

Reviewer Brief: Calculating 15 Out of 22 Months for the Purpose of Meeting Termination of Parental Rights Requirement

Purpose

The termination of parental rights (TPR) requirement, as outlined in the Social Security Act at § 475(5)(E), requires states to make timely decisions regarding permanency for children in foster care by having states and applicable Tribes file a TPR petition when a child has been in foster care for at least 15 of the most recent 22 months, and an exception or a compelling reason does not apply. This reviewer brief provides instructions on how 15 out of the 22 most recent months should be calculated for children in foster care for Child and Family Services Reviews (CFSR) purposes.

General Instructions for Calculating 15 of 22 Months

(see flowchart on the last page)

- 1) Begin by determining the child's most recent date of entry into foster care, defined as either the date of a judicial finding that the child was subjected to child abuse or neglect (often the adjudicatory hearing), or 60 days after the date on which the child was removed from the home, whichever is earlier. This is to identify when to begin counting the child's time in foster care to identify a total of 15 months of the most recent 22.
- 2) Using the most recent foster care entry date, count back 22 months to determine if the child had any prior foster care entries during the past 22 months. For a child who had multiple foster care entries during the 22-month period, count only the months in foster care that are part of a new foster care episode that began during the 22-month period. Do not include months in foster care that are part of an earlier episode that continued into the most recent 22 months.
- 3) Calculate the total number of months the child has been in foster care beginning with the first foster care entry date during the most recent 22-month period:
 - a) If the child **did not** have multiple foster care entries during the past 22 months from the current foster care entry date, calculate how long the child has been in care by counting forward starting with the most recent foster care entry date. See Example Scenario #1.
 - b) If the child **had** multiple foster care entries during the past 22 months from the current foster care entry date, start the cumulative count with the earliest entry into foster care that occurred **during** this past 22-month period. See Example Scenario #2.
- 4) If the most recent entry date is more than 22 months after the child entered foster care during the episode prior to the most recent episode, begin a new count of 15 of 22 months using the most recent foster care entry date, even if the part of the foster care episode that started more than 22 months prior to the most recent one overlapped with the 22-month timeframe. Again, the time the

child spent in foster care prior to the most recent foster care entry date will not be counted toward the new count of 15 of 22 months.

- 5) Filing of a TPR petition or documentation of a compelling reason in the case plan needs to be completed by the end of the 15th month. When a child is being cared for by a relative at the 15th month of the 22-month timeframe, documentation of this exception is not required. However, other compelling reasons must be documented in the case plan.

Additional Instructions

1. If a child has an entry, subsequent discharge, and then a re-entry into foster care, the same guidance applies for determining the date of foster care entry (either the judicial finding or 60 days after the date the child was removed from the home).
2. Do not include time during which a child was in a trial home visit (THV), on runaway status, in a locked facility (e.g., held in detention), or hospitalized when calculating 15 out of 22 months in foster care.
 - a. If a THV lasts longer than 6 months without a court order extending the THV, the child is considered to be discharged from foster care at the end of the 6 months.
 - b. If a child's THV ends without a discharge from foster care and the child returns to placement, the return is not counted as a foster care re-entry. The count of 15/22 months should resume at the time the child returned to placement rather than considering it as a new foster care entry.
3. In the Final Rule pertaining to 45 CFR § 1356.21, the Children's Bureau did not define a "month" but left it up to a state's discretion to determine what constitutes a "month" for the purposes of calculating 15 out of 22 of the most recent months (e.g., calendar month, date to date). If a state has a policy regarding what constitutes a "month," the state's policy should be used. Otherwise, count months using the actual dates, starting with the entry date (e.g., 15th to 15th) rather than counting a full month for each calendar month in which the child was in foster care.
4. If, when a child reached 15 months in care, the state/Tribe does not file a petition for TPR because an exception or a compelling reason applied, the state/Tribe does not need to begin calculating another 15 out of 22 months in foster care for that child's foster care episode, even if the child is later moved to another non-permanent placement (unless the child exits foster care and later re-enters). However, this does not mean that a TPR petition cannot be filed later if permanency has not been achieved for the child.
5. If a child was placed in foster care in State A and the child was moved to a foster care placement in State B where the case was transferred, and the case is being reviewed, the count for 15 of 22 months begins when the child first entered foster care in State A. Please refer to instructions provided above to calculate 15 out of 22 months in foster care.

Example Scenario #1—Only one foster care entry for the child
Period under review: 7/1/2021–7/12/2022 (date of review)

Date of removal: 5/15/2020

Date of judicial finding (adjudicatory hearing): 6/23/2020

Date of foster care entry: 6/23/2020

1. Since 60 days from the child's removal from the home is later than the date of the judicial finding (adjudicatory hearing), the date of foster care entry should be the date of judicial finding, 6/23/2020.
2. Starting with 6/23/2020, count forward 15 months, which is 9/23/2021. Either a TPR petition should have been filed or an exception/compelling reason documented in the case record by end of September 2021 (i.e., 9/30/2021).

Example Scenario #2—Multiple foster care entries for the child
Period under review: 7/1/2021–7/12/2022 (date of review)

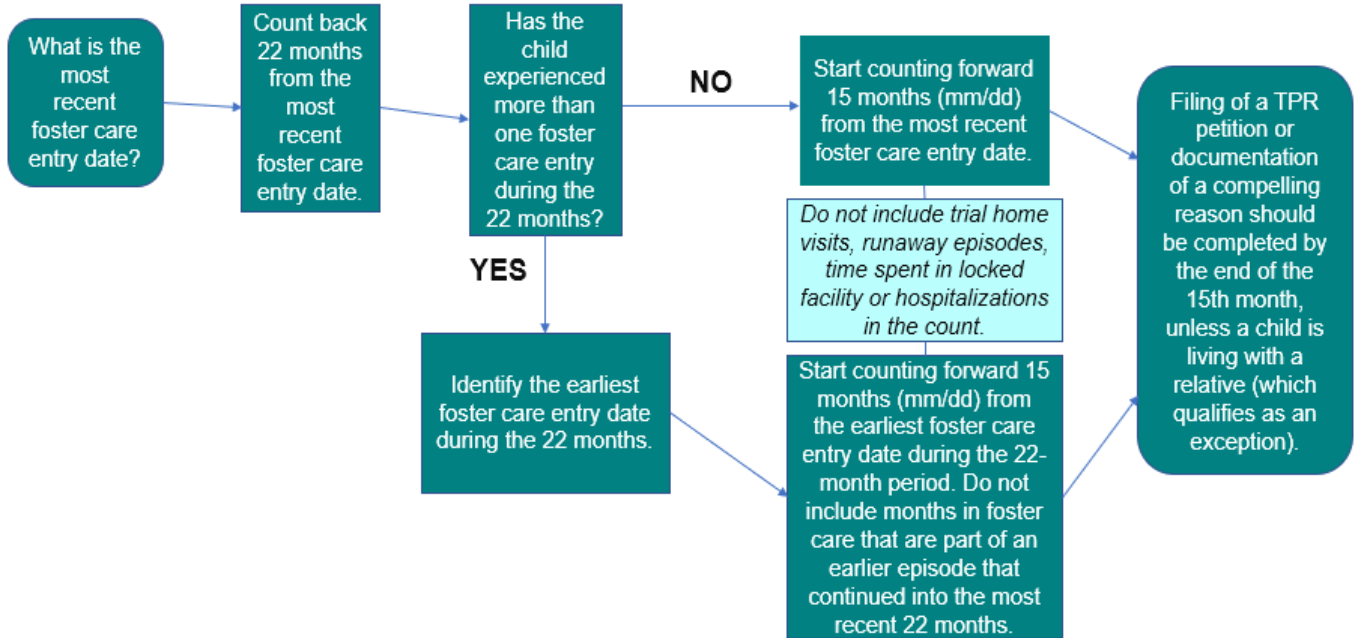
Date of first removal: 1/28/2020
Date of judicial finding (adjudicatory hearing): 2/20/2020
60 days from removal: 3/28/2020
Date of foster care entry: 2/20/2020
Date of discharge from foster care: 8/14/2020

Date of second removal: 10/6/2020
Date of judicial finding (adjudicatory hearing): 1/4/2021
60 days from removal: 12/5/2020
Date of foster care entry: 12/5/2020
Date of discharge from foster care: 10/2/2021

Date of third removal: 3/6/22
Date of judicial finding (adjudicatory hearing): 4/10/2022
60 days from removal: 5/5/2022
Date of foster care entry: 4/10/2022

1. Start with the most recent date of entry into foster care, 4/10/2022, and count back 22 months, which is 6/10/2020.
2. Identify the earliest foster care entry date during this 22-month period, which is 12/5/2020, 60 days after the child was removed from home. This date is used rather than the adjudicatory hearing date because it is the earlier of the two.
 - The months the child was in care before the foster care entry on 12/5/2020 will NOT be counted in the 15/22-months calculation even though the child was in foster care between the start of the 22-month period (6/10/2020) until discharged on 8/14/2020.
3. To calculate 15/22 months, count forward the months in foster care from the foster care entry date of 12/5/2020 using the entry date (e.g., 5th to 5th). The child has been in foster care for a total of 12 months.
 - 12/5/2020 to 10/2/2021 (5th to 5th) = 9 months
 - 4/10/2022 to 7/12/22 (10th to 10th) = 3 months

Calculating 15 Out of the Most Recent 22 Months Per Social Security Act § 475(5)(E) Requirements for Filing a Termination of Parental Rights Petition



- Foster care entry date is defined as either the date of a judicial finding that the child has been subjected to child abuse or neglect (often the adjudicatory hearing) or 60 days after the child's removal from home, **whichever is earlier**.