

<h1>ACF</h1> <p>Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Office of the Assistant Secretary	
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	3. Originating Office: Children's Bureau	

P.L. 96-272

PROGRAM REGULATION

TO: STATE ADMINISTRATORS OF STATE PUBLIC WELFARE AGENCIES; FOSTER CARE PROGRAM AND ADOPTION ASSISTANCE PROGRAM UNDER TITLE IV-E OF THE SOCIAL SECURITY ACT; AND CHILD WELFARE SERVICES PROGRAM UNDER TITLE IV-B OF THE SOCIAL SECURITY ACT

SUBJECT: FINAL FISCAL REGULATION - P.L. 96-272

LEGAL AND RELATED REFERENCES: 45 CFR Parts 1355, 1356, and 1357; P.L. 96-272, The Adoption Assistance and Child Welfare Act of 1980; Sections 470-475 and 420-428 of the Social Security Act, as amended.

ATTACHMENTS: Final Regulation and accompanying Correction Notice

DISCUSSION: The attached Final Regulation implements the fiscal provisions of the amendments to the Social Security Act made by the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272. The proposed rule was published in the Federal Register on December 31, 1980. This Final Regulation is essentially the same in content as the proposed rule, but has been partially reorganized and revised to provide greater clarity and ease of use. The Correction Notice has been sent to the Federal Register for publication.

EFFECTIVE DATE: August 16, 1982 for the entire regulation, as corrected.

INQUIRIES

TO: James H. Rich
 Director
 Financial Management Division
 Children's Bureau/ACYF
 P.O. Box 1182

Washington, D.C. 20013
(202) 755-7800
Commissioner

PROPOSED RULES

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Human Development Services

45 CFR Parts 1355, 1356, and 1357

Foster Care Maintenance Assistance and Adoption Assistance; Child Welfare Services

Wednesday, December 31, 1980

*86817 AGENCY: Office of Human Development Services (OHDS), HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department is proposing regulations to govern the new title IV-E program, Federal financial participation for Foster Care and Adoption Assistance, and revisions to the title IV-B program, Child Welfare Services, of the Social Security Act, contained in Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980.

Interim Final Regulations have also been issued to notify States of the procedures and protections that must be in place before a State can receive its share of title IV-B funds if appropriations are made in excess of \$141 million. These provisions also apply to transfer of funds from title IV-E to title IV-B for use in child welfare services, and to reimbursements for the allowable costs of voluntary placements of children in foster care.

DATES: Comments must be received on or before March 16, 1981.

Comments on the proposed rule for fiscal requirements, including allotments, the transfer of funds and administrative and training expenditures under title IV-E (Sec. 1356.80) must be received on or before January 30, 1981.

ADDRESS: Send written comments to: Frank Ferro,
P.O. Box 1182,
Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Frank Ferro,
Associate Chief,
Children's Bureau,
(202) 755-7418.

SUPPLEMENTARY INFORMATION: Public Meetings.

Public meetings on this proposed rulemaking will be held on the dates and at the locations listed below. For further information, contact the Regional Program Director in the appropriate Regional Office of the Administration for Children, Youth and Families.

January 9: Federal Reserve Bank Building Auditorium, 600 Atlantic Avenue, Boston, Massachusetts 02210, Contact: Tina Janey Burell, (617) 223-6450.

January 9: Richard B. Russell Building, 75 Spring Street, N.W., Atlanta, Georgia 39323, Contact: James K. Vaughn, (404) 221-2300.

January 12: Federal Building, Rooms 13029 and 15018, 450 Golden Gate Avenue, San Francisco, California 94102, Contact: Beverly Wood, (415) 556-6153.

January 13: American Dental Society Building, 211 E. Chicago Avenue, Chicago, Illinois 60606, Contact: Forrest Lewis, (312) 353-1784.

January 14: Dallas Public Library, Room: Auditorium, 1954 Commerce Street, Dallas, Texas 75202, Contact: Patricia Newlin, (214) 767-6596.

January 16: Federal Building, Room 140, 601 E. 12th Street, Kansas City, Missouri 64106, Contact: Richard Schrader, (816) 374-5401.

January 19: The Regency Inn, 3900 Elati Street, House of Common, Denver, Colorado 90204, Contact: Ms. Sue Dignum, (303) 292-9010.

January 23: William J. Green Federal Building, Room 3306, 600 Arch Street, Philadelphia, Pennsylvania 19101, Contact: Donald Barrow, (215) 596-0390.

January 28: World Trade Center Building, Room 4430, 2 World Trade Center, New York, New York, Contact: Caroline Gionta, (212) 264-2405.

January 29: New Federal Building, 915 Second Avenue, Seattle, Washington 98101, Contact: Ms. Jeanne Craig, (206) 442-0838.

The Department has established a demonstration project to assist qualified applicants with certain costs of commenting on these proposed regulations. The purpose of this project is to learn whether this kind of assistance will achieve a more complete discussion of significant issues and a greater diversity of oral and written comments. This project is described in a Notice published in Part VI of the Federal Register on December 17, 1980 (45 FR 83172). Please refer to that Notice for complete information on criteria for eligibility, on reimbursable costs and on completing the application form. The following is a summary of the demonstration project. Four of the ten meetings to be held during the comment period--Kansas City (Jan. 16), Denver (Jan. 19), Philadelphia (Jan. 23), and Seattle (Jan. 29)-- have been chosen for the demonstration project as sites where selected applicants can be assisted to participate if they could not

otherwise afford to do so. Applicants for the regional meeting in Kansas City must live in Iowa, Kansas, Missouri or Nebraska; applicants for the meeting in Denver must live in Colorado, Montana, North Dakota, South Dakota, Utah or Wyoming; and applicants for the meeting in Philadelphia must live in Delaware, Maryland, Pennsylvania, Virginia, West Virginia or the District of Columbia. Finally, applicants for the meeting in Seattle must live in Alaska, Idaho, Oregon or Washington State. The states listed are the states served by each of the four regional offices.

In addition, interested persons throughout the country and the territories are eligible to apply for funding to prepare written comments (such as compilations of membership surveys) or to gather information to back up their positions on the issues in these proposed regulations. The Department will give special consideration to applications for written comments from those regions where assistance to attend regional meetings is not available.

Applications for assistance to participate in one of the four regional meetings must be postmarked on or before the following dates: for the Kansas City meeting--December 26, 1980; for the Denver meeting--December 29, 1980; for the Philadelphia meeting--January 2, 1981; and for the Seattle meeting-- January 8, 1981. Applications for assistance in preparing written comments must be postmarked on or before January 21, 1981. These deadlines have been set to allow the Department sufficient time to review applicants and notify successful applicants. However, late applications will be considered to the extent possible.

An Evaluation Board will review all applications. To approve an application, *86818 the Board must be able to decide that it meets all the following three criteria:

1. The information the applicant plans to present will help the Department decide the issues in the proposed regulations.
2. The applicant represents an interest that otherwise might not be heard.
3. The applicant cannot otherwise afford the costs of participating in a regional meeting or developing written comments.
4. An application must contain the information necessary to show whether these three criteria are met. It must identify the issues of concern to the applicant, his or her positions on the issues, and for whom the applicant speaks. It must also describe the applicant's financial situation.
5. For further information and for application forms, contact: Carel Hedlund, Demonstration Project, Department of Health and Human Services, Room 706.E, 200 Independence Avenue, S.W., Washington, D.C. 20201, Telephone: (202) 245-7545.

The Department urges everyone interested in the regulations to make their views known during the comment period by attending a regional meeting or submitting written comments, whether or not they wish to apply for assistance.

I. Background

The landmark Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96- 272) was enacted on June 17, 1980. Section 101 of Pub. L. 96-272 amended title IV of the Social Security

Act (the Act) and created a new part E--Federal Payments for Foster Care and Adoption Assistance (IV-E). That section provides for a phased repeal of Section 408 of the Act, which currently provides authority for Federal matching in State foster care payments under the Aid to Families with Dependent Children program (AFDC-FC). States may continue to receive Federal matching for AFDC-FC payments under Title IV, Part A of the Act (IV-A) until September 30, 1982 or, if earlier, the quarter in which the State implements an approved State plan under title IV-E.

Public Law 96-272 also amended Title IV, Part B of the Act (IV-B) to consolidate, restate and in some instances modify the existing Child Welfare Services program. The most significant modification set new conditions on the States for receipt of their share of increased appropriations intended to improve protections for children in foster care.

The new law mandates needed improvement in the States' child welfare and social service programs, strengthens and improves the program of Federal support for foster care of needy and dependent children, establishes a program of Federal Financial participation to encourage adoptions of children with special needs, and encourages support for the family.

The impetus behind the passage of Pub. L. 96-272 was the belief of Congress, and most State child welfare administrators, supported by extensive research, that the public child welfare system responsible for serving children, youth and families had become a receiving or holding system for children living away from parents rather than a system that assists parents in carrying out their roles and responsibilities and provides alternative permanent placement for children who cannot return to their own homes. Studies show that under current policies and procedures thousands of children are stranded in the public foster care system with little hope of being reunited with their families or having a permanent home through adoption or other permanency planning, thereby causing harm to the children and high costs to the States.

The passage and enactment into law of Pub. L. 96-272 (formerly HR 3434) demonstrates a Federal commitment to provide financial and technical assistance to States to make changes in their child welfare services systems. To reduce the number of children entering foster care, emphasis is placed upon the use of preplacement preventive services to help solve or alleviate the family problems that would otherwise result in the child's removal from the home. To reduce the number of children already in the foster care system, the law requires States to undertake several initiatives.

A State must enact a law by October 1, 1982, establishing annual goals for reducing the number of IV-E children remaining in foster care over 24 months. If a State is to receive Federal financial participation (FFP) in foster care maintenance payments under title IV-E after October 1, 1983, it must provide services in all political subdivisions to facilitate the reunification of foster children with their families. To ensure that children do not remain adrift in the foster care system, a State must implement case plan and case review procedures that cyclically assess the appropriateness of the child's placement and reevaluate the services provided to assist the child and the family. To encourage family reunification, a State must attempt to place a child in close proximity to the family and in the least restrictive (most family like) setting, and finally, for those children who cannot be reunited with their families and who have "special needs" as

defined in the regulation, financial assistance will be available to families adopting these children.

In short, the new law rests on three pillars:

- Prevention of unnecessary separation of the child from the parents;
- Improved Quality of Care and Services to children and their families;
- Permanency through reunification with parents or through adoption or other permanency planning.

The foregoing is a brief summary of the major goals of the law. Sections II, III and IV of the Supplemental Information will discuss the more important provisions of the proposed regulation.

A. Approach to Writing the Regulation Pub. L. 96-272 establishes a new program, the title IV-E program, which will replace the title IV-A foster care program not later than October 1, 1982. In addition, the law makes changes in the IV-B child welfare services program and it ties the two programs together with numerous program and fiscal incentives. Thus, careful attention should be given to the cross references and linkages between Parts B and E. These linkages are discussed under the specific sections to which they apply. They include funding provisions with respect to amount and timeliness of appropriations, transfer of funds, service requirements, administrative costs and training regulations.

While the goals of the law can become somewhat obscured by the complexity of the interrelationship of the IV-B and IV-E programs, numerous provisions are drafted in the law with great specificity and leave little doubt as to intent. Consequently, the Department was able to incorporate into the regulation nearly verbatim many provisions of the law.

The law gave the Department discretion in implementing other important provisions. The Department held a public meeting to discuss the issues with outside organizations and established a senior level policy group to discuss alternative policy options and make formal recommendations to the Secretary.

Inevitably in writing regulations, difficult choices must be made from alternatives representing competing values and goals. This regulation is aimed to bring about changes within a reasonable timetable and may require participating States to make fundamental changes in their child welfare systems. Ultimately, the States will be the instrument of change. Many States have already begun to make the *86819 requisite changes. This regulation is drafted in recognition of the diversity of States and the variety of problem solving approaches extant. The Department has made every effort to be sensitive to State practice and has incorporated State recommendations in its approach and in framing the provisions of the proposed regulation. At the same time the regulation is specific enough to produce consistency in interpretation and uniformity in implementation.

The Department's purpose has been to draft a regulation designed to foster the desired changes, while allowing flexibility in the means of producing the changes required by the law. The requirements were developed after seriously weighing their consequences for children, parents, State practice, caseworkers, and others affected by the regulation.

B. Financial Impact

Cost considerations are a critical element in the regulatory decision process. Full implementation of the intent of Pub. L. 96-272 and of the proposed regulation is expected to have considerable impact on the Nation's public child welfare services system.

Cost consequences, although not solely determinative, were carefully considered in drafting the regulation provisions. For example, the Department chose to require only those preplacement preventive services and reunification services that are essential to accomplishing the goals of the legislation, rather than a more extensive list of required services which the Department concluded was too costly and would cause a financial drain from other vitally needed services. In dealing with the information and reporting requirements, cost and program considerations were combined. The information and reporting requirements in the Act have been interpreted to allow development of a Statewide information system that will meet the reporting requirements of both Pub. L. 95-266, the Adoption Opportunities Act, and of Pub.L. 96-272.

The Department believes the regulation will protect the best interests of children and families served, carry out legislative requirements, address the diverse range of capabilities existing in the States, and lead to a marked reduction of the average number of children in foster care. It is estimated that the foster care caseload will decline 5% in FY 81 compared to the average number of children in care in FY 80. Improved permanency planning practices begun in FY 81 will have their greatest impact on the average FY 82 caseload which is expected to decline a further 15% from the average number of children in care in FY 81.

Continuing declines of approximately 5% per year are expected in FY 83 and FY 84 when the caseload size is expected to stabilize at approximately 360,000, or nearly 30% lower than the average number of children in care during FY 80. If the cost maintaining children in substitute care continues to inflate at the same average rate that occurred between 1975 and 1978, cost savings per year by FY 84, due to the anticipated reduction in the number of children in out-of-home placement, would be over one billion dollars for the Nation's foster care system. Based upon conditions established in Executive Order 12044 and the Secretary's implementing instructions, the Department has conducted a threshold study and has determined that a full regulatory analysis is not required. The Department has classified this regulation as a significant regulation under Executive Order 12044.

C. Reporting and Recordkeeping Requirements

The proposed regulation contains reporting and recordkeeping requirements. The Department is required to submit to the Office of Management and Budget, for review and approval, the following sections and/or forms pertaining to reporting and recordkeeping requirements:

- Inventory of Children in Foster Care (Sec. 1357.30(a)(3))
- Statewide Information System (Sec. 1357.30(a)(4))
- Report on Voluntary Placements (Sec. 1357.30(a)(4)(iv))
- Federal Reports on Child Welfare Services (Sec. 1357.20(c)(10))

The Department will submit these sections and forms to OMB. The following sections and/or forms have been submitted to OMB for approval.

--IV-B Child Welfare Services State Plan Guidelines which contain an Annual Summary of Child Welfare Services and an Annual Budget Request (Section 1357.40(a)(4)) Approved by OMB for one year.

--Interim State Plan for title IV-E of the Social Security Act. The permanent IV-E State plan will be submitted following publication of the final regulations for Pub. L. 96-272.

IV-E Expenditures Reports (Section 1356.80)

IV-E Estimates of Expenditures (Section 1356.80)

D. Coordination

The Department believes that coordination of services in a time of scarce resources is vital to ensure the most appropriate and cost effective use of available resources. Pub. L. 96-272 is explicit in requiring that the title IV-E and title IV-B programs be coordinated with each other, with the title XX services program and with other Federal and State programs.

The proposed regulations facilitates coordination by mandating the common organizational location of the IV-E, IV-B and title XX programs within the single State Agency and by encouraging the development of common service programs to meet the plan requirements of title IV-E and title IV-B. The proposed regulation also contains requirements that States assess the relevance and appropriateness of related programs and services. This assessment, along with supporting policies and procedures, must be provided to local agencies to facilitate inter-program referrals and to enable periodic assessment of the effectiveness of the State's system for coordinating services.

E. Immediate Implementation Activities

States may immediately apply for available funds under title IV-E provided they have a DHHS approved State Plan. At this time, title IV-E does not authorize the Secretary to make estimated payments in advance of State expenditures. Therefore, Federal funds will be available on a reimbursement basis only. The Congress has passed a technical amendment to the Act to permit the making of estimated payments in advance of State expenditures. As of the date of publication of the proposed regulation, the President has not signed the technical amendment.

For Fiscal Year 1981, the Department will issue an interim title IV-E State Plan preprint to be used by the States to certify they have met the necessary requirements in the law. The present interim preprint is based solely on the provisions of the Act and not on this NPRM. Federal funds will be made available for FFP to reimburse States that have an approved interim IV-E State plan. A revised IV-E State Plan preprint will be made available to the States when the final regulation is issued.

F. Contents of Federal Register Regulation Package

The Department is concurrently publishing several regulatory documents pertaining to the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. *86820 96-272). These documents are all published in this edition of the Federal Register. They include:

1. Notice of Proposed Rulemaking for Pub. L. 96-272. The NPRM contains new Parts 1355, 1356 and 1357 of title 45 of the Code of Federal Regulations to implement the new IV-E program, revise the IV-B regulation, and implement new provisions in the IV-B program required by the amended Act. The NPRM also includes the provisions pertaining to State eligibility for additional payments (Section 427 of Pub. L. 96-272) which are also being published as an interim final rule in this issue of the Federal Register. The current regulation for the IV-B program is commingled with that of the IV-A services program for the territories in 45 CFR Part 1392. The proposed regulation for 45 CFR Parts 1355, 1356 and 1357 which is included in this document, will replace the provisions for IV-B in Part 1392.

The fiscal requirements for title IV-E are stated in section 1356.80. Included in this section are the conditions for the Federal financial participation in State payments and administration and training expenditures, and foster care allotment limitations. A shorter comment period has been provided for this section because States may be faced with a limitation on foster care funds, therefore the basis for the allotment must be finalized. Further, the regulations governing administrative and training expenditures must be finalized in order to have cost allocation plans approved. Finally, the allotment limitations govern the possible transfer of title IV-E funds not used for foster care to title IV-B. These activities will all occur during the fiscal year, no later than halfway through the third quarter of fiscal year 1981. Also, the State legislatures must appropriate State and local funds to match the Federal funds. Advance knowledge will be needed in order for the correct amounts to be requested by the State agencies and approved by the State legislatures.

2. Notice of Proposed Rulemaking for amendments to Medicaid Provisions in 42 CFR Parts 431, 435 and 436. This regulation would amend the Medicaid Program to implement the provisions of Pub. L. 96-272 that apply to Title XIX. The proposed rule extends Medicaid eligibility to children for whom payments are made under the title IV-E Foster Care Maintenance Payments Program or the Adoption Assistance Program, and the two additional groups now eligible for IV- A foster care (children voluntarily placed in foster care and children in public institutions).

3. Interim Final Rule for Requirements for State Eligibility for Additional Payments, 45 CFR 1357.30. This regulation governs criteria that apply to several provisions in Pub. L. 96-272 whereby States may qualify to receive additional funds for child welfare services, transfer funds from Title IV-E to Title IV-B for use in child welfare services, or be partially reimbursed for costs of voluntary placement of children in foster care. These provisions are also being published as part of the proposed rule for Pub. L. 96-272 so that the reader will not have to refer to the Interim Final Rule provisions when reviewing the NPRM.

Discussion of these provisions is contained in the Supplemental Information to the NPRM for Pub. L. 96-272. The Interim Final Rule contains a reproduction of the relevant sections of the NPRM requirements, but does not reiterate the discussion of these provisions set forth in the Supplemental Information section of the NPRM.

The Department finds that it is impracticable and contrary to the public interest to follow rulemaking procedures for this provision, and that good cause exists to publish this portion of the regulations as an interim final. These provisions are being published as an interim final rule because the Department recognizes that States must be notified of the standards the Secretary will apply in determining whether the requirements of Section 427(a) and (b) of the Act have been met. States meeting these requirements are immediately eligible to receive federal funds for foster care maintenance payments for voluntarily-placed children. It is also important that States be notified of these standards so that they may make appropriate plans to meet the standards and qualify for the additional funds under Section 427(a) of the Act. Notwithstanding the omission of rulemaking proceedings, public comments will be accepted for seventy-five days following publication. Based on the comment received, the Department will make appropriate changes. The changes will not be retroactive.

II. Title IV-E--Federal Payments for Foster Care Maintenance and Adoption Assistance

The law creates a new program under title IV-E (IV-E) of the Social Security Act. The IV-E program closely parallels the foster care program currently provided under title IV-A, Aid to Families with Dependent Children program. However, the IV-E program also makes available Federal financial participation (FFP) in adoption assistance payments for "special needs" children. Federal matching funds for adoption assistance payments are not available under title IV-A.

The IV-E program will eventually replace the IV-A foster care program. Beginning October 1, 1982, foster care funds will no longer be available under title IV-A. Until September 30, 1982 a State may operate its foster care programs under either title IV-E or IV-A. If a State chooses to continue under the IV-A program, the State must meet the title IV-A requirements.

Although the Federal agency responsibility for the administration of the title IV-A foster care program will be transferred to the Office of Human Development Services, the essential application and financial management procedures for title IV-A will not be altered.

For purposes of summarizing the IV-E provisions of Pub. L. 96-272, the law may be divided into the following general areas: State Plan Requirements; Foster Care Maintenance Payment Program; Children Voluntarily Placed in Foster Care; and, the Adoption Assistance Program.

State Plan Requirements: The State plan requirements contained in the amended Act (Sec. 471 of the Act) include many requirements applicable to AFDC State plans under title IV-A. Title IV-E State plans are also subject to additional administrative requirements. The plan would have to be administered by the same State agency that administers the Child Welfare State Grant Program under title IV-B of the Act. An independent audit would be required, at least once every three years, of the programs under titles IV-B and IV-E (Sec. 471(a)(13) of the Act). State plans must contain provisions to restrict the use or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with the administration of the plan and other Federal programs. States are required to establish by law, by October 1, 1982, for each fiscal year beginning with fiscal year 1984, goals as to the maximum number of IV-E children in the State who will remain in foster care after having been in care over 24 months (Sec. 471(a)(14) of the Act).

The amended Act (Sec. 471(a)(16) of the Act) strengthens the requirements for case plans and case reviews for children in foster care. Effective October 1, 1983, State plans must provide that reasonable efforts are made to prevent removal of the child from his or her home prior to foster care placement and that reasonable efforts are made to enable the child to return home (Sec. 471(a)(15) of the Act). Also effective October 1, 1983, the agency must show that reasonable efforts had been made to prevent removal, in order for the child to receive title IV-E assistance payments (Sec. 472(a)(1) of the Act).

Foster Care Maintenance Payment Program: Title IV-E authorizes FFP in assistance for all children currently eligible for AFDC-FC funds under title IV-A. Under title IV-A, Federal AFDC-FC payments are funds available for maintenance payments for a child otherwise eligible for AFDC payments, who is placed in a foster home or nonprofit private child care institution.

Eligibility for FFP under title IV-E includes children in public child care institutions which accommodate no more than 25 children. Children receiving foster care maintenance payments under title IV-E are deemed, for purposes of titles XIX and XX, to be dependent children as defined in title IV-A, and are, therefore, eligible for Medicaid as categorically needy and the title XX services (Sec. 472(d) of the Act). In the past, Federal matching funds for AFDC-FC payments have been available to States on an open-ended, entitlement basis. Under Pub. L. 96-272 and under the amended title IV-A Foster Care program, there is a ceiling on foster care FFP funds for each fiscal year 1981 to 1984, if appropriation for title IV-B child welfare services equals or exceeds specified amounts: \$163.55M for fiscal year 1981, \$220M for fiscal year 1982, and \$266M for each of fiscal years 1983 and 1984 (Sec. 474(b)(1) and (2) of the Act).

Federal funds made available to a State under its IV-E foster care allotment ceiling, which are not used for maintenance payments, may be transferred for use for child welfare services under title IV-B (at a 75 percent matching rate), under certain conditions (Sec. 474(c) of the Act). No State may increase its IV-B funds by a transfer of IV-E funds beyond certain specified amounts until it has implemented the protections required by Section 427(a) and (b) of the Act.

Under the old law, States received Federal matching for AFDC payments (including AFDC-FC payments) on the basis of either the AFDC formula (used by only four States) or the Medicaid matching formula. All FFP for foster care maintenance payments and adoption assistance payments under the title IV-E program is determined using the Medicaid matching formula (Sec. 474(a)(1) and (2) of the Act). Children Voluntarily Placed in Foster Care: In the past, Federal AFDC matching funds were not available for children placed in foster care without a judicial determination. Section 102 of Pub. L. 96-272 temporarily amends title IV-E to authorize FFP in expenditures made after September 30, 1980 and before October 1, 1983 (and under title IV-A, expenditures made after September 30, 1979, and before October 1, 1983) for foster care maintenance payments with respect to a child removed from home under a voluntary placement agreement. FFP is available only for expenditures made on behalf of voluntarily placed children after the State has implemented the protections and procedures mandated by Section 427(b) of the Act including a program of preplacement preventive services.

Adoption Assistance Program: Pub. L. 96-272 provides for FFP in State adoption assistance payments (Sec. 473 of the Act). There was no such authority prior to Pub. L. 96-272. States participating in the title IV-E program are required to establish a program of adoption assistance payments (Sec. 471(a)(1) of the Act).

Adoption assistance payments must be made under an adoption assistance agreement to parents who adopt an eligible child after the effective date of a State's approved title IV-E State plan. With an approved State plan, adoption assistance payments will also be available for assistance payments for adoptions made on or after June 17, 1980. FFP for these payments will not be retroactive but will be available from the effective date of the Plan.

FFP for adoption assistance is available for a child with "special needs" who is eligible for SSI, AFDC, or foster care maintenance payments under title IV- E. An adoption assistance agreement is required for each child. Children receiving adoption assistance payments under title IV-E would be considered to be receiving AFDC and therefore, eligible for Medicaid (as categorically needy) and title XX services (Sec. 473(b) of the Act).

FFP for adoption assistance payments is permanent, on an open-ended entitlement basis, and is determined based on the Medicaid matching formula (Sec. 474(a)(2) of the Act). The following is a discussion of the significant provision of the proposed IV-E regulation.

A. Case Review System

The proposed regulation, in Section 1356.40, requires that the State agency administering or supervising the administration of the IV-E State plan implement a case review system that will apply to each child receiving foster care maintenance payments. The case review system includes a case plan (Sec. 1356.40(d)(2)), periodic review of the child's status (Sec. 1356.40(d)(3)), and procedural safeguards to protect the rights of the child and the parent (Sec. 1356.40(d)(6)).

(1) Case Plan.--The law as implemented by the proposed regulation (Sec. 1356.40(d)(2) requires that each child receiving foster care maintenance payments have a case plan. The proposed regulation also requires that the State agency ensure that the child's case plan address the

essential elements. These elements are: the type of facility in which each child is placed; the appropriateness of the placement and how it serves the best interests, as well as any special needs, of the child; service requirements and recommendations made by the court or administrative review panel and how the agency will comply with these requirements and recommendations; an assessment of the circumstances which necessitated placement and what conditions in the child's own home need improvement before the child can be returned home, and what services will be provided to meet this objective; identification of goals to be achieved for the child while in placement, and what services will be provided to attain these goals; an estimated date when the child will be returned home or an alternative plan, including adoption will be undertaken. The plan must indicate the extent to which the child, if of appropriate age, and the parent(s) have been involved in the development of the case plan.

The elements stated above are in the law either as part of the definitions of a case plan or the case review system. In addition to being minimal requirements of a case plan, they are considered to exemplify the best professional practice and be most essential to ensure that the best interests of the child and family are continually served, and that agencies adhere to the provisions of the law which are designed to protect those best interests. Further, these elements will emphasize a close working relationship among the agency, the child and the parent(s) by involving the parent(s) in case planning. This effort should facilitate early reunification with the biological family. The continuing involvement of the parent(s) and courts further reduces the possibility of the child being "lost" in the foster care system, and will ensure that the services needed, will be provided in a timely fashion. A written case plan is a dynamic document, changing periodically as the child's and family's situation and progress is reviewed. This regulation requires that the initial case plan covering all of the essential elements be developed within a 30-day period *86822 starting at the time the agency assumes responsibility for providing services or placing the child. This time span permits the agency and the family to access the situation, set goals, identify needed services, and estimate a point in time when reunification is to take place or an alternative plan undertaken.

The proposed regulation also requires documentation in the case record of agency actions, services provided, and decision-making. This record will provide accountability for the child's movement within the foster care system (Sec. 1356.40(d)(2)(iii)). Essential information required by the Act draws heavily from the language found in the current regulation for AFDC-FC, 45 CFR 233.110. The recordkeeping required by the proposed regulation is similar to that required under title IV-A Foster Care; however, the proposed regulation provides more detailed guidance in the continuous updating and recording of the results of administrative actions or reviews affecting the child.

Systematic and meaningful recording will contribute to agency accountability for the best interests of the child. (2) Least Restrictive Placement in Close Proximity to the Parents or Family Home.--The law as implemented by the proposed regulation requires that the case plan ensure that children in foster care be placed in the least restrictive (most family-like) setting available. In drafting the proposed regulations, the Department was particularly sensitive to the importance of keeping children in their own community and in the most family-like setting while still meeting the needs of the child (Sec. 1356.40(d)(2)(i)). The draft regulation lists the order of consideration for foster care placements, starting with family care and proceeding to group

arrangements and institutional care (Sec. 1356.40(d)(2)(i)). In selecting the appropriate foster care setting for each child, agencies are required to explore the possibility of placement in the extended family of the child or with other relative(s) before exploring the resources of foster parents unknown to the child (Sec. 1356.40(d)(2)(i)). The regulation underscores the need for sensitivity and attention to the child's cultural, ethnic and racial group in the selection of the placement.

The requirement of placement in close geographical proximity to the home of the child's parent(s) reinforces the emphasis of the legislation to keep children who are in placement in close contact with their families. Research supports the conclusion that frequent visitation has a direct and positive effect in aiding the return of children to their homes. The placement must be consistent with the best interest and special needs of the child.

(3) Periodic Review and Composition of Administrative Review Board.--The law as implemented by the proposed regulation requires that the State agency must conduct a case review no less frequently than once every six months for each child in foster care (Sec. 1356.40(d)(3)). This review may be conducted by a court or administrative review panel (Sec. 1356.40(d)(3)). The administrative review panel, constituted by the State agency to meet the obligation to conduct administrative reviews every six months, must include at least one person who is not responsible for direct case management or delivery of services to the family or child being reviewed (Sec. 1356.40(d)(4)(i)). The proposed regulation lists some of the possible sources for selecting this person(s) including the use of citizens qualified by experience, training or professional background (Sec. 1356.40(d)(4)(i)).

The administrative review is the point at which the principal parties to a foster care placement and in the child's life have the opportunity to discuss the case plan, progress made toward resolution of problems and achievement of goals, and to reach some understanding about the child's current and future status. It is of particular importance that the child be present and participate in the process, so that the child has immediate access to the information presented and can offer his or her own point of view, ask questions, and share in the planning for the future. Participation in this critical activity will relieve the anxiety of awaiting the decisions of others, increase the likelihood of a decision the child can understand, meets the child's unique and individual needs and allows for an experience in personal growth related to responsibility for his or her own life. Unless there are reasons of age or condition that would preclude attendance, the foster child should be a part of the administrative review. The regulation defines "children of an appropriate age" and "appropriate notice to the child" in order to provide guidelines within which States may determine when children should be involved in the events which vitally concern them. The definitions take into account the child's ability to understand the events without excessive anxiety or emotional stress (Sec. 1356.40(d)(1) (i) and (ii)). This assumes that caseworkers will be prepared to make a judgment about the child's ability to understand the proceedings and to participate in the process. Workers should also be able to assist and support any child in preparation for and participation in the administrative review and other activities related to planning and placement. As stated previously, the administrative review panel must include at least one person who is not directly responsible for the case management of, or the delivery of services to the child and parent(s) who are subjects of the review (Sec. 1356.40(d)(4)(i)). This individual, who is outside of the direct line of supervision may not be the

worker, that worker's supervisor, or other levels of supervision or administration who could directly influence the lower levels of decision-making regarding the placement of the child. This provision does not exclude these agency personnel from being a part of the review panel. However, at least one other member who is not in that direct line of influence and who can provide a point of view independent of those in line authority must be a member of the review panel.

The proposed regulation requires that persons involved in the administrative review receive instruction in their role and the purposes of their review (Sec. 1356.40(d)(4)(ii)). An administrative review panel may be comprised of a majority of persons who are not agency personnel. It is important that they understand their roles within the context of the purpose of the review, the agency's child welfare services system and the program objectives. An understanding and awareness of the rights and responsibilities of the public agency as well as the family, foster family, and child will help to ensure that their participation in the review process will promote the best interests of the child and family. The State Agency has responsibility for establishing its own review system, according to its own geographic needs and resources available. The proposed regulation does not prescribe how a State is to do this, as logical limitations on the time of agency staff and volunteers will adequately determine the number of panels that must be appointed to review the State agency's cases.

(4) Dispositional Hearings.--Theservices program.

The specificity in this regulation for each of the required procedures and protections provides clarity and gives direction to the States in knowing what is expected of them and gives direction to the Department in reviewing and approving requests from those States that apply for funds above \$141M under title IV-B, the transfer of funds from title IV-E to title IV-B or reimbursement for the costs of voluntary placements of children in foster care.

To claim its share of funds appropriated under title IV-B when available funds are greater than \$141M or to transfer money from IV-E to IV-B, a state must request the additional funds or transfer of funds and must certify that it has implemented the procedures and protections under Sec. 1357.30(a) of the proposed regulation.

To claim FFP in payments made for children voluntarily placed in foster care, the state must certify that it meets the provisions of Sec. 1356.50 (Voluntary Placements).

A State's eligibility for funds under this Part will be determined by review of State policies, procedures and practices and a sample review of case records.

H. Development of State Child Welfare Services Plan

Title IV-B requires that a State Child Welfare Services Plan be developed jointly by the Secretary and the State agency. For the past several years the State plans in effect were those developed in 1969. Since 1969, States have been submitting amendments to their plans (the last in 1975), and an annual budget that has been the basis for awarding the grants. In order to make the State plan and the planning process more relevant to the legislation the proposed guidelines

for State plan development were revised and published in the Federal Register on February 22, 1980 (45 FR 12049) have been revised and will be republished.

The joint planning format consists of the following sections:

1. Assurances--The Assurances constitute the State Agency's commitment to meet the basic requirements of the law and regulations. They are submitted only once, unless otherwise required by the Commissioner of ACYF.

2. Long Range Strategy--In the Long Range Strategy, the State develops the goals for establishing, strengthening, extending and otherwise improving its child welfare services program over a period of two or three years. The Strategy is jointly developed by the State agency and the Children's Bureau. It must be submitted by the State agency to the ACYF Regional Office every two or three years at the State's option. The Long Range Strategy consists of two discrete sections, the needs analysis and the long range goals and objectives. These two processes are interdependent. The needs analysis includes identification of needs and setting priorities among needs. Meeting the more important of these needs is a fundamental consideration in establishing the State's long range goals. The objectives are specific, measurable, short range activities necessary to achieve the goals.

3. Annual Operating Plan--The Annual Operating Plan is the yearly update of the State Child Welfare Services Plan. It will report the current status of the long range goals and objectives, indicate changed and new initiatives, and present an Annual Summary of Child Welfare Services.

4. Annual Budget Request--The Annual Budget Request is prepared by the State agency and submitted with the Annual Operating Plan. IV-B funds are disbursed quarterly based on this annual submission.

The guidelines and this regulation require that any Assurances which the State is not meeting must be included as goals and/or objectives in the Long Range Strategy section of the Child Welfare Services Plan. There are other Assurances which require the State to include certain information in its State plan, such as the description of services to be provided, geographic areas of availability, staff development and training plans and steps to be taken to improve and expand services. The intent of the joint planning process, however, is for the States and Federal Government to work together to analyze the needs of children, youth and families, to plan and ultimately to accomplish initiatives and activities which respond to these needs and which may transcend the minimal requirements of law, regulation and good practice. The Long Range Strategy is that part of the plan in which these initiatives and activities are developed and set forth in measurable goals and objectives.

The goals and objectives of the Long Range Strategy, therefore, belong in two categories:

1. those goals and objectives which address the Assurances as State Plan Requirements and whose implementation are essential to the continued compliance by the State with the law and regulations; and

2. goals and objectives designed to further expand, extend and strengthen the child welfare services program in the State but whose implementation, while a concern of the Children's Bureau, will not be monitored with a view to compliance. The proposed regulation includes a provision that expressly applies 45 CFR Part 74 termination procedures in a case of State noncompliance with the State plan requirements. It is anticipated that the Department will not invoke this authority unless the issue cannot be resolved through the joint planning process.

I. Payments to Indian Tribal Organizations

Pub. L. 96-272 gives the Secretary discretion to decide whether a program of direct grants to Indian tribal organizations should be established, which Indian tribal organizations should be funded directly, and under what circumstances direct payments should be made.

The Department believes that direct funding of Indian tribes will strengthen the tribal child welfare services programs consistent with the goals and requirements of Pub. L. 96-272. In the legislative history to Pub. L. 96-272 (Congressional Record, June 13, 1980, S. 6944), Senator Cranston indicated that direct funding was included in the legislation because jurisdictional and other problems sometimes caused Indian communities to be left out of social service programs funded through State agencies.

The proposed rule will permit tribes meeting the eligibility requirements to apply directly to the Federal government for their share of the IV-B funds (totaling approximately \$1.08 million for all tribes). Tribes not applying for direct grants may continue to apply to the State for their share of IV-B funds.

The Department believes that eligible Indian tribes should receive their proportionate share of the IV-B allocation, that the principle is important and is affirmed by the Indian Self-Determination Act (Pub. L. 93-638) and other Federal programs. The Department recognizes that many tribes may choose not to apply for direct funding for various reasons. For example, the tribe may consider the money available too small to warrant application; the tribe may have established a productive IV-B program relationship with the State; or the tribe may determine that fewer services are available under direct grants than under a State's regular IV-B program. The Department is also aware that direct funding may cause preliminary adjustments in the working relationships between States and tribes. (However, States will not be relieved of their responsibility under other Federal programs and under the Constitution to serve Indians in a non-discriminatory manner.) The decision to permit funding of eligible Indian tribes was reached after weighing these and other factors, and ultimately determining that Indian tribes should have the right to apply for their own IV-B funds.

In determining which Indian tribal organization will be eligible for direct funding, the Department decided to make the option of applying for direct funding available to those Indian tribal organizations which have contracted under Pub. L. 93-638 (Indian Self-Determination Act) for child welfare services provided under 25 U.S.C. 13 (25 CFR 20). This proposed regulation addresses the concern expressed about the lack of services to Indians by permitting direct funding to Indian tribal organizations that have established the need for child welfare services

and have taken advantage of the opportunity for direct management and operation of child welfare services. Under this approach, direct grants will be added to existing, ongoing Indian child welfare programs operated by the tribes. The IV-B funds will be linked to the major Indian Federal social services program, will support Indian self-determination, and will complement the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95-608). This is important since IV-B funds alone are insufficient for an Indian tribe to establish and operate a basic child welfare services program. Aggregating funds from different Federal sources to intensify their impact is consistent with the thrust of the IV-B law which promotes progressive, comprehensive, quality child welfare services to children and families.

The Department considered other options for determining tribal eligibility to receive direct grants. One option, relating eligibility to a minimum number of children in each tribe, was rejected as arbitrary and lacking in programmatic justification. A second option established eligibility criteria based on management capability and adherence to specific IV-B requirements. This option was rejected as duplicative of the developmental and capacity-building resources currently available through other programs such as title II of the Indian Child Welfare Act (Pub. L. 95-608) and the Native American Programs Act of 1974 (Pub. L. 93-644 as amended).

In determining the amount of direct funding that would be available to an Indian tribal organization eligible under this provision, in the interests of equity, the Secretary, will apply a formula similar to the one used to calculate State title IV-B allotments. This formula takes into consideration the Indian tribe's resident population under 21 and its per capita income. Because current per capita income figures for Indian tribes are not available and most Indian tribes have very low per capita income similar to the Territories, a maximum allotment percentage of 70.0 per centum, the same per centum used for the territorial IV-B allotments, has been used.

For the balance of a State's population, excluding tribal population, the per capita income is estimated to be slightly higher than the State's average per capita income for the entire population. This results in an allotment percentage of 46.7 per centum for the balance of the State excluding the Indian tribes. Using these allotment percentages to calculate an Indian tribal organization's allotment results in an amount which bears approximately the same ratio to the total State's IV-B allotment as the product of 1.5 and the proportion of the Indian tribe's resident population under 21 bears to the State's total population under 21.

This provision does not affect funding under titles IV-A, IV-E and XX of the Social Security Act. Other funding allocation options were considered and rejected as unsupportable by the intent of the law.

The Department has proposed to begin direct funding in the first quarter of Fiscal Year 1982. Implementation of this provision must follow publication of this proposed rule in final form. The 1982 FY date will give eligible tribes, who choose to apply, the necessary lead time to develop child welfare plans.

Each eligible Indian tribal organization or consortium applying for direct IV-B grants will be required to submit a child welfare services plan that has been developed jointly by Federal and Indian tribal organization representatives. Although the requirements in the jointly developed

plan for Indian tribal organizations will differ slightly from the requirements in the State plan, the tribal organization's plan will foster the improvements in services envisioned in, and consistent with, the requirements in the law.

The plan which can be in effect for two or three years must contain the following elements: assurances that the specific requirements of the regulations are met; a long range strategy which calls for a needs analysis and goals and objectives designed to meet unmet needs; an annual operating plan; and, an annual budget request.

If eligible Indian tribal organizations applying for direct funds wish to receive their share of additional IV-B funds above \$141 million, they must meet the requirements under Section 427 of the Act (Sec. 1357.30) which relate to children who have been in foster care under the responsibility of the tribe. The requirements under IV-B and additionally those related to eligibility for funds above \$141 million are discussed more fully under the IV-B section of this Supplemental Information.

J. Fiscal Requirements

This section of the regulation (Sec. 1357.50) sets forth the procedures for determining each State's allotment percentage and the process for reallocation. It details the change in FFP rate from the existing individual State rate (33 1/3 % to 66 2/3 %) to 75% for each State. The section on allowable costs gives numerous examples of how title IV-B funds may be spent, but the list is not inclusive. The regulation also lists the limitation on expenditures: FFP in expenditures for foster care maintenance, day care because of employment of the parent or adoption assistance may not exceed the FY 1979 State allotment.

The funds expended to meet the requirements of Section 427 (a) and (b) of the Act may definitely be charged to title IV-B. Some of them, such as case reviews for children on behalf of whom foster care payments are made under title IV-E, may be charged as IV-E administrative expenditures.

K. Provision for Advance Funding

Beginning in FY 1981, Congress is to approve the title IV-B appropriation one fiscal year in advance of the issuance of allocations to the States. Knowledge of the IV-B appropriation level a year in advance will provide States budget development lead time and will facilitate child welfare services planning.

This is an important provision because it is one of the two conditions necessary for the IV-E and IV-A foster care maintenance ceiling to go into effect. The other condition necessary to trigger this ceiling is that the IV-B appropriation equal or exceed the levels specified in Pub. L. 96-272; namely: \$163.55 million in FY 81; \$220 million in *86833 FY 82 and \$266 million in FY 83 and FY 84.

L. Maintenance of Effort

During each phase of its deliberations on HR 3434, Congress expressed concern that if the goals of the law are to be realized, funds must be available to pay for the increased responsibilities placed on the State social service systems by the new law. In addition to taking steps to protect current State investments in services to children, youth, and families, Congress clearly indicated that any increases in IV-B appropriations would go for service systems' improvements by prohibiting the fund's use for foster care maintenance payments, employment or training related day care, and adoption assistance payments. The bill passed by the House included Federal title XX expenditures in the maintenance of effort. Not wanting to limit how States spend their title XX funds, the Senate-House Conference Committee removed expenditures under title XX from the requirement. The House Ways and Means Committee Report No. 96-136 expressed the legislative intent of the maintenance of effort provision by stating that the maintenance of effort provision was to prevent the substitution of new Federal funds for existing State expenditures.

The proposed regulation effectively excludes all donated funds and any Federal title XX expenditures from the maintenance of effort provision. States obviously cannot control the receipt of donated funds and should not be accountable for their continuation. States will be expected to determine their FY 1979 expenditure level, certify their level and have supporting information available for review.

As a condition for claiming their share of the increased title IV-B appropriation above \$56.5 million, the proposed rule will require States to maintain expenditures of State and local appropriated funds for public child welfare services in fiscal year 1981 and years thereafter that are no lower than the total of those expenditures in fiscal year 1979. The maintenance of effort provision does not include expenditures for foster care maintenance payments, adoption assistance payments, and employment or work related day care. These exclusions comprised most of the child welfare service State expenditure in fiscal year 1979.

(Catalog of Federal Domestic Assistance Program No. 13.645 Child Welfare Services--State Grants)

Dated: December 22, 1980.

Cesar A. Perales,
Assistant Secretary for Human Development Services.

Approved: December 23, 1980.

Patricia Roberts Harris,
Secretary of Health and Human Services.

A. In 45 CFR, Chapter XIII, Subchapter F, Administration for Children, Youth and Families, Child Welfare Services; Foster Care Maintenance Assistance and Adoption Assistance, new Parts 1355, 1356 and 1357 are established to contain the rules for child welfare services, foster care maintenance assistance and adoption assistance programs as follows:

PART 1355--GENERAL

1355.10 Program scope.

1355.20 Definitions of terms.

PART 1356--REQUIREMENTS APPLICABLE TO TITLE IV-E

1356.10 Program scope.

1356.20 State plan requirements--general.

1356.30 Organization and administration.

1356.40 Foster Care Maintenance Program.

1356.50 Voluntary placements.

1356.60 Adoption Assistance Program.

1356.70 Plan format and approval.

1356.75 Withholding of funds for non-compliance with an approved
Title IV-E State Plan.

1356.80 Fiscal requirements (IV-E).

PART 1357--REQUIREMENTS APPLICABLE TO TITLE IV-B

357.10 Program scope and definitions.

357.20 State Child Welfare Services Plan requirements under Title IV-B.

357.30 Requirements for State eligibility for additional payments.

357.40 Development of the State's Child Welfare Services Plan.

357.45 Requirements for direct payments to Indian Tribal Organizations.

357.50 Fiscal requirements (IV-B).

Authority: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, 42 U.S.C. 670 et seq., 94 Stat. 501, 42 U.S.C. 620, 94 Stat. 516 et seq., Section 1102 of the Social Security Act, as amended, 42 U.S.C. 1302.

PART 1355--GENERAL s 1355.10 Scope.

(a) Scope. Parts 1355, 1356 and 1357 apply to State programs under titles IV-E and IV-B of the Social Security Act, as amended.

(b) Purpose. Parts 1355, 1356 and 1357 set forth the requirements which must be met to receive Federal financial participation under titles IV-E and IV-B of the Social Security Act, as amended.

(c) Background. The purpose of these programs and regulations are--

(c)(1) To make needed improvements in child welfare and social services programs;

(c)(2) To strengthen and improve the program of Federal support for foster care of needy and dependent children;

(c)(3) To establish a program of Federal support to encourage adoptions of children with "special needs".

(c)(4) To preserve, strengthen and rehabilitate family life in order to prevent disruption and unnecessary or precipitous removal of children from their homes;

(c)(5) To provide preventive services through early identification of problems and provision of supportive and supplemental services to families and individual children;

(c)(6) To protect and promote the welfare of handicapped children and all other vulnerable children;

(c)(7) To prevent or remedy neglect, abuse, exploitation, or delinquency of children and youth;

(c)(8) To provide children temporarily removed from their families with foster care that meets their particular needs, and to ensure the earliest possible return of children to their families;

(c)(9) To seek an adoptive homes for eligible children including those with special needs in foster care who cannot be returned to their own homes;

(c)(10) To provide for other permanent arrangements through legal guardianship, independent living, or planned, long-term foster care in those exceptional cases where it is appropriate;

(c)(11) To protect the welfare of children, while respecting parental rights and responsibility for custody and guardianship, and avoiding unnecessary disruption of family relationships; and

(c)(12) To promote effective and efficient management and delivery of services to children, youth and families. s 1355.20 Definition of terms.

Unless otherwise specified, the following terms as they appear in Parts 1355, 1356, and 1357 of this title are defined as follows--

(a) The Act means the Social Security Act, as amended.

(b) ACYF means the Administration for Children, Youth and Families, Office of Human Development Services, United States Department of Health and Human Services.

(c) ASHDS means the Assistant Secretary for Human Development Services, United States Department of Health and Human Services.

(d) Child care institution means a licensed or approved public residential child care facility that accommodates no more than 25 children, or a private, nonprofit residential child care facility that is licensed or approved, by the agency of the State responsible for *86834 licensing or approval of institutions of this type, (or with respect to child care institutions on Indian reservations, by an Indian Tribal Council as defined in Section 1396.1 of this title), as meeting the standards established for licensing. Group homes are included in the term if they are licensed or approved as meeting licensing standards by the State as a child care facility. The term shall not include correctional facilities, forestry camps, training schools or any other facility operated primarily for the detention, care, or treatment of children who have been found or are alleged to be juvenile delinquents.

(e) Commissioner means the Commissioner, Administration for Children, Youth and Families (ACYF), Office of Human Development Services, United States Department of Health and Human Services.

(f) DHHS means the United States Department of Health and Human Services.

(g) Family means persons related by blood, adoption or marriage, including siblings, cousins, aunts, uncles, grandparents and relatives in-law.

(h) Foster care means 24-hour, out-of-home care provided in a licensed or approved foster family home, group home, or child care institution.

(i) Foster family home means the home of an individual or family licensed or approved by the State licensing authority(ies) (or with respect to foster family homes on Indian reservations, by an Indian Tribal Council as defined in Section 1396.1 of this titles), that provides 24-hour out-of-home care for children.

The term may include group homes if they are licensed or approved by the State as foster homes.

(j) Initiation of court proceedings means the point at which a petition or other legal document seeking removal of a child from his or her home is filed with a court of competent jurisdiction.

(k) OHDS means the Office of Human Development Services, United States Department of Health and Human Services.

(l) Parents means biological or adoptive parents or legal guardians, as determined by applicable State law.

(m) Regional Administrator (RA) means the Regional Administrator of Human Development Services, United States Department of Health and Human Services.

(n) Regional Programs Director (RPD) means the Regional Program Director, Administration for Children, Youth and Families.

(o) State agency means the State agency administering or supervising the administration of the title IV-B and IV-E State plans.

(p) State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands.

(q) Secretary means the Secretary of Health and Human Services, United States Department of Health and Human Services.

PART 1356--REQUIREMENTS APPLICABLE TO TITLE IV-E s 1356.10 Program scope.

These regulations apply to State programs for foster care maintenance payments, adoption assistance payments and related administrative expenditures under title IV-E of the Act.

s 1356.20 State plan requirements--general.

A State plan for foster care and adoption assistance must provide that the requirements of the following sections are met:

Section 1356.30

Section 1356.40

Section 1356.50

Section 1356.60

Section 1356.70

Section 1356.80

s 1356.30 Organization and administration.

(a) Designation of a State Agency. The State plan shall provide for designation of a State agency by the Chief Executive Officer of the State or as otherwise provided by State law that will have authority to administer or supervise the administration of the State's program for foster care maintenance payments and adoption assistance.

(a)(1) The State agency designated to administer or supervise the administration of the foster care and adoption assistance program under title IV-E shall be the same agency that administers or supervises the administration of the State's title IV-B program.

(b) Plan in Effect Statewide. The State plan shall be in effect in all political subdivisions of the State and, if administered by the political subdivisions, shall be mandatory upon them.

(c) Monitoring and Evaluation. The State plan shall provide for monitoring and periodic evaluation of the implementation of the programs and activities conducted under title IV-E which shall include--

(c)(1) Annual review of valid statistically selected samples of case records of individual services recipients to ensure that the requirements of Section 1356.40 and 1356.50 are met as they apply in each case;

(c)(2) Review and evaluation of other Federal requirements under this Part no less frequently than once every three years and a description of the methods to be used and the schedule to be followed;

(c)(3) The reviews and evaluations shall be documented and supporting documentation shall be available for inspection and duplication by ACYF, DHHS, other Federal staff or the appropriate committees and staff of Congress.

(d) Coordination of Services.

(1) The State plan shall assure coordination of services between titles IV-A, IV-B, IV-D, IV-E, XIX and XX and any other appropriate Federal or State program to ensure maximum availability and utilization of resources that promote and enhance the welfare of children, youth, and families served under titles IV-B and IV-E.

(d)(2) The State plan shall provide for procedures that will ensure coordination of services including--

(d)(2)(i) An assessment of the relevance and appropriateness of other programs and services to the needs of children and their families;

(d)(2)(ii) Provision of information to local agencies on the relevance and availability of related programs and services;

(d)(2)(iii) Establishment of policies and procedures to facilitate referrals at the local level;

(d)(2)(iv) Periodic assessment of the effectiveness of the State agency's arrangements for coordination of program services and activities;

(e) Reporting Child Abuse and Neglect. The State plan shall provide that the State agency has procedures to ensure that employees and other public and private service providers of any State agency who have reason to believe that the health or well-being of a child is harmed or threatened with harm shall bring the condition to the attention of the appropriate court or law enforcement agency, as well as to the State agency mandated to receive reports. The procedures shall apply to all children whose care is funded in whole or in part under title IV-E or IV-B of the Act whose home or institution is unsuitable due to suspected neglect, abuse or exploitation as defined in Section 1340 of this title, Child Abuse and Neglect.

(f) Safeguarding Information. The State plan shall provide for the establishment and maintenance of methods to safeguard the use and disclosure of information with respect to persons applying for or receiving foster *86835 care maintenance and adoption assistance, or child welfare services. The provisions of Section 1391.3 of this title, Safeguarding Information for Social Services Programs, shall be applicable to programs and activities funded under title IV-E. For the purposes of this paragraph, Section 1391.3, of this title, shall also apply to disclosure of information for purposes directly related to the administration of State plans approved under title V of the Act.

(f)(1) Nothing contained in these regulations or the methods, provisions, or rules developed by the State shall be used to restrict the Federal government's access to statistical data which in the judgment of the Secretary, his/her designee, or the appropriate Committees of Congress, are necessary to the proper and efficient administration and supervision of these programs.

(f)(2) A State may establish standards which restrict disclosure of information other than statistical data to purposes more limited than those specified in these regulations, or which, in the case of adoption, may prevent disclosure entirely.

(g) Appeals, Fair Hearings and Grievances.

(1) The State plan shall provide for a system for fair hearings, appeals and grievances and the methods of informing applicants and recipients of their rights under the system.

(g)(2) The State's system for fair hearings and appeals shall provide a process under which applicants and recipients, or someone acting on their behalf, may appeal denial, reduction, or termination of service(s) or benefit(s) or the failure of the State agency to act on a request for services or benefits with reasonable promptness. For purpose of this paragraph, the provisions of Section 205.10 of this title, Hearings, shall apply.

(g)(3) There shall also be a system through which recipients of service(s) or benefit(s) may present grievances to the State agency about the operation of a service or benefit program.

(h) Program Manuals and Policy Issuances. The State plan shall provide that program manuals and other policy issuances that affect the public, including regulations governing client rights and responsibilities, are maintained in the State office and each local office for review, study or reproduction by individuals, upon request, on regular workdays during regular work hours.

(i) Reports and Evaluations. The State shall submit statistical reports and participate in such evaluations as the Secretary may require with respect to children for whom payments are made. The reports shall be in a form specified by the Secretary, or his/her designee. The State agency shall comply with any provisions established by the Secretary needed to ensure the correctness and verification of these reports.

(j) Audits. The State plan shall provide for audits of the programs assisted under title IV-E no less frequently than once every three years and conducted in accordance with standards and procedures as the Secretary may require.

(k) Personnel Standards. The State plan shall provide for use of methods relating to the establishment and maintenance of a personnel system on a merit basis in accordance with Federal standards and procedures as the Secretary may require.

(k)(1) General Requirements. The following DHHS regulations are applicable to programs funded under title IV-E--

45 CFR Part 16--DHHS Grant Appeals Process.

45 CFR Part 74--Administration of Grants.

45 CFR Part 80--Civil Rights.

45 CFR Part 81--Practice and Procedures for Hearings Under Part 80.

45 CFR Part 84--Non-discrimination on the Basis of Handicap.

45 CFR Part 91--Non-discrimination on the Basis of Age in DHHS Programs and Activities Receiving Federal Financial Assistance (when issued).

45 CFR 1396.53--Restriction on State's share in claiming FFP.

s 1356.40 Foster Care Maintenance Program.

(a) Application of Eligibility Criteria. The plan shall provide for foster care maintenance payments on behalf of a child who would meet the definition of Section 406(a) or 407 of the Act but for his or her removal from the home of a relative specified in Section 406(a) of the Act, if:

(1) The removal was the result of a judicial determination that the child's continued residence in the home would be contrary to his or her welfare; or

(2) The child's removal from the home was the result of a voluntary placement agreement entered into (after September 30, 1980 and before October 1, 1983) by the child's parent(s); and

(3) The child's placement and care are the responsibility of the State agency administering or supervising the administration of the State plan; or any other public agency with which the State agency administering or supervising the administration of the State plan approved as meeting the requirements of Section 1356.20 has made an agreement which is still in effect; and

(4) The child received assistance under the State plan approved under title IV-A (AFDC) of the Act in or for the month in which the voluntary agreement was entered into or judicial proceedings leading to the removal of the child from the home were initiated; or the child would have received assistance under AFDC in or for that month if an application had been made; or the child had been living with a relative specified in Section 406(a) of the Act within six months prior to the month the judicial proceedings were initiated or voluntary agreement entered into and would have received AFDC in or for that month if in that month he or she had been living with such relative and an application for AFDC had been made; and

(5) The child has been placed in a licensed or approved foster family home or a child care institution as a result of a voluntary placement agreement or judicial determination referred to in paragraphs (1) and (2) of this Section.

(6) Effective October 1, 1983, reasonable efforts have been made to prevent removal from the home and to make return possible.

(b) Foster Care Maintenance Payments.

(1) The State plan must provide--

(b)(i) a Statewide standard for foster care rates, expressed in money amounts, to be used in determining the amount of the foster care payment, and to be applied uniformly throughout the State; and

(b)(ii) the method used in determining the amount of the foster care payment; and

(b)(iii) for taking into consideration the income available to the child in determining the amount of the foster care maintenance payment.

(b)(iii)(2) Foster care maintenance payments shall be made only on behalf of an eligible child who is placed in a foster family home or a child care institution, whether the payments are made directly to the foster parent(s) or the child care institution or to a public or non-profit private child placement or child care agency.

(b)(iii)(3) Federal financial participation is available for allowable costs in foster care maintenance payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of child care institutions, payments shall also include the reasonable cost of administration and operation that are necessarily required to provide the items described in this paragraph.

*86836 (b)(iii)(4) For purposes of determining eligibility (initial and continuing) and the income and resources of the child, the State's procedures under the State's approved title IV-A plan shall apply.

(c) Eligibility for Other Services. For purposes of eligibility for services under title XIX and title XX, a child eligible for foster care maintenance payments under title IV-E shall be considered to be a dependent child as defined in Section 406 of the Act and shall be considered to be a recipient of AFDC under title IV-A of the Act.

(d) Case Review System. The State agency shall develop and implement a case review system that shall ensure, for each child receiving foster care maintenance payments under the State title IV-E plan, a case plan, periodic review of the child's status, and procedural safeguards regarding the rights of the child and the parent(s).

(d)(1) Definition of Terms.

(i) Appropriate Notice to the Child means written notice or person-to-person discussion that takes into account the child's ability to understand what is being conveyed without raising excessive anxiety or fear.

(ii) Child of Appropriate Age means that the child is able to understand the circumstances and implications of the situation in which he or she is involved and is able to participate in the decision or process without excessive anxiety or fear.

(ii)(iii) Close Proximity to Parent(s) Home means a placement nearest the home community or residence of the child's parent(s) or legal guardian(s) that is consistent with the child's best interest and special needs. Factors to be considered include ease with which the child, his or her parent(s) and family may visit each other and the availability of services the child may require.

(ii)(iv) Determining the Continuing Necessity and Appropriateness of Placement means an assessment of the conditions in the child's own home to determine whether the child should return home. If the review of the home indicates that continued foster care is required, the assessment shall also include a determination of whether the placement and the services provided are appropriate to the child's needs and whether the service goals in the case plan are still appropriate.

(ii)(v) Placement in the Least Restrictive Setting means the most family-like setting that can provide the environment and services needed to serve the child's best interests and special needs. In order of consideration, this means placement with relative(s), tribal member(s), foster family care, group home care and institutional care.

(ii)(v)(2) Case Plan.--

(ii)(v)(2)(i) The State agency shall develop written policies and appropriate procedures to be in effect throughout the State which will assure that children will be placed in the least restrictive setting available and in close proximity to the parent(s)' or family home, consistent with the best interests and special needs of the child. The State agency shall develop a Statewide procedure for approving out-of-state placements or placements beyond a specified distance from the child's home.

(ii)(v)(2)(ii) The case plan shall be a separate, identifiable written document which includes for each child a relevant history and diagnostic assessment, sets goals, and describes significant transactions involving the child, including, after October 1, 1983, the services which were offered or provided to prevent removal from the home prior to placement.

(ii)(v)(2)(iii) The case plan shall be developed within a 30 day period, starting at the time the agency assumes responsibility for providing services or placing the child, and shall include at a minimum--

(A) After October 1, 1983 a description of the services offered or provided which were intended to help the child remain with his family;

- (B) A description of the type of home or institution in which the child is to be placed;
- (C) A justification of appropriateness of placement that discusses the child's best interests and any special needs, and whether the placement is in the least restrictive setting available and in the closest proximity to the parent(s)' home; and
- (D) A statement of all requirements of the court at the time of judicial determination or recommendations of the administrative review panel and a discussion of how the agency responsible for the child's care will meet the requirements and recommendations.
- (E) An analysis of the circumstances that necessitated the placement and the improvements required for the child's return to his or her home.
- (F) A statement of the goals, developed in consultation with the child and his family, to be achieved during the period of placement, a description of the services to be provided to the child, the child's parent(s), and family, and a discussion of the appropriateness of these services in meeting the goals and the child's special needs, if any;
- (G) A statement of the agency's plan for assuring that the child receives proper care while in the foster home or institution including services to the foster parent(s) to facilitate and support the child's adjustment, and that services are provided to the parent(s), child and other appropriate family members in order to improve the conditions in the parent(s)' home;
- (H) An estimated date by which a decision will be made to return the child to his or her parent(s) or family, or to seek an alternative permanent placement including adoption;
- (I) A description of the extent to which the child, if of appropriate age, the parent(s) or other relatives participated in the development of the case plan.
- (J) Where long term foster care is determined to be the plan for the child's future, the responsible agency shall include a statement in the case plan of the special needs or circumstances that would not allow the child to be returned home or placed for adoption, and shall specify the efforts that were made to place the child with parent(s) or other family or in adoption.
- (K) All parties to the development of the case plan, including the child of appropriate age, his or her parent(s) or other relative(s), shall receive a copy of the plan, which will include, whenever possible, signature(s) indicating that they have read and understood the plan.
- (L) The case record shall contain a continuing, updated notation of the results of each court and administrative action or review affecting the child, and significant agency actions, services, or encounters relative to the case plan.
- (ii)(v)(3) Periodic Review.--The case review system shall provide for a review of the status of each child no less frequently than once every six months by a court, or by an administrative review. The periodic review shall include--

(ii)(v)(3)(i) A determination of the continuing necessity for and appropriateness of the child's placement;

(ii)(v)(3)(ii) A discussion of the extent to which all parties have complied with the case plan and achieved the goals described in the plan;

(ii)(v)(3)(iii) A summary of progress toward alleviating or mitigating the circumstances necessitating placement; and

(ii)(v)(3)(iv) A target date by which the child may be returned home or placed for adoption, legal guardianship or other permanent placement.

(ii)(v)(4) Administrative Review.--(ii)(v)(4)(i) When the periodic review is an administrative review it shall be conducted by a panel of appropriate persons, at least one of whom is not a part of the direct line of supervision in the delivery of services to the child or parent(s) being reviewed. The review panel may include agency staff, staff of other agencies, officers of the court and citizens qualified by *86837 experience, professional background or training.

(ii)(v)(4)(ii) Members of the administrative review panel shall receive instructions which will enable them to understand the review process and their roles as participants.

(ii)(v)(4)(iii) The administrative review shall be open to the participation of the parent(s) and the child, if of appropriate age, and may include the foster parents. The agency shall develop methods and procedures for assuring that written notice will be sent to the child's parent(s) two weeks prior to the review, notifying them of the date and location of the review, and the rights of parent(s) and the child to be accompanied by a representative of their choice.

(ii)(v)(4)(iv) Following the review, a written statement of the conclusions and recommendations shall be made available to all participants in the review, subject to agency safeguards relative to the confidentiality of information.

(ii)(v)(5) Dispositional Hearings.--(ii)(v)(5)(i) The case review system shall require a dispositional hearing for each child no later than 18 months after placement; and shall have additional dispositional hearing(s) annually thereafter, unless otherwise determined by a court of competent jurisdiction.

(ii)(v)(5)(ii) The dispositional hearing shall be held by a family, juvenile or other court of competent jurisdiction, including a tribal court, or by an administrative body appointed or approved by the court.

(ii)(v)(5)(iii) The hearing shall determine the child's future status, including whether--

(A) The child should be returned to his or her parent(s) or other family member(s);

(B) The child should be continued in foster care for a specified period;

(C) The child should be placed for adoption or legal guardianship; or

(D) The child, because of exceptional circumstances, should remain in foster care on a long term basis as a permanent plan or with a goal of independent living.

(ii)(v)(6) Procedural Safeguards for the Rights of Parents and Child.--

(ii)(v)(6)(i) Procedural safeguards shall be applied with respect to the rights of parent(s), family and child pertaining to--

(A) Removal of the child from the home of his or her parent(s) or other family members;

(B) Any change in the child's foster care placement; and

(C) Any determination affecting the visitation arrangements of the parent(s) or other family member(s).

(ii)(v)(6)(ii) Procedural safeguards shall include--

(A) Prior written notice to the parent(s) or relative(s) with whom the child is living of the agency's intent to petition the court to remove a child from the home of his or her parent(s) or other family members. Notice shall be provided two weeks in advance of the intended action and shall specify the nature of the hearing; how counsel may be obtained; the right to written findings from the hearings and how they may be obtained; and the right to appeal. The State shall have a method of verifying that the parent(s) or family received the notice. This prior notice requirement will apply to all court proceedings with regard to neglect, dependency or termination of parental rights unless the child's health or well-being would be endangered if prior notice were given.

(B) A method of ensuring that notice of the intent to petition the court to remove the child from the home or to terminate parental rights is given in the language of the family and is given orally if there are indications that the parent does not read.

(C) Written notice of any intended change in placement or visitation agreement. The notice shall be sent to the parent(s) or family two weeks in advance of the change, with a statement advising them of their right to object, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given;

(D) Procedures which shall ensure review of the parent(s) objection(s) and provide for a discussion of the proposed change with the parent(s); and

(E) Appropriate notice to the child of the intended change in placement or visitation arrangement, given two weeks in advance of the change, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given.

(e) Efforts to Prevent Removal from the Home and to Reunify Families.--By October 1, 1983 the State agency shall develop and implement policies and procedures to ensure that in each case reasonable efforts shall be made to provide the services described in Section 1357.30(b)(4) to prevent or eliminate the need for removal of a child from his or her own home and to provide the services described in Section 1357.30(a)(5) to make it possible for each child in foster care to return to his or her own home.

(f) Establishment of Specific Foster Care Goals.--

(f)(1) On or before October 1, 1982, the State shall enact a statute that provides specific goals for reducing the number of children receiving assistance under title IV-E who will be in foster care more than 24 months.

(f)(1)(i) goals shall be set for each fiscal year, beginning with the fiscal year that starts on October 1, 1983;

(f)(1)(ii) the goals shall be stated in absolute number of children in foster care or as a percentage of all children for whom assistance is provided during the year, and shall apply to children who at any time during the year will have been in foster care for a period in excess of 24 months.

(f)(2) The State Plan shall contain a description of the steps the State will take to achieve its foster care goals.

(g) Placements Outside the State.--If a child is in foster care outside the State, the State agency shall retain responsibility for foster care payments, and for services under titles XIX and XX of the Act, and for ensuring that protections under the case plan, case review and reunification procedures are provided, until--

(g)(1) The State agency has been relieved of its responsibility by court action; or

(g)(2) A voluntary agreement has expired or has been revoked; or

(g)(3) The date that the receiving state indicates that it will begin payments and services.

(h) Standards for Foster Care Homes and Child Care Institutions.--

(h)(1) The State shall establish and maintain Statewide standards for foster family homes and child care institutions receiving funds under titles IV-E and IV-B. These standards shall be reasonably in accord with recommended standards of national standard-setting organizations.

(h)(2) The State shall identify the particular national standards, or a combination of national standards, with which its standards are reasonably in accord.

(i) The standards for foster family homes established by the following national organizations shall be used in the development of State standards-

(A) American Public Welfare Association; or

(B) Child Welfare League of America.

(ii) The standards for child care institutions established by the following national organizations shall be used in the development of State standards--

(A) Child Welfare League of America;

(B) National Association of Homes for Children;

(C) Council on Accreditation Services for Families and Children, Inc.;

(D) Interstate Consortium on Residential Care for Children; or

(E) Joint Commission on Accreditation of Hospitals.

*86838 (ii)(3) The State standards shall be incorporated into State licensing or approval requirements for foster family homes private child care institutions, and for manuals for State-administered child care institutions as appropriate.

(ii)(4) Licensing requirements established for foster family homes shall cover, at a minimum, the following areas--

(ii)(4)(i) Character, physical and emotional health, and financial status, of the foster families;

(ii)(4)(ii) Maximum number of children per home, including the maximum number of children under the age of two;

(ii)(4)(iii) Participation of foster parent(s) in case planning when requested by the agency; and

(ii)(4)(iv) Participation of foster parent(s) in available training deemed appropriate by the agency.

(ii)(5) Licensing requirements established for child care institutions shall cover, at a minimum, the following areas--

(i) Organization, administration, and financial management;

(ii) Policies for admission, personnel, and operation;

(iii) Case recordkeeping;

(iv) Treatment plans;

(v) Services which provide for the child's developmental, social, and educational needs;

(vi) Policies and procedures for assisting permanency planning for children;

- (vii) Coordination of the child's treatment plan with services provided to family;
- (viii) Education and experience qualifications of administrative, social work and child care staff;
- (ix) Staff-child ratio;
- (x) Physical plant and equipment safety; and
- (xi) Health care.

(ii)(6) The State licensing or approval requirements shall provide for sanctions for failure to comply with the requirements by a licensed or approved facility.

(ii)(6)(i) Review of State Standards.--The State agency shall conduct a review of its standards for child care institutions and foster family homes no less frequently than once every three years to assure their continuing appropriateness to the child care setting and to the service needs of children.

(j) Review of Foster Care Maintenance Payments.--The amount of the State's payments for foster care maintenance payments shall be reviewed no less frequently than once every two years to ensure their continuing appropriateness. The review shall include an examination of the costs of maintaining a child in foster care and the criteria for setting rates for foster care maintenance payments.

(k) Public Participation in Review of State Standards and Payment.--The method of review of the State's standards for childcare institutions and foster family homes, and for review of the payment systems shall be developed by the State agency. However, there shall be public participation in the review so that, at a minimum, representatives of the following groups shall have an opportunity to participate--

- (k)(1) Advisory Boards;
- (k)(2) Foster parent(s);
- (k)(3) Child care institutions;
- (k)(4) Other public and private child welfare, human services and advocacy organizations; and
- (k)(5) Parent(s) of children for whom foster care has been, or is being, provided.

s 1356.50 Voluntary placements.

(a) Federal financial participation is available for allowable costs in expenditures made after September 30, 1980 and before October 1, 1983, when the requirements of this Section, Sections 1356.40(a) and 1357.30(b) are met for foster care maintenance payments and adoption assistance payments made for a dependent child removed from his or her home pursuant to a voluntary placement agreement.

(b) Federal financial participation is limited to expenditures made within the first 180 days of voluntary placement unless there has been a judicial determination by a court of competent

jurisdiction within the first 180 days of placement to the effect that the continued voluntary placement is in the best interests of the child.

(c) Definitions.--

(c)(1) Voluntary Placement means an out-of-home placement of a minor, by or with the participation of a State agency, after parent(s) of a minor have requested the assistance of the agency and signed a voluntary placement agreement.

(c)(2) Voluntary Placement Agreement means an executed written agreement, binding on all parties, between the State agency or another agency authorized to execute voluntary placement agreement(s) and the parent(s) identifies as necessary and appropriate to facilitate reunification of children and families such as respite care; parent education; self-help groups; provision of, or arrangements for, mental health, alcohol and drug abuse counseling, and vocational counseling or rehabilitation.

(a)(5)(i)(C) Written guidelines which stress the value of worker involvement with the family of the child early in the placement and the importance of maintaining and strengthening parent-child relationships through frequent and regular visits. The guidelines shall contain principles, policies and procedures which workers must follow--

- (1) In determining the appropriate reunification services for each family's situation;
- (2) In providing (for at least three months) supportive services following reunification; and
- (3) In determining that a child cannot be returned home.

(a)(5)(ii) The program of services designed to facilitate adoption or legal guardianship shall include--

(a)(5)(ii)(A) Legal services to free children for permanent placement, including voluntary relinquishment, termination of parental rights, or activities required by the State to establish legal guardianship; and

(a)(5)(ii)(B) Adoptive services, including recruitment and preparation of adoptive families, registration with adoption exchanges; identification of current foster families as appropriate adoptive parents for children in their care, counseling, and follow-up services to support the placement.

(a)(5)(ii)(C) Other activities identified by the agency as necessary and appropriate for permanent placement, such as training families to care for special needs children; training workers to meet legal requirements for court actions; post-adoption services, including parent support groups and other self-help groups; and

(a)(5)(ii)(D) Written guidelines which contain principles, policies and procedures which workers shall follow--

(1) In determining the most appropriate plan for the child who cannot return to his or her family, giving first consideration to adoption, followed by alternatives such as legal guardianship, or long-term foster care in exceptional circumstances; and

(2) In determining the appropriate procedures for placement, including preparation for placement, follow-up, and support services as needed for parent(s), legal guardian(s), foster parent(s), and children.

(a)(5)(iii) For each child under the care of the State, the case plan as required in Section 1356.40(d) of this title, Case Review System, shall include--

(a)(5)(iii)(1) Goals for reunification with families, or a discussion of factors considered in a determination that the child cannot be returned home and goals for alternative permanent placement; and

(a)(5)(iii)(2) Documentation of the caseworker's actions in application of the principles, policies, and procedures set forth in the State's guidelines as required in sub-paragraph

(a)(5)(i)(C) or (a)(5)(ii)(D) of this section, as appropriate.

(a)(5)(iv) A description of the program of services to reunify families or to achieve other permanent placement shall be submitted to the RFD for review and approval.

(a)(6) Determinations as to whether a State agency has met the requirements of paragraph (a) of this section shall be based upon the reports submitted and on-site surveys of implementation and shall be made prior to award of additional payments.

(b) If, for any two consecutive fiscal years after Fiscal Year 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than \$266,000,000, a State's allotment amount for any fiscal year after those two consecutive fiscal years shall be reduced to an amount equal to its allotment amount for Fiscal Year 1979 unless the following conditions have been met--

(b)(1) The State agency has completed an inventory of children in foster care and determination of the appropriateness of placement and the report of the type specified in paragraph (a)(3) of this section;

(b)(2) The State agency has implemented and is operating--

(b)(2)(i) A Statewide information system as described in paragraph (a)(4) of this section;

(b)(2)(ii) A case review system as described in Section 1356.40(d) of this title for all children receiving foster care under the supervision of the State; and

(b)(2)(iii) A program of services designed to reunify children with their parent(s) or families or to provide alternative permanent placement through adoption or legal guardianship as described in paragraph (a)(5) of this section.

(b)(3) The State agency has implemented and is operating a program of pre- placement preventive services, policies and procedures designed to help children remain with their families.

The State agency's program of pre- placement preventive services shall be available to all children and families in need and shall include--

(b)(3)(i) Twenty-four hour emergency caretaker, and homemaker services, day care, crisis counseling, individual and family counseling, emergency shelters, procedures and arrangements for access to available emergency financial assistance; and arrangements for the provision of temporary child care to provide respite to the family for a brief period, as part of a plan for preventing children's removal from home;

(b)(3)(ii) Other services which the agency identifies as necessary and appropriate such as home-based family services; self-help groups; provision of, or arrangements for, mental health, drug and alcohol abuse counseling, and vocational counseling or vocational rehabilitation;

(b)(3)(iii) Written guidelines which workers shall use for assessing the feasibility and appropriateness of services to support and improve family functioning or for determining when a child should be removed from a home and which specify the factors to be considered in making such a decision, including who within the agency shall be involved in the decision.

(b)(3)(iv) Written guidelines which specify the circumstances in which prior efforts to prevent placement would not be required, including situations when--

(b)(3)(iv)(A) The circumstances in the home present a substantial risk of harm to the child's welfare; or

(b)(3)(iv)(B) Preventive services have been offered but were refused by the family.

(b)(4) For each child under the care of the State, there shall be documentation in the case plan of caseworker efforts to prevent removal from home through the application of the principles, policies and procedures set forth in the State's guidelines as specified in paragraph (b)(3)(iii) and a statement as to why such efforts failed to prevent the child's removal or why these efforts were not appropriate.

(b)(5) A description of the program of pre-placement preventive services shall be submitted to the RPD for review and approval.

(b)(6) Determination as to whether a State agency has met the conditions of paragraph (b) of this section shall be based upon the reports submitted and onsite surveys of implementation.

(c) Amounts expended by the State for the purposes of complying with the requirements of paragraphs (a) and (b) of this section shall be conclusively presumed to have been expended for child welfare services.

s 1357.40 Development of the State's Child Welfare Services Plan.

(a) The State Child Welfare Services Plan shall contain the following four components--

(a)(1) Assurances.

(a)(1)(i) The Assurances are the State agency's commitment to meet the basic requirements of the law and the regulation as described in this part.

(a)(1)(ii) The Administrator of the State agency shall certify on a pre- printed form that the State child welfare services program meets these requirements. If the State's CWSP does not meet all of the requirements specified in the Assurances, the State shall develop goals for correcting the *86847 deficiencies. The goals shall be contained in the Long Range Strategy.

(a)(2) The Long Range Strategy.

(a)(2)(i) The Long Range Strategy shall express in measurable goals and objectives the steps the State will take as described in Section 1357.20(c)(4) to cover additional political subdivisions, reach additional children, and strengthen, extend and otherwise improve the scope and quality of child welfare services.

(a)(2)(ii) The Long Range Strategy shall include--

(a)(2)(ii)(A) An analysis of the deficiencies in existing services and discrepancies between the services needed and the services provided in the State as described in Section 1357.20(c)(3) and (3);

(a)(2)(ii)(B) Goals and objectives for the activities the State will undertake to make progress in child welfare services program development and improved services delivery as described in Section 1357.20(c)(3) during the plan period;

(a)(2)(ii)(C) The description of the State's staff development and training plan as required by Section 1357.20(c)(5).

(a)(2)(iii) The State agency shall establish the program period for its Long Range Strategy beginning with either the State, local or Federal government fiscal year and extend for at least two years but not more than three years.

(a)(2)(iv) The Long Range Strategy shall be jointly planned and developed with ACYF Regional Office staff.

(a)(3) The Annual Operating Plan. The Annual Operating Plan shall--

(a)(3)(i) Include a report of the State's progress in attaining the goals and objectives in the Long Range Strategy.

(a)(3)(ii) Include a summary of child welfare services to be provided by the State and local agencies for the current plan year with estimates of the anticipated child welfare services

expenditures and the number of clients, in a form and manner to be prescribed by the Commissioner.

(a)(3)(iii) Be jointly planned and developed with the ACYF Regional Office staff.

(a)(4) The Annual Budget Request.

(a)(4)(i) The Annual Budget Request is the State's request for the award of funds allotted under title IV-B which shall be based on the Federal Fiscal Year and signed by the State agency administrator and the director of the single organizational unit.

(a)(4)(ii) Funds will be disbursed quarterly on the basis of the Annual Budget Request without submission of additional forms.

(b) Plan Submittal and Review.

(b)(1) The Assurances, the Long Range Strategy, the Annual Operating Plan and the Annual Budget Request of the jointly developed Child Welfare Services Plan shall be submitted to the ACYF Regional Office 30 days before the effective date in the initial year of the plan.

(b)(2) The Assurances shall be submitted only once and upon review and acceptance by the ACYF Regional Program Director, shall remain continuously in effect for the purposes of the Act, unless amended.

(b)(3) In subsequent years, the Annual Operating Plan, the Annual Budget Request and the Long Range Strategy, when appropriate, shall be submitted 30 days before the effective date.

(b)(4) The State Child Welfare Services Plan shall be submitted to the Governor's office or his/her designated agency for review and comment in accordance with the Office of Management and Budget Circular A-95 prior to OHDS/ACYF acceptance.

(b)(5) State plans (new or amendments thereto) shall be submitted to the ACYF Regional Office in the format and within the period set in the implementing instructions.

(b)(6) The ACYF Regional Program Director shall review the State Plan material to determine whether the requirements of Part 1357 of this title are met and that the document accurately represents the agreements reached through the joint planning process. If the requirements are not met or the document does not accurately reflect joint planning, the plan shall be revised through further discussion and negotiation between the State agency and ACYF Regional staff.

(b)(7) If the final plan submitted by the State agency does not meet the requirements of Section 422(b) of the Act and Part 1357, FFP under title IV-B may be withheld, in whole or in part, after notice and opportunity for a hearing under 45 CFR Part 213.

(c) The title IV-B State plan provisions shall be amended when necessary to reflect new or revised Federal statutes or regulations and court decisions. After acceptance of the original plan,

all relevant changes shall be submitted to the ACYF Regional Program Director to determine whether the plan continues to meet federal requirements and policies.

(d) Review of State and Local Administration and Implementation. To provide a basis for determining that State agencies are adhering to federal requirements and to the substantive legal and administrative provisions of the State plan, ACYF will review State and local program administration and implementation. The review shall include analysis of procedures and policies of State and local agencies and examination of case records of individual services recipients and a review of supporting documentation.

(d)(1) FFP may be denied for a specific expenditure(s) not made in accordance with the provisions of the State plan.

(d)(2) A grant may be terminated, in whole or in part, under 45 CFR 74.115 when the State agency has materially failed to comply with the terms of the grant.

s 1357.45 Requirements for direct payments to Indian tribal organizations.

(a) Program Scope and Definitions.

(a)(1) Scope. Grants are available under title IV-B for allowable costs in expenditures by Indian tribal organizations or consortia in establishing, extending and strengthening child welfare services. To be eligible the Indian tribal organization shall have a child welfare services plan that has been developed jointly by the Indian tribal organization and the Secretary, or his or her designee, and that meets the requirements of these regulations.

(a)(2) Definition of Terms. Consortium means a group of tribal organizations which is authorized by the membership to act for them for the purpose of providing services under title IV-B. Indian tribal organization means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body.

Indian tribe means any tribe, band, nation, or other organized group or community of Indians [including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Pub. L. 92-203; 85 Stat. 688)] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians or is located on, or in proximity to a Federal or State reservation or rancheria.

(b) Child Welfare Services Plan Requirements Under Title IV-B.

(b)(1) To be eligible for a grant under title IV-B, an Indian tribal organization must have contracted pursuant to the Indian Self-Determination Act, (title I of Pub. L. 93-638) to provide those child welfare services formerly provided directly by the Secretary of the Interior (25 U.S.C. 13).

(b)(2) To be eligible for a grant under title IV-B, an Indian tribal organization must have a plan for child welfare services jointly planned and developed by the Secretary and the Indian tribal organization or consortium.

*86848 (b)(3) The Indian Tribal organization's plan shall--

(b)(3)(i) Describe the tribal organization, including:

(b)(3)(i)(A) The name of the tribal organization;

(b)(3)(i)(B) The legal and organizational relationship of the tribal organization to the Indians in the area to be served;

(b)(3)(i)(C) Legal responsibility for children who are in foster care on the reservation and for adoption. Jurisdiction in civil and criminal matters, existence or nonexistence of a tribal court and the type of court and codes, if any;

(b)(3)(i)(D) Standards for foster family and institutional care and day care;

(b)(3)(i)(E) Tribe's political subdivisions, if any;

(b)(3)(i)(F) Whether the tribal organization is controlled, sanctioned or chartered by the governing body of Indians to be served, and, if so, documentation of such fact;

(b)(3)(i)(G) Any limitations on authorities granted the tribal organization; and

(b)(3)(i)(H) The tribal resolution(s) authorizing it to apply for a grant under this part.

(b)(3)(ii) The Indian tribal organization's plan shall meet the requirements in Section 1357.20(b) and (c)(3) through (c)(14). Substitute "Indian tribe" for "State" and disregard references to title IV-E whenever they occur. The coordination requirement has been modified as follows:

Coordination of Services

(b)(3)(ii)(1) The Indian tribal organization's plan shall assure coordination of services with other Federal or tribal programs to ensure maximum availability and utilization of resources that promote and enhance the welfare of children, youth and families served under title IV-B.

(b)(3)(ii)(2) The Indian tribal organization's plan shall provide for procedures that will ensure coordination of services including--

(b)(3)(ii)(2)(i) An assessment of the relevance and appropriateness of other programs and services to the needs of children and their families;

(b)(3)(ii)(2)(ii) Periodic assessment of the effectiveness of the tribal organization's arrangements for coordination of program services and activities.

(c) Requirements for Eligibility for Additional Payments

(c)(1) For any fiscal year after FY 1979 in which a sum in excess of \$141,000,000 is appropriated under Section 420 of the Act, a tribe shall not be eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to \$141,000,000 unless the Indian tribal organization shall implement the requirements in Section 1357.30(a). Substitute "Indian tribe" for "State," "Indian tribal organization" for "State agency," and "tribal geographic area" for "Statewide" wherever they occur.

(c)(2) If, for any two consecutive fiscal years after Fiscal Year 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than \$266,000,000, a tribe's allotment amount for any fiscal year those two consecutive fiscal years shall be reduced to an amount equal to what the allotment amount would have been for Fiscal Year 1979 unless the Indian tribal organization shall implement the requirements in Section 1357.30(b) and (c). Substitute "Indian tribe" for "State," "Indian tribal organization" for "State agency," and "tribal geographic area" for "Statewide" wherever they occur.

(d) Development of Indian Tribal Organization's Child Welfare Services Plan

(d)(1) The Indian Tribal Organization shall meet the requirements of 1357.40 with the exception of 1357.40(b)(4). This requirement can be disregarded unless the tribe has a procedure for review similar to that described in the Office of Management and Budget Circular A-95. Substitute "Indian tribe" for "State" and "Indian tribal organization" for "State agency" wherever they occur.

(e) Grant Distribution Formula and Fiscal Requirements

(e)(1) Grants shall be made beginning in October, 1982 to eligible Indian tribal organizations in a State which has a Child Welfare Services Plan under title IV-B. Only one Indian tribal organization within an Indian reservation (service area) can be eligible for a grant. A consortium of Indian tribal organizations can be eligible for a grant.

(e)(2) The allotment for each tribe is determined as follows:

(e)(2)(i) The Indian tribe's (or consortium's) resident population under 21 is divided by the State's total population under 21;

(e)(2)(ii) The result of paragraph (i) is multiplied by 1.5;

(e)(2)(iii) The State's total IV-B allotment is multiplied by the result of paragraph (ii).

(e)(3) Funds for eligible Indian tribal organizations shall be paid from the allotment for the State in which the tribal organization is located.

(e)(4) If an eligible Indian tribal organization (or consortium) includes population from more than one State, a proportionate amount of the grant will be paid from each State's allotment.

(e)(5) In determining the Indian population under 21, Bureau of Census data will be used, or if unavailable, the most recent and reliable independent data available.

(e)(6) The Indian tribal organization shall adhere to the requirements in Section 1357.50 (c), (d), (f) and (g). Substitute "Indian tribe" for "State," "Indian tribal organization" for "State agency."

(e)(7) The Secretary need not make an award to any Indian tribal organization if it can be clearly demonstrated that the receipt of a grant would reduce services to Indian children and their families.

(e)(8) The receipt of title IV-B funds shall be in addition to and not a substitute for funds otherwise previously expended by the Indian tribal organization or consortium for child welfare services.

s 1357.50 Fiscal requirements (IV-B).

(a) Allotments to State.

(a)(1) The Commissioner shall publish the allotment percentage for each State between October 1 and November 30 of each even numbered year--

(a)(1)(i) Data used shall be the average per capita income of each State and the United States for the three most recent calendar years for which satisfactory data is available from the U.S. Department of Commerce.

(a)(1)(ii) The published allotment percentages shall be conclusive for each of the next two fiscal years which begin October 1st, following the publication.

(a)(2) The allotment of Federal funds for child welfare services for each State with an approved State plan, jointly developed by the State agency and the Commissioner, shall be calculated in the following manner--

v (a)(2)(i) Each State shall receive a "base" amount of \$70,000; plus

(a)(2)(ii) An amount which is computed as follows--

(A) For each State, multiply the State's population under age twenty-one (21) by that State's allotment percentage as published by the Commissioner;

(B) Add all the products computed under paragraph (A) for all the States together;

(C) Subtract the sum of the "base amount" from the total funds available;

(D) Divide the amount calculated under paragraph (C) by the sum of the products in paragraph (B); and

(E) Multiply the result in (D) by the product for each State in paragraph (A).

(a)(3) For the purposes of this section only, the term United States means the fifty States and the District of Columbia.

(a)(4) Payments made directly to an Indian Tribal Organization under Section 1357.45 are included within the allotment of the State within which the tribal organization is located.

(b) Reallotment.

(b)(1) When a State certifies to the Commissioner that funds available to that State under its title IV-B allotment will not be required for carrying out that *86849 State's plan, those funds shall be available for reallotment to another State.

(b)(2) The Commissioner may reallot available funds to another State when he or she determines that--

(b)(2)(i) The requesting State's plan requires funds in excess of the State's original allotment; and

(b)(2)(ii) The State will be able to obligate the additional funds during the current fiscal year.

(c) Allowable Costs.

FFP is available for allowable costs in expenditures under title IV-B to establish, extend and strengthen child welfare services and to effectively administer, evaluate and monitor the State plan. These expenditures include, but are not limited to:

(1) In-home services that support or supplement parental care of children to avoid the necessity of out-of-home placement, such as services, respite care, day care, after care and counseling which meet standards set by the State agency;

(2) Professional education for appropriate State agency staff and for inservice training of all State agency staff providing or regulating child welfare services; for professional staff attending an educational facility, the provisions of 45 CFR 35.63 and 235.64 shall apply;

(3) Training of other providers of services, under contract or other agreement with the State agency, such as foster parents, child care institution staff and day care personnel;

(4) State and local agency staff attendance at meetings pertinent to the development and implementation of child welfare services in the State and local communities.

(5) State and local advisory committees for day care services, child welfare advisory committees of the State or local agency, and foster care review boards appointed by and responsible to the State or local agency, including expenses of members to attend meetings;

(6) Supervision and related costs of the use of volunteers;

- (7) State and local agency membership in organizations related to child welfare services;
- (8) Foster Care Maintenance payments; made on behalf of children placed in foster family homes, group homes or child care institutions which are licensed or are approved as meeting the standards for licensing or approval specified in Section 1356.40(h);
- (9) Services, including transportation, to assist in the reunification of children with their families when out-of-home care has been necessary;
- (10) Adoption services, before and after finalization of the adoption and the non-recurring costs of adoption proceedings;
- (11) Non-recurring costs of establishing a special needs child or children in the home of adoptive parent(s), including the costs of special furniture for a handicapped child or additional beds for a large sibling group.
- (12) Day care services for children in out-of-home care in family day care homes, groups homes, group day care homes and day care centers, when the State or local agency has accepted responsibility for the provision of the care for these children and the caretaker is licensed or approved as meeting the requirements for licensing or approval;
- (13) Care for children in emergency care facilities which meet standards set by the State agency;
- (14) Counselling and other appropriate services to youth, including status offenders and their families in crisis;
- (15) Care of unmarried mothers and their children in maternity homes and centers which meet the standards set by the agency;
- (16) Development of the State's child welfare services through activities which show promise of advancing the State's child welfare services and are conducted by public or private non-profit institutions of higher education, other public or voluntary agencies, or organizations that engage in research or demonstration of child welfare activities;
- (17) Case management, including monitoring, evaluation, reporting and the costs of compiling statistical report(s) required by these regulations;
- (18) Independent living arrangements for children under State agency supervision and guardianship;
- (19) Care for runaway children who are not yet age 18, in facilities which meet standards set by the State agency and transportation for returning these children (including, if necessary transportation of an attendant) to their own communities when their parents or other persons, agencies or institutions legally responsible for support of these children cannot assume that responsibility; and

(20) Costs for the inventory, Statewide information system, case review system, the service program designed to prevent placement in foster care, and the service program designed to return children to their families or place them for adoption or legal guardianship, as described in Section 1357.30.

(d) Restrictions on the Use of Title IV-B Funds.

(d)(1) The total of Federal funds used for the following purposes under title IV-B (whether paid under Section 420 of the Act or transferred from unused title IV-E or IV-A Foster Care allotments) may not exceed an amount equal to the FY 1979 Federal payment under title IV-B:

(d)(1)(i) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living.

(d)(1)(ii) Foster care maintenance payments.

(d)(1)(iii) Adoption assistance payments.

(d)(2) Notwithstanding paragraph (1), State expenditures required to match the title IV-B allotment may include foster care maintenance expenditures in any amount.

(d)(3) Funds awarded under title IV-B may not be used for the costs, purchase, construction, or other capital costs of child care facilities.

(e) Federal Financial Participation. Federal financial participation is available at the rate of 75% for allowable costs in expenditures made under this Part.

(f) Payments to States.

The procedures in the following sections of 45 CFR shall apply to grants made under the provisions of these regulations and title IV-B of the Act--

(1) Section 201.5, Grants (except that ACYF shall supply appropriate forms and instructions)

(2) Section 201.6, Withholding/Reduction of FFP

(3) Section 201.7, Judicial Review

(4) Section 201.15, Deferral

(5) Section 201.66, Repayment of Federal funds in installments

(g) Apportionment of Costs.

(g)(1) General.

Federal financial participation is available only if costs are incurred in accordance with the grants administration requirements of Part 74 of this title and where appropriate, allocated in accordance with the provisions of Section 205.150 of this title, Cost Allocation.

(g)(1)(i) Non-public third party in-kind contributions may not be used to meet the requirements of the non-Federal share of the costs of programs funded under this Part 1357.

(g)(1)(ii) Subpart I, Financial Reporting Requirements, of Part 74 of this title does not apply. ACYF will provide forms and instructions for financial reporting.

(h) Maintenance of Effort.

(h)(1) A State may not receive an amount of Federal funds under title IV-B greater than the amount of Federal funds received under title IV-B in Federal fiscal year 1979 unless the State's expenditure of State and local appropriated funds for public child *86850 welfare services (as defined in 1357.10(b)(1)) is equal to or greater than the total of that State's expenditure from State and local appropriated funds for similar covered services and programs in Federal fiscal year 1979.

(h)(2) In computing a State's expenditure in Federal FY 79 and any subsequent fiscal year expenditure level under the Act and these regulations, the following costs may not be included--

(i) Expenditures and costs for child day care necessary to support the employment of a parent or other relative;

(ii) Foster care maintenance payments; and

(ii)(iii) Adoption assistance payments.

(ii)(iii)(3) A State applying for an amount of Federal funds under title IV-B greater than the amount of title IV-B funds received by that State in Federal fiscal year 1979 must certify:

(ii)(iii)(3)(i) The amount of their expenditure in Federal fiscal year 1979 for child welfare services as described in paragraphs (1) and (2) of this section, and

(ii)(iii)(3)(ii) The amount of State and local funds that have been appropriated and are available for child welfare services as described in paragraph (i) above for the Federal fiscal year for which application for additional funds is being made.

Records verifying the required certification shall be maintained by the State and made available to the Secretary as necessary to confirm compliance with this section.