

Final Rule Executive Summary

Overview and Impact of the Final Rule

On January 25, 2000, HHS published a final rule in the Federal Register that establishes regulations regarding:

- a new approach to monitoring State child welfare programs that focuses on results in the areas of safety, permanency and child and family well-being;
- the penalty and corrective action process for the Multiethnic Placement Act (MEPA), as amended, regarding discrimination in adoptive and foster care placements;
- provisions of the Adoption and Safe Families Act (ASFA) and the Federal foster care program; and
- an updated review process for the Federal foster care program.

The final rule is a response, in part, to a congressional mandate for HHS to reform our approach to monitoring compliance with Federal child welfare requirements and to promulgate regulations for reviews of State child and family service programs.

This new rule will play an important role in improving services to and outcomes for abused and neglected children, children in foster care, and children awaiting adoptive families. The focus on outcomes in the child and family services reviews will allow HHS to promote increased safety for children who are maltreated; quicker movement to permanent homes and families for children in foster care; and enhanced well-being for families who are served by State agencies.

Regulating the MEPA enforcement strategy further strengthens the Department's capacity to hold States accountable for removing delays to permanency. Finally, by regulating the provisions of the ASFA, we expect to clarify the requirements for holding children's safety paramount and ensuring that children do not languish in foster care, and thereby strengthen the timeliness and quality of decision-making for children and families served through State child welfare programs.

The Department engaged in extensive consultation prior to developing the regulation. Because the shift to outcomes-focused monitoring represents such an important change in the way child welfare programs are held accountable, HHS conducted numerous pilot tests with States to refine our approach. In addition, we conducted a number of focus groups both on the child and family services reviews and on the implementation of ASFA that shaped our development of the proposed regulation, which was published on September 18, 1998. The final rule represents a balance of the lessons learned from the pilots and consultation and the 176 comment letters that were written in response to the proposed rule. The effective date of the final rule is March 25, 2000.

The following highlights the major areas of the regulation:

Child and Family Services Reviews

The new child and family services reviews represent a significant departure from the former review process. In the past, reviews focused almost entirely on the accuracy and completeness of

case files and other records, without regard to the outcomes for children and families. The prior reviews required a State's total compliance with Federal requirements and did not provide opportunities for improvement before significant penalties were imposed.

The child and family services reviews, as detailed in the final rule, offer a more balanced and child and family-centered approach, including:

- a focus on outcomes and results for children and families,
- technical assistance to assist States in improving their child welfare systems in a timely way, as well as accountability for non-compliance,
- the use of multiple qualitative and quantitative information sources to better evaluate child and family outcomes and system performance, and
- engaging the States as partners in identifying strengths and weaknesses, defining program improvements, and crafting technical assistance that will result in better outcomes and systems.

An outcomes and results-focused approach

The child and family services review is a results-focused approach to monitoring Federally-assisted State child welfare programs. The review measures State compliance with the State plan requirements under titles IV-B and IV-E of the Social Security Act. State child welfare programs will be reviewed in two areas: (1) outcomes for children and families served by the child welfare system; and (2) systemic factors that directly affect the State's capacity to deliver services leading to improved outcomes. Outcomes are focused on children's safety, permanency, and child and family well-being. Systemic factors include whether a State has in place and is successfully operating systems for reviewing the cases of children in foster care at required intervals, training child welfare staff, licensing foster care providers, and recruiting prospective adoptive parents. This approach focuses the reviews on the quality of services provided.

A two-tiered review process that uses qualitative and quantitative data

The review is a two-stage process comprised of a statewide assessment and an on-site review. The statewide assessment involves HHS preparing and transmitting to the State data profiles that have aggregate data on the State's foster care and in-home service population. The data profiles include information on whether the State has met a national standard, set by HHS, for certain permanency and safety data indicators, such as length of stay in foster care and rates of repeat maltreatment of children. The data profiles provide an overall picture of how well the State is performing. The statewide assessment is then completed by the State and its external partners primarily to further evaluate the programmatic issues behind the statewide data in the areas of safety, permanency, and well-being for children.

Following the statewide assessment, an on-site review is conducted by a joint Federal-State team. As we learned through the pilot reviews, the on-site portion of the review provides the most comprehensive information on the quality of a State's child welfare program. The Federal-State team evaluates the outcomes by examining a sample of children receiving in-home services and those in foster care by reviewing the written record and interviewing family members, caretakers, caseworkers, and service providers. Furthermore, interviews are conducted with State and local

representatives to evaluate system performance in specific areas, such as the foster home licensing process. The quantitative and qualitative data from the statewide assessment and the on-site portion of the review are used together by HHS to determine the State's compliance on the outcomes and systemic factors.

State Compliance and Accountability

The combination of information from the on-site portion of the review and the statewide data provides HHS and the State with a comprehensive picture of the strengths and weaknesses in the State's program. If a State is not in compliance, HHS and the State will formulate a time-limited plan for making program improvements that addresses the State's need for Federal technical assistance. Although penalties are deferred while the State implements its program improvement plan, the State is held accountable for meeting the milestones detailed in the plan and ultimately completing the plan successfully. If the State does not meet the milestones, or does not complete the plan, HHS will assess penalties commensurate with the extent of the non-compliance. In successive reviews, the amount of the penalty increases for continued non-compliance.

Timetable for Reviews

States determined to be in compliance will be reviewed every five years and will complete a statewide assessment every three years. States determined not to be in compliance will be reviewed two years after the approval of the program improvement plan.

Enforcement of the Multiethnic Placement Act

The regulation outlines the penalty and corrective action process for violations of the Multiethnic Placement Act, as amended. The Multiethnic Placement Act prohibits discrimination based on race, color or national origin in the placement of children for foster care and adoption. Investigation and enforcement of this requirement is a joint procedure between the Department's Office for Civil Rights and the Administration for Children and Families.

The penalty and corrective action process detailed in the regulation follows the statute closely. The potential penalty ranges from two to five percent of all Federal title IV-E funds depending on the number of violations found. States that are determined to have discriminated against an individual will be assessed a penalty immediately consistent with the law. If no individual has been discriminated against, but HHS determines that the State has a policy or practice that violates the law, then the State will have to correct that policy or practice within six months or face penalties.

The regulation also addresses the entities other than State agencies that are subject to financial penalties if they violate the law. Unlike the States, an entity such as a private agency is not afforded a corrective action process and must return all Federal foster care and adoption funds to HHS.

Adoption and Safe Families Act Requirements

The final rule implements certain ASFA requirements that are directed at improving States' efforts to achieve safety and timely permanency for children.

Reasonable Efforts

- Once a child is removed from home, the State must obtain a court order demonstrating that the State provided services to prevent the child's removal from the home and to reunify the family, or where safety considerations took precedence, that reasonable efforts to keep or return the child home were not required.
- The final rule clarifies that ASFA gives States broad flexibility to define circumstances in State law where the State does not have to make reasonable efforts to preserve a family or reunify a family because of child safety concerns.
- For children in foster care, the State is now required to obtain a court order at least every 12 months, showing that the State made reasonable efforts to finalize a permanent plan for the child in a timely manner, whether the plan is to reunify child and parents, or achieve permanency through adoption or legal guardianship.

Termination of Parental Rights

Consistent with ASFA, the regulation requires the State to file a petition to terminate parental rights (TPR) for children who have been in foster care for 15 out the most recent 22 months, abandoned infants, and children of parents who have committed certain felonies. The rule explains that there are no automatic exceptions for groups of children, but that States must make decisions about not pursuing a TPR on a case-by-case basis. The final rule offers States guidance on how to calculate the time frames for when a State must file a petition for TPR for a child in foster care, unless an exception is made. The rule also clarifies that the State can file such a petition at any earlier time if doing so is in the child's best interests.

Criminal Record Checks

Unless a State opts out by way of the Governor or State legislature, the State must conduct criminal record checks for prospective foster and adoptive parents. A State that opts out of this requirement must still document the safety of a child's placement.

Other Foster Care Requirements

- The final rule also requires a State to obtain a court order at the time the child is first removed from home finding that it was contrary to the child's welfare to remain at home. The court orders relating to the contrary to the welfare determination and reasonable efforts requirements must be obtained within the specified time frames in order for the State to claim Federal reimbursement for eligible children under the title IV-E Federal foster care program.
- For the Federal foster care program, States are required to have the same licensing or approval requirements for relative foster homes as they do for non-relative homes, with some exceptions for requirements not related to safety. The State cannot receive Federal reimbursement for foster care expenses for children placed in temporarily licensed foster homes or in foster homes that fail to meet all licensing or approval requirements.
- The regulation requires States to have court hearings on the permanency plan for the child at least every 12 months for all children in foster care, including those children placed in a permanent foster home or preadoptive home.

Title IV-E Reviews

The reviews of the Federal title IV-E foster care program focus on whether a child meets the statutory eligibility requirements for the program. The review team is comprised of Federal and State representatives who examine cases of children for information such as:

- a court order stating that the child welfare agency removed the child only when necessary,
- a court order stating that the agency provided reasonable efforts to preserve the family, if appropriate, and to achieve permanency for the child,
- a completed criminal background check on the foster parent, and
- confirmation that the child met the income test for the program.

Two-Tiered Review Process with a Program Improvement Component

The review of the Federal foster care program is a two-stage process, which is conducted every three years. During the first stage, HHS reviews a number of cases. A disallowance is taken for all cases that fail the requirements. If a State fails more than a specific percentage of cases, the State is out of compliance with the Federal foster care program requirements. As a condition of non-compliance, the State is required to complete a one-year program improvement plan and undergo a second review at the end of the year. After the second review, if the State is still not in compliance, a larger disallowance is assessed based on the total population of children in foster care.

Race and Ethnicity Data Collection

The final rule also includes a technical change to the race and ethnicity data elements in the Adoption and Foster Care Analysis and Reporting System (AFCARS). The rule codifies existing HHS and Office of Management and Budget policy with regard to allowing individuals to report that they identify with more than one race.

FIRST LADY HILLARY RODHAM CLINTON
TALKING POINTS FOR CHILD CARE CONFERENCE CALL
January 27, 1999

- Thank you all for joining this call. I wanted to take a few minutes to run through with you the pieces of the President's budget on child care, which he will unveil formally in the State of the Union address tonight.
- I believe that thanks to the hard work that we have done together and that all of you continue to do with such dedication and persistence, we have a real fighting chance to make more progress on child care this year. The ground work has been laid – from the additional funds we secured in welfare reform to the powerful White House Conference on Child Care, from the strong leadership of our friends in the Congress to the commitment of all of you to putting and then keeping this issue on the front burner where it belongs.
- We will share documents with you that detail the child care pieces of the President's Fiscal Year 2001 budget, but here are the highlights:
 1. We are proposing to increase Head Start by \$1 billion – the largest funding increase in history for the program. This funding level will enable the program to serve nearly 950,000 children with Head Start services, and get us well on the way to meeting the President's goal of serving 1 million low-income children with Head Start in 2002.
 2. We are proposing \$817 million more dollars in discretionary funding for child care subsidies for FY 2001, bringing the discretionary title to \$2 billion. We moved our budget request to the discretionary side – at your collective urging – to hold Senator Specter to his word to add this amount to the budget.
 3. We are proposing to make the Child and Dependent Care Tax Credit refundable to assist low-income working families who don't have enough tax liability to claim the maximum credit. This proposal, which we estimate will help nearly two million low-income families, will provide an average tax cut of \$902 to help offset the costs of child care. For example, a single mother who has one child, earns an annual salary of \$15,000, and spends about \$2,400 per year on child care, will receive a tax credit of \$1,200, an increase of \$817 over current law. The President will also re-propose his CDCTC expansion from last year to provide greater tax relief to 4.4 million working families paying for child care and assist nearly 2 million parents who stay at home with their young children.
 4. On after-school, we are proposing a \$1 billion for the 21st Century Community Learning Center program, more than doubling this year's funding level. With this increase, we can nearly triple the number of children served. And, we can enable every child in every failing school to participate in quality extending learning programs.

January 26, 2000

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: NICOLE RABNER

SUBJECT: CONFERENCE CALL ON CHILD CARE

Tomorrow morning at 8:30 AM, you are scheduled to hold a brief conference call with the key child care advocates to unveil the President's budget request on child care. The advocates will be very pleased with the funding levels in the budget, particularly on Head Start, after-school care, and the Early Learning Fund. They will be pleased that we are including a \$817 million increase on the discretionary side of the budget for child care subsidies – they see this as the most important and achievable goal this year (you'll remember that in the context of the FY 2000 budget negotiations, Senator Specter promised Senator Dodd that he would include this mark in next year's budget). Finally, they will be surprised and ecstatic that the Administration is newly proposing to make the Child and Dependent Care Tax Credit refundable to assist low-income working families with child care costs – this has long been on the advocates' agenda.

Attached please find a list of conference call participants, talking points, and an overview of the Fiscal Year 2001 budget request on child care.

Internal Child Welfare Final Rule Topline Qs and As

January 24, 2000

Q: What are you announcing today?

A: Today we are announcing new regulations that will improve outcomes for children in the child welfare system. These regulations provide a single, comprehensive framework for states to run their foster care and adoption programs. The federal government, through a new monitoring process, will now be able to hold states accountable for the safety, permanency and well-being of at-risk children. The monitoring process focuses on a new partnership with states in assessing the performance of programs for vulnerable children, including corrective action plans and tough penalties when states do not achieve compliance. The regulations also integrate fully the recent major changes to foster care and adoption from the Adoption and Safe Families Act and the Interethnic Adoption provisions into the child welfare program ensuring that states act timely to achieve permanent homes for children and that all families have the opportunity to adopt.

There was consensus among the Congress, Clinton administration, states and stakeholders that the previous monitoring process by the federal government of states focused too narrowly on paperwork. After an extensive consultation process, including pilot reviews with states, HHS developed a new monitoring process that holds states accountable for the safety of children, specific positive results for children's well-being, timely placement in permanent homes, quality services, and incorporates insight from children, parents, foster parents and service providers into the assessment of state performance.

Q: Why did it take you so long to issue these regulations?

A: There was broad consensus that the former federal review process for state foster care and adoption programs focused too narrowly on paperwork and didn't assess the quality of services or the outcomes for children. HHS consulted extensively with states, local communities, and other stakeholders to obtain the best advice on a new review process that would achieve accountability for states and safety and permanency for children. In addition, HHS tested several pilot reviews with states to determine in practice what worked best. While this effort was underway, major legislation was enacted that made significant changes in the child welfare system, namely the Adoption and Safe Families Act of 1997 (ASFA) and the two anti-discrimination laws in 1994 and 1996 that barred the denial or delay in the placement of children because of race, color or national origin. ASFA, signed into law in November 1997, made the most significant changes in foster care and adoption since the original law was passed in 1980. The new law ensured the safety of children as the paramount interest of states, quickened the timeframes for the placement of children, reduced barriers to adoption and provided for the first-ever

financial incentives for states to increase adoption. To ensure that states could be held accountable for specific provisions, HHS integrated the new laws into this single, comprehensive regulation for states.

Q: What did the ASFA do?

A: The Act helped to ensure that foster care is a short term solution, not a long term situation, by making clear that the child's safety and well-being must be the paramount concern when decisions are made about the removal of children from their homes or the reunification with their families. It also set swifter time frames for making permanent placement decisions and terminating parental rights for children. And, for the first time, states have financial incentives to increase adoptions. They must provide health insurance coverage for all special needs children in subsidized adoptions. The new law also eliminates obstacles to adoptions and develops new measures to track the success of states and good results for children.

Q: What does our nation's child welfare system look like today? How many children are in it and how long do they stay in foster care on average?

A: Today, approximately 520,000 of America's children live in our nation's foster care system. More than 100,000 of those children cannot return safely to their homes and need adoptive families. Our most recent data indicates that nearly half had been in care 24 months or longer. Of the children in care, the average age is 9 years old; 35 percent are white; 45 percent are black; and 14 percent are Hispanic; and five percent of children turn 18 and leave the foster care system without having a permanent home.

Q: Will you meet your goal of doubling the number of children adopted from foster care by 2002? How close are you?

A: We have seen a very positive response by states to meeting the goals of doubling the number of children adopted from foster care by the year 2002. States are investing resources, training staff, expanding outreach and recruitment efforts and setting tough year by year goals. HHS is collecting better statistics from states that show states are making progress. From 1996 to 1998, states increased adoptions by 29 percent -- from 28,000 to more than 36,000 -- the first significant increase in the history of the program.

Q: How much funding does the federal government invest in foster care and adoption services?

A: The federal government provides over \$6.3 billion to states to run their foster care, adoption and child welfare programs. The funding provides a variety of supports to states which include: preventive services, investigations of child abuse and neglect, caseworkers and administrators, foster care adoption benefits to families, training, recruitment of foster and adoptive families, demonstration grants to test innovative programs, services for youth who are leaving foster care to be on their own, and supports for children with

special needs. States must provide matching funds in order to access a majority of these funds.

Briefing Material on the Child Welfare Final Rule: Qs and As

Background and Chronology

REVIEWS: The review structures for the Federally-funded child welfare programs have been in place since the early 1980s. They were authorized by the Adoption Assistance and Child Welfare Act (Pub. L. 96-272), passed by Congress in 1980, which amended sections of title IV-B and provided for mandatory Federal reviews of State foster care services under section 427 of the Act. Later, through the Social Security Amendments of 1994 (Pub. L. 103-432), Congress repealed section 427 of the Act. As a result, ACF is no longer conducting "427" reviews. Public Law 103-432 also directed the Department, in consultation with State agencies, to promulgate regulations for child and family service programs that will:

- determine whether these programs are in substantial conformity with applicable State plan requirements and Federal regulations;
- develop a timetable for conformity reviews;
- specify the State plan requirements subject to review, and the criteria to be used in determining a State's substantial conformity with these requirements; and,
- make technical assistance available to the States, and afford them the opportunity to develop and implement corrective action plans designed to ameliorate areas of nonconformity before Federal funds are withheld due to the nonconformity.

The revised review processes, including the instruments used in the reviews, grew out of extensive consultation with interested groups, individuals and experts in the field of child welfare and related areas. A series of focus groups related to the child and family service reviews was conducted with representatives of State programs and national organizations, as well as with family and child advocates. ACF also conducted a number of pilot reviews as we developed and refined the review process.

Since ACF was already revising its approach to monitoring eligibility requirements for title IV-E foster care maintenance payments at the time Public Law 103-432 was enacted, we included the title IV-E eligibility review process in the same regulation.

History of monitoring in the Children's Bureau:

1978-1980: Effort to revitalize joint planning requirements of title IV-B

Led to development of first program reviews

1980 --1993: Pub. L. 96-272 `Established title IV-E with Foster Care and Adoption Assistance. Revised title IV-B and added section 427 --incentive funds for providing special protections to all children in FC.

1982: Development of section 427 review system

1983: Inception of title IV-E foster care eligibility reviews

1985: Inception of adoption assistance eligibility reviews

1986: Developed administrative costs reviews

1987—1993: Congress imposes various moratoria on collection of section 427 review disallowances through annual appropriations process

1993: Passage of FPS

Imposition of 1 year moratorium on 427 and IV-E review disallowances

1994: Passage of section 1123A of SSA repealed section 427

1994-95: Decision to cease all monitoring activities and develop dramatically different monitoring procedures

1995-1996: Consultation on new procedures/system

1996: Developed new system, including procedures for both IV-E foster care eligibility and CFS reviews
Begin field-testing and revision of monitoring procedures

9/96: Regs combined and cleared by ACF
Regs pulled back to include MEPA enforcement strategy

1997: Regs sent forward for clearance with MEPA enforcement included.
Reg pulled back to include ASFA, which was passed in November

1998: ASFA Focus Groups
NPRM published 9/18

2000: Final rule published January 25

MEPA: In 1994, Congress passed the Multiethnic Placement Act, Public Law No. 103-382, (MEPA) to address excessive lengths of stay in foster care experienced by children of

minority heritage. One factor contributing to these excessive lengths of stay in foster care was State agencies' attempts to place children of minority heritage in foster and adoptive homes of similar racial or ethnic background. The MEPA forbids the delay or denial of a foster or adoptive placement solely on the basis of the race, color, or national origin of the prospective foster parent, adoptive parent, or child involved. The MEPA, in section 553, permitted States to consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parent to meet the needs of a child of such background as one of a number of factors in making foster and adoptive placements. In 1996, through section 1808, "Removal of Barriers to Interethnic Adoptions" (Section 1808), of the Small Business Job Protection Act (Public Law 104-188), Congress repealed section 553 of MEPA, believing that the "permissible consideration" language therein was being used to obfuscate the intent of MEPA. Section 1808 also amended title IV-E by adding a State plan requirement, section 471(a)(18), which prohibits the delay or denial of a foster or adoptive placement based on the race, color, or national origin of the prospective foster parent, adoptive parent, or child involved. Section 1808 also dictates a penalty structure and corrective action planning for any State that violates section 471(a)(18) of the Act.

ASFA: On November 19, 1997, President Clinton signed the most significant child welfare reform legislation since Public Law 96-272 in 1980. The Adoption and Safe Families Act (ASFA) seeks to provide States the necessary tools and incentives to achieve the original goals of Public Law 96-272: safety; permanency; and child and family well-being. The impetus for the ASFA was a general dissatisfaction with the performance of the child welfare system in achieving these goals for children and families. This dissatisfaction came as a result of:

- Broad concerns about safety. The number of statutory requirements for high profile child deaths across the country, as well as confusion and misinterpretation of reasonable efforts for when family reunification prompted clearer language on child safety. The new law requires that child safety be the paramount concern when making service provision, placement and permanency planning decisions.
- Length of stay in foster care. We are now slightly in excess of a half-million children in foster care on any one day. This number has almost doubled since the mid-eighties. More children are coming into foster care each year than are exiting. These numbers prompted concern about moving children to permanent placements in a timely manner. The new law makes clear that foster care is a temporary setting and includes provisions that shorten the timeframe for making permanency planning decisions, and establish a timeframe for initiating proceedings to terminate parental rights.

The ASFA seeks to strengthen the child welfare system's ability to place the safety of children as paramount and ensure timely permanency for children.

General Questions

Question: Which program areas does this final rule address?

Answer: This final rule addresses Federal regulations in four program areas:

Child and Family Services Reviews. We are implementing a new process for reviewing State child and family services programs. We will review States' compliance with Federal requirements for child protective services, foster care, adoption, and family preservation and support services, included in titles IV-B and IV-E of the Social Security Act.

Enforcement of Section 471(a)(18) of the Act. We are implementing procedures for enforcing the Multiethnic Placement Act, as amended by Public Law 104-188, which prohibits discriminatory practices in placing children in foster care and adoptive homes on the basis of race, color, or national origin.

Implementation of ASFA and Federal Foster Care Plan. We are codifying the eligibility criteria and procedural requirements for the title IV-E foster care program. This section of the regulation includes amendments to the Act that are included in the Adoption and Safe Families Act (ASFA) of 1997 (Public Law 105-89).

Title IV-E Eligibility Review. We are implementing a new Federal review process for the title IV-E foster care maintenance payments program, which will review for eligibility criteria and payment accuracy.

Question: What will be the most significant impacts of this regulation?

Answer: The major impacts of the regulation include the following:

- By reviewing State child and family services programs on the basis of the *outcomes* experienced by children and families, we expect to promote increased *safety* for children who are maltreated; more expedient *permanency* for children in foster care; and increased *well-being* for families who are served by State agencies.
- By putting into regulation the enforcement provisions of the Multi-Ethnic Placement Act, which States began implementing in 1996, we expect to increase the movement of children into permanent adoptive families.
- By regulating the provisions of the Adoption and Safe Families Act, we expect to clarify the requirements and strengthen the timeliness and quality of decision-making for children and families served through State child welfare programs.

Question: How do you intend to accomplish these objectives?

Answer: This regulation makes clear that the Federal government intends to work with States to improve social services for children and families by:

- reviewing States on the basis of the outcomes of service delivery, not just the procedures that are in place;
- providing technical assistance, where needed, to help States make improvements;

- holding States accountable when program improvements are not made; and
- withholding Federal funding to States that do not take advantage of the opportunities in the regulation for making needed improvements.

Question: When was the last time that States were penalized for failure to comply with Federal child welfare laws?

Answer: As a result of reviews of State programs funded under titles IV-B and IV-E of the Social Security Act, the Department in 1994 disallowed approximately \$79 million in Federal funds previously paid to States. Disallowances were taken for reviews conducted from 1983-1992. ACF had been operating under a number of moratoria on taking disallowances for a State's failure to comply with the Federal child welfare laws until 1994, when legislation was passed requiring a new monitoring system. When this rule becomes effective, we will resume reviews of compliance with Federal child welfare requirements, possibly leading to penalties for noncompliance.

ACF has continued to regularly review State expenditure reports for the foster care and adoption assistance programs on a quarterly basis. As a result of these reviews, approximately \$1 billion in title IV-E funds was either disallowed or deferred for fiscal years 1993-1997. An additional \$17 million was disallowed on the basis of audit findings made by the Department's Office of Inspector General in 1993.

Question: Why are you implementing these new regulations at this particular time?

Answer: Congress directed us to reform Federal monitoring of State child welfare systems in 1994. We choose to use this direction to implement an outcomes-focused monitoring process that was already under development. Because the shift to outcomes-focused monitoring represents such an important change in the way child welfare programs are held accountable, HHS conducted extensive consultation and numerous pilot tests with States to refine our approach. While we were developing the regulation, the Multi-Ethnic Placement Act, and its subsequent amendments, were enacted, followed by the Adoption and Safe Families Act, both of which have extremely important implications for the review processes. We took advantage of this critically important opportunity to implement selected provisions of MEPA and ASFA and incorporated them into the regulation prior to releasing it. What we have now is a comprehensive regulation that not only provides States with the requirements for their child and family services programs that they must implement, but the review processes on which they will be evaluated, as well.

Question: How are the child and family services reviews described in this regulation different from previous Federal reviews?

Answer : The new child and family services reviews represent a significant departure from the former review process. In the past, reviews focused almost entirely on the accuracy and

completeness of case files and other records, without regard to the outcomes for children and families.

The child and family services reviews, as detailed in the final rule, offer a more balanced and child and family-centered approach, including:

- a focus on outcomes and results for children and families,
- technical assistance to assist States in improving their child welfare systems in a timely way, as well as accountability for non-compliance,
- the use of multiple qualitative and quantitative information sources to better evaluate child and family outcomes and system performance, and
- engaging the States as partners in identifying strengths and weaknesses, defining program improvements, and crafting technical assistance that will result in better outcomes and systems.

Question: **How will you know that the outcomes for children and families are improved?**

Answer:

- First, we will know whether outcomes are improving by examining statewide data indicators, such as the length of time it takes for children in foster care to achieve adoption or reunification with their families, the maltreatment of children in foster care, multiple entries into foster care, and the degree to which children in their own homes suffer repeat maltreatment.
- In addition, in each child and family services review, we will review very intensely a sample of cases of children served by the States to determine how those children and their families are being served. This gives us further information about whether the quality of services and outcomes is improving.
- Where States are determined to be non-compliant, we will require them to develop and implement program improvement plans that we will approve and monitor closely. The plans must include measurable steps and outcomes that can be monitored for expected improvements.
- We will impose penalties if the goals in the program improvement plans are not achieved by specified deadlines.

Question: **How did you develop the process for reviewing child and family services that is included in this regulation?**

Answer: We engaged in extensive consultation with the child welfare field in developing the conceptual framework for the reviews. We held national focus groups that included child welfare experts, consumer representatives, State and Federal partners, Tribal representatives, advocates, and others who helped to inform the development of the process. We subsequently field-tested the reviews in 13 States and used the information from those pilot reviews to revise and strengthen the process. Finally, we issued a Notice of Proposed Rulemaking on September

18, 1998, containing the proposed regulation and inviting nationwide comment. We used those comments to develop the final regulation that we are now releasing.

Question: What kind of response did you get to the NPRM?

Answer: We received 176 letters from Members of Congress, State and local child welfare agencies, national and local advocacy groups for children, educational institutions, and individual social workers. Other commenters on the NPRM included: providers of child welfare services, State and local courts, national and State associations representing groups of practitioners, Indian tribes, and local community organizations.

Question: What were the major comments you received about the new reviews?

Answer: We received many positive comments, including:

- Strong support for an *outcome-based approach* to reviewing child and family services, with a focus on the quality of services.
- Support for the child and family services review emphasis on *program improvements* and opportunities for the States to have penalties suspended and rescinded if they make required improvements.
- Support for the proposed *State and Federal partnerships* involved in jointly reviewing programs and developing program improvement plans.

We also received comments that raised a number of concerns, including:

- Concerns that determining a State's compliance based on a *small sample* of cases in the child and family services reviews would not accurately depict the States' performance.
- Concerns that the proposed *penalty structure* for the child and family services reviews would not be sufficient to achieve our goals of program improvement in the States, although a number of comments also thought the proposed penalties were, in fact, substantial.
- Concerns that, in reviewing for quality of services vs. procedural requirements, we would be overly *subjective* in making decisions about a State's compliance.
- Concerns, in the IV-E foster care reviews, that our requirement for foster homes to be fully licensed to care for children as an eligibility requirement for Federal foster care benefits would have financial impacts on the use of kinship homes or other foster homes that do not meet all of a State's licensing standards.

Question: What was your approach in responding to comments and making changes to the proposed regulations in the construct of this final rule?

Answer: We took all comments on the regulation very seriously in our deliberations. In analyzing the comments received on the NPRM and making changes in the final rule, we adhered to the following principles:

- Focusing on achieving the goals of safety, permanency and well-being in State child welfare

systems;

- Moving child welfare systems toward achieving positive child and family outcomes while maintaining accountability;
- Maintaining our stewardship role over the use of Federal funds;
- Enforcing statutory requirements in ways that encourage strong State/Federal partnerships and program improvements; and
- Using the lessons learned in the pilot reviews and information gathered in the consultation.

For example, we received a number of comments that indicated concern about subjectivity in the review process and requested that we strengthen the rule to assure objectivity in making determinations of compliance. We have added more objective measures by strengthening the use of the quantitative data in the statewide assessment and adding a process for resolving discrepancies. In this way we have retained the focus on results while being responsive to comments.

Question: Specifically, how did you address the major concerns about the reviews that you received?

Answer:

- To address concerns raised about the small sample of cases we strengthened the use of quantitative data in the statewide assessment to ensure that the intensive local sample was seen in a bigger context and added a process to resolve discrepancies between the two sources of data. We did not change the intensive review of a small number of cases because we learned from the pilots that this information was critical to gaining a comprehensive picture of the outcomes and experience of children and families who have contact with the child welfare system.
- In regard to the *penalty structure*, we retained our proposal to withhold one percent of a pool of title IV-B and IV-E funds for every area in which a State is determined to be in non-compliance in the child and family services reviews, up to a maximum of 14 percent of the pool. This conforms to the statutory requirement that the penalty be commensurate with the level of non-compliance. However, to make clear that we are serious about enforcing the need to make program improvements, we added provisions to increase the penalties to two percent per area of non-compliance in the second review if the same areas remain uncorrected, and to three percent in the third review. The maximum withholding increases to 28 percent and 42 percent respectively. If States do not engage in program improvement planning, they will receive the maximum penalty of 42 percent.
- In regard to concerns about *subjectivity* in the child and family services reviews, we have strengthened the role of the Statewide Assessment to provide for more uniformity in its completion and in the data indicators included; we have strengthened the criteria for determining substantial conformity by adding a uniform rating scale to examine certain State plan requirements subject to review; we have added a quality assurance function to the on-

site review process to assure consistency and uniformity in the way cases are reviewed; we have added the statewide data indicators as elements in making the determinations of compliance; and we will provide training to reviewers who are responsible for reviewing cases and making decisions about compliance.

- In regard to concerns about requiring *full licensure for foster homes* as a title IV-E foster care eligibility requirement, we did not change this requirement and do not believe we have the statutory authority to do so. Section 472 (c) of the Act requires that foster families be licensed for the care of children under title IV-E, or approved as meeting the standards established for such licensing. Further, the Adoption and Safe Families Act (ASFA) requires that the health and safety of children be the primary concern in decisions about removing children from their homes and reunifying them with their families. The ASFA also requires criminal background clearances on foster and adoptive homes prior to the placement of children, which is a part of the full licensure process. The statute does not differentiate between related and non-related foster homes in making these requirements, and we do not believe we can do so in regulation either.

REVIEWS

Question: **Describe the child and family review process.**

Answer:

- The *Child and Family Services Review* examines State compliance with child and family service requirements under titles IV-B and IV-E of the Act by a review of seven outcomes in the areas of safety, permanency, and well-being, and State plan requirements associated with seven “systemic” factors that have a direct bearing on the State’s ability to serve children and families effectively.
- The first phase of the review is a *statewide assessment* prepared by the State and representatives of various community and agency entities in the State. Using statewide data profiles prepared by ACF from two national databases, the State analyzes its data on indicators such as repeat maltreatment of children, length of stay in foster care, and length of time to achieve adoption or reunification, to identify areas where the State is performing well and where a more detailed on-site review might be warranted. This analysis provides a statewide perspective of the State’s child and family service system.
- The second phase of the review, an *on-site review*, is conducted in at least three sites across the State, including the State’s largest metropolitan area, by a team of State and Federal representatives. The team reviews for *outcomes* through a random sample of cases that includes examining case documentation as well as interviewing the child, parents, foster parents, caseworker and service providers in each case. The team reviews for *systemic*

factors through interviews with community stakeholders, both within and external to the child welfare agency, to assist in making determinations regarding the level at which the child welfare system is functioning.

- The regulations also provide for partial reviews, as needed, when there are compliance issues that do not fall within the child and family services review protocol.

Question: Describe the title IV-E eligibility review process.

Answer:

- The *title IV-E foster care eligibility reviews* determine the eligibility and payment accuracy for children receiving Federal foster care payments under title IV-E.
- The review includes two phases, a primary review and a secondary review. During the *primary review*, the review team, comprised of State and Federal representatives, reads a random sample of 80 cases to determine the eligibility of the child and the foster care provider. If the number of ineligible cases is eight or fewer, the State is in compliance, is assessed a disallowance for the ineligible cases, and is re-reviewed in three years. If the number of ineligible cases is nine or more, the State is not in compliance, is assessed a disallowance for the ineligible cases, must implement a program improvement plan, and undergoes a secondary review.
- During the *secondary review*, following the completion of the program improvement plan, the review team reads a random sample of 150 cases. If the number of ineligible cases *and* the dollar amounts in error exceed the acceptable error rate, a larger penalty is assessed based on a statistical formula. Otherwise, disallowances are taken only on the ineligible cases.

Question: What outcomes are being measured in the child and family services review?

Answer:

- In the area of *safety*, the outcomes are: *children are, first and foremost, protected from abuse and neglect, and children are safely maintained in their homes whenever possible and appropriate.*
- In the area of *permanency*, the outcomes are: *children have permanency and stability in their living situations, and the continuity of family relationships and connections is preserved for children.*
- In the area of *well-being*, the outcomes are *families have enhanced capacity to provide for their children's needs, children receive appropriate services to meet their educational needs, and children receive adequate services to meet their physical and mental health needs.*

Question: How is accountability addressed in the CFS review process, in view of the State completing its own statewide assessment?

Answer: While the State is responsible for completing the **statewide assessment**, it includes the

following accountability provisions:

- It is based on data from two federally maintained national data bases, NCANDS and AFCARS, or an alternate source approved by ACF. The AFCARS data include multiple checks for accuracy and thoroughness.
- It is completed by the State in collaboration with representatives from outside the State agency, in order to increase objectivity.
- It must be submitted to ACF for review and approval prior to the on-site review.

The **on-site review** includes the following accountability provisions:

- It is based on a random sample of cases, including cases drawn from AFCARS.
- The review team includes Federal and State staff and external representatives.
- A quality assurance function is used to assure that case reviews and ratings are accurate, and that the criteria used to evaluate outcomes are applied consistently.

Information is gathered from community and inter-agency representatives, providing a more complete and objective assessment than relying solely on the State agency for the information.

Question: *What are the time frames for conducting the reviews?*

Answer:

- Every State will have a child and family services review and a title IV-E eligibility review within the first four years following the effective date of the regulation.
- In FY 2000 we will conduct the first ten title IV-E foster care eligibility reviews and begin preparing the first 17 States for on-site child and family services reviews in FY 2001.
- Subsequent child and family services reviews will be conducted every five years for States in compliance, and every two years for States not in compliance.
- Subsequent title IV-E foster care eligibility reviews will be conducted every three years.

Question: *How long will States have to develop and complete program improvement plans?*

Answer:

- Following the *child and family services reviews*, States must develop and submit program improvement plans within 90 days of being notified they are not in compliance. The outside limit for completing the plans is two years, with a possible extension of one year from the Secretary in those rare situations where the problems are so complex that the plans cannot be completed in two years.
- Following the *title IV-E foster care eligibility reviews*, States must develop and submit program improvement plans within 90 days of being notified they are not in compliance. The outside time limit for completing the plans is one year.
- ACF will monitor the progress of the State in implementing program improvement plans and will

require quarterly status reports and updates.

Question: How will States receive technical assistance to make needed improvements and come into compliance?

Answer: ACF funds a network of National Resource Centers (NRC), that will be an important source of training and technical assistance for States determined not to be in substantial conformity on the basis of a child and family services review. The NRCs provide assistance in the areas of child maltreatment, foster care and permanency planning, special needs adoption, information and technology, organizational improvement, family-centered practice, youth development, and legal and judicial issues. While we anticipate that many States will identify their preferred sources of technical assistance, the Federal government will use the NRCs as a primary source of assistance to the States for the child and family service reviews. For the title IV-E foster care reviews, the ACF Regional Offices will be the primary source of technical assistance.

Question: What types of penalties are assessed in each review?

Answer:

- In the *Child and Family Services Reviews*, States are rated against seven outcome areas and seven systemic factors. A one-percent penalty is assessed for every outcome that has not been substantially achieved and for every systemic factor that does not meet State plan requirements. Penalties are taken from a pool of funds that includes the State's title IV-B allotment (subparts 1 and 2) for the year under review and 10% of the title IV-E administrative costs (foster care only) for the year under review. The maximum penalty is 14 percent of this pool of funds. Outcomes and systemic factors that remain uncorrected in subsequent reviews are assessed graduated penalties of two percent on the second review and three percent on the third and subsequent reviews. Accordingly, the maximum penalties increase to 28 percent and 42 percent, respectively. States that do not implement program improvement plans to correct areas of non-conformity are assessed the maximum 42 percent penalty.
- Penalties are suspended while the State is completing its program improvement plan and are rescinded if the State successfully completes the plan. If a State fails to complete portions of the plan according to schedule, penalties can be assessed on those portions at that point, rather than waiting until the end of the entire program improvement plan.
- In the *title IV-E foster care eligibility reviews*, the State is assessed a disallowance for the ineligible cases reviewed in the primary review. If a secondary review is required and both the number of ineligible cases *and* the dollar amounts in error exceed the acceptable error rate, a much larger penalty is assessed based on a statistical formula. Otherwise, disallowances are taken only on the ineligible cases in the sample.

- The pool of funds against which penalties are assessed in the title IV-E eligibility reviews includes the States' title IV-E foster care maintenance payments and the associated administrative costs.

Question: When will you begin assessing penalties against States?

Answer: We have not yet formalized a schedule, for the FY2000 - 2001 reviews. We plan to complete 17 child and family services reviews between October 2000 and September 2001. A State has up to two years to complete a program improvement plan and could conceivably receive a penalty at any point during that time depending on the scheduled completion dates for the action steps identified in the plan.

We plan to conduct 10 title IV-E foster care eligibility reviews between April and September 2000. Disallowances for ineligible cases will be assessed at the completion of each review.

Penalties for violations of the Multiethnic Placement Act, as amended, are not reliant on a specific review, and will be assessed whenever ACF determines that a violation has occurred.

Question: What provisions in this final rule will present the greatest challenges to the States?

Answer: Although the new reviews will present important challenges to States in several areas, we believe the challenges will promote the goals of the new reviews by helping States become more self-evaluating, more collaborative, and more effective in administering the programs we are reviewing. Some of the major challenges include the following:

- Requiring States to examine their programs on the basis of statewide data indicators will present a challenge for States that have not begun to use data widely to drive decision-making.
- Involving community and inter-agency representatives in the process of completing a statewide assessment will also challenge States to collaborate and form working partnerships throughout the review process.
- Involving States as full partners in both the child and family services reviews and the title IV-E foster care eligibility reviews will require greater commitment on their part than has previously been necessary, including making logistical arrangements and providing approximately half of the review team members.
- States with multiple or complex needs for improvement will be challenged to plan effectively and implement changes promptly.
- In many situations, the evidence of a State's successful implementation of program improvement plans will be improved outcomes for children and families, not merely the establishment of new policies or procedures. Therefore, the challenge to make lasting and effective improvements is substantial.
- Some of the new title IV-E requirements we are putting into regulation will require States to make significant changes in practices; for example, the requirements that all foster family

homes meet full licensure requirements and obtaining judicial determinations of reasonable efforts to finalize a child's permanency plan. To reduce the burden on States, we have built in six- and 12-month transition periods before taking adverse action for noncompliance with those provisions that may be particularly challenging to States.

Question: What are your plans for training States, national organizations, advocates, and other interested parties on the regulations?

Answer: Immediately prior to publishing the final rule, we briefed central office staff (IGA, ASL, Assistant Secretary, Commissioner, etc.) and the ACF Regional Offices. Soon thereafter, we will brief Hill staff and hold a briefing for national organizations and advocacy groups (APHSA, NGA, NCSL, CDF, CWLA, etc.)

Immediately following the publication of the rule, we will begin conducting training in each Regional Office for the Regional staff, States, Tribes, staff of the National Resource Centers, and other interested stakeholders. More specific training on the procedures involved in the Child and Family Services Reviews and the Title IV-E Foster Care Eligibility Reviews will be provided to the Regional Offices and the States closer to the initiation of the reviews.

Question: When and how will the review instruments be made available to the public? What is the timetable for conducting the reviews?

Answer: The review instruments must be cleared through the Paperwork Reduction Act process, and we expect that process to be complete by April 2000. When they are cleared, the instruments will be published on the Children's Bureau website. The Children's Bureau is currently working with the Regional Offices to identify the first States to be reviewed under the new rule and to develop a schedule for reviewing all States during the next four years. The first ten title IV-E foster care reviews will be conducted during FY 2000. The first 17 CFS reviews will be completed during FY 2001, although some of those 17 States will begin completing the statewide assessment during FY 2000.

Question: What appeals process is available to States that have been assessed a penalty under one of these new review protocols?

Answer: The State (or entity in the case of a §471(a)(18) violation) may appeal any penalty to the Departmental Appeals Board (DAB). DAB decisions may be appealed to the appropriate U.S. district court.

MEPA

Question: Describe your activities to implement the MEPA, as amended, prior to issuing this regulation.

Answer: Following the enactment of the MEPA in 1994, the Department's Office for Civil Rights (OCR) and the Administration on Children and Families (ACF):

- reviewed all applicable State statutes, regulations and published policies on adoption and foster care to determine their compliance with MEPA;
- issued letters to 29 States and the District of Columbia outlining the problem areas of noncompliance with MEPA identified in the review process and offered technical assistance. Those letters were followed up by site visits. The States made the corrections necessary to come into compliance with MEPA;
- issued MEPA guidance and fact sheets to State agencies administering or supervising the administration of titles IV-B and IV-E of the Social Security Act, Adoption Opportunities grantees, and State agencies enforcing civil rights; and
- conducted briefings for child welfare advocates and House and Senate staff on the MEPA guidance.

MEPA was later amended by the Small Business Job Protection Act of 1996. Following the enactment of this legislation, the Department issued a memorandum to the OCR Regional Managers and the ACF Regional Administrators to provide guidance on the implementation of these amendments to the MEPA. This document was widely circulated among state agencies and advocacy groups. Soon after, the Department issued practice-level guidance to assist States in identifying what activities would constitute a violation of MEPA.

In terms of ensuring that information is continuously available, both ACF and OCR maintain web sites that have made MEPA guidance easily accessible to the public and policymakers. Some of the Resource Centers funded by ACF, in addition to providing training and technical assistance on this subject, have provided informational materials as well. Many States and counties have developed their own MEPA guidance, often basing their information on materials supplied by HHS.

As we continue to implement the MEPA, ACF and OCR continue to work hard to ensure our enforcement activities are coordinated. To that end, an OCR/ACF workgroup meets monthly.

Question: The NPRM did not contain case specific information on what would constitute a delay or denial of adoption or foster care based on race, color, or national origin; nor did it address when race, color, or national origin can be considered when making a foster care or adoptive placement. Do the final regulations contain specific information and guidance that States and entities can use to ensure compliance with the MEPA, as amended?

Answer: No. We did not provide case specific examples of what constitutes a violation of MEPA, or definitive criteria for determining whether such a violation has occurred, in regulation. While we have provided this and other information guidance form, we do not believe such practice-level detail is appropriate for regulation. When potential violations of MEPA come to our attention, the specific facts of each case will be reviewed to determine if a State or entity is in violation of MEPA or if a policy or practice is consistent with previously issued guidance.

Question: Who has the final authority to determine whether a violation of the title IV-E anti-discrimination provision at section 471(a)(18) of the Social Security Act has occurred - ACF or OCR?

Answer: The Department's Office for Civil Rights will investigate potential violations of section 471(a)(18). We chose to collaborate with OCR in enforcing section 471(a)(18) because of its expertise in investigating civil rights violations. ACF will make the final determination with respect to violations of section 471(a)(18).

ASFA

Question: Specifically, which ASFA requirements are addressed in the final rule?

Answer: The final rule codifies the following provisions in the ASFA:

- the requirements for a State to make reasonable efforts to prevent a child's removal from his/her home when it is safe and appropriate to do so; to make reasonable efforts to reunify a child and his/her family when the State is unable to prevent the removal; to make reasonable efforts to effect a permanency plan if the child and family cannot be reunited;
- the requirement that all prospective foster and adoptive parents undergo a criminal background check prior to obtaining final licensure or approval;
- the new case plan requirements for documenting efforts made to finalize a child's permanency plan when the goal is adoption, legal guardianship, or some other permanent arrangement;
- the requirement that permanency hearings be held within 12 months of the date a child enters foster care;
- the requirements for a State to file or join a petition to terminate the rights of a parent to a child who has been in foster care for 15 out of 22 months, is an abandoned infant, or whose parent was convicted of committing one of a list of felonies identified in statute unless an exception is warranted in a particular case;.

- the requirements regarding the date a child is considered to have entered foster care which sets the timing for compliance with the new permanency hearing requirements; and,
- the requirement that foster parents, relative caregivers, and preadoptive parents be given notice of and the opportunity to be heard in reviews and hearings.

Questions: Which ASFA requirements are not covered in this final rule, and how will you regulate them?

Answer: As noted in the NPRM, we did not regulate certain requirements of the Adoption and Safe Families Act, including:

- Title IV-B, subpart 2 of the Act regarding the Promoting Safe and Stable Families program;
- Section 471(a)(21) of the Act regarding health insurance coverage for children with special needs for whom an adoption assistance agreement is in effect; and,
- Section 473(a)(2)(C) of the Act regarding a child's continued title IV-E eligibility for adoption assistance in cases where an adoption disrupts or the adoptive parent(s) die.

Before we drafted the NPRM, we consulted widely with States to discover the provisions where States felt that regulations were most critical. We learned from those focus groups that the requirements with regard to safety and permanence, including reasonable efforts, termination of parental rights, and criminal background checks needed the most clarification. As a result, we focused our regulatory effort on those provisions. The above provisions have been in effect since the date of enactment of the ASFA. In the absence of regulations, we have guided States in their implementation of these provisions through policy issuance.

Question: Tell us about your efforts to implement the ASFA provisions prior to codifying them in this regulation.

Answer: In the Spring of 1998, we sponsored 10 regional conferences on the ASFA legislation. These conferences served as a training opportunity for states, partners and stakeholders on the requirements, incentives and timelines contained in the law. The meetings allowed states the opportunity to exchange information about their current reform efforts, to learn how the law could support the changes and to discuss the service design and practice implications of the new law. We awarded a contract to the National Conference on State Legislatures to evaluate State legislation implementing ASFA and to provide technical assistance to States in drafting the ASFA legislative requirements. Additional training and technical assistance was provided to States and courts on ASFA implementation through the Children's Bureau's Resource Centers.

All of the states and Puerto Rico have enacted legislation to comply with the ASFA provisions.

Legislation from three of these states is under review by RO ACF and/or OGC staff. The legislation from Michigan, New Mexico, and Hawaii is deficient.

We are continuing our technical assistance efforts to bring all State legislation into compliance with the ASFA provisions and to assist States as they promulgate policies and procedures and train their staff in their ASFA-compliant legislation.

Question: What have you been doing to ensure that States are complying with the requirements to file a petition for termination of parental rights?

Answer: For all ASFA provisions, HHS has monitored States' enabling legislation to ensure that it complies with the law. To date, all States have passed legislation, and only three States have legislation that does not yet comply with ASFA. For the TPR requirement in particular, HHS issued policy explaining how States should apply the transition rule to phase in implementation of the provision. HHS also collected information on each State's status in implementing the TPR provision in June 1999 as part of the annual title IV-B plan update. Further, the new child and family services review will monitor States compliance with the TPR requirement.

Question: The final rule requires States to exclude time a child spends as a runaway and on a trial home visit from the calculation of when a State must file a petition to terminate parental rights. Does this create a loophole for States?

Answer: No, in our view, it does not. First, we want to emphasize that we do not believe it is appropriate to require states to count the time a child is on "runaway" because, during that time, the agency is unable to provide services to the child or the family. Similarly, counting time when a child is at home with the family toward the time for calculating when to file a petition for TPR is inappropriate. While the child may be in the legal custody and under the supervision of the State agency, both the child and the parent consider him or her to be at home. However, a State has the discretion to file a petition for TPR at whatever point in time it is in the best interests of the child to do so.

Question: The final rule allows States to make exceptions from the requirement to file a petition to terminate parental rights when a child has been in foster care for 15 out of 22 months. Do these exceptions undermine the law?

Answer: No, the exceptions are statutory. Those exceptions include: situations where the child is placed with a relative; there is a compelling reason not to pursue a TPR; and, situations when the State agency has not provided services necessary to reunite the family within the time frame documented in the case plan. The regulation follows the statute and clarifies that States cannot exempt groups of children from the TPR requirement and must make decisions not to file a petition for on a case-by-case basis. The statute created certain exceptions to the general requirement for States to file a petition for TPR for children who have been in foster care for 15 out of the most recent 22 months, abandoned infants and children of parents who have committed

certain felonies.

Question: Do your regulations make clear that States have broad discretion to define the aggravated circumstances in which reasonable efforts to preserve or reunify a family are not required?

Answer: Yes. We did not limit State authority in any way to define the types of aggravated circumstances that would allow the State to forego reasonable efforts to preserve or reunify a family. We followed the statutory language in this regard.

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