

Child Welfare Policy Manual

Questions & Answers

8.3C.2a TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, date a child is considered to have entered foster care

1. Question: For the date the child is considered to have entered foster care, may the State use a date that is earlier than that prescribed in regulation?

Answer: The time frames for considering when a child has entered foster care, i.e., the earlier of a judicial finding of abuse or neglect or 60 days from the date the child is removed from the home, are statutory. However, nothing precludes a State from using a point in time that is earlier than that required by statute or regulation, such as the date the child is physically removed from the home. Clearly, if a State uses the date a child is physically removed from the home, the requirements for holding periodic reviews, permanency hearings, and complying with the termination of parental rights provision within the time frames prescribed would be satisfied.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

2. Question: How does the date of entry into foster care apply to children who enter foster care pursuant to a voluntary placement agreement?

Answer: The statute makes no distinction with respect to the manner in which children enter foster care when setting the parameters for determining when a child is considered to have entered foster care. Therefore, children placed in foster care via a voluntary placement agreement will be considered to have entered foster care no later than 60 days after the child is removed from the home.

We want to take this opportunity, however, to note that the purpose of the 60-day limit at section 475 (5)(F) of the Social Security Act is to ensure that periodic reviews, permanency hearings, and application of the termination of parental rights (TPR) provision are not delayed as a result of contested involuntary removals. The danger of such a delay often does not exist when children are removed from their homes pursuant to a voluntary placement agreement. When children are removed from home via a voluntary placement

agreement, we encourage States to use the date the child is placed in foster care (rather than 60 days later) as the date for calculating when to hold periodic reviews, permanency hearings, and for complying with the TPR provision.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

3. Question: How should the State determine the date a child is considered to have entered foster care for a child who is voluntarily relinquished?

Answer: The date a child is considered to have entered foster care according to the statute is the earlier of a judicial finding of abuse or neglect or 60 days from the date the child was removed from the home. Typically, there is no finding of abuse or neglect in a voluntary relinquishment, so the date of entry into foster care would be no later than 60 days from the date the child was removed from the home.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

4. Question: What is the connection between the date the child is considered to have entered foster care and when the State may claim Federal financial participation (FFP) for foster care maintenance payments?

Answer: Establishing initial eligibility for title IV-E funding and initial claiming for FFP have no relationship to the date the child is considered to have entered foster care defined at section 475 (5)(F) of the Social Security Act. The purpose of that provision is to set the "clock" for determining when to satisfy the requirements for holding periodic reviews, permanency hearings, and the termination of parental rights (TPR) provision. A child's initial eligibility for title IV-E funding is not related to this time frame.

The date a child is considered to have entered foster care is, however, related to maintaining a child's eligibility for title IV-E funding. Under section 1356.21 (b)(2), we require the State to use the date the child is considered to have entered foster care in determining when to obtain a judicial determination that it made reasonable efforts to finalize a permanency plan. We intentionally linked the timing for obtaining this judicial determination to the date the child is considered to have entered foster care so that such determinations could occur at the permanency hearing, the logical time for making such determinations.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

5. Question: States often temporarily place children in facilities that are outside the scope of what is considered "foster care," such as a detention facility or psychiatric hospital, with the intent of moving the child to a foster care placement at a later date. What is the "date the child is considered to have entered foster care" (the date used to satisfy the case review requirements at section 475 (5) of the Social Security Act (the Act)) for such children?

Answer: If a child is initially placed in a facility that is not a foster family home or child-care institution, i.e., the child is not in "foster care," and remains in such facility for more than 60 days, the date such child is considered to have entered foster care is the day that child is placed in a foster family home or child-care institution. If however, the child's entry into foster care from such a setting occurs within 60 days of his or her removal from the home, States should determine the "clock" for satisfying the requirements of the case review system in accordance with section 475 (5)(F) of the Act, i.e., the earlier of a judicial finding of abuse or neglect or 60 days from the date of removal.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5); 45 CFR 1355.20