Child Welfare Policy Manual

Questions & Answers

7.3 TITLE IV-B, Programmatic Requirements

1. Question: For what population of children must the section 422 protections be provided?

Answer: Section 422 of the Social Security Act requires that all of the protections set forth therein be provided to all children in foster care. "Foster care" is defined at 45 CFR 1355.20 as:

"24 hour substitute care for all 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 foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child-care institutions, and pre-adoptive homes regardless of whether the foster care facility is licensed and whether payments are made by the State or local agency for the care of the child or whether there is Federal matching of any payments that are made."

Situations exist in which a child who, while s/he may have been removed from her/his home and placed in 24 hour substitute care, is not considered to be in "foster care" because of the nature of the facility in which s/he is placed. In accordance with the statute, we have not considered detention facilities, forestry camps, training schools, facilities that are primarily for the detention of children who are adjudicated delinquent, and facilities like medical or psychiatric hospitals as foster care placements. Therefore, children placed in facilities of the type described here are not, by definition, in foster care and the State is not required to provide the protections to them while they are placed in such facilities.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 422 (22); 45 CFR 1355.20

2. Question: Do the regulations at 45 CFR 205.10 require fair hearings for appeals related to services as well as financial claims?

Answer: Yes. The regulations at 1355.30 (p)(2) provide that the procedures for hearings found in 45 CFR 205.10 shall apply to all programs funded under titles IV-B and IV-E of the Social Security Act. Fair hearings in relation to services as well as financial claims are therefore covered under this regulation. The Department believes that the close

programmatic and fiscal relationship between titles IV-E and IV-B makes a fair hearings requirement appropriate. The process for fair hearings under section 205.10 is essentially the same for services hearings as for financial hearings. However, because the substantive portion of the regulations provides no examples of service issues, the State has the option of modifying the context of the hearing to accommodate services program complaints. The hearing process under either situation requires that recipients be advised of their right to a hearing, that they may be represented by an authorized representative, and that there be a timely notice of the date and place of the hearing.

The following paragraphs, excerpted from the now obsolete section 1392.11, may be used as guidance for the hearings related to services issues. "The State must have a provision for a fair hearing, under which applicants and recipients may appeal denial of or exclusion from a service program, failure to take account of recipient choice of service or a determination that the individuals must participate in the service program. The results of appeals must be formally recorded and all applicants and recipients must be advised of their right to appeal and the procedures for such appeal. There must be a system through which recipients may present grievances about the operation of the service program."

Examples of service issues in title IV-B that might result in a grievance or request for a hearing include: Agency failure to offer or provide appropriate pre-placement preventive services or reunification services; Agency may not have placed child in the most family-like setting in close proximity to his parents; Parents were not informed of their rights to participate in periodic administrative reviews; Agency failed to provide services agreed to in case plan; A request for a specific service is denied or not acted upon; and Agency failure to carry out terms of adoption assistance agreements.

- **Source/Date:** ACYF-CB-PIQ-83-04 (10/26/83)
- **Legal and Related References:** 45 CFR 1355.30 (k), 205.10 and 1392.11

3. Question: Will States jeopardize their title IV-B funding if they choose not to apply for the CAPTA Basic State Grant (BSG)?

Answer: No. A State's IV-B funding will not be affected if it does not apply for a CAPTA BSG. In order to receive CAPTA BSG funds, States must provide an assurance in their CAPTA Plans that the child abuse and neglect projects the State is funding under title IV-B comply with the CAPTA Plan (section 106 (b)(2)(E)). If a State does not apply for the CAPTA BSG, there would not be a CAPTA Plan, nor any such assurance.

- **Source/Date:** ACYF-NCCAN-PIQ-97-01 (3/4/97) updated 9/27/11
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

4. Question: Can you clarify which children must be included in the State's report to ACF on overseas adoption disruptions and dissolutions under section 422(b)(12) of the Social Security Act?

Answer: The Intercountry Adoption Act (IAA) of 2000, which amends title IV-B at section 422(b)(12), is intended to protect the rights of children and families involved in intercountry adoption and to standardize and regulate the practices of adoption agencies to protect the best interests of children. One of the ways in which the IAA accomplishes this purpose is to require that an adoption agency's current and past placement practices and records be fully disclosed to prospective adoptive parents. The law, therefore, requires both adoption agencies and States to report certain information on unsuccessful overseas adoptions. In particular, section 422(b)(12) of the Act, among other things, requires that States collect and report certain information to ACF on children who enter foster care because the adoption placement disrupted or the adoption dissolved. The State must report the specific agency that handled the adoptive placement, the reasons for the disruption or dissolution, and the plans for the child in its Annual Progress and Services Report.

States must report as a "disruption" a child who came to the United States for the purpose of adoption but entered foster care prior to the finalization of the adoption regardless of the reason for the foster care placement. Such disruptions typically occur after a child enters the United States under the guardianship of the prospective adoptive parents or an adoption agency with an "IR-4 visa" for the purposes of completing the adoption process domestically. States must report such disruptions even if the child's plan is reunification with the prospective adoptive parents and the stay in foster care is brief.

States must report as a "dissolution" a child who was previously adopted from overseas (whether the full and final adoption occurred in the foreign country or domestically) but entered foster care as a result of a court terminating the parents' rights or the parents' relinquishing their rights to the child. Since the child's legal relationship with his or her parents may not be severed until some time after the child enters foster care, States must also report to ACF children adopted from overseas who are already in foster care at the time that the adoption is dissolved.

A State need not report a child who enters foster care after a finalized adoption if the parents' legal rights to the child remain intact. In sum, the State need only report those children who enter foster care as defined in 45 CFR 1355.20 as a result of a disruption or dissolution.

- **Source/Date:** 06/09/04
- **Legal and Related References:** Social Security Act - Section 422(b)(12); Intercountry Adoption Act of 2000 (Public Law 106-279) - Section 205; 45 CFR 1355.20.

5. Question: Section 424(f) of the Social Security Act (the Act) require the State to provide data on monthly visits between a child in foster care and "the caseworker handling the case of the child" and to make progress toward 90 percent of children in foster care in the State being visited by "their caseworkers." Which caseworkers can fill these roles?

Answer: The caseworkers referred to in section 424(f) of the Act could be any caseworker to whom the State or local title IV-B/IV-E agency has assigned or contracted case management or visitation responsibilities. Within these parameters, the State may determine which caseworkers are appropriate to conduct the visits in accordance with the provisions of the Act.

- **Source/Date:** 04/27/07
- **Legal and Related References:** Social Security Act - section 424(f)

6. Question: Are youth 18 and older who are in foster care included in the monthly caseworker visits requirements in sections 424(e)(2)(A) and 436(b)(4) of the Social Security Act?

(Deleted 12/23/2011)

7. Question: Must a State's standards for ensuring monthly caseworker visits as required by section 422(b)(17) of the Social Security Act (the Act) be applied to children placed in foster care outside the State?

Answer: Yes. A State's standards must ensure monthly caseworker visits for children who are placed in foster care outside of the State. There are no exceptions permitted for State standards for at least monthly visits to children in foster care per section 422(b)(17) of the Act.

- **Source/Date:** 07/09/08
- **Legal and Related References:** Social Security Act - section 422(b)(17)

8. Question: Does video conferencing between a child in foster care and his/her caseworker meet the Federal statutory provisions at section 422(b)(17) of the Social Security Act (the Act) for caseworker visits on a monthly basis?

Answer: In general, no. Videoconferencing or any other similar form of technology between the child and caseworker does not serve as a monthly caseworker visit for the purposes of meeting the requirements of section 422(b)(17) of the Act. Rather, a monthly caseworker visit must be conducted face-to-face and held in person. Furthermore, the Act requires State and

Tribal title IV-B agencies to describe standards for monthly caseworker visits with children in foster care that are well-planned and focused on issues pertinent to case planning and service delivery to ensure the safety, permanency and well-being of the child.

However, there are limited circumstances in which a title IV-B agency could waive the in-person aspect of the requirement and permit monthly caseworker visits to be accomplished through videoconferencing. Such circumstances are limited to those that are beyond the control of the caseworker, child, or foster family, such as a declaration of an emergency that prohibits or strongly discourages person-to-person contact for public health reasons; a child or caseworker whose severe health condition warrants limiting person-to-person contact; and other similar public or individual health challenges. Even in the face of such challenges, agencies must continue to comply with the monthly caseworker visit requirement.

If an agency uses videoconferencing under these limited, specified circumstances, caseworkers must conduct the videoconference in accordance with the timeframe established in the Act, and must closely assess the child's safety at each conference. Also, we encourage agencies to consider plans of action should a caseworker not be able to reach a child via videoconference, or should the videoconference raise a concern about the child's safety or well-being. The waiver of the requirement would be narrowly limited to the timeframe during which the public or individual health challenge or issue renders it impossible or ill advised to meet the in-person requirement and should be well documented in the child's case plan. Scheduling conflicts and the like are insufficient grounds for waiving the in person requirement.

- **Source/Date:** 5/04/11; (3/18/2020)
- **Legal and Related References:** Social Security Act - section 422(b)(17); ACYF-CB-PI-10-01