

Child Welfare Policy Manual

Questions & Answers

8.3A.8c TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Facilities requirements, licensing

1. Question: Can the State waive some foster home standards or criteria for licensure or approval of relative foster homes?

Answer: Yes, in certain situations. In order to meet the requirements of section 471 (a)(10) of the Social Security Act, the State licensing authority must be responsible for establishing standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations.

However, special situations may arise where there are grounds for waiving a requirement for an individual relative/foster parent on behalf of a foster child. For example, a relative's dwelling may contain 10% less square feet than necessary to meet normal licensing standards. In these exceptional circumstances, the reason for the waiver must be documented in the licensing/approval record for the foster home and the certification of licensure/approval must indicate its applicability only to the specific relative child.

All foster care licensing standards should provide equal protection in terms of safety, sanitation, civil rights, and admission policies (where applicable) for all children in care, regardless of their special situations. Children living in the homes of relatives are entitled to no less protection than children living in non-relative foster homes.

- **Source/Date:** ACYF-CB-PIQ-85-11 (11/21/85)
- **Legal and Related References:** Social Security Act - sections 471 (a)(10), and 472 (c)

2. Question: Must a foster home be licensed by the State or by a State-certified child placement agency for title IV-E payments to be properly made?

Answer: No. Although Federal financial participation (FFP) is available for the costs of foster care maintenance only in licensed or approved foster homes or child care institutions, the statute does not limit licensing authority to the State or a State-certified child placement agency. Foster care facilities may be licensed by the State agency responsible for licensing, by other agencies under contract with the title IV-B/IV-E agency, or by Indian Tribal licensing authorities.

The statute at section 472 does not mention Indian Tribes; however, the regulation at 45 CFR 1355.20, in defining "foster family home," makes clear that with respect to foster family homes on or near reservations, such homes may be licensed or approved by the Tribal licensing or approval authority(ies). The Indian Child Welfare Act of 1978 at 25 U.S.C. 1931 (b) expressly provides that, for purposes of qualifying for Federal funds under any Federally assisted program, " . . . licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State." In *Native Village of Stevens v. Smith*, 770 F.2d 1486 (9th Cir., 1985), the Court held that: "Congress clearly intended by this section 1931(b) that tribal approval be recognized as equivalent to State licensing or approval." *Stevens* at 1488.

- **Source/Date:** ACYF-CB-PIQ-87-01 (3/25/87)
- **Legal and Related References:** Social Security Act - section 472; 45 CFR 1355.20; 25 U.S.C. of the Indian Child Welfare Act

3. Question: Must a Tribal foster home meet State licensing standards or be a "relative home" in order to be eligible for payments under title IV-E?

Answer: Foster homes on or near an Indian reservation or "relative homes" must meet either State licensing standards or Indian Tribal licensing standards.

- **Source/Date:** ACYF-CB-PIQ-87-01 (3/25/87); Preamble to the Final Rule (65 FR 4020) (1/15/00)
- **Legal and Related References:** Social Security Act - section 471 (a)(10); 45 CFR 1355.20; 25 U.S.C. of the Indian Child Welfare Act

4. Question: Both sections 401 (c)(1)(A) and 411 (c)(1)(A) of the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) define Federal, State, and local public benefits to include professional or commercial licenses. Is a foster care or adoptive home license/approval considered a Federal, State, or local public benefit?

Answer: No. Foster care and adoptive home licenses/approvals are not considered a Federal, State or local public benefit under sections 401(c)(1)(A) and 411(c)(1)(A) of PRWORA because they are not professional or commercial licenses.

- **Source/Date:** ACYF-CB-PIQ-99-01 (1/14/99)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) (PL 104-193)

5. Question: May a State maintain separate systems that "license" one category of foster family homes, e.g., non-relatives, and "approves" another category, e.g., relatives, as long as both systems adhere to the same standards?

(Deleted 07/17/2024)

6. Question: The regulations permit States to claim title IV-E reimbursement made for children placed in foster family homes for a period of time, up to 60 days, between the date the foster family homes meets all the licensing or approval criteria and the date the agency issues the license or approval. When does the 60-day period begin?

Answer: We recognize that certain administrative procedures may delay the actual issuance of a license beyond the date that all of the required documentation is received by the agency. The 60-day period begins when the agency has, in hand, all of the documentation required to issue a license, based on full compliance with the agency's licensing standards.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1355.20

7. Question: We understand the prohibition on claiming FFP for title IV-E foster care maintenance payments on behalf of children placed in foster family homes that are not fully licensed or approved. In situations where a foster home that has a full license or approval is placed on "probation" due to some factor that must be corrected, but maintains the license or approval during the probationary period, can the State claim FFP under title IV-E during the probationary period?

Answer: The purpose of requiring full licensure or approval of all foster family homes is to assure that the State's licensure or approval standards, including those that protect the health and safety of children, are applied to all foster homes that care for children. If a foster family home is placed on probation due to lack of compliance with a licensing or approval standard, the State may not claim FFP for foster care maintenance payments during the time that the foster home does not comply with the standards. However, if the home meets all of the licensure or approval standards but is on probation only in the sense that it is a newly licensed home requiring more frequent supervision by the agency, the period of probation would not preclude title IV-E foster care payments being made on behalf of an eligible child in the home.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 471 (a)(10); 45 CFR 1355.20

8. Question: What is an example of a two-tiered system of licensing, and how does that apply to training foster families?

Answer: A two-tiered system of licensing is one in which different licensing standards are applied to different groups of foster family homes. For example, different standards for related foster family homes and non-related foster family homes, as well as for "provisional"

foster family homes that have not yet met all required standards for full licensure, are two-tiered systems. If a State maintains certain training requirements as a standard to be met for full licensure, the standard must be applied to all foster family homes licensed or approved by the State.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 471 (a)(10); 45 CFR 1355.20

9. Question: By what authority are Tribes restricted to licensing homes that are on or near Indian reservations?

Answer: Section 1931 of the Indian Child Welfare Act (ICWA) authorizes Indian tribes and tribal organizations to establish and operate child and family services programs "on or near reservations," including a system for licensing or otherwise regulating Indian foster and adoptive homes. We use this language at section 1355.20 of the regulations to remain consistent with the ICWA.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - 45 CFR 1355.20; 25 U.S.C. of the Indian Child Welfare Act

10. Question: Must foster family homes approved through the tribal process meet the same standard as homes licensed by the State?

Answer: The definition of "foster family home" at section 1355.20 of the regulations gives tribal licensing or approval authorities the jurisdiction to license or approve homes that are on or near Indian reservations. This is consistent with the Indian Child Welfare Act at section 1931(b) which states that for purposes of qualifying for funds under a Federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe is equivalent to licensing or approval by a State. The authority to license or approve includes the authority to set standards.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - 45 CFR 1355.20; 25 U.S.C. of the Indian Child Welfare Act

11. Question: Licenses for foster family homes and child-care institutions often go into effect or may lapse on a day other than the first or last day of the month. How should the State claim Federal financial participation (FFP) for a title IV-E eligible child who is placed in a foster family home or child-care institution that is licensed for a portion of a month?

Answer: If a foster family home or child-care institution is licensed for a portion of a month, the State may claim FFP for the entire month when an otherwise eligible child has resided in that home for the entire month. The State must prorate any claims when the otherwise eligible child has resided in the home or institution for a portion of the month.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 471 (a)(10)

12. Question: Can a State claim title IV-E reimbursement for an eligible child placed in a child-care institution that has a provisional license? Can the State claim title IV-E if the child care institution has a probationary license due to a violation of State procedures?

Answer: If a child-care institution is granted a provisional license or placed on probationary status due to its failure to fully satisfy all of the State's licensing standards, then children placed in such facility are not eligible for title IV-E foster care maintenance payments. The child-care institution becomes eligible for Federal financial participation when it comes into full compliance with the State's licensing standards.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 471 (a)(10)

13. Question: Does the law require that licensed child-placing agencies in a State use the same foster home licensing standards as the State?

Answer: Yes. Section 471(a)(10) of the Act requires that the State licensing authority establish licensing standards and apply those standards to any foster family home or child care institution receiving funds under titles IV-B or IV-E of the Act. Furthermore, 45 CFR 1355.20 requires a State to apply the foster care licensing standards to all foster family homes for which it claims Federal financial participation. The only exception to these requirements is for foster family homes on or near Indian reservations, which may be licensed or approved in accordance with standards established by the tribal licensing or approval authority. The fact that a child-placing agency is conducting licensing activities on behalf of a State does not diminish the requirement for the State to apply the licensing standards equally to all foster family homes. Failure of the State to comply with this requirement will be considered a State plan compliance issue.

The law does not preclude the State or child-placing agency from establishing additional criteria above and beyond basic State licensing requirements for different levels of care to meet children's needs. For example, the State may license or approve all foster family homes according to the same minimum standards but require additional criteria for foster families that will provide therapeutic care or care for fragile children with special medical needs. As long as the State or child-placing agency adheres to the State's basic licensing standards, the State meets the requirements of section 471(a)(10) of the Act.

- **Source/Date:** 8/16/02
- **Legal and Related References:** Social Security Act section 471(a)(10); 45 CFR 1355.20

14. Question: May a State claim title IV-E reimbursement on behalf of an otherwise eligible child when a State's licensure requirements are met as the result of a "variance"?

Answer: Under specific circumstances, a State may claim title IV-E reimbursement on behalf of an otherwise eligible child when a State's licensure requirements are met through a ?variance?. For title IV-E purposes, a ?variance? is a mechanism that allows the State to meet a standard for licensure in a way other than is specified in the rule that governs licensure in that State. A ?variance? is acceptable on a case-by-case basis only if the State has the authority to permit "variances", the purpose of the State's licensing standard is achieved, and the safety of the child is maintained. A ?variance? constitutes an alternative equivalent method to meet the standard. For example, a "variance" may be granted when a foster family's well does not have potable water, and the family purchases bottled water for drinking. The State's "variance" from the original rule still meets the State's licensing requirement that the home is able to provide safe drinking water.

- **Source/Date:** September 29, 2005
- **Legal and Related References:** 45 CFR 1355.20(a)

15. Question: May a State claim title IV-E foster care maintenance payments on behalf of an otherwise eligible child who is in a pre-adoptive placement with an adoptive family if the family does not meet the State's foster care license/approval requirements but does meet the State's adoptive home license/approval requirements?

Answer: No. The State may not claim title IV-E foster care maintenance payments for the child because the child is not in a licensed/approved foster family home as required in section 472(b)(1) of the Social Security Act (the Act). Although the child is in a home that meets the State's adoptive home approval requirements, the requirement in section 472(b)(1) of the Act that the child be placed in a licensed/approved foster family home is not met.

However, if the child meets the adoption assistance eligibility requirements in section 473(a)(2) of the Act, the State may claim for title IV-E adoption assistance payments paid on the child's behalf once an adoption assistance agreement has been signed by all parties prior to finalization.

- **Source/Date:** April 6, 2006
- **Legal and Related References:** Social Security Act - sections 472(b) and 473(a)

16. Question: In response to a question about foster care provider licenses that go into effect or lapse on a day other than the first or last day of the month, section 8.3A.8c of the Child Welfare Policy Manual (CWPM), Q/A #11, states that "[i]f a foster family home or child-care institution is licensed for a portion of a month, the State may claim Federal financial participation (FFP) for the entire month when an otherwise eligible child has resided in that home for the entire month." Does this same policy apply in situations where a foster care provider's license is revoked at some point during the month?

Answer: No. Although it has been long-standing policy that FFP can be claimed from the first day of placement in the month in which all eligibility criteria have been met, such policy does not extend to situations in which a foster care provider's license or approval has been revoked. Revocation of a license/approval implies that the State has rescinded, withdrawn or otherwise invalidated the provider's license or approval. Therefore, instead of the Q/A referred to in the question, section 8.3A.8c of the CWPM, Q/A #7, more appropriately applies to this circumstance. This Q/A responds to a question about whether FFP can be claimed in situations where a fully licensed foster home has been placed on probation. The response, in part, states that, "[i]f a foster family home is placed on probation due to lack of compliance with a licensing or approval standard, the State may not claim FFP for foster care maintenance payments during the time that the foster home does not comply with the standards." Accordingly, a State cannot claim FFP for foster care maintenance payments beyond the date of revocation of a foster care provider's license or approval. A State may, however, claim a full month of administrative costs in accordance with the State's cost allocation plan.

- **Source/Date:** 8/7/2006
- **Legal and Related References:** 45 CFR 1355.20 (definition of *foster family home*); Child Welfare Policy Manual, Section 8.3A.8c, Q/A #7 and Q/A #11

17. Question: May a State claim administrative costs during the unlicensed period that a child is placed in a foster family home whose license has expired, but is in the process of renewal?

Answer: Under certain circumstances, it is possible that the State may claim administrative costs in this situation. Please see section 8.3A.8c, question 11 of the Child Welfare Policy Manual in which we allow the State to claim administrative costs for the entire month when an otherwise eligible child has resided in a home for the entire month, even if it is only licensed for a portion of the month. Furthermore, if the State's policies allow an expired license to remain in effect until renewed, the child placed in such a home is considered placed in a licensed foster family home, and the State may claim Federal Financial Participation (FFP) during that period. If, however, the State does not consider the expired license to remain in effect, the State may not claim FFP from the beginning of the month after the license expired until the beginning of the month in which the license is re-issued.

- **Source/Date:** 04/26/07
- **Legal and Related References:** Social Security Act § section 471(a)(10), Child Welfare Policy Manual § section 8.3A.8c, question 11

18. 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)

19. Question: If a State's license or approval of a private child-placing agency expires but that agency continues to license/approve foster family homes on behalf of the State, will the Administration for Children and Families (ACF) consider such homes fully licensed or approved according to State standards for title IV-E eligibility purposes?

Answer: Section 472(c) of the Social Security Act (the Act) requires a foster family home to be licensed or approved in accordance with section 471(a)(10) of the Act by the agency of the State that has responsibility for licensing such homes. Therefore, as long as the State considers the foster family home licensed, ACF will consider the title IV-E eligibility requirement met.

- **Source/Date:** 12/31/07

- **Legal and Related References:** Social Security Act § sections 471(a)(10) and 472(c)

20. Question: Are title IV-E agencies required to include the reasonable and prudent parent standard in foster care licensing standards (as defined in section 475(10) of the Social Security Act (the Act) and referenced in section 471(a)(10) of the Act regarding the licensing standards)? And are foster parents and designated officials for a child care institution then required to apply it?

Answer: Yes to both questions. Section 471(a)(10) of the Act requires title IV-E agencies to amend their standards for foster care to permit caretakers to use the reasonable and prudent parenting standard, and foster parents and designated officials for a child care institution must apply the standard as described in law at section 475(10)(A) of the Act. Specifically, the Act defines "reasonable and prudent parent standard" to mean "the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care...to participate in extracurricular, enrichment, cultural, and social activities."

- **Source/Date:** 6/5/2015
- **Legal and Related References:** Social Security Act – sections 471(a)(10), 475(10)

21. Question: Under section 471(a)(10)(B) of the Act, there must be at least one "onsite official...designated to be the caregiver who is authorized to apply the reasonable and prudent parent standard" as a condition of a contract the title IV-E agency enters into with a child care institution. May the onsite official(s) be someone affiliated with the child's case (such as the child care institution's case manager for the child)?

Answer: Yes. Officials of the child care institution affiliated with the child's case, such as the child care institution's case manager, may be a designated "onsite" official. The person must be trained in how to use and apply the reasonable and prudent parent standard in the same manner as prospective foster parents are trained.

- **Source/Date:** 8/26/15
- **Legal and Related References:** Social Security Act - Section 471(a)(10)(B)

22. Question: What is the definition of "relative" for the title IV-E program?

Answer: Except where the title IV-E statute directly references the definition of relative under the former Aid to Families with Dependent Children (AFDC) program, title IV-E agencies have the discretion to define the term "relative" for the purposes of title IV-E. Specifically, title IV-E agencies must use the definition of "specified relatives" as described in section 406(a) of the Social Security Act (the Act) as in effect on July 16, 1996, and implemented in 45 CFR 233.90(c)(1)(v) for the following title IV-E foster care provision:

- Title IV-E foster care maintenance payment eligibility in part depends on whether a child would have received AFDC in the home of a “specified relative” from which the child was removed in or for the month of removal if the child has lived with the “specified relative” within 6 months of the child’s removal (see section 472(a)(3)(A) of the Act and Child Welfare Policy Manual 8.3A.11, Q/A #4).

Title IV-E agencies have the discretion to define “relative” when it is not otherwise defined by the statute, including under the following provisions:

- A title IV-E agency may define "relative" for purposes of claiming administrative costs for a limited period of time while the relative’s application for licensure or approval as a foster family home is pending, in accordance with 472(i)(1)(A) of the Act. (The child must have been removed from the home of a “specified relative” in order to be eligible for this administrative cost claiming.)
- A title IV-E agency may define “relative” for purposes of waiving non-safety licensing standards for relatives permitted under section 471(a)(10)(D) of the Act.
- A title IV-E agency has discretion to define the term “relative” for the purposes of the Title IV-E Kinship Guardianship Assistance Program. This means that the Children’s Bureau will accept a title IV-E plan or amendment that contains a reasonable interpretation of a relative, including a plan that limits the term to include biological and legal familial ties or a plan that more broadly includes Tribal kin, extended family and friends, or other “fictive kin” (see section 471(a)(28), section 473(d) and ACYF-CB-PI-10-11).
- Under the relative notification requirements of section 471(a)(29) of the Act, the title IV-E agency has discretion to determine the scope of the terminology "all other adult relatives." However, to the extent that it is practical, the Children’s Bureau suggests that the agency use the same definition of "relative" for the relative notification provision and the title IV-E kinship guardianship assistance program option (if the agency elects the guardianship option) (see ACYF-CB-PI-10-11).
- A title IV-E agency that elects to develop different licensing or approval standards for relative or kinship foster family homes and non-relative/non-kinship foster family homes under 45 CFR 1355.20 may define “relative” and “kin” when determining to whom they will apply the relative licensing and approval standards. The Children’s Bureau encourages agencies to define relative and kin in a way that is inclusive of tribal custom and adopt a broad definition of relative and kin for purposes of licensing and approval standards.
- A title IV-E agency that elects to claim federal financial participation for allowable administrative costs of independent legal representation provided to the relative caregiver of a child who is eligible for title IV-E foster care under 45 CFR 1356.60(c)(4)(ii), has discretion to define the term “relative.” For example, a title IV-E agency may define relative to include kin and “fictive-kin.” In exercising this discretion, the Children’s Bureau encourages title IV-E

agencies to implement a definition of “relative” that includes a wide range of kinship relationships to support early identification of relatives and kin and to help remove barriers to kinship placements.

- **Source/Date:** 8/8/2024
- **Legal and Related References:** Social Security Act sections 471(a)(10), (28) and (29), 472(a)(3)(A) and (i)(1)(A); 473(d); 45 CFR 233.90(c)(1)(v), 1355.20, and 1356.60(c)(4)(ii); Child Welfare Policy Manual 8.3A.11, Q/A #4 and 8.1B, Q/A #11; ACYF-CB-PI-10-11