

STATE OF WISCONSIN  
Department of Health and Family Services  
Division of Children and Family Services

DCFS Memo Series 2007 - 18  
December 27, 2007  
Re: AFSA Exception to  
Filing a TPR Petition

To: Area Administrators/Assistant Area Administrators  
Bureau Directors  
Child Welfare Agency Directors  
County Departments of Community Programs Directors  
County Departments of Developmental Disabilities  
Services Directors  
County Departments of Human Services Directors  
County Departments of Social Services Directors  
Licensing Chiefs/Section Chiefs  
Tribal Chairpersons/Human Services Facilitators

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Administrator 

### Introduction

The Adoption and Safe Families Act (ASFA) contains a requirement to document one or more compelling reasons not to file a Termination of Parental Rights (TPR) petition for a child who has been in out of home care for 15 of the last 22 months. The TPR exception reasons are currently documented in eWisACWIS as part of the permanency plan and completing the documentation results in a new permanency plan document, which has raised questions regarding permanency plan distribution. To improve the process for complying with the ASFA TPR requirement, the exception reason documentation will be moved to a new screen effective January 7, 2008 to allow exception reasons to be entered without generating a permanency plan document. This memo explains the exception reason documentation and permanency plan distribution under the new process.

### Background

The federal ASFA [42 USC 675(5)(E) and 45 CFR 1356.21(i)] specifies that a TPR petition must be filed for a child who has been in out-of-home care for 15 of the last 22 months. Should the child welfare agency not file a TPR petition, one or more compelling reasons not to file the petition must be documented as an exception. The exception reason must be documented by the 15<sup>th</sup> month to be in compliance with the ASFA TPR requirement. Once documented by the 15<sup>th</sup> month, it is not necessary to update the ASFA exception for the same out-of-home care placement episode. However, as a matter of good practice, any decision not to pursue a TPR should be regularly reconsidered as the case progresses.

The federal ASFA requires that the compelling reason for not filing a TPR petition exception be documented in the case plan. A case plan is defined by federal law to be a written document which contains certain specified information [42 USC 675(1)]. Under state law [ss.48.417(1) and (2)], this same information is required in the permanency plan ss. 48.38 and 938.38, thus state law requires that the decision not to petition for TPR be documented in the permanency plan.

The ASFA exception to filing a TPR requirement does not impact the time frames for permanency plan reviews under the permanency plan review process. Therefore, while the ASFA exception must be documented in the permanency plan, the exception does not need to be reviewed or approved by the court or a permanency plan review panel at the time the exception is documented. The Administration for Children and Families (ACF) expressly permits an agency to alter the permanency plan outside a permanency hearing, and does not require the court to approve such a plan before the State agency can

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### Document Summary

The memo contains direction regarding when and where to document an agency decision to not pursue termination of parental rights when a child has been in out-of-home care for 15 of the last 22 months, and how to provide a court with notice of that decision.

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act on it [Federal Register, Vol. 65, No. 16, January 25, 2000, p. 4052].

However, under the federal Act, the exception must be available for court review if the court requests it [45 CFR 1356.21(i)(2)(ii)]. One way this can be accomplished is through the next regularly scheduled permanency plan review or hearing. In addition, if a court wants to review the ASFA exception before the next permanency plan review or hearing, the exception documentation must be made available to the court for review.

**Previously,** the only way to document the ASFA exception was to create a new permanency plan document, which has proven cumbersome for child welfare caseworkers, particularly given other statutory requirements and practice related to permanency planning. To simplify the process for AFSA TPR compliance, a new window has been created and named 'Permanency Plan - ASFA Exceptions.' The new window will be available with the January 2008 eWiSACWIS release.

The information in this window, once approved, will pre-fill into a stand alone Addendum to the permanency plan and into the next permanency plan created. In addition, the Addendum can be sent to the court should the court wish to review the TPR exception decision prior to the next permanency plan review or hearing.

To improve the timeliness of ASFA exception documentation, the system will calculate the 15<sup>th</sup> month for all children in OHC placement and generate a tickler to the caseworker to complete the ASFA exception. The ASFA exception can be completed at any point in the case process. The tickler is programmed for 30 days prior to the end of the 15<sup>th</sup> month. Child welfare agencies will have the flexibility to set when the tickler is generated to ensure that the ASFA exception is completed by the caseworker and approved by the supervisor by the 15<sup>th</sup> month if they want the tickler earlier than the programmed 30 days.

The eWiSACWIS SM10a27 report is available to child welfare agencies to monitor AFSA exception documentation. The report shows the status of ASFA documentation for children, including permanency goals and the types of exception reasons.

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