LRB-4375

2001 DRAFTING REQUEST

Bill

Received: **12/06/2001**

Received By: **malaigm**

Wanted: **Soon**

Identical to LRB:

For: **Steve Kestell (608) 266-8530**

By/Representing: **David Matzen**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Addl. Drafters:

Subject: **Children - out-of-home placement**
Children - TPR and adoption

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Conformity with federal Adoption and Safe Families Act

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	malaigm 01/24/2002	gilfokm 02/04/2002					S&L
/1			pgreensl 02/05/2002		lrb_docadmin 02/05/2002	lrb_docadmin 02/05/2002 lrb_docadmin 02/05/2002	S&L
/2	malaigm 02/11/2002	gilfokm 02/11/2002	jfrantze 02/12/2002		lrb_docadmin 02/12/2002	lrb_docadmin 02/12/2002	

FE Sent For: **02/07/2002, 02/07/2002.**

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/1		12-2/11 kmg	pgreensl 02/05/2002	_____ _____ _____ _____	lrb_docadmin 02/05/2002	lrb_docadmin 02/05/2002 lrb_docadmin 02/05/2002	

FE Sent For: "/1" 2/7/02 - 2/12 pgs 2/12 by David

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Malaise, Gordon

From: Matzen, David
Sent: Wednesday, December 05, 2001 4:38 PM
To: Malaise, Gordon
Subject: Rep. Kestell, Adoption and Safe Families Act Proposal


ASFALegisPro ASFALegisPro
osalRationa1.doalNov272001.do

Steve just spoke with you on the phone about this drafting request. I have three DHFS contact names (all in the Division of Children and Family Services) Mark Campbell, Director (6-6799), Mark Mitchell, child welfare (6-2860), and Michelle Jensen, child welfare (1-8084).

Thanks,

Dave

Rep. Kestell's Office
6-8530

RATIONALE FOR PROPOSED LEGISLATIVE CHANGES
RELATED TO THE FEDERAL ADOPTION AND SAFE FAMILIES ACT

Subsequent to the passage of the Adoption and Safe Families Act (ASFA), the Department proposed numerous changes to the statutes, primarily Ch. 48, and those proposals were accepted and enacted (1997 Wisconsin Act 237). In March 2000, the federal government issued its final regulations implementing ASFA, many parts of which went into significant detail regarding requirements under the Act. Failure to comply with these regulations could result in the loss of significant amounts of both revenue and financial penalties to the State of Wisconsin.

In some cases, the federal interpretation differed from our earlier interpretation of specific parts of the Act. This explains why we are recommending some changes to the language created by Act 237. It is critical that the legislative proposals incorporated in the attached document be enacted. This is important for several reasons:

- Wisconsin will be out of compliance with federal law if the changes are not enacted.
- Lack of compliance with the federal law can result in significant financial penalties to the state (primarily related to Title IV-E of the Social Security Act).
- It will be difficult for the state to meet federal requirements related to the Child and Family Services Review to be conducted in Wisconsin by the US Department of Health and Human Services in the summer of 2003.
- While some of these changes can be implemented via administrative rule or numbered memo, many of these requirements relate to the courts, District Attorneys and Corporation Counsels and other actors outside of the direct purview of county child welfare agencies who rely almost exclusively on specific statutory language to determine how they function on individual cases.

In essence, the changes proposed in the attached document relate to the following issues:

- Contrary to welfare language This is specific court order language that is a primary consideration in the determination of a child's eligibility for Title IV-E funding
- Bona fide consideration of an agency's recommendation for placement Under ASFA, if the court disagrees with the agency's placement recommendation and does not give bona fide consideration to that recommendation, the child's placement will not be Title IV-E reimbursable
- Reasonable efforts This is a specific court finding that determines whether a child's placement costs will be Title IV-E reimbursable
- Permanency plan reviews Timely and adequate permanency plan reviews is a primary consideration related to the reimbursability of a child's placement
- Permanency plan hierarchy Under ASFA, permanence options for children are organized into a hierarchy (e.g., reunification with the family, adoption, guardianship). Certain existing permanence goals (e.g., independent living, long-term foster care) are discouraged and, under some circumstances, are prohibited by ASFA
- Permanency plan contents While not directly related to ASFA, this issue is directly related to Title IV-E, which is also the federal law impacted by ASFA. Currently, Wisconsin statutes, in the context of permanency plan contents, lists only a few of the required elements. Others have been established by various federal laws but have never been codified in Ch. 48 and Ch. 938. As a result, permanency plans sometimes do not include all of the federally required elements

- Determination of 15 of 22 months Given the very tight time frames for filing a termination of parental rights under ASFA, it is critical that there be uniformity in determining when the "clock starts ticking." Related to this are the proposed changes regarding certain conditions which are not included in determining the 15 of 22 month standard
- Relatives as foster parents Under ASFA, relatives caring for children under a court order must be treated the same as non-relative foster parents. Numerous counties currently treat them differently, thus risking Wisconsin's compliance with ASFA
- Compelling reasons for not filing a termination of parental rights petition Language incorporated into the statutes by 1997 Wisconsin Act 237 is, in some cases, less restrictive than ASFA and, in other cases, is more stringent. These need to be clarified in order to assure that exceptions to the federal law are appropriate and allowed

The final federal regulation to implement provisions of ASFA prescribes new Title IV-E procedural requirements and outlines significant financial penalties for a State's failure to comply with the new mandates. For example, failure to obtain certain judicial findings in the specified time-frames will bar the State from claiming Federal Title IV-E administrative, maintenance and training funds for the entire out-of-home stay for each child welfare or juvenile justice case that does not contain the appropriate documentation of the procedural requirements.

To determine Wisconsin's level of compliance with Title IV-E mandates, the U.S. Department of Health and Human Services (HHS) will be conducting the Title IV-E Eligibility Review in March 2002. A mock Title IV-E eligibility audit conducted by Maximus, Inc. for the Division of Children and Family Services revealed that the State of Wisconsin exceeds the federal threshold of a 10% error rate. A conservative estimate of the federal funds that could be lost is $10 million if the federal review mirrors the findings of the mock audit. There is the potential that this financial loss figure could rise if a secondary review shows that the State has not improved its Title IV-E program after implementation of a one-year program improvement plan.

There is also the potential for additional financial penalties if the State is found to be in nonconformance with 14 national performance standards (7 outcomes and 7 systemic factors) that will be audited by HHS in the Child and Family Services Review to be held in Summer 2003. The estimated penalty for noncompliance per national standard during the initial review is approximately $150,000. The penalties remain in place until corrections are made.

PROPOSED STATUTORY AMENDMENTS

Required by the

ADOPTION AND SAFE FAMILIES ACT (Effective November 19, 1997)
And
THE FEDERAL FINAL RULE TO IMPLEMENT PROVISIONS OF ASFA (Effective March 27, 2000)

	Issue	Statutory Citation	Proposed Language
1.	Reasonable Efforts to Prevent Removal Judicial Finding	48.21(3)(am) ✓ 48.21(5)(c)	(am) The parent, guardian or legal custodian may waive his or her right to participate in the hearing under this section. ~~Agreement in writing of the child is required if he or she is over 12. After any waiver, a hearing shall be granted at the request of any interested party.~~
		48.21(5) ✓	*Drafting instructions: Add a directive to the court that no later than 60 days from the date of removal there must be a judicial finding in a court order regarding whether or not reasonable efforts to prevent removal were made, or that reasonable efforts are not required to be made for the same reasons that are already described in current s. 48.355(2d), aggravated circumstances, etc.* 2.,5., 48.355(2)(b)6. ✓ *Add a directive to the court that if reasonable efforts are not required to prevent removal, then the court may also make a judicial finding that reasonable efforts to reunify are not required.* ✓ *Add language requiring a permanency plan hearing as provided in 48.38 within 30 days of a judicial finding that reasonable efforts to reunify are not required unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify are not required.*
		(c) ✓ 48.21(5)~~(b)~~ par. (b)	3. If, for good cause shown, sufficient information is not available for the court to make the findings described in ~~subd.~~ 1., the court shall order the county department or the department, in a county having a population of 500,000 or more, to provide sufficient information to the court to make the finding described in ~~subd.~~ 1. within 5 days after the hearing under sub. (1)

Federal Requirement: **45 C.F.R. § 1356.21(b)(1).** Requires that when a child is removed from his/her home, a judicial finding that reasonable efforts were made or were not required under 45 C.F.R. § 1356.21(3) to prevent the removal must be made no later than 60 days from the date the child is removed from the home. Also under subsection (3), if reasonable efforts are not required to prevent the child's removal, a judicial finding may be made that reasonable efforts are not required to reunify the child and family. If a court makes a judicial finding that reasonable efforts to return the child to the home are not required, a permanency hearing must be held within 30 days of that finding. **45 C.F.R. § 1356.21(h)(2)**

Fiscal Impact: The State will be unable to claim Title IV-E maintenance payments from the federal government for the remainder of that child's/juvenile's stay in out-of-home care if the reasonable efforts to prevent removal judicial finding is not made in the required timeframe. In addition, the State may be subject to additional penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: Under current law, or at least the common interpretation of current law, a parent can waive the right to a detention hearing. This proposal amends the statutes to make it clear that the parent can only waive his or her right to appear at the hearing. This is important so that there will always be a hearing within 60 days of the child's removal from the home at which the court will make both the contrary to welfare and reasonable efforts finding.

	Issue	Statutory Citation	Proposed Language
2.	Documentation of Judicial Findings	~~48.255(1)(f)~~ 48.21(5)	(f) The factual basis for the contrary to welfare finding, the reasonable efforts to prevent removal and the reasonable efforts to achieve the permanence goal.

48.357
48.365

dispositional stage, not plea or fact finding - just grounds to invoke jur. only applies to out of home placement

Federal Requirement: The federal final rule to implement provisions of ASFA requires that the judicial findings regarding contrary to the welfare, reasonable efforts to prevent removal, reasonable efforts not required to prevent removal and reasonable efforts to finalize the permanency plan in effect must be explicitly documented on a case-by-case basis and so state in the court order. **45 C.F.R. § 1356.21(d)**

Fiscal Impact: The State will be unable to claim Title IV-E funding from the federal government for the remainder of that child's/juvenile's stay in out-of-home care if the contrary to the welfare and the reasonable efforts judicial findings are not sufficiently documented unless a transcript is produced to correct a technical error. In addition, the State may be subject to additional penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: Court findings related to contrary to welfare and reasonable efforts must provide more specific information related to the case than would have been allowable pre-ASFA. As a result, the petition to the court must contain the factual basis of the removal so that the court can make an informed finding.

	Issue	Statutory Citation	Proposed Language
3.	Documentation Of Judicial Findings	~~48.299(9)~~ 48.355 (2)(b)6.	(9) In all proceedings under this chapter, judicial findings regarding contrary to the welfare of a child, reasonable efforts to prevent removal and reasonable efforts to achieve a permanency plan, including judicial findings that reasonable efforts are not required, shall be explicitly documented in the court order and shall be made on a case-by-case basis based on child-specific circumstances. Court orders that merely reference state law without detailed, child-specific information to substantiate court findings, nunc pro tunc orders, and affidavits are not permitted.

Federal Requirement: See Issue Number 2. Also, the federal final rule prohibits the use of court orders that merely reference state law, nunc pro tunc orders and affidavits as documentation to support the contrary to the welfare and reasonable efforts findings. **45 C.F.R. § 1356.21(d) (2) and (3)**

Fiscal Impact: See Issue Number 2.

Rationale: The Children's Code does not require detailed documentation of judicial findings and is silent on the use of affidavits, nunc pro tunc orders, and referencing state law as the sole basis of a judicial findings.

	Issue	Statutory Citation	Proposed Language
4.	Contrary to the Welfare/Reas. Efforts to Prevent Removal	48.32(1b)	48.32(1b) is renumbered 48.32(1m).
		48.32(1)	48.32(1) is renumbered 48.32(1) and (1g) **(1)** At any time after the filing of a petition for a proceeding relating to s. 48.13 or 48.133 and before the entry of judgment, the judge or juvenile court commissioner may suspend the proceedings and place the child or expectant mother under supervision in the home or present placement of the child or expectant mother. The court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian, to the child expectant mother and her parent, guardian or legal custodian or to the adult expectant mother, including the condition specified in sub. ~~(1b)~~ (1m).
		48.32(1g)	**(1g)** The order under this section shall be known as a consent decree and must be agreed to by the child if 12 years of age or older, the parent, guardian or legal custodian, and the person filing the petition under s. 48.25; by the child expectant mother, her parent, guardian or legal custodian, the unborn child by the unborn child's guardian ad litem and the person filing the petition under s. 48.25; or by the adult expectant mother, the unborn child by the unborn child's guardian ad litem and the person filing the petition under s. 48.25. The consent decree shall be reduced to writing and given to the parties.
		48.32(1j)	**(1j)** If the child is living outside of his or her home without a court order or under a voluntary placement agreement under s. 48.63, and the consent decree maintains the child in that living arrangement, then the consent decree shall include judicial findings that residence in the child's home would be contrary to the welfare of the child and that reasonable efforts were made to prevent the child's removal from the home.

Federal Requirement: See Issue Number 1 **45 C.F.R. § 1356.21(b)(1).** Also, the federal final rule to implement provisions of ASFA requires that the first court order that authorizes a child's/juvenile's removal from the home, even temporarily, contain a judicial finding that continuation of residence in the home would be contrary to the welfare of the child/juvenile. **[45 C.F.R. § 1356.21(c)]**

Fiscal Impact: The State will be unable to claim Title IV-E funding from the federal government for the remainder of that child's/juvenile's stay in out-of-home care if the contrary to the welfare and the reasonable efforts judicial findings are not made in the required timeframes. In addition, the State may be subject to additional penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: Under the federal final rule to implement ASFA, the first court order that authorizes the placement of the child outside of the home must contain the contrary to welfare and there must be a reasonable efforts to prevent removal judicial finding in a court order within 60 days of a child's removal from the home. Even though a child cannot be removed from his or her home by a consent decree, the child can be maintained in an out-of-home care placement via a consent decree (e.g., the child may have been placed out of the home via a voluntary placement agreement and the court order occurred subsequent to that). A consent decree is a court order even though it is not a dispositional order.

	Issue	Statutory Citation	Proposed Language
5.	Reasonable Efforts to Finalize the Permanency Plan	48.355(2)(b)6.	6. If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to health, safety and welfare of the child and, if sub. (2d) does not apply, a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, or, if applicable, a finding as to whether the agency primarily responsible for providing services under a court order has made reasonable efforts to ~~make it possible for the child to return safely to his or her home~~ achieve the permanency plan. *Note: If a judicial finding is not made that reasonable efforts to reunify are not required, the agency must still make reasonable efforts to reunify although the federal rule only requires a judicial finding that reasonable efforts have been made to achieve the permanency plan.*
		48.355(2c)(b)	(b) When a court makes a finding under sub. (2)(b)6. as to whether the agency primarily responsible for providing services to the child under a court order has made reasonable efforts ~~to make it possible for the child to return safely to his or her home~~ to achieve the permanency plan, the court's consideration of reasonable efforts shall include, but not be limited to, the considerations listed under par. (a)1. to 5. And whether visitation schedules between the child and his or her parents were implemented, unless visitation was denied or limited by the court.
	No - still must make efforts to achieve perm. plan	48.355(2d)(b) (intro.)	(b) Notwithstanding sub. (2)(b)6., the court need not include in a dispositional order a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts with respect to a parent of a child to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, or, if applicable, a finding as to whether the agency primarily responsible for providing services under a court order has made reasonable efforts with respect to a parent of a child to ~~make it possible for the child to return safely to his or her home~~ achieve a permanency plan of reunification, if the court finds, as evidenced by a final judgment of conviction, any other following:

Federal Requirement: The federal final rule to implement ASFA requires a judicial finding that the agency has made reasonable efforts to finalize the permanency plan (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within 12 months of the date the child is considered to have entered foster care and every 12 months thereafter.
45 C.F.R. § 1356.21(b)(2)

Fiscal Impact: Failure to make the reasonable efforts to finalize the permanency plan judicial finding in a timely manner will result in the State being unable to unable to claim Title IV-E maintenance payments from the federal government until the finding is made by the court. In addition, the State may be subject to additional penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: ASFA changes the thrust of Title IV-E from one of reunification to one of permanence. As such, the reasonable efforts finding language needs to be changed to emphasize permanence rather than reunification alone. The goal of reunification remains the highest priority permanence goal under the final rule, but there is no requirement that a separate reasonable effort to reunify judicial finding be made.

	Issue	Statutory Citation	Proposed Language
6.	Reasonable Efforts to Finalize the Permanency Plan Judicial Finding	48.355(4) ✓ 48.365	*Drafting Instructions: Remove the current statutory language limiting a court order to one year. Court orders should continue until they are terminated by the court or the child ages out. Create permanency hearings to be held 12 months from the date the child is removed from the home where the reasonable efforts to achieve the permanency plan judicial finding is made. Continuances must not be permissible.*

Federal Requirement: The federal final rule to implement ASFA requires a judicial finding that the agency has made reasonable efforts to finalize the permanency plan (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within 12 months of the date the child is considered to have entered foster care and every 12 months thereafter.
45 C.F.R. § 1356.21(b)(2)

Fiscal Impact: Failure to make the reasonable efforts to finalize the permanency plan judicial finding in a timely manner will result in the State being to unable to claim Title IV-E maintenance payments from the federal government until the finding is made by the court. In addition, the State may be subject to additional penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: Under ASFA, reasonable efforts findings to finalize the permanency plan must be made every 12 months. Current practice in many counties is to combine the extension hearing and the permanency plan review into one hearing based on the date that the order will terminate. Given that the timing for extension hearings, permanency plan reviews, and the required new reasonable efforts finding are all based on different counting frameworks, we believe the best approach would be to remove the current statutory language limiting a court order to one year. If this change was not made, the timing of reviews, dispositional hearings and reasonable efforts findings would be such that courts would have to hold 2 or 3 hearings rather than just one annually. There is also a great potential that the deadline for the reasonable efforts finding would be missed.

Not every disp. order places a child out of home
= If in home 12 mo. from date of previous order
- If out of home 12 mo. from date of removal or 12 month from date of previous review

	Issue	Statutory Citation	Proposed Language
7.	Contrary to the Welfare & Reasonable Efforts to Prevent Removal Findings	48.357	*Drafting Instruction: Insert the required contrary to the welfare and reasonable efforts to prevent removal judicial findings when a change in placement order authorizes the initial removal of the child from the home, even when the original dispositional order authorizes the out-of-home placement. Therefore, for changes from an in-home placement to an out-of-home placement a hearing should be held.* *In addition, broaden the bona fide consideration language to include all changes in placement, not just changes in placement that remove the child from the home under §48.357(2v).*

Federal Requirements: The federal final rule to implement provisions of ASFA requires that the first court order that authorizes a child's/juvenile's removal from the home, even temporarily, contain a judicial finding that continuation of residence in the home would be contrary to the welfare of the child/juvenile. **45 C.F.R. § 1356.21(c)**

When a child is removed from his/her home, a judicial finding that reasonable efforts were made or were not required under 45 C.F.R. § 1356.21 (b) (3) to prevent the removal must be made no later than 60 days from the date the child is removed from the home. **45 C.F.R. § 1356.21(b)(1)**

Fiscal Impact: The State will be unable to claim Title IV-E funding from the federal government for the remainder of that child's/juvenile's stay in out-of-home care if the contrary to the welfare and the reasonable efforts judicial findings are not made in the required timeframes. In addition, the State may be subject to additional penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: Under ASFA and the federal child welfare outcomes, there is an important distinction made between removing a child from his or her home and simply moving the child from one out-of-home care placement to another. Under current state law, both of these actions could occur under s. 48.357. If a child is removed from the home via a change in placement order, the contrary to the welfare and reasonable efforts to prevent removal judicial findings must be included as this is the first court order authorizing the removal of the child from the home.

	Issue	Statutory Citation	Proposed Language
8.	Date of Removal Definition	48.365(1)	*Drafting Instruction:, Change definition of the date child is considered to be placed outside the home for purposes of this section to the date the child is removed from home.*
	Reasonable Efforts to Finalize the Permanency Plan Judicial Finding	48.365(2g)(b)2. 48.365(2m)(g)	2. An evaluation of the child's adjustment to the placement and of any progress the child has made, suggestions for amendment of the permanency plan, a description of efforts to ~~return the child safely to his or her home~~ achieve the permanency plan, including, if appropriate, efforts of the parents to remedy factors which contributed to the child's placement ~~and, if continued placement outside of the child's home is recommended, an explanation of why returning the child to his or her home is not safe or feasible~~.

Federal Requirement: 45 C.F.R. § 1356.21(b)(2)

Fiscal Impact: Failure to make the reasonable efforts to finalize the permanency plan judicial finding in a timely manner will result in the State being unable to unable to claim Title IV-E maintenance payments from the federal government until the finding is made by the court. In addition, the State may be subject to additional penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: As noted previously, ASFA emphasizes permanence; as a result, the language is amended here as it was previously. The struck language is no longer necessary since it is duplicative of the permanency plan review language and also because it does not reflect the emphasis on overall permanency rather than solely on reunification. The amended date of removal language above represents one of the two allowable "starting points." We opted to limit it to one starting point to assure accuracy in making all subsequent findings.

48.417(2)(c) - NO

48.425 (1)(c) (d) } NO

48.977 (2) (F) NO

	Issue	Statutory Citation	Proposed Language
9.	Trial Home Visits/Termination of Parental Rights	48.365(2g)(b)3.b.	b. The determination under subpar. a., shall not include any amount of time, under 6 months, the child may have spent with the person or persons from whose home the child was removed on a trial home visit. The determination shall also not include any time the child was a runaway from the out-of-home care placement.

Federal Requirements: The final rule to implement ASFA prohibits States from including trial home visits or runaway episodes in calculating 15 months in out-of-home care for the filing of a termination of parental rights petition. **45 C.F. R. § 1356.21(i)**

Fiscal Impact: The State may be subject to penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: Trial home visits, which, under federal law, can last up to six months, cannot be included in the determination of the length of time the child has been removed from his or her home. This provision is currently not included in the Children's Code.

	Issue	Statutory Citation	Proposed Language
10.	Case Review Requirements	48.38(2)	(2) PERMANENCY PLAN REQUIRED. Except as provided in sub. (3), for each child living in a foster home, treatment foster home, group home, child-caring institution, the home of a relative under either court order or voluntary placement agreement, secure detention facility or shelter care facility, the agency that placed the child or arranged the placement or the agency assigned primary responsibility for providing services to the child under s. 48.355 shall prepare a written permanency plan, if one of the following conditions exists:
		48.38(2)(c)	(c) The child is under supervision of an agency under s. 48.64(2), pursuant to a consent decree under s. 48.32(1j) or pursuant to a court order under s. 48.355.

Federal Requirement: 45 C.F.R. § 1355.20 Definition of Foster Care; 42 U.S.C. §622(b)(10) State Plans for Child Welfare Services

Fiscal Impact: The State may be subject to penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: The addition of home of a relative and consent decrees is required because all children who are placed by a court order, whether in the home of a relative or in another out-of-home care placement, are entitled under federal Title IV-E to the protections afforded under permanency planning and is a requirement of the Wisconsin State Plan for Child Welfare Services.

	Issue	Statutory Citation	Proposed Language
11.	Case Plan Requirements	48.38(3)	**(3)** TIME. Subject to s. 48.355(2d)(c), the agency shall file the permanency plan with the court within 60 days after the date on which the child was first ~~held in physical custody or placed outside his or her home under a court order~~ removed from his or her home, except that if the child is held for less than 60 days in a secure detention facility, juvenile portion of a county jail or a shelter care facility, no permanency plan is required if the child is returned to his or her home within that period.
		48.38(5)(a)	(a) The court or a panel appointed under this paragraph shall review the permanency plan every 6 months from the date on which the child was ~~first held in physical custody or placed outside of his or her home~~ removed from his or her home. If the court elects not to review the permanency plan, the court shall appoint a panel to review the permanency plan. The panel shall consist of 3 persons who are either designated by an independent agency that has been approved by the chief judge of the judicial administrative district or designated by the agency that prepared the permanency plan. A voting majority of person on each panel shall be persons who are not employed by the agency that prepared the permanency plan and who are not responsible for providing services to the child or the parents of the child whose permanency plan is the subject of the review.

Federal Requirement: 45 C.F.R. § 1326.21(g)(2)

Fiscal Impact: The State may be subject to penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: Under ASFA, it is important to simplify the process for counting to determine when various hearings must be held and findings made. The added language above represents one of the two allowable "starting points." We opted to limit it to one starting point to assure accuracy in making all subsequent findings.

	Issue	Statutory Citation	Proposed Language
12.	Reasonable Efforts to Finalize the Permanency Plan/Case Plan Requirements	48.38(4)(a)	48.38(4)(a) is renumbered 48.38(4)(ar).
		48.38(4)(a)	~~(a)~~ The name, address and telephone number of the child's parent or parents and guardian, if any.
		48.38(4)(am)	(ag) The date of the child's removal from his or her home and the date of the child's placement into out-of-home care.
		48.38(4)(ar)	~~(a)~~ (ar) The services offered and any service provided in an effort to prevent holding or placing the child outside of his or her home, while assuring that the health and safety of the child are the paramount concerns, and to ~~make it possible for the child to return safely home~~ achieve the permanency plan, except that the permanency plan need not include a description of those services offered or provided with respect to a parent of the child if any of the circumstances specified in s. 48.355(2d)(b)1., 2., 3. or 4. apply to that parent.
		48.38(4)(dg)	(dg) Educational information, including all of the following: 1. ~~The name~~ of the school in which the child is enrolled or was most recently enrolled. 2. Any special academic programs in which the child is enrolled or was previously enrolled. 3. The grade level in which the child is currently enrolled or was most recently enrolled as well as any grade level performance information available. 4. A summary of any educational records that ~~affect~~ are relevant to any educational goals included in the educational services plan ~~pursuant to a court report~~ prepared under s. 48.33(1)(e).
		48.38(4)(dm)	(dm) If the child's placement will result or resulted in the child's transfer from the school in which he or she is or was most recently enrolled, documentation that arrangements to maintain the child in that school were not possible or reasonable.
		48.38(4)(dr)	(dr) Medical information, including all of the following: 1. The names and addresses of the child's physician, dental care provider and other medical practitioners who are currently or were most recently providing health care to the child. 2. The child's immunization record, including the names of all immunizations provided to the child and the dates on which those immunizations were administered. 3. The child's known medical problems, including any conditions for which the child is currently receiving medical care and all serious injuries and illnesses for which the child received medical care in the past. 4. The names, purposes and dosages of all medications currently being administered to the child, including any known allergic or other negative reactions to any types of medication.

12.	**(Continued)**	48.38(4)(fg)	**(fg)** 1. The permanence goal or, if there is a concurrent permanency plan, goals for the child. The goal or goals, in order of preference, are the following: a. Reunification with the parent or guardian from whose home the child was removed. b. Termination of parental rights and placement for adoption. c. Legal guardianship. d. Permanent placement with a fit and willing relative. 2. If a goal that is less preferred is determined to be the most appropriate, the case plan must include documentation as to the rationale for the selection of the less preferred goal. 3. Only if the court finds that there is a compelling reason for not pursuing the goals specified in subd. 1.a. to d., then the court may approve another planned permanent living arrangement, including sustaining care, independent living and long-term foster care.
		48.38(4)(h)	(h) For a child aged 15 or older, a ~~written~~ description of the programs and services that are being provided or will be provided to assist ~~in the preparation of~~ the child for the transition from out-of-home care to independent living. The written description shall include all of the following: 1. The anticipated age at which the child will be discharged from out-of-home care. 2. The anticipated amount of time available for transition ~~of the child~~ from out-of-home care to independent living. 3. The anticipated location and living situation of the child upon discharge from out-of-home care. 4. A description of the assessment process, tools and methods that have been or will be used to determine the services that ~~were~~ are or will be provided to the child. 5. A description of each of the services being provided and to be provided to the child, a rationale for providing each service, time frames for delivering each service and the expected outcomes of each service.

Federal Requirement: 42 U.S.C. § 675; 42 U.S.C. § 622; and 45 CFR §1356.21(h)(3)

Fiscal Impact: The State may be subject to penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: Under ASFA, there is an increased emphasis on permanency planning and achieving the permanence goal. While the above changes are not specifically required by ASFA, they are required by previous federal funding laws that have never been codified in Ch. 48. As a result, the current description of the contents of a permanency plan in s. 48.38 is not accurate, leading some individuals and agencies to erroneously believe that a permanency plan need include only the information currently contained in s. 48.38.

	Issue	Statutory Citation	Proposed Language
13.	Reasonable Efforts to Finalize the Permanency Plan	48.38(5)(bm) (a) +	(bm) Notwithstanding the appointment of a panel under par. (am), the court shall review the permanency plan and make findings as described in par (c). The reasonable efforts to achieve the permanency plan finding under 48.38(5)(c)7 shall be made by the court within 12 months from the date the child was removed from the home. The finding that reasonable efforts to achieve the permanency plan shall be made by the court in a court order within 12 months from the prior finding.
		48.38(5)(c)7.	7. Whether reasonable efforts were made by the agency to achieve the permanency plan. ~~make it possible for the child to return safely to his or her home, except that the court or panel need not determine whether those reasonable efforts were made with respect to a parent of the child if any of the circumstances specified in s. 48.355(2d)(b)1., 2., 3. or 4. apply to that parent.~~

Federal Requirement: 45 C.F.R. §1356.21(b)(2)

Fiscal Impact: Failure to make the reasonable efforts to finalize the permanency plan judicial finding in a timely manner will result in the State being unable to unable to claim Title IV-E maintenance payments from the federal government until the finding is made by the court. In addition, the State may be subject to additional penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: These changes reflect the new requirement under ASFA that the court make a reasonable efforts to achieve the permanency plan finding every 12 months and every 12 months thereafter.

	Issue	Statutory Citation	Proposed Language
14.	Termination Of Parental Rights Petition Filing Requirement	48.417	*Drafting Instructions: Require that a termination of parental rights petition be filed within 60 days of a judicial finding that a child is an abandoned infant, or a within 60 days of a judicial finding that reasonable efforts to reunify are not required due to conviction of murder or voluntary manslaughter of another child of the parent, or aiding, abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of another child of the parent, or felony assault that results in serious bodily injury to the child or another child of the parent, unless exceptions exist to filing tpr petition as provided in current 48.417(2).*
		48.417(1)(a) 48. 38 (5) (c) 6.	48.417(1)(a) is renumbered 48.417(1)(a)1. ~~(a)~~ 1. The child has been placed outside of his or her home, as described in s. 48.365(1), for 15 of the most recent 22 months. Under this circumstance, the petition must be filed or joined by the end of the 15th month of the child being placed outside of his or her home. If an exception is being claimed, documentation of the exception must be included in the case file and made available for court review.
		48.417(1)(a)2.	2. The determination under subd. 1. shall not include either any amount of time, under 6 months, the child may have spent with the person or persons from whose home the child was removed on a trial home visit or any period of time the child was a runaway from the out-of-home care placement.

Federal Requirement: 45 C.F.R. § 1356.21(i)

Fiscal Impact: The State may be subject to penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: The first change reflects the fact that the petition to terminate parental rights must be filed by the end of the 15th month. The second change reflects the fact the ASFA prohibits the time that a child was on a home visit or runaway status from being counted toward the 15 of 22 months.

	Issue	Statutory Citation	Proposed Language
15.	Federal Language	48.417(2)(a)	(a) The child is being cared for by a fit and willing relative of the child.

Federal Requirement: 45 C.F.R. §1356.21(h)(3)

Fiscal Impact: The State may be subject to penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: "Fit and willing" is terminology used in the ASFA legislation and the final rule. Current state statute does not reflect the federal requirement.

	Issue	Statutory Citation	Proposed Language
16.	Documentation Requirement	48.417(2)(b)	(b) The child's permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child.

Federal Requirement: 45 C.F.R. §1356.21 (i)

Fiscal Impact: The State may be subject to penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: ASFA requires that there be justification for determining that not terminating parental rights is in the child's best interests. This change merely requires that there be documentation in the permanency plan rather than simply the finding.

	Issue	Statutory Citation	Proposed Language
17.	TPR Petition Filing Requirement	48.417(2)(d)	(d) Grounds for an involuntary termination of parental rights under s. 48.415 do not exist.

Federal Requirement: **45 C.F.R. §1356.21(i)**

Fiscal Impact: The State may be subject to penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: Under ASFA, a termination of parental rights must be filed under certain conditions. However, it is possible to have a situation where the child has been outside of his or her home for 15 of 22 months, but where there are no grounds for terminations of parental rights. In recognition of this, federal regulations permit exceptions to the requirement to include the language proposed above.

	Issue	Statutory Citation	Proposed Language
18.	Voluntary Placement Agreement (counting)	48.63(1) (4)	**48.63(1)** Acting pursuant to court order or voluntary agreement, the child's parent or guardian or the department of health and family services, the department of corrections, a county department or a child welfare agency licensed to place children in foster homes or treatment foster homes may place a child or negotiate or act as intermediary for the placement of a child in a foster home, treatment foster home or group home. Voluntary agreements under this subsection may not be used for placements in facilities other than foster, treatment foster or group homes and may not be extended. A foster home or treatment foster home placement under a voluntary agreement may not exceed ~~6 months~~ 180 days from the date of the child's removal under the voluntary agreement. A group home placement under a voluntary agreement may not exceed 15 days. These time limitations do not apply to placements made under s. 48.345, 938.183, 938.34 or 938.345. Voluntary agreements may be made only under this subsection and shall be in writing and shall specifically state that the agreement may be terminated at any time by the parent or by the child if the child's consent to the agreement is required. The child's consent to the agreement is required whenever the child is 12 years of age or older.

Federal Requirement: **45 C.F.R. §1356.22(a)(4)(b)**

Fiscal Impact: The State may be subject to penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: Under federal Title IV-E, although not specifically required by ASFA, federal eligibility under Title IV-E is lost if a voluntary placement agreement lasts more than 180 days. Current state law (i.e., 6 months) could result in eligibility being lost because 6 months can be longer than 180 days.

	Issue	Statutory Citation	Proposed Language
19.	Safety Requirements for Foster Care and Adoptive Home Providers.	48.685(5)(a)4.	*Drafting Instructions: Add alcohol related felonies to list of violations that are subject to a 5 year bar for foster care providers or adoptive home providers receiving adoption assistance.*

Federal Requirement: 45 C.F.R. § 1356.30(c)

Fiscal Impact: The State may be subject to penalties if found to be in non-compliance with federal mandates during the Title IV-E audit scheduled for March 2002 and the Child and Family Services Review scheduled for Federal Fiscal Year 2003.

Rationale: Preamble to the final rules clarifies that an alcohol related felony conviction within 5 years is considered a drug related felony that prohibits foster care or adoptive placement approval.

	Issue	Statutory Citation	Proposed Language
20.	Computing Time Periods for Judicial Finding Requirements	Throughout Chapter 48 or 48.315	*Drafting Instruction: Establish in statute that the reasonable efforts to prevent removal finding must be made within 60 days of the child's removal from the home and the reasonable efforts to finalize the permanency plan finding must be made within 12 months from the date of the removal of the child from the home and every 12 months thereafter with no exception to timelines. Federal funding will be unavailable if the strict timelines are not adhered to.* No continuance or exceptions

add 938.315 (3)
-3443

48.21 (5)(b) 1.
48.355 (2) (b) 6.

he detention of children who are determined to be delinquent.

Commissioner means the Commissioner on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services.

Date a child is considered to have entered foster care means the earlier of: The date of the first judicial finding that the child has been subjected to child abuse or neglect; or, the date that is 60 calendar days after the date on which the child is removed from the home pursuant to §1356.21(k). A State may use a date earlier than that required in this paragraph, such as the date the child is physically removed from the home. This definition determines the date used in calculating all time period requirements for the periodic reviews, permanency hearings, and termination of parental rights provision in section 475(5) of the Act and for providing time-limited reunification services described at section 431(a)(7) of the Act. The definition has no relationship to establishing initial title IV–E eligibility.

Department means the United States Department of Health and Human Services.

Detention facility in the context of the definition of child care institution in section 472(c)(2) of the Act means a physically restricting facility for the care of children who require secure custody pending court adjudication, court disposition, execution of a court order or after commitment.

Entity, as used in §1355.38, means any organization or agency (*e.g.*, a private child placing agency) that is separate and independent of the State agency; performs title IV–E functions pursuant to a contract or subcontract with the State agency; and, receives title IV–E funds. A State court is not an "entity" for the purposes of §1355.38 except if an administrative arm of the State court carries out title IV–E administrative functions pursuant to a contract with the State agency.

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Foster care maintenance payments are payments made on behalf of a child eligible for title IV–E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences. "Daily supervision" for which foster care maintenance payments may be made includes:

(1) *Foster family care*—licensed child care, when work responsibilities preclude foster parents from being at home when the child for whom they have care and responsibility in foster care is not in school. licensed child care when the foster parent is required to participate, without the child, in activities associated with parenting a child in foster care that are beyond the scope of ordinary parental duties, such as attendance at administrative or judicial reviews, case conferences, or foster parent training. Payments to cover these costs may be: included in the basic foster care maintenance payment; a separate payment to the foster parent, or a separate payment to the child care provider; and

(2) *Child care institutions*—routine day-to-day direction and arrangements to ensure the well-being and safety of the child.

Foster family home means, for the purpose of title IV-E eligibility, the home of an individual or family licensed or approved as meeting the standards established 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, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting title IV-E eligibility requirements. States may, however, claim title IV-E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

Full review means the joint Federal and State review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining the State's substantial conformity with the State plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part. A full review consists of two phases, the statewide assessment and a subsequent on-site review, as described in §1355.33 of this part.

Independent Living Program (ILP) means the programs and activities established and implemented by the State to assist youth, as defined in section 477(a)(2) of the Act, to prepare to live independently upon leaving foster care. Programs and activities that may be provided are found in section 477(d) of the Act.

Legal guardianship means a judicially-created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term *legal guardian* means the caretaker in such a relationship.

National Child Abuse and Neglect Data System (NCANDS) means the voluntary national data collection and analysis system established by the Administration for Children and Families in response to a requirement in the Child Abuse Prevention and Treatment Act (Pub. L. 93–247), as amended.

Partial review means:

(1) For the purpose of the child and family services review, the joint Federal and State review of one or more federally-assisted child and family services program(s) in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services. A partial review may consist of any of the components of the full review, as mutually agreed upon by the State and the Administration for Children and Families as being sufficient to determine substantial conformity of the reviewed components with the State plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part; and

(2) For the purpose of title IV-B and title IV-E State plan compliance issues that are outside the prescribed child and family services review format, *e.g.*, compliance with AFCARS requirements, a review of State laws, policies, regulations, or other information appropriate to the nature of the concern, to determine State plan compliance.

Permanency hearing means:

(1) The hearing required by section 475(5)(C) of the Act to determine the permanency plan for a child in foster care. Within this context, the court (including a Tribal court) or administrative body determines whether and, if applicable, when the child will be:

(i) Returned to the parent;

(ii) Placed for adoption, with the State filing a petition for termination of parental rights;

(iii) Referred for legal guardianship;

(iv) Placed permanently with a fit and willing relative; or

(v) Placed in another planned permanent living arrangement, but only in

ses where the State agency has documented to the State court a compelling ason for determining that it would t be in the best interests of the child follow one of the four specified opns above.

(2) The permanency hearing must be ld no later than 12 months after the te the child is considered to have enred foster care in accordance with e definition at §1355.20 of this part or thin 30 days of a judicial determinaon that reasonable efforts to reunify e child and family are not required. ter the initial permanency hearing, bsequent permanency hearings must held not less frequently than every months during the continuation of ster care. The permanency hearing ust be conducted by a family or juvele court or another court of comtent jurisdiction or by an administative body appointed or approved by e court which is not a part of or der the supervision or direction of e State agency. Paper reviews, *ex rte* hearings, agreed orders, or other tions or hearings which are not open the participation of the parents of e child, the child (if of appropriate e), and foster parents or preadoptive rents (if any) are not permanency arings.

State means, for title IV–B, the 50 ates, the District of Columbia, the mmonwealth of Puerto Rico, Guam, e Virgin Islands, the Commonwealth the Northern Mariana Islands, and nerican Samoa. For title IV–E, the rm "State" means the 50 States and e District of Columbia.

State agency means the State agency ministering or supervising the adnistration of the title IV–B and title –E State plans and the title XX soal services block grant program. An ception to this requirement is pertted by section 103(d) of the Adopn Assistance and Child Welfare Act 1980 (Pub. L. 96–272). Section 103(d) ovides that, if on December 1, 1974, e title IV–B program (in a State or cal agency) and the social services ogram under section 402(a)(3) of the t (the predecessor program to title X) were administered by separate encies, that separate administration the programs could continue at ate option.

(b) Unless otherwise specified, the definitions contained in section 475 of the Act apply to all programs under titles IV–E and IV–B of the Act.

Statewide assessment means the initial phase of a full review of all federally-assisted child and family services programs in the States, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining, in part, the State's substantial conformity with the State plan requirements of titles IV–B and IV–E as listed in §1355.34 of this part. The statewide assessment refers to the completion of the federally-prescribed assessment instrument by members of a review team that meet the requirements of §1355.33(a)(2) of this part.

[48 FR 23114, May 23, 1983, as amended at 57 FR 30429, July 9, 1992; 58 FR 67924, Dec. 22, 1993; 61 FR 58653, Nov. 18, 1996; 65 FR 4076, Jan. 25, 2000]

§1355.21 State plan requirements for titles IV–E and IV–B.

(a) The State plans for titles IV–E and IV–B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.

(b) The State plans for titles IV–E and IV–B must provide for compliance with the Department's regulations listed in 45 CFR 1355.30.

(c) The State agency and the Indian Tribe must make available for public review and inspection the Child and Family Services Plan (CFSP) and the Annual Progress and Services Reports. (See 45 CFR 1357.15 and 1357.16.) The State agency also must make available for public review and inspection the title IV–E State Plan.

[48 FR 23114, May 23, 1983, as amended at 61 FR 58654, Nov. 18, 1996]

§1355.25 Principles of child and family services.

The following principles, most often identified by practitioners and others as helping to assure effective services for children, youth, and families, should guide the States and Indian Tribes in developing, operating, and improving the continuum of child and

§ 1356.21 Foster care maintenance payments program implementation requirements.

(a) *Statutory and regulatory requirements of the Federal foster care program.* 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 (FFP) for foster care maintenance payments under this part, a State must meet the requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and sections 472, 475(1), 475(4), 475(5) and 475(6) of the Act.

(b) *Reasonable efforts.* The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the "reasonable efforts" requirements of section 471(a)(15) (as implemented through section 472(a)(1) of the Act), the State must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the State's paramount concern.

(1) *Judicial determination of reasonable efforts to prevent a child's removal from the home.*

(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV–E foster care maintenance payments program for the duration of that stay in

(2) *Judicial determination of reasonable efforts to finalize a permanency plan.*

(i) The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made, the child becomes ineligible under title IV–E from the end of the twelfth month following the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, or the end of the month in which the most recent judicial determination of reasonable efforts to finalize a permanency plan was made, and remains ineligible until such a judicial determination is made.

(3) *Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family.* Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the State agency obtains a judicial determination that such efforts are not required because:

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) A court of competent jurisdiction has determined that the parent has been convicted of:

(A) Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) Voluntary manslaughter (which would have been an offense under sec-

Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or.

(iii) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

(4) *Concurrent planning.* Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

(5) *Use of the Federal Parent Locator Service.* The State agency may seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan.

(c) *Contrary to the welfare determination.* Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV–E foster care maintenance payments for the duration of that stay in foster care.

(d) *Documentation of judicial determinations.* The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.

(3) Court orders that reference State law to substantiate judicial determinations are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

(e) *Trial home visits.* A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV–E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

(f) *Case review system.* In order to satisfy the provisions of section 471(a)(16) of the Act regarding a case review system, each State's case review system must meet the requirements of sections 475(5) and 475(6) of the Act.

(g) *Case plan requirements.* In order to satisfy the case plan requirements of sections 471(a)(16), 475(1) and 475(5) (A) and (D) of the Act, the State agency must 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. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the State, which is developed jointly with the parent(s) or guardian of the child in foster care; and

(2) Be developed within a reasonable period, to be established by the State, but in no event later than 60 days from the child's removal from the home pursuant to paragraph (k) of this section;

(3) Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child. (FFP is not available when a court orders a placement with a specific foster care provider);

(4) Include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family; and

(5) Document the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home in accordance with sections 475(1)(E) and (5)(E) of the Act. When the case plan goal is adoption, at a minimum, such documentation shall include child-specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.

(This requirement has been approved by the Office of Management and Budget (OMB) under OMB control number 0980–0140)

(h) *Application of the permanency hearing requirements.*

(1) To meet the requirements of the permanency hearing, the State must, among other requirements, comply with section 475(5)(C) of the Act.

(2) In accordance with paragraph (b)(3) of this section, when a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required.

(3) If the State concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the State must document to the court the compelling reason for the alternate plan. Examples of a compelling reason for establishing such a permanency plan may include:

(i) The case of an older teen who specifically requests that emancipation be established as his/her permanency plan;

(ii) The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or,

(iii) the Tribe has identified another planned permanent living arrangement for the child.

(4) When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of *permanency hearing* must be so extended by the administrative body.

(i) *Application of the requirements for filing a petition to terminate parental rights at section 475(5)(E) of the Social Security Act.* (1) Subject to the exceptions in paragraph (i)(2) of this section, the State must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(i) Whose child has been in foster care under the responsibility of the State for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the State:

(A) Must calculate the 15 out of the most recent 22 month period from the date the child entered foster care as defined at section 475(5)(F) of the Act;

(B) Must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;

(C) Must not include trial home visits or runaway episodes in calculating 15 months in foster care; and,

(D) Need only apply section 475(5)(E) of the Act to a child once if the State does not file a petition because one of

the exceptions at paragraph (i)(2) of this section applies;

(ii) Whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State law). The petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant; or,

(iii) Who has been convicted of one of the felonies listed at paragraph (b)(3)(ii) of this section. Under such circumstances, the petition to terminate parental rights must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

(2) The State may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) of this section if:

(i) At the option of the State, the child is being cared for by a relative;

(ii) The State agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child. Compelling reasons for not filing a petition to terminate parental rights include, but are not limited to:

(A) Adoption is not the appropriate permanency goal for the child; or,

(B) No grounds to file a petition to terminate parental rights exist; or,

(C) The child is an unaccompanied refugee minor as defined in 45 CFR 400.111; or

(D) There are international legal obligations or compelling foreign policy reasons that would preclude terminating parental rights; or

(iii) The State agency has not provided to the family, consistent with the time period in the case plan, services that the State deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

(3) When the State files or joins a petition to terminate parental rights in accordance with paragraph (i)(1) of this section, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child.

(j) *Child of a minor parent in foster care.* Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on those items described in the definition of *foster care maintenance payments.*

(k) *Removal from the home of a specified relative.*

(1) For the purposes of meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:

(i) A voluntary placement agreement entered into by a parent or relative which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

(ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

(3) A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

(l) *Living with a specified relative.* For purposes of meeting the requirements for living with a specified relative prior to removal from the home under section 472(a)(1) of the Act and all of the conditions under section 472(a)(4), one of the two following situations must apply:

(1) The child was living with the parent or specified relative, and was AFDC eligible in that home in the month of the voluntary placement agreement or initiation of court proceedings; or

(2) The child had been living with the parent or specified relative within six months of the month of the voluntary placement agreement or the initiation of court proceedings, and the child

would have been AFDC eligible in that month if s/he had still been living in that home.

(m) *Review of payments and licensing standards.* In meeting the requirements of section 471(a)(11) of the Act, the State must review at reasonable, specific, time-limited periods to be established by the State:

(1) The amount of the payments 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.

(n) *Foster care goals.* The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law by statute or administrative regulation with the force of law.

(o) *Notice and opportunity to be heard.* The State must provide the foster parent(s) of a child and any preadoptive parent or relative providing care for the child with timely notice of and an opportunity to be heard in permanency hearings and six-month periodic reviews held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and an opportunity to be heard does not include the right to standing as a party to the case.

[65 FR 4088, Jan. 25, 2000]

§ 1356.22 Implementation requirements for children voluntarily placed in foster care.

(a) 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 must meet the requirements of:

(1) Section 472 of the Act, as amended;

(2) Sections 422(b)(10) and 475(5) of the Act;

(3) 45 CFR 1356.21 (f), (g), (h), and (i); and

(4) The requirements of this section.

(b) Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days of the child's placement in foster care unless there has been a judicial determination by a court of competent jurisdiction, within the first 180 days of such placement, to the effect that the continued voluntary placement is in the best interests of the child.

(c) The State agency must 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.

[65 FR 4090, Jan. 25, 2000]

§ 1356.30 Safety requirements for foster care and adoptive home providers.

(a) Unless an election provided for in paragraph (d) of this section is made, the State must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

(b) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds that, based on a criminal records check conducted in accordance with paragraph (a) of this section, a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

(1) Child abuse or neglect;

(2) Spousal abuse;

(3) A crime against a child or children (including child pornography); or,

(4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(c) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if

the State finds, based on a criminal records check conducted in accordance with paragraph (a) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:

(1) Physical assault;

(2) Battery; or,

(3) A drug-related offense.

(d)(1) The State may elect not to conduct or require criminal records checks on prospective foster or adoptive parents by:

(i) Notifying the Secretary in a letter from the Governor; or

(ii) Enacting State legislation.

(2) Such an election also removes the State's obligation to comport with paragraphs (b) and (c) of this section.

(e) In all cases where the State opts out of the criminal records check requirement, the licensing file for that foster or adoptive family must contain documentation which verifies that safety considerations with respect to the caretaker(s) have been addressed.

(f) In order for a child care institution to be eligible for title IV–E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed.

[65 FR 4090, Jan. 25, 2000]

§ 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 must meet the requirements of this section and sections 471(a), 473 and 475(3) of the Act.

(b) The adoption assistance agreement for payments pursuant to section 473(a)(2) must meet the requirements of section 475(3) of the Act and must:

(1) Be signed and in effect at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party; and

(2) Specify its duration; and

(3) Specify the nature and amount of any payment, services and assistance to be provided under such agreement 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 regardless of the State of which the adoptive parents are residents at any given time.

(c) There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.

(d) 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).

(e) A State may make an adoption assistance agreement with adopting parent(s) who reside in another State. If so, all provisions of this section apply.

(f) The State agency must actively seek ways to promote the adoption assistance program.

[48 FR 23116, May 23, 1983, as amended at 53 FR 50220, Dec. 14, 1988]

§ 1356.41 Nonrecurring expenses of adoption.

(a) The amount of the payment made for nonrecurring expenses of adoption shall be determined through agreement between the adopting parent(s) and the State agency administering the program. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

(b) The agreement for nonrecurring expenses may be a separate document or a part of an agreement for either State or Federal adoption assistance payments or services. The agreement for nonrecurring expenses must be signed prior to the final decree of adoption, with two exceptions:

and provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part [42 USCS §§ 670 et seq.] or part B of this title [42 USCS §§ 620 et seq.];

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part [42 USCS §§ 670 et seq.] is denied or is not acted upon with reasonable promptness;

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part [42 USCS §§ 670 et seq.] and part B of this title [42 USCS §§ 620 et seq.], which shall be conducted no less frequently than once every three years;

(14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year (commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals,

(15) provides that—

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has—

(I) committed murder (which would have been an offense under sec-

tion 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—

(i) a permanency hearing (as described in section 475(5)(C) [42 USCS § 675(5)(C)]) shall be held for the child within 30 days after the determination; and

(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(F) reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (B);

(16) provides for the development of a case plan (as defined in section 475(1) [42 USCS § 675(1)]) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 475(5)(B) [42 USCS § 675(5)(B)] with respect to each such child;

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the program funded under part A [42 USCS §§ 601 et seq.] and plan approved under part D [42 USCS §§ 651 et seq.], to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part [42 USCS §§ 670 et seq.];

(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may—

(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved;

(19) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards;

(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are to be made under the State plan under this part [42 USCS §§ 670 et seq.], including procedures requiring that—

(i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) in any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

(B) subparagraph (A) shall not apply to a State plan if the Governor of the State has notified the Secretary in writing that the State has elected to make subparagraph (A) inapplicable to the State, or if the State legislature, by law, has elected to make subparagraph (A) inapplicable to the State;

(21) provides for health insurance coverage (including, at State option, through the program under the State plan approved under title XIX [42 USCS §§ 1396 et seq.]) for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement (other than an agreement under this part [42 USCS §§ 670 et seq.]) between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage—

(A) such coverage may be provided through 1 or more State medical assistance programs;

(B) the State, in providing such coverage, shall ensure that the medical benefits, including mental health benefits, provided are of the same type and kind as those that would be provided for children by the State under title XIX [42 USCS §§ 1396 et seq.];

(C) in the event that the State provides such coverage through a State medical assistance program other than the program under title XIX [42 USCS §§ 1396 et seq.], and the State exceeds its funding for services

made prior to placement of child in foster care to prevent or eliminate need for removal of child from home and to make it possible for child to return to home requires neither that all children be returned home, nor that all children be returned to original home because standard used in 42 USCS § 671(a) does not make reunification mandatory since regulations implementing statutes indicate that alternative planning would be appropriate in some cases. In re Frances (1986, RI) 505 A2d 1380.

7. —Fair hearing

Pre-adoptive parent who temporarily lost custody of pre-adoptive child after state court hearing was not denied "benefits" under 42 USCS § 671(a)(12), because even if state agency hearing was such benefit, agency hearing was minimum requirement and hearing before state court substantially satisfied this requirement. Spielman v Hildebrand (1989, CA10 Kan) 873 F2d 1377.

County and state agencies' failure to hold administrative "fair hearing" on provision of child related services was proper under 42 USCS § 671, where issues involved are service-related rather than financial, because neither statute nor regulations require hearing, notwithstanding regulatory interpretation to contrary by HHS Secretary. Ward v Keller (1991, SD Ohio) 774 F Supp 439.

8. Approval of plan

Department of Health and Human services is not barred from disapproving state's plan for allocation of costs under Aid to Families with Dependent Children program (42 USCS §§ 670 et seq.), even though DHHS delayed more than the 60 days specified by 45 CFR § 95.511 in disapproving plan, because (1) 60day regulation requires notification only, not final decision, (2) argument that 40 CFR § 95.511 must be construed so that DHHS's failure to respond within 60 days results in "deemed approval" of state's plan fails because such construction is contrary to DHHS's own interpretation of its regulations and would result in too severe a sanction, and (3) there is no evidence of "affirmative misconduct" required to apply equitable estoppel against federal government. Missouri v Bowen (1986, WD Mo) 638 F Supp 37, affd (1987, CA8 Mo) 813 F2d 864.

Disallowance of reimbursement of $474,140 to state in federal participation funds under Adoption Assistance Act (42 USCS §§ 670 et seq.) is confirmed, because state could not show that judicial determinations required by 42 USCS §§ 671(a)(15) and 672(a)(1) had in fact been made at time children in 5 cases at issue were removed from their homes. Harvey v Shalala (1993, DC Neb) 824 F Supp 186, affd (1994, CA8 Neb) 19 F3d 1252.

§ 672. Foster care maintenance payments program

(a) Qualifying children. Each State with a plan approved under this part [42 USCS §§ 670 et seq.] shall make foster care maintenance payments (as defined in section 475(4) [42 USCS § 675(4)]) under this part [42 USCS §§ 670 et seq.] with respect to a child who would have met the requirements of section 406(a) [42 USCS § 606(a)] or of section 407 [42 USCS § 607] (as such sections were in effect on July 16, 1996) but for his removal from the home of a relative (specified in section 406(a) [42 USCS § 606(a)] (as so in effect)), if—

(1) the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) [42 USCS § 671(a)(15)] for a child have been made;

(2) such child's placement and care are the responsibility of (A) the State agency administering the State plan approved under section 471 [42 USCS § 671], or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 471 [42 USCS § 671] has made an agreement which is still in effect;

(3) such child has been placed in a foster family home or child-care institution as a result of the voluntary placement agreement or judicial determination referred to in paragraph (1); and

(4) such child—

Requirements applicable to Title IV-E, 45 CFR Part 1356.
Requirements applicable to Title IV-B, 45 CFR Part 1357.

CROSS REFERENCES

This section is referred to in 2 USCS § 906; 42 USCS §§ 673, 677.

RESEARCH GUIDE

Am Jur:

2 Am Jur 2d, Adoption (1994) § 37.

Annotations:

Actions under 42 USCS § 1983 for violations of Adoption Assistance and Child Welfare Act (42 USCS §§ 620 et seq. and 670 et seq.). 93 ALR Fed 314.

Law Review Articles:

Hardin. Sizing up the welfare act's impact on child protection, 30 Clearinghouse Rev 1061, February 1997.

§ 675. Definitions

As used in this part [42 USCS §§ 670 et seq.] or part B of this title [42 USCS §§ 620 et seq.]:

(1) The term "case plan" means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 472(a)(1) [42 USCS § 672(a)(1)].

(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) To the extent available and accessible, the health and education records of the child, including—

(i) the names and addresses of the child's health and educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

(v) a record of the child's immunizations;

(vi) the child's known medical problems;

(vii) the child's medications; and

(viii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

(D) Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.

(2) The term "parents" means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term "adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4)(A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(B) In cases where—

(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.

(5) The term "case review system" means a procedure for assuring that—

(A) each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child, which—

(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and

(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 12 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, or of the State in which the child has been placed, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship,

review every 6 mos.

(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent

hearing every 12 mos.

living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents;

(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care;

(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

(i) at the option of the State, the child is being cared for by a relative;

(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 471(a)(15)(B)(ii) [42 USCS § 671(a)(15)(B)(ii)] are required to be made with respect to the child;

(F) a child shall be considered to have entered foster care on the earlier of—

(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(ii) the date that is 60 days after the date on which the child is removed from the home; and

(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard.

(6) The term "administrative review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons

at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(7) The term "legal guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term "legal guardian" means the caretaker in such a relationship.

(Aug. 14, 1935, ch 531, Title IV, Part E, § 475, as added June 17, 1980, P. L. 96-272, Title I, § 101(a)(1), 94 Stat. 510; June 17, 1980, P. L. 96-272, Title I, § 102(a)(4), 94 Stat. 514; Apr. 7, 1986, P. L. 99-272, Title XII, Subtitle C, §§ 12305(b)(2), 12307(b), 100 Stat. 293, 296; Oct. 22, 1986, P. L. 99-514, Title XVII, § 1711(c)(6), 100 Stat. 2784; Dec. 22, 1987, P. L. 100-203, Title IX, Subtitle B, Part 2, § 9133(a), 101 Stat. 1330-314; Nov. 10, 1988, P. L. 100-647, Title VIII, Subtitle B, § 8104(e), 102 Stat. 3797; Dec. 19, 1989, P. L. 101-239, Title VIII, § 8007(a), (b), 103 Stat. 2462; Oct. 31, 1994, P. L. 103-432, Title II, Subtitle A, §§ 206(a), (b), 209(a), (b), Subtitle F, § 265(c), 108 Stat. 4457, 4459, 4469; Nov. 19, 1997, P. L. 105-89, Title I, §§ 101(b), 102(2), 103(a), (b), 104, 107, Title III, § 302, 111 Stat. 2117, 2118, 2120, 2121, 2128.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1980. Act June 17, 1980 (effective only with respect to expenditures made after 9/30/79 as provided by § 102(c) of such Act, as amended, which appears as 42 USCS § 672 note), in para. (1), inserted "voluntary placement agreement entered into or".

1986. Act Apr. 7, 1986, § 12307(b), in para. (1), added the sentence beginning "Where appropriate, for a child age 16 . . .".

Section 12305(b)(2) of such Act, in para. (3), substituted "any adoption assistance payments and any other services and assistance" for "the adoption assistance payments and any additional services and assistance". For application of this amendment, see § 12305(c) of such Act, which appears as 42 USCS § 673 note.

Act Oct. 22, 1986 (applicable for expenditures made after 12/31/86 as provided by § 1711(d) of such Act, which appears as 42 USCS § 670 note), in para. (3), substituted cl. (A) for one which read: "specifies the amounts of any adoption assistance payments and any other services and assistance which are to be provided as part of such agreement, and".

1987. Act Dec. 22, 1987 (effective 4/1/88 as provided by § 9133(c) of such Act, which appears as 42 USCS § 602 note), in para. (4), designated existing provisions as subpara. (A) and added subpara. (B).

1988. Act Nov. 10, 1988 (effective 10/1/88 as provided by § 8104(g)(1) of such Act, which appears as 42 USCS § 677 note), in para. (5)(C), inserted "and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living".

1989. Act Dec. 19, 1989 (effective 4/1/90 as provided by § 8007(c) of such