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§ 205.42 Case review and management requirements.

(a) *Purpose.* Except for paragraphs (g), (h) and (i) of this section, which apply only to AFDC, this section establishes the rules and procedures for the conduct of QC case reviews, completion of QC sample cases and the determination of whether an error exists in a sample case in the AFDC and Adult assistance programs.

(b) *Review basis.* The review shall be conducted against permissible State practice, except as follows:

(1)(i) Where a State plan provision(s) is approved incorrectly and is inconsistent with Federal law or regulations, the review shall be conducted against the approved State plan until either an amendment to remove the inconsistency is submitted or six months have elapsed since receipt by the State of a dated written notification from the Assistant Secretary for Children and Families, the Regional Administrator, or either's designee, of the inconsistency(ies), whichever occurs earlier. If the plan amendment is submitted within six months, the review shall be conducted against the submitted plan amendment. If the plan amendment is not approved by the Department or is not submitted within six months, sample cases selected for the review month immediately following the date that disapproval becomes final or the six-month period, whichever occurs earlier, shall be reviewed against applicable Federal law and regulations until the State has an amendment approved.

(ii) Where a State implements a pending plan amendment which is subsequently disapproved by the Department, the review shall be conducted against the pending plan amendment until disapproval becomes final. Sample cases selected for the review month immediately following the date that disapproval becomes final shall be reviewed against the prior approved plan if it is consistent with Federal law and regulations. If the prior approved plan is inconsistent with Federal law and regulations, the review shall be conducted against applicable Federal law and regulations until the State has submitted and had approved a plan amendment. A final disapproval here, and at paragraph (b)(1)(i) of this section, means the decision issued by the Assistant Secretary for Children and Families if the State requests a hearing pursuant to part 201; otherwise a final disapproval means the decision issued by the Regional Administrator.

(iii) If it is necessary for a State to enact a law in order to remove an inconsistency, the State must submit the proposed law change for enactment no later than the next scheduled legislative session immediately following written notification, pursuant to paragraph (b)(1)(i) of this section, and shall notify the Department. The Department shall establish in writing a reasonable period of time, on a case-by-case basis, for the State to enact the law and amend its State plan. The review shall continue to be conducted against the State's current plan during this time period.

(2) Where the State makes payment in compliance with a court order, the review shall be conducted against the provisions of the court order.

(c) *Case review requirements.* (1) The State shall review all cases selected in the active and negative case samples as prescribed in § 205.41 of this part and reach a review finding as required on each case.

(2) The review shall include: an examination and analysis of the case record; the conduct of a field investigation with a face-to-face interview in all cases in the active case sample (unless paragraph (c)(3) of this section applies) and, as necessary, in the negative case action sample; the verification and documentation of all required review elements through contacts with appropriate collateral sources of information; the securing of specified primary or secondary evidence; a determination of the correctness of the eligibility and payment decisions; and, where required, transmission of the coded findings to a designated host computer.

(3) A face-to-face interview with a recipient shall not be required if the recipient lives in an isolated area not reachable by regularly scheduled commercial air service, other public transportation, or automobile. For these cases, the State shall document why the interview cannot be held in another location convenient to both parties.

The State shall also make at least one attempt to contact the recipient to obtain statements regarding factors of eligibility and payment. If a case is exempted from a face-to-face interview under this section, the QC review shall be completed through the case file information and collateral contacts as provided by QC policy and procedures. Exceptions to the face-to-face interview requirements shall be determined on a case-by-case basis.

(4) The State shall use the forms and schedules set forth in the QC Manuals and otherwise prescribed by the department to document all review findings. The State may substitute their own forms and review schedules if approved by the Department in advance.

(d) *Special provisions applicable to error determination.* The following provisions modify what constitutes a payment error under permissible State practice.

(1) *Changes in circumstances.* For purposes of this paragraph (d), a change in circumstances means a change occurring after the date of authorization of the initial payment which may affect the assistance unit's eligibility or payment amount. Multiple changes in circumstances shall be evaluated individually to assess their impact on the final payment error determination. A change in policy or the issuance of a hearing decision shall be considered a change in circumstances.

(i) A change in circumstances shall not be counted as a payment error if the change occurred in the review month or the month immediately preceding the review month, or if the review month's payment continues unadjusted because a hearing was requested.

(ii) A change in circumstances shall be counted as a payment error if the change was incorrectly reflected in the review month's payment, or if the change occurred in or before the second prior month to the review month and was not reflected in the review month's payment.

(2) *Other types of payment error not to be counted. The following types of payment error shall not be counted as errors.*

(i) Payment errors which result solely from failure on the part of the State to properly implement changes in Federal law or regulation for a period of six months after the effective date of the Federal legislation or implementing regulations, whichever is later;

(ii) Payment errors which result solely from a State's reliance on, and correct use of, incorrect written factual information provided by the Department about matters of fact or from incorrect written statements of Federal policy by Department officials. ''Written factual information'' means hard copy documentation, such as a signed statement, a computer printout or data tape, and reports of specific data provided by the Department about a given individual (e.g., social security data). ''Departmental officials'' means the Assistant Secretary for Children and Families (ACF), the ACF Regional Administrator, the ACF Assistant Regional Administrator for AFDC programs, or the Director of the Office of Family Assistance.

(iii) Payment errors which result from a declaration by the President or the State Governor of a state of emergency or major disaster and which directly affects the State's ability to make correct payments, if adequate documentation of the event and its impact are provided. The information shall include: a copy of the declaration; a detailed explanation of the circumstances; identification of the affected jurisdictions; and the reason(s) why the State's ability to make correct payments has been or will be impaired;

(iv) Payment errors which result solely from failure of the assistance unit to submit a monthly report;

(v) Payment errors which result when a recipient—

(A) Does not have a social security number, but has filed an application (as defined by the Social Security Administration) for a number within 30 calendar days after the date of application for assistance, or

(B) Does not furnish a social security number upon receipt but has furnished a social security number through the Enumeration at Birth (EAB) project by the next redetermination of eligibility or within six months after the receipt of the social security number, whichever occurs earlier; and

(vi) Payment errors which are inconsistent with fair hearing decisions

under § 205.10 of this part when the hearing decision meets the following criteria:

(A) The decision is based only on the case circumstances that existed as of the QC review month;

(B) The State defended the adverse action during the hearing process; and

(C) The request for adjustment is made within eleven months after the end of the annual sample period to which the adjustment would apply, or the date of the last appeal decision by the Quality Control Review Panel, whichever occurs later.

(e) *Sample disposition and data submission time frames.* (1) The State shall input review findings for disposed of active sample cases into the computer terminal provided by the Federal government and transmit the edited data to a designated host computer. For States that cannot transmit the data due to lack of equipment or a telecommunication linkage, the State shall submit the review findings in a format specified by the Department. The State shall submit the review findings for disposed of negative sample cases also in a format specified by the Department.

(i) Review findings of both active and negative case samples shall be disposed of and submitted in accordance with the following time frames:

(A) Seventy-five percent or all but 5 cases of the cases selected in both the active and negative case samples each month, within 75 calendar days after the end of each sample month;

(B) Ninety-five percent or all but five cases of the cases selected in both the active and negative case samples each month, within 95 calendar days after the end of each sample month; and

(C) One hundred percent of the cases selected in both the active and negative case samples each month, within 120 calendar days after the end of each sample month;

(ii) If the State does not submit 100 percent of the review findings of the cases selected in the active case sample each month within 120 calendar days after the end of the sample month, and the Department finds there is insufficient justification for the delay, the Department may initiate action to establish the State's error rate under the procedures specified in paragraph (h) of this section.

(2) The State shall submit the review findings for disposed of sample cases promptly (i.e., at least on a monthly basis).

(f) *Alternate disposition plan.* (1) The State may submit an alternate disposition plan for the Department's approval if the State is unable to meet the requirements of paragraph (e)(1)(i) of this section, either as a result of circumstances of a permanent or recurring nature, or as a result of the occurrence of an unforeseen event during the annual sample period. Until the Department approves the alternate disposition plan, the State shall continue to comply with the requirements in paragraph (e)(1)(i) of this section. The alternate disposition plan may be approved when:

(i)(A) The State's sample population is dispersed over such great distances that conducting the number of field interviews needed to meet the requirements of paragraph (e)(1)(i) is cost prohibitive; or

(B) The State's usual weather conditions or geography make significant numbers of the sample population inaccessible or difficult to contact during certain times of the year, making it a hardship for the State to comply with the requirements of paragraph (e)(1)(i);

(ii) The State's request contains evidence and data to justify the need for an alternate disposition plan, including a description of the State's population dispersal or inaccessibility, and the reason(s) why the State cannot comply with the requirements in paragraph (e)(1)(i) of this section;

(iii) The request contains detail on the State's proposed disposition schedule for sample cases, including the annual sample period(s) to be covered, the revised disposition dates and percentages, and the revised schedule for the transmission of the edited review findings of the sample cases; and

(iv) The request is submitted at least 60 calendar days before the beginning of the first annual sample period covered by the alternate disposition plan.

(2) The Department may approve a temporary alternate disposition plan for a particular annual sample period based on unforeseen events and allow

the State to submit the edited review findings of its sample cases at later dates than those specified in paragraph (e)(1) of this section, when:

(i) Unforeseen events (e.g., floods, earthquakes, computer breakdowns, snow-storms and labor disputes) occur which prevent the State temporarily from meeting the requirements in paragraph (e) of this section; and

(ii) The request contains a description of the circumstances of the unforeseen event, the period to be covered by the alternate disposition plan, the revised disposition dates and percentages, and the revised schedule for the transmission of the edited review findings of the sample cases.

(g) *Federal re-review of State sample cases.* As part of the Federal monitoring of State QC programs, the Department conducts a re-review of a subsample of each State's AFDC active case sample.

(1) The State shall provide the original or legible copies of the case record and State QC file for each subsample case, by mail or delivery service, within 10 calendar days after the State's receipt of a request for such information.

(2) The information provided shall include records relating to public assistance, recipients and third parties, including information available under § 205.55 of this part.

(3) The Department may grant exceptions to these requirements in unusual circumstances.

(4) The Department shall conduct reviews of a subsample of the State's completed active AFDC sample cases and, as necessary, of the State's negative case actions and shall dispose of and report subsample findings in accordance with the following time frames:

(i) Seventy-five percent of the subsampled cases selected each month within 75 calendar days after the end of the month in which they are selected;

(ii) Ninety-five percent of the subsampled cases selected each month within 95 calendar days after the end of the month in which they are selected; and

(iii) One hundred percent of the subsampled cases selected each month within 120 calendar days after the end of the month in which they are selected.

(h) *Effects of failure to complete the sample.* This paragraph provides the procedures that the Department shall follow if a State fails to complete a valid and reliable AFDC active case sample in accordance with prescribed QC procedures and deadlines which include obtaining and using information available under § 205.55 of this part.

(1) The Department shall notify the State of its failure to complete its sample and provide the State the opportunity to negotiate a solution for the completion of the sample.

(2) When a State is unable to negotiate a solution or fails to carry out a negotiated solution, the Department shall, directly or through contractual or other such arrangement as appropriate, conduct the review and establish the fiscal year error rate for the State on the basis of the best data reasonably available to the Department, in accordance with statistical methods that would apply if the reviews were completed by the State.

(3) Notwithstanding any other provision of this chapter, total payments to a State under section 403(a)(3)(D) of the Act for the proper and efficient administration of the State plan shall be reduced by the costs incurred by the Federal government to complete the State's sample.

(i) *Difference resolution process.* A ''difference'' is a disagreement between State and Federal review findings that affect the State's official AFDC payment error rate (i.e., a difference between a State review and a Federal re-review finding of a correct payment, overpayment, underpayment, or a payment to an ineligible case, or a Federal finding that the sample case should be dropped from the QC review). The process for resolving the difference shall be as follows:

(1) The State shall be notified in writing of the disagreement and afforded an opportunity to request a review of the difference by the ACF Regional Administrator.

(2) The State shall respond to the difference notification within 30 calendar days after receipt of such notification

agreeing, or indicating reasons for disagreeing, with the Federal finding. Responses postmarked, otherwise officially dated, or delivered by the 30th calendar day after the date of the receipt of the difference letter shall have met the deadline. If the deadline is a Saturday, Sunday, legal holiday, or an office closing, the deadline shall be extended to the next business day. If the State fails to respond within the 30-day deadline, the Federal finding shall be the final decision of the Department.

(3) The Regional Administrator shall respond to the State within 21 calendar days of receipt of the review request. The response shall either be a decision on the State's request, or an indication that the decision will be delayed pending further review of applicable laws, regulations, or policies.

(4) If the State disagrees with the Regional Administrator's decision, it may seek review with the Quality Control Review Panel. The appeal request shall be postmarked, otherwise officially dated, or delivered to the Panel by the 30th calendar day after the receipt of the Regional Administrator's decision; otherwise the Regional Administrator's decision shall be the final decision of the Department. If the deadline is a Saturday, Sunday, legal holiday, or an office closing, the deadline shall be extended to the next business day. The State shall forward an informational copy of its appeal request to the Department's regional office concurrent with submittal of its request to the Review Panel. The State may submit to the Panel any documentation appropriate to substantiate its position as part of its appeal request. Extensions may be granted by the Panel for a State to submit documentation in support of its appeal where good cause is shown.

(5) The Panel shall evaluate all of the pertinent evidence submitted and shall notify the State of its decision (within a target date of 45 calendar days following the completion of the record as determined by the Panel). Unless the Secretary chooses to review an individual difference case, the decision of the Panel with respect to that case shall constitute the decision of the Secretary for establishing a State's payment error rate for the fiscal year.

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§ 205.43 Determination of payment error rates and disallowances of Federal financial participation for erroneous payments.

(a) *Purpose.* This section sets forth the rules and procedures for calculating State AFDC error rates and for disallowing Federal financial participation (FFP) to the States with erroneous payments in excess of the national standard for a fiscal year.

(b) *Definitions.* In addition to the definitions in §§ 205.40(b) and 205.41(b) of this part, the following definitions apply to this section.

(1) *Child support collection rate* means the ratio of—

(i) The sum of the number of AFDC cases reported by the State IV–D agency for each quarter in the fiscal year for which an assignment under section 402(a)(26) of the Act and a collection were made, to

(ii) The sum of the number of AFDC cases with such assignments reported by the State IV–D agency for each quarter in the fiscal year.

(2) *National child support collection rate* for a fiscal year means the ratio of the sum of the number of cases (excluding AFDC ''arrears-only'' cases) described in paragraph (b)(1)(i) of this section reported by all States for quarters in the fiscal year, to the sum of the number of cases described in paragraph (b)(1)(ii) of this section reported by all States for quarters in the fiscal year.

(3) *National overpayment rate* means the ratio of the total amount of erroneous assistance payments made by all States to the total amount of assistance paid by all States for the fiscal year. (This figure is equivalent to the ratio of the average monthly erroneous assistance payment per case for all States to the average monthly assistance payment per case for all States.) The rate shall be computed as the sum, over all States, of the product of each State's regressed overpayment rate and total amount of assistance payments divided by the sum of the total amount of assistance payments of all States for