

**PROPOSED REGULATION OF THE DIVISION OF CHILD AND
FAMILY SERVICES OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES**

**DRAFT REGULATIONS AB 263, Subsection 8
Revisions to NAC 432B.030 Evaluation of Child Welfare
New Sections (NRS 432B.180)**

Color Code:

New language in blue font

~~Deleted language in strikethrough red.~~

NEW DEFINITIONS

ADMINISTRATIVE AUDIT defined: Refers to a Targeted Review Process or Case Review Process that is conducted by the Division which may be announced or unannounced, to determine the performance of a child welfare agency's compliance with chapter 432B of NRS and NAC, and any other applicable state and federal law and regulation, state or federal child welfare policies, and any written agreements entered into with the Division or the Department of Health and Human Services.

NON-COMPLIANCE defined: Refers to a child welfare agency's failure to: 1) adhere to the terms of a legally binding contract or any memoranda of understanding with the Division; or 2) abide by applicable state or federal law or regulation, state or federal child welfare policies; or 3) achieve an acceptable level of performance on an audit established by and including, but not limited to, federal priority performance indicators and outcomes or other negotiated priority performance goals and outcomes between the Division and the child welfare agency.

FEDERAL PRIORITY PERFORMANCE GOALS OR OTHER NEGOTIATED PRIORITY PERFORMANCE GOALS defined: Performance indicators designated by the Division that have negotiated levels of compliance that must be met in order to avoid fines or other sanctions or penalties.

CASE SAMPLE defined: A random sampling of an identified number of cases, based on the methodology used in federal child welfare reviews, which are included in the sample due to meeting specific characteristics of the population from which they are drawn.

CASE REVIEW PROCESS defined: A formal review of individual case files conducted by the Division, utilizing a standardized review tool approved by the Division, including electronic and hard copy documents selected from a case sample that yields evaluative performance and compliance information that can be expanded and continual, not to exceed a total of 150 individual case files to make definitive conclusions regarding compliance and performance.

SIGNIFICANT PROGRESS defined: Implementation of action steps and benchmarks by an agency which provides child welfare services towards the completion of the corrective action plan, that is determined significant by the Division.

TARGETED REVIEW PROCESS defined: A formal, concentrated review of a specific programmatic area or component, of electronic and hard copy documents and individual case files conducted by the Division, utilizing a standardized review tool approved by the Division, selected from a case sample that yields evaluative performance and compliance information that can be expanded and continual, not to exceed a total of 150 individual case files to make definitive conclusions regarding compliance and performance.

WAIVER OF FINES defined: A process, upon written request to the Administrator of the Division, to allow the Division to waive fines imposed on the agency which provides child welfare services, if it is determined by the Division, that the reason for non-compliance is wholly attributable to NRS 423B.180 (8), which requires the Division, in consultation with each agency which provides child welfare services, to request sufficient money for the provision of child welfare services throughout this state; or non-compliance occurs in areas not indicated as federal priority performance indicators or other negotiated priority performance goals; or the child welfare agency which provides child welfare services is making significant progress and the Division will not incur fines, penalties or sanctions .

PASS THROUGH OF FEDERAL FINES defined: Fines imposed on the state by the federal government for non-compliance with federal law, policy or performance indicators that shall be imposed on the child welfare agency which provides child welfare services if the Division determines that non-compliance on the part of the child welfare agency which provides child welfare services resulted in the fine to the state.

NAC 432B.030 Evaluation of child welfare services in state; actions upon determination of non-compliance with certain provisions. (NRS 432B.180, 432B.190)

1. The evaluation required by subsection 6 of NRS 432B.180 must:

(a) Include:

(1) Audits of each agency which provides child welfare services **including Targeted Review Process or Case Review Process evaluations.**

(2) An assurance that each agency which provides child welfare services is complying with chapters 432B of NRS and NAC, any other applicable state and federal law **and regulations, state or federal child welfare policies,** and any written agreements entered into with the Division or the Department **of Health and Human Services. [Resources]**

(b) Be conducted by audit teams **as determined appropriate by the type of audit to be conducted, and may be comprised [composed]** of:

(1) Representatives from the Division;

(2) Representatives of the agency being reviewed; and

(3) Representatives from a related discipline, including, without limitation, law enforcement, mental health, a medical program or a school district.

(c) Use procedures, methods and standards of auditing established by the Division.

(1) A comprehensive review of the performance of an agency which provides child welfare services includes, but may not be limited to:

(i) *A case sample which identifies a specific number of cases relevant to the performance measures under review, and*

(ii) *Performance measures across program areas related to safety, permanency, and well being.*

(2) If a Targeted Review Process or Case Review Process evaluation is conducted and non-compliance is found, the Division shall conduct additional Targeted Review Process or Case Review Process evaluations as determined necessary by the Division to adequately assess the extent of the non-compliance before taking further action.

2. If non-compliance is determined, the Division shall, within 30 days after the completion of the evaluation performed pursuant to subsection 1, provide to the agency which provides child welfare services, written notice in the form of a comprehensive report outlining the areas of non-compliance within the provisions in this chapter. The notice must set forth the nature of the non-compliance, the specific instances of non-compliance and identify program areas that may benefit from the provision of technical assistance or training.

3. If the agency which provides child welfare services disagrees with the written notice, a negotiation process shall be initiated, not to exceed 15 days. During the negotiation process the agency which provides child welfare services may submit to the Division, additional written information to support its position. Within 15 days of receipt, the Division will review the additional information submitted and make a determination regarding the need for corrective action. The Division will issue a written notice of agreement, resulting in no need for corrective action or issue a written notice of disagreement reasserting the need for corrective action. The Division and the agency which provides child welfare services then have an additional 15 days to develop a mutually agreeable corrective action plan. If the Division and agency which provides child welfare services are unable to develop a mutually agreeable corrective action plan, the Division may impose a non-negotiable corrective action plan on the agency which provides child welfare services. Corrective action plans must outline action steps, benchmarks, methods of measurement and include projected timelines for completion to achieve identified outcomes, and will not exceed 12 months unless otherwise extended by the Division. During this period, the Division may conduct, as determined necessary, ongoing oversight monitoring of the corrective action plan by utilizing data reports, or other sources of information, as appropriate.

4. The Division will evaluate compliance with the corrective action plan 12 months from the date of initiation of the negotiated or non-negotiated corrective action plan. This evaluation may consist of, but is not to, analysis of the completion of action steps, benchmarks, documents providing verification of completion, methods of measurement, data, and other materials as determined necessary by the Division to assess progress towards corrective action plan compliance.

5. The Division may extend a corrective action plan for an additional 12 months; however the maximum duration of the corrective action plan including extensions cannot exceed 24 months. Extensions of the corrective action plan will be considered at 3 month intervals, and be based upon evaluation of the achievement of significant progress. If an extension is warranted, the Division will make the determination to:

a) Continue oversight monitoring; or

b) Initiate on-site monitoring if the agency which provides child welfare services has not achieved significant progress. On-site monitoring may include the establishment of an on-site review team for the purposes of:

(1) Providing on-site monitoring and consultation to assess and collaboratively develop a plan of action to assist the agency in achieving compliance with the corrective action plan;

(2) Establishing communication guidelines for monthly meetings regarding the progress of the corrective action plan and specific areas of non-compliance;

(3) Evaluating the progress of the corrective action plan and supervision activities necessary to achieve compliance; and

(4) Monitoring program activities that include, if necessary, random case reviews, unannounced program reviews, program planning, data and progress reports, identifying technical assistance and training needs; or

(c) Initiate direct intervention if the agency which provides child welfare services has not achieved significant progress. Direct Intervention may consist of worksite involvement and direct management and supervisory decisions when there are unresolved, ongoing circumstances of non-compliance. Before implementing direct intervention to the agency which provides child welfare services, the Division shall submit notice to the Board of County Commissioners or other governing body that includes the basis for the decision to implement direct intervention and the corrective actions and fines that will be imposed; or

(d) If at any time during an Administrative Audit, the results indicate an immediate response by the Division is necessary for child safety, the determination to initiate emergency on-site management may be made. Emergency on-site management may consist of immediate intervention and direct management and supervisory decisions when there are urgent or exigent circumstances that may endanger children until compliance is achieved. The director of the agency which provides child welfare services and county management will be immediately notified of the intent to initiate emergency on-site management and be apprised of the findings. Within 15 days, after initiation of emergency on-site management, a written notice outlining the areas of non-compliance within the provision in this chapter will be provided.

6. Upon evaluation, the Division may end monitoring of the corrective action plan if significant progress has been made by the agency which provides child welfare services, in the implementation of action steps and benchmarks. However, the agency which provides child welfare services must continue the corrective action plan until all agreed upon action steps and benchmarks have been achieved.

7. The Division may withhold up to an amount equivalent to 5% of the child welfare integration monthly administrative operating budget on a monthly basis during the on-site monitoring period. The administrative operating budget includes, but is not limited to: travel, auto expenses, vehicles, operating expense, rental, property liability, equipment repair and maintenance, background investigations, information systems, and legal counsel. These funds shall be used to cover all of the Divisions costs for the provision of on-site monitoring, technical assistance and training.

(a) Fines will not be imposed by the Division on an agency which provides child welfare services in a county whose population is less than 100,000, where audit findings indicate non-compliance. Personnel action, as noted in Section 8, will be pursued.

(b) If the Division responds to evaluation results by initiating direct intervention or emergency on-site management, the Division may impose an administrative fine on the agency which provides child welfare services to cover the cost of the direct intervention or emergency on-site management in an amount not to exceed \$250,000 per year while direct intervention or emergency on-site management is in place. The Division must operate within the agency budgets as approved by the Board of County Commissioners and the State Legislature.

(c) The Division shall not take any action against an agency which provides child welfare services if such action would impede the provision of child welfare services.

(d) Corrective action plans will be developed based upon the period under review and cannot be amended. Fines, if assessed, are based on the requirements of each plan. Any new finding will result in the establishment of a new and separate corrective action plan.

8. If the findings of any administrative audit indicates that personnel actions substantially contributed to the areas of non-compliance, the personnel director for the agency which provides child welfare services and the director of the agency which provides child welfare services must be notified in writing by the Division within 15 days of the determination. The agency which provides child welfare services must determine whether it is necessary to impose disciplinary action against the employee under these circumstances within 90 days of the date of notification from the Division, and provide an annual, non-identifying written report to the Division regarding its personnel decisions pursuant to this section.

9. The Division will provide written notification to an agency which provides child welfare services of the intent to impose or implement the following actions:

- a) a non-negotiated corrective action plan;*
- b) oversight monitoring;*
- c) on-site monitoring;*
- d) direct intervention; or*
- e) emergency on-site management*

An agency which provides child welfare services may appeal these actions by submitting a written request for an administrative hearing, to the Administrator of the Division of via certified mail, return receipt requested. The written request must be mailed to the Administrator within 15 days of the date of the notification. The administrative hearing that is held pursuant to this section must be conducted in accordance with Chapter 233B of NRS.