

Child Welfare Policy Manual

Questions & Answers

8.3A.12 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Responsibility for placement and care

1. Question: What does "responsibility for placement and care" mean? Are there certain activities which cannot be delegated? If so, which activities? Can the "case plan" be delegated while the child is under the care of the nonprofit agency? Does "responsibility for placement and care" mean that the title IV-E agency must have custody of the child or can the court give custody to a private nonprofit agency? We think "responsibility for placement and care" follows custody.

Answer: The title IV-E agency, or another public agency with whom the title IV-E agency has made an agreement which is still in effect, is to be assigned the overall responsibility for placement and care of the child, although many of the activities associated with the placement and care may be performed by others. Clearly, if the court assigns the responsibility for a child to an agency or institution other than the title IV-E agency or to another public agency with which the title IV-E agency has no agreement, no Federal financial participation (FFP) will be allowable.

Under title IV-E, to be eligible for FFP, section 472(a)(2)(B) of the Social Security Act (the Act) requires that the responsibility for placement and care of the child is with the title IV-E agency administering the plan approved under section 471 of the Act, or any other public agency with whom the title IV-E agency has made an agreement which is in effect.

A major responsibility in placement and care is the development of an individual case plan for the child, including periodic review of the appropriateness and suitability of the plan and the foster care placement, to ensure that proper care and services are provided to facilitate return to the child's own home or to make an alternative permanent placement. The case plan activities, such as assessing family strengths and needs, identifying and using community resources, and the periodic review and determination of the continued appropriateness of placement, and the efforts to finalize a permanency plan may be carried out by agencies from which services are purchased. However, the ultimate responsibility for ensuring that there is an appropriate plan of care, case review, and activities to improve the home of the child or identify and work toward a permanency plan for the child remains with the title IV-E agency identified in the title IV-E plan as having responsibility for the placement and care of the child. Thus, the title IV-E agency must actively supervise the various activities performed by the contractor or other agency. This supervision includes case plan

assessment and case review functions and adherence to the requirements of the Act, Federal rules, regulations and policy interpretations in operation of the foster care maintenance program. The title IV-E agency is ultimately responsible for proper operation of the foster care program.

Although responsibility for placement and care generally is associated with child custody, custody of the child is not a requirement of Federal law or policy under title IV-E and the title IV-E agency need not be given custody, but must be given responsibility for placement and care of the child. Custody may be retained by the court or be given to a private nonprofit agency. However, the title IV-E agency administering the title IV-E plan or another public agency with which the title IV-E agency has a currently effective agreement can be given "responsibility for placement and care" in order to claim FFP for foster care costs under this program.

- **Source/Date:** ACYF-CB-PIQ-82-07 (8/25/82); (3/2/20)
- **Legal and Related References:** Social Security Act - sections 471, 472, and 479B

2. Question: Can foster care payments under title IV-E be made on behalf of a child initially placed under the care of another public agency (and no inter-agency agreement exists), when and if the responsibility for the placement and care of the child is later transferred to the title IV-E agency?

Answer: Yes. Section 472(a)(2)(B) of the Social Security Act (the Act) does not require that the child's placement and care be the initial responsibility of the title IV-E agency, nor does it conversely prohibit a subsequent transfer from another public (or private) agency to the title IV-E agency from triggering eligibility for foster care payments for an otherwise eligible child. When all eligibility criteria in section 472(a) are met, a title IV-E agency may claim FFP from the first day of placement in the month in which all eligibility criteria have been met. FFP may not be retroactive to the time of removal.

Once the responsibility for placement and care has been given to the title IV-E agency, all of the title IV-E plan requirements in sections 471(a)(15) and (16) of the Act are applicable, including the title IV-E case plan and case review requirements.

- **Source/Date:** ACYF-CB-PIQ-87-03 (6/1/87); (3/2/20)
- **Legal and Related References:** Social Security Act - sections 471, 472, and 479B

3. Question: The regulations at 45 CFR 1356.21(g)(3) specify that Federal financial participation (FFP) for title IV-E foster care maintenance payments may not be claimed when a court orders a placement with a specific foster care provider. In situations where the court specifies the placement in a court order after hearing testimony from various sources, including the title IV-E agency, is FFP available? Is availability of FFP affected when the court disagrees with the agency's placement recommendation and specifies another placement in the order?

Answer: Title IV-E requires, as a condition of eligibility, that a child's placement and care responsibility be vested either with the title IV-E agency, or another public agency with which the title IV-E agency has an agreement. The purpose of the regulatory provision in question is to assure that the authority of the title IV-E agency with placement and care responsibility for the child is not usurped. A "court-ordered" placement, as prohibited in the rule, involves the court taking placement and care responsibility away from the agency and assuming placement and care responsibility by choosing the child's placement without bona fide consideration of the agency's recommendation regarding placement. This does not mean that the court must always concur with the agency's recommendation in order for the child to be eligible for title IV-E foster care payments. As long as the court hears the relevant testimony and works with all parties, including the agency with placement and care responsibility, to make appropriate placement decisions, we will not disallow the payments. The prohibition in the rule also does not apply to situations where the court merely names the child's placement in the court order as an endorsement or approval of the agency's placement choice.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00); (3/2/20)
- **Legal and Related References:** Social Security Act - section 472 and 479B; 45 CFR 1356.21(g)(3)

4. Question: Does responsibility for placement and care of the child as used in section 472(a)(2)(B) of title IV-E of the Social Security Act (the Act) equate with custody?

Answer: Not necessarily. The title IV-E foster care program requires, as a condition of eligibility, that a child's placement and care responsibility be vested either with the title IV-E agency or another public agency with which the title IV-E agency has a bona fide agreement pursuant to section 472(a)(2)(B)(ii) of the Act. The term placement and care means that the title IV-E agency is legally accountable for the day-to-day care and protection of the child who has come into foster care through either a court order or a voluntary placement agreement. Sometimes this responsibility translates to "custody" or "care and control" of the child via a court order, but custody is not a title IV-E requirement. Placement and care responsibility allows the title IV-E agency to make placement decisions about the child, such as where the child is placed and the type of placement most appropriate for the child. It also ensures that the title IV-E agency provides the child with the mandated statutory and regulatory protections, including case plans, administrative reviews, permanency hearings, and updated health and education records.

- **Source/Date:** ACYF-CB-PIQ-82-07 (8/25/82); 6/23/03; (3/2/20)
- **Legal and Related References:** Social Security Act - sections 471, 472, and 479B