5. MONITORING

5.1 MONITORING, Child and Family and Services Review (CFSR)

1 ***Q:*** The child and family services review assesses compliance with only certain State plan requirements rather than all State plan requirements. How will you ensure compliance with those State plan requirements not addressed in the child and family services review?

A: We have selected those requirements for the child and family services review that are most directly related to the achievement of successful outcomes in the areas of safety, permanence and child and family well-being. However, the State remains responsible for complying with all State plan requirements for titles IV-B and IV-E, even if each requirement is not subject to review in the child and family services review. The regulations at 45 CFR Section 1355.32 (d) clarify that we will use a partial review to determine conformity with State plan requirements outside the scope of the child and family services reviews. Because defining the variety of State plan compliance issues in advance is not possible, we will approach each circumstance on a case-by-case basis. Consistent with section 1123A, the necessary elements of the program improvement plan and, if necessary, the amount of the withholding, will be commensurate with the extent of the State's non-conformity.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 1123A; 45 CFR 1355.32 (d)

2 **Q:** How will the child and family service reviews work in county-administered systems?

A: We did not make separate provisions for State-administered and county-administered systems. The State title IV-B and IV-E plan requirements subject to review are applicable to all counties in the State, and the statewide data indicators used in the reviews reflect statewide practice. The statewide assessment is designed to be completed by the State, not by individual counties, and responses should reflect official State policies and the most typical State practice, while noting where outstanding exceptions exist. It is only the locations of the on-site review that focus on specific counties, but that is true regardless of whether the State is county-administered or State-administered. The locations are determined based on the regulation, which requires that the State's largest city be a site, and by the statewide assessment, which provides information relevant to deciding the location of the other two review sites. Ultimately, we have no authority to hold individual counties accountable for compliance or non-compliance with the requirements being reviewed. It is the State that is accountable, and responsible for assuring that counties administering their own programs operate in compliance with applicable requirements.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1355.33

3 **Q:** At 45 CFR 1355.33 (b) are there special requirements or criteria for the "external partners" who are supposed to be included in the child and family services review team? Can these individuals be paid or compensated?

A: In the regulation, we identified agencies/entities external to the State that participated in the development of the State's Child and Family Services plan as appropriate partners to include on the review team. The State may cover per diem and travel expenses for its external partners' participation to the extent that it so chooses. Moreover, the State may, pursuant to an approved cost allocation plan, allocate the cost of conducting a child and family services review, which may include compensation for the State's external partners, to title IV-E.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1355.33

4 **Q:** What are the requirements for ensuring confidentiality during the case review portion of the review?

A: All case-specific information disclosed during a child and family services review is confidential. Both titles IV-B and IV-E have restrictive disclosure provisions (found at section 471 (a)(8) of the Act and 45 CFR 205.50). One of the purposes for which a State is authorized to disclose such information, however, is for an audit or similar activity conducted by the Department in connection with the State plan. Further, Federal regulations at 45 CFR 205.50 require that recipients of information concerning children and families receiving assistance and/or services from the title IV-B/IV-E agency be held to the same standards of confidentiality as the agency. The confidentiality standards for case-specific information are addressed in the procedures manual for use in conducting the child and family services review. In addition, the confidentiality of case records routinely will be reinforced during reviewer training prior to each review.

States have complete flexibility in establishing procedures to ensure that confidentiality requirements are met. States may choose to require the reviewers who are not State or Federal employees to sign confidentiality agreements prior to reviewing confidential information.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *Social Security Act - section 471 (a)(8); 45 CFR 205.50 and 1355.33 (c)*

5 ***Q:*** For the on-site portion of the review, does including the State's largest metropolitan area impact the representativeness of the sample?

A: Urban areas often provide a disproportionate number of families who have contact with the child welfare system. In order to serve its stated purpose of improving outcomes for children and families, the review process must include this population of children and families. For example, the reviews could not accurately claim to represent statewide issues in Illinois without reviewing Chicago, in New York without reviewing New York City, or in California without reviewing Los Angeles. In selecting the locations for the on-site review, it is also important to represent the range of other environments in the State including rural and suburban areas with their unique family and resource issues. However, since the reviews will only permit on-site activities in a limited number of locations, we did not regulate geographic sites other than the largest metropolitan area. Beyond that, the statewide assessment guides the State and Regional ACF Offices in determining the most appropriate review sites given each State's unique characteristics, issues and population.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1355.33 (c)*

6 **Q:** Do the child and family services reviews cover the title IV-E State plan requirement that prohibits States to delay or deny interjurisdictional adoptions?

A: Compliance with the requirement regarding interjurisdictional adoptions at 471 (a)(23) of the Act is not a specific factor covered in the child and family services reviews. However, because of the intensity of the CFS reviews, we may identify possible violations of this provision of the Act, as well as others not specifically covered in the CFS reviews. The requirement regarding interjurisdictional adoptions at section 471 (a)(23) has its own specific penalty and corrective action structure at section 474 (d) of the Act. In the child and family service reviews, we examine the State plan assurance, at section 422 (b)(12) of the Act, that the States will develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children. We do this through inquiries in our interviews with community stakeholders and through the statewide assessment regarding the ways in which States encourage or support interjurisdictional adoptions. In the on-site review, we also determine on a case-by-case basis if delays in adoptions are present and the factors that contribute to delays. If a child and family service review indicates a possible violation of the requirement, the regulation at section 1355.32 (d) includes provisions for reviewing for compliance with State plan requirements that are outside the scope of the child and family services review, such as section 471 (a)(23).

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - sections 422 (b)(12), 471 (a)(23) and 474 (d); 45 CFR 1355.32 (d) and 1355.33

7 **Q:** Certain performance indicators do not seem to be applicable to their related outcomes. For example, the performance indicators associated with Well-Being Outcome #1, Families have enhanced capacity to provide for their children's needs, are measures of process and do not equate with enhanced capacity for parents. Please explain the rationale for the choice of these performance indicators.

A: For each outcome to be reviewed, we selected indicators that, if met, are both within the scope of the State agency's range of responsibilities and are likely to promote outcome achievement. Each of the on-site indicators includes a subset of questions and issues that permits reviewers to explore the indicator below the surface level. We believe that this type of exploration during the on-site review is necessary to evaluate the quality of work and the successful achievement of outcomes for children and families. It is unlikely that individual performance indicators, in isolation, can be used to evaluate the outcomes accurately. In combination, however, the set of performance indicators associated with each outcome will provide a balanced perspective on the outcome.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1355.34 (b)*

8 **Q:** Well-Being Outcome #2, "Children receive appropriate services to meet their educational needs," is not an outcome that can necessarily be achieved by the child welfare system. Moreover, we question whether this outcome, as it is stated, meets the definition of an outcome. Please explain the rationale for its inclusion as an outcome.

A: The outcome delineated at 45 CFR 1355.34 (b)(1)(iii)(B), addresses the responsibilities of public child welfare agencies in regard to the educational needs of children in their care and custody. Certain aspects of the educational status of children are not within the control of the public child welfare agency. We do not think it appropriate to describe the outcome in more definitive terms and hold the State accountable for educational outcomes that must be addressed primarily through the State's educational agencies. Rather, we will review those responsibilities that the State child welfare agency legitimately has in this area: considering and addressing educational needs for children in case planning; obtaining and considering educational records for children in its care; and, where appropriate, advocating for children's educational needs with the education authorities in the State.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1355.34 (b)

9 ***Q:*** In enforcing the national standard for the statewide data indicators, will some States automatically fail to meet the standard, by definition, since the standard is set at the 75th percentile of State performance?

A: No. The national standards for the statewide data indicators will be established on the basis of all jurisdictions' submissions of data over several time periods. When the standard is set, it remains constant and, when the State is reviewed, the statewide data indicators are compared to the standard to determine conformity. It is possible, theoretically, that every State could submit data for the year under review that would be at or above the national standard. It is also possible that all States' submissions would fall below the standard or that any combination of States will meet or not meet the standard.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1355.34 (b)

10 ***Q:*** Is a two year time period (plus the opportunity for a one year extension) for completing a program improvement plan excessive?

A: Not all program improvement plans will require two years to implement and the specific time frame for each State's plan will be negotiated and agreed upon between the State and ACF. In many States, complex issues are being litigated or settled on behalf of their child welfare systems. Therefore, some improvements will require extensive periods of time to implement. Systemic changes that lead to identifiable improvements in the outcomes for children and families cannot always be achieved by simply modifying a policy, creating new tracking procedures or implementing new standards. The following requirements are in place to ensure expeditious implementation and completion of program improvement plans:

(1) Time frames for a program improvement plan must be consistent with the seriousness and complexity of the remedies required for any areas determined not in substantial conformity.

(2) Particularly egregious areas of nonconformity impacting the safety of children in the State's responsibility must receive priority in both the content and time frames of the program improvement plans and must be satisfactorily addressed in less than two years.

(3) The Secretary must approve any extensions of deadlines in the program improvement plans and any requests to extend the program improvement plan by a third year. The circumstances under which requests for extensions would be approved are expected to be very rare and will require compelling documentation. Requests for extensions must be received by ACF at least 60 days prior to the affected completion date.

(4) Finally, in monitoring the implementation of program improvement plans, States must submit quarterly status reports to ACF, unless the State and ACF agree to less frequent reports. These reports will inform ACF of the State's progress in implementing the plan.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1355.35 (a) and (d)

11 Q: Will you ensure that program improvement plans are consistent with any consent degrees by which States may be bound?

A: We are responsible for reviewing compliance with State plan requirements, and we must assure that the program improvement plan addresses applicable requirements. States are not required to include the provisions of consent decrees into program improvement plans because there is no assurance that the provisions of a State's consent decree do not conflict with Federal requirements. It is the States' responsibility to ensure that no such conflict exists. We are willing to work with States to minimize such conflict within our statutory and regulatory mandates.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1355.35 (a) and (d)

12 Q: What are the differences among calculating the amount of the penalty, suspending penalties, and rescinding penalties in the child and family service reviews?

A: The amount of the penalty is determined at the point that a determination of non-conformity is made and the State is notified of applicable penalties for the areas of non-conformity. If the State engages in a program improvement plan designed to correct the areas of non-conformity, the penalties are suspended pending the completion of the plan, or specific benchmarks within the plan. In that situation, no actual withholding of funds occurs while the State is actively engaging in and adhering to the provisions of the approved plan. If the State successfully completes the plan, the penalty is rescinded, meaning that no funds are actually withheld at any point. If the State fails to complete the plan successfully, we will withhold the penalty.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1355.36

13 **Q:** During a child and family services review, a State must meet certain thresholds to be determined in substantial conformity (i.e., achievement of the outcomes in 90% or 95% of the cases (as applicable) and the national standards for the statewide data indicators). Must the State meet those same standards post-review in order to successfully complete a program improvement plan and for the penalty to be rescinded?

A: Not necessarily. One of the primary objectives of the child and family services reviews is to promote continued quality improvement. Therefore, the Administration for Children and Families (ACF) has structured the reviews so that a State has an opportunity to improve through a program improvement plan (PIP) before we withhold Federal funds (45 CFR 1355.35(a)).

Taking into consideration unique circumstances, ACF and the State may negotiate a level of improvement in the PIP that results in performance less than the applicable standards required for substantial conformity at 45 CFR 1355.34. For example, with respect to outcome achievement, the State and Regional Office may agree on a percentage of cases that meet the criteria for substantial conformity that is different from that defined for the CFS reviews in 45 CFR 1355.34(b)(3)(ii). Additionally, progress may be measured through an alternate method such as a special study or a quality assurance review. The State may also be permitted to use methods for determining the effectiveness of its improvement efforts in ways other than evaluating cases for substantial conformity.

The regulations require ACF to terminate the penalty if the State either completes a program improvement plan successfully or is determined by ACF to be in substantial conformity (45 CFR 1355.36(b)(3) and 1355.36(d)). If the State achieves the negotiated level of improvement, the associated penalties will be rescinded.

To promote continuous improvement, a State that does not achieve the regulatory standards for substantial conformity in the subsequent CFS review will again be determined to be not in substantial conformity and will be required to develop a new PIP that builds on past program improvement efforts (45 CFR 1355.35(a)(vi)). In addition, the associated penalty for each outcome or systemic factor that continues to be out of substantial conformity in a second full CFS review increases to two percent, or three percent in the third or subsequent full CFS review (45 CFR 1355.36(b)(7) and (8)).

Source: *8/16/028/16/02*

Reference: *45 CFR 1355.34 - 1355.36*

5.2 MONITORING, Title IV-E Eligibility Reviews

1 ***Q:*** Under what authority may the Department review closed or sealed foster care records, particularly for those children who have been adopted?

A: Section 471(a)(8) of the Social Security Act (the Act) requires a State Plan to provide safeguards restricting use and disclosure of information concerning individuals assisted by the foster care and adoption assistance programs. It also indicates that a State Plan must provide: Safeguards which restrict the use of information concerning individuals assisted under the State Plan to purposes directly connected with... (C) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in (D), with respect to any activity referred to in such clause), of any information which identifies by name or address any such applicant or recipients except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which in the case of adoptions, prevent disclosure entirely.

While the language of section 471(a) (8) (D) provides that States may restrict disclosure entirely of adoption assistance records, that subsection, read in its entirety and in harmony with other sections of the Act, indicates that Congress did not intend to restrict access to federal auditors of information essential for audits under the title IV-E foster care and adoption assistance programs.

In particular, section 471(a) (8) (D) itself provides for disclosure of information concerning individuals assisted by the foster care and adoption assistance programs for purposes directly connected with audits conducted by the Federal Government and otherwise authorized by law.

The authority for Federal audits of the foster care and adoption assistance programs is expressly provided for under section 471 (a)(6) of the Act. That section requires that a State Plan, in order to qualify for Federal financial participation (FFP) for foster care and adoption assistance, provide that the appropriate State agency will make such reports, in such form and containing such information as the Secretary may from time to time find necessary to assure the correctness and verification of such reports.

The legislative history of section 471(a)(8) also reveals that while Congress was concerned about providing safeguards which limited access to information on individuals assisted by the

title IV-E programs, it did not intend to hinder the essential function of Federal audits. Thus, while Congress extended to States the option of imposing restrictions broader than those imposed in the past on the disclosure of information for the protection of the confidentiality of recipients of adoption assistance, it did not impede essential auditing functions by those authorized to conduct such audits.

Accordingly, in the case of reviews of the eligibility of foster care and adoption assistance claims, the State Agency must make available foster care and adoption records (including sealed foster care and adoption records) in order to document the eligibility of the beneficiaries (children) and related costs of administration. If the requested records cannot or are not made available, all payments made on behalf of the children whose records have not been made available for review and associated costs will be disallowed.

Source: ACYF-CB-PA-85-02 (12/19/85)ACYF-CB-PA-85-02 (12/19/85)

Reference: Social Security Act - section 471 (a)(6) and (8); H.R. Rep. Conf. No. 96-900, 96th Congress 2nd Session 44 (1980)

2 ***Q:*** Since only States, and not tribes, are reviewed, how do we assure that title IV-E eligibility requirements are met for children served by the tribes in foster care?

A: States and tribes that enter into agreements whereby the tribes access title IV-E foster care maintenance payments for children must determine between themselves how the roles and responsibilities for meeting title IV-E requirements will be shared. While tribes that enter into such agreements with States have the latitude to develop their own procedures for satisfying title IV-E requirements, the State child welfare agency is ultimately responsible for the proper administration of the title IV-E program and for assuring compliance. Children served by tribes who are receiving title IV-E foster care maintenance payments as part of a State/tribal agreement will be included in the sample of cases reviewed.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.71

3 **Q:** Doesn't the requirement for the State to submit the complete payment history records for each sample case fail to comport with the regulation governing records retention at 45 CFR 74?

A: There is no inconsistency between the requirement that a State provide the complete payment history and the regulation at 45 CFR 74.53 (b) which, in pertinent part, states that "Financial records . . . shall be retained for a period of three years from the date of submission of the final expenditure report . . .". For a child in out-of-home care, the final expenditure report would not be submitted to ACF until such child is discharged from foster care.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.71(b)

4 **Q:** How will the eligibility of children receiving title IV-E foster care maintenance payments where the State or tribe is operating under a IV-E waiver demonstration be reviewed?

A: We will not review the files of children whose title IV-E eligibility would be affected by a waiver demonstration project. We pull a large enough oversample of cases for the title IV-E eligibility reviews to exclude those children from the sample of cases reviewed.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 1130 (A); 45 CFR 1356.71

5 **Q:** Should the review title IV-E foster care eligibility team include representatives that are external to the agency such as State foster care review board members, child advocates, etc.?

A: The purpose of the title IV-E financial review is to assess payment accuracy through an examination of case record documentation. Those individuals identified above possess expertise that would be utilized more effectively on a review of service delivery issues, such as the child and family services review. The Federal/State team combination is used to assist States in identifying strategies for training, technical assistance and corrective action, and to

augment the knowledge of State staff about title IV-E eligibility requirements. For these reasons, we see no benefit in expanding the review team composition to include external representatives. The State may, however, exercise its discretion in deciding the range of State and/or local staff to include on the team.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1356.71 (b)*

6 **Q:** For title IV-E eligibility reviews, what is the expectation for determining whether a provider is properly licensed when a child is placed in foster care in another State?

A: Provider documentation requirements are the same for all children. The child must be placed in a licensed or approved foster family home, regardless of the State in which the home is located. The State must provide documentation that the home is licensed or approved and evidence that safety considerations with respect to the caretakers have been addressed.

Source: *September 29, 2005September 29, 2005*

Reference: *45 CFR 1356.30 and 1356.71(g); Social Security Act Sections 471(a)(10) and 471(a)(20); Title IV-E Foster Care Eligibility On-Site Instrument and Instructions, Sections H and I.*

7 **Q:** When a child is placed in foster care outside the State that has placement and care responsibility, must the foster family home be licensed by the State in which it is situated for title IV-E eligibility purposes? Will it be considered an error case on a title IV-E eligibility review if a foster family home is not licensed by the State in which it is situated?

A: Yes to both questions. In order for a child to be eligible for title IV-E foster care maintenance payments, the statute requires that the foster family home or child care institution be licensed by the State licensing authority in the State in which the home is situated. Section 472(c)(1) of the Social Security Act (the Act) defines foster family home as "a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing." The definition for a child care institution in 472(c)(2) of the Act similarly requires licensing or approval by the State in which it is situated. See the

CWPM Section 8.3A.8c, Q/A #2 for the situations in which a Federally-recognized Indian tribal licensing authority may license a foster family homes for title IV-E purposes.

If during a title IV-E eligibility review, we find that a foster care maintenance payment has been made during the period under review for a child placed in a home (or child care institution) not licensed or approved by the State in which it is situated, the case will be found in error. If we find such payments were made outside the period under review, the ineligible payments will be disallowed.

Source: 11/14/0711/14/07

Reference: Social Security Act section 472(c)