



## DEPARTMENT OF HEALTH & HUMAN SERVICES

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**ADMINISTRATION FOR CHILDREN AND FAMILIES**  
**Administration on Children, Youth and Families**  
330 C Street, S.W.  
Washington, D.C. 20201

June 23, 2020

Dear State and Tribal Child Welfare Leaders:

The Children's Bureau recognizes the significant stress that the COVID-19 pandemic and resulting national public health emergency (the pandemic) has placed on the child welfare system. We applaud how you have adjusted your practice to serve families and children effectively under such unprecedented and challenging conditions. We also recognize that you are doing so during a time of uncertainty amidst budget and workforce challenges.

I am writing today for three reasons: (1) to address concerns related to filing petitions to terminate a parent's rights (TPR) when services have not been available; (2) to highlight some service delivery strategies; and (3) to highlight challenges that adoptive families may face during the pandemic.

### Filing a Petition to Terminate Parental Rights During the Pandemic

As you know, the Social Security Act requires title IV-E agencies to initiate a petition to terminate a parent's rights if the child has been in foster care for 15 out of the most recent 22 months (the 15/22 requirement). See the Social Security Act at §475(5)(E). The Social Security Act provides statutory exceptions to the 15/22 requirement, of which two are particularly relevant to circumstances when service delivery has been impeded as a result of the COVID-19 pandemic. These statutory exceptions exist to ensure that an agency only files a petition to terminate parental rights when a parent has had access to the necessary services that can lead to a meaningful opportunity to reunify with his or her children. The exceptions also allow the agency the flexibility to make life-changing TPR decisions on a case by case basis that consider the totality of circumstances for each family, including whether the parent has not been able to access services as a result of the pandemic. An agency is not required to file a 15/22 petition if:

- the agency is required to make reasonable efforts to reunify the family, but has not provided the family the services necessary for the safe return of the child; or
- the agency has documented a compelling reason that filing a TPR petition is not in the child's best interests.

*See* Social Security Act at §475(5)(E)(ii) and (iii).

We understand that some title IV-E agencies continue to file TPR petitions during the pandemic because a child has been in foster care for 15 of the most recent 22 months. In light of the devastating impact that the COVID-19 pandemic has had on child welfare systems and applicable exceptions to the 15/22 requirement, I cannot emphasize how strongly I urge agencies to carefully consider whether it is appropriate to terminate a parent's rights pursuant to the 15/22

requirement. Additional consideration is particularly important when a parent's access to services that are necessary to work toward reunification (such as drug rehabilitation or ability to have parent-child family time) have been compromised as a result of the pandemic. Other challenges (such as illness, shelter in place requirements, lack of transportation, lack of suitable locations for family time, etc.) might further impede a parent's ability to progress, rendering it virtually impossible for a parent to have an opportunity to achieve goals related to reunification requirements. It similarly becomes far more challenging for an agency to assess accurately whether a parent continues to make appropriate progress toward reunification. A decision to file a TPR petition should be made in light of the impediments that a parent might face as a result of the pandemic. An agency should evaluate carefully whether parents have had a meaningful opportunity to demonstrate that they have made the necessary efforts to reunify with their children before taking that step.

As such, I urge agencies to continue to consider the totality of each family's circumstances prior to filing a TPR petition. During the pandemic and its aftermath, agencies also may want to consider instituting protocols that provide an extra layer of review prior to filing a TPR petition.

#### Service Delivery amid Interruptions

As noted, efficient and effective service delivery can have a critical impact on whether a child is removed from home or whether a family is reunified. Child welfare systems and service providers face significant challenges as they work to serve children and families under the strained, unpredictable conditions that the COVID-19 pandemic has imposed. Many services, including family visiting time and rehabilitation services, have been interrupted or disrupted as a result of the pandemic. As such, we strongly encourage title IV-E agencies to seek alternate service delivery modalities, including non-traditional electronic methods, when in-person service delivery is not possible as a result of the pandemic. To that end, the Children's Bureau has issued guidance that highlights available resources as well as available statutory flexibilities when meeting such requirements is not possible during the pandemic. This guidance is available on the Children's Bureau website at: <https://www.acf.hhs.gov/cb/resource/covid-19-resources>.

#### Offering Support to Adoptive Families

We encourage agencies to consider offering support to your adoptive families, some of whom may be newly facing stressors that include managing online/at home schooling, employment changes, illness, or financial challenges. Such an offer might be helpful, particularly to those adoptive families whose change in circumstance might require additional financial support or intervention from the child welfare agency if the family's stressors now render them at risk of their child re-entering foster care. As you know, such an offer of support could make a considerable difference to an adoptive family that is struggling, but is uncertain from whom support might be available.

Of course, we caution that an agency may offer support as described above to adoptive families however, the agency must avoid requiring families to respond to such a communication, or consequently reducing, suspending, or terminating a family's adoption assistance payment. For more guidance on this issue, see the Child Welfare Policy Manual (CWPM), §8.2, QA#1 at: [https://www.acf.hhs.gov/cwpm/public\\_html/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=63](https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=63).

Also see the CWPM, §8.2D, QA#3 at

[https://www.acf.hhs.gov/cwpm/public\\_html/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=43](https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=43).

Again, thank you for all of the critically important work that you do on behalf of the children and families in your state or in your tribe during such unpredictable times. Should you have any questions, please direct them to your Children's Bureau Regional Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Milner". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jerry Milner  
Associate Commissioner  
Children's Bureau