

<b>ACF</b>  <b>Administration</b>  <b>for Children</b>  <b>and Families</b>	<b>U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES</b> <b>Office of the Assistant Secretary</b>	
	<b>1. Log No:</b> ACYF-PR-82-01	<b>2. Issuance Date:</b> August 2, 1982
	<b>3. Originating Office:</b> Children's Bureau	
	<b>4. Key Words:</b> Foster Care; Adoption Assistance, Child Welfare Services	

P.L. 96-272

# **PROPOSED PROGRAM REGULATION**

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

**SUBJECT:** SECOND NOTICE OF PROPOSED RULEMAKING (NPRM) - P.L. 96-272, Program Regulations

**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.

**ATTACHMENT:** Attached is a copy of the Second Notice of Proposed Rulemaking published in the Federal Register July 15, 1982. (Part III)

**DISCUSSION:** The attached Notice of Proposed Rulemaking (NPRM) is the second proposal to implement the programmatic provisions of P.L. 96-272, the Adoption Assistance and Child Welfare Act of 1980. This second NPRM on the programmatic provisions replaces the previous version published in the Federal Register December 31, 1980.

Written public comments from State agencies and other interested persons will be accepted through September 13, 1982. Any questions or comments should be addressed to Frank Ferro, Associate Chief, Children's Bureau, ACYF. Fiscal regulations implementing the fiscal provisions of P.L. 96-272, originally published on December 31, 1980 as interim final rules, have been published in the Federal Register on July 15, 1982 as final rules effective August 16, 1982. These rules will be sent under separate cover.

**COMMENT PERIOD:** Comments on the NPRM may be submitted on or before September 13, 1982.

## **INQUIRIES**

**TO:** Frank Ferro  
Associate Chief  
Children's Bureau, ACYF  
P.O. Box 1182  
Washington, D.C. 20013  
(202) 755-7418

Clarence E. Hodges  
Commissioner

## **PROPOSED RULES**

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Office of Human Development Services

45 CFR Parts 1355, 1356, 1357, and 1392

Foster Care Maintenance Assistance, Adoption Assistance, and Child Welfare Services

Thursday, July 15, 1982

\*30932 AGENCY: Office of Human Development Services (OHDS), HHS.

**ACTION:** Second Notice of Proposed Rulemaking

**SUMMARY:** The Department is issuing this notice of proposed rulemaking to govern the new title IV-E program, Federal Payments for Foster Care and Adoption Assistance, and to govern 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. This proposed regulation would provide the basic programmatic requirements under titles IV-E and IV-B. The earlier version of this notice of proposed rulemaking, published on December 31, 1980, is herewith withdrawn. The Department is also concurrently publishing elsewhere in this issue the fiscal requirements for titles IV-E and IV-B as a final regulation.

**DATES:** Comments must be received on or before September 13, 1982.

**ADDRESS:** Send written comments to Frank Ferro, Associate Chief, Children's Bureau, P.O. Box 1182, Washington, D.C. 20013.

**FOR FURTHER INFORMATION CONTACT:**

Frank Ferro,  
Associate Chief,  
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(202) 755-7418.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Child Welfare Services Program has been a part of the Social Security Act since the Act's inception. In 1968 Congress transferred the program to title IV, Part B of the Act (Sec. 420-425 of the Act). Historically, title IV-B has provided Federal grants to States to establish, extend and strengthen child welfare services. Under this program, services are available to all children, including the handicapped, homeless, neglected and dependent.

The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272) was enacted on June 17, 1980. In addition to amending title IV-B, Pub. L. 96-272 establishes a new program, the title IV-E program, Federal Payments for Foster Care and Adoption Assistance, which will replace by October 1, 1982, the current title IV-A foster care program in the States. The law creates links between the two programs with numerous program and fiscal incentives.

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 dependent and neglected children, youth and families had become a receiving or holding system for children living away from parents. Congress envisioned in the Act a system that also helps families remain together by assisting parents in carrying out their roles and responsibilities and provides alternative permanent placement for those children who cannot return to their own homes. Studies showed that thousands of children were 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. Other findings included:

1/8 The number of children in foster care had increased during the last decade while the length of stay in substitute care has also increased.

1/8 Caseloads are large in the social service field and case workers are often unable to provide full and appropriate services to children in care and to their families.

1/8 Many children in foster care could have been cared for in their own homes if homemaker, day care or other services had been available.

1/8 Home based services and adoptive care are the most cost beneficial forms of care.

## II. **Content and Purpose of Pub. L. 96-272**

The passage and enactment into law of Pub. L. 96-272 demonstrates a Congressional concern and commitment to provide financial assistance and technical consultation to States to make changes in their child welfare services systems. To reduce the number of children entering foster care, the law places emphasis on 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 children funded under the title IV-E program who remain 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 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 periodically 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. Finally, for those children who cannot be reunited with their families and who have "special needs," 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; and

Permanency through reunification with parents or through adoption or other permanency planning.

### Title IV-E Program

The law creates a new program under title IV-E of the Social Security Act. The IV-E program closely parallels the foster care program currently provided under title IV-A, the Aid to Families with Dependent Children program. In addition, the title IV-E program also makes available Federal financial participation (FFP) in adoption assistance payments for children with "special needs." Federal matching funds for adoption assistance payments are not available under title IV-A. It also provides, for the first time, Federal matching funds for children voluntarily placed in foster care. Beginning October 1, 1982, the title IV-E program will replace the IV-A foster care program. 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 title IV-A program, the State must meet the title IV-A requirements as amended by Pub. L. 96-272. Although the Federal agency responsibility for the administration of the title IV-A foster care program is now with the Office of Human Development Services, the essential application and financial management procedures for title IV-A will not be altered.

For purposes of briefly summarizing the title IV-E provisions of Pub. L. 96- 272, the law may be divided into the \*30933 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 section 471 of the Act include many requirements applicable to AFDC State plans under title IV-A such as a system of fair hearings and provisions to restrict the use or disclosure of information concerning individuals assisted under the State plan.

Sections 471(a)(16) and 475 of the Act strengthen 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 in the child's case plan that reasonable efforts had been made to prevent removal of the child from his home in order for the child to receive title IV-E assistance payments (sec. 472(a)(1) of the Act).

**Foster Care Maintenance Payments Program:** Title IV-E authorizes FFP in foster care maintenance 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 also includes children in public child care institutions which accommodate no more than 25 children. When this law was written, it included the requirement that 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. This meant that such children would be eligible for Medicaid (title XIX) and social services under the title XX program then in effect (sec. 472(d) of the Act). Title XX was amended in August 1981 by Pub. L. 97-35, the Omnibus Budget Reconciliation Act, to create a new social services block grant program (SSBG). Eligibility for social services under the SSBG is at State option.

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 1982 to 1984, if the appropriations for title IV-B child welfare services are made by Congress in advance of the fiscal year and if they equal or exceed 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 title IV-E foster care allotment ceiling, which are not needed for this program's foster care maintenance expenditures, may be transferred to the child welfare services program under title IV-B (at a 75 percent matching rate), under certain conditions (Sec. 474(c) of the Act). Section 474(c)(4)(a) of the Act provides that no State may increase its title IV-B funds by a transfer of title IV-E or IV-A funds beyond its

share of \$141M until it has implemented the protections required by section 427(a) of the Act. Section 102(a)(2)(B) of Pub. L. 96-272 makes the same requirement applicable to transfers of funds under title IV-A. This new Notice of Proposed Rulemaking (NPRM) clarifies that the transfer requirements are different when the "trigger" amounts in fiscal years 1981-84 are not reached. The statute applies the ceiling and transfer provisions equally to foster care under title IV-E and IV-A. 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 are 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, 1982) for foster care maintenance payments with respect to an eligible 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.

**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). FFP in adoption assistance payments is available for those eligible children adopted on or after June 17, 1980 if a valid adoption assistance agreement has been made. However, for those children adopted on or after June 17, 1980 but prior to the effective date of the State's title IV-E plan, FFP for these payments will be available only from the effective date of the State 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 and is defined in section 475(3) of the Act. Children receiving adoption assistance payments under title IV-E are considered to be receiving AFDC and therefore eligible for Medicaid (as categorically needy) (sec. 473(b) of the Act). They may also be eligible for social services under the SSBG as determined by the State. FFP for adoption assistance payments is available for children under age 18 or age 21 under certain circumstances) on an open-ended entitlement basis and is based on the Medicaid matching formula (sec. 474(a)(2) of the Act).

#### Title IV-B Child Welfare Services Program

Pub. L. 96-272 also amended title IV-B of the Act to consolidate, restate and in some instances modify the existing Child Welfare Services program. Historically, title IV-B

has provided Federal grants to establish, extend and strengthen child welfare services in the States. Grants are made to State agencies on the basis of a plan developed jointly by the Administration for Children, Youth and Families' (ACYF) Children's Bureau and the State agency. The amended Act reaffirms this partnership between the Federal and State governments for the provision of child welfare services by the State.

Under title IV-B, formula grants are allocated to the States for providing and improving child welfare services to children and families in need of services (sec. 1357.20(b)). There are no income based eligibility requirements under title IV-B. In recent years States have used approximately 70 to 80% of title IV-B funds for foster care maintenance payments. Other services which have been provided include adoption, day care and protective services to abused and neglected children.

\*30934 The Act contains sections which include a list of the title IV-B State plan requirements, the method of computing and making and reallocating IV-B payments, the requirements for a State to be eligible for its proportionate share of payments above 141 million dollars, and language permitting the Department to make grants directly to Indian tribal organizations. The last two sections are significant new additions to title IV-B and will be discussed more extensively later in this preamble.

### **III. Notice of Proposed Rulemaking, December 31, 1980**

Following publication of the Notice of Proposed Rulemaking (NPRM) in the Federal Register on December 31, 1980 (45 FR 86817-86850), the Department mailed 25,000 copies of that NPRM to individuals, organizations and public agencies. In January, 1981, hearings were held in each of the ten HHS regions. In addition to the presentation of formal testimony, these hearings included sessions of open discussion between the public and Federal staff. Verbatim transcripts were taken of all testimony and discussion at the ten public regional meetings and later analyzed.

During the 75-day comment period after publication of the first NPRM, approximately 450 comments in addition to the testimony and discussion from the regional hearings were received. These comments varied greatly in both length and detail. Although there were differing views concerning the proposed regulation, there was broad based support for the law and its proposed reforms.

The commenters included public interest organizations, professional groups, State agencies, municipal agencies, universities and individual respondents. Some written comments were very brief and general; others were detailed, section-by-section analyses of the regulations. Many respondents suggested specific regulatory language for their recommended changes. Many comments supported detailed requirements and explicit regulatory expectations as essential to bring about the changes envisioned in the law. Most advocacy organizations that commented on costs believed that the increased authorization in the law provided States with adequate funds to implement the regulation. Some noted the cost savings contemplated in the law and the regulation would result from reducing the number of children placed in extended institutional care and the cost

benefits of permanency planning (reunification with families and adoption) when compared with long-term foster care placement.

Other respondents, including twenty-nine State agencies that either administer directly or supervise the administration of child welfare service programs, prepared detailed analyses of the NPRM offering support for some sections and detailed criticism of other sections. In general, however, State agencies objected to the numerous specific requirements in the December 31, 1980 NPRM.

States recommended regulatory language that adhered closely to the law, increased State flexibility and programmatic discretion, and limited the Federal role to those activities specifically provided for in the law. State agencies were also concerned that specific requirements would impose costs that would add additional pressure to already overextended State budgets.

#### **IV. Approach to Writing the Second Notice of Proposed Rulemaking**

In reviewing the initial NPRM, we concluded that substantial revisions are appropriate. In addition to certain deficiencies noted in comments, the proposed regulations contained a number of provisions that, we now believe, would unduly limit State flexibility or impose unjustifiable costs. The proposal has therefore been thoroughly evaluated and revised and inappropriate provisions have been eliminated.

Given the magnitude of these changes and expressed public interest in this regulation, the Department is withdrawing the NPRM published on December 31, 1980, and is proposing these revised rules. The Department believes it beneficial and essential to obtain new comment on this revised proposal before publishing a final regulation. The comment period will extend for 60 days. Comments submitted in response to the withdrawn NPRM will not be considered in the development of the final rule. The revised NPRM references the law wherever possible, deletes most language in the NPRM that repeated statutory requirements, and removes many of the detailed and specific requirements contained in the NPRM. The Department has added regulatory requirements only in those areas where clarification or specificity is needed to carry out the intent of the law. In this effort the Department has been aided by the wording of the law which in many sections is precise, explicit and unusually detailed. We believe these stated requirements clearly reflect Congressional intent and make further clarification or regulation unnecessary. In other areas, statutory language suggests Congress chose to leave discretion to the Secretary. The Secretary has used this discretion to permit States flexibility in implementing these sections of the statute. In writing this proposed regulation, HHS has also made every effort to be sensitive to State practice by incorporating State recommendations wherever possible. Overall our purpose has been to prepare a regulation that produces the desired changes while adhering closely to the law and allowing flexibility in the means of producing the changes required by the law.

#### **V. Section by Section Discussion of the NPRM**



- a. Part 1355--This Part applies to both the title IV-E and the IV-B programs. In this section we are proposing two definitions that clarify the law. We are defining the term "detention" in the context of the definition of "child care institution" in section 472(c)(2) of the Act to differentiate among child caring institutions eligible for foster care maintenance payments. Our purpose is to make clear that detention facilities are not eligible child caring institutions under this program.

We are defining "foster family home" (sec. 472(c)(1) of the Act) to make clear that foster homes licensed or approved by the responsible tribal authority(ies) meet the definition of a foster family home.

The passage of the Social Services Block Grant (SSBG) necessitates a clarification of the single State agency requirement under title IV-B. Prior to the passage of the SSBG legislation, the State agency designated to administer the title XX program was required to administer (or supervise the administration of) the title IV-B program. The SSBG does not require the designation of a single State agency to administer the block grant. This second NPRM, therefore, leaves to the State the decision on program organization regarding which State agency(ies) shall administer the programs under title IV-E, IV-B and SSBG. It should be noted, however, that the statutory requirement of a single State agency to operate both the title IV-E and title IV-B programs was not affected by the SSBG legislation and remains unchanged (sec. 471(a)(2) of the Act and s 1355.21(a)).

In s 1355.21(b), the Department has included the regulatory provision to implement section 471(a)(8). In addition to the confidentiality requirements of this section, the Department has concluded that it is necessary to provide for restricted access to the records of title \*30935 IV-B service recipients. It is clear from the intent of Pub. L. 96-272 that the programs under titles IV-E and IV-B are to be closely related and interactive. Therefore, it would defeat the intent of the confidentiality provisions of title IV-E, which is the maintenance title, if sensitive information were inappropriately accessible through the files of the complementary service title, title IV-B. Hence, the Department has chosen to impose the confidentiality requirement on title IV-B as well as title IV-E.

- b. Part 1356-Requirements applicable to title IV-E.

Section 471 of the Act and s 1356.20 of this proposed regulation contain the statutory and regulatory provisions regarding State plan requirements for title IV-E. Passage of the SSBG made two additional changes affecting the title IV-E program. Section 472(d) of the Act (sec. 472(h), as amended) extends title XIX and title XX eligibility to title IV-E eligible children. However, the SSBG which replaced the former title XX program grants to each State the authority to determine both the services to be provided and the eligibility criteria for service recipients. Since section 472(h) deems children receiving title IV-E foster care payments to be children receiving AFDC payments, title IV-E children can

receive social services only if States choose to provide these services to AFDC children or in some other way extend eligibility to these children (e.g., by explicitly covering children receiving title IV-E payments). Given this change, foster care recipients maintain their title XIX eligibility, as section 472(h) of the Act mandates, but the States have discretion to determine what services, if any, will be available under the SSBG.

Pub. L. 97-35 (SSBG) also changed section 471(a)(10) of the Act. Section 2353(s) rescinded the Federal Day Care Requirements and required that day care provided with Federal matching funds must meet applicable State and local rather than Federal standards. However, an erroneous cross-reference in section 2353(r) provides that the standards in effect in the State with respect to child day care services under title XX will apply to foster family homes and child care institutions receiving title IV-B or IV-E funds. The Department has offered a technical amendment which will delete this erroneous cross-reference and provide that States must designate a State authority responsible for establishing and maintaining standards for the safety and health of children in foster homes and institutions. This will carry out the intent of the original cross-reference to section 2003(d)(1)(F) of the former title XX program.

Section 1356.20(c) provides that the title IV-E State plans shall be submitted consistent with the procedures contained in 45 CFR 201.3. The content of the State plan must meet the requirements of section 471(a) of the Act and may be submitted in a format determined by the State.

Consistent with the Department's effort to reduce the paperwork and reporting burden of these regulations, States may submit their original title IV-E State plan document once and amend it as needed or required. The State plan need not be submitted annually. Only the changes or amendments need be submitted.

In s 1356.21, we have set forth the additional foster care maintenance requirements that States have to meet in implementing the State plan. Consistent with our new approach to writing this regulation, we have not repeated the requirements of the law and have proposed provisions only in those areas where we believe clarification would be beneficial to States or individuals or where regulation is necessary to carry out the intent of the law.

Section 1356.21 (b) and (c) propose additional requirements to implement the case review system. This section proposes that the initial case plan covering all of the essential elements be developed within a reasonable time period, to be established by the State, but in no event longer than 60 days, starting at the time the agency assumes responsibility for providing services or placing the child. The Department received comments recommending both specific and open-ended time periods. We believe this provision will permit States the needed flexibility to develop a responsible time period to attend to the child's needs and provide adequate time for the agency and the family to assess the situation, set goals,

identify needed services, and estimate a date when reunification is to take place or an alternate plan undertaken. In addition, this provision is consistent with the statutorily mandated six month periodic reviews. The first and subsequent reviews will primarily focus on the needs of the child and family and the services provided. The 60 day limit is designed to ensure that each child will have a case plan and that the plan will be the standard against which the review will measure progress and the need for changes. The NPRM through a cross reference to section 475(1) of the Act also proposes that the case plan include a discussion of the appropriateness of the services that have been provided to the child under the case plan. This information will provide accountability for the child's movement within the foster care system and for the outcome of the services provided. Moreover, the Department is requiring the State agency to develop policy materials and instructions for use by State and local staff in making the decisions about the appropriateness and necessity for the foster care placement of the child. This provision is intended to ensure that the placement decision-making process, so vital to the child's future, is objectively and consistently applied and responsive to the child's needs.

With regard to the dispositional hearing (s 1356.21(d)), the initial hearing must take place no later than eighteen months after the original placement. The NPRM proposes that subsequent dispositional hearings be held within a reasonable time period thereafter rather than annually as the first NPRM had proposed. The State is permitted the flexibility to define a reasonable time period.

Section 1356.21(e) of this NPRM specifies that States must make "reasonable efforts" to prevent placement or to reunify the family in accordance with section 471(a)(15) of the Act. This proposed regulation defines reasonable efforts as the State having services systems in place that meet the requirements of section 427 (a)(2)(C) and (b)(3) of the Act. A discussion of these services provided to the child and family must be included in the case plan in accordance with the case plan requirements.

Section 1356.21(f) of this NPRM implements section 471(a)(14) of the Act. This NPRM accommodates the comments and recommendations of many States to the first NPRM by permitting States to incorporate the required goals into State law either by statute or by administrative regulation provided that such regulations have the force and effect of law in the State.

Section 1356.21(g) implements section 471(a)(11) of the Act.

This NPRM provides that each State must conduct a review of the foster care maintenance payments, adoption assistance and State foster care standards within reasonable time periods to be established by the State. As with many other provisions in the Act that use the term "periodic," the Department has chosen to give States the latitude to specify a reasonable time period that is in accordance with the intent of the Act. This NPRM does not require public involvement in the

review process. However, public involvement is strongly \*30936 recommended as a benefit to the State and affected constituencies.

Commenters requested clarification with regard to the periodic review in section 475(6) of the Act. The Act states that an administrative review panel must include at least one person who is not directly responsible for the case management or the delivery of services to the child and parent(s) who are subjects of the review. Commenters were concerned that the wording of the earlier NPRM raised new questions. This NPRM references the wording of the statute. This individual who is outside of the direct line of supervision must not be the worker, that worker's supervisor, or persons at other levels of supervision or administration who could directly influence 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 State agency has responsibility for establishing its own review system, according to its own needs and resources. The proposed regulation does not prescribe how a State is to do this, as limitations on the time of agency staff and volunteers will determine the number of panels that must be appointed to review the State agency's cases.

Provisions implementing voluntary placements are contained in s 1356.30. Section 102(a)(1) of Pub. L. 96-272 amends section 472 of the Act by providing for FFP in the costs of foster care maintenance payments for children voluntarily placed in foster care under a voluntary placement agreement. This provision applies to expenditures for voluntary placements made after September 30, 1980, and before October 1, 1983 under the title IV-E program, and for voluntary placements made under the title IV-A(FC) program after September 30, 1979 and before October 1, 1982.

The provision in the Act for FFP for voluntary foster care placements is a significant departure from the earlier title IV-A foster care program in which only placements resulting from judicial orders were considered eligible for FFP. Federal financial participation in the cost of voluntary foster care placements is available when the title IV-E plan requirements are met and all the provisions contained in section 427(b) of the Act are in place and operating in the State. Participation by the State in this new program is optional.

Therefore, the statutory requirements regarding the voluntary placement program in section 472 of the Act, as amended, become State plan requirements only if a State elects to participate in this program.

To implement the provision for voluntary placement, we have added provisions in s 1356.30. Section 1356.30(b) clarifies that FFP is available for foster care

maintenance expenditures only within the first 180 days after the original voluntary foster care placement unless there has been a judicial determination within the 180 day period that continued voluntary placement is in the best interest of the child. The first NPRM did not make clear that the term "placement" meant original placement. The first NPRM also proposed that in order to request return of a child placed under a voluntary agreement, parents had to give written notice to the agency at least five working days in advance. Section 1356.30(c) of this NPRM deletes that requirement and provides that each State establish and maintain a uniform procedure for revocation consistent with its own State law. The Department believes that each State should be given the flexibility to develop requirements best suited to its circumstances.

Section 1356.40 proposes to implement section 473 of the Act which contains the statutory requirements for the Adoption Assistance Program. For the first time, Federal financial participation is available to provide adoption assistance for children with "special needs." The substantial costs of providing proper care for children with special needs has been a significant hindrance to the adoption of thousands of AFDC-foster care children.

The requirements for the adoption assistance program are proposed in s 1356.40 of the NPRM. The Department has incorporated the view of many who recommended that a completed adoption assistance agreement must include the amount of assistance and services to be provided, the duration of the agreement, and an eligibility clause for services provided under title XIX (s 1356.40(b)). Payments are conditioned upon the signing of the agreement prior to or at the time of the interlocutory or final decree of adoption. In response to comments on the first NPRM questioning whether a means test should be applied, s 1356.40(d) makes clear, based on the legislative history, that there shall be no income eligibility requirement (means test) for prospective adoptive parents in determining eligibility for adoption assistance payments. However, section 473(a)(2) of the Act requires that the amount of the adoption assistance payment be determined in part by the circumstances of the adopting parents. Section 475(3) of the Act requires that adoption assistance agreements contain a provision protecting the interests of the child when the adoptive family moves to another State. For agreements entered into on or after October 1, 1983, the adoption assistance agreement shall remain in effect regardless of the State of residence of the adoptive parent(s) and the child. If the needed services specified in the agreement are not available in the State to which the family moves, the State making the adoption assistance payment remains financially responsible for providing the services (s 1356.40(e)).

The proposed rule also provides that a State may place a child under an adoption assistance agreement with adoptive parents who reside in another State. In this event, all of the requirements of s 1356.40 would apply.

Commenters to the December 31, 1980 NPRM made suggestions as to when adoption assistance payments should begin. Congress specified that adoption assistance payments were to begin at the time of adoption. However, if an interlocutory decree granting the prospective adoptive parent(s) guardianship or legal custody pending a final decree of adoption is issued, payments may begin at that time. The intent of Congress was to ensure that these children have the additional procedural safeguards provided by a judicial determination. The option of having assistance begin at placement for adoption was rejected as contrary to Congressional intent to subsidize only actual adoptions.

The earlier NPRM required promotion of the adoption assistance program. This NPRM modifies that provision. The Department believes that States are best equipped to decide how to promote the program. Therefore, the Department has maintained the general promotion requirement while eliminating the specificity on how this should be done. The Department has chosen this modified approach in the belief that a primary intent of Pub. L. 96-272 is to move children out of foster care and into permanent arrangements. This requirement is intended to move toward that end while giving the States flexibility on how it should be implemented.

The basis and procedure by which the Department would, if necessary, withhold funds based on non-compliance with the State plan are stated in s 1356.50. The proposed regulation adopts present Department- \*30937 wide procedures (45 CFR Part 213) for handling non-compliance actions.

Paragraph (a) of this section has been added to clarify what requirements must be met to be in compliance with the State plan. However, it is anticipated that the Department will not use this authority unless and until other less formal methods of ensuring compliance with the approved title IV-E State plan requirements have been exhausted.

The sections of the regulation pertaining to the title IV-E fiscal requirements (ss 1356.30, 1356.60, 1356.65, 1356.70) are being published as a final regulation, and are not included in this NPRM. The final regulation is published concurrently with this NPRM and should be read in close conjunction with this NPRM to understand fully both regulations. There is one exception:

Section 1356.60(a), Federal matching funds for foster care maintenance and adoption assistance payments, is being published as a final rule with references only to the statutory provisions.

In this NPRM, the provisions of the proposed rule are also referenced.

c. Part 1357--Child Welfare Services

Section 1357.10(c) of this regulation proposes several definitions. Commenters to the first NPRM indicated some confusion about the meaning of "child welfare services" as it relates to many provisions in this proposed regulation. The statutory definition (sec. 425(a)(1)) of "child welfare services" is comprehensive and the Department has interpreted it to include all public social services directed toward the accomplishment of the stated objectives. This interpretation is supported by both the legislative history and the intent of the Pub. L. 96-272. It is clear from the history which gave rise to this definition that Congress intended the approach to child welfare services to be comprehensive and coordinated. The links between the title IV-B and IV-E programs found in Pub. L. 96-272 are but simple examples of this clear intent. This means that the definition is not limited to only those services funded under title IV-B as some commenters to the first NPRM suggested. Consequently, we propose that the State must use this definition (sec. 425(a)(1)) to meet the statutory requirements that the State plan "\* \* contain a description of the services provided \* \* \*" and "\* \* \* contain a description of the steps which the State will take to provide child welfare services and to make progress in \* \* \*" (sec. 422(b)(6)).

This proposed regulation (s 1357.15(a)(2)) requires a description of all child welfare services to be provided, the geographic areas in which they are available and what is being done to expand, improve and strengthen those services or provide new ones. All child welfare services that come under the definition contained in the law are to be described regardless of funding source.

In order to provide greater flexibility in planning, we have proposed in s 1357.15 (b) and (d) to allow States to submit their plans in a form determined by them and to remain in effect for one, two or three year periods. Although the Department previously published "Guidelines for Development of State Child Welfare Services Plans," on January 6, 1981, the States are free to use whatever format they choose for their title IV-B State plan. These guidelines are advisory and are intended only as an aid to the States.

Section 422 of the Act contains the State plan requirements for title IV-B. Included in proposed s 1357.15 are requirements which cross reference and incorporate other sections of the Act.

In commenting on the earlier NPRM, some State agencies requested clarification of their responsibilities for joint planning under the title IV-B if they were participating in the Department's Consolidated Plan Demonstration Project, or the Office of Human Development Services' Plan Simplification Project. States participating in these projects must comply with the requirement of joint planning.

In addition to the foregoing requirements, the Department is including another title IV-B State plan requirement regarding the implementation of preplacement preventive and reunification services. The Department is requiring that the State specify in its title IV-B State plan which preplacement preventive and

reunification services are available. To aid in the development of these services programs, the Department has included in the NPRM a list of examples from which the States are free to choose any, all or none (s 1357.15(e)). (Additional discussion of these services programs is found in the section 427 portion of the preamble.)

Section 1357.20 contains the requirements of the Child Abuse Prevention and Treatment Act of 1974, as amended, 42 U.S.C. 5103(b)(3) (Pub. L. 93-247) that apply to title IV-B. These requirements must be met if a State chooses to fund any child abuse and neglect programs and projects under title IV-B of the Act.

The Department has chosen to include these provisions in this proposed regulation so that all title IV-B requirements may be located in the same Part of the Code of Federal Regulations, Part 1357. In addition, the Department proposes to delete Part 1392 which presently contains these requirements.

Section 1357.25 implements section 427 of the Act. To help finance the services required and to encourage changes in the foster care system, Congress provided that a State must establish certain protections and procedures. Section 427 of the Act establishes these requirements which apply to several fiscal activities.

To be eligible:

1. for title IV-B funds in excess of its proportionate share of \$141 million (sec. 427(a)), or
2. to transfer funds not needed for foster care under title IV-A or IV-E to title IV-B for use in the provision of child welfare services in an amount which, together with the States' IV-B allotment would exceed its share of \$141 million (sec. 474(c)(4)(A)), a State must meet the following conditions of section 427(a):
  1. it must have conducted an inventory of all children who have been in foster care in the State for six months or more and made certain determinations as to the appropriateness and necessity of the placement; and
  2. it must have implemented and be operating--
    - A. a statewide information system for every child in foster care; and
    - B. a case review system for each child in foster care; and
    - C. a service program designed to reunify families or achieve other permanent placement.

The Department received many comments on the requirements for the inventory and Statewide information system. Many organizations supported the provisions of the first NPRM or suggested more detailed requirements. Others recommended revising the final regulation to permit States greater flexibility in



implementing the statutory provisions. The Department supports the latter approach and revised this NPRM to reference the language of the law. The Department believes this approach will minimize burden and costs imposed on the States without significantly affecting the expected outcomes.

To meet the provisions of section 427(a) of the Act, the Department proposes to require the States to collect and maintain information (inventory and Statewide information system, s 1357.25(b)) only for those children under the care and responsibility of the State's titles IV-E (or IV-A(FC)) and IV-B agency(ies). States are free to include additional children in either the inventory or the Statewide information \*30938 system at their option. The scope of the inventory and statewide information system requirements stated above are based in large part upon the findings of the 1977 National Study of children in foster care. That study, and the resulting determination that there were approximately 500,000 children in foster care, limited its investigation to those children under the responsibility of the State agencies described above.

The first NPRM prescribed the required elements in the inventory and Statewide information system. In this second NPRM, we have proposed to limit the nature of the Statewide information system to the requirements specified in the Act (sec 427(a)(2)(A)). For the nature and content of the inventory required by section 427(a)(1) of the Act, the statutory language is sufficiently specific to require only a cross-reference in this proposed regulation.

States must meet the conditions in section 427(a) and implement and operate a program of preplacement preventive services (sec. 427(b)(3)) in order to:

4. avoid reduction of its funds to the level of Fiscal Year 1979, if title IV-B appropriations reach \$266 million for two consecutive years (427(b) of the Act); or
5. receive Federal financial participation under titles IV-A or IV-E for foster care maintenance payments made on behalf of children placed pursuant to a voluntary placement agreement (section 102 of Pub. L. 96-272); or
6. transfer funds not needed for foster care under title IV-E or title IV-A to title IV-B for use in the provision of child welfare services, when appropriations under title IV-B have equaled or exceed \$266 million for two consecutive years (section 474(c)(4)(B)); or when the State has claimed reimbursement under title IV-B in a sum equal to or

exceeding its share of \$266 million for two consecutive years (section 474(c)(4)(C)).

The Department also proposes to leave the decision on the nature and content of the reunification and preplacement preventive services programs to States.

One way States may meet the reunification requirement is by ensuring that reunification services are available and provided to children and families in need by specifying the services available, developing appropriate procedures and instructions for staff, and determining services delivery in relevant cases.

Section 427(a)(2)(C) also requires that a service program designed to help children be placed for adoption or legal guardianship be implemented and operating in each State. As with reunification services and all child welfare services, these adoption services must be available to children and families in need of these services.

The sections of the regulation setting forth the title IV-B fiscal requirements (ss 1355.30 and 1357.30) are being published as a final regulation and, therefore, are not included in this proposed rule. They are being published concurrently with this NPRM and should be read in close conjunction with the NPRM to fully understand both. The reasons for publishing the fiscal sections as a final rule and discussion of those sections are contained in the preamble to the final regulation. Section 1357.40 of this regulation implements section 428 of the Act which gives the Secretary discretion to decide whether a program of direct grants to Indian tribal organizations (ITO) should be established, which Indian tribal organizations should be eligible to receive funds directly and under what circumstances direct payments should be made available. 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.

This NPRM proposes to permit Indian tribal organizations meeting the eligibility requirements to apply directly to the Federal government for their share of the State title IV-B funds. The Department believes in self-determination for Indian tribes consistent with a direct government to government relationship. This principle is affirmed by the Indian Self-Determination Act (Pub. L. 93-638) and other Federal programs.

However, the Department recognizes that many tribal organizations may choose not to apply for direct funding for various reasons. For example, the tribal organization may consider the money available too small to warrant application; the tribal organization may have established a cooperative relationship with the State; or the tribal organization may determine that fewer services are available under direct grants than under a State's regular title IV-B program. However, if a direct grant is made to an Indian tribal organization, 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 substance of the requirements in this NPRM are consistent with those imposed upon the States. In determining which Indian tribal organizations will be eligible for direct funding, the Department has 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 Part 20) and are located in States with approved title IV-B State Plans. This NPRM 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 a tribal child welfare services program. Under this approach, direct grants will be added to existing, ongoing Indian child welfare programs operated by the tribal organizations. The title IV-B funds are intended to be linked to the other 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 title IV-B funds alone are insufficient for

an Indian tribal organization 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 title 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 title 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, the Secretary will apply a \*30939 formula similar to the one used to calculate State allotments under title IV-B. 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 would 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 title IV-B allotments of the Territories, 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.

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 title IV-B allotment as the product of 1.5 times the proportion of the Indian tribe's resident population under 21 bears to the State's total population under 21. Other funding allocation options were considered and rejected as unsupportable by the intent of the law.

In the first NPRM, the Department had proposed to begin direct funding in the first quarter of Fiscal Year 1982. Implementation of this provision must await publication of the final rule and the statutory waiting period which is thirty days following publication of the final regulation.

Each eligible Indian tribal organization or consortium applying for a direct title IV-B grant 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 service improvements envisioned in, and consistent with, the requirements in the law.

The plan which can be in effect for two or three years, must meet the requirements of sections 422(a) and 422(b)(2) through (b)(8) of the Act as well as this regulation. However, as with the States, the format of the plan will be left to the discretion of the Indian tribal organizations. In addition to the jointly developed plan, each tribal organization applying for a direct grant must submit an annual operating budget on forms and in a manner prescribed by the Secretary.

If eligible Indian tribal organizations that apply for direct funds wish to receive their share of additional title IV-B funds above \$141 million, they must meet the requirements under section 427 of the Act. The requirements under IV-B and additionally those related to eligibility for funds above \$141 million are discussed more fully under the title IV-B section of this preamble.

In reviewing the first NPRM comments for this section, two general procedural issues were raised. First, how is the State to interact with the tribal organization Second, since the direct grant funds are to come from a State's allocation, how is the State to be kept informed

In response to these issues, the Department looked carefully at the earlier NPRM and the comments. To resolve the information flow problem between States and the tribal entities, three new provisions have been added to the NPRM. First, when an Indian tribal organization

submits its jointly developed plan, it shall notify the State title IV-B agency. If the State title IV-B agency requests a copy of the ITO's title IV-B plan, the ITO shall provide such. Second, the State(s) shall provide a copy of its title IV-B State plan to the ITO upon request. Third, upon the Department's approval of a direct grant, the Department will promptly notify the affected State(s).

## **7. Changes Made in the Code of Federal Regulations**

This proposed regulation would remove Part 1392 of this title, which currently contains requirements for the title IV-B program and the title IV-A program of services to the territories. The title IV-A services program was abolished by the Omnibus Budget Reconciliation Act of 1981. Services are now funded in the Territories under the SSBG. In addition, this proposed regulation would amend the three new parts (Parts 1355, 1356 and 1357) in Subchapter G (The Administration for Children, Youth and Families, Foster Care and Adoption Assistance; Child Welfare Services), created by the final regulation.

The Department is publishing a final regulation for the fiscal sections implementing Pub. L. 96-272 concurrently with this regulation. The Department will also publish separately a regulation concerning Medicaid eligibility for children receiving foster care maintenance and adoption assistance payments under the title IV-E program.

## **8. Impact Analysis**

- a. Executive Order 12291.--The Secretary has determined, in accordance with Executive Order 12291, that this proposed rule does not constitute a major rule because it will not: have an annual effect on the economy of \$100 million or more; result in a major increase in costs or process for consumers, any industries, any governmental agency or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.
- b. Regulatory Flexibility Act.--The Regulatory Flexibility Act of 1980, Pub. L. 96-354, requires that an agency prepare a regulatory flexibility analysis for a proposed or final rule if the rule

would have a significant economic impact on a substantial number of "small entities," i.e. small businesses, small non-profit organizations, or small governmental jurisdictions.

Although actual delivery of services may be provided in some circumstances by proprietary, public and not-for-profit agencies or organizations under contract to the State agency, the responsibility for meeting the requirements of these regulations is on the State agencies, which are not "small entities" within the meaning of the Act. This proposed rule will impose no significant burdens on States or other affected parties and will provide flexibility to States in implementing the provisions of the Act. For these reasons, the Secretary hereby certifies that these regulations will not have a significant impact on a substantial number of small entities.

- c. Recordkeeping and Reporting Requirements.-- Under the Paperwork Reduction Act of 1980, the Department is required to submit to the Office of Management and Budget for approval of any information collection or reporting requirements. This proposed regulation contains the following such requirements:
  - a. s1356.20. State Plan Document and Submission  
  
Requirements (IV-E)
  - b. s1357.15. Child Welfare Services State Plan  
  
Requirements and Submittal (IV-B)
  - c. s1357.40(c) &
  - d. Title IV-B State Plan Requirements (for Indian Tribes and Tribal Organizations)

In addition, section 427(a)(2)(A) of the Act (Statewide Information System) is also subject to the approval of OMB under the Paperwork Reduction Act of 1980.

\*30940 Clearance packages for the Statewide Information System and these

three sections of the regulations requiring development of State plans will be submitted to OMB for approval.

Since the requirements in these regulations are no more comprehensive than the legislation, the Department will not require specific formats for the State plans. Therefore, the reporting burden will be minimal. The requirements of section 476(a) and (b) of the Act (Technical Assistance; Data collection and Evaluation), which were included in the earlier NPRM at s 1356.30(i), have been deleted from this NPRM. If the Department determines that specific reporting and recordkeeping requirements to implement this section are necessary at some future date, such requirements will be submitted to OMB for approval at that time.

Further, in order to meet the very specific and detailed requirements of Pub. L. 96-272 States must maintain a variety of records and documents. Examples of these requirements are: an inventory of all children in foster care in the State for the preceding six months (sec. 427(a)(1)); a case plan for each child (sec. 471(a) and 475(5)); other records needed to establish a basis for FFP; and verification that the State has met the requirements for additional payments (sec. 427(a) and (b)). The Department does not plan to mandate detailed requirements on how these records must be maintained (other than the general requirements of 45 CFR Part 74), but States will be required to produce evidence that they are following the provisions of the statute during on-site monitoring or auditing by the Department.

- e. **VIII. List of Subjects in 45 CFR Part 1355 Information** (Confidentiality). Part 1356



Adoption Assistance, Administrative costs, Administrative practice and procedure, Administrative reviews, Allotments to States, Case Plan, Case review system, Contracts (Agreements), Definitions, Dispositional hearings, Federal financial participation, Foster care allotments, Foster Care Maintenance Payments Medicaid, Preplacement preventive services, Reunification services, Social services, Statewide information system, State plans, Training, voluntary placements, Part 1357 Child welfare services, Federal financial participation, Foster care, Grants- in-Aid program, Indians, Inventory, Preplacement preventive services, Reunification services, State plan, Training, Part 1392 Aid to Families with Dependent Children, Child welfare, Grant program-social programs, Guam, Northern Mariana Islands, Puerto Rico, Virgin Islands, Volunteers.

(Catalog of Federal Domestic Assistance Program No. 13.645, Child Welfare Services--State Grants, 13.658, Foster Care Maintenance, and 13.659, and Adoption assistance)

Dated: April 2, 1982.

Dorcas R. Hardy,  
Assistant Secretary for Human Development  
Services.

Approved: May 17, 1982.

Richard S. Schweiker,  
Secretary for Health and Human Services.

45 CFR Chapter XIII is proposed to be amended for the reasons set forth in the preamble as follows:

3. PART 1355--GENERAL

1. Part 1355 is amended by adding ss 1355.10, 1355.20 and 1355.21 to read as follows: s 1355.10 Scope.

Part 1355 applies to State programs and the requirements for

Federal financial participation under titles IV-E and IV-B of the Social Security Act, as amended.

s 1355.20 Definitions.

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

Act means the Social Security Act, as amended.

ACYF means Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and Human Services.

Child abuse and Neglect means the definition contained in 45 CFR 1340.1-2(b), Child Abuse and Neglect Prevention and Treatment Program.

Commissioner means the Commissioner for Children, Youth and Families (ACYF), Office of Human Development Services, U.S. Department of Health and Human Services. Detention in the context of the definition of child care institution in section 472(c)(2) of the act means the care of a youth determined to be delinquent who requires secure custody in a physical restricting facility pending court disposition, execution of a court order or after commitment.

Foster family home means the home of an individual or family licensed or approved by the State licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies)), 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.

State means the 50 States, the District of Columbia, and, except in ss 1356.65 and 1356.70, the Commonwealth of Puerto Rico, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands. State agency means the State agency administering or supervising the administration of the title IV-E and title IV-

B State plans. For purposes of this definition, State agency shall include a local agency if it is administering the State plan on behalf of the State agency under an agreement which is still in effect.

- a. Unless otherwise specified, the definitions contained in section 475 of the Act shall apply to all programs under titles IV-E and IV-B of the Act.

s 1355.21 State plan requirements for titles IV-E and IV-B.

- a. The State plan for titles IV-E and IV-B shall designate a single State agency to administer both the State's programs under titles IV-E and IV-B of the Act.
- b. The State plans for titles IV-E and IV-B shall both provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.
- c. The State plans for titles IV-E and IV-B shall provide for compliance with the Department's regulations listed in s 1355.30.

#### PART 1356--REQUIREMENTS APPLICABLE TO TITLE IV-E

- b. Part 1356 is amended by adding ss 1356.10, 1356.20, 1356.21, 1356.30, 1356.40 and 1356.50 to read as follows:

s 1356.10 Scope.

This regulation applies to State programs for foster care maintenance payments, adoption assistance payments and related administrative and training expenditures under title IV-E of the Act.

s 1356.20 State plan document and submission requirements.

- c. To be in compliance with the State plan requirements and to be eligible to receive Federal financial participation (FFP in the costs of foster care \*30941 maintenance payments and adoption assistance under this Part, a State shall have a State plan approved by the Secretary that meets the requirements of this section and section 471(a) of the Act. The title IV-E State plan shall be submitted to the appropriate Regional Program Director, ACYF, in a form determined by the State.
- d. If a State chooses to claim FFP for voluntary foster care placements, the State shall meet the requirements of paragraph (a) of this section and section 102 of

Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980, as it amends section 472 of the Act.

- e. The procedures in 45 CFR 201.3, Approval of the State Plans and Amendments, shall apply to submission of title IV-E State plans with the following exceptions:
  - 1. Substitute "Commissioner, ACYF" for "Administrator", "Regional Program Director, ACYF" for "Regional Commissioner" or "Regional Medicaid Director" whenever they appear; and
  - 2. Substitute "45 days" wherever "90 days" appears.
- f. Once the title IV-E State plan has been submitted and approved, it shall remain in effect until amendments are required. An amendment is required if there is any significant and relevant change in the information or assurances in the plan, or the organization, policies or operations described in the plan.

s 1356.21 Foster care maintenance payments program implementation requirements.

- a. To implement the foster care maintenance payments program provisions of the title IV-E State plan and to be eligible to receive Federal financial participation for foster care maintenance payments under this Part, a State shall meet the requirements of this section, and sections 472, 475(1), 475(4), 475(5), and 475(6) of the Act.
- b. In meeting the requirements of sections 475(1) and 475(5)(A) of the Act, the case plan for each child shall:
  - 1. Be developed within a reasonable period, to be established by the State, but in no event later than 60 days starting at the time the State agency, or local agency, assumes responsibility for providing services or placing the child; and
  - 2. Include a discussion of how the plan is designed to achieve a placement in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s), consistent with the best interests and special needs of the child; and
  - 3. After October 1, 1983, include a description of the services offered or provided and the reasonable efforts made to help the child remain with his family or to return home.
- c. In meeting the requirements of section 471(a)(16), each State's case review system shall meet the requirements of sections 475(5)(B) and 475(6) of the Act and shall include the case plan required under paragraph (b) of this section. In meeting the case plan requirement of this paragraph, the State agency shall promulgate policy materials and instructions for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child.
- d. In meeting the requirements of section 475(5)(C) of the Act, the dispositional hearing shall take place within 18 months of the date of the original foster care placement and within reasonable time periods thereafter, at intervals to be established by the State.

- e. In meeting the "reasonable efforts" requirements of s 1356.21(b)(3) and section 471(a)(15) of the Act, the State shall meet the requirements of sections 427(a)(2)(c) and 427(b)(3) of the Act.
- f. The specific foster care goals required under section 471(a)(14) of the Act shall be incorporated into State law by statute or administrative regulation provided such administrative regulation has the force of law.
- g. In meeting the requirements of section 471(a)(11) of the Act, the State shall periodically review, at intervals to be established by the State:
  - 1. The amount of the payment made for foster care maintenance and adoption assistance to assure their continued appropriateness; and
  - 2. The licensing or approval standards for child care institutions and foster family homes (including group homes). s 1356.30  
Implementation requirements for children voluntarily placed in foster care.
    - . As a condition of receipt of Federal financial participation (FFP) in foster care maintenance payments for a dependent child removed from his home under a voluntary placement agreement, the State shall meet the requirements of section 472 of the Act (as amended by section 102(a) of Pub. L. 96-272) and section 102(d) of Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980, and the requirements of this section.
  - a. Federal financial participation is available only for foster care maintenance expenditures made within the first 180 days after the date of the original voluntary foster care placement unless there has been a judicial determination by a court of competent jurisdiction within the first 180 days of the date of that original placement to the effect that the continued voluntary placement is in the best interests of the child.
  - b. The State agency shall establish and maintain a uniform procedure or system, consistent with State law, for revocation by the parent(s) of a voluntary placement agreement and return of the child.

s 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.

- a. To implement the adoption assistance program provisions of the title IV-E State plan and to be eligible for Federal financial participation in adoption assistance payments under this Part, the State shall meet the requirements of this section and sections 471(a), 473 and 475 of the Act.
- b. The adoption assistance agreement shall meet the requirements of section 475(3) of the Act and shall:

1. Be signed and in effect at the time of or prior to the interlocutory decree or at the time of or prior to the final decree of adoption. A copy of the signed agreement shall be given to each party; and
  2. Specify its duration; and
  3. Specify the amount of assistance and other services to be provided and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for Medicaid services; and
  4. Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement shall remain in effect if a family changes its State of residence.
- c. For purposes of implementing section 473 of the Act, interlocutory decree means a court order granting legal custody or guardianship to the adoptive petitioners prior to the final decree of adoption. For purposes of implementing section 473
  - d. There shall be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.
  - e. In the event an adoptive family moves from one State to another State, the family may apply for social services on behalf of the adoptive child in the new State of residence. However, for agreements entered into on or after October 1, 1983, if a needed service(s) specified in the adoption assistance agreement is not available in the new State of residence, the State making the original adoption assistance payment remains financially responsible for providing the specified service(s).
  - f. \*30942 A State may make an adoption assistance agreement with adopting parent(s) who reside in another State. If so, all provisions of this section shall apply.
  - g. The State agency shall actively seek ways to promote the adoption assistance program.

s 1356.50 Withholding of funds for non-compliance with the approved title IV-E State plan.

- a. To be in compliance with the title IV-E State plan requirements, a State shall meet the requirements of the Act and ss 1356.20, 1356.21 and 1356.40 of this Part.
  - b. To be in compliance with the title IV-E State plan requirements, a State that chooses to claim FFP for voluntary placements shall meet the requirements of the Act, s 1356.30 and paragraph (a) of this section; and
  - c. For purposes of this section, the provisions of 45 CFR Part 213, Practice and Procedure for Hearings to States on Conformity of Public Assistance Plans to Federal Requirements, shall apply.
- h. In Part 1356, s 1356.60 is amended by revising paragraph (a)(1) to read as follows:

s 1356.60 Fiscal requirements (title IV-E).

- . Federal matching funds for foster care maintenance and adoption assistance payments (1) Effective October 1, 1980, Federal financial participation (FFP) is available to States under an approved title IV-E State plan for allowable costs in expenditures for:
  - i. Foster care maintenance payments as defined in section 475(4) of the Act, made in accordance with sections 1356.20 through 1356.30 of this Part,

- section 472 of the Act and section 102(d) of Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980;
- ii. Adoption assistance payments made in accordance with ss 1356.20, 1356.30(d) and 1356.40 of this Part and sections 473 and 475(3) of the Act.

\* \* \* \* \* PART 1357 REQUIREMENTS APPLICABLE TO TITLE IV-B

- Part 1357 is amended by adding ss 1357.10, 1357.15, 1357.20, 1357.25, and 1357.40 to read as follows:

s 1357.10 Scope and definitions.

- a. Scope--This Part applies to State programs for child welfare services (including related administrative expenditures) under title IV-B of the Act.
- b. Child welfare services under title IV-B State plan shall be available on the basis of need for services and shall not be denied on the basis of financial need or legal residence.
- c. Definitions

Child Welfare Services means the definition contained in section 425(a)(1) of the Act, regardless of the funding source of such services.

Child Welfare Services Plan (CWSP) means the document developed through joint planning which describes the State agency's total child welfare services program, including services, program deficiencies, plans for program improvement and allocation of resources by type of service.

Joint Planning means State and Federal review and analysis of the State's child welfare services, including analysis of the service needs of children and their families, selection of unmet service needs that will be addressed in a plan for program improvement, and development of goals and objectives to enhance the capability of the State in providing child welfare services.

(For purposes of s 1357.40, Direct Payments to Indian Tribal Organizations, substitute "Indian Tribal Organization" for "State" wherever State appears.)

s 1357.15 Child welfare services State plan requirements and submittal.

- a. In order to be eligible for Federal financial participation (FFP) under this Part and title IV-B of the Act, a State shall have a Child Welfare Services State Plan (CWSP) which:
  - 1. Meets the requirements of sections 422(a) and (b) of the Act; and
  - 2. In meeting the requirements of section 422(b)(5) of the Act, the State plan shall contain a description of all child welfare services provided to children and their families in the State and specify by political subdivision the geographic areas where these services will be available.

- In implementing the requirements of this section and sections 427(a)(2)(C) and 427(b)(3) of the Act, the State shall specify, in its title IV-B State plan, which preplacement preventive and reunification services are available to children and families in need.
1. The services specified may include: 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; 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; 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.
- The State plan shall be written in a form determined by the State.
  - The jointly developed State plan shall be submitted to the Regional Program Director (RPD), ACYF. The RPD will notify the State when the State plan meets all the requirements of the Act.
  - A State shall indicate in the State plan document whether the plan will remain in effect for one, two or three fiscal years.

s 1357.20 Child abuse and neglect programs.

The State agency shall assure that, with regard to any child abuse and neglect programs or projects funded under title IV-B of the Act, the requirements of paragraph (3) of section 4(b) of the Child Abuse Prevention and Treatment Act of 1974, as amended, 42

U.S.C. Sec. 5103(b)(3) (Pub. L. 93-247), are met.

s 1357.25 Requirements for eligibility for additional payments.

- a. 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 State 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 State shall comply with the requirements of Section 427(a) of the Act; and
  - b. In meeting the requirements of the inventory and statewide information system under section 427(a)(1) and (2)(A) of the Act, the inventory and statewide information system shall be required to include only those children under the care and responsibility of the State title IV-B, IV-E or IV-A(FC) agencies, and other agencies with which these agencies have agreements for provision of foster care.
- If, for each of any two consecutive fiscal years after FY 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 two such consecutive fiscal years shall be reduced to an



amount equal to what the allotment amount would have been for FY 1979 unless the State has implemented the requirements of Section 427(b) of the Act.

s 1357.40 Direct payments to Indian Tribal Organizations.

- a. Who may apply for direct funding. Any Indian tribal organization (ITO) that meet the definitions in section \*30943 428(c) of the Act, or any consortium or other group of eligible tribal organizations authorized by the membership of the tribes to act for them is eligible to apply for direct funding if:
  1. The Indian tribe (or tribes comprising the ITO) has contracted under the Indian Self-Determination Act to provide those child welfare services formerly provided by the Secretary of the Interior; and
  2. The Indian tribal organization, consortium or group has a plan for child welfare service that is jointly developed by the Indian tribal organization and the Secretary of HHS, or his designee.
- Joint planning. For purposes of this section, Joint Planning means ITO and Federal review and analysis of the ITO's child welfare services including analysis of the service needs of children and their families, selection of unmet service needs that will be addressed in a plan for program improvement of goals and objectives to enhance the capability of the ITO in providing child welfare services.
- Title IV-B plan requirements. The Indian Tribal

Organization's title IV-B plan shall meet all of the requirements of section 422(a) and 422(b) (2) through (8) of the Act. (For purposes provision, substitute "Indian tribe" for "State", "ITO" for "State (or local) agency," and "chief legal officer" for "Attorney General" wherever they appear) and shall include:

1. The name of the ITO;
2. A brief description of the ITO;
3. A brief description of the legal and organizational relationship of the tribal organization to the Indians in the area to be served;
4. A statement of the legal responsibility, if any, for children who are in foster care on the reservation and placed for adoption;
5. A description of tribal jurisdiction in civil and criminal matters, existence or nonexistence of a tribal court and the type of court and codes, if any;
6. An identification of the standards for foster family homes and institutional care and day care;
7. The ITO's political subdivisions, if any;
8. Whether the tribal organization is controlled, sanctioned or chartered by the governing body of Indians to be served and if so, documentation of that fact;
9. Any limitations on authorities granted the ITO;
10. The tribal resolution(s) authorizing it to apply for direct title IV- B grant under this Part;
11. In the plan document, whether the plan is to remain in effect for one, two or three fiscal years.

- Submittal of the title IV-B services plan and annual budget request.
1. The ITO's title IV-B Annual Budget Request shall be submitted, in a form and manner prescribed by the Secretary, or his designee, to the appropriate Regional Program Director, ACYF.
  2. The title IV-B services plan shall be submitted to the appropriate Regional Program Director, ACYF, in a form, determined by the ITO, which meets all of the requirements of paragraph (c) of this section.
  3. Upon submission to the appropriate ACYF Regional office of a jointly developed plan, the ITO shall promptly notify the affected State(s)' title IV-B agency of the submission. For purposes of coordination, the ITO shall provide a copy of its plan to the State(s) upon request. The State IV-B agency shall provide a copy of its title IV-B State plan to the ITO upon request.
- Coordination of services. In meeting the requirements of section 422(b)(2) of the Act, the Indian tribal organization's plan shall assure coordination of services with other Federal, State 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.
  - Requirements for eligibility for additional payments.
1. For any fiscal year after fiscal year 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 has implemented the requirements of section 427(a) of the Act. Substitute "Indian tribe" for "State", "Indian tribal organization" for "State agency", and "tribal geographic area" for "Statewide" wherever these words occur in section 427(a) of the Act.
  2. If, for each of 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 after those two consecutive fiscal years shall be reduced to an amount equal to what the the allotment amount would have been for fiscal year 1979 unless the Indian tribal organization has implemented the requirements of section 427(b) of the Act. Substitute "Indian tribe" for "State" and "ITO" for "State agency", and "tribal geographic area" for "Statewide" wherever these words occur in section 427(b) of the Act.
- Grants: General.
1. Grants may be made to eligible Indian tribal organizations in a State which has a jointly developed Child Welfare Services Plan under title IV-B of the Act.
  2. Federal funds made available for a direct grant to an eligible ITO shall be paid by the Secretary, or his designee, from the title IV-B allotment for the State in which the ITO is located. Should a direct grant be approved, DHHS shall promptly notify the State(s) affected.
  3. If an eligible Indian tribal organization includes population from more than one State, a proportionate amount of the grant will be paid from each State's allotment.

4. 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 for child welfare services.
5. The Indian tribal organization shall adhere to the requirements in s 1357.30. Substitute "Indian tribe" for "State", "Indian tribal organization" for "State agency," wherever they appear.

#### PART 1392--SERVICE PROGRAMS FOR FAMILIES AND CHILDREN [REMOVED]

- Chapter XIII is further amended by removing Part 1392 from subchapter J. Subchapter J is reserved as follows:

#### Subchapter J [Reserved]

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 et seq., 94 Stat. 516 et seq., Section 1102 of the Social Security Act, as amended, 42 U.S.C. 1302.

47 FR 30932-01