

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

LCB File No. R094-08

November 11, 2008

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1, 13, 14 and 16, NRS 432B.190; §§2-12 and 15, NRS 432B.180 and 432B.190.

A REGULATION relating to children; prescribing the requirements for an administrative audit conducted by the Division of Child and Family Services of the Department of Health and Human Services; establishing the requirements for a plan of corrective action; prescribing circumstances under which action must be taken against an agency which provides child welfare services for failure to take certain corrective action; establishing the right of an agency to appeal certain decisions of the Division; revising provisions relating to an evaluation of an agency which provides child welfare services; and providing other matters properly relating thereto.

Section 1. Chapter 432B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *“Department” means the Department of Health and Human Services.*

Sec. 3. *“Plan of corrective action” means a plan established by the Division pursuant to NAC 432B.030 and section 7 of this regulation.*

Sec. 4. *For the purposes of NAC 432B.030 and sections 4 to 12, inclusive, of this regulation, an agency which provides child welfare services is making significant progress toward compliance with a plan of corrective action if the agency is:*

1. Taking the action steps and achieving the benchmarks prescribed in the plan of corrective action;

2. *Reaching a level of improvement that has been negotiated with the Division;*
3. *On target to meet the goals prescribed in the plan of corrective action; and*
4. *Meeting other goals relating to quality established by the Federal Government or the Division, as determined necessary by the Division.*

Sec. 5. *For the purposes of NAC 432B.030 and sections 4 to 12, inclusive, of this regulation, an agency which provides child welfare services is not in compliance with the provisions of this chapter, chapter 432B of NRS or any applicable state or federal law, or any regulations adopted pursuant thereto, any statewide plans or policies relating to the provision of child welfare services, or any written agreements entered into with the Division or the Department if the agency fails to:*

1. *Adhere to the terms of a legally binding contract or memorandum of understanding entered into with the Division;*
2. *Abide by applicable state or federal law, regulations adopted pursuant thereto or statewide plans or policies relating to the provision of child welfare services; or*
3. *Achieve an acceptable level of performance on an administrative audit, including, without limitation, failing to meet priority performance indicators and outcomes identified by the Federal Government or other priority performance goals negotiated by the Federal Government, the Department or the agency.*

Sec. 6. *1. An administrative audit of an agency which provides child welfare services conducted by the Division pursuant to NAC 432B.030 must consist of a:*

- (a) *Case review which must include, without limitation, a formal review of individual case files. When conducting a case review, the Division will:*

(1) Use electronic and hard copies of documents selected at random from a sample of cases that yields information which may be used to evaluate the performance and compliance of the agency;

(2) Select a standardized tool to use when conducting the review; and

(3) Review not more than 150 case files.

(b) Targeted review which must include, without limitation, a formal review that concentrates on a specific area or component of a program of the agency which provides child welfare services. When conducting a targeted review, the Division will review electronic and hard copies of documents from not more than 150 case files selected at random to yield information which may be used to evaluate the performance and compliance of the agency.

2. Each administrative audit must be conducted by an audit team established by the Division, which may be composed of:

(a) Representatives from the Division;

(b) A representative of the agency which provides child welfare services that is being reviewed;

(c) A representative from a related discipline, including, without limitation, law enforcement, mental health, medicine or education; or

(d) Any combination thereof.

3. If the Division determines that the agency which provides child welfare services is not in compliance with the provisions of this chapter, chapter 432B of NRS or any applicable state or federal law, or any regulations adopted pursuant thereto, any statewide plans or policies relating to the provision of child welfare services, or any written agreements entered into with the Division or the Department, the Division will conduct an additional case review or targeted

review, as applicable, to adequately assess the extent of the noncompliance. Except as otherwise provided in section 9 of this regulation, the Division will not take further action against the agency until the additional case review or targeted review, as applicable, is completed pursuant to this subsection.

4. An administrative audit may be conducted without prior notice to the agency which provides child welfare services that is being audited.

Sec. 7. 1. A plan of corrective action must include, without limitation:

(a) An outline of actions and steps that the agency which provides child welfare services must take to become compliant with the provisions of this chapter, chapter 432B of NRS or any applicable state or federal law, or any regulations adopted pursuant thereto, any statewide plans or policies relating to the provision of child welfare services, or any written agreements entered into with the Division or the Department;

(b) Benchmarks and methods for measuring whether an agency has achieved those benchmarks, including, without limitation, projected timelines for the completion of identified outcomes;

(c) The effective date of the plan of corrective action; and

(d) The projected date by which the plan of corrective action will be completely carried out, which must not be more than 12 months after the effective date.

2. A plan of corrective action may require, without limitation:

(a) On-site monitoring and consultation by the Division to assess the needs of the agency which provides child welfare services and to provide assistance to the agency to achieve compliance with the plan of corrective action.

(b) Oversight monitoring of the agency which provides child welfare services or a specific program of the agency by the Division to provide guidance and direction to the agency.

(c) Direct intervention, including, without limitation, involvement by the Division at a work site, direct management by employees of the Division and the Division making supervisory decisions for the agency which provides child welfare services, to correct unresolved and ongoing noncompliance of the agency with the provisions of this chapter, chapter 432B of NRS or any applicable state or federal law, or any regulations adopted pursuant thereto, any statewide plans or policies relating to the provision of child welfare services, or any written agreements entered into with the Division or the Department.

(d) Emergency on-site management of the agency pursuant to section 9 of this regulation.

(e) The provision of technical assistance or training by the Division.

3. Before including an action set forth in subsection 2 in a plan of corrective action, the Division will submit to the agency which provides child welfare services notice of its intent to take such action, including, without limitation, the basis for the decision, the action that the Division intends to take and the amount of any fine that will be charged to the agency pursuant to section 10 of this regulation.

4. A plan of corrective action must be developed based upon the findings of the evaluation conducted pursuant to NRS 432B.180 and NAC 432B.030 and may not be revised. If an additional finding of noncompliance is made after a plan of corrective action has been established, a new plan of corrective action may be established which shall be deemed separate from the other plan of corrective action for purposes of compliance.

Sec. 8. 1. On the projected date for completion of a plan of corrective action, the Division will:

(a) Evaluate whether the agency which provides child welfare services has complied with the plan of corrective action; and

(b) Assess the progress of the agency which provides child welfare services in complying with the plan of corrective action, including, without limitation, an analysis of:

(1) Whether the agency completed the actions and steps outlined in the plan of corrective action;

(2) Whether the agency achieved the benchmarks required by the plan of corrective action, as determined using the methods for measuring achievement prescribed in the plan of corrective action;

(3) Whether the agency appropriately documented completion of the plan of corrective action; and

(4) Any other data or materials determined necessary by the Division.

2. After conducting an evaluation pursuant to subsection 1, if the Division determines that the agency which provides child welfare services has:

(a) Made significant progress toward completion of the plan of corrective action or has complied with the plan of corrective action, the Division may terminate the plan of corrective action.

(b) Not made significant progress toward completion of the plan of corrective action or has not complied with the plan of corrective action, the Division may extend the date for completion of the plan of corrective action for not more than 12 months. A plan of corrective action may be extended more than one time if the total duration of the plan of corrective action, including each extension, does not exceed 24 months. If the plan of corrective action is

extended, the Division will take the actions set forth in subsection 1 every 3 months until the completion of the plan of corrective action, including each extension.

3. If the Division extends the date for completion of a plan of corrective action, the Division may, in addition to the requirements of the existing plan of corrective action:

(a) Provide on-site monitoring and consultation to assess the needs of the agency which provides child welfare services and provide assistance to the agency in achieving compliance with the plan of corrective action.

(b) Establish guidelines for communicating during monthly meetings concerning the progress of the plan of corrective action and specific areas in which the agency which provides child welfare services is noncompliant with the plan of corrective action.

(c) Evaluate the progress of the agency which provides child welfare services in complying with the plan of corrective action and supervise activities necessary to achieve compliance with the plan of corrective action.

(d) Monitor activities relating to programs of the agency which provides child welfare services that may include, without limitation, reviewing cases selected at random, conducting unannounced reviews of programs, program planning, reviewing data and progress reports, identifying technical assistance needs and identifying training needs. The Division may, upon subsequent evaluation, cease monitoring activities pursuant to this paragraph if the agency has made significant progress toward compliance with the plan of corrective action.

(e) Initiate direct intervention, including, without limitation, involvement by the Division at a work site, direct management by employees of the Division and the Division making supervisory decisions for the agency which provides child welfare services, to correct unresolved and ongoing noncompliance with the plan of corrective action. Before initiating

direct intervention, the Division will submit to the governing body of the agency written notice of the intent of the Division to initiate direct intervention, including, without limitation, the basis for the decision to initiate direct intervention, the action that the Division intends to take and the amount of any fine that will be imposed pursuant to section 10 of this regulation.

Sec. 9. 1. *The Division may initiate emergency on-site management of an agency which provides child welfare services if the Division, at any time during an evaluation required pursuant to subsection 6 of NRS 432B.180, an administrative audit conducted pursuant to NAC 432B.030, an evaluation conducted pursuant to section 8 of this regulation or any other review of the performance of an agency which provides child welfare services, determines that urgent or exigent circumstances may endanger a child and immediate compliance with the provisions of this chapter, chapter 432B of NRS or any applicable state or federal law, or any regulations adopted pursuant thereto, any statewide plans or policies relating to the provision of child welfare services, or any written agreements entered into with the Division or the Department is necessary to eliminate the danger to the child.*

2. If emergency on-site management is initiated, the Division may immediately intervene in the operation of the agency which provides child welfare services, take over the direct management of the agency, make supervisory decisions for the agency and take any other action it deems necessary to protect the child.

3. Upon initiating emergency on-site management, the Division will immediately submit to the governing body and the director of the agency which provides child welfare services notice of such action. The notice must include, without limitation, the basis for the decision to initiate emergency on-site management and the amount of the fine, if any, that will be imposed pursuant to section 10 of this regulation.

4. Within 15 days after initiating emergency on-site management, the Division will provide to the governing body and the director of the agency which provides child welfare services a complete written description of each area in which the agency is noncompliant with the provisions of this chapter, chapter 432B of NRS or any applicable state or federal law, or any regulations adopted pursuant thereto, any statewide plans or policies relating to the provision of child welfare services, any written agreements entered into with the Division or the Department, or with the plan of corrective action, if applicable.

Sec. 10. 1. *In addition to a fine assessed pursuant to subsection 5, the Division may:*

(a) For each month in which the Division provides on-site monitoring, oversight monitoring, technical assistance or training, withhold from an agency which provides child welfare services an amount equal to the actual cost to the Division to provide such services, not to exceed 5 percent of the monthly administrative operating budget of the agency.

(b) Impose an administrative fine in an amount equal to the actual cost to the Division to provide direct intervention or emergency on-site management to the agency which provides child welfare services, not to exceed \$250,000 in a fiscal year.

2. Except as otherwise provided in subsection 5, in a county whose population is less than 100,000, the Division will not impose a fine on the agency which provides child welfare services in the county but may impose any appropriate disciplinary action pursuant to section 11 of this regulation.

3. When providing on-site monitoring, oversight monitoring, direct intervention, emergency on-site management or otherwise taking over the management responsibilities for an agency which provides child welfare services, the Division will not exceed the budget of the agency.

4. Except for a fine assessed pursuant to subsection 5, an agency which provides child welfare services may submit to the Administrator a written request to waive any fine or fee imposed pursuant to this section if:

(a) The noncompliance of the agency is the result of the Division failing to request sufficient money for the provision of child welfare services as required pursuant to subsection 8 of NRS 432B.180;

(b) The area in which the noncompliance occurred is not identified as a priority performance indicator by the Federal Government or a priority performance goal negotiated by the Federal Government, the Department or the agency; or

(c) The agency is making significant progress toward compliance and the Division will not incur any fine, penalty or other sanction from the Federal Government as a result of the noncompliance of the agency.

5. If the Federal Government imposes a fine on the Department because an agency which provides child welfare services is not complying with federal law, federal policy, a priority performance indicator or priority performance goal identified by the Federal Government, the Division will withhold from the agency which provides child welfare services an amount equal to the fine assessed by the Federal Government.

Sec. 11. 1. *If the findings of an evaluation conducted pursuant to NAC 432B.030 indicate that an action of an employee of an agency which provides child welfare services has substantially contributed to the agency not complying with the provisions of this chapter, chapter 432B of NRS or any applicable state or federal law, or any regulations adopted pursuant thereto, any statewide plans or policies relating to the provision of child welfare services, or any written agreements entered into with the Division or the Department, the*

Division will, within 15 days after making such a determination, provide notice of its determination to the director of personnel for and the director of the agency which provides child welfare services.

2. Within 90 days after receiving notice of a determination of the Department pursuant to subsection 1, the agency which provides child welfare services shall determine whether to take disciplinary action pursuant to paragraph (d) of subsection 7 of NRS 432B.180.

3. Each agency which provides child welfare services that receives notice pursuant to subsection 1 shall, on or before June 30 of each year, provide to the Division a written report regarding each personnel action taken as a result of receiving such notice. The report must not contain the name or any other identifying information of an employee of the agency.

Sec. 12. *1. An agency which provides child welfare services may submit to the Administrator a written request for an administrative hearing to appeal the following actions of the Division:*

(a) The establishment of a plan of corrective action.

(b) Oversight monitoring.

(c) On-site monitoring.

(d) Direct intervention.

(e) Emergency on-site management.

2. A written request for an appeal must be submitted by certified mail, return receipt requested, within 15 days after the date on which the agency which provides child welfare services receives notice of the action that will be taken.

3. If a written request for an appeal submitted pursuant to this section concerns the intent of the Division to:

(a) Establish a plan of corrective action or require oversight monitoring, on-site monitoring or direct intervention, the Division will suspend such action pending the outcome of the appeal.

(b) Initiate emergency on-site management, the Division will proceed with such action pending the outcome of the appeal.

4. An administrative hearing authorized pursuant to this section must be conducted in accordance with the provisions of chapter 233B of NRS.

Sec. 13. NAC 432B.010 is hereby amended to read as follows:

432B.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 432B.011 to 432B.017, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 14. NAC 432B.016 is hereby amended to read as follows:

432B.016 “Division” means the Division of Child and Family Services of the Department .
~~[of Health and Human Services.]~~

Sec. 15. NAC 432B.030 is hereby amended to read as follows:

432B.030 1. The evaluation required by subsection 6 of NRS 432B.180 must:

(a) Include ~~f~~:

~~—(1) Audits]~~ *an administrative audit* of each agency which provides child welfare services
~~f~~

~~—(2) An]~~ *in the manner set forth in section 6 of this regulation. The administrative audit must use generally accepted procedures, methods and standards of auditing selected by the Division.*

(b) *Include an* assurance that each agency which provides child welfare services is complying with this chapter, chapter 432B of NRS ~~[H]~~ *or* any other applicable state and federal law, *or any regulations adopted pursuant thereto, any statewide plans or policies relating to the provision of child welfare services*, and any written agreements entered into with the Division or the Department . ~~[of Health and Human Services.~~

~~—(b) Be conducted by an audit teams composed of:~~

~~——(1) Representatives from the Division;~~

~~——(2) A representative of the agency being reviewed; and~~

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

~~—2. Each audit team described in subsection 1 shall provide a written evaluation of the audit to the agency which provides child welfare services being audited.~~

~~—3.]~~ (c) *Provide a comprehensive review of the performance of the agency which provides child welfare services, including, without limitation:*

(1) A review of a random sample of individual case files of the agency which must be chosen based on the methodology used in a federal child welfare review and which meet specific characteristics of the population from which each sample case is selected.

(2) A review of the performance of the agency across program areas relating to the safety, permanency and well-being of children.

2. Within 30 days after the completion of an ~~[audit]~~ *evaluation* performed pursuant to subsection 1, the Division will issue a written notice to the agency which provides child welfare services if the Division determines as a result of the ~~[audit]~~ *evaluation* that the agency is not in compliance with the provisions of this chapter, chapter 432B of NRS ~~[H]~~ *or* any applicable state

or federal law, *or any regulations adopted pursuant thereto, any statewide plans or policies relating to the provision of child welfare services*, or any written agreements entered into with the Division or the Department . ~~[of Health and Human Services.]~~ The *written* notice *issued pursuant to this subsection* must ~~[set]~~, *without limitation*:

(a) *Include a comprehensive report which outlines each area of noncompliance;*

(b) *Set* forth the nature of the noncompliance ~~[-~~.

~~—4.—Within 30 days after receipt of a notice issued pursuant to subsection 3, the agency which provides child welfare services shall submit to the Division a plan of action for the areas of noncompliance. The agency may use the services of a consultant to carry out the plan of action. Upon request by an agency which provides child welfare services, the Division will provide to the agency assistance relating to carrying out its plan of action.~~

~~—5.—Each audit team shall reevaluate the areas of noncompliance within 4 to 6 months after the completion of the audit. Within 6 months after completion of the audit, the agency which provides child welfare services shall complete the plan of action or demonstrate that it has made significant progress, as determined by the Division, towards completing the plan of action. If the Division determines that the agency has demonstrated that it has made significant progress towards completing the plan of action, the Division may grant the agency an additional 3 months to complete the plan.~~

~~—6.—The Division may, pursuant to subsection 6 of NRS 432B.180, withhold money from an agency which provides child welfare services based upon the failure of the agency to complete the plan of action within the period set forth in subsection 5. As used in this subsection, “period set forth in subsection 5” includes any additional time to complete the plan granted to the agency by the Division pursuant to subsection 5.] ;~~

(c) Specify each instance of noncompliance; and

(d) Identify any area which may benefit from technical assistance or training.

3. Within 15 days after receipt of a notice issued pursuant to subsection 2, the agency which provides child welfare services may submit to the Division a written notice that the agency does not agree with the determination that the agency is noncompliant and request to begin negotiations with the Division concerning the determination. The written notice submitted to the Division pursuant to this subsection may include, without limitation, any additional written information which demonstrates that the agency is in compliance.

4. Within 15 days after receiving written notice and any additional information pursuant to subsection 3, the Division will review the information submitted by the agency which provides child welfare services and reconsider its determination that the agency is noncompliant. The Division will provide to the agency written notice when it has completed its reconsideration. The notice must:

(a) Reassert that the agency is noncompliant and that a plan of corrective action is necessary; or

(b) State that the Division agrees with the agency and that upon reconsideration, it has determined that a plan of corrective action is not necessary.

5. If the Division determines that a plan of corrective action is necessary or if an agency does not submit a notice pursuant to subsection 3, the Division will work cooperatively with the agency to develop a mutually agreed upon plan of corrective action which complies with the provisions of section 7 of this regulation. If the Division and the agency are not able to agree upon a plan of corrective action within 15 days after beginning to develop a plan of

corrective action pursuant to this subsection, the Division may establish a plan of corrective action without the cooperation of the agency and the agency must comply.

Sec. 16. NAC 432B.040 and 432B.050 are hereby repealed.

TEXT OF REPEALED SECTIONS

432B.040 Plans submitted pursuant to NRS 432B.395: Evaluation by Division; action by agency upon disapproval.

1. The Division will conduct an annual review of plans submitted pursuant to NRS 432B.395 in such a manner as to ensure compliance with the provisions of this chapter and chapter 432B of NRS.

2. The Division will provide to an agency that submits a plan pursuant to NRS 432B.395 a written evaluation of the plan, including the Division's approval or disapproval of the plan, within 60 days after the date of receipt of the plan by the Division. If a plan is disapproved, the agency submitting the plan shall:

(a) Establish a corrected plan for areas found not in compliance with this chapter and chapter 432B of NRS, and submit the corrected plan to the division within 60 days after the date of the letter of disapproval.

(b) As needed, seek consultative services to develop a corrected plan. The Division will provide assistance if requested.

↪ The Division will reevaluate areas of the plan found not in compliance within 30 days after the resubmittal.

432B.050 Plans submitted pursuant to NRS 432B.395: Time for submission; contents.

(NRS 432B.190, 432B.395) A plan submitted pursuant to NRS 432B.395 must be submitted by May 1 of each year and must:

1. Describe how the agency which provides child welfare services will establish and maintain effective programs of preventive and reunification services which include, but are not limited to, the following elements:

- (a) An assessment of the safety of the child;
- (b) An assessment of the need for services;
- (c) A comprehensive plan for the provision of an adequate array and availability of preventive and reunification services;
- (d) The provision of any required preventive and reunification services identified pursuant to paragraphs (a), (b) and (c);
- (e) A structure for the delivery of services;
- (f) Training for the personnel of the agency;
- (g) Criteria for eligibility to obtain preventive and reunification services;
- (h) Written guidelines, procedures and protocols; and
- (i) A procedure for gathering and maintaining data, and providing data to the juvenile court.

2. Specify how the agency which provides child welfare services will ensure that it makes good faith efforts to:

- (a) Prevent removal of the child from his home, including:

(1) A careful assessment of the familial situation, including an identification of the specific problems, if any, placing the child at imminent risk of serious harm, to determine the likelihood of protecting the child effectively in the home.

(2) Consideration of the specific problems of the child or family to determine whether any of the services available within the agency or in the community might effectively address those problems without removal of the child.

(3) Consideration of alternative ways of addressing the family's needs, that would enable the child to be protected without removal, when the services regularly provided by the agency appear unlikely to meet the family's needs, or when waiting lists for those services are too long to prevent removal of the child.

(4) Notice to the family concerning the services available within the agency and in the community that might address the problems of the family or child.

(5) An offer to the family to provide those services the agency considers most likely to address the problems identified as creating the risk of removal of the child.

(6) An opportunity for the family to request other services not offered by the agency that the family believes might mitigate the risk of removal.

(7) A mechanism for the child or family to seek a review of the agency's failure to provide the assistance or services the family believes would eliminate the need for removal of the child.

(b) Reunify the family, including the efforts required by paragraph (a) and the:

(1) Development of an appropriate case plan.

(2) Establishment of an appropriate schedule for visitation and other measures to ensure visitation is facilitated and actually occurs.

3. Describe how the agency which provides child welfare services will ensure compliance with NRS 432B.540.