

Attachment B

Current Variances in Title IV-B Provisions Of Law And Regulation

I. Title IV-B Requirements in Statute but not Regulations*

A. Title IV-B, subpart 1.

1. Program Name Changed to Stephanie Tubbs Jones Child Welfare Services Program.

This change occurred when the Child Welfare Services program was amended by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

2. Authorization for Funding.

The Child and Family Services Improvement Act of 2006 (Public Law 109-288) removed section 420 of the Social Security Act (Act) as well as the permanent authorization in section 421, which changed title IV-B subpart 1 from a permanent authorization to a five-year authorization. This change supersedes the allocation regulated in 45 CFR 1357.30(b). In addition, instead of spending funds according to a definition of “child welfare services” in former section 425(a)(1) and 45 CFR 1357.10(c), funds must now be spent in accordance with the new program purpose added by Public Law 109-288 which can be found at 421 of the Act.

3. Assurance Regarding Use of Cross-Jurisdictional Resources.

The Safe and Timely Interstate Placement of Foster Children Act of 2006 (Public Law 109-239) requires that State plans for child welfare services contain assurances that the State will make effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for children.

4. Description of Activities for Children Adopted from Overseas.

The Intercountry Adoption Act of 2000 (Public Law 106-279) added section 422(b)(11) to title IV-B, which states that the plan for Child Welfare Services must contain a description of activities that the State has undertaken for children adopted from other countries, including the provision of adoption and post-adoption services.

5. Information on Children Adopted from Other Countries Who Enter State Care.

Public Law 106-279 added section 422 (b)(12) to title IV-B. This provision requires that State plans for child welfare services provide that the State will

collect and report information on children who are adopted from other countries and who enter State custody as a result of the disruption of an adoptive placement, or the dissolution of a finalized adoption. Such information must include the reasons for disruption or dissolution, the agencies who handled the placement or adoption, the plans for the child, and the number of children to whom this pertains.

6. Assurance Regarding Administrative Costs.

Public Law 109-288 added a new section 422(b)(14) to title IV-B subpart 1, requiring grantees to assure that not more than 10 percent of expenditures related to activities funded from IV-B, subpart 1 will be used for administrative costs. Public Law 109-288 also added a definition of “administrative costs” at section 422(c)(1) of the Act.

7. Consultation with Medical Professionals.

Public Law 110-351 amended section 422(b)(15) of title IV-B, subpart 1. The provision was amended to require that grantees coordinate with other agencies, pediatricians and other experts in health care and child welfare services to develop a plan for the ongoing oversight and coordination of mental and physical health care and dental services for children in foster care. The plan must include a strategy for scheduling initial and follow-up health screenings, monitoring and treating health needs, continuity of care and health records, and oversight of prescription medicines.

8. Disaster Response Procedures.

Public Law 109-288 added a new section 422(a)(16) requiring grantees to provide a description of their disaster response procedures.

9. Caseworker Visits.

Public Law 109-288 added a new section 422(b)(17) to title IV-B, subpart 1 requiring that grantees describe the standards for content and frequency of caseworker visits for children in foster care.

10. Collaboration with State Courts.

The Deficit Reduction Act of 2005 (Public Law 109-171) added section 422(b)(13) to require that grantees demonstrate substantial, ongoing, and meaningful collaboration with State courts in the development and implementation of the title IV-B plan.

11. Use of Funds.

Public Law 109-288 amended section 424(c) and (d) of the Act to prohibit States from using more than the amount of non-Federal funds it spent in FY 2005 on foster care maintenance payments as match for the title IV-B, subpart 1, program, and prohibited States from spending title IV-B subpart 1 funds on child care,

foster care maintenance or adoption assistance payments in excess of the amount of funds they spent on these activities in FY 2005. The statutory prohibition supersedes the regulatory provisions at 45 CFR 1357.30(e)(2), (e)(3) and (g).

B. Title IV-B, subpart 2.

1. Program Name Changed to Promoting Safe and Stable Families.

This change occurred when the original Family Preservation and Family Support program was expanded by Public Law 105-89. Funding was also increased at that time and also with the program reauthorization in 2001. [Section 430 (a) in title IV-B of the Social Security Act (the Act)]

2. Addition of Language to subpart 2 Definitions of the Service Categories re: Infant Safe-Haven Programs, Strengthening Parental Relationships, and Promotion of Healthy Marriages.

Public Law 107-133 amended the definition of Family Preservation Services in Section 431(a)(1)(F) to allow grantees to support infant safe haven programs to allow a parent to safely relinquish a newborn infant. The law also added to the definition of Family Support Services. Specifically, grantees may support services to strengthen parental relationships and promote healthy marriages. [Section 431 (a)(2)] The definitions for family preservation and family support services in the regulations at 45 CFR 1357.10 should be read in conjunction with these statutory definitions.

3. Addition of Service Categories of Time-Limited Reunification Services and Adoption Promotion and Support.

The 1997 reauthorization of the title IV-B, subpart 2 program affirmed the use of Federal funds for community-based family support services and family preservation services, and additionally required grantees to spend a portion of funds for time-limited family reunification services and adoption support services. The two latter categories allow grantees to fund services that facilitate the reunification of children in foster care with their families in a timely and safe manner, and encourage more adoptions out of the foster care system, expedite the adoption process, and support adoptive families as necessary to allow them to make a lifetime commitment to their children. [Sections 431(a)(7) and (8)] In general, requirements in the regulations related to family preservation and support only should be taken to mean all four allowable service categories.

4. Expanded Definition of Non-Federal Funds for Non- Supplantation Provision.

Public Law 105-89 added a definition of non-Federal funds for purposes of the title IV-B, subpart 2 non-supplantation requirement at 432(a)(7)(A) of the Act.

Non-federal funds are defined as State funds, or at State option, State and local funds. This means that a State may consider the amount of both local and State funds spent on Promoting Safe and Stable Families Program services in determining which funds may not be supplanted by Federal funds. This statutory definition of non-Federal funds in Section 431(a)(9) supersedes the regulatory definition in 45 CFR 1357.32(f).

5. Expenditure Reports.

Public Law 109-288 amended sections 432(a)(8)(B) and (c) in subpart 2 of the Act to require that States and Tribes submit their planned child and family services expenditures for the next fiscal year, as well as actual expenditures for the preceding fiscal year along with numbers of families and children served, the population served and geographic areas served by agency. These amended sections add to the regulatory provision in 45 CFR 1357.16(b).

6. Secretarial Authority to Exempt Tribes on Administrative Cost and Significant Portion Limitations.

Public Law 109-288 amended section 432(b)(2) of the Act by permitting the Secretary to exempt Indian Tribes from the two requirements in sec 432(a)(4) only: 1) limiting 10 percent of its total expenditures of each fiscal year's total title IV-B, subpart 2 funds for administrative costs and 2) spending a significant portion of funds on each of the four service categories. This supersedes the Secretary's authority to waive other State plan requirements as stated in 45 CFR 1357.50(f)(2). ACF is exercising the statutory authority to waive the two provisions, however, Tribes, are now required to assure that subpart 2 funds will not be used to supplant Federal or non-Federal funds expended under subpart 2.

7. Re-allotments of Title IV-B, subpart 2 Funds.

The Promoting Safe and Stable Families Amendments of 2001 (Public Law 107-133) amended Section 433(d) of the Act to allow the Secretary to re-allot unneeded portions of title IV-B, subpart 2 allocations to other grantees, so that the total appropriation remains available for program purposes. The grantee must certify that grant funds are not needed before they can be re-allotted.

8. Title IV-B, subpart 2, Limitation on Administrative Costs.

Public Law 109-288 prohibits States, from expending more than 10 percent of its total Federal and State expenditures of each fiscal year's total title IV-B, subpart 2, funds on administrative costs as required by section 434(d) of the Act.

C. Federal Program Name Changes.

Since the regulations were issued, a number of Federal programs referenced in the regulations have undergone significant changes, including name changes. States should

note the following name changes in meeting the consultation requirements in 45 CFR 1357.15(l)(3)(viii):

1. "Part H programs" are now programs under Part C of the Individuals with Disabilities Education Assistance (IDEA) Act
2. "Title IV-A" is also known as the Temporary Assistance for Needy Families program (TANF)
3. The "child care and development block grant (CCDBG)" is also known as the Child Care Development Fund (CCDF)
4. "Community-Based Family Resource Programs" are now known as either Title II programs under the Child Abuse Prevention and Treatment Act (CAPTA) or Community-Based Grants for the Prevention of Child Abuse.
5. The Food Stamp Program is now known as the Supplemental Nutrition Assistance Program (SNAP).

II. Obsolete Title IV-B Provisions Still in Regulation**

A. References to Dates and Submission Timeframes that Have Passed.

1. The regulations at 45 CFR 1357.15 refer to numerous timelines that have passed. This is because the regulation was based on the initial Family Preservation and Family Support legislation. With the exception of the obsolete requirements listed below, **the required elements of the APSRs and CFSPs apply on an annual or five-year cycle as applicable, regardless of the dates listed.**

2. Phase-in Expired.

At 45 CFR 1357.15 (a)(4), there is reference to the phase-in of the requirements for a consolidated CFSP by June 30, 1997. The phase-in period has expired and consolidation of the CFSP is now required. See also similar out-of-date references for phasing in consolidation of the CFSP in 45 CFR 1357.15 (b)(2) and (3), 1357.16(a)(7), and 1357.16 (b)(4).

B. Assurances.

1. Title IV-B, subpart 1 Reference to Child Care Standards Removed.

Public Law 109-288 removed the provisions in section 422(b)(3) that required States and Tribes to assure that day care facility standards and requirements correspond with the child care standards imposed under title XX. Therefore, the regulatory provision at 45 CFR 1357.15(c)(4) is obsolete.

2. Title IV-B, subpart 1 Training and Use of Professional Staff and Volunteers Provisions Removed.

Public Law 109-288 removed the assurance in section 422(b)(4) of the Act requiring States and Tribes to assure they will have a plan for the training and use of paid paraprofessional staff and for the use of partially paid or unpaid volunteers in providing services and assisting any advisory committees established by the State or Tribe. Therefore, the regulatory provision at 45 CFR 1357.15(c)(3) regarding training and use of professional staff and volunteers is obsolete.

3. References to Title IV-B, subpart 1 Assurances in Section 422(b)(9).

The regulation at 45 CFR 1357.15 (q) requires the CFSP to explain how services will help meet permanency provisions for children and families at 422 (b)(9) of the Act, but the actual section of the Act that addresses this issue is now located at 422(b)(8).

C. Other Obsolete Provisions.

1. CFSP Requirement that a Significant Portion of Funds are Used for Family Support and Family Preservation Services.

At 45 CFR 1357.15(s), the regulation requires that States use a significant portion of funds for family preservation and family support services. The requirement for significant portion previously required States to provide a strong rationale if they planned to expend less than 25% of their title IV-B, subpart 2 funds for either family preservation or family support. As a result of the expansion of title IV-B, subpart 2 to include two new services, that percentage requirement no longer applies. The significant portion requirement applies to all 4 services including time-limited family reunification services and adoption support services. Program Instructions on the APSR (beginning with ACYF-CB-PI-98-03) provide guidance to States on how to determine the significant portion requirement.

2. Authority for Requirements and Funding Formerly under Section 427 of the Act.

Section 427 was added to title IV-B by the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272). The section offered incentive funds to States and Indian Tribes if they provided certain protections for children in foster care. Public Law 103-432 then repealed section 427 effective for fiscal years beginning after April 1, 1996. On October 7, 2008 Public Law 110-351 added a new section 427 to authorize family connection grants.

3. Title IV-B, subpart 1 Funding Authorization.

Public Law 109-288 removed section 420 of the Act as well as the permanent authorization in section 421, which changed title IV-B subpart 1 from a permanent authorization to a five-year authorization. This change supersedes the

allocation regulated in 45 CFR 1357.30(b). In addition, instead of spending funds according to a definition of “child welfare services” in former section 425(a)(1) and 45 CFR 1357.10(c), funds must be spent in accordance with the new program purpose added by Public Law 109-288.

4. Use of Funds.

Public Law 109-288 amended section 424(c) of the Act to prohibit States from using more than the amount of non-Federal funds it spent in FY 2005 on foster care maintenance payments as match for the title IV-B, subpart 1, program, and prohibited States from spending title IV-B subpart 1 funds on child care, foster care maintenance or adoption assistance payments in excess of the amount of funds they spent on these activities in FY 2005. The statutory prohibition supersedes the regulatory provisions at 1357.30(e)(2), (e)(3) and (g).

5. Expanded Definition of Non-Federal Funds for Non-Supplantation Provision.

ASFA added a definition of non-Federal funds for purposes of the title IV-B, subpart 2 non-supplantation requirement at 432(a)(7)(A) of the Act. Non-federal funds are defined as State funds, or at State option, State and local funds. This means that a State may consider the amount of both local and State funds spent on Promoting Safe and Stable Families Program services in determining which funds may not be supplanted by Federal funds. This statutory definition of non-Federal funds section 431(a)(9) supersedes the regulatory definition in 45 CFR 1357.32(f).

6. Redesignation of Payments and Allotments.

Public Law 109-288 amended provisions for payments and allotments by redesignating section 421 of the Act as 423 and section 423 of the Act as 424. Throughout the regulatory provisions found at 45 CFR 1357, statutory references to section 421 of the Act should be references to 423. Statutory references to section 423 of the Act should be read as 424.

* This section describes new requirements in title IV-B of the Social Security Act that are relevant to the Child and Family Services Plan and the Annual Progress and Services Report. This appendix may not include all amendments to title IV-B requirements.

** This section describes obsolete requirements in the regulations at 45 CFR 1357 that are relevant to the Child and Family Services Plan and the Annual Progress and Services Report. This appendix may not include all obsolete requirements.