceptions.
3. Publish the a) self-assessment instrument; b) on-site review instrument in conjunction with the publication of the rule.
4. Require the State to make public the a) self-assessment; b) monitoring final reports; c) program improvement plans.
5. Lengthen comment period to 120 days.

Language changes

p. 46. Rewrite of new sentence.

“ACF will conduct an independent analysis using AFCARS data and provide consultation to support the State self-assessment to ensure that it is complete and accurate.”

P. 175

In section 1355.34 or 1355.35 add a reference for the reader to the indicators (for the outcomes) in the self-assessment tool.

p. 176 Rewrite of section

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Child Welfare Notice of Proposed Rulemaking

General Areas Covered:

- (I) Title IV-E Foster Care Eligibility Reviews
- (II) Child and Family Services State Plan Reviews
- (III) MEPA as amended by the Small Business Job Protection Act
- (IV) Adoption and Safe Families Act provisions

I. Title IV-E Eligibility Reviews

The NPRM reforms the IV-E Eligibility Review, which are federal reviews mandated by statute to oversee and verify the accuracy of federal adoption and foster care maintenance payments. While past review processes have focused on standard completion of case files, the NPRM changes the reviews to emphasize federal collaboration with and technical assistance to states (recommended by a 1994 HHS OIG Report). The IV-E Eligibility Review will now be done by a federal/State joint team and give States the opportunity to correct errors before penalties are exacted. Reviews are conducted at three year intervals, with "substantial compliance" defined as an error rate of less than 15% in the first review, and 10% thereafter. The sample of at least 80 cases (up from at least 50 cases in prior reviews) are drawn from AFCARS (the Adoption and Foster Care Assistance Reporting System).

II. Child and Family Services Reviews

The NPRM presents an entirely new review of State child welfare systems -- the Child and Family Services Review (CFSR) -- to replace prior "427 reviews." The 427 Review focused on accuracy and completion of case files, with bonus dollars awarded to fully completed files. The new CFSR instead focuses on child and family outcomes in the areas of safety, permanence, and child and family well-being.

The CFSR is a 2 stage review: (1) a State undergoes a self-assessment in consultation with ACF; and (2) on the basis of that self-assessment and an independent analysis by ACF, areas for an on-site review (substantive and geographic) are selected and the on-site review is undertaken by a joint federal/state team (with involvement as appropriate by outside experts). The review involves intense evaluation (on the basis of case reviews and interviews) of randomly selected cases and focuses on outcomes for children (see attached), as well as requirements related to delivering child welfare services which lead to improved outcomes. "Substantial Conformity" is defined as 90% of outcomes achieved in the first review, and 95% of outcomes achieved in subsequent reviews.

Under the NPRM, States must undergo a first review within three years. If a State is found to be in substantial conformity, another review is not required for five years. If a State is determined not to be substantial conformity, another full CFSR is required in three years, and the State must submit a Program Improvement Plan within six months to address areas of noncompliance. ACF must approve the Program Improvement Plan. The NPRM gives the States up to three years to complete its Program Improvement Plan, with interim ACF evaluations annually.

III. MEPA as amended by the 1996 Small Business Job Protection Act

The NPRM proposes a separate process for addressing violations, once identified, of the MEPA as amended by the 1996 Small Business Job Protection Act. HHS determined that proper enforcement requires collaboration with the Office of Civil Rights (OCR) because a State's noncompliance constitutes a violation of title IV-E as well as of Title VI of the Civil Rights Act of 1964, and because OCR has significant expertise in investigating alleged civil rights violations.

Under the NPRM, ACF will refer all cases involving potential violations to OCR for investigation (cases may come to ACF's attention during the course of the CFSR, by letter, through media, etc.). (Violations based on a court finding will not be referred to OCR for investigation; rather, ACF will invoke penalty and corrective action procedures directly.) OCR will conduct an investigation of the potential violation, and hand its completed file to ACF, which will make a determination, based on OCR's file and in consultation with OCR, whether there has been a violation (which could be a violation to a person or a violation based on the state's maintenance of any statute, regulation, policy, procedure or practice). If ACF finds that no violation has occurred, no further action is taken.

If ACF determines that a violation has occurred, it will invoke a specified enforcement process, which includes possible penalties assessed and a corrective action plan required. By statute, an immediate penalty will be levied against a state found to be in violation of the statute with respect to a person or as the result of a court finding (although a state may appeal and engage in a corrective action plan during the judicial appeals process if it so chooses). In other circumstances, also by statute, a State will have up to six months from the date it receives notification of its violation from ACF to implement (HHS interprets as "begin") a corrective action plan (after which the State will be assessed a penalty). Approval of the plans are at the sole discretion of ACF (no timetable for approval, but state must "begin" an approved plan before six months lapses). Evaluation of a State's corrective action plan will be completed solely by HHS within 30 days of projected completion date. Penalties levied are consistent with statute.

Summary of MEPA Enforcement: (1) potential violation is brought to ACF's attention; (2) ACF refers case to OCR for investigation; (3) OCR conducts investigation and hands file to ACF; (4) ACF evaluates file and, in consultation with OCR, makes determination -- (a) if ACF finds no violation, inquiry ends; (b) if ACF finds a violation with respect to a person or as the result of a court finding, penalties are immediately assessed; or (c) if ACF finds a relevant violation, ACF notifies the State in writing; if (c), then (5) the State must begin implementing an ACF-approved a corrective action plan within six months; and (6) ACF must evaluate and approve the completed corrective action plan within 30 days of projected completion.

IV. 1997 Adoption and Safe Families Act Provisions

HHS has decided to regulate the provisions of the 1997 Adoption and Safe Families Act (ASFA) and other recent statutory amendments through two NPRM's. This rule addresses those provisions related to the foster care maintenance program; the second rule will address the remaining ASFA amendments to the SSA. Provisions regulated in the NPRM are:

(1) *Permanency Hearing.* The NPRM recognizes the statutory changes in terminology, timing (18-12 months), and purpose.

(2) *Reasonable Efforts.* The NPRM implements the ASFA requirement that the State hold the child's health and safety as its paramount concern when making reasonable efforts. It does not provide a regulatory definition, in order neither to limit the courts' ability to make determinations on a case-by-case nor to be so broad as to be ineffective; the NPRM does provide questions and guidelines (such as the statutory descriptions of circumstances in which Reasonable Efforts are not required, and a preamble discussion of possible cases). The NPRM also follows the statute closely -- it proposes that in order to satisfy IV-eligibility requirements, there must be a judicial determination that: (1) reasonable efforts were made to prevent a child from being removed from home; (2) reasonable efforts were made to reunify the child with his/her family if the removal could not be prevented; (3) if reasonable efforts were not made to prevent the child's removal from home or to reunify the child with his/her family, that reasonable efforts are/were not required; and (4) if the permanent plan for the child is adoption, guardianship, or some other permanent living arrangement other than reunification, that reasonable efforts were made to make and finalize that alternate placement. The NPRM requires that a judicial determination of reasonable efforts must be made within 12 months, in order to encourage this assessment during the Permanency Hearing.

(3) *Termination of Parental Rights.* The NPRM follows the statutory requirement for States to file for Termination of Parent Rights (TPR) when a child has been in foster care for 15 of the most recent 22 months. By statute, a state may elect not to file for TPR if a child is placed with a relative; if there is a "compelling reason" that TPR is not in the child's best interests; or if adequate services identified in the case have not been provided.

(4) *Criminal Records Check Requirement.* The NPRM follows the statutory requirement that the State conduct criminal records checks for prospective foster and adoptive parents unless the State "opts out" of this provision through a Governor's letter to the Secretary of HHS. The NPRM leaves to state discretion whether the criminal background checks are national or state-wide (ASFA was not specific, and HHS claims that FBI checks are too burdensome, time- and dollar-wise, to be required).

Family-child welfare

- (4) the determination of conformity by the ACF Regional Office based on the criteria described in paragraphs (a) - (c) of this section.

(b) Criteria related to outcomes.

- (1) A State's substantial conformity will be determined by its ability to substantially achieve the following child and family service outcomes:

(i) In the area of child safety:

- (A) Children are protected from abuse and neglect and safely maintained in their homes (whenever possible); and
- (B) The risk of harm to children is minimized;

(ii) In the area of permanency for children:

- (A) Children have permanency and stability in their living situations; and
- (B) The continuity of family relationships and connections is preserved for children; and

(iii) In the area of child and family well-being:

- (A) Families have enhanced capacity to provide for their children's needs;
- (B) Children have educational achievements appropriate to their abilities; and
- (C) Children receive adequate services to meet their physical and mental health needs.

(2) A State's level of achievement with regard to each outcome reflects the extent to which a State has implemented the following CFSP requirements or assurances:

- (i) The requirements in 45 CFR 1357.15(p) regarding services designed to assure the safety and protection of children and the preservation and support of families;
- (ii) The requirements in 45 CFR 1357.15(q) regarding the permanency provisions for children and families in sections 422 and 471 of the Act;

- (iii) The requirements in section 422(b)(9) of the Act regarding recruitment of potential foster and adoptive families;

- (iv) The assurances by the State as required by section 422(b)(10)(C)(i) and (ii) of the Act regarding policies and procedures for abandoned children;

- (v) The requirements in section 422(b)(11) of the Act regarding the State's compliance with the Indian Child Welfare Act;

- (vi) The requirements in section 422(b)(12) of the Act regarding a State's plan for effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements; and,

- (vii) The requirements in section 471(a)(15) of the Act regarding reasonable efforts to prevent removals of children from their homes, to make it possible for children in foster care to safely return to their homes, or, when the child is not able to return home, to place the child in accordance with the permanency

plan and complete the steps necessary to
finalize the permanent placement.

← (3) A State will be determined to be in substantial conformity if each outcome listed in paragraph (b) (1) of this section is rated as "substantially achieved" in 95 percent of the cases examined during the on-site review (90 percent of the cases for a State's initial review). Information from various sources (case records, interviews) will be examined for each outcome and a determination made as to the degree to which each outcome has been achieved for each case reviewed.

(c) Criteria related to State agency capacity to deliver services leading to improved outcomes for children and families.

In addition to the criteria related to outcomes contained in paragraph (b) of this section, the State agency must also satisfy criteria related to the delivery of services. Information from the self-assessment and the on-site review must indicate that the State has implemented the referenced State plan requirements related to the State agency's capacity to deliver services leading to improved outcomes, and

actually delivered those services, by meeting each of the criteria listed for the following core systemic factors:

~~(1)~~ Statewide information system: The State is operating a statewide information system that, at a minimum, can readily identify the status, demographic characteristics, location, and goals for the placement of every child who is (or within the immediately preceding 12 months, has been) in foster care (section 422(b)(10)(B)(i) of the Act);

(2) Case review system: The State has procedures in place that:

(i) provide, for each child, a written case plan to be developed jointly with the child's parent(s) that includes provisions: for placing the child in the least restrictive, most family-like placement appropriate to his/her needs, and in close proximity to the parents' home where such placement is in the child's best interests; for visits with a child placed out of State at least every 12 months by a social worker of the agency or of the agency in the State where the child is

(iv) provide a process for termination of parental rights proceedings in accordance with section 475(5)(E) of the Act; and,

(v) provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and an opportunity to be heard in any review or hearing held with respect to the child.

(3) Quality assurance system: The State has developed and implemented standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children (section 471(a)(22) and is operating an identifiable quality assurance system (45 CFR 1357.15(u)) as described in the CFSP that:

(i) is in place in the jurisdictions within the State where services included in the CFSP are provided;

(ii) is able to evaluate the adequacy and quality of services provided under the CFSP;

- (iii) is able to identify the strengths and needs of the service delivery system it evaluates;
 - (iv) provides reports to agency administrators on the quality of services evaluated and needs for improvement; and
 - (v) evaluates measures implemented to address identified problems.
- (4) Staff training: The State is operating a staff development and training program (45 CFR 1357.15(t)) that:
- (i) supports the goals and objectives in the State's CFSP;
 - (ii) addresses services provided under both subparts of title IV-B and the training plan under title IV-E of the Act;
 - (iii) provides training for all staff who provide family preservation and support services, child protective services, foster care services, adoption services and independent living services soon after they are employed

and that includes the basic skills and knowledge required for their positions;

(iv) provides ongoing training for staff that addresses the skills and knowledge base needed to carry out their duties with regard to the services included in the State's CFSP; and,

(v) provides short-term training for current or prospective foster parents, adoptive parents, and the staff of State-licensed or State-approved child-care institutions providing care to foster and adopted children receiving assistance under title IV-E that addresses the skills and knowledge base needed to carry out their duties with regard to caring for foster and adopted children.

(5) Service array: Information from the State self-assessment and on-site review determines that the State has in place an array of services (45 CFR 1357.15(n) and section 422(b)(10)(B)(iii) and (iv) of the Act) that include, at a minimum:

- (i) services that assess the strengths and needs of children and families assisted by the agency and are used to determine other service needs;
- (ii) services that address the needs of the family, as well as the individual child, in order to create a safe home environment;
- (iii) services designed to enable children at risk of foster care placement to remain with their families when their safety and well being can be reasonably assured;
- (iv) services designed to help children achieve permanency by returning to families from which they have been removed, where appropriate, be placed for adoption or with a legal guardian or in some other planned, permanent living arrangement, and through post-legal adoption services;
- (v) services that are accessible to families and children in all political jurisdictions covered in the State's CFSP; and,

(vi) services that can be individualized to meet the unique needs of children and families served by the agency.

(6) Agency responsiveness to the community:

- (i) the State, in implementing the provisions of the CFSP, engages in ongoing consultation with a broad array of individuals and organizations representing the State and county agencies responsible for implementing the CFSP and other major stakeholders in the services delivery system including, at a minimum, tribal representatives, consumers, service providers, foster care providers, the juvenile court, and other public and private child and family serving agencies (45 CFR 1357.15(1)(4));
- (ii) the agency develops, in consultation with these or similar representatives, annual reports of progress and services delivered pursuant to the CFSP (45 CFR 1357.15(1)(4));
- (iii) there is evidence that the agency's goals and objectives included in the CFSP reflect

consideration of the major concerns of stakeholders consulted in developing the plan and on an ongoing basis (45 CFR 1357.15(m)); and

(iv) there is evidence that the State's services under the plan are coordinated with services or benefits under other Federal or federally-assisted programs serving the same populations to achieve the goals and objectives in the plan (45 CFR 1357.15(m)).

(7) Foster and adoptive parent licensing, recruitment and retention:

(i) the State has established and maintains standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes (section 471(a)(10) of the Act);

(ii) the standards so established are applied by the State to every licensed or approved foster family home or child care institution

receiving funds under title IV-E or IV-B of the Act (section 471(a)(10) of the Act);

(iii) the State complies with the safety requirements for foster care and adoptive placements in accordance with sections 471(a)(16) and 475(1) of the Act and 45 CFR 1356.30;

(iv) the State has in place an identifiable process for assuring the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed (section 422(b)(9) of the Act); and,

(v) the State has developed and implemented plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children (section 422(b)(12) of the Act).

(d) Availability of review instruments.