

LEG. FINANCE - BILLS 1977 - 1978 686

.CSHR 215 cont.

Original sponsor: Community and  
Regional Affairs Committee

Offered: 3/3/77  
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

CS FOR HOUSE BILL NO. 215 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act making a supplemental appropriation to the  
7 Department of Community and Regional Affairs for the  
8 day care assistance program; and providing for an  
9 effective date."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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\* Section 1. The sum of \$219,000 is appropriated from federal Title XX  
"D" funds to the Department of Community and Regional Affairs for the day  
care assistance program for the fiscal year ending June 30, 1977, to be  
allocated as follows:

15

Fairbanks \$80,000

16

Anchorage 80,000

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Juneau 34,000

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Kodiak 25,000

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\* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-  
070(c).

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#

3-22-77 Harvey Pitts

Fbx - thru group 3 all children

Joneson has not sent any  
details of the program

since the ~~program~~

the ~~program~~

in ~~the~~ all

in ~~the~~ be

in

Fitz

where did com

Harvey Pitts  
279-3462

Terese Donnelly

Would put people back  
on program and  
maintain as is —

~~Funding <sup>for</sup> groups 1, 2, & 3~~

~~— 5 groups in all —~~

Would fund all  
five until end  
of year — would not  
allow any new  
program —

— Would not receive  
more money unless  
supplemental appropriation.

Terese Donnelly  
Program Manager  
Arch Day Care Assistance

276-5124

H B 215

if municipality doesn't  
get add'l funds group  
3 will be broken out  
of program (those  
funded 60% - 80% by  
state) - they will have to  
give notification by  
april 1. Judy

To

Judy

Date

5/21

Time

10:50A

WHILE YOU WERE OUT

M

Mango Dick

of

City Borough

Phone

6-3300 x 52

TELEPHONED		PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	

RETURNED YOUR CALL

Message

HB 215 - Suppl

App of Jan Day  
Case - What's  
the status?

Operator

Whoever is assigned  
HB 215 should give  
her a call - she  
has info regarding  
a possible reduction  
to this supplemental.

Judy

3-22-77

Yesterday Juneau received 21,076 from  
CRA for Day-care assistance.

Harvey Pitts - Program manager - Juneau's  
need is now 34.0 minus 21,076.

Original estimate of 400.0 + included  
growth money which was not needed  
on emergency basis. This was ant  
given by Pitts to Rudd

Day care

368,750

Senate Bill?

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OmniBus -

Berrier

<u>loc</u>	<u>group</u>
Anch	- 3
Fbx	- 3
Juneau	- 5
Kodiak	?

COMMITTEE REPORT  
SENATE

3/17/77

April 12, 1977

Date

Mr. President:

The Committee on FINANCE has had CSHB 214 (PMB)  
supplemental appropriation to Dept. of Community & Regional Affairs for daycare  
under consideration. A majority of the members of the Committee program

- recommends it do pass
- recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for \_\_\_\_\_ and that  
CS for \_\_\_\_\_ do pass
- (and) recommends it be referred to the \_\_\_\_\_  
committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) \_\_\_\_\_

MEMBERS SIGNING THE MAJORITY REPORT:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

Fillion recommends: No Rec

\_\_\_\_\_ recommends: no rec

\_\_\_\_\_ recommends: \_\_\_\_\_

\_\_\_\_\_ Chairman

# STATE OF ALASKA

## DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH H-01 - JUNEAU 99811

March 11, 1977

Document# SEC #4

Senator John Sackett  
Chairman, Senate Finance Committee  
Alaska Legislature  
Capitol Building, Room 423  
Juneau, Alaska 99811

Dear Senator Sackett:

The following is provided for your information regarding CSIB 215, "An Act making a supplemental appropriation to the Department of Community and Regional Affairs for a Day Care Assistance Program":

1. The Bill authorizes and appropriates special federal Title XX day care funds to the Department of Community and Regional Affairs, which agency cannot make a claim for reimbursement of Title XX funds; only the Department of Health and Social Services can make such a claim as the agency designated by the Governor for operation of Title XX programs. Federal regulations require that a single agency be designated for such purpose. (See 45 CFR 228.6)
2. Title XX day care funds, can be used to provide care only for the following eligible groups which are designated in the Comprehensive Annual Social Services Plan for 1977 (See 45 CFR 228.22 and 228.60):

"Children under 14 years of age,

- a. who are recipients of AFDC or SSI, when day care services are not otherwise available;
- b. who require the developmental benefits of day care for therapeutic purposes because of special physical or mental needs, and who are in a family with gross income below 80% of the 50 states median income as adjusted for family size, when day care services or developmental opportunities are not otherwise available";
- c. refugees from Vietnam or Cambodia.

3. Federal regulations require that the Department of Health and Social Services (managed through the Division of Social Services):
  - a. take a "written signed application" (45 CFR 228.60(f)(i);
  - b. notify applicants of their eligibility and right to a fair hearing (45 CFR 228.60(g)(2) and (h);
  - c. maintain documentation of all such actions (45 CFR 228.60(f)(2);
  - d. purchase services only from "day care centers, group day care homes, and family day care homes, which are licensed by the State for child day care services and otherwise meet the requirements of 228.42(a)(2) as modified by the provisions of 228.42(c) and (d) (See attachment p. 5855 and Monitoring Guide);
  - e. when services are purchased from another public or private agency, there be executed a written contract (RSA) in accordance with requirements under 45 CFR 228.70 (See attachment p. 5862) which lists thirteen elements required to be in the contract.

The activities and documents listed above will remain with the Department of Health and Social Services (Div. of Social Services) even if an RSA is implemented with the Dept. of Community and Regional Affairs.

4. Because of the regulations listed above, the Department of Community and Regional Affairs could use Title XX funds made available under an RSA only after such a contract is signed and dated for services provided after that date; each child receiving day care under this situation must be referred by the Division of Social Services only after an application is received, and eligibility is documented.
5. The Department of Community and Regional Affairs will be required to bill the Department of Health and Social Services on an individual child basis using the child's case number provided at the time of referral. Documentation must be maintained by DC&RA on an individual child basis to support the billing.
6. At the present time, no more than twelve of fifty-six day care centers in the State are thought to meet the Federal Interagency Day Care Requirements. It is questionable whether all of these twelve would meet the Requirements upon federal compliance inspection.

Senator John Sackett  
Alaska Legislature

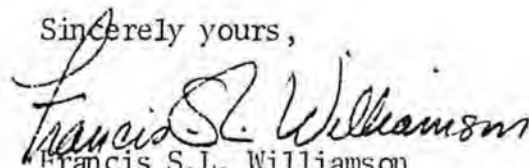
(3)

March 11, 1977

It is our judgement that an RSA of funds to the Department of Community and Regional Affairs as proposed would elicit a federal audit because of the amount of funds involved and because the federal government is well aware of earlier decisions made by the State to forego use of federal funds for the primary day care program so as not to be required to meet federal day care standards. Having completed an earlier review of compliance with federal day care standards in Alaska, federal officials know that our facilities will not pass the test of a compliance review.

I hope that this information is helpful to you.

Sincerely yours,

  
Francis S.L. Williamson  
Commissioner

## Title 45—Public Welfare

## CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## PART 228—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

## Final Regulations

Notice of proposed rulemaking was published in the FEDERAL REGISTER August 26, 1976 (41 FR 36156) revising existing regulations for the provision of social services under Pub. L. 93-647, Title XX of the Social Security Act. These proposed revisions represented the first comprehensive review of the Title XX regulations since the program began October 1, 1975. They were aimed at reducing the operational difficulties States encountered during the first program year. The final regulations which follow are issued after further consideration of the policies and changes proposed in the NPRM and of the comments received on these proposals.

Three hundred letters containing about 1400 comments were received from a broad range of respondents: private citizens, Governors, members of Congress, national and local health and welfare organizations, advocacy organizations, public and private provider agencies, provider agency organizations, State and local Title XX agencies, other State agencies, and colleges and universities. In addition, staff in each of the HEW regions arranged informal public meetings during September and October, 1976 in one or more States in each region to obtain additional discussion and comments. Summaries of comments received during these public meetings have also been carefully considered.

The overall reaction to the proposed regulations was one of substantial approval. SRS believes the circulation in April 1976 of the draft proposed regulations to State Title XX agencies and 175 national public and private organizations was beneficial. (See Preamble to the proposed regulations, 41 FR 36156, August 26, 1976.) Such prior circulation and opportunity for public discussion and comment produced useful suggestions from a knowledgeable audience. It also increased the sense of cooperation between the Department and the public in the administration of the social services program. In addition, greater public involvement in meetings where the proposed policies were discussed and explained seems also to have produced an increase in the number of letters which indicate a high degree of understanding of and familiarity with the issues dealt with in the NPRM.

Some letters provided thoughtful discussions of program and policy issues. The majority of comments, however, contained either well-documented observations, recommendations, and suggestions; or requested clarification, specificity, or technical guidance. Where possible, these recommendations and suggestions have been incorporated. For

the purpose of public information, significant numbers of requests for statutory changes are noted in the comment analysis which follows. Respondents are referred to the State Title XX agency or the Social and Rehabilitation Service Regional Office for technical guidance and interpretation regarding issues specific to a particular State or problem area which could not be addressed in the regulation.

Also incorporated into the regulations which follow are the interim final regulations implementing Pub. L. 94-401, 1976 Amendments to Title XX of the Social Security Act, published in the FEDERAL REGISTER (41 FR 55668) on December 21, 1976. Although the 45 day comment period for those interim final regulations is still in effect, they are incorporated in this issuance to provide a complete set of Title XX regulations as they now stand. If public comment indicates that modification of the amendments required by Pub. L. 94-401, is desirable changes will be published at a later date.

In response to questions, we wish to reiterate that States planning to implement the options provided by Pub. L. 94-401 must amend their State services plan in accord with § 228.36. Amendments are required with regard to group eligibility (§§ 228.24(f) and 228.26(a), e.g., individuals to be served and services provided); providing family planning services without regard to income; establishing an authority for determining the non-feasibility of standards in day care facilities (§ 228.26(l)); and making grants to providers to hire welfare recipients in day care facilities (§ 228.29(d)). However, States may begin making grants to providers as of September 7, 1976. However, for the purpose of public information as well as receipt of FEP, the plan must be amended. The final amendment will show an effective date of October 1, 1975, or a later date, depending on the date of implementation of such amendments by the State.

The purpose of the portion of the regulation that revises the existing 45 CFR Part 228 is to establish policies and procedures that will:

- (1) Clarify or provide specificity in some aspects of existing regulations;
- (2) Simplify or eliminate administrative requirements and reduce the possibility of fiscal sanctions on States;
- (3) Provide extensions of benefits wherever possible;
- (4) Provide additional options for the States in designing their programs; and
- (5) Provide an integrated set of all Title XX regulations.

The basis for the final regulation is the Department's continued wish to enhance the ability of the States to focus on the delivery of services to eligible persons and to avoid undue administrative burdens and unnecessary costs.

The following is a summary of the substantive comments received as a result of the publication of the proposed regulations of August 26, 1976, the major issues raised by the respondents, the SRS response to the comments, and a general statement of the bases and purposes of

the rules adopted herein. Because the proposed regulations received widespread approval, most, but not all, of the changes made in the proposed regulations are in response to requests for clarification. However, all changes from the August 26 proposal, other than minor editorial corrections, are discussed below.

## SUBPART A—SCOPE AND DEFINITIONS

Three changes have been made in this Subpart in response to comments. In § 228.1, the definition of Indian Tribal Council has been revised for clarification.

Also in § 228.1, the current definition of Indian Tribe covers only those Indian Tribes which have received Federal recognition. In the final regulation, the definition has been broadened to include Indian Tribes recognized by appropriate State authority. The purpose of the change is to extend benefits under this program to State recognized Indian Tribes. This expanded definition of an Indian Tribe will be used in all SRS programs.

The third change is a clarification of the term "licensed health professional" under the definition of medical and remedial care. Respondents pointed out that some health professionals (such as respiratory therapists and mental retardation professionals) are not licensed by States but are credentialed by national professional organizations. This language change has been incorporated.

Respondents also recommended changes in the definition of Family, e.g., *Recommendation (1)*: broaden the definition to include unmarried pregnant teenagers and unmarried teenage parents living in their parents' homes as one person families.

*Response to (1)*: It is the Department's view that Congress intended eligibility under Title XX to be based on a definition of "Family" that is consistent, reasonable, and operationally feasible. The present definition is seen as incorporating as many exceptions and as much flexibility as is possible within the intent of the law. It is our belief that children living with and supported by parents cannot be made an exception to the definition of Family without violating the integrity and internal consistency of the definition and without negating the intent of the law.

*Recommendation (2)*: Mandate a national definition of "Family" or mandate various groups, such as children in the custody of State agencies, as one person families.

*Recommendation (3)*: Provide a definition of an "emancipated minor."

*Responses to (2) and (3)*: These recommendations were not accepted based on the Department's wish to provide States with programmatic options in these matters. States are expected to use their State definition of emancipated minor.

There were also a number of requests for policy interpretation, technical guidance, and clarification regarding the application of these definitions to specific State programs or problems. It was not deemed appropriate to address these re-

quests in the regulation. Respondents are encouraged to contact the appropriate Title XX State agency or Social and Rehabilitation Service Regional Office for further assistance.

**SUBPART B—STATE PLAN REQUIREMENTS, REPORTS, MAINTENANCE OF EFFORT, COMPLIANCE**

The proposed regulations contained clarifying language in § 228.6. No substantial objections were submitted to these proposed changes; therefore, they are included in the final regulations.

**SUBPART C—COMPREHENSIVE ANNUAL SERVICE PROGRAM PLAN**

This Subpart received the highest number of comments and was the focus of concern of a wide range of respondents. Comments are summarized below. Changes made in the proposed regulations are primarily for specificity or clarification, although two new requirements have been added.

In § 228.21, the word "Federal" has been added to clarify that the State may use either the Federal fiscal year or the fiscal year of the State government as the basis of their services program year.

Section 228.22(a) is revised to recognize, in accordance with the law, the responsibility of the Chief Executive Officer of the State (not the State Title XX agency) for publication of the Comprehensive Annual Services Plan (CASP).

Section 228.22(b) is rewritten for clarity. It also adds a specification that States shall, as a part of the statutory mandate to explain the difference between the proposed and final services plans, include a summary in the CASP of the public comment on the proposed plan and the State's response to these comments. Respondents to the NPRM cited the Federal publication and comment process as a model in support of the public review and participation process. A parallel change is also made in § 228.36 with respect to comments received on the proposed amendments to final services plans.

In § 228.24, the example used of "female headed families" brought objections for our use of sexist language. The example has been changed to "one parent families."

Section 228.26(b) adds a requirement that States shall specify in the CASP the effective dates (the dates certain) of each discrete service. This requirement will provide options and flexibility to States who wish to "phase-in" a service as service delivery capability increases, or to "phase-out" (indicate the termination of) a service. The purpose of this change is to (1) inform the public more specifically regarding the availability of services; (2) give States added options in services delivery planning; and (3) ease publication costs.

For example, a State is in the process of increasing its homemaker services delivery capability and will be "phasing-in" this service during the program year. Homemaker services will be available at the beginning of the program year in all

but one geographic area of the State. The service will be available (date certain) in the remaining geographic area 4 months later. The State has two options in this situation. It may, under this change, specify in the CASP that the effective date of the homemaker service is October 1 for all but one geographic area and is February 1 for the remaining geographic area. Or, it may publish an amendment to the CASP after the program year has begun showing that homemaker service has been added in the remaining geographic area and is now available on a specified date.

States can also use this option to indicate the termination of a service that is date certain. For example, a State offers day care services to migrant children for a 6-month period during the program year. States may include the service in the CASP and amend the CASP when it terminates the service. Or, under this change in the regulation, the State may specify in the CASP that the effective dates (the dates certain) of the availability of this service are from July 1 to January 1. It is not the intention of this regulation to permit States to use broad, non-specific phrases such as "This service will continue to be available if additional funds are appropriated."

Section 228.28 clarifies that "other funds" may, at State option, be included in the list of program resources used to support the State's Title XX program even though such funds are in excess of the amount needed to match the Federal allotment. This change provides an option to States in regard to FFP for training expenditures. For example, some States use non-Federally matched funds above their ceiling to continue or expand the same services that are included in their CASPs to the same or additional eligible individuals identified in their CASPs. Staff who carry out these programs may receive training as provided in Subpart H so long as these non-Federally matched "other funds" are estimated in the CASP as available Title XX program resources.

FFP for training expenditures of staff carrying out these programs is available if the services program so funded (e.g., with non-Federally matched funds) meets all requirements of 45 CFR Part 228. For example, these include the requirements that the service is described in the CASP, is offered to the same eligible categories of individuals, and adheres to the same standards, eligibility requirements, and limitations on services as pertain to Title XX.

In response to concern for accountability to the public, § 228.28 clarifies how a State shall indicate in the CASP its Federal allotment, depending on whether the State program year does or does not coincide with the Federal fiscal year.

In § 228.29 the words "A general description of the steps taken \* \* \*" are substituted for the words "The steps taken \* \* \*" in response to many comments. Respondents interpreted the phrase "The steps taken" too specifically, i.e., to mean a list of every meeting, interview, contact, telephone call, etc., with

respect to the requirement for program coordination and utilization in this section.

Section 228.33(a). Considerable comment and discussion was received with respect to the public review process described in this section. In general, numerous respondents, primarily national and local health and welfare agencies and organizations, advocacy groups, local government, and individuals objected to the detailed focus of the regulations on the publication and public review process (e.g., a public education and information function) and a diminished focus on assuring active and continuing public participation in the development of the State's services program. Respondents urged an increase in specific requirements on States aimed at strengthening and requiring public participation at all stages of the development of the services program.

The Department has attempted to support requirements for public participation while attempting to avoid unnecessary requirements on States. The requirements contained in these regulations are considered to be minimum requirements. The Department assumes and strongly encourages State commitment to good planning processes, general accountability to the public, and increased public participation in the development of the service program. However, because of the newness of Title XX and the range of capability among the States, not all States have been able to achieve these goals. The Department has tried to indicate its views, position, and concerns (while allowing States maximum flexibility to develop their own procedures) by the inclusion of § 228.29 (c) in the proposed regulations and by the new language in § 228.33(a) related to purpose.

In § 228.33, items (b)(7) and (b)(9) are added for clarification to complete the list of steps that make up the scope of the public review process. These are not new requirements. Section 228.33(b)(7) refers to publication of necessary corrections to a proposed amendment; § 228.33(b)(9) refers to publication of necessary corrections to a final amendment.

In § 228.33(d), a requirement is added that copies of the proposed and final CASPs be retained for inspection for three years. This change is considered minimal for reference and accountability purposes and parallels the requirement that public comments be required for three years.

Two changes are made in § 228.33(h) with regard to information which must be included in the summary of the proposed services plan. The first, in § 228.33(h)(8), clarifies the specific fiscal data that shall be included in the summary, e.g., the amount of the Federal allotment to the State and the amount of State and local appropriated funds and of other funds available to finance the services program. The second change adds paragraph (h)(9) and requires that the summary include information regarding where an individual may apply for serv-

ices or where he may obtain information about where to apply. This requirement places no burden on the State since this information must also be included in the proposed and final services plan and in the display ad announcing the final services plan. Respondents felt such information included in the summary would help inform the public and assist individuals to apply for needed services. The change was made in response to such requests.

Section 228.33(g)(7) clarifies that States have options in distributing the proposed services plan from local public agency offices, e.g., distributing directly or taking orders for distribution from another source.

In § 228.36(a)(1), an editorial change is made to show that "changes in the program year" means "changes in the period of time encompassed by the program year."

Several new subsections and paragraphs have been added in § 228.36 in response to requests for clarification of the procedures, including the SRS role and responsibility, in making corrections to proposed and final amendments. The newly added citations are: § 228.36 (b)(2), (b)(3), (b)(4), and § 228.36 (c) and (f). These are not new requirements. Since the procedures for correcting proposed and final amendments are parallel to the procedures for correcting proposed and final services plans (with the exception that a 30 day rather than a 45 day comment period is required), the language is similar, if not identical, to previous language and procedures in this Subpart.

In the publication of amendments to the regulations required by Pub. L. 94-401, a section was coded "228.35 Amendments to Final Services Plan." The citation number was in error and should read § 228.36. The pertinent language has been properly included under § 228.36(d) in this issuance.

Changes in § 228.36(b)(5)(III) were discussed earlier in a parallel change made in § 228.22(b). The added requirement here is that States must include in the display ad which announces an amendment to the final CASP, a summary of the public comments to a proposed amendment and the State's response to such comments.

A significant number of comments regarding this Subpart objected to the delay in FFP until the CASP has met all appropriate requirements of this Subpart. Respondents offered alternate recommendations including deletion of requirements for publication of corrections to the plan and inclusion of corrections in the final plan in lieu of publication. The rationale was saving of publication costs, eliminating the delay in a 45 day comment period on the correction, and, primarily, easing the threat of loss to FFP.

The Department is aware of and concerned about the problems cited. However, these recommendations cannot be accepted, because they conflict with statutory requirements, including the requirement for public notice of all provisions of the plan, and a 45 day review of these provisions. To help prevent such problems, the Department concurs with

the suggestion made that States can work with the Regional Offices to obtain technical assistance and review prior to publication of their CASPs and amendments thereto.

A significant number of comments also registered disapproval of the reduction of detailed requirements in § 228.31 and 228.32, concerning needs assessment, planning, evaluation and reporting. They considered that States will diminish their efforts in these areas to the probable detriment of the program. An equal number of comments expressed strong approval for these deletions. All comments have been carefully considered. The Department's decision is that the changes proposed will become final. The basis for this position is the desire of the Department to simplify the administration of the program and reduce the number of detailed requirements which must be included in the CASP. This decision was taken in the context of increased State efforts to improve their programs in these areas. Incidentally, these areas of needs assessment, program planning, monitoring, reporting and the public participation process are priority areas of technical assistance by SRS. Many excellent suggestions and recommendations were received (such as use of television, public meetings, etc., to reach additional groups of citizens) which can be useful in a technical assistance effort. Many of the suggestions made are currently being utilized by States to adapt their programs/procedures to local needs.

#### SUBPART D—LIMITATIONS: SERVICES

This Subpart of the proposed amendments was the focus of considerable comment, both positive and negative. Specifically, the following changes have been made in response to these comments.

Sections 228.40 and 228.41 have been changed to eliminate the requirement for a case-by-case documentation of how medical and remedial care or room or board is integral but subordinate to a discrete service in the CASP. The Department is appreciative of the many methods of documentation sent us. However, the overwhelming majority of comments objected to this requirement, stating it would be severely burdensome and/or administratively infeasible. Respondents further recommended that the requirement for documentation of room or board and medical and remedial care could be accomplished by a description of these service components in the CASP. This suggestion is accepted. The regulation has been changed to require, under § 228.40, that the medical and remedial care must, first, be necessary to achieve the objective of the discrete service of which it is an integral but subordinate part. Secondly, a specific description of the medical and remedial care must be included in the CASP, together with a description of the service of which it is an integral but subordinate part. A general statement in the CASP such as "including medical and remedial care" is no longer acceptable. Similar requirements with respect to room or board are incorporated in § 228.41. The regulation in-

tends that the State agency will be held responsible for determining the specific type of medical and remedial care and specifically whether both room or board (or one or the other) will be provided as integral and subordinate to a social service. To communicate this to the public, the State agency is also responsible for the publication of this detailed information in the CASP. Only the specific medical and remedial care and the room or board so described in the CASP are matchable.

Section 228.44 is clarified in response to many questions and considerable confusion regarding the provision of services under this section. Paragraph (b)(1) is revised to provide specifically and to clarify the term "inherent responsibilities." Paragraph (b)(2) is revised to clarify that the "intrinsic activities" of a facility are determined by facility charter, State law or standards, relevant licensing or certification requirements, or Federal or State court decisions.

Strong objection was received to § 228.44(d) concerning limitations on services provided in juvenile correctional facilities. These limitations were the result of inadvertent drafting error and have been removed. Section 228.44(d) returns to the language of the current regulation and allows FFP for services but not for inherent responsibilities (e.g., food, clothing, shelter, general maintenance and administration (including the detention function), general supervision and care) in such facilities.

Two major areas of comment were raised regarding § 228.46. The first was a strong request that FFP be available for emergency shelter for adults, particularly battered women. Since Section 2002(a)(11) of title XX limits the provision of emergency shelter to children, this recommendation could not be accepted.

The second area of concern pertained to the limitation of 30 days in any 12-month period for provision of emergency shelter to a child. Respondents cited this limitation as unrealistic and overly restrictive in the context of service delivery to abused, neglected, or exploited children. In response to recommendations for added flexibility, the regulation has been changed to allow 30 days (as provided by law) in any 6 month period, for children, under the conditions specified in this section.

The 6 month time period will allow States the flexibility needed in diagnosis and service provision to such children and their families. This flexibility is valuable, particularly with respect to a decision to remove a child from his own home, in a service area such as this one that lacks diagnostic precision.

The 6 month time period was selected (as opposed to other suggestions which included 30 days for any one placement or episode, and 90 days in a 12 month period) on the basis that it extends FFP for this service; that it offers States additional alternates for services provision; and that it is a reasonable, if somewhat arbitrary, compromise between the current provisions and the strong recom-

mendation for 30 days per placement or episode which we believe supports an undesirable revolving-door approach to service delivery in these difficult cases. (For example, the child is abused or neglected, is given 30 days of emergency shelter, no diagnostic study or services are provided to the child or his family. He returns home but is back in the care of the agency needing emergency shelter for the same or similar problems within a short time. This cycle occurs repeatedly.)

Regarding § 228.47, many of the comments seemed unclear with respect to the availability of FFP when State funds are advanced to an eligible individual for an authorized service. The regulations do not address State practices. However, the regulation intends that if a State advances its own funds, such an advance may become an expenditure for FFP purposes only after a service has been authorized and delivered as evidenced by a bill or receipt.

Recommendations that FFP be made available for foster care in foster family homes and foster care institutions were received. This is a limitation in the law (Section 2002(a)(7)) and cannot be allowed under regulation.

#### SUBPART E—LIMITATIONS: FINANCIAL

Two changes have been made in this Subpart in response to comments. Sections 228.53 and 228.54 are clarified to show that public or private agencies or organizations may make funds available to the title XX agency for training as well as for services and other administrative functions. Since this has always been the case, the purpose of the change is to make this provision explicit. It was suggested that in-kind donations be allowed from private donors. This suggestion could not be accepted since such a change would require legislative action.

Section 228.55, containing the definition of family planning services, was vacated under the regulations pertaining to Pub. L. 94-401 and its contents were moved to § 228.63.

#### SUBPART F—LIMITATIONS: INDIVIDUALS SERVED, ELIGIBILITY AND FEES

Sec. 228.60 *Persons eligible and access to services.* This section has been reorganized and new material added for clarification. It has also been retitled from "Persons eligible" to "Persons eligible and access to services" to more clearly reflect its content.

A new paragraph (a) "Conditions for FFP," consolidates the material on Federal financial participation previously scattered throughout the section.

It was suggested by commentators that individuals who may receive certain services without regard to income was a third category of eligible persons and should be listed with income maintenance status and income status persons. The regulation has been changed accordingly. In addition, the regulation also notes that persons whose eligibility is determined on a group basis are income status individuals.

Paragraph (b) on median income is revised to make clear that all States,

whether conducting their Title XX programs on a State or Federal fiscal year, are to use the median income promulgated annually in December for their ensuing program year.

Paragraph (d) formerly called "Income levels," is now broken down into two paragraphs. Paragraph (d) is entitled "Income levels as baselines for fee imposition" and clarifies how to calculate the upper and lower limits of median income which set the boundaries for the mandatory imposition of fees on persons in income status. In order to make clear that the State has the option to impose fees on other persons not having incomes within the limits for mandatory fees, a cross reference is now included to the regulation concerned with discretionary fees.

In regard to adjustment figures for family size relative to setting the income levels for mandatory fees, three respondents thought that 3 percentage points increase for each additional person over a family of six was inequitable. No change has been made in the regulation in this respect because: (1) The Department has concluded that it would not be prudent to make a change in view of the fact that the issue was not raised in a proposal which could be evaluated and commented upon by all interested parties; and (2) The Department believes that the matter of adjustments around incomes must be examined in the broader context of considering other Federal programs which also require a means test.

Paragraph (e) is now called "Income levels for services" and presents the same options for setting income levels as previously.

When Pub. L. 94-401 introduced determination of eligibility on a group basis into the Title XX program, the word "application" in the regulations had to be reconsidered. Generally in the public social services field, application has meant the submission by the applicant of a written, signed form containing information on income needed to establish eligibility for a service. Sometimes it also included a request for a service if the State did not have a separate form for this purpose. However, information on income is not required from individuals whose eligibility is being determined on a group basis, but a request for services is still applicable. Therefore, the regulation now differentiates between an application and a request for services. The application is used only when there is a need to determine eligibility on an individual basis. A request for services is made by everyone seeking a service. The State is to document such requests for purposes of FFP, fair hearings, and to verify that the request for services was a voluntary one. Documentation may be accomplished through submission of a written request by an individual or by the recording of information elicited by the agency, except that a request for family planning services must be in writing to insure that it was requested voluntarily. Documentation for protective services remains the same as in the proposed amendment. The State must establish a procedure for documenting information

and referral requests as to the number and nature of these requests.

A heading has been added, "Prompt action on eligibility applications and requests for service" as paragraph (g) to include existing material on time frames in which the State must make decisions on applications for eligibility and notify applicants. As noted previously, an application often included a request for services. To this paragraph has been added new material dealing with a response by the State to requests for service as described in paragraph (f), and to carry out the intent of the legislation which provides that "an opportunity for a fair hearing before the appropriate State agency will be granted to any individual whose claim for any service described in Section 2002(a)(1) is denied or is not acted upon with reasonable promptness." The new material directs that unless a service is denied, the State must provide the service requested with reasonable promptness. "Provide the service" is defined as the actual provision of the service or arrangements for its provision at an appropriate later date. The latter half of the definition is to accommodate those cases where a service is not needed until a later date—e.g., homemaker service is needed six weeks from the date of the request when the mother will be going to the hospital. "Reasonable promptness" means providing the service within 15 days after notification of eligibility to a person whose eligibility is determined on an individual basis, or within 30 days after acceptance of a request for service. If the service is being denied, the State must notify the applicant in writing of the denial within the same time limits.

Paragraph (h) is newly lettered and covers "Notification of right to a fair hearing" which has been rewritten to include applicants who make only a request for services.

Some respondents requested that time limits in the fair hearings process be presented in the regulation along with the time limits on notifying applicants about their eligibility. An SRS decision has been made that fair hearings materials for all SRS programs (now contained in 45 CFR 205.10) would be revised to reflect the needs of the Title XX program and be contained in a separate regulation. A Notice of Intent was published in the Federal Register on this matter on November 30, 1976 (41 FR 52491) and comments are being accepted through the end of January.

Several comments were received about the time limits specified for the State to notify applicants about their eligibility on an individual basis. One dealt with the difficulty of getting a response from the Social Security Administration within 30 days about SSI recipients; another proposed giving the States complete freedom to set their own time limits provided they were "reasonable"; another opposed having to notify the applicant about his eligibility within 15 days after the State has reached a decision. These comments generally represent administrative problems at the State and local level. The suggestion for States setting a "reason-

able time" is unacceptable as it affords the applicant little protection against possible abuse and nullifies an effective fair hearings procedure.

Sec. 228.61 *Determination and redetermination of eligibility.* Paragraph (7) in § 228.60 which deals with safeguarding the civil and other rights of the individual in standards and methods of determining eligibility has been transferred from that section and added to paragraph (a) of § 228.61 which is concerned with methods of determining eligibility. This is merely a consolidation of relevant material.

By inadvertence, material in this Section on the documentation method of determining individual eligibility had been dropped. It is now restored so that a description of both the documentation and declaration methods of determining eligibility are included. The description of what constitutes a determination of individual eligibility has also been clarified.

Respondents were divided on whether the State should have the choice of using different methods of determining eligibility for different categories, services, and geographic areas. Providers and organizations generally favored mandating one method throughout the State, using the declaration method. The regulation was not changed, however, in the interests of permitting flexibility to the States.

The paragraph on conditions for FFP has been changed to reduce the material in (1) and (3) of paragraph (b) to one item and relate it more clearly to conditions for FFP when an individual who had formerly been eligible is subsequently found ineligible. The incorrect citation in the last paragraph of (b) has also been adjusted.

There was overwhelming support from respondents for including recipients of SSI in the group for whom redetermination could be conducted on an annual basis. This change was made, as well as permitting the individual to have a combination of income from a pension, social security and SSI. Other suggestions which were not accepted recommended that AFDC recipients, the developmentally disabled, and other groups be included in the yearly redetermination category. SRS believes that more experience with the Title XX program is necessary before further changes are made.

A great deal of apprehension was expressed about the possibilities of audit exceptions if the declaration method is used. States wanted specifications—such as for monitoring, error rates, and valid samples—before they constructed their monitoring procedures and undertook using the declaration method. SRS does not believe the regulation is the proper vehicle for such material, and the Department has no plans for such promulgation. For the present, § 228.61(g) is as far as the Department wishes to go in requiring States to conform to specified procedures. Technical assistance will be available to the States in these areas.

When regulations for Pub. L. 94-401 were published December 21, 1976 (FR

55668), it was specified in § 228.61(d) (2) that if a State agency were claiming expenditures retroactively for services on a group determination of eligibility basis, as permitted to October 1, 1975, the validation of each group of persons receiving such services had to be completed within three months following December 21, 1976. Since this date would fall in the middle of March, SRS has extended the completion date to March 31, 1977 to make it coincide with the end of a month and end of the quarter.

Another change in the regulation issued on December 21, 1976 has been made for purposes of operational feasibility. The regulation, § 228.61(d) (6), instructed the State agency, in the event it found that persons receiving a particular service on the basis of group eligibility did not meet the test of "substantially all," to take two steps within 75 days of making the finding. One step was to discontinue claiming FFP for expenditures incurred for the service provided to persons in the group whose eligibility had been determined on a group basis. The other step was to amend the services plan. Since the end of the 75 days could occur at any point in a month and result in administrative problems relative to stopping FFP, the regulation has been changed to discontinue FFP "by the end of the month in which the 75th day occurs."

In response to queries, paragraph (d) (5) has been revised to clarify that the 75 percent validation test for group eligibility is to be conducted on the same basis as each group is described in the services plan. This means that if a State has described the group on a geographic area basis, it shall conduct the validation on a geographic area basis; if a State has conceived of the group on a Statewide basis, it shall conduct the validation on a Statewide basis. Even though this change has been made on the basis of early comments to the interim final regulation published on December 21, 1976, the Department is still accepting comments on that regulation.

Sec. 228.62 *Fees.* Some respondents seemed unaware that the legislation requires imposition of a fee "reasonably related to income" on service recipients with family gross incomes exceeding 80 percent of the median up to 115 percent of the median. They proposed various legally unacceptable changes: waivers of fees, fees based on characteristics of a group, fees related to cost of service rather than income, exceptions when calculating the income of various groups. Several objected to the possibility of different fees in different geographic areas for the same service. Since States must describe their fee structures in the annual services plan, the public has the opportunity to question differences in fees they believe unjustified.

In paragraph (e) (1) of the proposed regulations, the intended meaning of the words "normal charge" was the going rate in the community for a service. Since the words used raised questions, the regulation has been revised to substitute "the going rate in the commu-

nity" for "normal charge," for purposes of clarification.

It was of concern to a number of respondents that a Title XX service provider, having been given the opportunity to expand the service with fees collected, would discriminate in favor of providing services to persons who had to pay fees. SRS believes the State agency has the responsibility to detect such trends and deal with them. Others questioned why the State agency was not permitted to use the service fees it collected to expand Title XX services. SRS has added this possibility to the regulation. In response to questions, it has also clarified that fees collected cannot be used to match Federal funds. Pursuant to 45 CFR 74.45(b), these fees (whether initially paid by service recipients to a private or public provider) are to be retained by the State agency to be used in one of two ways: (1) to further the objectives of the program (expand the service); or (2) to reduce the size of the claim for Federal matching. Despite the fees thus becoming State agency monies, SRS has concluded on the basis of long-standing Federal policy relating to conditions under which public funds may be used as the non-Federal match (as expressed in 45 CFR 228.53), that such fees do not meet the requirements of that policy and hence cannot be used as the non-Federal share.

Clarification is also made that FFP is not available if providers impose fees or charges other than those which are stated in the purchase of service agreement with the State agency and are in accordance with the fee schedules published in the State's services plan.

Some respondents also seem unaware that the legislation specifies use of the median income as the basis for determining eligibility for Title XX services for income status individuals. There were suggestions to use for the Title XX eligibility determination, data gathered for determining eligibility for other programs such as food stamps or medical assistance. This is not feasible because income considered for Title XX (as described in § 228.66) is not necessarily the same as that for other programs.

Several respondents reacted unfavorably to the new paragraph (f) requiring the Title XX agency to make outside contacts at the applicant's request in order to protect the confidentiality of an inquiry relating to determination of eligibility when a provider agency is making the eligibility determination. One objection was that providers, seeking audit protection, would flood the State agency with requests to make outside contacts. Another objection was that an extensive system of procedures and administrative effort would be required to carry out this policy. SRS believes that this assurance of confidentiality is crucial in view of continuing concern for individual privacy in governmental programs. This provision will be tested and the situation evaluated later on the basis of experience.

Another change, as a result of the comments, is the clarification that States have authority to charge fees if they

wish for persons receiving services with regard to income. This is of particular significance because there is a pattern of fee setting in many community agencies which provide family planning services.

**Sec. 228.63 Family Planning Services.** Changes were made in this section to include additional components of family planning services as examples for greater specificity.

**Sec. 228.64 Information and Referral.** No changes in this section were suggested by the respondents. Strong approval was expressed by a number of respondents for restricting FFP for information and referral services only when provided by an agency having I&R as a recognized, specific function.

**Sec. 228.65 Protective Services.** A recommendation was made to include services to battered women. Insofar as such individuals meet the definitions in § 228.65, they may receive the services specified in the State's services plan to provide protective services.

#### SUBPART G—PURCHASE OF SERVICE

Two changes have been made in this Subpart. In response to requests for clarification, § 228.71(a) has been revised to specify factors to be considered and procedures to be used in establishing rates for the purchase of services from public and private agencies. The purpose of these changes are to provide definitive information on which States and provider agencies may base their procedures.

A significant number of respondents disagreed with the option in § 228.70(d) of allowing an unwritten contract with certain individual providers of services. They cited the lack of accountability, including the difficulties in auditing an unwritten contract, and the potential for abuse. They also noted that the requirement that the terms of the unwritten contract be documented in the record was operationally similar to the requirement for a written contract. These comments were carefully considered as were comments which approved of this option as a method of easing administrative requirements. Approving respondents cited the benefits to individual providers (such as day care providers) who wish to provide a service but who are reluctant to sign a formal contract. They cited the resulting threat to services availability due to a decrease in numbers of service providers. They also cited cumbersome contract processing requirements in some States which delay provision of services and create an exceptionally heavy administrative workload.

On balance, this provision was retained on the basis that administrative options are needed by the States. However, for the purpose of clarification, a change is made in § 228.70(d) to specify that States in documenting the terms of the unwritten contract, shall document the terms of the contract that has been negotiated with the individual provider, including all applicable items in § 228.70(a). We anticipate that States,

at their discretion, will continue to require written contracts for certain services provided by such individual providers.

The effective date of this option for unwritten contracts for certain individual providers of services under § 228.70(d) is made retroactive to October 1, 1975. This retroactive date aims to avoid undue administrative burdens on States. The requirement for a written contract with all providers of services was based on the Department's intent to encourage sound administrative and business practices which would support accountability. However, the Department was not aware of the volume of individual providers in some States, the difficulties involved in obtaining written contracts, nor the administrative difficulties of processing such a large number of contracts in some States. In this instance, the Department considers its requirements, although based on good intent, to have been unduly burdensome.

#### SUBPART H—TRAINING AND RETRAINING

This Subpart received a substantial number of comments from a wide range of respondents. Comments were received on the proposed regulations and in response to the SRS request for public consideration of and comment on the feasibility of combining all SRS training regulations into a consolidated regulation. SRS is appreciative of the large number of comments received on this matter, the majority of which favored separate training regulations. This decision is still pending. All responses, including those received in response to an NOI on this subject, will be carefully considered in reaching a final decision.

The following is a summary of changes which have been made in the proposed regulations after consideration of comments.

The issue, related to this Subpart, which produced the most comment was the deletion of the requirement for submittal of a Training Plan to SRS in § 228.80. A majority of respondents who commented specifically on the Training Plan urged re-instatement of this requirement. Many other respondents, however, commented in general terms approving changes made in this Subpart or approving the relaxation of administrative requirements in this section. It was difficult for the Department to precisely assess these general comments since they might refer to any or all of the several changes made in this Subpart. They were read, however, to give implicit approval to the proposed deletion of the requirement.

Therefore, the requirement for submittal of a Training Plan has been deleted as contemplated in the August proposed regulation. The Department believes the working relationship with the States can be enhanced by avoiding mandated requirements whenever possible and by working on a joint basis with States for program improvement. The Department also recognizes the interest in and shares a concern for good program management with respect to training. The President's Budget for FY

1978 contains a recommendation for a \$75 million ceiling on the presently open-ended training fund for income maintenance and social services. The Department will be working closely with States to monitor the use of all training expenditures and their impact on service delivery.

An opportunity for further comment on Departmental regulations with respect to training for all SRS programs is contained in a Notice of Intent and Notice of Proposed Rule-Making published in the FEDERAL REGISTER January 11, 1977 (42 FR 2440). SRS will give further consideration to procedures for planning and reviewing training activities in considering public comment on the issues raised in that notice.

The ten remaining changes made in this Subpart respond to requests for clarification. Their purpose is to eliminate confusion.

Editorial changes are made in §§ 228.81(c) and (c)(1) to clarify that a provider agency does not need to have a contract to determine eligibility in effect before its service delivery staff may be trained. This section also clarifies that eligibility determination staff of providers may be trained when the contract includes the eligibility determination function.

Section 228.81(c)(2) has been revised to provide that an individual family or in-home day care provider may receive training both:

(1) To enable her (him) to provide services to an eligible person already in her (his) care, or

(2) To prepare her (him) to give such services to an eligible person at a later date, under the conditions specified in this section.

This clarification is made in response to questions asking when the training of such providers may occur. The specified conditions under which the training may be given are the same as for other service providers.

In § 228.82(c), the words "which include equal representation from the three groups comprising the panel" have been deleted in response to requests from State Title XX agencies. They pointed out that since States have primary responsibility for such grants, they should have the responsibility, if they wish, to determine the numerical composition of the evaluation panel, so long as the panel consists of representatives of the SRS Regional Office, the educational institution, and the State agency.

Section 228.84(b) adds language to specify that costs of State agency staff, such as program area specialists, may be matchable when such persons are utilized in training programs under the supervision of the State agency Director of Staff Development, and are properly allocated.

Section 228.84(c) is modified to set limits on the type of expert whose services will qualify for FFP, e.g., FFP is available for experts who are from outside the Title XX agency. This clarification is made in response to questions about whether supervisors or other pro-

gram area specialists in the Title XX agency may be considered as "experts" and thus be eligible to receive salaries, fringe benefits, travel, and per diem as training expenditures.

Section 228.84(e) adds language that clarifies the requirement for a training contract between the Title XX agency and the provider agency.

Section 228.84(g) is modified to parallel the change made in § 228.84(c), namely, to allow FFP only for experts who are from outside the provider agency. This clarification is also made in response to questions from provider agencies on this matter.

Section 228.86, entitled "Phase-in of training requirements," is vacated as no longer applicable. The phase-in period to which this section referred expired on June 30, 1976.

Regarding other comments received, many respondents, primarily those from provider agencies, urged that regulations permit FFP as a training cost for the training of management/administrative staff of and volunteers in provider agencies, and for financial assistance for persons preparing for employment in a provider agency. These recommendations were not accepted. The Department is concerned, first of all, about a public policy position and an interpretation of the statute that would allow FFP as a training expenditure, outside the ceiling, to train the non-direct service delivery staff of agencies from whom the Title XX agency is presumably purchasing such expertise and services. This concern is particularly strong as it is possible to fund the training of such persons only under certain conditions and in appropriate cases within the overall cost of a purchase of service contract.

Secondly, with respect to the recommendation to train persons preparing for employment in provider agencies, this provision would increase considerably the administrative burdens of the State Title XX agency in attempting to control, monitor, and assure benefits of such training to the Title XX program. Unlike the provision of allowing training for persons preparing for employment in the Title XX agency, the administrative costs associated with the potentially multiple number of persons so funded could tend to divert Title XX monies away from service provision.

In addition, two mis-interpretations of the proposed regulations appeared in the comments. The first was in regard to the requirement for accreditation of Departments or Institutes, such as an Institute of Social Policy and Planning, which are a part of an accredited educational institution. The regulation intends that for FFP to be available under § 228.82, to Departments or Institutes which are a part of an accredited educational institution must themselves be accredited by a special accrediting body, if such an accrediting body exists for that Department or Institute. If no special accrediting body exists for the program of such Departments or Institutes, then FFP is available, under § 228.82, for grants to such Departments or Institutes if the

Department or Institute is a part of an accredited educational institution. A Department or an Institute which is not a part of an accredited educational institution cannot receive funding under § 228.82.

#### SUBPART I—GENERAL PROVISIONS

Three changes have been made in this Subpart. In response to requests for clarification, § 228.90(a)(2) adds language that clarifies the availability of FFP for medical examinations for eligible persons precedent to receipt of a service, such as an examination for a child entering day care.

Section 228.90(a)(3) also adds the word "agency" to clarify that FFP is available for costs of State (and local) Title XX agency advisory committees. This clarification is made in response to questions concerning FFP for costs of local advisory committees.

Also in response to comments, § 228.91 clarifies that no FFP is available for goods or services provided in-kind by individuals. The purpose of these changes is to make explicit statements that will resolve continuing questions in these areas.

Part 228, Chapter II, Title 45 of the Code of Federal Regulations is revised to read as set forth below:

Subpart A—Scope and Definitions	
Sec.	
228.0	Scope of program.
228.1	Program definitions.
Subpart B—State Plan Requirements, Reports, Maintenance of Effort, Compliance	
228.5	State plan requirements.
228.6	Appropriate State agency.
228.7	State financial participation.
228.8	Statewide operation.
228.9	Merit system.
228.10	Safeguarding information.
228.11	Residency requirements.
228.12	Standards for institutions or foster homes.
228.13	Standards for child day care services.
228.14	Fair hearings.
228.15	Amendments to State plan.
228.16	Submission of State plan and amendments for approval by the Secretary.
228.17	Reports and maintenance of records.
228.18	Maintenance of effort.
228.19	Noncompliance.
Subpart C—Comprehensive Annual Services Program Plan	
228.20	Conditions for FFP.
228.21	Establishment of program year.
228.22	Services plan.
228.23	Program goals and objectives.
228.24	Individuals to be served.
228.25	Availability of services by geographic area.
228.26	Services.
228.27	Estimates of individuals to be served and expenditures.
228.28	Program resources.
228.29	Program coordination and utilization.
228.30	Organizational structure.
228.31	Needs assessment.
228.32	Planning, evaluation and reporting.
228.33	The public review process.
228.34	Regional review of proposed and final services plans.
228.35	Correction of proposed and final services plans.
228.36	Amendments to final services plan.

Subpart D—Limitations: Services	
Sec.	
228.39	General.
228.40	Minor medical and remedial care.
228.41	Room or board.
228.42	Child care standards.
228.43	Educational services.
228.44	Services to individuals living in hospitals, skilled nursing facilities, intermediate care facilities (including hospitals or facilities for mental diseases or for the mentally retarded), or prisons.
228.45	Special services provided by foster family homes.
228.46	Emergency shelter.
228.47	Cash payments for a service.
228.48	Confidentiality regarding services to drug and alcohol abusers.
Subpart E—Limitations: Financial	
228.50	Services and individuals covered in the services plan.
228.51	Matching rates.
228.52	Allotments to States.
228.53	Public sources of State's share.
228.54	Private sources of State's share.
228.55	Family Planning Services.
228.56	Fifty Percent Rule.

Subpart F—Limitations: Individuals Served, Eligibility and Fees	
228.60	Persons eligible and access to services.
228.61	Determination and redetermination of eligibility.
228.62	Fees for services.
228.63	Family planning services.
228.64	Information and referral services.
228.65	Services directed at the goal of preventing or remedying neglect, abuse, or exploitation of children or adults unable to protect their own interests.
228.66	Monthly gross income.
Subpart G—Purchase of Service	
228.70	Procurement standards.
228.71	Rates of payment.
Subpart H—Training and Retraining	
228.80	Conditions for FFP.
228.81	Who may be trained.
228.82	Grants to educational institutions.
228.83	Financial assistance to students.
228.84	Activities and costs matchable as training expenditures.
228.85	Activities and costs not matchable as training expenditures.
228.86	(Reserved)

Subpart I—General Provisions	
228.90	Expenditures for which Federal financial participation is available.
228.91	Expenditures for which Federal financial participation is not available.
Subpart J—Grants to Child Day Care Providers To Employ Welfare Recipients	
228.100	Definitions.
228.101	Conditions for Federal financial participation.
228.102	Claims for Federal financial participation.

AUTHORITY: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).

Subpart A—Scope and Definitions	
§ 228.0	Scope of program.
(a) Federal financial participation is available, in accordance with title XX of the Social Security Act and this Part, with respect to expenditures under a State program for the provision of services, to low income individuals and families, directed at the goals of:	
(1) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;	

(2) Achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

(3) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;

(4) Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care, or

(5) Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

**§ 228.1 Program definitions.**

As used in this Part:

*Act* means the Social Security Act.

*Administrator* means the Administrator of the Social and Rehabilitation Service of the U.S. Department of Health, Education, and Welfare.

*Categories of individuals* means groupings of persons on the basis of common characteristics such as recipient status (AFDC, SSI, Medicaid), income level, age, physical or mental condition, or any other characteristic that the State specifies in its comprehensive annual services plan.

*Family* means one or more adults and children, if any, related by blood, or law, and residing in the same household. Where adults, other than spouses, reside together, each may be considered a separate family by the State. Emancipated minors and children living under the care of individuals not legally responsible for that care may be considered one-person families by the State.

*Fiscal year* means the Federal fiscal year unless otherwise specified.

*FFP* means Federal financial participation.

*Geographic area* means any identifiable area encompassed within the State.

*Indian tribal council* means the official Indian organization administering the government of an Indian tribe, but only with respect to those tribes with a reservation land base. This includes Inter Tribal Councils whose membership tribes have reservation status.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native region, village or group as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or any Indian Tribe, band, nation, or other organized group or community which is recognized as an Indian Tribe by any State commission, agency, or authority which has the statutory power to extend such recognition.

*Medical or remedial care* means care directed toward the correction or amelioration of a medical condition which has been diagnosed as such by a licensed medical practitioner operating within the scope of medical practice as defined by State law, and which care is provided by or under the direct supervision of such a

medical practitioner or other health professionals licensed by the State or credentialed by the appropriate professional organization.

*Monthly gross income* means the monthly sum of income received from sources identified by the U.S. Census Bureau in computing median income. (See 228.66.)

*Other public agencies* means State and local public agencies other than the State agency, and Indian Tribes.

*Room* means shelter only; and *board* means 3 meals a day or any other full nutritional regimen.

*Secretary* means the Secretary of the U.S. Department of Health, Education, and Welfare.

*Services plan* means the State Comprehensive Annual Services Program Plan under section 2004 of the Act.

*SSI (Supplemental Security Income)* means monthly cash payments made by the Social Security Administration to an aged, blind or disabled individual who meets the requirements for such aid under title XVI of the Act, and also includes State supplementary payments made by a State on a regular basis to an individual receiving SSI, or who would, but for his income, be eligible to receive such benefits, as assistance based on need in supplementation of such benefits.

*State* means the 50 States and the District of Columbia.

*State agency* means the appropriate State agency, designated by the chief executive officer of the State or as otherwise provided by the laws of the State, to administer or supervise the administration of the State's program, and except where the context otherwise requires, includes local agencies administering the program under the supervision of the State agency.

*State plan* means the State plan under section 2003 of the Act.

*Title XX* means title XX of the Social Security Act.

**Subpart B—State Plan Requirements, Reports, Maintenance of Effort, Compliance**

**§ 228.5 State plan requirements.**

Each State which establishes a services plan under title XX shall operate it pursuant to a State plan, approved as meeting the requirements of §§ 228.6 through 228.16.

**§ 228.6 Appropriate State agency.**

(a) *Designation of appropriate State agency.* The State plan shall provide:

(1) For the designation, by the chief executive officer of the State or as otherwise provided by the laws of the State, of a State agency with authority to administer or supervise the administration of the State's program under title XX; and

(2) For a description of the appropriate State agency, and inclusion of an organizational chart showing location of the agency within the State Government.

(b) If on December 1, 1974, a separate agency administered or supervised the service program for the blind under title VI, such agency may continue to do so for title XX. Both agencies shall use the same program year.

(c) *Administration of title IV-B of the Act.* Under title IV-B of the Act, the State agency shall administer or supervise the administration of title IV-B of the Social Security Act unless, prior to December 1, 1974, title IV-A and IV-B of the Act were administered by separate agencies.

(d) *Legal authority.* The Attorney General of the State shall submit a certification identifying the State agency and certifying the legal authority under which such agency administers or supervises the administration of the State program including the authority to make rules and regulations governing the administration of the program.

(e) *Authority and responsibility of the agency.* There shall be maintained within the State agency the authority and responsibility for:

- (1) The State plan;
- (2) The services plan;
- (3) The projection of estimated expenditures;
- (4) The accountability for Federal funds;
- (5) The establishing and maintaining of standards for the determination of eligibility;
- (6) The administration or supervision of the administration for the provision of services;
- (7) Operating the program on a State-wide basis;
- (8) Complying with any program reporting requirements;
- (9) Maintaining a working relationship between the Secretary and the State; and
- (10) Overall supervision, control and oversight of title XX activities.

(f) *Administrative support agreements.* In carrying out the responsibilities under paragraph (e) of this section, the State agency may enter into agreements in accordance with the procurement requirements of 45 CFR Part 74, Subparts P and Q, with public or private entities to provide administrative support. A local agency administering the program under the supervision of the State agency may also enter into such agreements.

**§ 228.7 State financial participation.**

A State plan under title XX shall provide that State funds will be included in meeting the cost of the program.

**§ 228.8 Statewide operation.**

A State plan shall provide that the State's program for the provision of services described in its services plan shall be in effect in every political subdivision of the State. Every part of every political subdivision shall be part of a geographic area described in the services plan.

**§ 228.9 Merit system.**

(a) The State plan shall provide that methods of personnel administration will be established and maintained in the State agency administering or supervising the administration of the State plan and in local agencies administering the State plan in conformity with the standards for a Merit System of Personnel Administration, 45 CFR Part 70, and any standards prescribed by the U.S.

Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970, modifying or superseding such standards. Under this requirement, laws, rules, regulations, and policy statements effectuating such methods of personnel administration are a part of the State plan. Statements of acceptance of these standards by all official local agencies included in the State plan must be obtained and methods must be established by the State to assure compliance by local jurisdictions. These statements and citations of applicable State laws, rules, regulations, and policies which provide assurance of conformity to the standards in 45 CFR Part 70 must be submitted to the U.S. Civil Service Commission in accordance with 5 CFR Part 900 for determination as to adequacy. Copies of the materials cited and of similar local materials maintained by a State official responsible for compliance by local jurisdictions must be furnished to the Department on request.

(b) The State plan shall provide that the State agency will develop and implement an affirmative action plan for equal employment opportunity in all aspects of personnel administration as specified in 45 CFR Part 70.4. The affirmative action plan will provide for specific action steps and timetables to assure such equal opportunity. The plan shall be made available for review upon request.

#### § 228.10 Safeguarding information.

The State plan shall contain provisions regarding safeguarding the use and disclosure of information on applicants for, and recipients of, services in accordance with 45 CFR 205.50.

#### § 228.11 Residency requirements.

The State plan shall provide that no requirements as to duration of residence or citizenship will be imposed as a condition of participation in the State's program for the provision of services.

#### § 228.12 Standards for institutions or foster homes.

Where a services plan includes services to individuals living in institutions or foster homes, the State plan shall provide for the establishment or designation of a State authority or authorities, that may include Indian tribal councils on Indian reservations, which shall be responsible for establishing and maintaining standards which are reasonably in accord with recommended standards of national standard setting organizations concerned with standards for such institutions or homes including standards related to admissions policies, safety, sanitation, and protection of civil rights. For purposes of this section, "institution" includes all residential facilities providing for group living.

#### § 228.13 Standards for child day care services.

Where a services plan provides for child day care services, the State plan shall provide for the establishment or designation of a State authority or authorities, that may include Indian tribal councils on Indian reservations, which shall be responsible for establishing and

maintaining standards for such services which are reasonably in accord with recommended standards of national standard setting organizations for such services including standards related to admissions policies for facilities providing such services, safety, sanitation and protection of civil rights.

#### § 228.14 Fair hearings.

The State plan shall provide for a system of hearings under which applicants for, or recipients of, services or an individual acting on behalf of an applicant or recipient, may appeal denial, reduction, or termination of a service, or failure to act upon a request for service with reasonable promptness. Under this requirement, the procedures and provisions of 45 CFR 205.10 shall apply.

#### § 228.15 Amendments to State plan.

The State plan shall provide that it will be amended whenever necessary to reflect new or revised Federal statutes or regulations, or material change in any State law, organization, policy, or State agency operation.

#### § 228.16 Submittal of State plan and amendments for approval by the Secretary.

Upon adoption by the State of a State plan, or an amendment to a State plan, it shall be certified by a duly authorized officer of the State agency and submitted to the Social and Rehabilitation Service in accordance with 45 CFR Part 201.

#### § 228.17 Reports and maintenance of records.

(a) Each State which participates in the program shall maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records regarding applications, determination of eligibility, the provision of services, and administrative cost; and statistical, fiscal and other records necessary for reporting and accountability required by the Secretary in accordance with 45 CFR Part 201 and Part 205; and shall retain such records for such periods as are prescribed by the Secretary.

(b) The State agency shall make such reports in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as he finds necessary to assure the correctness and verification of such reports.

#### § 228.18 Maintenance of effort.

Each State which participates in the program shall assure that the aggregate expenditures from appropriated funds from the State and political subdivisions for the provision of services during each services program year with respect to which payment is made under this Part is not less than the aggregate expenditures from such appropriated funds for the provision of services during the fiscal year ending June 30, 1973, or the fiscal year ending June 30, 1974, with respect to which payment was made under the plan of the State approved

under title I, VI, X, XIV, or XVI, or Part A of title IV, whichever is less, except that the requirements of this subsection shall not apply to any State for any services program year if the payment to the State under this Part, for each fiscal year any part of which is included in that services program year, with respect to expenditures, other than expenditures for personnel training or retraining directly related to the provision of services, equals the allotment of the State for that fiscal year under § 228.52 of this Part. Where such sum totals appropriated include privately donated funds that are identifiable and documented, such donated funds are not considered part of the aggregate expenditures from appropriated funds.

#### § 228.19 Noncompliance.

(a) *Withholding of payment.* If the Secretary, after reasonable notice and opportunity for a hearing to the State, in accordance with 45 CFR 213, finds that the plan of the State no longer complies with any of the requirements of § 228.6 through § 228.15, that in the administration of the plan, there is a substantial failure to comply with any of those requirements, or that there is a substantial failure to comply with the requirements of §§ 228.17 or 228.18, he shall, except as provided in paragraph (b) of this section, notify the State that further payments will not be made to the State under this Part until he is satisfied that there will no longer be any such failure to comply.

(b) *Alternate three percent penalty.* The Secretary may suspend implementation of any termination of payments under paragraph (a) of this section for such period as he deems appropriate and, alternatively, reduce the amount otherwise payable to the State under this Part for expenditures during that period by three percent for each requirement set forth in § 228.6 through § 228.18 with respect to which there was a finding of noncompliance and with respect to which he is not yet satisfied that there will no longer be any failure to comply.

#### Subpart C—Comprehensive Annual Services Program Plan

#### § 228.20 Conditions for FFP.

(a) The State's final services plan shall meet all requirements of this Subpart and of § 228.50; if it does not (except for family planning services provided pursuant to § 228.26(g)), there will be no FFP in expenditures for services under the services plan.

(b) FFP will be available in expenditures under the final services plan for services that are provided:

(1) No earlier than 90 days after a proposed services plan has been published and made available for public review and any corrections necessary to bring such proposed plan into compliance with all requirements of §§ 228.21 through 228.33 have been published, with 45 days for public comment; and

(2) No earlier than the date of publication of a final services plan that meets all requirements of §§ 228.21 through 228.35 (if applicable).

§ 228.21 Establishment of program year.

The State shall establish the beginning of the Federal fiscal year or the fiscal year of the State government as the beginning of the State's services program year. In order to exercise this option, the State may have a program year of less than 12 months or may extend the program year to 15 months.

§ 228.22 Services plan.

(a) The Chief Executive Officer of the State, or such other official as the laws of the State shall provide, shall publish in both proposed and final form the Comprehensive Annual Services Plan (hereinafter in this part referred to as the services plan) prepared by the State agency prior to the beginning of each services program year. The proposed and final services plans shall meet all requirements of this Subpart.

(b) The final services plan shall also include: (1) A summary of the public comments, including the State's response to the comments; and

(2) An explanation of differences between the proposed and final services plan, if any and the reasons therefor.

§ 228.23 Program goals and objectives.

(a) The services plan shall provide that services offered are directed at the goals of:

(1) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) Achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

(3) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;

(4) Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; or

(5) Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

(b) The objectives to be achieved under the program shall be directed to the goals in paragraph (a) of this section, and shall be stated in the services plan in measurable terms so that an assessment may be made of the extent to which they are achieved.

§ 228.24 Individuals to be served.

The proposed and final services plans shall:

(a) Specify which of the categories of individuals described in § 228.60 will be provided services in the forthcoming program year; describe the income levels for eligibility, and include the Statewide definition of family in accordance with § 228.1;

(b) If the State limits services to individuals with certain characteristics, describe the limitations imposed for each category in sufficient detail to enable individuals to know if they are likely to meet the eligibility requirements, e.g.,

one parent families whose income is not more than 80 percent of the median income; mentally retarded SSI recipients, or alcohol abusers whose income does not exceed 50 percent of the median income;

(c) Specify which of the categories to be served will be charged a fee;

(d) Include the fee schedule, specifying any variations by service or by geographic area, as permitted under § 288.62; and

(e) Specify whether family planning services, information and referral services, and services to prevent or remedy neglect, abuse or exploitation will be provided without regard to income.

(f) If the State is determining eligibility on a group basis in accordance with § 228.61, the services plan shall so state and describe any specific conditions or characteristics (other than income), that must be met or that individuals must have so that they will know if they might qualify to receive a particular service for which eligibility is determined on a group basis. Conditions or characteristics that may be used by the State as a basis for determining that a service is to be offered on a group eligibility basis may include one or more of the following: the nature of the service, characteristics of persons to receive the service (such as age, physical or mental condition, place of residence, single parenthood, common problems, etc.), location of the service site(s), nature of the community where the service will be provided, or other factors which lead the State to reasonably conclude that substantially all the persons to whom the services will be offered are members of families which have a monthly gross income of no more than 90 percent of the State's median income, adjusted for family size.

§ 228.25 Availability of services by geographic area.

For the purpose of delivering services described in the service plan, the State agency may divide the State into geographic areas, but only if such geographic areas encompass the entire State, including Indian reservations. The State shall consider, in defining geographic areas, the boundaries of planning areas of other human services programs. If the State chooses to establish such geographic areas, the services plan shall:

(a) Describe those geographic areas;

(b) Provide that the services described in § 228.26(f) will be available to eligible individuals in every geographic area; and

(c) Where different services are made available to a category of individuals in different geographic areas, provide that the services furnished in a geographic area will be available to all eligible individuals in that category who reside in that area.

§ 228.26 Services.

The services plan shall: (a) Describe each discrete service, including the service(s) which is (are) available to individuals on the basis of group determination of eligibility, in as much detail

as necessary to enable a reasonably prudent person to understand what is included in the service. For purposes of this paragraph, services such as "child welfare services" "services to alcoholics" or "protective services" are not discrete services but rather clusters of services, each of which shall be separately described. If medical or remedial care or room or board as described in §§ 228.40 and 228.41 are part of a service, the plan shall so specify in describing that service.

(b) Specify the effective date when each discrete service is available if the effective date is other than the beginning of the program year. For each discrete service that is to be offered in a prescribed time frame, specify the effective date on which that service is available and the effective date on which that service is to be discontinued. (See § 228.50 (a) (2).)

(c) Specify the method of delivery for each service, i.e., directly by the State agency, by a provider (public or private), or both;

(d) Indicate the relationship of each service to one or more of the program goals and one or more of the program objectives specified in § 228.23;

(e) Specify the categories of individuals in each geographic area to whom each service will be provided, including any services provided on a group basis;

(f) Include among the services to be provided in each geographic area:

(1) At least three services for SSI recipients;

(2) At least one service directed at each of the program goals specified in § 228.23.

(g) Describe the foster care services required under section 408 of the Act to be provided to all recipients of AFDC-FC, if such services are available under title XX;

(h) Describe any family planning services that will be provided pursuant to section 402(a) (15) of the Act. Failure to include such family planning services will not constitute a deficiency in the services plan. However, failure to provide family planning services pursuant to section 402 (a) (15) of the Act may result in a loss of FFP to the State under its AFDC program.

(i) The State agency shall identify in its services plan the point in its organizational structure or the level of staff where it has placed authority:

(1) To make the decision for the State that it is not feasible to furnish child day care in a day care center or group day care home which complies with Federal staffing standards; and

(2) To furnish child day care by granting a waiver of otherwise applicable Federal staffing standards in a day care center or group day care home which serves few title XX funded children (see § 228.42(c) (2)) and meets applicable State staffing standards.

§ 228.27 Estimates of individuals to be served and expenditures.

In order to provide residents of the State with information on the scope of the services program, the services plan shall include estimates of State and Fed-

eral expenditures applicable to the title XX program as follows:

(a) For each discrete service, a list of estimated expenditures and estimated numbers of individuals to be served, by each category of eligible individuals and by each geographic area;

(b) Estimated expenditure for the forthcoming program year; and

(c) A comparison of estimated aggregate non-Federal expenditures for the forthcoming program year with those of the preceding completed program year.

#### § 228.28 Program resources.

(a) The services plan shall indicate how the State intends to finance its title XX program by providing an estimate of the funds to be used from the State's title XX allotment, and by separately identifying and estimating State and local appropriated funds, and the aggregate of donated and other funds to be used to meet the expenditures under the program. ("Other funds" include any State or local funds used in the title XX program that are in excess of the State's allotment ceiling so long as such funds are administered in accordance with all requirements of this Part.)

(b) Where a State program year is the same as the Federal fiscal year, States shall include in the services plan the full amount of the federal allotment. Where a State program year extends through more than one Federal fiscal year, States shall include in the services plan the full amount of the federal allotment for both fiscal years. The services plan shall also indicate the proportion of each Federal fiscal year encompassed by the State's program year.

#### § 228.29 Program coordination and utilization.

The services plan shall describe:

(a) How the planning and the provision of services under the program will be coordinated with and utilize the following programs:

- (1) Under the Social Security Act:
  - (i) title IV-A, AFDC (including WIN);
  - (ii) title IV-B, Child Welfare Services;
  - (iii) title XVI, SSI; and
  - (iv) title XIX, Medical Assistance (Medicaid); and

(2) Other appropriate programs for the provision of related human services within the State—for example, programs for the aging, children, develop mentally disabled, alcohol and drug abusers; programs in corrections, public education, vocational rehabilitation, mental health, housing, medical and public health, employment and manpower.

(b) A general description of the steps taken to assure maximum feasible utilization of services under these programs to meet the needs of the low income population; and

(c) A general description of the steps taken to assure public participation in the development of the services program, including contacts with public and private organizations, officials of county and local general purpose government units, and citizen groups and individuals, including recipients of services.

(d) The description shall also include the extent to which the title XX agency utilizes grants and otherwise encourages child day care providers under contract to employ AFDC recipients.

#### § 228.30 Organizational structure.

The services plan shall describe the organizational structure of the State agency through which the program will be administered including where individuals may apply for services and have their eligibility determined, and the estimated number of volunteers or a brief description of volunteer activities.

#### § 228.31 Needs assessment.

The services plan shall describe the steps taken to assure that the needs of all residents of, and all geographic areas in, the State are taken into account in the development of the services plan. The description shall include the data sources used (or to be used).

#### § 228.32 Planning, evaluation and reporting.

The services plan shall describe the planning, evaluation, and reporting procedures and activities the State has carried out or plans to carry out in connection with its services program. Examples of these procedures and activities which may be described include the following:

(a) *Planning.* Relationship with the State budget process and the legislature; input from other State, regional and local planning units and from local general purpose governmental units; citizen organizations and individuals; relationship of needs assessment and service resources inventory to setting of program priorities and allocation of resources.

(b) *Evaluation.* Purpose, scope and timing of current and proposed evaluations, and the schedule for dissemination of evaluation results.

(c) *Reporting.* Description of planned formal reports, such as reports to elected officials or to the public (but excluding reports furnished to SRS), and the schedule for issuance.

#### § 228.33 The public review process.

A State's services plan does not become effective for its services program year until the public review process is completed in accordance with § 228.33, § 228.34, and § 228.35 (if applicable).

(a) *Purpose.* The purpose of the public review process is to enable the residents of each State to participate meaningfully in the State decision making processes with respect to the State's services plan. The public review process is intended to assure that each State has provided opportunity for prior public participation of title XX clients, title XX advisory groups, public and private organizations, public officials and the general public in needs assessment, identification of priorities and allocation of resources throughout the development of the services plan. (See § 228.29(c))

(b) *Scope.* The public review process shall include at least:

(1) Publication of the proposed services plan and a display advertisement describing that plan, and a summary of the plan, if any, at least 90 days before the beginning of the program year, with a 45-day period for public comment;

(2) Consideration of, and public access to, comments received;

(3) Publication of any corrections required to bring the proposed services plan into compliance with the requirements of §§ 228.21 through 228.33;

(4) Publication of the final services plan and a display advertisement announcing its publication no earlier than 45 days after publication of the proposed services plan;

(5) Publication of any necessary corrections to the final plan;

(6) Publication of any proposed amendments to the final plan with a 30-day period for comments;

(7) Publication of any corrections required to bring the proposed amendment into compliance with the requirements of § 228.21 through § 228.33;

(8) Publication of the final amendments; and

(9) Publication of any necessary corrections to the final amendment;

(10) Public access to copies of the proposed and final services plans.

(c) *Approval prior to publication.* Prior to publication, the proposed and final services plans shall each be approved by the Governor or such other official as the laws of the State provide.

(d) *Retention of published services plans.* Copies of the proposed and final services plans shall be retained for at least three years in specified local public offices and made available for public and Federal inspection throughout the program year.

(e) *Handling of public comments.* (1) Written comments on the proposed services plan shall be considered by the State agency if received within 45 days after publication of the display advertisement announcing publication and availability of the proposed services plan; and

(2) Such comments shall be retained for at least 3 years for inspection by the public and by Federal officials.

(f) *Display advertisement; general requirements.* (1) A display advertisement is one prepared for and published within the main news section of a newspaper; advertisements placed in the legal or classified sections of a newspaper do not meet this requirement.

(2) Such advertisement must be published in the newspaper of widest circulation (and in foreign languages or foreign language newspapers where appropriate) in each geographic area described in the proposed and final services plans.

(g) *Display advertisement for the proposed plan.* A display advertisement shall at least:

(1) Specify the beginning and ending dates of the program year;

(2) Include a brief description of the services to be offered under the services plan;

(3) Describe the categories of individuals to be served;

(i) Identify those whose eligibility is based on income maintenance status (AFDC or SSI); and

(ii) Specify the maximum dollar amount of income that a family of four can have and still be eligible on the basis of income status; and

(iii) Indicate that such dollar amount is adjusted by family size.

(4) If the State has different income levels for different services, or different income levels for different geographic areas, specify that those different income levels are described in the proposed plan and in the plan summary (if the State has published a summary);

(5) Indicate beginning and ending dates of the 45-day period for public review and comment.

(6) Specify a toll-free telephone number that can be called to obtain without charge either a copy of the proposed plan or a summary thereof; or state that such copies can be obtained by calling a specified local public agency in each county, such as the local social services agency.

(7) Identify a local public agency in each county such as the social services agency where copies of the proposed services plan are available for public review; available for distribution to the public either free (if no summary is provided) or at a reasonable cost; or where copies of the proposed service plan may be ordered, if distributed from another source; and

(8) Specify the address where written comments may be sent and, if there are to be public hearings on the proposed plan, the location, date, and time for such hearings; or state that information concerning the hearings can be obtained by calling a specified toll-free number or by telephoning specified local agencies after a given date.

(h) *Summary of proposed services plan.* If the State publishes a services plan summary (to be provided free in lieu of a free copy of the entire services plan), it shall contain at least the following information:

(1) The beginning and ending dates of the program year;

(2) The categories of individuals including any limitations, who are eligible for services;

(3) The categories of individuals to whom a fee will be charged if they wish to be provided services under the services plan;

(4) Fee schedules, including any variations by service or by geographic area;

(5) A description of each discrete service to be provided under the plan;

(6) The services that will be made available to each category of individuals in each geographic area under the services plan;

(7) For each service, estimated expenditures, and estimated numbers to be served by each category of eligible individuals and by each geographic area; and

(8) Amount of the Federal allotment to the State and the amounts of State and local appropriated funds and of other funds to finance the services program; and

(9) A toll-free telephone number that can be called to obtain information on where to apply for services or the name of a local public agency in each county where applications for services will be accepted.

(i) *Display advertisement of the final services plan.* The display advertisement of the final services plan shall contain at least:

(1) A statement that the final services plan has been published and is available for review by the public;

(2) An explanation of any differences between the proposed and final services plans and the reasons therefore;

(3) A toll-free telephone number that can be called to obtain information about the services plan and where to apply for services; or the name of a local public agency in each county, where information regarding the services plan will be made available and where applications for services will be accepted;

(4) The name of a local public agency in each county where copies of the final services plan are available for public review and distribution to the public either free or at a reasonable cost; and

(5) The location where public comments on the proposed services plan are available for review.

§ 228.31 Regional review of proposed and final services plans.

(a) *Proposed services plan.* (1) Not later than 5 working days after publication of the proposed services plan, the State shall submit to the SRS Regional Commissioner the following: 7 copies of the proposed services plan and its summary, if any; a dated copy of the display advertisement; the names of the newspapers in which the display advertisement appeared; and the geographic areas covered by those newspapers.

(2) The Regional Commissioner will review the materials submitted to determine whether all requirements of §§ 228.21 through 228.33 have been met.

(3) Within 10 working days following receipt of the materials described in paragraph (a)(1) of this section, the SRS Regional Commissioner will notify the director of the State agency in writing that those materials meet all the requirements of this Subpart, or will specify the deficiencies that must be corrected in accordance with § 228.35. For purposes of this paragraph, a display advertisement which does not meet each requirement of paragraphs (f) and (g) of § 228.33, or a proposed services plan which does not comply with each required item under §§ 228.21 through 228.32, and 228.33(c) is deficient.

(4) (i) If correction(s) to the proposed services plan or to the display advertisement announcing the proposed services plan is necessary, the State shall submit to the SRS Regional Commissioner no later than 5 working days after publication of such correction(s), the following:

(A) For correction(s) to the proposed services plan, 7 copies of the corrected pages and one dated copy of the display advertisement announcing the correction(s). (The State shall file the cor-

rected pages in the proposed services plan.)

(B) For correction(s) to the display advertisement announcing the proposed services plan, one dated copy of the display advertisement containing the correction(s) to the original display advertisement.

(ii) Within 5 working days of receipt of the materials submitted pursuant to paragraph (a)(4)(i)(A) and (B) of this section, the SRS Regional Commissioner will notify the director of the State agency in writing that the correction meets the requirements of §§ 228.21 through 228.32, 228.33(c), and 228.35; and that the State is free to publish its final services plan following expiration of the 45-day comment period; or will specify the additional correction that must be made in accordance with § 228.35.

(b) *Final services plan.* (1) Not later than 5 working days after publication of the final services plan, the State shall transmit to the SRS Regional Commissioner: 7 copies of such plan; a dated copy of the display advertisement; and a statement containing the date of publication of the final services plan; the names of newspapers where the display advertisement appeared; and the geographic areas in the services plan covered by those newspapers;

(2) The Regional Commissioner will review the materials submitted to determine whether all requirements of §§ 228.21 through 228.33 have been met;

(3) Within 5 working days following receipt of the materials described in paragraph (b)(1) of this section, the SRS Regional Commissioner will notify the director of the State agency in writing that the final services plan meets all the requirements of §§ 228.21 through 228.33, or will specify the deficiencies that must be corrected in accordance with § 228.35. For purposes of this paragraph (b)(3), a display advertisement that does not meet all requirements of § 228.33(i), or a final services plan that does not comply with each requirement of §§ 228.21 through 228.32, and 228.33(c) is deficient.

(4) (i) If correction(s) to the final services plan or to the display advertisement announcing the final services plan is necessary, the State shall submit to the SRS Regional Commissioner no later than 5 working days after publication of such correction(s), the following:

(A) For correction(s) to the final services plan, 7 copies of the corrected pages and one dated copy of the display advertisement announcing the correction(s). (The State shall file the corrected pages in the final services plan.)

(B) For correction(s) to the display advertisement announcing the final services plan, one dated copy of the display advertisement containing the correction(s) to the original display advertisement.

(ii) Within 5 working days of the receipt of the materials specified in paragraph (b)(4)(i)(A) and (B) of this section, the SRS Regional Commissioner will notify the State agency in writing that the correction(s) meets all the require-

ments of §§ 228.21 through 228.32, 228.33 (c) and 228.35; and that the final services plan is in effect; or specify the additional corrections that are required before the plan can become effective.

**§ 228.35 Correction of proposed and final services plans and display advertisements.**

(a) A display advertisement which is deficient shall be corrected by publication of correct information for each deficient item in a display advertisement in all newspapers in which the original display advertisement appeared.

(b) A deficient proposed or final services plan shall be corrected by publishing the following information in a display advertisement in all newspapers in which the original advertisement appeared:

(1) The items being corrected;

(2) A statement that corrected pages for insertion in the plan are available without charge; and

(3) A toll-free number or the address of the local public office where corrected pages may be obtained.

(c) For correction of a proposed services plan, the display advertisement shall contain the information specified in paragraph (b) of this section and also indicate the beginning and ending dates of the new 45-day comment period on the corrected plan, and the method for submitting comments.

**§ 228.36 Amendments to final services plan.**

(a) Amendments to the final services plan are necessary at least when:

(1) Change is to be made in the period of time encompassed by the program year (See § 228.21);

(2) Geographic areas are to be realigned; or

(3) Any of the following changes are to be made, whether applicable Statewide or only in particular geographic areas:

(i) Specific services are to be added or deleted;

(ii) Fees are to be changed, or the charging of fees is to be initiated or discontinued; or

(iii) The categories of individuals to be served are to be changed.

(b) Any amendment to a final services plan shall be prepared by the State agency and approved, published, and made generally available to the public by the Chief Executive Officer or such other official as the laws of the State provide in the following manner:

(1) The proposed amendment shall be published in a display advertisement in the newspaper of widest circulation (and in foreign languages or foreign language newspapers, where appropriate) in each geographic area in which the change has impact, and shall provide for a public comment period of at least 30 days. The display advertisement shall contain at least:

(i) A description of the proposed changes and the reasons therefor, and the proposed effective date of the changes which shall be no earlier than 30 days after publication of the proposed changes;

(ii) The method for public comment and where comments will be received; and

(iii) The beginning and ending dates of the 30 day period for public comment.

(2) Not later than 5 calendar days after publication of the proposed amendment, the State shall submit to the SRS Regional Commissioner 7 copies of the proposed amendment and a dated copy of the display advertisement which announced the proposed amendment.

(3) The SRS Regional Commissioner will review the proposed amendment(s) to determine whether applicable requirement(s) of § 228.21 through § 228.33 have been met. Within five working days following receipt of the amendment(s) the Regional Commissioner will notify the director of the State Agency in writing that the amendment meets the applicable requirement(s) of § 228.21 through § 228.33 or will specify deficiencies.

(4) Corrections to the proposed amendment(s) shall be made in accordance with the procedures for corrections to the proposed plan as described in § 228.34(a) (4) except that the period for public review and comment prior to publication of the final amendment is 30 days.

(5) No earlier than 30 days following the publication of the proposed amendment, the final amendment shall be published as a display advertisement in each newspaper in which the proposed amendment was published. This display advertisement shall contain at least:

(i) A description of the final amendment of the services plan;

(ii) The effective date of the amendment; and

(iii) An explanation of the State's response to the public comments; and

(iv) An explanation of the differences between the proposed and final amendments if any and the reasons therefor.

(c) The effective date of an amendment shall be no earlier than the date of publication of the final amendment.

(d) (1) Notwithstanding paragraph (c), of this section, when a State amends its services plan so that it may provide family planning services without regard to income, or determine eligibility on a group basis for the provision of a service, the final amendment to the services plan may have a retroactive effective date of October 1, 1975 (or later, depending on when the State began providing the particular service specified in the amendment). FFP is available for a service which is the subject of an amendment made in accordance with this paragraph (d) (1), *Provided*, That the service was in the State's services plan when the service was delivered.

(2) The State shall publish the proposed and final amendments to the services plan, in accordance with the provisions of this section, and specify therein the relevant retroactive dates.

(e) Not later than 5 calendar days following publication of the final amendment, the State agency shall submit to the SRS Regional Commissioner 7 copies of the final amendment and a dated copy of the display advertisements which announced the final amendments.

(f) The SRS Regional Commissioner will review the final amendments to determine whether applicable require-

ment(s) of § 228.21 through § 228.33 have been met. Within 5 working days following receipt of the amendment(s) the Regional Commissioner will notify the director of the State agency in writing that the amendment meets the applicable requirement(s) of § 228.21 through § 228.33 or will specify deficiencies.

(g) Corrections to the final amendment(s) shall be made in accordance with procedures for corrections to the final plan as described in § 228.35(b).

**Subpart D—Limitations: Services**

21. Section 228.40 is revised to read as follows:

**§ 228.40 Minor medical and remedial care.**

(a) FFP is not available for medical and remedial care, other than family planning services, except when they are an integral but subordinate part of a service described in the services plan, and the medical and remedial care is not available to the individual under the State's approved title XEX plan and to the extent the individual or the provider is not eligible to receive payment under title XVIII for the provision of the service to the individual.

(b) Medical and remedial care are deemed to be integral but subordinate components of a service if:

(1) They are necessary to achieve the objective of that service and not merely to correct a medical condition; and

(2) The specific medical and remedial care are described and included in the State's services plan along with the description of the service of which they are an integral but subordinate part. For example, in describing child day care services, a State could describe (itemize) medical examinations, dental screening, and immunizations as integral but subordinate parts of the child day care service.

(c) Notwithstanding the requirement of paragraph (a) of this section, that medical and remedial care must be integral but subordinate to a particular service, FFP is available for medical and remedial care provided between October 1, 1975 and October 1, 1977 in a program of rehabilitative services to drug and alcohol abusers, under the following conditions:

(1) When provided in the initial detoxification of such persons for up to 7 days, so long as such detoxification is integral (but not necessarily subordinate) to the further provision of other title XX services to drug and alcohol abusers; and

(2) When integral but subordinate to the entire rehabilitative process (rather than a particular service), including but not limited to initial detoxification, short-term residential services, and subsequent outpatient counseling and rehabilitative services, whether or not such a process involves more than one provider of services.

**§ 228.41 Room or board.**

(a) FFP is not available for room or board under a services plan, except when

provided in emergency shelter under § 228.46, or as an integral but subordinate part of another service and then only for a period of not more than six consecutive months for any one placement.

(b) Room or board is deemed to be as an integral but subordinate component of a service if:

(1) It is necessary to achieve the objective of that service and not merely to provide food and shelter; and

(2) Room or board are included in the State's services plan along with the description of the service of which it is an integral but subordinate part, and is provided in accordance with all applicable requirements under this Part.

(c) Room or board under this Part shall not be considered an integral but subordinate part of a service when provided to an individual in a foster family home or other facility such as a foster care institution or other facility whose primary purpose is to provide board, room and care or supervision.

(d) As used in this section, the term placement means an uninterrupted period of time during which an individual takes up, or is placed in, residence in a facility other than his usual place of residence, for the purpose of undergoing a specific regimen of services or treatment according to a prescribed plan.

(e) Notwithstanding the requirement of paragraph (a) of this section, that room or board must be integral but subordinate to a particular service, FFP is available for room or board provided between October 1, 1975 and October 1, 1977 in a program of rehabilitative services to drug and alcohol abusers, under the following conditions:

(1) When provided in the initial detoxification of such persons for up to 7 days, so long as detoxification is integral (but not necessarily subordinate) to the further provision of other title XX services to drug and alcohol abusers; and

(2) When integral but subordinate to the entire rehabilitative process (rather than a particular service), including but not limited to initial detoxification, short-term residential services, and subsequent outpatient counseling and rehabilitative services, whether or not such a process involves more than one provider of services.

§ 228.12 Child care standards.

(a) FFP is available for child care services provided under a services plan only where the following standards are met:

(1) *In-home care.* (i) When homemaker service is utilized for this purpose, it meets standards established by the State or by an Indian tribal council, in accordance with § 228.13, which are reasonably in accord with recommended standards of national standard setting organizations concerned with this type of home care for children.

(ii) When other caretakers are utilized for this purpose, such care meets standards established by the State or by

an Indian tribal council, in accordance with § 228.13, which, as a minimum, cover the caretaker's age, health, capacity and available time to properly care for children; minimum and maximum hours to be allowed per 24 hour day for such care; maximum number of children that may be cared for in the home at any one time; and proper feeding and health care of the children.

(2) *Out-of-home care.* (i) Facilities used to provide day care outside a child's own home are licensed by the State, an Indian tribal council, in accordance with § 228.13, or approved as meeting the standards for such licensing.

(ii) Such facilities and care meet the 1968 Federal Interagency Day Care Requirements, except that:

(A) Subdivision III of such requirements with respect to educational services is recommended but not required.

(B) Required staffing standards for children under age 3 in day care centers and group day care homes are: 1 adult for each child under 6 weeks of age; 1 adult to 4 children, ages 6 weeks through 36 months. (States may, at their option, require fewer children per adult.)

(C) Required staffing standards for school age children in day care centers are: at least 1 adult to 15 children, ages 6-10; and at least 1 adult to 20 children, ages 10-14.

(b) The requirements in paragraph (a) (2) (i) of this section are in lieu of otherwise applicable requirements under section 522(d) of the Economic Opportunity Act of 1964 with respect to child day care services under title XX.

(c) Notwithstanding the Federal staffing requirements for out-of-home child day care services set forth in paragraph (a) (2) (i) (B) of this section:

(1) FFP is available between October 1, 1975 and October 1, 1977 for title XX child day care services so long as day care centers and group day care homes providing day care services to children 6 weeks of age to 6 years of age apply staffing standards which:

(i) Are the State staffing standards which are in effect at the time the child day care services are provided;

(ii) Are no lower than the corresponding staffing standards which were imposed or required by applicable State law on September 15, 1975; and

(iii) Are no lower, in the case of a particular day care center or group day care home, than the corresponding standards actually being met in such center or home on September 15, 1975.

(2) (i) When States find that it is not feasible to furnish day care (partly or totally funded under title XX) for children of any age in a day care center or group day care home that complies with Federal staffing standards, they may waive such Federal standards otherwise applicable, and furnish day care services, if:

(A) A day care center or group day care home serves few title XX children (of the total number of children served at any given time in each such facility, not more than 5 of the children in a center, or 20 percent of them, whichever is

lower; not more than 20 percent of the children in a group day care home); and

(B) Such day care center or group day care home complies with applicable State staffing standards.

(ii) States shall establish criteria against which to assess the non-feasibility of their use of a day care center or group day care home which complies with Federal staffing standards; and they shall maintain a record of the waiver for each facility in terms of these criteria.

(d) Between October 1, 1975 and October 1, 1977, in applying Federal staffing standards, States shall not count the children of the operator of a family day care home unless such children are under 6 years of age.

§ 228.13 Educational services.

FFP is not available for any educational service made generally available through any State or local educational agency to residents of the State without cost and without regard to their income. To the extent a fee is imposed on any resident, FFP is available only for such fee.

§ 228.14 Services to individuals living in hospitals, skilled nursing facilities, intermediate care facilities (including hospitals or facilities for mental diseases or for the mentally retarded), or prisons.

(a) FFP is available for services to individuals living in hospitals, skilled nursing facilities, intermediate care facilities (including any such hospitals or facilities for mental diseases or for the mentally retarded), or prisons only under the following conditions:

(1) The services provided are separately identifiable in the services plan (generalized descriptions such as "services to nursing home patients" or "services to increase socialization skills" are unacceptable under this provision).

(2) Such services are provided by other than the facility in which the individual is living. This requirement is not met if the services are provided by:

(i) Staff or contractors who are under the professional direction or direct supervision of the facility; the facility exercises control of the employment, tenure or compensation of such staff or contractors or makes assignments or alters the service regimen provided by them; or

(ii) Staff of like facilities under reciprocal arrangement.

(3) Such services are also provided to individuals who:

(i) Are not living in a hospital, skilled nursing facility, intermediate care facility (including any such hospitals or facilities for mentally retarded), or prison; and

(ii) Are residents of any part of a geographic area that is within the catchment area of such facility.

(b) FFP is not available for:

(1) Inherent responsibilities of a facility including but not limited to the provision of food, clothing, shelter, general maintenance and administration (includ-

ing the detention function), general supervision and personal care; or

(2) Activities that are intrinsic to the purpose of such facility as determined by facility charter, State law or standards, relevant licensing or certification requirements, or Federal or State court decisions.

(c) For purposes of this section:

(1) "Prison" means any State or local correctional institution or facility for the confinement of individuals charged with or convicted of criminal offenses. The term does not include separate juvenile correctional facilities nor community-based residential service facilities, such as half-way houses.

(2) *Separate juvenile correctional facility* means one that is located in a separate building or buildings; is served by separate day-to-day operational staff; and provides a separate and distinct program of services.

(3) *Skilled nursing facility (SNF)* means an institution primarily engaged in providing to inpatients skilled nursing care and related services for patients requiring medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(4) *Intermediate care facility (ICF)* means an institution which provides on a regular basis, health related care and services to individuals who do not require the degree of care which a hospital or SNF is designed to provide, but who because of their mental or physical condition require health related care and services above the level of room or board which can be made available to them only through institutional facilities.

(5) *Hospital* means an institution which is primarily engaged in providing by or under the supervision of physicians, to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(d) Services in separate juvenile correctional facilities may be provided by staff of the facility. However, FFP is not available for inherent responsibilities of the facility (e.g., food, clothing, shelter, and managing and carrying out the detention function).

(e) Notwithstanding the requirements of paragraphs (a) (2) and (b) (1) and (2) of this section, FFP is available between October 1, 1975 and October 1, 1977 for the cost of providing initial detoxification services for up to 7 days for drug and alcohol abusers when such detoxification is integral to the further provision of other title XX services, even though:

(1) Hospital or other institutional staff provide detoxification services to resident drug and alcohol abusers; and

(2) Such detoxification services include inherent or intrinsic responsibilities of the facility where they are provided.

**§ 228.15 Special services provided by foster family homes.**

(a) A foster family home is a home licensed or approved by appropriate State or local authority or an Indian tribal council on Indian reservations, in

accordance with § 228.12, to provide board and care including parenting for children and oversight for adults.

(b) *Special services provided by foster family homes.* FFP is not available for activities described under paragraph (a) of this section, but is available for special services provided by a foster family home to an individual living in that home, only upon documentation, by an appropriately qualified professional person who is other than the placement worker, that:

(1) The individual requires an identified special service because of a health (physical or mental) condition, an emotional or behavioral problem; and

(2) The caregivers are capable, by virtue of special training, or experience, of providing the needed service.

(c) Nothing in this section precludes the provision of any other service in the services plan to eligible individuals living in foster family homes when provided other than the foster family.

**§ 228.16 Emergency shelter.**

(a) FFP is available for emergency shelter as a protective service to any child, including runaways, only under the following conditions:

(1) The child is in danger of abuse, neglect or exploitation;

(2) The need for emergency shelter is documented by personnel authorized by State law to place children, or by an Indian tribal council; and

(3) Emergency shelter is provided for not in excess of 30 days in any 6 month period, which may be consecutive or may accumulate over more than one stay.

(b) Emergency shelter may be provided in facilities such as foster family homes, institutions, and group homes.

**§ 228.17 Payments to recipient for services.**

FFP is available in cash payments made to a recipient for a service already rendered to him, upon presentation of a bill for, or presentation of a receipt of payment for, such service if he was eligible under the services plan for the service at the time it was provided and if the purchased service:

(a) Is identified in the services plan;

(b) Was authorized by the State agency prior to its purchase and meets applicable standards, if any; and

(c) Was secured by the individual within a period of time and at a cost which were approved by the State agency.

**§ 228.18 Confidentiality regarding services to drug and alcohol abusers.**

States providing services to drug and alcohol abusers shall safeguard information about such services and recipients by applying the provisions of section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (as amended by section 122(a) of Pub. L. 93-282), as implemented by regulations at 42 CFR Part 2.

**Subpart E—Limitations: Financial**

**§ 228.50 Services and individuals covered in the services plan.**

(a) FFP is available with respect to any expenditures for the provision of any service for any individual only when:

(1) The State's services plan meets the requirements of Subpart C, and

(2) The final services plan (including any amendments published in final) in effect when the service is provided to the individual includes the provision of that service to a category of individuals which includes that individual.

(3) The State plan is approved as meeting the requirements of Subpart B of this Part.

**§ 228.51 Matching rates.**

(a) *Seventy-five percent FFP.* FFP is available at the 75 percent rate for service costs and for personnel training and retraining directly related to the provision of services under the services plan.

(b) *Ninety percent FFP.* Notwithstanding paragraph (a) of this section, FFP is available at the 90 percent rate for costs of family planning services provided under the services plan.

(c) *One hundred percent FFP.* Notwithstanding paragraph (a) of this section, FFP is available at the 100 percent rate up to the State's share of the additional allotments described in § 228.52(c) (3). The purpose of the additional funds is to encourage States to the maximum extent they determine to be feasible to promote the employment of AFDC recipients in jobs related to day care services.

(1) During fiscal year 1977, 100 percent FFP is available for:

(i) Day care services provided to children in day care centers, group day care homes, and family day care homes, which are licensed by the State for child day care services and otherwise meet the requirements of § 228.42(a) (2) as modified by the provisions of § 228.42(c) and (d).

(ii) Day care services provided to children in their own homes in accordance with § 228.42(a) (1); and

(iii) Staff activities in direct support of the child day care services such as: licensing homes or facilities used by title XX children, monitoring title XX child care services delivery, and training staff in accordance with Subpart II of this Part.

(2) During the transition quarter (July 1, 1976 through September 30, 1976) and the 1977 fiscal year, 100 percent FFP is available for grants by States to child day care providers to employ welfare recipients, in accordance with Subpart J.

**§ 228.52 Allotments to States.**

(a) *Basic Limitation.* The amount of Federal funds payable to the 50 States and the District of Columbia under this Part for any fiscal year with respect to expenditures for services under the services plan (other than expenditures for personnel training or retraining directly related to the provision of services) may not exceed the allotment set forth in this section.

(b) *Allotments for fiscal year beginning July 1, 1975.* The allotment of each State for the fiscal year beginning July 1, 1975, shall be the allotment of the State for that fiscal year as determined under section 1130 of the Act. In determining, for the purposes of that limitation, the total amount of the payments made to any State with respect to expenditures

during that fiscal year, there shall be included the amount of any payments made to the State that are chargeable against the allotment of the State for the fiscal year beginning July 1, 1975, under section 1130.

(c) *Allotments for fiscal years beginning after June 30, 1976.* (1) The allotment of each State for each fiscal year beginning after June 30, 1976, shall be an amount which bears the same ratio to \$2,500 million as the population of such State bears to the population of all the States.

(2) The allotment for each State will be promulgated for each fiscal year by the Secretary prior to the first day of the third month of the preceding fiscal year, on the basis of the population of each State and of all the States as determined on the basis of the most recent satisfactory data available from the Department of Commerce.

(3) (i) The basic allotment described in paragraph (c) (1) of this section shall be increased by an amount which bears the same ratio to \$40 million for the transition quarter (July 1, 1976 through September 30, 1976) and to \$200 million in the 1977 fiscal year as the population for such State bears to the population of all States. The amount of these additional allotments payable to each State shall be the lesser of:

(A) The amount of each additional allotment; or

(B) The amount of actual expenditures incurred for the provision of child day care services and for grants by States to child day care providers for the employment of welfare recipients.

(d) *Certification of allotment need.* (1) Each fiscal year, each State shall certify to the Secretary, within 30 days after the beginning of the fiscal year, whether the amount of its allotment is greater or less than the amount needed by the State for such fiscal year and, if so, the amount by which the amount of such allotment is greater than such need.

(2) If any State certifies in accordance with paragraph (d) (1) of this section, that the amount of its allotment for any fiscal year is in excess of its need for such year, the amount of the limitation of such State for such year shall be adjusted downward by the amount of such excess.

(3) Of the amounts made available pursuant to paragraph (d) (2) of this section, the Secretary shall allot to the jurisdiction of Puerto Rico \$15,000,000, to the jurisdiction of Guam \$500,000, and to the jurisdiction of the Virgin Islands \$500,000, which shall be available to each such jurisdiction in addition to amounts available under Section 1108 of the Act for the purpose of matching the expenditures of such jurisdictions for services pursuant to sections 3(a) (4) and (5), 403(a) (3), 1003(a) (3) and (4), 1403(a) (3) and (4), and 1603(a) (4) and (5) of the Act, except that if the amounts made available pursuant to paragraph (d) (2) of this section are less than \$16,000,000, such amounts as are available shall be allotted to each of the three jurisdictions in proportion to their respective populations.

(e) *Date of Expenditure.* For purposes of this section, expenditures for services are ordinarily considered to be incurred on the date on which the State or local agency makes payment or the date to which the expenditure was allocated, pursuant to the cost principles of Subpart Q of 45 CFR Part 74 and the cost allocation procedures of 45 CFR 205.150. In the case of local administration, the date of expenditures by the local agency governs. In the case of purchase of services from another public agency, the date of expenditure by such other public agency governs. Different rules may be applied with respect to a State, either generally or for particular classes of expenditures, only upon justification by the State to the Administrator and approval by him. In reviewing State requests for approval, the Administrator will consider generally applicable State law, consistency of State practice, particularly in relation to periods prior to October 1, 1975, and other factors relevant to the purposes of this section.

(f) *Procedures for making grants to States.* See 45 CFR Part 201.

**§ 228.53 Public sources of State's share.**

(a) *Funds available for matching.* Public funds used by the State or local agency for its services programs, including training and other administrative functions, may be considered as the State's share in claiming FFP only where such funds are:

(1) Appropriated directly to the State or local agency; or

(2) Funds of another public agency (including Indian tribes) which are:

(i) Transferred to the State or local agency and are under its administrative control; or

(ii) Certified by the contributing public agency as representing expenditures for services eligible for FFP under this Part; or

(iii) Representing value, as determined in accordance with 45 CFR 74.53(b) and (c), and Appendix C, Part II, B.11 of 45 CFR 74, of goods or property provided by a public agency even if the agency does not incur any current expenditures for such goods or property during the period of their use in the services program.

(b) *Funds not available for matching.* Notwithstanding paragraph (a) of this section, public funds used by the State or local agency for its services programs may not be used as the State's share in claiming FFP where such funds are:

(1) Federal funds not authorized by Federal law to be used to match other Federal funds; or

(2) Used to match other Federal funds.

**§ 228.54 Private sources of State's share.**

(a) *Funds available for matching.* Funds donated from private sources for services, training, or other administrative functions may be considered as State funds in claiming FFP only where such funds are:

(1) Transferred to the State or local agency and under its administrative control;

(2) Donated to the State, without restrictions as to use, other than restrictions as to the services, administration or training with respect to which the funds are to be used imposed by a donor who is not a sponsor or operator of a program to provide those services, or the geographic area in which the services with respect to which the contribution is used are to be provided; and

(3) Not used to purchase services from the donor unless the donor is a nonprofit organization and it is an independent decision of the State agency to purchase services from the donor.

(b) For purposes of this Part, a voluntary federated fund-raising organization is not considered to be a sponsor or operator of a service facility, and member agencies are considered separate autonomous entities so long as control by interlocking board membership or other means does not exist.

**§ 228.55 [Reserved]**

**§ 228.56 Fifty Percent Rule.**

(a) If one-half of the Federal funds to which the State is otherwise entitled is greater than the amount of the aggregate expenditures (combined State and Federal) made under the program for individuals identified in this paragraph, such Federal funds will be adjusted so the total Federal reimbursement does not exceed twice the amount of the total expenditures in behalf of those individuals:

(1) Who are receiving aid under the plan of the State approved under part A of title IV or who are eligible to receive such aid; or

(2) Whose needs are taken into account in determining the needs of an individual who is receiving aid under the plan of the State approved under part A of title IV, or who are eligible to have their needs taken into account in determining the needs of an individual who is receiving or is eligible to receive such aid; or

(3) With respect to whom supplementary security income benefits under title XVI or State supplementary payments, are being paid, or who are eligible to have such benefits or payments paid with respect to them; or

(4) Whose income and resources are taken into account in determining the amount of supplemental security income benefits or State supplementary payments being paid with respect to an individual, or whose income and resources would be taken into account in determining the amount of such benefits or payments to be paid with respect to an individual who is eligible to have such benefits or payments paid with respect to him; or

(5) Who are eligible for medical assistance under the plan of the State approved under title XIX.

(b) In accounting for costs of services to meet the requirements of paragraph (a) of this section:

(1) In lieu of accounting for the status of each person receiving a service on the basis of group determination of eligibility, States may use generally accepted statistical sampling procedures.

(2) Regarding services to persons who receive services without regard to income (family planning services, services to prevent or remedy abuse, neglect or exploitation of children and adults, and information and referral services), States may use any appropriate method, including generally accepted sampling procedures or allocation of costs to the services provided these persons in the same ratio as the known cost of all other services distributed for the 50 percent rule.

(3) States shall deem grants made by them to child day care providers for the employment of welfare recipients, to be expenditures for child day care services made on behalf of AFDC recipients.

**Subpart F—Limitations: Individuals Served, Eligibility and Fees**

**§ 228.60 Persons eligible and access to services.**

(a) *Conditions for FFP.* FFP is available in expenditures for services to individuals provided that:

(1) The service is included in the State's services plan;

(2) The individual who receives the service is a member of one of the categories covered by the State's services plan; and

(3) Such individual was eligible under the provisions of this section and those of § 228.61 at the time of receipt of the service.

(b) *Categories of individuals who may receive services.*

(1) *Income maintenance status.* The following individuals are eligible on the basis of income maintenance status:

(i) Recipients of AFDC; and

(ii) Those persons whose needs were taken into account in determining the needs of AFDC recipients; and

(iii) Recipients of SSI benefits or State supplementary payments.

(2) *Income status.* Individuals other than those described in paragraph (b) (1) of this section, are eligible if the family's monthly gross income is less than 115 percent (or, at State option, a lower percentage) of the median income of a family of four in the State adjusted for size of family, subject to the limitations set forth in § 228.62. Income status individuals include those whose eligibility is determined on a group basis.

(3) *Without regard to income.* Individuals may be provided family planning services under § 228.63, information or referral services under § 228.64, or services to prevent or remedy neglect, abuse, or exploitation of children or adults under § 228.65, without regard to income at State option if the State so provides in its services plan.

(c) *Median income.* On or before December 1 of each year, beginning with calendar year 1975, the Secretary will promulgate the median income for a family of four for each State and for the 50 States and the District of Columbia. This promulgation shall be used for purposes of determining eligibility and establishing fees in the following Federal or State fiscal year.

(d) *Income levels as baselines for fee imposition.*

(1) Except for individuals whose eligibility is determined on a group basis, individuals whose eligibility is based on income status shall be subject to imposition of a fee for service (in accordance with § 228.62) if their family's monthly gross income exceeds 80 percent of the median income of a family of four in the State or the median income of a family of four in all States, whichever is less, and does not exceed 115 percent of the median income of a family of four in the State, adjusted for family size.

(2) The median incomes (at 80 percent and 115 percent) as calculated in paragraph (d) (1) of this section for a family of four, shall be adjusted for family size according to the following percentages:

(i) One person—52 percent.

(ii) Two person family—68 percent.

(iii) Three person family—84 percent.

(iv) Four person family—100 percent.

(v) Five person family—116 percent.

(vi) Six person family—132 percent.

(vii) For each additional family member above six persons, the State shall add 3 percentage points to the percentage for a family of six.

(3) For discretionary fees applicable to persons who are at or below the lower level median income described in paragraph (d) (1) of this section, or are eligible on the basis of income maintenance status, or who may receive services without regard to income, see § 228.62(b).

(c) *Income levels for services.* So long as the State observes the baselines for income levels for imposition of fees established pursuant to paragraph (d) (1) of this section, it may establish income levels for services:

(1) At any level lower than 115 percent of the median income of the State;

(2) At different levels for different services under the services plan;

(3) At different levels for different categories of individuals;

(4) At different levels in different geographic areas; or

(5) At different levels for different sizes of families within the limits for eligibility and fees set forth in paragraph (d) (2) of this section.

(f) *Opportunity to apply.* The State shall assure that each individual wishing to do so has an opportunity to apply for services without delay. The State shall use the following intake process for individuals seeking service:

(1) *Determination of eligibility.*

(i) When eligibility must be determined on an individual basis, the State shall require a written signed application containing the necessary information.

(A) The application shall be in a form prescribed by the State and the applicant shall certify that the information submitted is correct.

(B) The application may be filed by the applicant himself or by his authorized representative; or where the applicant is incompetent or incapacitated or in an emergency, by someone acting responsibly for him, including agency staff.

(ii) No written application is necessary for services available without regard to income.

(iii) No written application is necessary for individuals whose eligibility is determined on a group basis.

(2) *Request for services.* Except as described in paragraph (f) (2) (iv) (B) of this section, the State shall document each request for service for purposes of FFP as well as for fair hearings and as evidence of the voluntary nature of the request for service. Documentation may be accomplished through submission of a written request by an individual needing service or his representative, or by the recording of information elicited by the agency, except that a request for family planning services (whether or not it is a "universal" service) must be in writing in order to verify that it was requested voluntarily. With respect to the following:

(i) When an individual has had eligibility determined on an individual basis, the written application for eligibility determination may be deemed a request for services (unless the State has a separate process for requesting services), and may serve as initial documentation. Subsequent requests for services from such an eligible individual shall be documented as described in paragraph (f) (2) of this section.

(ii) For protective services, an acceptable alternative to a request for services is a dated agency record that documents the circumstances of actual or potential abuse, neglect, or exploitation of a child or adult.

(iii) For requests for information and referral services, the State shall establish a procedure for documenting the number and nature of the requests.

(iv) When eligibility is determined on a group basis in accordance with § 228.61, requests for services shall be handled in one of two different ways:

(A) If the State has established specific conditions (other than income) or characteristics as a condition precedent to the receipt of a service on the basis of group eligibility, the State shall, in the intake process, elicit information necessary to determine whether an individual meets the specified conditions or has the characteristics for membership in the group (e.g.—if eligibility for homemaker services to teenage parents maintaining their own homes in public housing is determined on a group basis, the intake process shall elicit a statement regarding age, parenthood, address, and maintenance of one's own home).

(B) If the State has concluded solely on the basis of the nature of a service and/or the location where it will be provided (e.g.—recreation services in specified senior centers or day care services for migrant children), that substantially all of the individuals who would apply for the service are members of families with gross monthly incomes of 90 percent or less of the State's median income, adjusted for family size, no information need be elicited at intake or documentation made except as to the numbers served. The presence of the individual at

the service site or participation in the service is deemed a request for services.

(g) *Prompt action on eligibility applications and requests for service*

(1) A decision shall be made on all applications within time standards established by the State agency pursuant to § 228.6, but not to exceed 30 calendar days from the date of application.

(2) The agency shall notify applicants about their eligibility within 15 calendar days after it makes a decision. The date of each notification shall be entered in the case record. Applicants found to be eligible shall be notified orally or in writing; those found to be ineligible shall be notified in writing unless the requested service is provided by that agency to them through another funding source.

(3) Unless a service is denied, the State shall provide the service requested with reasonable promptness. "Provide the service" means actual provision of the service or arrangement for its provision at an appropriate later date. "Reasonable promptness" is accomplished when the State provides the service:

(i) Within 15 calendar days after notification of eligibility; or

(ii) Within 30 calendar days after acceptance of a request for service.

If the service is denied, the State shall notify the applicant in writing of the denial within these same time limits.

(h) *Notification of right to a fair hearing.* At the time of application or request for services, each individual shall be given information about the right to request and obtain a fair hearing, in accordance with § 228.14.

§ 228.61 Determination and redetermination of eligibility.

(a) *Methods of determining (or redetermining) eligibility.* (1) Standards and methods for determination of eligibility will be consistent with the objectives of the program, and will respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws.

(2) States may establish any method or methods, including a declaration method, for determining individual eligibility in accordance with § 228.60 and § 228.66.

(i) A determination of individual eligibility means a decision, reflected in the State's records, based on a dated and signed application and sufficient information which would lead a reasonable person to conclude that the criteria set forth in § 228.60 have been met and the individual is eligible to receive services on the basis of income or income maintenance status.

(A) *Documentation method* means that the State has sought and obtained verification regarding the source and amount of the gross family monthly income of the individual applying, or has verified his income maintenance status.

(B) *Declaration method* means acceptance of an individual's statements regarding the source and amount of his family's gross monthly income, and the

income maintenance status as described in § 228.60(b)(1) of any member of the family.

(ii) (For group determination of eligibility, see paragraph (2) of this section and § 228.60(f)(2)(iv).)

(3) (i) States may determine eligibility on a group basis if, upon consideration of one or more of the following factors, with respect to a particular service, they can reasonably conclude without individual determination that substantially all members of the group who receive the particular service are members of families with monthly gross incomes of not more than 90 percent of the State's median income, adjusted for family size:

(A) The geographic area in which a particular service is provided;

(B) The characteristics of the community in which the service is provided;

(C) The nature of the service provided;

(D) The conditions, other than income, of eligibility to receive the service; or

(E) Other factors surrounding provision of the service.

(ii) "Substantially all" means that no less than 75 percent of the persons provided a service on the basis of group eligibility determination shall be members of families whose gross monthly incomes are no more than 90 percent of the State's median income, adjusted for family size.

(iii) There are no mandatory fees, as defined in § 228.62(a), for persons whose eligibility is determined on a group basis.

(iv) Group determination of eligibility may be used for any service except, that for child day care, it is limited to the children of migratory workers.

(4) States may use one method for determining eligibility for all services, categories of individuals and geographic areas, or they may use different methods for different services, different categories of individuals and different geographic areas.

(5) States shall have available for Federal review a written description of the method(s) they have established for determining and redetermining eligibility.

(b) *Conditions for FFP.* (1) Regardless of the method chosen for determination or redetermination of eligibility:

(i) FFP is available in the cost of services provided prior to the actual date of an initial determination of eligibility only if such determination is made within 30 days of the date of application and the individual is properly determined to have been eligible when the services were initiated.

(ii) When a recipient of services was improperly determined to be eligible, FFP is not available in the cost of services provided during the period of improperly determined eligibility.

(2) When an individual properly determined to be eligible on the basis of information available to the agency at the time of determination of eligibility is subsequently found ineligible, FFP is available until the end of the month in which he is determined ineligible.

A proper determination of eligibility is a determination which is based on a correct assessment on the information available to the agency at the time of such determination, provided that all information necessary to make a determination is available; a proper redetermination is one which meets those criteria and, in addition, is made within the time limits established by paragraph (c) of this section.

(c) *When redetermination shall be made.*

(1) Redetermination of eligibility shall be made for persons whose eligibility is determined on an individual basis:

(i) When required on the basis of information the agency has obtained about anticipated changes in the individual's situation;

(ii) Promptly, not to exceed 30 days, after information is obtained about changes which have occurred in the individual's circumstances that may make him ineligible; and

(iii) Periodically, but not less frequently than every 6 months except that for individuals whose family gross monthly income at the time of determination is derived exclusively from pensions, or social security benefits, or SSI, or a combination thereof, redetermination may be made at 12-month intervals.

(2) If the State has established specific conditions or characteristics as a condition precedent to the receipt of a service on the basis of group eligibility (and, in accordance with § 228.60(g)(2)(iv)(A), has elicited information at intake that individuals applying for the service meet the conditions or have the characteristics for membership in the group), it shall, unless the characteristic is irreversible (such as being above a certain age), redetermine the eligibility of these individuals as follows:

(i) When the conditions or characteristics established by the State are apt to change in regard to an individual (such as place of residence, marital status, children living in the home), the State shall ascertain not less frequently than every 6 months whether persons receiving the service on a group eligibility basis still meet the conditions or have the characteristics which made them members of the group; or

(ii) When the conditions or characteristics established by the State are not apt to change substantially in regard to an individual (such as a physical disability), the State shall ascertain not less frequently than once a year whether persons receiving the service on a group eligibility basis still meet the conditions or have the characteristics which made them members of the group.

(iii) The State shall discontinue providing the service on the basis of group eligibility determination by the end of the month in which it finds persons who no longer meet the conditions or have the characteristics required for group membership.

(d) *Validation of "substantially, all" basis for establishing a group:*

(1) Each group of persons receiving a service on the basis of group determination of eligibility shall be subject

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to a validation check of whether at least 75 percent of those receiving the service are members of families with gross monthly incomes of no more than 90 percent of the State's median income, adjusted for family size.

(2) States shall conduct their initial validation check not later than 6 months after they have started providing a service to individuals on the basis of group eligibility. (If a State claims expenditures for services on a group determination of eligibility basis retroactively, as permitted to October 1, 1975, the validation shall be made by no later than March 31, 1977.)

(3) After the initial validation, States shall thereafter conduct such validations for the same group no less frequently than once a year.

(4) The validations may be conducted on a sample basis. States shall maintain a record of how the test was conducted, and document the process used and the findings.

(5) In order to determine whether at least 75 percent of the persons who receive a particular service on the basis of group eligibility are in families with the specified income level, States shall take into account the findings made on members of the group, as described in the services plan.

(6) If a State finds that less than 75 percent of the persons receiving a particular service on the basis of group eligibility meet the specified income standard, the State shall, within 75 days following such a finding:

(i) Discontinue by the end of the month in which the 75th day occurs, claiming FFP for expenditures incurred for the service provided to persons in that particular group whose eligibility has been determined on a group basis;

(ii) Amend the State's services plan to either delete the service, or to provide a new basis for determination of eligibility to continue the service.

(iii) If the State decides to continue the service, FFP is available, in accordance with the amended services plan, for providing the service:

(A) On the basis of individual eligibility; or

(B) On the basis of group eligibility if the State changes the conditions or characteristics relative to the group and has a reasonable basis on which to conclude that with such modification, at least 75 percent of the individuals served would then be members of families with the specified monthly gross income.

(c) *Who makes the determination.* Determinations of eligibility shall be made by the State agency, or, pursuant to written contract in accordance with Subpart G, by a provider of services.

(f) *Outside contacts.* (1) When the provider agency determines eligibility, it shall inform the applicant or recipient that, if it is necessary to contact outside sources (including employers) and the applicant or recipient wishes to keep the service confidential, he is entitled to request that such contacts be made by the State agency; and

(2) The State agency, upon notification of the individual's request, shall make the outside contacts and relay the information to the provider.

(g) *State monitoring of eligibility process.* Whether the determination of eligibility is made by the State or the provider, the State shall establish and implement a continuing monitoring procedure to test the ability of its method(s) for determining eligibility to correctly make those determinations and shall, where erroneous determinations are disclosed, take action designed to eliminate such errors. A monitoring procedure under this paragraph may include the use of statistically valid samples. Periodic reports on the State agency's monitoring procedures, findings, and actions under this paragraph will be required pursuant to § 228.17(b).

#### § 228.62 Fees for services.

(a) *Mandatory fees.* FFP is available for a service provided to an individual whose eligibility is based on income status if his family's monthly gross income exceeds 80 percent of the median income of a family of four in the State or the median income of a family of four in all States, whichever is less, and does not exceed 115 percent of the median income of a family of four in the State, adjusted as to family size, only if a fee or other charge, based on a fee schedule in accordance with paragraph (c) of this section, is imposed.

(b) *Discretionary fees.* (1) A State may impose a fee or other charge for any service to any individual who is eligible for services based on income maintenance status, or is eligible based on income status and whose family's month gross income is less than 80 percent of the median income of a family of four in the State, adjusted for family size, or the median income for a family of four in all States, adjusted for family size, whichever is less, but only if the fee or other charge is based on a fee schedule in accordance with paragraph (c) of this section.

(2) A State may impose a fee on individuals who are provided services without regard to income (family planning services, information or referral services, or services to prevent or remedy abuse, neglect or exploitation of children and adults). The fee shall be based on a fee schedule in accordance with paragraph (c) of this section and be described in the State's services plan in accordance with § 228.24(c).

(c) *Criteria for fees.* (1) Fees established by the State agency:

(i) May be different for different services;

(ii) May be different for different geographic areas;

(iii) Shall be reasonably related to the individual's income; and

(iv) Shall not exceed the cost of the service to the title XX agency.

(2) Where several services are provided concurrently to an individual, the total fees imposed shall not exceed the amount reasonably related to his income.

(d) *Methods of collection.* The State agency shall:

(1) Establish methods for the collection of any fee or other charge imposed; and

(2) Maintain evidence of a reasonable effort to collect such fee or charge.

(c) *Disposition of fees collected.* Fees collected from service recipients may not be used as the non-Federal matching share. However, at State option, fees may:

(1) If provided for in the purchase of service agreement, be retained by the provider and used to expand the title XX service to eligible individuals under that contract; or

(2) Be used to reimburse the provider if the contract so specifies, for costs above the negotiated rate when it is lower than the going rate in the community for the service. Any amount remaining after such reimbursement to the provider for these costs shall be deducted from the amount of expenditures for which FFP is claimed; or

(3) Be deducted from service expenditures before FFP is claimed.

(4) If collected by the State in direct delivery of a service, be retained by the State and used only to expand the service to eligible individuals.

(f) Under this provision, FFP is not available in the costs of any service when a provider imposes a fee or charge other than that set by the State agency, pursuant to the purchase of service agreement under § 228.70(a)(7), described in the State's services plan pursuant to § 228.24 (c) and (d), and formulated in accordance with paragraph (c) of this section.

#### § 228.63 Family planning services.

(a) FFP is available in the cost of family planning services provided without regard to income.

(b) For purposes of this part, family planning services means counseling, educational and medical services (including diagnosis, treatment and continuing supervision, necessary laboratory examinations and tests, drugs, supplies, devices and related counseling furnished, prescribed by, or under the supervision of, a physician) to enable individuals (including minors) voluntarily to limit their family size, to space their children, or to correct infertility.

(c) Where a State authorizes sterilization as a family planning service, it must comply with the provisions of 45 CFR 205.35.

#### § 228.64 Information and referral services.

FFP is available: (a) Only for information about services provided under title XX and related service programs, brief assessment (but not diagnosis and evaluation) to facilitate appropriate referral, and referral to and follow-up with those community resources which provide or make available such services; and (b) Only when provided by an agency that has information and referral as a specific recognized function and that

has a staff with identifiable tasks relating to information and referral.

§ 228.65 Services directed at the goal of preventing or remedying neglect, abuse, or exploitation of children or adults unable to protect their own interests.

(a) FFP is available without regard to income for services directed at the goal of preventing or remedying neglect, abuse or exploitation of children and adults unable to protect their own interests, only as follows:

(1) With respect to children, only when provided to or in behalf of an individual under the age of 18 who is harmed or threatened with harm through non-accidental physical or mental injury, sexual abuse (as defined by State law); or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter. For purposes of this section, runaways are presumed to be harmed or threatened with harm by virtue of their status.

(2) With respect to adults, only when provided with respect to individuals 18 years of age or older unable to protect their own interests, harmed or threatened with harm through action or inaction by another individual or through their own actions due to ignorance, incompetence or poor health; resulting in physical or mental injury, neglect or maltreatment, failure to receive adequate food, shelter, or clothing, deprivation of entitlements due them, or wasting of their resources.

(3) In each case, the State agency shall document the circumstances which lead it to believe that the individual is subject to, or at risk of, abuse, neglect or exploitation.

(4) No later than six months after the case has been opened, the State agency shall redocument and evaluate the circumstances then existing with respect to abuse, neglect or exploitation for the purpose of ascertaining if the individual still meets the conditions for services without regard to income. Such redocumentation and evaluation of the circumstances shall take place thereafter no less frequently than at six-month intervals if the case remains open.

(b) Except in the case of runaways, no individual shall be deemed to meet the conditions specified in paragraph (a) (1) or (2) of this section merely because he belongs to a particular class (e.g., mentally retarded, aged, juvenile delinquents); each person shall be individually determined to meet the specified criteria.

(c) States may include in their services plan, subject to the limitations of Subpart F, any appropriate service which they plan to provide to prevent or remedy abuse, neglect or exploitation of children or adults as set forth in this section.

§ 228.66 Monthly gross income.

(a) Monthly gross income means the monthly sum of income received by an individual from the following sources that are identified by the U.S. Census Bureau in computing the median income:

(1) *Money, wages or salary*—i.e., total money earnings received for work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece-rate payments, and cash bonuses earned, before deductions are made for taxes, bonds, pensions, union dues, and similar purposes.

(2) *Net income from nonfarm self-employment*—i.e., gross receipts minus expenses from one's own business, professional enterprise, or partnership. Gross receipts include the value of all goods sold and services rendered. Expenses include costs of goods purchased, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes), and similar costs. The value of salable merchandise consumed by the proprietors of retail stores is not included as part of net income.

(3) *Net income from farm self-employment*—i.e., gross receipts minus operating expenses from the operation of a farm by a person on his own account, as an owner, renter, or sharecropper. Gross receipts include the value of all products sold, government crop loans, money received from the rental of farm equipment to others, and incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include cost of feed, fertilizer, seed, and other farming supplies, cash wages paid to farmhands, depreciation charges, cash rent, interest on farm mortgages, farm building repairs, farm taxes (not State and Federal income taxes), and similar expenses. The value of fuel, food, or other farm products used for family living is not included as part of net income.

(4) *Social Security* includes Social Security pensions and survivors' benefits, and permanent disability insurance payments made by the Social Security Administration prior to deductions for medical insurance and railroad retirement insurance checks from the U.S. Government.

(5) *Dividends, interest (on savings or bonds), income from estates or trusts, net rental income or royalties* include dividends from stockholdings or membership in associations, interest on savings or bonds, periodic receipts from estates or trust funds, net income from rental of a house, store, or other property to others, receipts from boarders or lodgers, and net royalties.

(6) *Public assistance or welfare payments* include public assistance payments such as AFDC, SSI, State Supplemental Payments, and general assistance.

(7) *Pensions and annuities* include pensions or retirement benefits paid to a retired person or his survivors by a former employer or by a union, either directly or through an insurance company; periodic receipts from annuities or insurance.

(8) *Unemployment compensation* means compensation received from government unemployment insurance agencies or private companies during periods of unemployment and any strike benefits received from union funds.

(9) *Worker's compensation* means compensation received periodically from private or public insurance companies for injuries incurred at work. The cost of this insurance must have been paid by the employer and not by the person.

(10) Alimony.

(11) Child support.

(12) *Veterans' pensions* means money paid periodically by the Veterans' Administration to disabled members of the Armed Forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training, as well as so-called "refunds" paid to ex-servicemen as GI insurance premiums.

(b) *Exclusions from monthly gross income.* Excluded from computation of monthly gross income are the following:

(1) Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims;

(2) Payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under section 21(a) of the Act;

(3) Money received from sale of property, such as stocks, bonds, a house, or a car (unless the person was engaged in the business of selling such property in which case the net proceeds would be counted as income from self employment);

(4) Withdrawals of bank deposits;

(5) Money borrowed;

(6) Tax refunds;

(7) Gifts;

(8) Lump sum inheritances or insurance payments;

(9) Capital gains;

(10) The value of the coupon allotment under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons;

(11) The value of USDA donated foods;

(12) The value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;

(13) Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(14) Earnings of a child under 14 years of age (no inquiry shall be made);

(15) Loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs;

(16) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act; and

(17) Home produce utilized for household consumption.

**Subpart G—Purchase of Service**  
**§ 228.70 Procurement standards.**

FFP is available in the costs of purchased services only if they are secured in accordance with relevant provisions of Subpart P of 45 CFR 74, and the requirements of this Subpart.

(a) *Written contracts.* The State agency executes a written contract in accordance with requirements under this Part and 45 CFR 74.159 with the agency, individual, or organization from which services are purchased. In addition to the applicable requirements of § 74.159, the contract shall:

(1) Include all terms of the contract in one instrument, be dated, and be executed by authorized representatives of all parties to the contract prior to the date of implementation;

(2) Have a definite beginning and ending date for provision of services;

(3) Contain a detailed description of the services to be provided and of the methods, including subcontracting, to be used by the provider in carrying out its obligations under the contract;

(4) If eligibility determinations are to be made by the provider, contain a statement to that effect and criteria in accordance with Subpart F which shall be used by the provider for such determinations; and specify that the provider will inform individuals of their right to fair hearings in accordance with § 228.14,

(5) Provide for a stated number of units of service at a specific dollar rate, or for a specific dollar amount, or for costs to be determined in accordance with acceptable cost allocation methods;

(6) Specify the method and source of payment to the provider, including collection and disposition of fees, if applicable;

(7) Specify that no fees shall be imposed by the provider other than those set by the State in accordance with § 228.62 and described in the services plan;

(8) Include a statement that the provider meets applicable State or Federal standards as specified in this part;

(9) Specify the locations of facilities to be used in providing services;

(10) Provide that the provider will comply with the requirements of the Civil Rights Act of 1964, and for safeguarding information in accordance with § 228.10;

(11) Provide that any subcontracts permitted by the contract shall be subject to the requirements of this Part; and that the provider is responsible for the performance of any subcontractor;

(12) Specify requirements for fiscal and program responsibility, billing, records, controls, reports, and monitoring procedures; and

(13) Provide for access to financial and other records pertaining to the program by State and Federal officials.

(b) The requirements of this section may be satisfied by a simple printed contract form so long as all items described in paragraph (a) of this section are contained therein.

(c) The provisions of this section do not apply when services are obtained directly by the recipient and payment is made to him. (See § 228.47.)

(d) A written contract is not required for purchase of services from an individual provider who has no direct service employees or subcontractors provided:

(1) The State's statute of frauds does not preclude the agency from enforcing its unwritten contract with the provider; and

(2) The State agency maintains documentation of the terms of the unwritten contract negotiated with the individual provider, including all applicable items specified in paragraph (a) of this section.

**§ 228.71 Rates of payment.**

(a) FFP is available for expenditures for services only where the rates of payment for services do not exceed the amounts reasonable and necessary to assure the quality of service. (See § 228.62 (e) for disposition of fees.) Where services are purchased from other public agencies, rates shall be established in accordance with cost principles of Appendix C of 45 CFR Part 74 and such cost are reasonably assignable to such services. Where services are purchased from private agencies, rates may be established on the basis of negotiation, utilizing any reasonable methods for establishing competitive rates, including the Principles for Determining Costs suggested in Appendix F of 45 CFR Part 74. The State agency shall maintain and make available for Federal review records which describe and support the rates of payment and the methods used to establish and maintain such rates.

(b) Public Health Service grant funds from programs specified in 42 CFR Part 50 of the Health Services Funding regulation (as well as any matching funds required to earn those grant funds) which have been made available under a grant to a health service project, if not required to be used to finance cost of services to individuals eligible for services under title XX, shall not be deemed by the State agency to be available to reduce the costs otherwise subject to reimbursement under title XX. This precludes double Federal payment for the same individuals.

**Subpart H—Training and Retraining**  
**§ 228.80 Conditions for FFP.**

FFP is available in expenditures for personnel training and retraining that is directly related to the services program if the State meets all requirements of this Subpart. The training may include in-service training, and short and long-term training at educational institutions. FFP in such training expenditures may be claimed inside or outside the State's allotment for services and is available at the 75 percent rate. FFP shall be available for training expenditures no earlier than the date on which FFP is available for the provision of services under the final services plan in accordance with § 228.20.

**§ 228.81 Who may be trained.**

FFP is available for training only the following individuals:

(a) State agency staff employed in all classes of positions which directly re-

late to the operation of the Title XX program;

(b) Volunteers attached to the State agency and supervised by it in relation to duties directly related to the program;

(c) Service delivery personnel employed by providers (and in instances where the provider agency also determines eligibility for service, eligibility determination personnel employed by providers) only when:

(1) A purchase of service contract or a purchase of service and eligibility determination contract, is in effect in accordance with Subpart G;

(2) The training provided is directly related to the provision of services, or the determination of eligibility under the contract; and

(3) The provider personnel, during or immediately following the training period, participate in the provision of services or the determination of eligibility under the contract for a period of time at least equal to the period of time for which training was provided;

(d) Persons preparing for employment in the State agency in all classes of positions which directly relate to operation of the title XX program;

(e) Individual providers who are currently under contract pursuant to Subpart G including, but not limited to:

(1) Foster family caregivers who need training to enable them to provide special services (as specified in § 228.45) to eligible individuals living in the home, or to prepare them to receive eligible individuals who need such services if the home is used within the period covered by the contract, or

(2) Family or in-home day care givers to enable them to provide services to eligible individuals already in their care or to prepare them to receive eligible individuals who need such services, if the home is used within the period covered by the contract;

(f) Individuals who provide services paid for by the recipient, as provided in § 228.47, if training is directly related to such service, and

(g) Foster family caregivers whose homes provide a resource to the title XX agency in carrying out its directly operated foster care services program for eligible children and adults.

**§ 228.82 Grants to educational institutions.**

(a) FFP is available in payments for training furnished under grants to educational institutions, if all conditions specified in this section are met:

(1) Grants are made: (i) For the purpose of developing, expanding, or improving training for employees of the State agency and of providers, or persons preparing for employment with the State agency; (ii) For an educational program (curriculum development, classroom instruction, and related field instruction) that is directly related to the title XX program and provision of services; and (iii) For not more than three years, renewable subject to the provisions of paragraph (b) of this section;

(2) Grants are available only to post secondary, undergraduate and graduate

educational institutions and programs that have been accredited by the appropriate institutional accrediting body recognized by the U.S. Commissioner of Education. A specialized program for which there is a specialized accrediting body shall be accredited by, have pre-accreditation status from, or have applied for, accreditation by such body. (45 CFR Part 149 specifies the criteria and procedures for obtaining recognition as an accrediting agency or association. Lists of currently recognized accrediting bodies are published in the FEDERAL REGISTER periodically. See also "Nationally Recognized Accrediting Agencies and Associations" dated June, 1975 and published by the Office of Education).

(3) The State agency has written policies establishing conditions and procedures for such grants; and

(4) Each grant specifies objectives in terms of how the educational program is related to the title XX services program and how it is designed to meet the State agency's manpower needs.

(b) An evaluation of the educational program funded by each grant is made no later than the close of the second year of the grant. The evaluation shall be conducted by a panel consisting of representatives from the educational institution, the State agency, and the SRS Regional Office to determine whether the conditions and objectives specified in the grant are being met.

(c) If a majority of the panel members finds that the educational programs are failing to meet such conditions and objectives, payment shall be terminated no later than the close of the second year of the grant.

**§ 228.83 Financial assistance to trainees.**

(a) FFP is available for expenditures in the costs of training persons specified in § 228.81. If the following conditions are met, and within the specified limitations:

(1) State agency employees and service delivery personnel and eligible workers of provider agencies who are in attendance full-time at training programs for 8 consecutive workweeks or longer have a legally binding commitment to continue to work in the State or provider agency for a period of time at least equal to the period for which financial assistance is granted.

(2) Persons preparing for employment in the State agency are:

(i) Selected by the State agency and accepted by the school;

(ii) Pursuing educational programs approved by the agency; and

(iii) Legally committed to work for the State agency for a period of time at least equal to the period for which financial assistance is granted if employment is offered within 6 months after training is completed. If not employed by the State agency, such persons shall keep the agency informed of their employment status for one year.

(b) *State agency responsibilities.* The State agency shall:

(1) Offer employment to the individual preparing for employment in the State agency during the 6 months following completion of the training, unless pre-

cluded by Merit System requirements, legislative cuts, position freezes, or other circumstances beyond the agency's control; and

(2) Evaluate the training programs.

(c) Any recoupment of funds by the State from trainees failing to fulfill their commitment under this section shall be treated as a refund and deducted from total training costs for the purpose of determining net costs for FFP.

**§ 228.84 Activities and costs matchable as training expenditures.**

Costs matchable as training expenditures include:

(a) *State agency employees.* (1) For State agency employees in full-time training programs of eight consecutive work weeks or longer (with no assigned agency duties); salaries (including fringe benefits), or stipends, dependency allowances, travel, and education costs (that is, tuition, books, and supplies);

(2) For State agency employees in full-time training programs of less than eight consecutive work weeks: per diem, travel and education costs;

(3) For State agency employees in part-time training programs (part of work week, evenings, mornings): Education costs.

(b) *State agency staff development personnel.* For State agency staff development personnel (including support staff), assigned full time to training functions with respect to State agency or provider agency staff: salaries, fringe benefits, travel and per diem. (Costs of staff spending less than full time on training for the title XX program, including costs of other State agency staff under the supervision of the State agency Director of Staff Development, must be allocated according to the time actually spent on such training.)

(c) *State agency training activities.* (1) For experts outside the State agency engaged to develop or conduct special programs: salary, fringe benefits, travel and per diem;

(2) For State agency training activities directly related to the title XX program: cost of use of space, postage, teaching supplies, and purchase or development of teaching materials and equipment—for example, books and audio-visual aids.

(d) *Persons preparing for employment.* For persons preparing for employment with the State agency: stipends, travel, and education costs.

(e) *Provider agency personnel.* FFP is available in the following costs of training provider agency personnel as training costs, provided there is a contract with the State agency which includes such training; such costs are not included in the cost of services purchased from the provider agency; and such costs are reasonably assignable to title XX training:

(1) For provider agency employees in full-time training programs of 8 consecutive work weeks or longer (with no assigned provider agency duties): travel and education costs;

(2) For provider agency employees in full-time training programs of less than 8 consecutive work weeks: per diem, travel, and education costs;

(3) For provider agency employees on part-time educational leave: education costs;

(f) *Provider agency staff development personnel.* For provider agency staff development personnel (including support staff) engaged in providing training to State title XX agency staff or provider agency staff eligible for training under § 228.81 salaries and fringe benefits, travel and per diem.

(g) *Provider agency training activities.* (1) For experts outside the provider agency engaged to develop or conduct special programs: salary, fringe benefits, travel and per diem.

(2) For provider agency training activities directly related to the title XX program: cost of teaching supplies and purchase or development of teaching materials and equipment—for example, books and audio-visual aids.

(h) *Individual providers.* For individual providers and foster parents in part-time training: travel and education costs.

(i) *Payments to educational institutions.* Under conditions specified in § 228.82, for curriculum development, classroom and field instruction: salaries, fringe benefits and travel of instructors; clerical assistance; teaching materials and equipment—for example, books and audio-visual aids.

**§ 228.85 Activities and costs not matchable as training expenditures.**

FFP is not available for the following as expenditures outside the State's allotment for social services. Such expenditures are matchable as administrative costs (not training expenses) under the State's allotment for services.

(a) Salaries of newly-employed workers in the State agency or a provider agency while they are in orientation;

(b) Salaries of State agency employees who attend training programs less than full-time for a period of less than eight consecutive work weeks;

(c) Salaries of supervisors (day-to-day supervision of staff is not a training activity);

(d) Attendance at meetings or conferences of professional organizations; and

(e) Employment of students on a temporary basis, such as in the summertime.

**§ 228.86 [Reserved]**

**Subpart I—General Provisions**

44. Section 228.90 is revised to read as follows:

**§ 228.90 Expenditures for which Federal financial participation is available.**

(a) Federal financial participation is available only for expenditures which are identified and allocated in accordance with grant administration requirements set forth in 45 CFR Part 74, and, where appropriate, with the cost allocation provisions of 45 CFR 205.150.

(b) Under this Part, expenditures for the following are considered appropriate for the effective and efficient administration of the program:

(1) Salary, fringe benefits and travel costs of staff engaged in carrying out service work or service related work;

(2) Costs or related expenses, such as equipment, furniture, supplies, communications, and office space; transportation (such as tokens or tickets); and medical examinations, when necessary for the development of a services plan or when precedent to obtaining a service for an individual, provided such medical examination is not available to the individual under title XVIII or title XIX of the Act.

(3) Costs of State agency advisory committees on services, including expenses of members in attending meetings, supportive staff, and other technical assistance;

(4) Costs of agency staff attendance at meetings pertinent to the development or implementation of Federal and State service policies and programs;

(5) Cost to the agency for the use of volunteers in the program;

(6) Costs of operation of agency facilities used solely for the provision of services, except that appropriate distribution of costs is necessary when other agencies also use such facilities in carrying out their functions;

(7) Costs of administrative support activities furnished by other public agencies, private organizations, or individuals, or other units within the State agency which are properly cost allocated;

(8) Costs of technical assistance, data collection, surveys and studies performed by other public agencies, private organizations or individuals to assist the State agency in developing, planning, monitoring, and evaluating the services program; and

(9) Costs of public liability and other insurance protection.

44. Section 228.91 is revised to read as follows:

§ 228.91 Expenditures for which Federal financial participation is not available.

(a) Federal financial participation is not available under this part in expenditures for:

(1) Carrying out any maintenance assistance payments functions or any other functions or activities which are not related to services under this Part;

(2) The purchase, construction, or major modification of any land, building or other facility, or fixed equipment. However, FFP is available in the cost of using buildings, capital improvements, and equipment, in accordance with 45 CFR 74, Appendix C, Part II, B. 11.

(3) Housing costs for families and individuals including rent, deposits, purchase, construction, major renovation or repair;

(4) Goods or services provided in-kind by a private organization or individual; and

(5) Sabbatical leave.

Subpart J—Grants to Child Day Care Providers to Employ Welfare Recipients .

§ 228.100 Definitions.

For purposes of this Subpart:

(a) A "qualified" child day care provider is one in whose facility at least 20 percent of the total number of children regularly served are partly or totally funded under title XX.

(b) An "eligible" welfare recipient is, as defined in section 50B(g) of the Internal Revenue Code of 1954, one who meets all the following requirements:

(1) Has been certified by the State or local welfare department as being eligible for financial assistance for aid to families with dependent children (AFDC) and as having continuously received AFDC during the 90-day period which immediately precedes the date on which the employee is hired;

(2) Has been a full-time employee of the provider for a period in excess of 30 consecutive days;

(3) Has not displaced any other individual from employment by the provider; and

(4) Is not a migrant worker. (The Internal Revenue Code of 1954 defines a migrant worker as one who is employed in a job for which the customary period of employment by one employer is less than 30 days if the nature of the job requires the worker to travel from place to place over a short period of time.)

§ 228.101 Conditions for FFP

From September 7, 1976 until October 1, 1977, FFP is available from additional allotments specified in § 228.52 (c) (3) for salaries paid under grants which States make in accordance with this Subpart to qualified public, non-profit private, and proprietary child day care providers under contract to the State agency, to employ eligible welfare recipients, as defined in § 228.100: *Provided, That:*

(a) The grants do not exceed:

(1) \$5,000 to public and non-profit private providers for each recipient per year; and

(2) \$4,000 to proprietary providers for each recipient per year. (The Internal Revenue Code of 1954 provides a tax credit of up to \$1,000 per year per welfare recipient employed by proprietary child day care providers (section 50A(a) (6) (B) of the Code) under an extension until October 1, 1977 of the credit for Federal welfare recipient employment incentive expenses to proprietary child day care providers (section 50B(a) (2) (B)). The tax credit, to a maximum of \$1,000, equals 20 percent of the wages to a recipient to the extent that a provider is not specifically reimbursed for such wages. There is no aggregate tax credit limit for such child day care employers of recipients.)

(b) States make such grants on a time schedule that minimizes balances of Federal funds and in a manner consistent with Treasury Department Circular #1075 (revised) which promulgated the Letter of Credit system and was published in the Federal Register (38 FR 5242) on February 27, 1973.

(c) Pursuant to § 228.17, States submit statistical and financial reports on the AFDC recipients hired under these grants, in accordance with instructions issued by the Secretary.

§ 228.102 Claims for FFP.

(a) States may claim for salaries paid by child day care providers for the 30 days of full-time, continuous employ-

ment needed to make a recipient eligible, as defined in § 228.100(b).

(b) If a recipient starts employment with a provider on or after September 7, 1976, expenditures incurred for salaries for any part of the continuous 30-day employment which occurs after September 7, but within the transition quarter, are chargeable to the State's new allotment for the transition quarter.

(c) Any expenditures incurred on or after October 1, 1976 through September 30, 1977 for salaries under the grants for employment of welfare recipients are chargeable to the State's new allotment for the 1977 fiscal year.

*Effective date:* These regulations shall be effective 90 days after publication or earlier at State option with the following exceptions: (1) Section 228.70(d) is made retroactive to October 1, 1975, at State option; (2) Sections of Part 228 (as listed below), that were issued as interim final regulations implementing Pub. L. 94-401 (1976 Amendments to Title XX of the Social Security Act) published in the Federal Register (41 FR 55668) on December 21, 1976, are effective October 1, 1975, at State option, with the following exceptions: Additional allotments to States (§ 228.52) are available from 7-1-76 through 9-30-77; State grants to child day care providers (Subpart J) may be made on or after September 7, 1976 for use through September 30, 1977; and the option to waive Federal staffing standards in out-of-home facilities with few title XX children (§ 228.42(c) (2)) is effective no earlier than September 7, 1976.

The list of sections effective October 1, 1975, at State option, is as follows:

SUBPART C

§ 228.24 (e) and (f)  
§ 228.26(a)  
§ 228.29(d)  
§ 228.36(d)

SUBPART D

§ 228.40(c) (1) and (2)  
§ 228.41 (c) (1) and (2)  
§ 228.42 (c) (1) and (d)  
§ 228.44 (c) (1) and (2)  
§ 228.46

SUBPART E

§ 228.51 (e)  
§ 228.56(b)

SUBPART F

§ 228.60 (b) (3)  
§ 228.60 (f) (2) (ii)  
§ 228.60 (f) (1) (iii)  
§ 228.60 (f) (2) (iv) (A) and (B)  
§ 228.61 (a) (3)  
§ 228.61 (c) (2)  
§ 228.61 (d)

(Catalog of Federal Domestic Assistance Program No. 13754 Public Assistance Social Services.)

*Note.*—The Social and Rehabilitation Service has determined that this document does not require preparation of an Inflationary Impact Statement under Executive Order 11621 and OMB Circular A-107.

Dated: January 6, 1977.

ROBERT FULTON,  
Administrator, Social and  
Rehabilitation Service.

Approved: January 10, 1977.

MARJORIE LYNCH,  
Acting Secretary.

[FR Doc. 77-2056 Filed 1-20-77; 0:46 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL AND REHABILITATION  
WASHINGTON, D.C. 20201

INFORMATION MEMORANDUM

SRS-IM-77-8 (PSA)

February 4, 1977

TO: STATES AGENCIES ADMINISTERING TITLE XX SERVICES  
PROGRAMS AND OTHER INTERESTED ORGANIZATIONS  
AND AGENCIES

SUBJECT: Revision to IM-75-59 regarding Technical Assistance  
Materials for use by State Agencies in Monitoring  
Their Title XX Out-of-Home Child Day Care Services.

COMMENT: This information memorandum revises IM-76-59 (PSA)  
inserted in "Monitoring Out-of-Home Child Day Care  
Services: A Guide."

Attached are copies of the guide which States may find useful in monitoring Out-of-Home Child Day Care Services provided under Title XX. This document was developed by the Public Services Administration, Division of Monitoring, Research, and Evaluation, Social and Rehabilitation Service, U.S. Department of Health, Education, and Welfare.

The guide is being made available to States as a technical assistance document, but States are not required to use it. States that have already developed a monitoring instrument may use that instrument or any other appropriate instrument it desires. We do suggest, however, that each State assure itself that the monitoring instrument it uses contains questions which will enable it to determine whether or not its child day care program meets Title XX requirements.

The Public Services Administration will convene training sessions in the use of the monitoring guide early in March 1977. Detailed information regarding these training sessions will be issued at a later date.

DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
Washington, D.C. 20201

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**a guide**

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**MONITORING  
OUT-OF-HOME  
CHILD DAY CARE  
SERVICES**

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U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service ● Public Services Administration

QUESTIONS ABOUT THIS MONITORING GUIDE SHOULD BE DIRECTED TO:

Division of Monitoring, Research,  
and Evaluation  
Public Services Administration  
Social and Rehabilitation Service  
330 C Street, S.W.  
Washington, D. C. 20201

MONITORING OUT-OF-HOME CHILD DAY CARE SERVICES

A GUIDE

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
Social and Rehabilitation Service  
Public Services Administration  
1976

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL AND REHABILITATION SERVICE  
WASHINGTON, D.C. 20201

INFORMATION MEMORANDUM

SRS-IM-76-59 (PSA)

December 22, 1976

TO: STATE AGENCIES ADMINISTERING TITLE XX SERVICES  
PROGRAMS AND OTHER INTERESTED  
ORGANIZATIONS AND AGENCIES

SUBJECT: Technical Assistance Materials for use by State  
Agencies in Monitoring Their Title XX Out-of-Home  
Child Day Care Services.

CONTENT: Attached are copies of a guide which States may find  
useful in monitoring out of home child day care services  
provided under Title XX. This guide was developed by  
the Public Services Administration, Division of  
Monitoring, Research, and Evaluation, Social and  
Rehabilitation Service, U.S. Department of Health,  
Education, and Welfare.

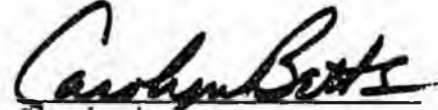
The guide is being made available to States as a  
technical assistance document but States are not  
required to use it. We do suggest, however, that  
each State assure itself that the monitoring  
instrument used contains questions which will enable  
it to determine whether those facilities utilized  
are meeting the Title XX requirements.

The Public Services Administration will convene  
training sessions in the use of this guide early  
in February 1977. Detailed information regarding  
these training sessions will be issued under  
separate cover.

For additional copies of the guide and any questions  
about the guide:

Division of Monitoring, Research,  
and Evaluation  
Public Services Administration  
Social and Rehabilitation Service  
330 C Street S.W.  
Washington, D.C. 20201

INQUIRIES TO: SRS Regional Commissioners.

  
Commissioner,  
Public Services Administration

## REFERENCES

Code of Federal Regulations. Title 45 (Public Welfare)  
Part 228 - Social Services Program for Individuals and  
Families (Title XX of the Social Security Act.)

Compliance/Performance Information Subsystem. Prepared by  
Systems Research and Development, Regional Institute of  
Social Welfare Research, University of Georgia, in  
collaboration with the Community Services Administration  
(now, Public Services Administration) Task Force on  
Monitoring and Evaluation, 1973.

Evaluating Social Services. Texas State Department of  
Public Welfare, 1971.

Federal Interagency Day Care Requirements. U.S. Department of  
Health, Education, and Welfare, Office of Human Development,  
Children's Bureau, 1968. Publication No. (OHD) 75-1081. 17pp.

Guides for Day Care Licensing. U.S. Department of Health,  
Education, and Welfare, Office of Child Development, Bureau  
of Child Development Services, Publication No. (OCD) 73-1053.

Indicators of Satisfactory Compliance with Federal Interagency  
Day Care Requirements: A Guide for Monitoring. UNCO, Inc.,  
Arlington, VA., 1975. Unpublished.

Social Services Reporting Requirements. U.S. Department of  
Health, Education, and Welfare, Social and Rehabilitation  
Service, July 1975.

Staff - part-time

Individuals employed and persons who volunteer their services for less than 40 hours per week.

State and Local Agency

The agency at the State and local level which has been given the responsibility, usually designated by law, for providing social services.

Substantial Federal Funds 4/

Any of the following are considered to be facilities which receive substantial Federal funds:

1. A single facility that provides care, paid for with Federal funds, to 40 or more children.
2. A day care center where 25 percent or more of the children enrolled receive care paid for with Federal funds.
3. A center where 25 percent or more of the income comes from a combination of Federal and State (or local) matching funds.

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The monitoring guide is supplemented by the following interview guides:

- . Guide for Monitoring Family Day Care Homes for Children
- . Guide for Monitoring Group Day Care Homes for Children
- . Guide for Monitoring Day Care Centers

4/ Indicators of Satisfactory Compliance with Federal Inter-agency Day Requirements: A Guide for Monitoring. (UNCO, Inc., Arlington, VA., 1975.) Unpublished.

FIDCR

Federal Interagency Day Care Requirements, published September 1968, which contains Federal standards for day care, amended by Title XX of the Social Security Act.

Group Day Care Homes 2/

An extended or modified, licensed or approved family residence in which family like care is provided, usually to school age children. A group day care home may provide care for up to 12 children.

Operating Agency 3/

An agency directly providing day care services with funding from an administering agency. In some cases, the administering and the operating agency may be the same, such as a Title XX agency or a community action agency which directly operates child care facilities.

Proprietary (Commercial) Day Care Facility

A day care facility that is owned, administered, and operated by a person or business concern for the purpose of earning a profit.

Private (Nonprofit) Day Care Facility

A day care facility that is administered and operated by private, nonprofit organizations funded through voluntary gifts and fees received for the cost of care. This includes private, voluntary, nonprofit community agencies which receive all or part of their funds from the Title XX agency and part from contributions.

Public Day Care Facility

A day care facility that is administered and operated by a public agency and paid for with public tax dollars.

Staff - full-time

Individuals employed by the day care facility and persons who volunteer their services for 40 or more hours per week.

2/ Ibid.

3/ Federal Interagency Day Care Requirements, page v. (U.S. Department of Health, Education, and Welfare, Office of Human Development, Children's Bureau, 1968.)

## DEFINITIONS OF TERMS AS USED IN THIS GUIDE

### Administering Agency

The agency which receives Federal funds under Titles XX, IV-A, IV-B, and IV-C for day care services and which has ultimate responsibility for the conduct of the day care services program. Such an agency may be the Title XX State agency or the Title IV-B (Child Welfare Services) agency if separate from the Title XX agency. In the Territories, such an agency may be the one that is responsible for the Titles IV-A and IV-B programs.

### Day Care full-time <sup>1/</sup>

Care provided for 32 hours or more per week in periods of less than 24 hours per day.

### Day Care part-time <sup>1/</sup>

Care provided for less than 32 hours per week in periods of less than 24 hours per day.

### Day Care Centers <sup>1/</sup>

A licensed facility in which care is provided part of the day for a group of 12 or more children.

### Day Care Providers

An individual, organization or a corporation which provides day care services for children and from whom such services are purchased or otherwise provided on behalf of the Title XX, IV-B, and/or WIN agencies.

### Family Day Care Home <sup>1/</sup>

A licensed or approved private family home in which children receive care, protection, and guidance during a part of the 24 hour day. A family day care home may serve no more than a total of six children, ages 3 through 14 years, including the family day care mother's own children under 14 years. When the age range is infancy through 6 years, no more than five in total may be served, including the family day care mother's own children under 14 years of age.

<sup>1/</sup> Social Services Reporting Requirements, page B-4. (U.S. Department of Health, Education, and Welfare, Social and Rehabilitation Service, 1975.)

## MONITORING OUT-OF-HOME CHILD DAY CARE SERVICES

### INTRODUCTION

As more and more mothers have become employed outside of the home, the demand for out-of-home child care has greatly increased. This demand has been accompanied by an increase in Federal and State expenditures for child care. Information gathered by the U.S. Department of Health, Education, and Welfare indicates that, in many instances, the quality of child care services has not kept pace with the increased expenditures and demands for these services.

In order to assure the consumers of child care services, the Congress, and Federal and State agencies that federally funded child care is meeting the standards set forth by the Federal and State Governments, there must be some means of testing State and local child care service delivery systems. Monitoring provides one means of testing these systems.

### PURPOSE OF THE MONITORING GUIDE

This guide has been developed as an aid for use by State agencies in monitoring their out-of-home child care facilities for the purpose of determining whether or not these facilities meet Federal and State standards. A second guide will be developed which may be used to monitor administering and operating agencies' child day care service program activities. Monitoring findings should provide Federal, State, and local administrators, as well as other appropriate staff, with information which can be of value in such decisionmaking areas as child care resource development, budgeting, staffing and staff training, legislative proposals, and other programmatic decisions relative to child care.

Use of the guide should provide a means of uniformly assessing the child care services delivery system within the State. The identification of the strengths and weaknesses within the system will provide a basis for planning toward improvement. The guide also provides information which may be useful to the State agency in establishing or strengthening its existing monitoring system. States may modify the process, including the interview guides, to accommodate or meet their particular needs.

## RELATIONSHIP OF FEDERAL STAFF TO STATE AGENCY MONITORING STAFF

Staff of the Public Services Administration will assist States in developing or strengthening their monitoring capabilities. This cooperative effort will enable both the States and Federal staff to determine the nature and extent of problems found, the type of problems, and the impact of these problems on the child care services program. The joint effort will also provide a basis for State and Federal planning around the improvement of the program. A uniform monitoring system in each State will produce comparable information from all States, and this information will provide a national picture of the child care delivery systems throughout the country.

### WHAT IS MONITORING?

That the words "monitoring" and "evaluation" are often used interchangeably is understandable, since data used to evaluate program effectiveness may be collected by means of a system designed to monitor program performance. Though some common data are used in both, the purposes of the two tasks are dissimilar.

Within the context of this guide, monitoring and evaluation are defined as follows:<sup>1/</sup>

Monitoring - The act of carrying out a structured approach of continuous or repetitive review of a program or any of its components for the purpose of determining operational performance. It is a process which establishes whether or not a program or any of its components is functioning in accordance with the laws, regulations, contracts, agreements, standards, management policies, and other requirements under which it operates. It is also a process which identifies areas where corrective action is needed.

Evaluation - The act of examining, analyzing, and appraising program objectives, operations, organization, resources, and resource allocations for the purpose of determining the effectiveness, efficiency, quality, and relevance of the program. It is a process which provides a measurement of the extent to which the defined objectives or the organizational purposes of the program are achieved.

<sup>1/</sup> Evaluating Social Services. Austin, Texas: Texas State Department of Public Welfare, 1971.

4. The center or the sponsor has published policies and procedures which govern the items specified in FIDCR VIII.A.5. (page 16).

#### Evidence of Compliance:

A review of the published policies shows that they include the items listed in FIDCR VIII.A.5.

5. Title VI of the Civil Rights Act

This item is applicable to all facilities, as well as to all administering and operating agencies.

#### Evidence of Compliance:

A review of the admission policies shows that they do not include statements or information which indicates the facility discriminates on the basis of race, color, or national origin.

#### Section IX. - Self-Evaluation - Applicable to All Types of Facilities

Local operators must evaluate their own program activities according to outlines, forms, etc., provided by the sponsoring or administering agency (Title XX, IV-B, or WIN).

Evidence of Compliance may be, but is not limited to, one of the following:

The provider has written evidence that he/she has conducted periodic self-evaluations.

or

The administering or operating agency has written evidence that the provider has conducted periodic self-evaluations.

2. The center's methods of recruitment and selection of personnel ensure that all interested persons who apply will be given equal opportunity and will have their applications considered within reasonable criteria.

Evidence of Compliance may be, but is not limited to, the following:

Evidence exists that the center has widely advertised position openings through the various public media, such as local newspapers.

or

There is evidence that the center has utilized the State employment office as a means of recruiting staff.

or

Specific steps were taken to ensure that bilingual/bicultural applicants have access to position openings, particularly when the center serves children from minority racial and ethnic groups.

3. If this facility is a day care center and also the operating agency, and if it provides to 40 or more children care that is under the auspices of the Title XX or IV-B program or if 25 percent of the children in care receive such care under Title XX or IV-B, or if 25 percent of the center's budget comes from Title XX or IV-B funds, then "the methods for recruitment and selection must provide for the effective use of nonprofessional positions and for priority in employment to welfare recipients and other low-income people filling those positions." (FIDCR, page 15).

Evidence of Compliance may be, but is not limited to the following:

The center has WIN, other welfare recipients, or low-income persons in training.

or

The center has hired WIN, other welfare recipients, or low-income persons.

or

The center has other mechanisms for assuring the effective use of such persons.

Essentially, monitoring provides information regarding the extent to which the program is meeting the established guidelines under which it must operate. Evaluation measures the impact or outcome of the program, or the effect of services, on the target population. Both activities are of equal importance in program administration and management.

#### SCOPE OF THE STATE MONITORING PROGRAM

The goal of the State monitoring program should be to monitor all child care facilities within the State for which public social services funds are expended. The magnitude of such a task necessitates careful planning, which includes allowing sufficient time in which to accomplish the monitoring goal. The frequency with which each facility is monitored is an important factor to be considered. Other areas include the number of facilities to be monitored within the State or county, the number of staff assigned the monitoring responsibility, and the role and responsibilities of the monitoring staff.

Where the monitoring staff are responsible for monitoring the total social services program, the frequency with which each facility is monitored may be quite different from the frequency with which facilities are monitored when the monitoring staff have special units specifically assigned to monitor child care only. A suggested frequency is a minimum of once a year for monitoring each facility.

#### ADMINISTRATION OF STATE AGENCY'S MONITORING SYSTEM

Sound administration of a monitoring system is essential. Initial implementation of such a system may require certain organizational restructuring if the system is to accomplish its purposes. For those States that already have staff charged with monitoring responsibilities, the monitoring of child care services is an ongoing part of their functions. States that do not have such staff will have to plan carefully regarding who will carry out this function. While staff responsible for monitoring may initially be concerned only with the monitoring of child care service, a long-range goal of the State agency may be to monitor all of the social services it provides.

The responsibility for developing and directing the monitoring program and for gathering and evaluating the data should rest with a designated staff person. This person should be at a level within the organizational structure to ensure that the

results of the monitoring activity can be made readily available to appropriate staff. The monitoring data can be used for such purposes as: determining the need for corrective action, policy development, program planning, staffing, staff training, budgeting, and resource development.

The monitoring function, which is supportive of other program operations, involves three broad processes:

1. The ongoing monitoring of the program or any of its components.
2. The compilation and analysis of the findings.
3. The submittal of a report to appropriate agency staff within the State agency for their use as may be indicated.

#### STAFF FOR MONITORING

Staff responsible for monitoring should be sufficient in number and capability so that they are able to work effectively within the time frame established by the agency. For example, the agency's plan may call for a specific number of facilities to be monitored each quarter, with reports of the results to be given to appropriate staff within the organization. Adherence to the time schedule is very important.

Quality work on the part of the monitoring staff is essential in order to assure valid findings. One qualification for staff who will carry out the site monitoring activities may be that each staff member have a minimum of 1 year's experience in the agency as a service or eligibility worker, or have the equivalence of this experience. The rationale for this suggested qualification is that a worker with this job experience would have knowledge of program, policy, and regulations and, therefore, would require less training, at least in the program area, than a worker without this background.

The assignment of the monitoring activity as an additional responsibility to staff whose primary functions or responsibilities are in another program area is discouraged. For example, the use of casework staff in the dual roles of monitoring and of providing social services is discouraged because dual responsibilities tend to diminish the workers' effectiveness in both areas of responsibility. For the same reason, the use of licensing staff in the monitoring role is also discouraged. The responsibilities assigned to the monitoring staff should include only those functions involved in carrying out the monitoring program.

or

The center has parent committees or less formal groups, or there are individual parents who, while not volunteers, engage in activities directed at enhancing the center's program.

or

The center has brochures or pamphlets that are issued to parents to encourage their involvement.

Parents are provided an opportunity to observe their children in the center.

Evidence of Compliance may be, but is not limited to, one of the following:

Parents receive form letters, brochures, or pamphlets that include information about the center and its program or they receive invitations to visit and observe the children.

or

Parents receive printed announcements of special activities to which they are invited.

or

Parents are given a copy of the admission policy statement which includes an invitation for them to observe their children in the facility.

#### Section VIII. - Administration

Items 1 through 4 below are requirements which the operating or administering agencies must meet. Therefore, these items are not applicable for family and group homes but are applicable for day care centers only if the day care center is also the operating agency.

1. The center maintains written personnel policies which include the items specified in FIDCR VIII. A.1 (page 15).

Evidence of Compliance:

A review of the policies shows that they contain the items specified in FIDCR VIII.A.1.

Section VII. - Parent Involvement

For Family and Group Homes

Family and group day care providers may be individual providers from whom the State agency purchases services directly, or they may be a part of a group of several facilities sponsored by a corporation, organization, or an individual who operates several such facilities and from whom the Title XX or IV-B agency purchases child day care services. In either case, parent involvement in the actual family or group home facility may be of a less formal nature than that expected at the administering or operating agency level and in day care centers.

Evidence of Compliance may be one of the following:

The family or group caretaker discusses with the parents on a continuing basis the children's adjustment while in care.

or

The family or group caretaker provides an opportunity for parents to offer suggestions or recommendations regarding the service provided.

or

The family or group caretaker provides an opportunity for parents to assist, voluntarily, in the care of the children in ways which are mutually agreed to be appropriate and indicated.

or

The family or group caretaker provides various opportunities for parents to feel welcome and a part of the care provided the child.

For Day Care Centers

Parents are given opportunities to work in the program at a time convenient for them.

Evidence of Compliance may be, but is not limited to, one of the following:

The center has parent volunteers on the staff.

Staff who actually monitor the program should have access to, or have assigned to them, statistical staff with knowledge and experience in such areas as sampling, data analysis, statistics, forms and tables design, etc. States that have automated systems may need access to the electronic data processing staff. Clerical staff who are sufficient in numbers and skills are essential in carrying out the monitoring activities.

THE MONITORING PROCESS

The monitoring process involves three specific activities:

1. Pre-site visit data collection, review, and planning

The purpose of this activity, which is carried out prior to the site visit, is:

- To collect, review, and become familiar with all information pertinent to the facility to be monitored, and
- To plan for the visit, based on the information reviewed.

Prior to the site visit, the monitor must become thoroughly knowledgeable about the State's standards, regulations, and policies for child care, as well as about any changes in the codes, standards, regulations, and policies which relate to the licensing of day care facilities. It is important that the monitoring staff work closely and cooperatively with the program staff. For example, the monitor may inform the caseworker or supervisor that a monitoring visit is planned to a facility. Cooperative efforts such as this should prevent feelings of competition between the two staffs, or the feeling that the monitoring staff are "checking on" program staff, or that there is an effort on the part of the monitoring staff to usurp the role or responsibilities of the casework staff.

Caseworkers should be made aware that the role of the monitoring staff is supportive of their responsibilities, and the findings from the monitoring activities should be provided to caseworkers or other appropriate staff for use in carrying out their responsibilities in the provision of quality child care.

## 2. Site visit

The second monitoring activity is to actually visit the site. An interview schedule has been developed as a guide for the monitor's use during the site visit. The purpose of the schedule is to assure coverage of all pertinent areas of concern. The schedule should also collect objective rather than subjective or judgmental information.

It must be recognized that the monitor may observe irregularities in a facility that may have a serious impact on the physical or emotional well-being of the children. In fact, the irregularities may be of so urgent a nature that immediate attention by the agency is needed. The State agency will need to develop a policy concerning how such situations are to be handled. Alternate policies might call for the monitor to immediately convey his/her concerns to the appropriate program person who has responsibility for handling such situations; or, if the monitor is expected to handle the situation the appropriate staff should be advised immediately of the action taken. A policy relating to such situations can be helpful in furthering coordination and cooperation between the monitoring and the program staffs.

## 3. Post-site visit reports

The last phase of the monitoring process is the summary report of the pre-site and site findings. This report is forwarded to the appropriate staff in the agency for follow-up relative to the corrective action needed as well as to other actions which may be indicated. In addition to the report on individual facilities monitored during a given period, an aggregate report on all of these facilities can be of value to the agency's administrative staff in that it provides an overall view of the status of the child care services within the State, county, or a given jurisdiction. Such a report may be issued monthly, quarterly, semiannually, or annually.

### SAMPLING GUIDELINES

Since the number of facilities in a State can be quite large, monitoring all of them may prove to be an enormous task. In light of this, States may wish to periodically review only a selected sample of facilities, thus enabling monitors to do a thorough job of monitoring each facility. The results of

## Health Evaluation for the Provider and Staff (if any)

### Evidence of Compliance:

A review of staff health records and the information recorded on Attachment C, Part II, show that the provider and staff (if any) received a health evaluation.

### Adequate and Nutritious Meals and Snacks Are Served in a Safe and Sanitary Manner

### Evidences of Compliance may be both of the following:

The facility and the staff who prepare the food possess and have available for review the appropriate certificates or licenses required by the State.

and

The facility utilizes the services of a nutritionist or other type of food service specialist to assure nutritious meals and snacks.

## Section VI. - Training of Staff

### Evidence of Compliance may be, but is not limited to, one of the following:

The provider and staff, if any, provide certificates or other similar documentation as evidence of training completed.

or

The Title XX, IV-B, or WIN agencies or the sponsoring agency provide a training plan or have documentation of training provided or arranged.

or

The Title XX, IV-B, or WIN agencies or the sponsoring agency have staff assigned the responsibility for training providers.

or

The purchase of service contract includes provisions for training the provider's staff who are directly involved in the provision of the day care service.

Availability of Emergency Medical Care or First Aid

Evidence of Compliance may be one of the following:

The facility has the written name, address, and telephone number of a physician who is used in case of an emergency.

or

The written name, address, and telephone number of a clinic, hospital, or similar health source that is used in case of an emergency.

or

The written name, address, and telephone number of a physician or health source specified by the parent(s) of each child.

or

There is a planned source of readily available emergency medical care such as a hospital emergency unit, clinic, or other appropriate facility.

Availability of Parents' Names, Addresses, and Telephone Numbers for Notification in an Emergency

Evidence of Compliance:

As a minimum, the records must contain the following information:

- . The child's full name, birth date, current address;
- . The name and address of the parent(s) or person(s) legally responsible for the child;
- . Telephone numbers or instructions as to how the parent(s) may be reached during the hours the child is in the day care facility;
- . Names, addresses, and telephone numbers of person(s) who can assume responsibility for the child if for some reason the parent(s) cannot be reached immediately in an emergency.

probability samples may be generalized to the entire population of facilities, since the problems that occur frequently in the sample probably occur throughout the population. Thus, specific program weaknesses and strengths could be identified.

The sample of facilities is to be selected randomly from a list of all day care facilities in the State used by the Title XX and/or Title IV-B and WIN agencies. In this way, the distribution of facility types in the sample will reflect approximately the distribution in the population.

The following suggested sample sizes, which are based on the number of day care facilities in a State, should reflect the size of the State monitoring staff. It is assumed that each site visit may average 4 to 6 hours for a day care center, and an average of 2 hours for a family or group day care home. Travel time to facilities may average 2 hours round trip. One monitor is expected to monitor 5 facilities 4 days a week; the fifth day is to be spent writing and analyzing results. Under these assumptions, each monitor, working 50 weeks a year, should handle 250 facilities.

Suggested Sample Sizes\*

<u>Number of Out-of-Home Day Care Facilities in State</u>	<u>Suggested Sample Size and Number of Monitors</u>
0-249	All facilities - 1 monitor
250-2,000	250 facilities - 1 monitor
2,000-10,000	500 facilities - 2 monitors
above 10,000	750 facilities - 3 monitors

States may increase their sample size above the suggested sample size level if desired.

\* The suggested method of sampling and the suggested sample sizes were developed by the National Center for Social Statistics, Statistical Methods Branch, Social and Rehabilitation Service, Department of Health, Education, and Welfare.

## USING THE INTERVIEW GUIDES

### INTRODUCTION

As a condition for the receipt of Federal money, each type of facility is expected to meet the requirements of the Federal Interagency Day Care Requirements, as amended by Title XX, 2/ and of Public Law 94-401 (the Social Security Act Amendments of 1976).

There are three types of out-of-home child care facilities: (1) family day care homes, (2) group day care homes, and (3) day care centers. This monitoring guide contains an interview guide for each type of facility. The definition of the type of facility for which the guide is to be used is on the first page of each guide.

The instructions that follow are applicable to all three interview guides. State agencies, however, are free to modify the guide in any way they desire in order that the guides meet their own particular needs, requirements, or interests -- so long as all of the Title XX requirements, which are contained in the guides, are monitored.

As noted earlier, it is extremely important that the monitor be thoroughly knowledgeable about his/her own State's child care standards and the requirements for each type of facility prior to visiting it. In addition, the monitor must be kept abreast of changes in State codes, standards, and Federal and State policies and regulations that relate to or impact on the licensing of the child day care facilities.

### CONTENT AND FORMAT OF INTERVIEW GUIDES

Each interview guide consists of (1) a section to gather information about the facility to be monitored prior to the site visit, (2) a section to be used as a guide during the site visit, and (3) attachments for recording specific information.

The purpose of the first section is to provide the monitor with pertinent information about the facility to be visited. This section collects identifying information such as the name, address, and telephone number of the facility and/or

2/ Federal Interagency Day Care Requirements (U.S. Department of Health, Education, and Welfare, Office of Human Development, Children's Bureau, 1968) and Title XX - 45 CFR 228.42.

### Section IV. - Social Services

#### Availability of Social Services

##### Evidence of Compliance:

The facility has staff who provide social services; such staff are under the supervision of a staff member trained or experienced in the field.

or

The sponsoring agency or organization has staff who provide social services; such staff are under the supervision of a staff person trained or experienced in the field.

or

The sponsoring agency has a procedure which assures that the children and their families have access to the range of available community social services.

or

The Title XX, Title IV-B, or the WIN agencies provide social services for the facility and the families served.

#### Counseling, Guidance, Referral, and Continuing Assessment Regarding Child's Adjustment Are Part of the Social Services Provided

##### Evidence of Compliance:

A review of the worker's case records, or discussion with the worker or with the social services supervisory staff show that these services are being provided.

### Section V. - Health and Nutrition Services

#### Health Evaluations for the Children

##### Evidence of Compliance:

That the children receive a health evaluation upon entering care and at appropriate subsequent intervals and that they receive all appropriate immunizations will be determined through review of a sample of the children's health records, the findings to be recorded on Attachment C, Part I.

The monitor will need to keep in mind that methods of keeping attendance records may vary from facility to facility. In addition, it must be remembered that some children are in a facility part time while others, particularly preschool age children, may be in care full time. The mathematical approaches used to compute staff/child ratios must take into account all of these variables.

Section I.C. - Licensing or Approval of Facilities as Meeting the Standards for Such Licensing

Evidence of Compliance:

The facility operator possesses a current license or certificate of approval from the appropriate State agency.

or

The State licensing law does not fully cover the licensing of this type of facility, but there is evidence that the State licensing authority or the State welfare department has developed acceptable standards, and this facility operator possesses a certificate of approval or similar documentation that this facility meets these standards.

Section II. - Environmental Standards, Safety, and Suitability of Facilities

Attachment A (Fire, Safety, and Sanitation Review Form) is completed for this section.

Evidence of Compliance:

The facility has current licenses or certificates which meet the State's code requirements. However, if, in the course of the site visit, the monitor observes violations of some code or hazardous circumstances, a statement about this should be included in the report. The appropriate agency representative should also be notified, even though the license or certificate relative to the situation may be current. For example, a facility may have a current license or certificate showing that the annual fire inspection has been carried out. However, if the monitor determines that there are obvious fire hazards, such as locked or blocked exits which impede ready exit, these should be noted on Attachment A, as well as reported to the appropriate agency staff person.

the provider; type of sponsorship, such as whether the facility is public, private (commercial), or private nonprofit; and whether the facility has been licensed or approved.

Also included in the pre-site visit data collection section are items designed to collect pertinent information from the contract which the agency has with the provider. Under Title XX, Federal funds for services purchased by the State agency are available only if the State agency has a written contract in accordance with the Title XX regulations. Under certain circumstances, Title XX provides an option for an unwritten contract for the purchase of services from individual providers. Insofar as out-of-home child day care is concerned, this option is only applicable to family day care providers under the following three conditions:

- The individual provider does not have a direct service employee or subcontractor. This means that the individual provider does not have an employee who, in the case of child care, is employed for the purpose of providing direct care to the children. For example, in a family day care home, one or more severely handicapped children may be receiving care, in which case it may be necessary for the family day caretaker to employ on a regular basis another caretaker to assist her in the care of the children. Under such circumstances, the unwritten contract provision is not applicable;
- The State's fraud statutes do not preclude the State agency from enforcing an unwritten contract with the provider;
- The State agency must maintain documentation of the terms of the unwritten contract, including all applicable items specified in the Title XX regulations for the written contracts. (45 CFR 228.70(d)(1)(2))

The site interview guide has been designed to assure that all pertinent requirements are discussed with the provider. Within this section are items that require a review of a sample of records and a review of the facility's licenses and/or certificates. Attachments have been provided for the recording of this information.

The items included in the interview guides are based on the requirements of Title XX and FIDCR, as amended by Title XX. Each guide contains nine lead items, or "sections," and the number of each lead item is the same as the chapter number in FIDCR that deals with that subject area.

Some items have follow-up questions designed to gather further information about the lead items. As a means of ready reference, all lead items include the Title XX and FIDCR citations.

#### EVIDENCES OF COMPLIANCE

To assist the monitor in determining whether or not a facility is meeting certain requirements, a listing of evidences of compliance follows. This listing should provide suggestions as to what the monitor should look for as evidence of compliance.

Each of the following evidences of compliance is identified by the section number as it appears in the interview guides:

#### Section A.3. - Contract Provisions

##### Evidence of Compliance:

A review of the written contract between the State agency and the provider shows that all appropriate areas have been covered in accordance with 45 CFR 228.70.

Where the State agency has an unwritten contract with a family day caretaker, the monitor must review the documentation of the terms of the unwritten contract and determine if all of the terms of the unwritten contract are included, as well as all of the applicable items in 45 CFR 228.70(a)(1) through (13). Such a determination is sufficient evidence of compliance.

#### Section I.B. - Grouping of Children and Staff/Child Ratios

##### Item I.B.1.

##### Evidence of Compliance:

Each facility's staff/child ratio is in accordance with the ratios listed below.

For Family Day Care Homes, the staff/child ratios are:

- "Infancy through 6 years. No more than two children under 2 and no more than five in total, including the family day care mother's own children under 14 years old."

- "Three through 14 years. No more than six children, including the family day care mother's children under 14 years old."<sup>3/</sup>

For Group Day Care Homes, the staff/child ratios are:

<u>Ages of Children</u>	<u>Number of Staff</u>	<u>Number of Children</u>
Under 6 weeks	1 <sup>4/</sup>	1 <sup>4/</sup>
6 weeks through 36 months	1 <sup>4/</sup>	4 <sup>4/</sup>
36 months through 5 years	1	5
6 years through 14 years	1	6

For Day Care Centers, the staff/child ratios are:

Under 6 weeks	1 <sup>4/</sup>	1 <sup>4/</sup>
6 weeks through 36 months	1 <sup>4/</sup>	4 <sup>4/</sup>
36 months	1	5
4 years to 6 years	1	7
6 years to 10 years	1	15 <sup>4/</sup>
10 years to 14 years	1	20 <sup>4/</sup>

P.L. 94-401 enacted September 7, 1976, reinstates the moratorium on staff/child ratios for children ages 6 weeks through 6 years until October 1, 1977.

#### Computing Staff/Child Ratios

The number of staff and children seen at the time of the site visit is not a valid determination of compliance of the staff/child ratio. Evidence of compliance must be based on a computation of the actual ratio for a specified period of time.

It is suggested that the time period not be less than 1 month. In computing staff time, only compute that time during which the staff directly provided care to the children. The time that staff spent in activities which are not in the direct provision of child care should not be included. Absences on the part of staff and children, due to sickness, vacation, holidays, and emergencies, must be taken into account in computing the staff/child ratios.

Mathematical approaches for computing staff/child ratios may vary. Whatever method is used, it should accurately reflect the actual staff/child ratio for a given time period.

<sup>3/</sup> FIDCR, Section B, pages 5 and 6.

<sup>4/</sup> Title XX Regulations 45 CFR 228.42(a)(2)(ii)(B) and (C).

GUIDE FOR MONITORING DAY CARE CENTERS

Definition: Day Care Center - A licensed or approved facility in which care is provided part of the day for a group of 12 or more children.

Name of State: \_\_\_\_\_

Date of Review: \_\_\_\_\_

1. Reviewer's Name: \_\_\_\_\_

2. Reviewer's Telephone Number: \_\_\_\_\_  
(Include Area Code)

3. Official Name of Day Care Center: \_\_\_\_\_

Address of Day Care Center: \_\_\_\_\_  
(Street Number)

\_\_\_\_\_  
(City or Town) (County) (State)

Telephone Number of Day Care Center: \_\_\_\_\_  
(Include Area Code)

4. Name of Operator of Day Care Center: \_\_\_\_\_

5. Name of Owner(s) or Administering Agency (if other than Director of Operator): \_\_\_\_\_

6. Telephone Number of Owner(s): \_\_\_\_\_  
(Include Area Code)

ATTACHMENT C, PART II

WORKSHEET FOR REVIEW OF HEALTH RECORDS

Name of facility: \_\_\_\_\_

Federal requirement: FIDCR V.10.

Part II - HEALTH RECORDS FOR FACILITY STAFF

This form is to be completed for item V.B.3. in the interview guide. FIDCR (Section V.10) requires that adequate health records be maintained on each child and on each staff person who has contact with the children. A sample of the health records for the children and the staff must be reviewed. In order to verify the sample, list the records reviewed by name or by case number on the reverse side of this form. Check below to indicate whether or not each record reviewed contains the following information.

Health records contain:	Record #1			Record #2			Record #3			Record #4			Record #5			Comments (if any)
	Yes	No	NR*	Yes	No	NR*	Yes	No	NR*	Yes	No	NR*	Yes	No	NR*	
1. Name of staff person.																
2. Statement signed and dated by physician or other health source showing that health evaluation was done and meets State's requirements for persons caring for children.																
3. Evidence that person had health evaluation within required time period.																
4. Evidence that person had chest X-ray or negative tuberculin test within last 12 months.																
5. Other pertinent health information, if indicated or required by State.																

\* Not required by State.

SECTION A - PRE-SITE VISIT DATA COLLECTION	
<p>A.1. Who sponsors this facility?</p> <p><input type="checkbox"/> Agency purchases child day care services directly from center.</p> <p><input type="checkbox"/> Center is under sponsorship of organization, corporation or individual who operates several facilities.</p> <p><input type="checkbox"/> Center is under sponsorship of Title XX or IV-B agency.</p>	<p>A.3. <u>Contract Provisions:</u></p> <p>A.3.1. Does Title XX (or IV-A or IV-B) agency have written contract with provider?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>A.3.1.(a) If answer is "No," go to A.4.1. and A.4.2.</p>
<p>A.1.1. If center is under sponsorship of organization, corporation, or individual, enter:</p> <p>Name: _____</p> <p>_____</p> <p>Address: _____</p> <p>_____</p> <p>Telephone: _____</p> <p>_____</p> <p>Name of contact person: _____</p> <p>_____</p>	<p>A.3.2. If answer is "Yes," enter effective date of contract:</p> <p>_____</p> <p>Termination date:</p> <p>_____</p>
<p>A.2. Has center been:</p> <p><input type="checkbox"/> Licensed?</p> <p><input type="checkbox"/> Approved?</p> <p><input type="checkbox"/> Other (Specify).</p> <p>_____</p> <p>_____</p>	<p>A.3.3. Was contract dated and signed by all authorized representatives of all parties to this contract prior to date of implementation of contract?</p> <p>A.3.4. Enter number of child care slots agency is purchasing:</p> <p>_____</p> <p>A.3.5. Does contract include age range of children to be cared for?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>If "Yes," what is age range?</p> <p>From ____ to ____ years of age.</p> <p>A.3.6. Does contract contain a detailed description of child care service to be provided by this provider?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>

WORKSHEET FOR REVIEW OF HEALTH RECORDS

Name of facility: \_\_\_\_\_

Federal requirement: FIDCR V. 10.

Part I - HEALTH RECORDS FOR THE CHILDREN

This form is to be completed for item V.A.12. in the interview guide. FIDCR (Section V.10) requires that adequate health records be maintained on each child and on each staff person who has contact with the children. A sample of the health records for the children and the staff must be reviewed. In order to verify the sample, list the records reviewed by name or by case number on the reverse side of this form. Check below to indicate whether or not each record reviewed contains the following information.

Health records contain:	Record #1			Record #2			Record #3			Record #4			Record #5			Comments (if any)
	Yes	No	NR*	Yes	No	NR*	Yes	No	NR*	Yes	No	NR*	Yes	No	NR*	
1. Child's name.																
2. Child's birthdate.																
3. Statement signed and dated by physician or other health source showing that child received health evaluation upon entering care.																
4. Statement showing child received a dental evaluation.																
5. Verification that child has received all immunizations required by State for enrollment in care.																
6. Other pertinent health information if indicated or required by State.																

\* Not required by State.

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<p>A.3.7. Does contract indicate that, as part of care, there are services to be provided by persons other than provider?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>	<p>8. _____</p> <p>9. _____</p> <p>10. _____</p>
<p>A.3.8. List services to be provided by persons other than provider. Specify "Direct" or "Subcontract" to show how these services will be provided. (Use additional paper if needed.)</p> <p style="text-align: center;"><u>Services Provided</u></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> <p>5. _____</p> <p>6. _____</p> <p>7. _____</p> <p>8. _____</p> <p>9. _____</p> <p>10. _____</p>	<p>A.3.9. Will provider determine eligibility for services to be provided?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>
<p style="text-align: center;"><u>Method of Provision</u> (Direct or Subcontract)</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p>	<p>A.3.10. If "Yes," does contract indicate that criteria to be used are in accordance with Title XX regulations?</p>
<p>4. _____</p> <p>5. _____</p> <p>6. _____</p> <p>7. _____</p>	<p>A.3.11. If provider is to determine eligibility, does contract indicate that provider will inform individuals of their right to a fair hearing?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>
	<p>A.3.12. Method used by agency (as stated in contract) for determining payment to provider is based on:</p> <p><input type="checkbox"/> Stated number of service units at specific dollar rate.</p> <p><input type="checkbox"/> Specific dollar amount.</p> <p><input type="checkbox"/> Payment is at cost.</p> <p><input type="checkbox"/> Other (Specify).</p> <p>_____</p> <p>_____</p>
	<p>A.3.13. Does contract include method and source of payment to provider?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>

ATTACHMENT B (cont.)

WORKSHEET FOR REVIEW OF GENERAL RECORDS

General records reviewed contain:	Record #1		Record #2		Record #3		Record #4		Record #5		Comments (if any)
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	
9. Current name, address, and telephone number of persons to be contacted in emergency if unable to reach parents.											
10. Plan for health care in case of emergency.											
11. Date enrolled in care.											
12. Date care was terminated.											

<p>A.3.14. Does provider collect fees for services to be provided?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>	<p>A.3.21. Does contract show that provider agrees to safeguard information concerning persons served?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>
<p>A.3.15. If provider collects fees, does contract include statement as to disposition of fees?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>	<p>A.3.22. Does provider subcontract for any services to be provided?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>
<p>A.3.16. Does contract specify that provider may not impose fees other than those established by Title XX agency?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>	<p>A.3.23. If "Yes," does contract show that:</p> <p>Subcontractor is subject to same requirements as provider?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>Provider is responsible for performance of subcontractor?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>
<p>A.3.17. Does contract include statement showing that provider meets State and Federal child day care standards?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>	<p>A.3.24. Contract includes following fiscal and program responsibilities:</p> <p><input type="checkbox"/> Billing.</p> <p><input type="checkbox"/> Recordkeeping.</p> <p><input type="checkbox"/> Controls.</p> <p><input type="checkbox"/> Reports.</p> <p><input type="checkbox"/> Monitoring procedures.</p>
<p>A.3.18. If provider plans to provide services in more than one facility, does contract specify the locations of facilities?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>	<p>A.4. <u>Attendance Reporting:</u></p> <p>A.4.1. Provider reports attendance to State (or county) agency:</p> <p><input type="checkbox"/> Weekly.</p> <p><input type="checkbox"/> Biweekly.</p> <p><input type="checkbox"/> Monthly.</p> <p><input type="checkbox"/> Bimonthly.</p>
<p>A.3.19. If provider is to determine eligibility, does contract indicate that provider will inform individuals of their right to a fair hearing?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>	
<p>A.3.20. Does contract indicate that provider agrees to comply with Civil Rights Act of 1964 (nondiscrimination in provision of service)?</p> <p><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>	

(Cont.)

ATTACHMENT B

WORKSHEET FOR REVIEW OF GENERAL RECORDS

Name of facility: \_\_\_\_\_

Federal requirement: FIDCR V.6.

This form must be completed for items V.A.6., V.A.7., and V.A.8. in the interview guide. FIDCR (Section V.6) requires that advance arrangements be made for the care of a child, including notification of the parents, and that provisions be made for emergency medical care or first aid. A sample number of records should be reviewed. In order to verify the sample, list the records reviewed by name or by case number on the reverse side of this form. Check below to indicate whether or not each record reviewed contains the following information.

General records reviewed contain:	Record #1		Record #2		Record #3		Record #4		Record #5		Comments (if any)
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	
1. Child's name.											
2. Child's birthdate.											
3. Child's current address.											
4. Name of parent(s) or guardian.											
5. Current home address of parents (if different from child's).											
6. Current home telephone.											
7. At least one parent's current work address.											
8. At least one parent's current work telephone number.											

ATTACHMENT B

WORKSHEET FOR REVIEW OF GENERAL RECORDS

Name of facility: \_\_\_\_\_

Federal requirement: FIDCR V.6.

This form must be completed for items V.A.6., V.A.7., and V.A.8. in the interview guide. FIDCR (Section V.6) requires that advance arrangements be made for the care of a child, including notification of the parents, and that provisions be made for emergency medical care or first aid. A sample number of records should be reviewed. In order to verify the sample, list the records reviewed by name or by case number on the reverse side of this form. Check below to indicate whether or not each record reviewed contains the following information.

General records reviewed contain:	Record #1		Record #2		Record #3		Record #4		Record #5		Comments (if any)
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	
1. Child's name.											
2. Child's birthdate.											
3. Child's current address.											
4. Name of parent(s) or guardian.											
5. Current home address of parents (if different from child's).											
6. Current home telephone.											
7. At least one parent's current work address.											
8. At least one parent's current work telephone number.											

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GENERAL EVALUATION

List the deficiencies observed, including any which may not be listed in the previous items.