

Child Welfare Policy Manual

Questions & Answers

8.3C.2e TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, termination of parental rights

1. Question: How should a State calculate the 15 out of 22 months when a child has multiple entries to and exits from foster care?

Answer: For the purpose of implementing the termination of parental rights (TPR) provision for children with multiple foster care placement episodes within the 22 month period, the State must use a cumulative method of calculating 15 months in foster care. For example, a child enters foster care on January 15, 2001 and is discharged from foster care three months later on April 15, 2001. He remains home for six months and then enters foster care again on October 15, 2001. The State must apply the TPR requirement at section 475(5)(E) of the Social Security Act with respect to this child based on the date he entered foster care for the first foster care episode, or January 15, 2001. If this child remains in foster care for another 12 months, the State will be obliged to comply with section 475(5)(E) on October 15, 2002, because this child will have been in foster care for a cumulative total of 15 out of the previous 22 months. However, the time line for conducting case reviews, permanency hearings, and providing time-limited reunification services for the subsequent foster care episode must be based on the date the child entered foster care for that episode, October 15, 2001.

If the child in the above scenario does not return to foster care until January 15, 2003, the State must begin calculating a new 15 out of 22 month period for applying section 475(5)(E) and the other case review requirements as of January 15, 2003, because this most recent date of entry into foster care is more than 22 months after the date the child entered foster care during the prior episode.

- **Source/Date:** Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)
- **Legal and Related References:** Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

2. Question: When a child has been in foster care for 15 out of 22 months but the State does not file a petition to terminate parental rights (TPR) because an exception applies, must the State begin counting another 15 out of 22 months at that time?

Answer: States need only apply section 475(5)(E) of the Social Security Act (the Act) to a child once. If, when a child reaches 15 months in foster care, the State does not file a petition for TPR because one of the exceptions applies, or the State does file such a petition but the court does not sustain that petition, the State does not need to begin calculating another 15 out of 22 months in foster care for that child. We think the requirements at sections 471(a)(15)(C) and (E) and 475(1)(E) of the Act regarding reasonable efforts to make and finalize alternate permanency placements and the requirements at section 475(5)(C) of the Act regarding permanency hearings provide children sufficient protections with respect to achieving permanency, thereby removing the need to require multiple applications of section 475(5)(E) of the Act. However, this does not preclude the State from filing, or the court from ordering, a petition for TPR upon later review if the permanency plan has not been achieved.

- **Source/Date:** Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)
- **Legal and Related References:** Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

3. Question: Must the State obtain a judicial determination regarding a compelling reason not to file a petition to terminate parental rights (TPR)?

Answer: No. We have not interpreted the statutory language which requires that the documentation of the compelling reason be "... available for court review..." as a requirement that the court make a determination with respect to the compelling reason. To interpret this language as requiring a court determination with respect to the compelling reason not to file a TPR would place an unnecessary additional burden on the State agency and the courts. We do anticipate, however, that the court will have the opportunity to review the compelling reason not to file for TPR as part of its ongoing oversight.

- **Source/Date:** Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)
- **Legal and Related References:** Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

4. Question: Is it possible to exempt certain categories of children from the requirement to file or join termination of parental rights (TPR) petitions for children who have been in foster care for 15 out of the most recent 22 months?

Answer: No. There is no statutory authority to provide an exemption for particular populations from the requirement to file a TPR for children who have been in foster care for 15 out of the most recent 22 months. The TPR requirement is designed to encourage State agencies to make timely decisions about permanency for children in foster care. Exempting groups of children from the requirements would be contrary to this goal.

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

- **Legal and Related References:** Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

5. Question: Please explain how the termination of parental rights (TPR) requirement applies to Indian tribes and it's relationship to Indian Child Welfare Act requirements.

Answer: The Indian Child Welfare Act of 1978 (ICWA), Public Law 95-608, was passed in response to concerns about the large number of Indian children who were being removed from their families and tribes and the failure of States to recognize the culture and tribal relations of Indian people. ICWA, in part, creates procedural protections and imposes substantive standards on the removal, placement, termination of parental rights and consent to adoption of children who are members of or are eligible for membership in an Indian tribe. The addition of the requirement in section 475 (5)(E) of the Social Security Act (the Act) to file a petition for TPR for certain children in no way diminishes the requirements of ICWA for the State to protect the best interests of Indian children. Furthermore, States are required to comply with the ICWA requirements and develop plans that specify how they will comply with ICWA in section 422 (b)(9) of the Act.

The requirement in section 475 (5)(E) of the Act applies to Indian tribal children as it applies to any other child under the placement and care responsibility of a State or tribal agency receiving title IV-B or IV-E funds. While we recognize that termination of parental rights and adoption may not be a part of an Indian tribe's traditional belief system or legal code, there is no statutory authority to provide a general exemption for Indian tribal children from the requirement to file a petition for TPR. If an Indian tribe that receives title IV-B or IV-E funds has placement and care responsibility for an Indian child, the Indian tribe must file a petition for TPR or, if appropriate, document the reason for an exception to the requirement in the case plan, on a case-by-case basis.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - sections 422 (b)(9) and 475 (5) (E); 45 CFR 1356.21 (i); The Indian Child Welfare Act of 1978 (PL 95-608)

6. Question: May the State or Tribe define compelling reasons for not filing a petition to terminate parental rights (TPR) in State law or Tribal code?

Answer: No. States and Tribes may not develop a standard list of compelling reasons for not filing for TPR that exempts groups of children. Such a practice is contrary to the requirement that determinations regarding compelling reasons be made on a case-by-case basis. States and Tribes may, however, provide case workers examples of such for training purposes.

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

7. Question: Is the fact that a child had been in foster care for 15 out of the most recent 22 months legal grounds for a State to file a termination of parental rights (TPR) petition?

Answer: States are neither required nor prohibited by Federal statute from making a child's length of stay in foster care legal grounds to file or grant a petition for TPR.

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