

ACF

Administration
for Children
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children, Youth and Families

1. Log No: ACYF-PI-CB-96-01

2. Issuance Date: March 13, 1996

3. Originating Office: Children's Bureau

4. Key Words: Title IV-E and IV-B State Plan Amendments; Public Law 103-432

PROGRAM INSTRUCTION

TO: State Agencies Administering or Supervising the Administration of Titles IV-E and IV-B of the Social Security Act, Indian Tribes and Tribal Organizations

SUBJECT: NEW LEGISLATION - Changes in Title IV-E State Plan Requirements and Title IV-B State Plan and Indian Tribal Plan Requirements

LEGAL and RELATED REFERENCES: Sections 422(b), 427, 474(b) and (c) and 475(5)(A) and (C) of the Social Security Act and 45 CFR 1355 and 1357

BACKGROUND: On October 31, 1994, Public Law (P.L.) 103-432, the Social Security Act (the Act) Amendments of 1994, was enacted:

1. Section 202(c) repealed section 427 in title IV-B of the Act, effective for fiscal years beginning after April 1, 1996. Section 427 had been added to title IV-B by Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980, which offered incentive funds to States and Indian Tribes if they provided certain protections for children in foster care.
2. Section 202(a) amended section 422(b) in title IV-B of the Act to include, as State Plan assurances, the foster care protections formerly required in section 427 of the Act. It also added two new assurances with respect to review of State policies on abandoned children.
3. Section 206(b) amended section 475(5)(C) in title IV-E of the Act by defining the periodicity requirement for dispositional hearings.
4. Section 207 repealed subsections (b) and (c) of section 474 of the Act and thereby eliminated the foster care ceilings and the authority to transfer unused foster care funds to child welfare services programs.
5. Section 209 amended the case plan requirements in section 475(5)(A) of the Act by adding a requirement for accountability for children placed in foster care out of State or a substantial distance from home.

PURPOSE: The purpose of this Program Instruction is to provide information to the States and Indian Tribes with regard to the enactment of P.L. 103-432 and the instructions regarding its implementation.

INSTRUCTIONS:

1. **REQUIREMENT** Section 202 of P.L. 103-432, **REQUIRED PROTECTIONS FOR FOSTER CHILDREN:**
 - repealed section 427 of the Social Security Act (Foster Care Protections Required for Additional Federal Payments), and
 - amended section 422(b) of the Social Security Act to include, as State plan assurances, section 427 foster care protections as (b)(9).

* **Effective Date:** The amendments and repeal made by section 202 are effective with respect to fiscal years beginning on or after April 1, 1996. In addition, section 202 of P.L. 103-432 added:

- the requirement that, (C)(i), within 12 months (by October 1, 1995), States must review their policies and administrative and judicial procedures for children abandoned at or shortly after birth; and
- that, (C)(ii), within 24 months (by October 1, 1996), States must enact and implement policies and procedures necessary to enable permanent decisions to be made expeditiously regarding the placement of such children.

ACTION: States and Indian Tribes must assure in the title IV-B, subpart 1 plan update, to be submitted by June 30, 1996, that:

- they will meet all the requirements of section 422(b)(9) of the Social Security Act, not later than October 1, 1996, and
 - they have conducted a review of their policies and administrative and judicial procedures, as required by section 422(b)(9)(c)(i), and
 - they have implemented or will implement the necessary changes in policies and administrative and judicial procedures to enable permanent decisions to be made expeditiously regarding the placement of children as required by section 422(b)(9)(c)(ii).
2. **REQUIREMENT:** Section 206 of P.L. 103-432, **DISPOSITIONAL HEARING,** amended:
 - section 475(5)(A) by inserting "and most appropriate" after "(most family like)", and
 - section 474(5)(C) with regard to the timing of subsequent dispositional hearings by striking "periodically" and requiring them "not less frequently than every 12 months".

ACTION: 1. States and Indian Tribes must assure:

- that all dispositional hearings are in fact meeting the requirements of section 475(5)(A) and (C) and that statutes, policies or procedures have been revised in accordance with the new federal legislation.

We recommend that the States and Indian Tribes submit a copy of their changed policies and procedures to the Administration for Children and Families (ACF) Regional Offices for informational review purposes by June 30, 1996.

3. **REQUIREMENT:** Section 209 of P.L. 103-432, PLACEMENT ACCOUNTABILITY, amended section 475(5)(A) of the Act by adding the requirements:
 - that the case plan for a child placed in a foster family home or child-care institution a substantial distance from the home of the parents, or in a different State, set forth the reasons why the placement is in the best interests of the child, and
 - if the child has been placed in foster care in a State outside the State in which the child's parents are located, an agency caseworker, of either State, must visit the foster home or institution no less frequently than every 12 months and submit a report on the visit to the State agency of the State where the home of the child's parents is located, and
 - that dispositional hearings must determine whether an out-of-State placement continues to be appropriate and in the best interests of the child.

ACTION:

4. States and Indian Tribes must assure:
 - that statutes, policies, and procedures for case plans have been revised to include the requirements governing the placement accountability provisions for children placed out of State or a substantial distance from the home of the parents; and
 - that dispositional hearings will determine the appropriateness of a child's out-of-State placement.
5. We recommend that the States and Indian Tribes submit a copy of their changed policies and/or procedures to the ACF Regional Office for review and informational purposes.

INQUIRIES TO: ACF Regional Administrators
Olivia A. Golden
Commissioner
Administration on Children, Youth and Families

[Attachment A](#)- TITLE II--Maternal And Child Health Services Block Grant Program, Income Security, Human Resources, And Related Programs

Attachment A

Title II--Maternal And Child Health Services Block Grant Program, Income Security, Human Resources, And Related Programs

Section 501(a) (42 U.S.C. 701(a)) is amended by striking `686,000,000 for fiscal year 1990' and inserting `705,000,000 for fiscal year 1994'.

Subtitle A--Child Welfare, Foster Care, Adoption Sec. 202 Required Protections For Foster Children.

- a. In General: Section 422(b) (42 U.S.C. 622(b)) is amended--
 1. by striking `and' at the end of paragraph (7);
 2. by striking the period at the end of paragraph (8) and inserting `; and'; and
 3. by adding at the end the following: "(9) provide assurances that the State--
 - A. "since June 17, 1980, has completed an inventory of all children who, before the inventory, had been in foster care under the responsibility of the State for 6 months or more, which determined--
 - i. "the appropriateness of, and necessity for, the foster care placement;
 - ii. "whether the child could or should be returned to the parents of the child or should be freed for adoption or other permanent placement; and
 - iii. "the services necessary to facilitate the return of the child or the placement of the child for adoption or legal guardianship;
 - B. "is operating, to the satisfaction of the Secretary--
 - i. "a statewide information system from which can be readily determined the status, demographic characteristics, location, and goals for the placement of every child who is (or, within the immediately preceding 12 months, has been) in foster care;
 - ii. "a case review system (as defined in section 475(5)) for each child receiving foster care under the supervision of the State;
 - iii. "a service program designed to help children--
 - I. "where appropriate, return to families from which they have been removed; or

PROGRAMS, FOR CONFORMITY WITH STATE PLAN REQUIREMENTS"Sec. 1123.

- a. In General.--The Secretary, in consultation with the State agencies administering the State programs under parts B and E of title IV, shall promulgate regulations for the review of such programs to determine whether such programs are in substantial conformity with--
 1. "State plan requirements under such parts B and E,
 2. "implementing regulations promulgated by the Secretary, and
 3. "the relevant approved State plans.
- b. "Elements of Review System.--The regulations referred to in subsection (a) shall--
 1. "specify the timetable for conformity reviews of State programs, including--
 - A. "an initial review of each State program;
 - B. "a timely review of a State program following a review in which such program was found not to be in substantial conformity; and
 - C. "less frequent reviews of State programs which have been found to be in substantial conformity, but such regulations shall permit the Secretary to reinstate more frequent reviews based on information which indicates that a State program may not be in conformity;
 2. "specify the requirements subject to review, and the criteria to be used to measure conformity with such requirements and to determine whether there is a substantial failure to so conform;
 3. "specify the method to be used to determine the amount of any Federal matching funds to be withheld (subject to paragraph (4)) due to the State program's failure to so conform, which ensures that--
 - A. "such funds will not be withheld with respect to a program, unless it is determined that the program fails substantially to so conform;
 - B. "such funds will not be withheld for a failure to so conform resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary; and
 - C. "the amount of such funds withheld is related to the extent of the failure to so conform; and
 4. "require the Secretary, with respect to any State program found to have failed substantially to so conform--
 - A. "to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the failure to so conform;
 - B. "to make technical assistance available to the State to the extent feasible to enable the State to develop and implement such a corrective action plan;
 - C. "to suspend the withholding of any Federal matching funds under this section while such a corrective action plan is in effect; and
 - D. "to rescind any such withholding if the failure to so conform is ended by successful completion of such a corrective action plan.
- c. "Provisions for Administrative and Judicial Review.--The regulations referred to in subsection (a) shall--

1. "require the Secretary, not later than 10 days after a final determination that a program of the State is not in conformity, to notify the State of--
 - A. "the basis for the determination; and
 - B. "the amount of the Federal matching funds (if any) to be withheld from the State;
 2. "afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days after receipt of the notice described in paragraph (1) (or, if later, after failure to continue or to complete a corrective action plan); and
 3. "afford the State an opportunity to obtain judicial review of an adverse decision of the Board, within 60 days after the State receives notice of the decision of the Board, by appeal to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.".
- d. Conforming Amendment.--Section 471(b) (42 U.S.C. 671(b)) is amended by striking all that follows the first sentence.
- e. Effective Dates.--
1. In general.--The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.
 2. Conforming amendment.--The amendment made by subsection (b) shall take effect on October 1, 1995.
 3. Regulations.--The Secretary shall promulgate the regulations referred to in section 1123(a) of the Social Security Act (as added by this section) not later than July 1, 1995, to take effect on April 1, 1996.

Item 55: (15) SEC. 204. STATES REQUIRED TO REPORT ON MEASURES TAKEN TO COMPLY WITH THE INDIAN CHILD WELFARE ACT.

SEC. 204. STATES REQUIRED TO REPORT ON MEASURES TAKEN TO COMPLY WITH THE INDIAN CHILD WELFARE ACT.

- a. State Plan Requirement.--Section 422(b) (42 U.S.C. 622(b)), as amended by section 301(a), is amended--
- a. State Plan Requirement: Section 422(b) (42 U.S.C. 622(b)), as amended by section 202(a), is amended--
 1. by striking "and" at the end of paragraph (8);
 2. by striking the period at the end of paragraph (9) and inserting "; and"; and
 3. by adding at the end the following: "(10) contain a description, developed after consultation with tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act) in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act.".
- b. Effective Date.--The amendments made by subsection (a) shall be effective with respect to fiscal years beginning on or after October 1, 1995.

Item 56: (47) SEC. 205. CHILD WELFARE TRAINEESHIPS.

SEC. 205. CHILD WELFARE TRAINEESHIPS.

- a. In General.--Subpart 1 of part B of title IV (42 U.S.C. 620-628) is amended by inserting after section 428 the following: "CHILD WELFARE TRAINEESHIPS "Sec. 429. The Secretary may approve an application for a grant to a public or nonprofit institution for higher learning to provide traineeships with stipends under section 426(a)(1)(C) only if the application--
 1. "provides assurances that each individual who receives a stipend with such traineeship (in this section referred to as a 'recipient') will enter into an agreement with the institution under which the recipient agrees--
 - A. "to participate in training at a public or private nonprofit child welfare agency on a regular basis (as determined by the Secretary) for the period of the traineeship;
 - B. "to be employed for a period of years equivalent to the period of the traineeship, in a public or private nonprofit child welfare agency in any State, within a period of time (determined by the Secretary in accordance with regulations) after completing the postsecondary education for which the traineeship was awarded;
 - C. "to furnish to the institution and the Secretary evidence of compliance with subparagraphs (A) and (B); and
 - D. "if the recipient fails to comply with subparagraph (A) or (B) and does not qualify for any exception to this subparagraph which the Secretary may prescribe in regulations, to repay to the Secretary all (or an appropriately prorated part) of the amount of the stipend, plus interest, and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary);
 2. "provides assurances that the institution will--
 - A. "enter into agreements with child welfare agencies for onsite training of recipients;
 - B. "permit an individual who is employed in the field of child welfare services to apply for a traineeship with a stipend if the traineeship furthers the progress of the individual toward the completion of degree requirements; and
 - C. "develop and implement a system that, for the 3-year period that begins on the date any recipient completes a child welfare services program of study, tracks the employment record of the recipient, for the purpose of determining the percentage of recipients who secure employment in the field of child welfare services and remain employed in the field."
- b. Conforming Amendment.--Section 426(a)(1)(C) (42 U.S.C. 626(a)(1)(C)) is amended by inserting "described in section 429" after "including traineeships".
- c. Applicability.--The amendments made by this section shall apply to grants awarded on or after October 1, 1995

Item 57: (9) SEC. 206. DISPOSITIONAL HEARING.

SEC. 206. DISPOSITIONAL HEARING.

- a. Most Appropriate Setting.--Section 475(5)(A) (42 U.S.C. 675(5)(A)) is amended by inserting "and most appropriate" after "(most family like)".
- b. Timing of Subsequent Review.--Section 475(5)(C) (42 U.S.C. 675(5)(C)) is amended by striking "periodically" and inserting "not less frequently than every 12 months".
- c. Effective Date.--The amendments made by this section shall take effect on October 1, 1995.

Item 58: (12) SEC. 207. ELIMINATION OF FOSTER CARE CEILINGS AND OF AUTHORITY TO TRANSFER UNUSED FOSTER CARE FUNDS TO CHILD WELFARE SERVICES PROGRAMS.

SEC. 207. ELIMINATION OF FOSTER CARE CEILINGS AND OF AUTHORITY TO TRANSFER UNUSED FOSTER CARE FUNDS TO CHILD WELFARE SERVICES PROGRAMS.

- a. Repeal.--Subsections (b) and (c) of section 474 (42 U.S.C. 674 (b) and (c)) are hereby repealed.
- b. Conforming Amendments.--Section 474 (42 U.S.C. 674) is amended--
 1. in subsection (d)(1)--
 - A. by striking "subsections (a), (b), and (c)" and inserting "subsection (a)"; and
 - B. by striking "the provisions of such subsections" and inserting "subsection (a)"; and
 2. by redesignating subsections (d) and (e) as subsections (b) and (c) respectively.
- c. Effective Date: The amendments and repeals made by this section shall apply to payments for calendar quarters beginning on or after October 1, 1993.

Item 59: (40) SEC. 208. DEMONSTRATION PROJECTS.

SEC. 208. DEMONSTRATION PROJECTS.

Part A of title XI (42 U.S.C. 1301-1320b-13) is amended by inserting after section 1129 the following: "DEMONSTRATION PROJECTS"

- a. `Sec. 1130. (a) In General: The Secretary may authorize not more than 10 States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of title IV.
- b. `(b) Waiver Authority: The Secretary may waive compliance with any requirement of part B or E of title IV which (if applied) would prevent a State from carrying out a demonstration project under this section or prevent the State from effectively achieving the purpose of such a project, except that the Secretary may not waive--
 - 1. "any provision of section 427 (as in effect before April 1, 1996), section 422(b)(9) (as in effect after such date), or section 479; or
 - 2. "any provision of such part E, to the extent that the waiver would impair the entitlement of any qualified child or family to benefits under a State plan approved under such part E.
- c. `Treatment as Program Expenditures: For purposes of parts B and E of title IV, the Secretary shall consider the expenditures of any State to conduct a demonstration project under this section to be expenditures under subpart 1 or 2 of such part B, or under such part E, as the State may elect.
- d. `Duration of Demonstration: A demonstration project under this section may be conducted for not more than 5 years.
- e. `Application: Any State seeking to conduct a demonstration project under this section shall submit to the Secretary an application, in such form as the Secretary may require, which includes--
 - 1. "a description of the proposed project, the geographic area in which the proposed project would be conducted, the children or families who would be served by the proposed project, and the services which would be provided by the proposed project (which shall provide, where appropriate, for random assignment of children and families to groups served under the project and to control groups);
 - 2. "a statement of the period during which the proposed project would be conducted;
 - 3. "a discussion of the benefits that are expected from the proposed project (compared to a continuation of activities under the approved plan or plans of the State);
 - 4. "an estimate of the costs or savings of the proposed project;
 - 5. "a statement of program requirements for which waivers would be needed to permit the proposed project to be conducted;
 - 6. "a description of the proposed evaluation design; and
 - 7. "such additional information as the Secretary may require.
- f. `Evaluations; Report: Each State authorized to conduct a demonstration project under this section shall--
 - 1. "obtain an evaluation by an independent contractor of the effectiveness of the project, using an evaluation design approved by the Secretary which provides for--
 - A. "comparison of methods of service delivery under the project, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management;
 - B. "comparison of outcomes for children and families (and groups of children and families) under the project, and such outcomes under a State plan or

plans, for purposes of assessing the effectiveness of the project in achieving program goals; and

C. "any other information that the Secretary may require; and

2. "provide interim and final evaluation reports to the Secretary, at such times and in such manner as the Secretary may require.
- g. `Cost Neutrality: The Secretary may not authorize a State to conduct a demonstration project under this section unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the project over its approved term (or such portion thereof or other period as the Secretary may find appropriate) will not exceed the amount of such funds that would be expended by the State under the State plans approved under parts B and E of title IV if the project were not conducted.'

Item 60: (24) SEC. 209. PLACEMENT ACCOUNTABILITY.

SEC. 209. PLACEMENT ACCOUNTABILITY.

- a. Case Plan Requirements: Section 475(5)(A) (42 U.S.C. 675(5)(A)) is amended by adding at the end the following: `which--
 - i. "if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and
 - ii. "if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 12 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, or of the State in which the child has been placed, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,".
- b. Dispositional Hearing: Section 475(5)(C) (42 U.S.C. 675(5)(C)) is amended by inserting `and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child,' after `long-term basis)'.
c. Data Collection.--Section 479(c)(3)(C) (42 U.S.C. 679(c)(3)(C)) is amended--
 1. by striking "and" at the end of clause (i); and
 2. by adding at the end the following:
 - iii. "children placed in foster care outside the State which has placement and care responsibility, and".
- d. Effective Date.--The amendments made by this section shall be effective with respect to fiscal years beginning on or after October 1, 1995.

Item 61: (23) SEC. 210. PAYMENTS OF STATE CLAIMS FOR FOSTER CARE AND ADOPTION ASSISTANCE.

SEC. 210. PAYMENTS OF STATE CLAIMS FOR FOSTER CARE AND ADOPTION ASSISTANCE.

- a. In General.--Section 474(b) (42 U.S.C. 674(b)), as redesignated by section 207(b)(2), is amended by adding at the end the following:
 - A. "(4)Within 60 days after receipt of a State claim for expenditures pursuant to subsection (a), the Secretary shall allow, disallow, or defer such claim.
 - B. "Within 15 days after a decision to defer such a State claim, the Secretary shall notify the State of the reasons for the deferral and of the additional information necessary to determine the allowability of the claim.
 - C. "Within 90 days after receiving such necessary information (in readily reviewable form), the Secretary shall--
 - i. "disallow the claim, if able to complete the review and determine that the claim is not allowable, or
 - ii. "in any other case, allow the claim, subject to disallowance (as necessary)-
 - I. "upon completion of the review, if it is determined that the claim is not allowable; or
 - II. "on the basis of findings of an audit or financial management review."
- b. Effective Date.--The amendment made by subsection (a) shall be effective with respect to claims made on or after the date of the enactment of this Act.

Item 62: (20) SEC. 211. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.

SEC. 211. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.

- a. In General.--Part A of title XI (42 U.S.C. 1301-1320b-13), as amended by section 208, is amended by inserting after section 1130 the following: "EFFECT OF FAILURE TO CARRY OUT STATE PLAN "Sec. 1130A. In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability: Provided, however, That this section is not intended to alter the holding in *Suter v. Artist M.* that section 471(a)(15) of the Act is not enforceable in a private right of action."
- b. Applicability.--The amendment made by subsection (a) shall apply to actions pending on the date of the enactment of this Act and to actions brought on or after such date of enactment.