

Child Welfare Final Rule Executive Summary

Overview and Impact of the Final Rule

On January 25, 2000, HHS published a final rule in the *Federal Register* to:

- establish 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;
- strengthen the penalty and corrective action process for the Multiethnic Placement Act (MEPA), as amended, regarding discrimination in adoptive and foster care placements;
- regulate provisions of the Adoption and Safe Families Act (ASFA) of 1997, and the Federal foster care program; and
- update the review process for the Federal foster care program.

The final rule is, in part, a response to Federal legislation requiring HHS to reform its approach to monitoring State 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 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 provisions of the ASFA, HHS clarifies 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 initially conducted numerous pilot tests with States to refine its approach. In addition, a number of focus groups were conducted, both on the child and family services reviews and on the implementation of ASFA, that shaped development of the proposed regulation, which was published in the *Federal Register* on September 18, 1998. Comments on the proposed rule were submitted by a wide range of interested groups and the final rule represents a balance of those comments with the lessons learned from the pilots and consultation. 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

HHS child and family services reviews are an important tool for ensuring compliance with Federal child welfare requirements. The new 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 did not provide opportunities for improvement before significant penalties were imposed.

The child and family services reviews are consistent with the legislative requirements in section 1123A of the Social Security Act and 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. Under the new rule, 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 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 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.

Correction of Compliance Issues Outside the Scope of the Child and Family Services Reviews

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

Enforcement of the Multiethnic Placement Act

While HHS has been vigorously enforcing the Multiethnic Placement Act (MEPA), as amended, since its enactment, the regulation provides clarity to the penalty and corrective action process for MEPA violations. 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 these requirements 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. The rule clarifies that States that are determined to have discriminated against an individual will be assessed a penalty 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 which entities other than State agencies 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 rule requires a State to 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 is not required to make reasonable efforts to preserve a family or reunify a family because of child safety concerns.
- For children in foster care, the rule requires the State 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 decisions regarding exceptions must be made 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 through the Governor's action or the passage of a State law, the statute requires States to conduct criminal record checks for prospective foster and adoptive parents who will receive Federal funds. The rule requires that 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, 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 pre-adoptive 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

As stated in the rule, 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.