

Child Welfare Policy Manual

Questions & Answers

5.2 MONITORING, Title IV-E Eligibility Reviews

1. Question: Under what authority may the Department review closed or sealed foster care records, particularly for those children who have been adopted?

Answer: Section 471(a)(8) of the Social Security Act (the Act) requires a State Plan to provide safeguards restricting use and disclosure of information concerning individuals assisted by the foster care and adoption assistance programs. It also indicates that a State Plan must provide: Safeguards which restrict the use of information concerning individuals assisted under the State Plan to purposes directly connected with... (C) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in (D), with respect to any activity referred to in such clause), of any information which identifies by name or address any such applicant or recipients except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which in the case of adoptions, prevent disclosure entirely.

While the language of section 471(a) (8) (D) provides that States may restrict disclosure entirely of adoption assistance records, that subsection, read in its entirety and in harmony with other sections of the Act, indicates that Congress did not intend to restrict access to federal auditors of information essential for audits under the title IV-E foster care and adoption assistance programs.

In particular, section 471(a) (8) (D) itself provides for disclosure of information concerning individuals assisted by the foster care and adoption assistance programs for purposes directly connected with audits conducted by the Federal Government and otherwise authorized by law.

The authority for Federal audits of the foster care and adoption assistance programs is expressly provided for under section 471 (a)(6) of the Act. That section requires that a State Plan, in order to qualify for Federal financial participation (FFP) for foster care and adoption

assistance, provide that the appropriate State agency will make such reports, in such form and containing such information as the Secretary may from time to time find necessary to assure the correctness and verification of such reports.

The legislative history of section 471(a)(8) also reveals that while Congress was concerned about providing safeguards which limited access to information on individuals assisted by the title IV-E programs, it did not intend to hinder the essential function of Federal audits. Thus, while Congress extended to States the option of imposing restrictions broader than those imposed in the past on the disclosure of information for the protection of the confidentiality of recipients of adoption assistance, it did not impede essential auditing functions by those authorized to conduct such audits.

Accordingly, in the case of reviews of the eligibility of foster care and adoption assistance claims, the State Agency must make available foster care and adoption records (including sealed foster care and adoption records) in order to document the eligibility of the beneficiaries (children) and related costs of administration. If the requested records cannot or are not made available, all payments made on behalf of the children whose records have not been made available for review and associated costs will be disallowed.

- **Source/Date:** ACYF-CB-PA-85-02 (12/19/85)
- **Legal and Related References:** Social Security Act - section 471 (a)(6) and (8); H.R. Rep. Conf. No. 96-900, 96th Congress 2nd Session 44 (1980)

2. Question: Since only States, and not tribes, are reviewed, how do we assure that title IV-E eligibility requirements are met for children served by the tribes in foster care?

Answer: States and tribes that enter into agreements whereby the tribes access title IV-E foster care maintenance payments for children must determine between themselves how the roles and responsibilities for meeting title IV-E requirements will be shared. While tribes that enter into such agreements with States have the latitude to develop their own procedures for satisfying title IV-E requirements, the State child welfare agency is ultimately responsible for the proper administration of the title IV-E program and for assuring compliance. Children served by tribes who are receiving title IV-E foster care maintenance payments as part of a State/tribal agreement will be included in the sample of cases reviewed.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.71

3. Question: Doesn't the requirement for the State to submit the complete payment history records for each sample case fail to comport with the regulation governing records retention at 45 CFR 74?

Answer: There is no inconsistency between the requirement that a State provide the complete payment history and the regulation at 45 CFR 74.53 (b) which, in pertinent part, states that "Financial records . . . shall be retained for a period of three years from the date of submission of the final expenditure report . . .". For a child in out-of-home care, the final expenditure report would not be submitted to ACF until such child is discharged from foster care.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.71(b)

4. Question: How will the eligibility of children receiving title IV-E foster care maintenance payments where the State or tribe is operating under a IV-E waiver demonstration be reviewed?

Answer: We will not review the files of children whose title IV-E eligibility would be affected by a waiver demonstration project. We pull a large enough oversample of cases for the title IV-E eligibility reviews to exclude those children from the sample of cases reviewed.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 1130 (A); 45 CFR 1356.71

5. Question: Should the review title IV-E foster care eligibility team include representatives that are external to the agency such as State foster care review board members, child advocates, etc.?

Answer: The purpose of the title IV-E financial review is to assess payment accuracy through an examination of case record documentation. Those individuals identified above possess expertise that would be utilized more effectively on a review of service delivery issues, such as the child and family services review. The Federal/State team combination is used to assist States in identifying strategies for training, technical assistance and corrective action, and to augment the knowledge of State staff about title IV-E eligibility requirements. For these reasons, we see no benefit in expanding the review team composition to include external representatives. The State may, however, exercise its discretion in deciding the range of State and/or local staff to include on the team.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.71 (b)

6. Question: For title IV-E eligibility reviews, what is the expectation for determining whether a provider is properly licensed when a child is placed in foster care in another State?

Answer: Provider documentation requirements are the same for all children. The child must be placed in a licensed or approved foster family home, regardless of the State in which the home is located. The State must provide documentation that the home is licensed or approved and evidence that safety considerations with respect to the caretakers have been addressed.

- **Source/Date:** September 29, 2005
- **Legal and Related References:** 45 CFR 1356.30 and 1356.71(g); Social Security Act § Sections 471(a)(10) and 471(a)(20); Title IV-E Foster Care Eligibility On-Site Instrument and Instructions, Sections H and I.

7. Question: When a child is placed in foster care outside the State that has placement and care responsibility, must the foster family home be licensed by the State in which it is situated for title IV-E eligibility purposes? Will it be considered an error case on a title IV-E eligibility review if a foster family home is not licensed by the State in which it is situated?

Answer: Yes to both questions. In order for a child to be eligible for title IV-E foster care maintenance payments, the statute requires that the foster family home or child care institution be licensed by the State licensing authority in the State in which the home is situated. Section 472(c)(1) of the Social Security Act (the Act) defines foster family home as "a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing." The definition for a child care institution in 472(c)(2) of the Act similarly requires licensing or approval by the State in which it is situated. See the CWPM Section 8.3A.8c, Q/A #2 for the situations in which a Federally-recognized Indian tribal licensing authority may license a foster family homes for title IV-E purposes.

If during a title IV-E eligibility review, we find that a foster care maintenance payment has been made during the period under review for a child placed in a home (or child care institution) not licensed or approved by the State in which it is situated, the case will be found in error. If we find such payments were made outside the period under review, the ineligible payments will be disallowed.

- **Source/Date:** 11/14/07
- **Legal and Related References:** Social Security Act § section 472(c)