

Child Welfare Policy Manual

Questions & Answers

8.4B TITLE IV-E, General Title IV-E Requirements, Aliens/Immigrants

1. Question: Section 403 (a) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (PL 104-193) sets a five year residency requirement for qualified aliens who enter the United States on or after August 22, 1996 and who make application for Federal means- tested programs. Section 403(c)(2)(F) of PRWORA lists those programs that are exempted from section 403(a) to include titles IV-B and IV-E, under certain circumstances; however, title XIX is not on the list of programs exempted from section 403(a) of PRWORA. Title IV-E eligible children are categorically eligible for Medicaid. Must qualified alien children who are eligible for title IV-E meet the five year residency requirement to be eligible for title XIX?

Answer: No. All qualified alien children who are eligible for title IV-E retain their categorical eligibility for Medicaid under title XIX, regardless of how long they have been in the United States. Section 402(a)(3) of the Social Security Act (as amended by PRWORA) requires States to certify, in their Temporary Assistance for Needy Families Plans, that "... the State will operate a foster care and adoption assistance program under the State plan approved under part E, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State plan under title XIX."

The statute makes no distinction between children who are citizens and children who are qualified aliens. Thus, the law requires all title IV-E eligible children to receive medical coverage under title XIX.

- **Source/Date:** ACYF-CB-PIQ-99-01 (1/14/99)
- **Legal and Related References:** Social Security Act - Titles IV-E and XIX; The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

2. Question: Are unaccompanied minor refugee children eligible for title IV-E payments for foster care?

Answer: In order to be eligible for foster care payments under title IV-E any child must meet the requirements of section 406(a) or of section 407 of the Social Security Act (the Act) (as such sections were in effect on July 16, 1996) except for his removal from the home of a relative (specified in section 406(a)), in addition to meeting the other requirements found in

section 472(a) of the Act. If a title IV-E agency is able to document that the child meets the requirements found in the Act, the unaccompanied minor refugee child is eligible for title IV-E payment, provided he/she is a qualified alien.

One of the major problems, however, is that because the child is unaccompanied, documentation is not ordinarily available to substantiate the child's age, financial need, and deprivation of parental support or care by reason of death of a parent, continued absence of the parent from the home, or physical or mental incapacity of a parent (45 CFR 233.90(c)).

In addition, the child must meet the requirements of section 472 (a) of the Act. These requirements include, for example, the existence of a voluntary placement agreement entered into by the child's parent or legal guardian or a judicial determination that continuation of the child in his home would be contrary to his welfare. Another requirement is that the child either received aid under section 402 of the Act (as in effect on July 16, 1996) in the month in which the agreement or judicial determination was made, or would have received aid in or for that month if an application had been made and the child had been living with a specified relative within six months prior to the month in which the agreement was made or the judicial proceeding was initiated.

Therefore, although the unaccompanied minor refugee child may clearly be in need of foster care upon his arrival in this country, he must also meet the eligibility requirements of title IV-E (section 472(a)) if Federal financial participation is claimed by the title IV-E agency. If it can be documented that he meets the requirements, then he would be eligible for title IV-E payments.

The circumstances of a refugee child who comes into the country with his family are different from the unaccompanied child in that the first child is "living with" his family. Assuming the degree of kinship is that cited in section 406(a) of the Act, this accompanied child could later become eligible for title IV-E foster care payments, if all criteria in section 472(a) are met and the documentation of age, need and deprivation can be reviewed in relation to the home (in the U.S.) from which he is removed.

- **Source/Date:** ACYF-CB-PIQ-83-07 (10/24/83); ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13)
- **Legal and Related References:** Social Security Act - sections 406 (a), 407 (as in effect on July 16, 1996) and 472; 45 CFR 233.90

3. Question: It is our understanding that qualified aliens, regardless of whether they entered the United States before or after the date of enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), August 22, 1996, are eligible for Federal foster care maintenance and adoption assistance payments. Is this a correct interpretation?

Answer: Not entirely. If the child is a qualified alien who is placed with a qualified alien or United States citizen, the date the child entered the United States is irrelevant. However, if the child is a qualified alien who entered the United States on or after August 22, 1996 and is placed with an unqualified alien, the child would be subject to the five-year residency requirement for Federal means-tested public benefits at section 403(a) of PRWORA unless the child is in one of the excepted groups identified at section 403(b). As a general matter, we do not expect these situations to arise very often. In the event such situations do arise, State, Tribal or local funds may be used to support these children.

- **Source/Date:** ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13)
- **Legal and Related References:** Social Security Act- sections 472(a)(4) and 473(a)(2)(B); The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

4. Question: Does the welfare reform legislation concerning benefits for immigrants/aliens have any impact on title IV-E eligibility for legal aliens, persons permanently residing under color of law (PRUCOL), etc.?

Answer: Yes. Alien children must be qualified aliens in order to be eligible for title IV-E payments and independent living services. Not all legal aliens or aliens with PRUCOL status necessarily meet the criteria for qualified alien status.

- **Source/Date:** ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13)
- **Legal and Related References:** Social Security Act- sections 472(a)(4), 473(a)(2)(B) and 473(d); The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

5. Question: Does title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) supersede the provision in section 472(a) of the Social Security Act (the Act) which affords title IV-E eligibility to certain alien children who would be otherwise eligible for title IV-E but for their disqualification for the Aid to Families with Dependent Children (AFDC) program due to their alien status?

Answer: Yes. Title IV-E agencies must follow the rule in PRWORA section 401(a) that: "(n)otwithstanding any other provision of law ... an alien who is not a qualified alien ... is not eligible for any Federal public benefit..."

- **Source/Date:** ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13)
- **Legal and Related References:** Social Security Act - section 472 (a); tThe Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

6. Question: Section 108(d) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (as amended by the Balanced Budget Act of 1997, P.L. 105-33) links eligibility for Federal foster care and adoption assistance to the Aid to

Families with Dependent Children (AFDC) program as it was in effect on July 16, 1996. Section 401(a) of PRWORA limits Federal public benefits to "qualified aliens." The term "qualified alien" was not defined or in use on July 16, 1996. How are title IV-E agencies to apply these two provisions?

Answer: Alien children must be eligible for AFDC under a State's July 16, 1996 plan and must also meet the PRWORA definition of "qualified alien" to be eligible for title IV-E foster care maintenance or adoption assistance.

- **Source/Date:** ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13; 3/27/20)
- **Legal and Related References:** Social Security Act - sections 472(a)(4) and 473(a)(2) (B); The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193); Balanced Budget Act of 1997 (PL 105-33)

7. Question: Can an unqualified alien become the foster or adoptive parent of a title IV-E eligible child?

Answer: Yes. However, the unqualified alien foster or adoptive parent of a child who entered the United States on or after 8/22/96 would be eligible to receive title IV-E payments on behalf of the child only if the child is a United States citizen, is in one of the excepted groups at section 403(b) the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), or has lived in the United States as a qualified alien for five years.

This interpretation is consistent with section 401(a) of PRWORA, which requires aliens to be qualified in order to receive Federal public benefits. Foster and adoptive parents are not recipients of Federal foster care and adoption assistance payments; rather, foster care and adoption assistance payments are made on the child's behalf to meet his or her needs.

- **Source/Date:** ACYF-CB-PIQ-99-01 (1/14/99)
- **Legal and Related References:** The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

8. Question: Both sections 401(c)(1)(A) and 411(c)(1)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (PL 104-193) 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:** The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

9. Question: Are title IV-E agencies required to verify the citizenship or immigration status of individuals receiving services or payments under title IV-E?

Answer: Title IV-E agencies are required to verify the citizenship or immigration status of all children receiving Federal foster care maintenance payments, adoption assistance payments, or independent living services.

Title IV-E agencies are not required to verify the citizenship or alien status of foster or adoptive parents, with one exception. Title IV-E agencies must verify the citizenship or immigrant status of potential foster or adoptive parents when placing a qualified alien child who entered the United States on or after 8/22/96 and has been in the United States as a qualified alien for less than five years. In order to be exempt from the five year residency requirement imposed at section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act, a qualified alien child must be placed with a citizen or a qualified alien; hence, citizenship/alien status of prospective foster or adoptive parents must be verified in such circumstances.

- **Source/Date:** ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13)
- **Legal and Related References:** Social Security Act - Title IV-E; The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

10. Question: Can you explain section 472(a)(4) of the Social Security Act (the Act) and how it applies to Aid to Families with Dependent Children (AFDC) eligibility under title IV-E?

Answer: Section 472(a)(4) of the Act is no longer applicable to the title IV-E program. This provision essentially "deemed" certain alien children who were "temporary" legal residents as eligible for AFDC, thereby granting them access to the title IV-E program if other eligibility requirements were met. This provision was made obsolete by title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193). Under PRWORA, a child must be a qualified alien or a citizen in order to receive title IV-E payments. (See Child Welfare Policy Manual section 8.4B Q&A5 and 6).

- **Source/Date:** 12/31/07 (revised 6/6/13)
- **Legal and Related References:** Social Security Act § section 472(a)(4), Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) § section 401(a), Child Welfare Policy Manual section 8.4B Q&A5 and 6

11. Question: May a title IV-E agency claim payments under the title IV-E foster care program for a child in foster care who is not a citizen or qualified alien at removal, but who later secures Special Immigrant Juvenile Status (SIJS) and becomes a qualified

alien?

Answer: No. Section 472(a)(3) of the Social Security Act requires that the child would have been eligible under the former Aid to Families with Dependent Children (AFDC) program in the month of the voluntary placement agreement or court proceedings leading to the removal from the home. A child who was not a citizen or qualified alien at the time of his or her court ordered or voluntary removal would not have been eligible for the former AFDC program. Therefore, the child cannot later become title IV-E eligible even if his/her status changes to one of "qualified alien" during that foster care episode since the child was not AFDC eligible at removal.

- **Source/Date:** 2/24/2011
- **Legal and Related References:** Social Security Act § Section 472(a)(3)

12. Question: Section 471(a)(27) of the Social Security Act (the Act) requires title IV-E agencies to have in effect procedures for verifying the United States (U.S.) citizenship or immigration status of any child in foster care under the responsibility of the State or Tribe. When determining U.S. citizenship for a child in title IV-E foster care under the responsibility of the Tribe, may Federally recognized Tribes use Tribal enrollment cards to verify U.S. citizenship?

Answer: No. A Tribal enrollment card alone is not sufficient to meet the citizenship verification requirement of section 471(a)(27) of the Act. As a general rule, Tribal membership itself does not speak to the citizenship of the individual. The "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996" published in the Federal Register on November 17, 1997 (62 FR 61344) by the Department of Justice should be used as guidance for verifying citizenship.

- **Source/Date:** 05/04/11
- **Legal and Related References:** Social Security Act § section 471(a)(27); 62 FR 61344

13. Question: May a title IV-E agency deny access to services provided under the title IV-E Prevention Program based on the immigration status of the child, parent, or family members?

(New 01/15/2025)

Answer: Title IV-E agencies that choose to operate the title IV-E Prevention Program may not deny children access to these services based on their immigration status or the immigration status of their family members.

The title IV-E Prevention Program is a “federal public benefit” under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) as defined in section 401(c)(1)(B) of PRWORA. PRWORA defines federal public benefits to include “any... welfare, health...or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by any appropriated funds of the United States.” Title IV-E Prevention Services would be considered welfare, health, or similar benefits.

HHS “interpret[s] the phrase ‘individual, household, or family eligibility unit’ to refer to benefits that are (1) provided to an individual, household, or family, and (2) the individual, household, or family must, as a condition of receipt, meet specified criteria (e.g., a specified income level or residency) in order to be conferred the benefit, that is, they must be an ‘eligibility unit.’” (See 63 FR 41658-01; Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) Interpretation of “Federal Public Benefit”). As eligibility for IV-E prevention services is limited to children who meet the requirements of Section 471(e)(2) of the Act as candidates for foster care or pregnant/parenting foster youth, title IV-E prevention services qualify as federal public benefits under PRWORA.

However, PRWORA provides an exception from restrictions on immigrant access to federal public benefits if they fall within the “necessary for the protection of life or safety” exception of 8 U.S.C. § 1611(b)(1)(D) and if they are in-kind services delivered at the community level, which are not conditioned on the recipient’s income or resources. The Attorney General has determined that “services and assistance relating to child protection” fall under the “life or safety” exception to the PRWORA. Order No. 2353-2001, 66 Fed. Reg. 3616 (Jan. 16, 2001). Accordingly, because title IV-E Prevention Program services are services and assistance relating to child protection and meet the other requirements of the Attorney General’s order, they are not subject to the citizenship and qualified alien requirements of PRWORA.

- **Source/Date:** 1/15/2025
- **Legal and Related References:** Social Security Act - Title IV-E; ACYF-CB-IM-98-04; 8 U.S.C. § 1611(a) and (b)(1)(D).; Attorney General Order No. 2353-2001, 66 Fed. Reg. 3616 (Jan. 16, 2001).