

Child Welfare Policy Manual

Questions & Answers

8.3C.1 TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case plans

1. Question: 45 CFR 1356.21 (g)(1) requires case plans to be developed jointly with the parent(s). What if the State is unable to locate the parent or s/he is unwilling or unable to participate in developing the plan?

Answer: We believe the regulatory requirement to include parents in the joint development of case plans serves the goal of the Adoption and Safe Families Act (Pub. Law 105-89) to begin the permanency planning process and service delivery as soon as possible following a child's removal from home. If the parent is not able or willing to participate in the development of the case plan, it should be so noted in the plan.

- **Source/Date:** Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)
- **Legal and Related References:** 45 CFR 1356.21 (g)

2. Question: How long after the original placement occurs must the case plan be written? Must a new case plan be prepared each time a child moves to a new provider or is it sufficient to update the case plan for each change in placement? How often must the case plan be updated if the child remains in the same placement for several years?

Answer: The regulations at 45 CFR 1356.21 (g) require that the case plan "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..." Therefore, when a new placement is made, either a new or updated case plan must be developed.

If a child remains in the same placement for several years, the case plan should be updated periodically. Ordinarily, this should occur after each six-month periodic review. The education and health section of the case plan should also be updated as appropriate to reflect the changing services to and needs of the child.

- **Source/Date:** ACYF-CB-PIQ-90-03 (12/6/90)
- **Legal and Related References:** Social Security Act - section 471 (a)(16), 475 (1) and (5); 45 CFR 1356.21 (g)

3. Question: Must the court approve case plans?

Answer: No. There is no statutory basis for requiring judicial approval of the State agency's case plan document. The court's role is to: exercise oversight of the permanency plan; review the State agency's reasonable efforts to prevent removal from the home, reunify the child with the family and finalize permanent placements; and to conduct permanency hearings. The State agency is responsible for developing and implementing the case plan. We see no additional benefit in requiring court approval of the case plan.

Moreover, it is not permissible for courts to extend their responsibilities to include choosing a child's placement with a specific foster care provider. To be eligible for title IV-E foster care maintenance payments the child's placement and care responsibility must either lie with the State agency, or another public agency with whom the State has an agreement according to section 472 (a)(2) of the Social Security Act. Once a court has chosen a placement with a specific provider, it has assumed the State agency's placement responsibility. Consequently, the State cannot claim Federal financial participation (FFP) for that placement.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (g)

4. Question: What are the title IV-E and title IV-B case plan requirements regarding health and educational records? Can the education and health records remain a part of the case record rather than be incorporated into the case plan? Can education and health records be attached to the case plan as an appendix?

Answer: Section 475 (1) of the Social Security Act (the Act) included in its definition of "case plan" the requirement that a foster child's case plan must include certain information regarding his educational and health status. In addition, section 475 (5)(D) of the Act ensures that the child's health and education records are reviewed and updated at the time of each placement of the child in foster care and that such records are supplied to the foster parent or foster care provider with whom the child is placed.

The case plan must be a discrete document which includes the education and health records of the child. In most cases, the information to be included in the case plan, and supplied to the foster parent(s) or caretaker of the foster child, would be less comprehensive than the case record. The case record, on the other hand, should include all of the health and education records of the child and include detailed medical reports, psychological evaluations, etc.

It would be possible to comply with the law by attaching copies of the most relevant health and education information to the case plan as an appendix or by summarizing this information as an integral part of the case plan.

- **Source/Date:** ACYF-CB-PIQ-90-03 (12/6/90)
- **Legal and Related References:** Social Security Act - sections 475 (1)

5. Question: Section 475(1)(C) of the Social Security Act states that the case plan must include "the most recent information available" regarding the health and education records of the child. How can a State meet the requirements in order to continue eligibility for Federal financial participation (FFP) if the records are not available?

Answer: States are required under this provision to include the child's most recent available health and educational records in the child's case plan. If the information is unavailable as a result of Federal or State confidentiality restrictions or for any other reason, the State should explain this in the case plan and describe the steps being taken to obtain such records. Including recent health and education records in a case plan is a State plan requirement, rather than a title IV-E eligibility criterion upon which FFP is conditioned. Therefore, we may determine whether the State is in substantial compliance with this requirement through a Child and Family Services Review or a partial review (45 CFR 1355.32 and 1355.34).

- **Source/Date:** 01/29/07
- **Legal and Related References:** The Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239); 475(5)(C) of the Social Security Act

6. Question: Regulations at 45 CFR 1356.21(g) require that a State develop a case plan within 60 days of removal. How is the due date for development of a case plan determined for a child initially placed in a facility outside the scope of foster care (e.g., a detention facility or psychiatric hospital) prior to entering foster care?

Answer: The case plan requirements in 45 CFR 1356.21(g) apply to children in foster care. Accordingly, when a child is initially placed in a facility that is outside the scope of foster care, the State has 60 days from the date the child is placed in foster care to develop a case plan.

- **Source/Date:** 12/31/07
- **Legal and Related References:** Social Security Act § sections 471(a)(16); 45 CFR 1356.21(g); Preamble to the Final Rule (65 FR 4031)

7. Question: Does 475A(b) of the Social Security Act (the Act) create specific federal "rights" for youth in foster care with regard to education, health, visitation, court participation and other areas?

Answer: No. Section 475A(b) expands the title IV-B/IV-E case plan requirements so that the title IV-B/IV-E agency must provide information to the youth about certain rights of the child in foster care. Specifically, in the case plan of each youth age 14 and older, the title IV-B/IV-E agency must include a document that describes the rights the agency has established for the youth, such as rights to education, health, visitation and the child's right to stay safe and avoid exploitation.

- **Source/Date:** 6/5/2015
- **Legal and Related References:** Social Security Act – section 475A(b)

8. Question: Do the title IV-E/IV-B case plan provisions at section 475(1)(E) of the Social Security Act (the Act) require a state or tribe to use adoption exchanges as part of its child specific recruiting for adoption or other permanent homes?

Answer: No. Section 475(1)(E) of the Act requires a title IV-E/IV-B agency to document the child specific recruitment efforts it makes on behalf of a child whose permanency plan is adoption or placement in another permanent home. The Act provides adoption exchanges as an example of the type of child specific recruitment activities that the agency must document. This does not mean that using adoption exchanges is required; only that doing so is consistent with the type of child specific recruitment efforts that could be useful for a title IV-E/IV-B agency that is considering permanency options for a child who needs one.

- **Source/Date:** 07/15/20
- **Legal and Related References:** Section 475(1)(E) of the Social Security Act