Child Welfare Policy Manual

Section 8: TITLE IV-E

8.1. TITLE IV-E, Administrative Functions/Costs

Question 1. Is the cost of conducting criminal records checks for prospective foster and adoptive parents an allowable administrative cost under title IV-E?

Answer

The regulations at section 1356.60(c)(2) allow title IV-E agencies to claim costs associated with recruitment and licensing as administrative costs under title IV-E. Since the criminal records check provision is a condition of licensure or approval, costs associated with criminal records checks for prospective foster and adoptive parents are allowable under title IV-E when claimed pursuant to an approved cost allocation plan or methodology.

Source/Date

Preamble to the Final Rule (65 FR 4020) (6/14/90); (12/17/2019)

Legal and Related References

Social Security Act - section 479B; 45 CFR 1356.30 and 1356.60 (ACYF-CB-PA-90-01)

Question 2. Can a case assessment be considered an allowable administrative cost?

Answer

Yes, a case assessment is an allowable administrative cost in the context of case planning. Section 471(a)(16) of the Social Security Act (the Act) requires the title IV-E agency to develop a case plan as defined at section 475(1) of the Act. The development of and ongoing updates to the case plan are allowable costs pursuant to 45 CFR 1356.60(c)(2)(iv). A critical component of case planning is the worker's assessment of the child and family. A case assessment might consider information regarding psychological, developmental, behavioral and educational factors; explore underlying or disguised issues such as family violence or substance abuse; examine the child and the family's needs, strengths, resources and existing support systems; and explore whether it is safe for the child to remain in or return to the home.

Furthermore, it could include information on the child's past history, current adjustment, direct observations, and family history.

Specialized assessments such as psychiatric, medical or educational assessments are medical or educational services, respectively, and are not, therefore, allowable under title IV-E (45 CFR 1356.60(c) and Child Welfare Policy Manual Section 8.1B). Time spent analyzing specialized assessments to inform the case plan, however, is allowable.

Source/Date

June 27, 2003; (12/17/2019)

Legal and Related References

Social Security Act - sections 471(a)(16), 475(1) and (5), and 479B; 45 CFR 1356.60(c); Child Welfare Policy Manual Section 8.1B

Question 3. May a title IV-E agency use title IV-E administrative funds for such items as beds or smoke detectors to help prospective foster family homes meet licensing standards?

Answer

Yes. A title IV-E agency may claim title IV-E administrative costs for items such as beds, cribs, and smoke detectors that are needed in order to license or approve a foster family home. These costs are closely related to foster family home recruitment, which is an example of an allowable title IV-E administrative cost in 45 CFR 1356.60. In many jurisdictions, there are not enough foster family homes to meet the needs of the children in foster care. Therefore, increasing the number of foster family homes through the allowable use of title IV-E administrative funds is appropriate.

Any such costs must be allocated through an approved cost allocation plan or methodology. Please note that under general appropriations law, the costs of construction and renovation are not allowable without specific affirmative authorization. Title IV-E does not have that affirmative authorization.

Source/Date

06/09/04; (12/17/2019)

Legal and Related References

Social Security Act - sections 474 and 479B; 45 CFR 1356.60(c)(2)(vii)

Question 4. Are the costs of medical exams necessary for a prospective foster parent to obtain and retain a foster family home license or approval an allowable administrative cost under title IV-E?

Answer

Yes. 45 CFR 1356.60(c)(2)(vii) specifically identifies recruitment and licensing of foster family homes as an example of allowable administrative costs necessary for the administration of the foster care program. If medical exams are necessary for prospective foster parents to obtain or retain a foster family home license or approval, then these costs are allowable as they are directly related to the administration of the program.

Any such costs must be allocated through an approved cost allocation plan or methodology.

Source/Date

06/09/04; (12/17/2019)

Legal and Related References

Social Security Act - sections 474 and 479B; 45 CFR 1356.60(c)(2)(vii)

Question 5. May a title IV-E agency that receives a request for an home study from another title IV-E agency pursuant to section 471(a)(26) of the Social Security Act (the Act) claim title IV-E administrative costs to comply with the request?

Answer

Yes. The requirement in section 471(a)(26) of the Act for a title IV-E agency to conduct an home study if requested by another title IV-B agency is a requirement of the title IV-E plan. As such, the costs of performing the home study are 100% allocable to title IV-E and do not have to be allocated to other benefiting programs.

Source/Date

4/24/2007; revised 9/30/2026.

Legal and Related References

Social Security Act § sections 471(a)(26) and 474(a)(3)(E)

Question 6. May a title IV-E agency claim administrative costs on behalf of an otherwise eligible child for an entire month when the child is placed in a licensed or approved foster family home or child care institution for less than

an entire month including when the child moves from a facility not eligible for payments under title IV-E into a licensed or approved foster family home or child care institution?

Answer

Yes. A title IV-E agency may claim administrative costs from the beginning of the month in which the child meets all eligibility criteria, if the criteria are met for the child at any point during that month. The title IV-E agency is not required to prorate administrative cost claims based on the number of days the child is placed in the foster family home or child care institution.

When an otherwise title IV-E eligible child moves from a facility not eligible for payments under title IV-E to a licensed or approved foster family home or child care institution, the title IV-E agency may claim administrative costs in accordance with section 472(i)(1)(B) of the Act: (1) for the full calendar month prior to the month in which the child moved; and (2) for the next full calendar month if the child meets all title IV-E eligibility criteria prior to the end of that month. This is consistent with our administrative cost claiming practice allowing a title IV-E agency to claim title IV-E administrative costs for an entire month if the child is eligible for a portion of the month.

Source/Date

04/26/07; 11/014/07; (12/17/2019); revised 9/30/2026.

Legal and Related References

Social Security Act - sections 472(i)(1)(B), 474(a)(3)(E) and 479B

Question 7. May a title IV-E agency claim title IV-E foster care administrative costs for the identification of sex trafficking and for associated case management as administration in accordance with sections 471(a)(9) and (34) of the Social Security Act (Act)?

Answer

Yes. Allowable costs for title IV-E administration under sections 471(a)(9) and (34) of the Act may be claimed on behalf of any child or youth in the placement, care or supervision of the title IV-E agency who is at-risk of becoming a sex trafficking victim or who is determined as a sex trafficking victim in accordance with section 471(a)(9) of the Act. This includes those individuals not removed from home; those who have run away from foster care and are under age 18 or such higher age elected under section 475(8) of the Act; and youth not in foster care who are receiving services under the Chafee Foster Care Program for Successful Transition to Adulthood (Chafee), and at the option of the agency, youth under age 26 who were or were

never in foster care. In general, the title IV-E administrative costs that are allowable for this population of children and youth to implement these provisions are those necessary for the title IV-E agency to administer the title IV-E plan requirements in sections 471(a)(9) and 471(a)(34) of the Act. This consists of the following activities (or those closely related) that are title IV-E allowable as administration related to victims of sex trafficking beginning in federal fiscal year (FFY) 2015:

- Developing and implementing policies and procedures to identify, document in agency records, and determine appropriate services for victims of sex trafficking;

- Conducting sex trafficking screenings and documenting victims of sex trafficking in agency files;

- Determining appropriate services for individuals identified as such victims, including referrals to services; and

- Completing reports required for law enforcement and ACF of children or youth who the agency identifies as being a sex trafficking victim.

Title IV-E agencies may also claim allowable title IV-E administrative costs on behalf of any child missing from foster care for the purpose of administering section 471(a)(35) of the Act. This would include developing and implementing protocols to locate and assess children missing from foster care, including screening the child to identify if the child is a possible sex trafficking victim.

Since the title IV-E agency is not limited to performing the activities described above on behalf of individuals meeting title IV-E eligibility requirements, there is no need to apply a title IV-E foster care participation rate in allocating allowable administrative costs to the title IV-E foster care program.

Title IV-E funding may not be claimed for the costs of conducting investigations of allegations of sex trafficking or other forms of child abuse or neglect or for providing social services, such as counseling or treatment, to victims of sex trafficking or other children or youth.youth.

Source/Date

8/26/15; (12/17/2019)

Legal and Related References

Social Security Act - Sections 471(a)(9) and (34)

8.1A. TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Adoption Assistance Program

Question 1. What are the allowable administrative costs in the title IV-E Adoption Assistance Program?

Answer

The Social Security Act, at section 474(a)(3), permits title IV-E agencies to be reimbursed at a 50 percent matching rate for the costs of administrative activities as found necessary by the Secretary for the proper and efficient administration of the title IV-E plan.

45 CFR 1356.60(c), entitled "Federal matching funds for other State and local administrative expenditures for foster care and adoption assistance under title IV-E" interprets section 474(a)(3) of the Act. All of the sections of that regulatory section apply to the administrative expenditures of both the Foster Care and Adoption Assistance Programs.

In paragraph (1) of 45 CFR 1356.60(c), certain identified costs are deemed allowable administrative costs of the Adoption Assistance Program under title IV-E. Federal financial participation for these costs may not be claimed under any other section of Federal regulations or Federal program. They are: the determination and redetermination of eligibility; fair hearings and appeals; rate setting; and other costs directly related only to the administration of the adoption assistance program.

In addition, the following administrative costs are also considered to be directly related only to the administration of the Adoption Assistance Program, and are therefore also allowable under 45 CFR 1356.60(c)(1): grievance procedures; negotiation and review of adoption agreements; and post-placement management of subsidy payments.

The following are examples provided by 45 CFR 1356.60(c)(2) of allowable administrative costs considered necessary for the administration of the Adoption Assistance Program for which Federal financial participation may be claimed under title IV-E: recruitment of adoptive homes; placement of the child in the adoptive home; case reviews conducted during a specific preadoptive placement for children who are legally free for adoption; case management and supervision prior to a final decree of adoption; a proportionate share of related agency overhead; referral to services; and development of the case plan.

The following administrative costs are also considered to be necessary for the proper and efficient operation of the Adoption Assistance Program and are therefore allowable under 45 CFR 1356.60(c): home studies, and a proportionate share of the development and use of adoption exchanges.

Attention is also called to paragraph (3) of 45 CFR 1356.60(c) and 45 CFR 1356.60(b)(1)(ii) regarding restrictions on certain types of costs, i.e., social services and limitations on training costs for adoptive parents.

Source/Date

ACYF-CB-PA-83-01 (10/1/80); (12/17/2019)

Legal and Related References

Social Security Act - sections 473, 474, and 479B; 45 CFR 1356.60

Question 2. Under the Adoption Assistance Program, is Federal financial participation (FFP) for administrative costs associated with case review, case management, and supervision prior to a final decree of adoption available only for children in preadoptive placements?

Answer

Yes. Federal financial participation is available in the costs of the administration of the Adoption Assistance Program beginning when the title IV-E agency determines that: (1) an eligible child (section 473(a)) cannot or should not be returned to the home of his parents; (2) the goal for the child is adoption (section 473(c)(1)); and (3) the child has been determined to be a 'child with special needs' (section 473(c)).

In addition, the child must be legally free for adoption and that the goal of adoption must be documented in the case plan for the child and in the report of the periodic review. Case reviews, case management and supervision are allowable costs only when provided on behalf of a child who is already placed in a preadoptive home.

Costs under the Adoption Assistance Program must be directly related to the administration of the Adoption Assistance Program and to children for whom adoption is a definite plan, rather than just a long range goal which may not materialize. Therefore, the child must be in placement in a specific preadoptive home, rather than in a foster care placement where the goal is eventual adoptive placement.

Source/Date

ACYF-CB-PIQ-85-06 (6/5/85); (12/17/2019)

Legal and Related References

Social Security Act - sections 473 and 479B

Question 3. Can a title IV-E agency claim title IV-E administrative costs for activities performed on behalf of a child in a finalized adoption?

Answer

A title IV-E agency may claim Federal financial participation for activities performed on behalf of a child in a finalized adoption that are consistent with 45 CFR 1356.60(c) and the title IV-E agency's approved cost allocation plan or methodology. Under the title IV-E adoption assistance program, a title IV-E agency may claim for administrative activities that occur post-finalization, such as fair hearings and appeals, management of the adoption subsidy, review and renegotiation of the adoption assistance agreement, referral to services, and case management performed to implement an adoption assistance agreement.

Furthermore, if the title IV-E agency determines that the adoptive placement is in jeopardy and demonstrates that the adopted child is a candidate for foster care, the title IV-E agency may claim allowable title IV-E administrative costs under the foster care program for activities performed on behalf of the child as a candidate.

Source/Date

8/16/02; (12/17/2019)

Legal and Related References

Social Security Act - sections 474(a)(3)(B) and 479B; 45 CFR 1356.60(c); CWPM Sections 8.1A, 8.1B and 8.1D

8.1B. TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program

Question 1. Please clarify those pre-placement administrative activities that are considered a service and, therefore, not claimable under title IV-E foster care administration from those that are allowable administrative functions.

Answer

A title IV-E agency may claim for any allowable title IV-E foster care administrative cost that comports with or is closely related to one of the listed activities at 45 CFR 1356.60(c)(2). Allowable title IV-E foster care administrative costs related to pre-placement activities may include the determination of eligibility, preparation for placement, placement and referral costs before the child is placed in foster care.

The administrative costs of referral to service providers (45 CFR 1356.60(c)(2)(i)) are only for those referrals specifically designed to further the statutory goal of reasonable efforts to prevent removal in section 471(a)(15)(B)(i) of the Social Security Act. Referral to services is limited to the activities of the caseworker and the caseworker's supervisor and does not include investigations or physical or mental examinations or evaluations. The costs of services related to the prevention of placement are not foster care administrative costs and are therefore not reimbursable under the title IV-E foster care program. A title IV-E agency's cost

allocation plan or methodology must identify the costs that are allocated and claimed under the program.

Costs that are not reimbursable as title IV-E foster care administrative costs (under 45 CFR 1356.60(c)(3)) include those for social services which provide counseling or other treatment to the child, his family, or foster family. Examples of non-reimbursable services include counseling, homemaker or housing services and assisting in reuniting families. These services are not reimbursable regardless of the credentials or training of the provider, e.g., these services provided by a caseworker are unallowable. Further, they are not reimbursable regardless of whether they are provided on a single occasion or as part of a series.

Allowable costs associated with preparation for and participation in judicial determinations (45 CFR 1356.60(c)(2)(ii)) such as a determination that to remain in the home would be contrary to the child's welfare, and a determination that the agency made reasonable efforts to finalize a permanency plan, are limited to the preparation of reports to the court and participation in court proceedings by title IV-E agency's (and if applicable, the tribe or other public agency's) personnel.

Source/Date

ACYF-CB-PA-85-01 (11/18/85); ACYF-CB-PA-87-05 (10/22/87); 7/7/2006; (12/17/2019); revised 9/30/2026.

Legal and Related References

Social Security Act - sections 471(a)(15)(B)(i), 474 and 479B; 45 CFR Part 1356.60

Question 2. May we claim Federal financial participation (FFP) for the cost of conducting title IV-E eligibility determinations even for children who are not found to be title IV-E eligible?

Answer

Yes. The determination and redetermination of eligibility (45 CFR 1356.60(c)(l)) are considered necessary administrative activities in the title IV-E foster care program. Therefore, a title IV-E agency may claim reimbursement for the costs of all determinations and redeterminations of eligibility for title IV-E foster care. These may include negative as well as positive eligibility determinations.

Reimbursement for eligibility determination activities is limited to costs involved in the actual verification and documentation of eligibility and may not include the costs of other activities such as judicial determinations, placement of the child or periodic court or administrative reviews. The activities of staff whose responsibilities extend beyond eligibility determination for title IV-E must be allocated to the appropriate program; e.g., foster care maintenance, food stamps, or title XIX medical assistance.

Source/Date

ACYF-CB-PA-87-05 (10/22/87); (12/17/2019)

Legal and Related References

Social Security Act - sections 474 and 479B; 45 CFR Part 1356.60; DHHS Grant Appeals Board Decision No. 844

Question 3. May the title IV-E agency claim administrative costs for the child of a minor parent?

Answer

When a child is placed with his/her minor parent, no administrative costs may be claimed on her/his behalf because s/he is not eligible for nor a recipient of title IV-E foster care maintenance payments. The title IV-E agency is merely increasing the amount of the title IV-E foster care maintenance payment made on behalf of the eligible minor parent to accommodate the board and care of the child. In situations where the eligibility of the minor parent and his/her infant is determined separately and the two are placed separately, the title IV-E agency may claim administrative costs for the child because s/he is eligible for and receiving title IV-E maintenance payments in her/his own right.

Source/Date

Questions and Answers on the Final Rule (65 FR 4020) (1/25/00); (12/17/2019)

Legal and Related References

Social Security Act - sections 475(4) and 479B

Question 4. Can administrative costs for processing and management of foster child health care services be claimed against title IV-E?

Answer

No. In accordance with sections 474(a)(3) and 475(4) of the Social Security Act and 45 CFR 1356.60(c), administrative costs for the processing and management of health care services for foster children under title IV-E are not allowable.

Section 475(4) defines "foster care maintenance payments" as payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, and a child's personal travel to the child's home for visitation. The provision of health care services is not included in that definition and therefore is not an allowable cost item under title IV-E. Allowable administrative costs are only those

administrative expenditures necessary for the proper and efficient administration of the title IV-E plan.

Source/Date

ACYF-CB-PIQ-85-05 (4/12/85); (12/17/2019)

Legal and Related References

Social Security Act - sections 474(a)(3), 475(4), and 479B; 45 CFR 1356.60(c)

Question 5. Is it permissible for a title IV-E agency to identify court activities related to title IV-E eligible children and claim title IV-E reimbursement on behalf of the court? Such activities might include docketing of the cases, the time of court staff assigned to review "reasonable efforts" made by the title IV-E agency, clerical support, the time spent by referees with title IV-E cases, and expenses such as supplies, space and utilities.

Answer

No. Section 474(a)(3) of the Social Security Act (the Act) provides for Federal matching for administrative expenditures; section 471(a)(2) of the Act specifies that the responsible title IV-E agency shall administer the title IV-E plan. Accordingly, a title IV-E agency may not claim reimbursement for administrative costs under title IV-E for activities being performed by the court.

With respect to the activities described in the question, docketing of cases is a required court activity, not a title IV-E agency function. The time of court staff assigned to review "reasonable efforts" made by the title IV-E agency is likewise a required court activity, and not a title IV-E agency function. In this regard, the title IV-E agency is required by section 471(a)(15) of the Act to provide "reasonable efforts" prior to the placement of a child in foster care to eliminate the need for removal of the child from his home and, when removal is necessary, to provide "reasonable efforts" to make it possible for the child to return home or to make and finalize an alternate permanent living arrangement for the child. The court is required by section 472(a)(2)(A)(ii) of the Act to determine if the title IV-E agency, in fact, has made "reasonable efforts" to keep the child in his home.

Thus, activity related to the "reasonable efforts" determination to be made by the court would not be considered an administrative cost that is reimbursable by the title IV-E agency on behalf of the court. Associated clerical and overhead expenses are similarly unallowable.

Source/Date

ACYF-CB-PIQ-92-03 (7/17/92); (12/17/2019)

Legal and Related References

Social Security Act - sections 471, 472, 474, and 479B

Question 6. How should the costs of foster parent insurance be claimed, as maintenance payments or as administrative expenditures subject to reimbursement? What types of insurance costs are allowable? Is liability insurance sometimes considered a service? What should be included in the definition of "liability insurance"?

Answer

Section 475(4) of the Social Security Act, by including "liability insurance with respect to a child" in the definition of foster care maintenance payments, gives title IV-E agencies the option of considering insurance for foster parents as a direct foster care maintenance cost or as an administrative cost of the foster care maintenance program under title IV-E.

Some title IV-E agencies include payment for insurance coverage in the monthly foster care payment to foster parents; others provide the protection through a group insurance policy or through the title IV-E agency's self-insuring procedures. Using self-insurance, the title IV-E agency may be able to provide broad coverage at low cost.

Foster parent insurance should include coverage of damages by a foster child to the home or property of the foster parents and of harm done by a foster child to another party.

Source/Date

ACYF-CB-PIQ-82-04 (1/29/82); (12/17/2019)

Legal and Related References

Social Security Act - sections 475(4) and 479B

Question 8. There appears to be no agreement between insurers on the meaning of "liability insurance". Is the interpretation to include coverage of damages to the home or property of the foster parents as well as coverage for harm done by the child to another party, or accidental harm done by the foster parents to the child?

Answer

The terminology may be misleading, because foster parents are interested in more than "liability insurance". The correct interpretation includes coverage of damages to

the home or property of the foster parents, as well as liability for harm done by the child to another party. In addition, protection against suit for possible malpractice or situations such as alienation of affection are often realistic concerns of persons who care for the children of others.

Several States have responded to these concerns by providing coverage for foster parents under a "pooled" liability program which provides in effect a self-insurance for departments of State government. Other States have legislated or otherwise defined foster parents as employees or as persons acting on behalf of the State, thus providing protection to those persons for claims made against them as agents of the State. Some States have purchased insurance coverage for foster parents, although the policies available often do not cover all of the risks incurred.

Source/Date

ACYF-CB-PIQ-82-04 (1/29/82)

Legal and Related References

Social Security Act - sections 424(a) and (c), 475 (4)

Question 10. Please provide some guidance with respect to the allowable costs for candidates for foster care.

Answer

Pursuant to section 472(i) of the Social Security Act (the Act) a title IV-E agency may make claims for candidates for foster care for any allowable title IV-E administrative cost that comports with or is closely related to the activities listed at 45 CFR 1356.60(c)(2).

Consistent with the law, existing policy and DAB decisions (see DAB Decision Nos. 844 and 1428), pre-placement administrative functions for which title IV-E agencies wish to claim FFP must be "closely related" to the administrative cost items specified at 45 CFR 1356.60. Further, the administrative costs of referral to service providers (45 CFR 1356.60(c)(2)(i)) are for those referrals specifically designed to further the statutory goal of section 471(a)(15)(B)(i) of the Act (reasonable efforts to prevent removal) and are limited to the activities of agency staff in the referral process only.

Allowable costs of preparation for and participation in judicial determinations (45 CFR 1356.60(c)(2)(ii)) are limited to those costs related to preparation of reports to the court and participation in court proceedings by title IV-E agency personnel.

Title IV-E administrative costs claimed on behalf of foster care candidates are subject to the same limitations that are in place when such cost items are claimed for children in foster care. For example, investigating claims of child abuse/neglect,

physical/mental examinations or evaluations, and completing case progress notes with regard to the delivery of services are not allowable title IV-E administrative functions. Nor do the actual services delivered to foster care candidates in compliance with the reasonable efforts requirements qualify as title IV-E administrative costs.

Source/Date

ACYF-CB-PA-87-05 (10/22/87); ACYF-CB-PA-01-02 (7/3/01); 7/7/2006; (12/17/2019)

Legal and Related References

Social Security Act - sections 471(a)(15)(B)(i), 472(i)(2), and 479B; 45 CFR 1356.60; Departmental Appeals Board Decision Nos. 844 and 1428; ACYF-CB-IM-06-02

Question 12. May we claim Federal financial participation (FFP) for the administrative costs of otherwise title IV-E eligible children who are placed in public child care institutions that accommodate more than 25 children?

Answer

In general, no. Section 472(c)(2) of the Social Security Act specifically excludes public child care institutions that accommodate more than 25 children from the definition of "child care institution" therein, making such facilities unallowable under title IV-E. Therefore, a child placed in a public child care institution that accommodates more than 25 children is not eligible for title IV-E, and thus the title IV-E agency may not claim administrative costs on his/her behalf. Nor may the title IV-E agency consider such child to be a candidate for the purpose of claiming title IV-E administrative costs because such child has been removed from the home.

Source/Date

ACYF-CB-PA-01-02 (7/3/01); 7/17/2006; (12/17/2019); revised 9/30/2026.

Legal and Related References

Social Security Act - sections 472(c)(2), 472(i)(1)(B), and 479B; Section 8.1 of the Child Welfare Policy Manual

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Question 14. May a State claim title IV-E administrative funds for the cost of conducting child and family services (CFS) reviews and title IV-E eligibility reviews?

Answer

Yes, however, a State that seeks to charge the allowable portion of the costs of conducting a CFSR to title IV-E must first amend its cost allocation plan to include CFSR activities. The State must, pursuant to 2 CFR Parts 200 and 300, allocate the costs of the CFSR across benefiting programs and may then charge the portion claimable under title IV-E at the 50 percent rate for Federal financial participation (FFP). Conducting a child and family services review includes preparation for and completion of the statewide assessment, preparation for and the execution of the on-site portion of the review, and developing and implementing a program improvement plan. All costs for a State to prepare and conduct a title IV-E eligibility review, as well as any required PIP development costs, are 100 percent allocable to title IV-E administration. The costs associated with approved PIP activities are also eligible for 100 percent allocation to title IV-E administration. A State should, however, separately allocate costs qualifying as title IV-E training (in accordance with all applicable regulations) for claiming at the 75 percent rate of FFP.

Note: This answer previously referenced 45 CFR Part 75. However, 2 CFR Parts 200 and 300 supersede 45 CFR Part 75 effective October 1, 2025.

Source/Date

August 16, 2002 (revised 11/2/2016, 81 FR 3022, Jan. 20, 2016), (revised 10/1/25, 89 FR 80055, Oct. 2, 2024)

Legal and Related References

Social Security Act section 474(a)(3); 45 CFR 1355.20, 33, and 35; 2 CFR part 200 45 CFR 1356.60(c); section 474(a)(3); 2 CFR part 200

Question 15. Is the implementation and operation of a statewide or tribe-wide quality assurance system an allowable title IV-E administrative cost?

Answer

Pursuant to section 471(a)(7) of the Social Security Act (the Act), the title IV-E agency is required to monitor and conduct periodic evaluations of its title IV-E program. The operation of a statewide or tribe-wide quality assurance system is one acceptable method for complying with section 471(a)(7) of the Act. Such a quality assurance system will usually include the review of cases other than those that are title IV-E eligible and address issues, such as the effectiveness of the delivery of social services, that do not qualify as title IV-E administration. Only quality assurance system costs associated with title IV-E eligible cases and functions may be claimed for title IV-E reimbursement. A State may amend its cost allocation plan, and a Tribe may amend its cost allocation methodology, as necessary to include the implementation and operation of a quality assurance system and subsequently claim

the allowable title IV-E portion as an administrative expense after allocating costs among all benefiting programs.

Source/Date

8/16/2002; revised 9/30/2026.

Legal and Related References

Social Security Act -- Section 401(a)(7)

Question 19. Does having an approved program improvement plan (PIP) enable a title IV-E agency to claim title IV-E administrative or training costs that otherwise would not be allowable under section 474(a)(3) of the Social Security Act?

Answer

No. The costs of any administrative activities or training that a title IV-E agency undertakes as a result of a program improvement plan can only be claimed under title IV-E if the costs are allowable under the existing policies, regulations, and statute for claiming FFP. The existence of an approved PIP does not make otherwise unallowable costs allowable under title IV-E.

Source/Date

7/7/2006; (12/17/2019)

Legal and Related References

Social Security Act - sections 474 and 479B; 45 CFR 1357.10(b)

Question 20. Title IV-E agencies are permitted to claim administrative costs for a child placed with a relative for the lesser of 12 months or the average length of time it takes for the title IV-E agency to license or approve a foster home as long as a foster family home application is pending. What happens if the title IV-E agency does not license or approve the relative's home during this period?

Answer

The title IV-E agency must discontinue administrative cost claims on behalf of the child if the home is not licensed or approved during the timeframe specified in section 472(i)(1)(A) of the Social Security Act (i.e., at the end of the 12th month or the average time it takes the title IV-E agency to license/approve a foster family home, if less). Furthermore, the statute specifies that a title IV-E agency is permitted

to claim administrative costs only if an application for licensure or approval of the home is pending.

Source/Date

8/7/2006; (12/17/2019)

Legal and Related References

Social Security Act - sections 472(i)(1)(A) and 479B

Question 21. What administrative costs may a title IV-E agency claim during the one-month period when a child moves from an unallowable facility to a licensed or approved foster family home or child care institution as described at section 472(i)(1)(B) of the Social Security Act?

Answer

A title IV-E agency may claim any allowable title IV-E administrative cost that comports with 45 CFR 1356.60(c). There are no restrictions on the types of title IV-E administrative activities that title IV-E agency may claim during the one-month period, as long as they are consistent with the examples of allowable administrative costs stipulated in 45 CFR 1356.60(c)(2), such as case management and supervision, or activities that are closely related to those examples. As required in 1356.60(c), the title IV-E agency's cost allocation plan or methodology must identify the costs that are allocated and claimed under the program.

Source/Date

8/7/2006; (12/17/2019)

Legal and Related References

Social Security Act - sections 472(i)(1)(B) and 479B; 45 CFR 1356.60(c)

Question 22. Section 472(i)(1)(B) of the Social Security Act (the Act) permits title IV-E agencies to claim administrative costs for a calendar month prior to the child's move from an unallowable facility to a licensed or approved foster family home or child care institution. Is a title IV-E agency limited in how many times it can apply section 472(i)(1)(B) for the same child?

Answer

No. The title IV-E agency may claim up to one calendar month of administrative costs pursuant to section 472(i)(1)(B) of the Act each time a child transitions from a facility

not eligible for title IV-E payments to a licensed or approved foster family home or child care institution.

Source/Date

8/7/2006; (12/17/2019)

Legal and Related References

Social Security Act - sections 472(i)(1)(B) and 479B

Question 23. May a title IV-E agency claim title IV-E administrative costs as permitted under section 472(i) of the Social Security Act (the Act) for a child placed in an unlicensed or unapproved relative home before completing the background check requirements in section 471(a)(20) of the Act?

Answer

Yes. The title IV-E agency may claim title IV-E administrative costs in accordance with 472(i) of the Act absent the results of the relative's background checks, although the title IV-E agency must complete the background check requirements in section 471(a)(20) of the Act before the relative's home can be licensed or approved. The title IV-E agency may claim the administrative costs only during the period specified in the statute and while an application for foster family licensure or approval of the relative home is pending.

Source/Date

01/29/07; (12/17/2019)

Legal and Related References

Social Security Act - sections 471(a)(20), 472(i), and 479B

Question 29. What are examples of allowable administrative costs for the title IV-E Guardianship Assistance Program?

Answer

The Social Security Act, at section 474(a)(3)(E), permits title IV-E agencies with approved title IV-E plans to claim reimbursement at a 50 percent matching rate for the costs of administrative activities found necessary by the Secretary for the proper and efficient administration of the title IV-E plan. The Guardianship Assistance Program (GAP) is an optional portion of the title IV-E plan and provides permanency with relative guardians for a child who has been in title IV-E foster care living with that relative.

In general, the title IV-E administrative costs that are allowable for children in the GAP program are those necessary for the title IV-E agency to administer the GAP program and agreement. This includes overall development and operation of a title IV-E agency's GAP program beginning in the calendar quarter when the IV-E agency submits an approvable title IV-E GAP plan to the Children's Bureau. Other activities include: determining GAP eligibility, fair hearings and appeals, management of the GAP payment, review and re-negotiation of the GAP agreement, referral to services, and case management only for the IV-E agency to implement the GAP agreement. As such, the IV-E agency's administrative activities for a child in the GAP program are not as extensive as they are for a child in foster care that has not yet achieved permanency.

Source/Date

10/14/2011

Legal and Related References

Social Security Act § section 474(a)(3)(E), PI-10-01, Child Welfare Policy Manual section 8.1A

Question 32. May a title IV-E agency claim title IV-E administrative costs of paralegals, investigators, peer partners, or social workers that support an attorney providing representation in accordance with 45 CFR 1356.60(c)(4)?

Answer

Yes, a title IV-E agency may claim such title IV-E administrative costs to the extent that they are necessary to support an attorney providing such representation. The costs must be consistent with federal cost principles per 2 CFR Parts 200 and 300. The title IV-E agency must allocate such costs so as to ensure that the title IV-E program is charged its proportionate share of costs (see CWPM sections 8.1B and 8.1C).

Source/Date

(4/20/20)

Legal and Related References

45 CFR 1356.60(c), section 474(a)(3)

Question 33. Are costs to purchase equipment and administer fingerprinting allowable administrative costs under the title IV-E foster care program?

Answer

Yes. The regulations at 45 CFR 1356.60(c) specify that Federal financial participation is available at the rate of 50% for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The administrative function specified at 45 CFR 1356.60(c)(2)(vii), recruitment and licensing of foster homes and institutions, includes activity necessary to document that prospective foster or adoptive parent meet applicable safety requirements as per 45 CFR 1356.30. Title IV-E agencies, as per Section 471(a)(20) of the Social Security Act (the Act), must have procedures for criminal background checks, including fingerprint-based criminal record checks of the national crime information databases for prospective foster and adoptive parents. As per Section 471(a)(20)(D) of the Act, these checks also apply to all of the adults working in a child care institution when title IV-E foster care maintenance payments are made on behalf of an eligible child placed in the institution.

The performance of fingerprinting is most commonly done by law enforcement agencies. In that instance the allowable costs paid by the title IV-E agency, with appropriate cost allocation, may be claimed as title IV-E administration at the 50% federal financial participation (FFP) rate. Alternatively, to the extent permitted under state or tribal law, a title IV-E agency may choose to perform the fingerprinting process. If so, the cost of necessary equipment, staff and facility overhead is allowable as title IV-E administrative costs at the 50% FFP rate. Costs of training staff in conducting fingerprinting may also be title IV-E claimed as training at the 75% FFP rate. These costs must meet applicable cost principles at 45 CFR Part 75 Subpart E and be allocated to all benefiting programs through an approved public assistance cost allocation plan (PACAP) for states and an approved cost allocation methodology (CAM) for tribes.

All title IV-E training activities and costs must additionally be included in the agency's training plan for title IV-B in accordance with 45 CFR 1356.60(b)(2). See 2 CFR 200.313, 45 CFR § 75.439 and 45 CFR Part 95 Subpart G for more information on costs of equipment.

Source/Date

7/30/2024 (Revised 12/11/2024)

Legal and Related References

Social Security Act - sections 471 (a)(20) and 474(a)(3); 45 CFR 1356.30 and 1356.60(b)(2) and (c)(2); 45 CFR Part 75 Subpart E; 2 CFR §200.313, Interim Final Rule 2024-21984, Oct. 2, 2024.

Question 35. May allocated time for case review, case supervision, and case management performed by an institution be charged to title IV-E

administration, and how should treatment planning and daily progress recording be treated?

Answer

The premise that title IV-E administrative costs may generally be claimed for activities completed by child-placing agencies is not entirely accurate. Such costs may be claimed when the title IV-E agency contracts with child-placing agencies to perform foster-care-related administrative functions of the title IV-E agency.

Under 45 CFR 1356.60(c)(2), allowable title IV-E administrative costs include expenses necessary for administration of the foster care program.

When a child-care institution performs these title IV-E administrative activities, the title IV-E agency may claim those expenses as title IV-E administrative costs if the agency contracts with the institution to perform them. The same expenses may not also be included in the child's title IV-E care maintenance payment. Allocable costs for case review activities performed by child ombudsman personnel may likewise be claimed when paid through the title IV-E agency pursuant to an arrangement for performance of those administrative activities.

By contrast, an institution's provision of social services addressing a child's personal or behavioral problems, counseling intended to improve home conditions, and daily recording of progress are not administrative activities of the title IV-E foster care maintenance program and are not allowable for federal financial participation under 45 CFR 1356.60(c)(3).

Source/Date

10/1/26

Legal and Related References

45 CFR 1356.60(c)(2) and (3)

Question 36. Can a title IV-E agency claim Federal financial participation for administrative costs related to establishing and managing Fostering the Future Accounts (26 U.S.C. 530A) or Achieving A Better Life Experience (ABLE) Accounts (26 U.S.C.529A) for a title IV-E eligible child in foster care?

Answer

A title IV-E agency may claim FFP at a rate of fifty percent (50%) for allowable title IV-E administrative expenses associated with establishing and administering a Fostering the Future Account (26 U.S.C. 530A) and Achieving A Better Life Experience (ABLE) Account (26 U.S.C. 529A) on behalf of a title IV-E eligible child in foster care when those activities comport with or are closely related to allowable

administrative activities at 45 CFR 1356.60(c)(2). Examples of allowable administrative activities may include:

- case management, such as assisting with Fostering the Future or ABLE account setup, coordinating with other entities regarding account administration, and incorporating account-related planning into transition planning; and
- referrals to service, including referrals that support case plan requirements in section 475(1) and 477(a) of the Act, such as financial literacy education (including access to and education about Fostering the Future and ABLE Accounts).

All title IV-E foster care administrative expenses must be included in an approved cost allocation plan (for tribal title IV-E agencies, an approved cost allocation methodology) and supported by appropriate documentation demonstrating that the activities are allowable title IV-E administrative functions.
Activities that constitute the direct provision of services, rather than administration of the title IV-E foster care maintenance payment program, are not allowable title IV-E foster care administrative expenses.

Note: Fostering the Future Accounts include any account established under 26 U.S.C. 530A.

Source/Date

8/18/2026, revised 10/1/26

Legal and Related References

Social Security Act - Sections 475(1), 477(a)(1) and (b)(3)(H); 26 U.S.C.529A and 530A; 45 CFR 1356.60(c)(2)

8.1C. TITLE IV-E, Administrative Functions/Costs, Calculating Claims

Question 1. May a title IV-E agency claim Federal financial participation (FFP) in the title IV-E foster care and adoption assistance programs based on estimates of quarterly expenditures, or must FFP be claimed on the basis of actual expenditures reported quarterly?

Answer

In accordance with regulations at 45 CFR 95.4, a "claim" is defined as "...a request for Federal financial participation in the manner and format required by our program regulations, and instructions or directives issued thereunder." The instructions for completing Form CB-496 state that all amounts must be for actual expenditures

made under the title IV-E agency's approved IV-E plan in accordance with applicable statutes and regulations. These claims must be supported by accounting records and source documentation at the time they are submitted. Estimates of quarterly expenditures do not represent a "claim" as defined above and, as such, may not be reported on the Form CB-496 for the purpose of claiming FFP. All claims must be comprised of actual expenditures and filed within two years from the end of the quarter within which the expenditures were made.

Source/Date

ACYF-CB-PIQ-96-01 (10/8/96); (12/17/2019)

Legal and Related References

Social Security Act - section 479B; 45 CFR 95.4; ACYF-OC-PI 99-01 (9/22/99), ACYF-CB-PI-10-14 (11/23/10), ACYF-CB-PI-13-06 (12/5/13), and ACYF-CB-PI-18-12 (11/30/18)

Question 3. A title IV-E agency asks whether it is required to apply an eligibility factor to child'specific costs for children whom it "reasonably views as candidates for title IV-E foster care maintenance payments".

Answer

Administrative costs identified in 45 CFR 1356.60(c)(2) that are not directly linked to the eligibility of children must be allocated in such a manner as to assure that each participating program is charged its proportionate share of costs. Such allocation may be on the basis of case count or on some other equitable basis. These administrative costs include recruitment and licensing of foster homes, rate setting, training, and the proportionate share of related agency overhead.

Child specific administrative costs include such matters as referrals, reports and court proceedings. Allowable administrative costs associated with child'specific activities are 100 percent reimbursable for those individuals that the title IV-E agency reasonably views as candidates for title IV-E foster care.

In order to claim child'specific administrative costs, the title IV-E agency may individually determine those children who are title IV-E foster care candidates and claim 100 percent of the child'specific allowable administrative costs incurred on behalf of these children.

Alternatively, if the child is not specifically identified as a candidate for title IV-E foster care, there must be an allocation. The allocation must be based on a determination both of candidacy for foster care and of potential IV-E eligibility. Using a ratio of IV-E to non-IV-E cases is one acceptable means of allocation. Other means

of determining candidacy and of determining potential IV-E eligibility may also be acceptable.

The title IV-E agency must clearly identify in its cost allocation plan or methodology those administrative activities which are child'specific and the methodology which will be used for claiming these costs.

Source/Date

ACYF-CB-PA-87-05 (10/22/87); ACYF-CB-PIQ-96-01 (10/8/96); (12/17/2019)

Legal and Related References

Social Security Act - sections 474 and 479B; 45 CFR 1356.60; DHHS Grant Appeals Board Decision No. 844

Question 5. When May Federal financial participation (FFP) begin for candidates for foster care?

Answer

Title IV-E agencies may claim FFP for administrative costs for allowable administrative functions performed on behalf of foster care candidates in the month in which the child's candidacy is determined consistent with section 472(i)(2) of the Social Security Act (the Act). Title IV-E agencies may not claim FFP for title IV-E administrative functions performed prior to the month of candidacy because a child is not a candidate for foster care until the title IV-E agency has determined that the child is at imminent risk of removal from the home and reasonable efforts are being made to prevent removal, or if necessary, to pursue removal from the home. A title IV-E agency must document that it has determined that a child is a candidate for foster care pursuant to one of three acceptable methods: a case plan that identifies foster care as the goal absent preventative services; an eligibility form used to document the child's eligibility for title IV-E foster care maintenance payments; or evidence of court proceedings related to the child's removal from the home.

Source/Date

ACYF-CB-PA-01-02 (7/3/01); 7/7/2006; (12/17/2019)

Legal and Related References

Social Security Act - sections 472(i)(2)) and 479B; 45 CFR 1356.60; Departmental Appeals Board Decision No. 844; ACYF-CB-IM-06-02

Question 6. Are administrative funds available at 50% Federal financial participation (FFP) for the cost of accrediting a title IV-E agency?

Answer

Yes. Section 471(a)(22) of the Social Security Act requires title IV-E agencies to provide standards to ensure that children in public or private foster care placements are provided quality services that protect the safety and health of the children. Therefore, costs associated with accrediting a title IV-E agency, to the extent they meet the requirement with regard to the placement of children in foster care, are allowable for the proper and efficient administration of the title IV-E plan.

Any such costs must be allocated, through an approved cost allocation plan or methodology to all benefiting programs.

Source/Date

06/09/04; (12/17/2019)

Legal and Related References

Social Security Act - sections 471(a)(22) and 479B; 45 CFR 1356.60(c).

Question 7. Section 472(i)(2) of the Social Security Act permits title IV-E agencies to claim administrative costs on behalf of a candidate for foster care who is potentially eligible for benefits under a title IV-E plan under this part. Does the phrase "potentially eligible" mean that the title IV-E agency must determine that a child would meet the Aid to Families with Dependent Children (AFDC) eligibility criteria at the time of removal before claiming allowable costs?

Answer

No. Title IV-E agencies may forgo testing for AFDC eligibility in favor of using cost allocation to claim for allowable title IV-E administrative functions performed on behalf of children who are candidates for foster care maintenance payments. The allocation must be based both on a determination of candidacy for foster care and potential title IV-E eligibility. Title IV-E agencies typically use a ratio of title IV-E to non-title IV-E cases to satisfy the requirement that foster care candidates potentially be eligible for title IV-E. Please see Child Welfare Manual Section 8.1C Question and Answer #3 for more detail on acceptable methods for calculating claims for candidates.

Source/Date

8/7/2006; (12/17/2019)

Legal and Related References

Social Security Act - sections 472(i)(2) and 479B

Question 8. Which children should be included in the numerator and which in the denominator to determine a title IV-E foster care participation rate for purposes of claiming title IV-E Foster Care program administrative costs under section 474(a)(3) of the Social Security Act (the Act)?

Answer

A title IV-E agency that uses a title IV-E foster care participation rate (sometimes called the eligibility, penetration or discount rate) as a cost allocation methodology must determine this rate by dividing the number of title IV-E foster care eligible children by the total number of children in foster care pursuant to the definition of foster care in 45 CFR 1355.20. The numerator is comprised of the total number of children in foster care determined to meet all title IV-E eligibility requirements. A title IV-E agency may also include in the numerator otherwise eligible children placed with relatives pending foster family home approval or licensure (for the lesser of the average time it takes to license a foster home or 12 months) and children moving from a facility that is not licensed to one that is for up to one month pursuant to section 472(i)(1) of the Act. The denominator is comprised of the total number children who are in foster care, including those that are title IV-E eligible and those that are not or have not yet been determined title IV-E eligible. Any methodology for claiming administrative costs, including the calculation of the participation rate described above, must be a part of the State's approved cost allocation plan or a Tribe's approved cost allocation methodology in accordance with 45 CFR 95.507(b)(4) and 2 CFR Parts 200 and 300.

Note: This answer previously referenced 45 CFR Part 75. However, 2 CFR Parts 200 and 300 supersede 45 CFR Part 75 effective October 1, 2025.

Source/Date

04/20/12 (revised 11/2/2016, 81 FR 3022, Jan. 20, 2016), (revised 10/1/25, 89 FR 80055, Oct. 2, 2024)

Legal and Related References

Social Security Act sections 472(i) and 474(a)(3); 45 CFR 95.507(b)(4), 45 CFR 1355.20; 2 CFR Parts 200 and 300; and Child Welfare Policy Manual section 8.1C Q/A#3

8.1D. Candidates for title IV-E foster care

Question 1. May we claim Federal financial participation (FFP) for the administrative costs associated with foster care candidates even for children who never enter foster care?

Answer

Yes. Federal financial participation for administrative costs listed at 45 CFR 1356.60(c) may be claimed regardless of whether the child is actually placed in foster care and becomes a recipient of title IV-E foster care benefits. However, reimbursement is limited to those individuals the title IV-E agency reasonably views as candidates for title IV-E foster care maintenance payments consistent with section 472(i)(2) of the Social Security Act. Should the title IV-E agency determine that the child is no longer a candidate for foster care at any point prior to the removal of the child from his home, subsequent activities will not be allowable for reimbursement of costs under title IV-E.

Source/Date

ACYF-CB-PA-87-05 (10/22/87); 7/7/2006; (12/17/2019); revised 9/30/26

Legal and Related References

Social Security Act - sections 471(a)(15), 472(i)(2), and 479B; DHHS Grant Appeals Board Decision No. 844; ACYF-CB-IM-06-02

Question 2. At what point may a child be considered a candidate for foster care?

Answer

A candidate for foster care is a child who is at serious risk of removal from home as evidenced by the title IV-E agency either pursuing his/her removal from the home or making reasonable efforts to prevent such removal. The basis for determining when a child may be considered a candidate for foster care can be found in statute, Departmental policy, and Departmental Appeals Board (DAB) decisions:

STATUTE: Section 471(a)(15)(B)(i) of the Act provides the frame of reference for determining the point at which a child becomes a candidate for foster care by requiring a title IV-E agency to make reasonable efforts to prevent a child's removal from home. A child may not be considered a candidate for foster care solely because the title IV-E agency is involved with the child and his/her family. In order for the child to be considered a candidate for foster care, the title IV-E agency's involvement with the child and family must be for the specific purpose of either removing the child from the home or satisfying the reasonable efforts requirement with regard to preventing removal.

DEPARTMENTAL POLICY: Stipulates the three acceptable methods for documenting a child's candidacy for title IV-E foster maintenance payments. The existence of these forms of documentation indicates that a child legitimately may be considered a candidate for foster care:

1) A defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child.

The decision to remove a child from home is a significant legal and practice issue that is not entered into lightly. Therefore, a case plan that sets foster care as the goal for the child absent effective preventive services is an indication that the child is at serious risk of removal from his/her home because the title IV-E agency believes that a plan of action is needed to prevent that removal.

2) An eligibility determination form which has been completed to establish the child's eligibility for title IV-E foster care maintenance payments.

Completing the documentation to establish a child's title IV-E eligibility is an indication that the title IV-E agency is anticipating the child's entry into foster care and that s/he is at serious risk of removal from home. Eligibility forms used to document a child's candidacy for foster care should include evidence that the child is at serious risk of removal from home. Evidence of AFDC eligibility in and of itself is insufficient to establish a child's candidacy for foster care.

3) Evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court proceedings.

Clearly, if the title IV-E agency has initiated court proceedings to effect the child's removal from home, s/he is at serious risk of removal from the home.

DAB DECISIONS: DAB Decision No. 1428 offers the following guidance for identifying the point at which a child may be considered a candidate:

"...The methods of documenting candidacy [identified in the Department's policy guidance] involve activities which occur at a point when the state has initiated efforts to actually remove a child from his or her home or at the point the state has made a decision that the child'should be placed in foster care unless preventive services are effective..."

The DAB also ruled in Decision No. 1428 that a report of child abuse or neglect is insufficient for establishing a child's candidacy for foster care:

"...The fact that a child is the subject of [a child abuse/neglect report] falls far short of establishing that the child is at serious risk of placement in foster care and thus of becoming eligible for IV-E assistance..."

A candidate, in the opinion of the DAB, is a child who is at serious risk of removal from his/her home because the title IV-E agency is either pursuing that removal or attempting to prevent it. A child cannot be considered a candidate for foster care when the title IV-E agency has no formal involvement with the child or simply

because s/he has been described as "at risk" due to circumstances such as social/interpersonal problems or a dysfunctional home environment.

Source/Date

ACYF-CB-PA-01-02 (7/3/01); (12/17/2019)

Legal and Related References

Social Security Act - sections 471(a)(15), 472(i), and 479B; Departmental Appeals Board Decision No. 1428

Question 3. Can children on trial home visits be considered candidates for title IV-E foster care?

Answer

Yes. A title IV-E agency often will provide supportive services to a child and family during the course of a trial home visit to facilitate the success of such visit. We believe that the services and supports provided to a child on a trial home visit can be considered reasonable efforts to prevent the child's removal from the home and return to foster care in accordance with section 471(a)(15) of the Social Security Act (the Act). If the title IV-E agency determines that the child on a trial home visit meets the other criteria in section 472(i)(2) of the Act, the title IV-E agency, may claim Federal reimbursement for the allowable title IV-E administrative costs associated therewith. However, a child may not be simultaneously both in foster care and a candidate for foster care. In addition, the title IV-E agency must document the child's candidacy for foster care pursuant to one of the approved methods. For example, the title IV-E agency may document in the child's case plan its intent for the child to return to foster care if the services provided during the course of the trial home visit prove unsuccessful.

Source/Date

ACYF-CB-PA-01-02 (7/3/01); 7/7/2006; (12/17/2019)

Legal and Related References

The Social Security Act - sections 471(a)(15), 472(i)(2) and 479B; 45 CFR 1356.21(e) and 1356.60; ACYF-CB-IM-06-02

Question 4. Can children in aftercare be considered candidates for title IV-E foster care?

Answer

Yes. During aftercare, the services or supports provided to the newly reunited family can be considered the title IV-E agency's reasonable efforts to prevent the child's removal from the home and re-entry into foster care in accordance with section 471(a)(15) of the Social Security Act (the Act). If the title IV-E agency determines that the child in aftercare meets the other criteria in section 472(i)(2) of the Act, the title IV-E agency may claim Federal reimbursement for the allowable title IV-E administrative costs associated therewith. However, in order to consider a child who is newly reunited with his/her family a candidate for foster care, the title IV-E must document the child's candidacy pursuant to one of the approved methods. The title IV-E agency may, for example, develop a case plan that demonstrates its intent to remove the child from home and return him/her to foster care if the aftercare services prove unsuccessful.

Source/Date

ACYF-CB-PA-01-02 (7/3/01); 7/7/2006; (12/17/2019)

Legal and Related References

The Social Security Act - sections 471(a)(15), 472(i)(2), and 479B; Departmental Appeals Board Decision No. 844; ACYF-CB-IM-06-02

Question 5. What is the maximum length of time a child may be held in candidate status?

Answer

Pursuant to Departmental Appeals Board Decision No. 844, the Department has instructed title IV-E agencies to cease claiming Federal reimbursement when the title IV-E agency determines, at any point prior to the removal of a child from home, that such child is no longer a candidate. By definition, a candidate is a child for whom the title IV-E agency is either pursuing or making reasonable efforts to prevent a removal, suggesting a child may be considered a candidate only for a finite period of time. We do not prescribe the maximum length of time a child may be considered a candidate; however, a title IV-E agency must document its justification for retaining a child in candidate status for longer than six months.

Source/Date

ACYF-CB-PA-01-02 (7/3/01); (12/17/2019)

Legal and Related References

Departmental Appeals Board Decision No. 844; Social Security Act - sections 472(i) and 479B

Question 6. Who must make the determination with respect to foster care candidacy?

Answer

The title IV-E agency (or another public agency that has entered into an agreement with the title IV-E agency pursuant to section 472(a)(2) of the Social Security Act (the Act)) must determine whether a child is a candidate. The basis for this clarification is set forth in regulation and Departmental policy:

REGULATION: A determination with respect to candidacy is a type of eligibility determination because title IV-E funds are expended as the result of a determination with respect to a child's status. The regulations at 45 CFR 205.100 require that officials of the title IV-E agency perform administrative functions that require the exercise of discretion. Under long-standing Departmental policy that originates with the 1939 amendments to the Social Security Act, the determination of an individual's eligibility for a Federal entitlement is considered a function that requires the exercise of discretion. Accordingly, determinations with respect to foster care candidacy must be made by employees of the title IV-E agency, or of another public agency that has entered into an agreement with the title IV-E agency pursuant to section 472(a)(2) of the Act. We are aware that some States and Tribes with an approved title IV-E plan contract with consultants to assist in identifying children in the foster care caseload who may be eligible for title IV-E. These contractors are not employees of the title IV-E agency and may not make determinations with respect to title IV-E eligibility or foster care candidacy. The same holds true for the contractors of public agencies that enter into title IV-E agreements pursuant to section 472(a)(2) of the Act. Only employees of the public agency are authorized to make the determination of title IV-E eligibility and/or foster care candidacy.

DEPARTMENTAL POLICY: The three acceptable forms of documentation that establish a child's candidacy for title IV-E foster care maintenance payments that the title IV-E agency must make the determination with respect to candidacy:

1) A defined case plan which clearly indicates that, absent effective preventative services, foster care is the planned arrangement for the child.

The DAB, in Decision No. 844, ruled that the development of a case plan is a title IV-E administrative function that may be performed on behalf of candidates in accordance with section 471(a)(16) of the Act. The case plan identified above is thus the title IV-E agency's case plan developed in compliance with section 471(a)(16) of the Act.

2) An eligibility determination form which has been completed to establish the child's eligibility under title IV-E.

As stated earlier, only employees of the title IV-E agency can make the determination with respect to candidacy because it is a type of eligibility determination. The form

referenced above is thus the title IV-E agency's documentation of the child's eligibility for title IV-E foster care maintenance payments.

3) Evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court proceedings.

A candidate is a child for whom the title IV-E agency is either seeking a removal or fulfilling the statutory requirement to attempt to prevent removal from the home. Among other things, the title IV-E agency is required to obtain a judicial determination sanctioning or approving such an attempt to prevent removal with respect to reasonable efforts to qualify the child for title IV-E foster care maintenance payments. The judicial proceedings referenced above are those proceedings the title IV-E agency initiates to obtain the judicial determinations related to the removal of a child from home.

Source/Date

ACYF-CB-PA-01-02 (7/3/01); (12/17/2019)

Legal and Related References

Social Security Act - sections 471(a)(16) 472(a) and (i) and 479B; 45 CFR 205.100; Departmental Appeals Board Decision No. 844

Question 7. Are children placed in facilities that are outside the scope of what is considered title IV-E foster care candidates for the purpose of claiming title IV-E administrative costs?

Answer

No. A child who has been removed from his/her home is not a candidate for foster care. Moreover, title IV-E agencies should note that, in accordance with long-standing Departmental policy, title IV-E administrative costs cannot be claimed on behalf of a child who is placed in a facility that is not a foster care facility, even if the title IV-E agency intends to place such child in foster care at a later date. Facilities that are outside the scope of foster care include, but are not limited to: detention facilities; psychiatric hospitals; forestry camps; or facilities that are primarily for the detention of children who are adjudicated delinquent.

Source/Date

ACYF-CB-PIQ-85-06 (4/12/85); ACYF-CB-PA-01-02 (7/3/01); (12/17/2019)

Legal and Related References

Social Security Act - sections 472(c)(2) and (i), and 479B

Question 8. What constitutes a case plan for the purposes of documenting a child's candidacy for foster care?

Answer

The development of a case plan in compliance with sections 471(a)(16) of the Social Security Act (the Act) is an allowable title IV-E function performed on behalf of candidates for foster care. The requirements for case plans developed pursuant to section 471(a)(16) of the Act are set forth in regulation at 45 CFR 1356.21(g). The provisions at 45 CFR 1356.21(g) are, therefore, to the extent that they are applicable to pre-placement, controlling with respect to case plans used to document candidacy for foster care. Specifically, the provisions at 45 CFR 1356.21(g)(1) and (4) apply. The case plan used to document a child's candidacy for foster care must be a written document that is developed jointly with the parent(s) or guardian of the child and include a description of the services offered and provided to prevent removal of the child from the home. In addition, the title IV-E agency must document, in said plan, that the goal for the child is foster care if the services described in the plan are not effective.

The title IV-E agency may claim administrative costs in the month that it determines and documents a child is a candidate for title IV-E foster care consistent with section 472(i)(2) of the Act (see Section 8.1C QA #5 of the Child Welfare Policy Manual).

Source/Date

8/16/02; 7/7/2006; (12/17/2019); revised 10/1/26

Legal and Related References

Social Security Act - sections 471(a)(16), 472(i), 475(1), and 479B; 45 CFR 1356.21(g); Departmental Appeals Board Decision No. 844; Child Welfare Policy Manual Section 8.1C QA #5; ACYF-CB-IM-06-02

Question 9. The title IV-E agency is permitted to claim administrative costs for a candidate for foster care if a potentially title IV-E eligible child is at imminent risk of removal from the home and the title IV-E agency is either pursing the removal of the child from the home or providing reasonable efforts to prevent the removal in accordance with section 471(a)(15) of the Social Security Act (the Act). Section 472(i)(2) of the Act requires the title IV-E agency to redetermine that a candidate for foster care remains at imminent risk of removal at least every six months. What happens if the title IV-E agency does not complete this redetermination timely?

Answer

The statute is very specific that the title IV-E agency may claim administrative costs for a candidate for foster care only if the title IV-E agency is providing reasonable efforts in accordance with section 471(a)(15) of the Act or pursuing the removal of the child from the home and redetermines at least every six months that the child remains at imminent risk of removal from the home. Therefore, if the title IV-E agency does not make this determination at the six-month point, the title IV-E agency must cease claiming administrative costs on behalf of the child.

Source/Date

8/7/2006; (12/17/2019)

Legal and Related References

Social Security Act - sections 471(a)(15), 472(i)(2), and 479B

Question 10. Section 472(i)(2) of the Social Security Act (the Act) describes a candidate for foster care as a child at "imminent" risk of removal. Does the title IV-E agency have to use the term "imminent risk" in the case plan to document a child's candidacy? Or, is it permissible for the title IV-E agency to document that the child is at "serious risk of removal" from the home to satisfy this requirement?

Answer

We consider the term "serious risk of removal" to be synonymous with "imminent risk of removal." As such, the title IV-E agency may use this term in the case plan to document a child's candidacy. The title IV-E agency also may use alternate descriptions that are equivalent to "imminent" or "serious risk of removal." In addition, the title IV-E agency must ensure that the child meets all other criteria in section 472(i)(2) of the Act and the Child Welfare Policy Manual at Section 8.1, to be a candidate for foster care.

Source/Date

1/29/2007; (12/17/2019)

Legal and Related References

Social Security Act - sections 472(i)(2) and 479B

Question 11. In order for a child to be considered a foster care candidate for purposes of section 472(i)(2) of the Social Security Act (the Act), among other things, the title IV-E agency must have documented that the child is at imminent risk of removal from the home. Does the out of home placement for the child have to be a foster care setting?

Answer

Yes. Section 472(i)(2) of the Act explicitly states that, among other requirements, to be a candidate for foster care, a child has to be potentially eligible for title IV-E foster care benefits. Therefore, this means that the title IV-E agency has made a decision that the out of home placement for the child will be a foster care setting. A child is not a candidate for foster care when the planned out of home placement for the child is an arrangement outside of foster care, such as a detention facility.

Source/Date

12/31/07; (12/17/2019)

Legal and Related References

Social Security Act - sections 472(i)(2) and 479B

8.1E. TITLE IV-E, Administrative Functions/Costs, Contracting

Question 1. Under the title IV-E foster care program may the title IV-E agency contract for some child foster care functions (administrative or otherwise) and still be eligible for Federal financial participation (FFP), as long as the title IV-E agency retains responsibility for the placement and care of the child?

Answer

Yes. Under title IV-E, such functions as training, recruiting or licensing of foster homes for which the title IV-E agency contracts with private agencies are defined as allowable costs for the proper administration of the title IV-E plan and may be claimed for purposes of Federal financial participation (FFP). Responsibility for the placement and care of the foster child, however, must remain with the title IV-E agency.

Source/Date

ACYF-CB-PIQ-82-07 (8/25/82); (12/17/2019)

Legal and Related References

Social Security Act - sections 474(a)(3)(B) and 479B

Question 2. Title IV-E administrative costs may be claimed for activities completed by child placing agencies. When an institution participates in case review, case supervision and case management, can an allocated amount of this time be charged to title IV-E administration? If not, what is the

appropriate way of allocating these costs? When an institution participates in making a treatment plan and in daily recording of a child's progress, to what should these activities be allocated?

Answer

The first statement in the question is not entirely accurate. Title IV-E administrative costs may be claimed when the title IV-E agency contracts with child-placing agencies to perform foster care related administrative functions of the title IV-E agency.

45 CFR 1356.60(c)(2) includes in the list of allowable title IV-E administrative costs as those costs which are necessary for the administration of the foster care program.

Costs for these title IV-E administrative activities, when performed by a child-care institution, may be claimed by the title IV-E agency as title IV-E administrative costs if the title IV-E agency contracts with the institution to perform these activities. These costs may not also be claimed as part of the child's title IV-E maintenance payment.

The institution's provision of social services in relation to the child's personal or behavioral problems, counseling to ameliorate home conditions and daily recording of progress would not be considered administrative activities of the title IV-E foster care maintenance program and the costs are not allowable for purposes of Federal financial participation (45 CFR 1356.60(c)(3)).

Source/Date

ACYF-CB-PIQ-85-06 (6/5/85); (12/17/2019)

Legal and Related References

Social Security Act - sections 474 and 479B; 45 CFR 1356.60(c)

Question 4. May title IV-E foster care maintenance payments flow through a for-profit entity to the foster care provider?

Answer

Yes. The Fair Access Foster Care Act of 2005 (Public Law 109-113), which took effect on November 22, 2005, amended section 472(b) of the Social Security Act to eliminate the prohibition against making foster care maintenance payments through a for-profit entity.

Source/Date

1/29/2007

Legal and Related References

Social Security Act, section 472; Public Law 109-113

8.1F. TITLE IV-E, Administrative Functions/Costs, Match Requirements

Question 2. May third-party in-kind services be used as the State's share for matching purposes under title IV-E?

Answer

No. Third party in-kind contributions may not be used by a State to meet Federal cost-sharing requirements under the title IV-E Foster Care and Adoption Assistance Program.

Source/Date

ACYF-CB-PIQ-84-06 (10/22/84) / 8/16/02

Legal and Related References

Social Security Act - section 474; 45 CFR Part 1356.60

Question 3. May donated funds be used as the State's share for matching purposes under title IV-E?

Answer

The Departmental Appeals Board concluded in Decision No. 1737 (July 14, 2000) that longstanding agency policy permitted States to claim Federal financial participation (FFP) for allowable costs paid with funds donated to support specific activities. The State must take into consideration the following conditions in order for a State to use donated funds to meet Federal cost-sharing requirements and claim FFP:

1) The donated funds must be used to pay for allowable title IV-E costs.
2) The donor may specify the activities to be supported with its donations but cannot be a sponsor or operator of a program to provide such activities.
3) The donor may specify the geographic area in which the activity is to be provided.

States should note, however, that only funds donated from a public source that satisfy the above criteria may be used to match title IV-E training expenditures pursuant to 45 CFR 1356.60(b)(3).

Source/Date

8/16/2002

Legal and Related References

Departmental Appeals Board Decision No. 1737 (July 14, 2000); 45 CFR Part 1356.60

Question 4. May unrestricted funds from a private source donated to the State that become part of the general pool of funds available to the State and are then appropriated by the State legislature be used to match title IV-E Federal Financial Participation (FFP) at the 75 percent rate for training?

Answer

Yes. Funds that are donated from a private source to the State's general funds or treasury and then appropriated by the State legislature to the State child welfare agency are considered public funds and, therefore, may be used as the State's share in claiming FFP for title IV-E training at the 75 percent rate. However, private funds that merely are transferred from the private source to the State cannot be used to match the State's training costs under title IV-E foster care or adoption assistance.

Source/Date

6-Apr-06

Legal and Related References

45 CFR 235.66(a)

Question 5. The Departmental Appeals Board (DAB) found in Decision No. 1737 that States may claim FFP for allowable administrative costs paid with private funds that are donated to support specific activities. Does this finding mean that funds donated from a private source can be used to match Federal financial participation (FFP) at the 75% rate for title IV-E training?

Answer

No. DAB Decision No. 1737 did not address matching funds for training under section 474(a)(3)(A) and (B) of the Social Security Act (the Act). Therefore, ACF regulations and policy which permit only public funds to be used as match for title IV-E training at the 75% rate are applicable. As specified in the Child Welfare Policy Manual at Section 8.1F question 3, only public funds may be used to match title IV-E training expenditures. The regulations at 45 CFR 1356.60(b)(3) on Federal matching funds for State and local training for foster care and adoption assistance under title IV-E cross reference to 45 CFR 235.63 through 235.66(a) which, among other things, permit public funds to be used as match. The regulation does not cross reference to 45 CFR 235.66(b) which permit funds donated from private sources to be used as match.

Source/Date

8/7/2006

Legal and Related References

45 CFR 1356.60(b)(3); 45 CFR 235.66(a); DAB Decision No. 1737

8.1G. TITLE IV-E, Administrative Functions/Costs, Title IV-E Agreements

Question 1. May a court be considered a "public agency" for purposes of entering into a title IV-E agreement, or does "public agency" refer only to the executive branch of government? Is separation of powers an issue here?

Answer

There is no statutory prohibition on agreements between the public agency administering the title IV-E foster care program and the court. However, legislative and program history do not provide precedent for agreements whose only purpose is to transfer the decision-making authority for placement and care from the title IV-E administering agency to the court or its affiliated citizen review panel. Rather, discussion of such agreements in the 1963 Handbook of Public Assistance Administration describes "another public agency" as a child placing agency authorized by State/Tribal law to operate a program of services to children and families, with supervision by the agency administering the Aid to Families with Dependent Children program. Current ACF policy sustains this position.

Therefore, the requirements of section 472(a)(2)(B) of the Social Security Act may be met through an agreement with a public agency (including a court) which is authorized under State/Tribal law to operate as a child placing agency, and, if so authorized, is operating a child placing agency. The agreement, properly written, should be binding on both parties and should permit the title IV-E agency to have access to case records, reports or other informational materials as needed to monitor title IV-E compliance. The title IV-E agency must maintain a supervisory role in relation to all title IV-E eligible children and would need to monitor the provisions required under title IV-E.

However, if a court is not authorized under State/Tribal law to operate and is not operating as a child placing agency, the court could not be considered "another public agency" with responsibility for placement and care of otherwise eligible children for purposes of section 472(a)(2)(B).

Source/Date

ACYF-CB-PIQ-85-02 (3/13/85); (12/17/2019)

Legal and Related References

Social Security Act - sections 472(a)(2)(B) and 479B; Handbook of Public Assistance Administration, Part IV, Department of Health, Education and Welfare 7/24/63

Question 3. What is the rationale for prohibiting anybody that conducts permanency hearings from being part of or under the supervision or direction of the title IV-E agency? Does this requirement extend to other public agencies with which the title IV-E agency has a title IV-E agreement?

Answer

Critical decisions that have a significant effect on the lives of children and their families are made at permanency hearings. The purpose of requiring courts to oversee permanency hearings is to ensure that these hearings are conducted by an impartial body, which includes anybody appointed or approved by the court to provide this oversight in its stead. An administrative body that is part of the title IV-E agency or under its direction or supervision would not meet the test of impartiality.

The requirement does extend to other public agencies with which the title IV-E agency has an agreement. Title IV-E requirements extend to any other public agency with which the title IV-E agency enters an agreement for the performance of title IV-E administrative functions, including responsibility for placement and care of the child.

Source/Date

Preamble to the Final Rule (64 FR 4020) (1/25/00); (12/17/2019)

Legal and Related References

Social Security Act - sections 475(5)(c) and 479B; 45 CFR 1355.20

Question 4. Under title IV-E, a title IV-E agency must be designated to administer the foster care maintenance program. Could another State or Tribal agency, such as a "Youth Authority", provide program monitoring and supervision through an inter-agency contract (assuming some or all children under the "Youth Authority" will be eligible)?

Answer

Section 472 of the Social Security Act requires that "such child's placement and care are the responsibility of the title IV-E agency administering the title IV-E plan...or any other public agency with whom the title IV-E agency administering or supervising the administration of the title IV-E plan...has made an agreement which is still in effect."

Assuming that a State or Tribal Department of Social Services (DSS) is the title IV-E designated agency, a "Youth Authority" for example, would need to have a currently effective agreement with the DSS which covers these children and all requirements of the title IV-E law and regulations. If the agreement covered all of the requirements, then the "Youth Authority" could, for purposes of administering the title IV-E plan, function as the DSS's surrogate. This arrangement, however, would not relieve the DSS of ultimate responsibility to supervise the "Youth Authority's" administration of the title IV-E plan for these children nor does it speak to the question of IV-E allowable costs. Moreover, the requirements of the Act under section 472, are broader than merely an agreement between two entities covering particular items. To receive FFP for the care of "Youth Authority" supervised children, the DSS and the "Youth Authority" would have to assure that all the title IV-E plan requirements are met for these children, not merely addressed by the interagency agreement. Assuming these arrangements are carried out properly, FFP could be available.

Source/Date

ACYF-CB-PIQ-82-10 (8/11/82); (12/17/2019)

Legal and Related References

Social Security Act - sections 472 and 479B

Question 5. Is a public entity that has entered into a title IV-E agreement pursuant to section 472(a)(2)(B) of the Social Security Act (the Act) with the title IV-E agency permitted to perform the title IV-E functions of an employee of the title IV-E agency?

Answer

Yes. Entering into a section 472(a)(2)(B) agreement with the title IV-E agency permits another public agency to have responsibility for the placement and care of title IV-E eligible children. An agency that exercises responsibility for the placement and care of a title IV-E eligible child is fulfilling the fundamental purpose of the program and is, in effect, implementing the title IV-E plan on behalf of a specified population of children under the agreement. Thus, such public agencies are permitted to perform functions that the title IV-E agency is required to perform pursuant to 45 CFR 205.100(b), such as eligibility determinations. Public agencies that enter into section 472(a)(2)(B) agreements are subject to all applicable Federal statutory, regulatory, and policy guidance as well as State or Tribal rules that implement Federal requirements.

Source/Date

06/09/04; (12/17/2019)

Legal and Related References

Social Security Act - sections 472(a)(2)(B) and 479B; 45 CFR 205.100

8.1H. TITLE IV-E, Administrative Functions/Costs, Training

Question 1. What costs can the title IV-E agency claim for Federal financial participation (FFP) to train title IV-E agency employees, foster parents, adoptive parents, relative guardians, employees of private child placing and child care agencies, and the other individuals listed in section 474(a)(3)(B) of the Social Security Act (the Act)?

Answer

Section 474(a)(3)(A) of the Social Security Act (the Act) provides that States and Tribes with plans approved under title IV-E shall be entitled to Federal matching funds for the proper and efficient administration of the plan in the following proportions of total amounts expended: 75 percent for the training (including both short-term training and long-term training at educational institutions, through grants to the institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the title IV-E agency or by the local agency administering the title IV-E plan; and 474 (a)(3)(B) of the Act provides for the short-term training of current or prospective foster or adoptive parents or relative guardians, the members of the staff of State or Tribal-licensed or approved child care institutions providing care, or State-licensed or State-approved child welfare agencies providing services, to foster or adoptive children receiving assistance under this part, to foster and adopted children receiving assistance under this part and members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in proceedings of such courts, in ways that increase the ability of such current or prospective parents, guardians, staff members, institutions, attorneys and advocates to provide support and assistance to foster and adopted children, and children living with relative guardians whether incurred directly by the State or by contract.* The regulations at 45 CFR 1356.60(b) and (c) specify what is considered a training cost and what is considered an administrative expense under title IV-E. Section 1356.60(c) explains that the State's cost allocation plan shall identify which costs are allocated and claimed under title IV-E. Tribal title IV-E agencies must identify which costs are allocated and claimed under title IV-E in the Tribe's cost allocation methodology (CAM) (see ACYF-CB-PI-10-13). With regard to costs of educational programs (approved by the title IV-E agency) leading to a baccalaureate or graduate degree, the regulations clearly indicate that training to prepare persons who are employed or about to be employed by the title IV-E agency administering the title IV-E plan can include such long-term training. Grants to the institution or to the person

attending the institution are reimbursable at a Federal matching rate of 75 percent. (See 45 CFR 1356.60 (b)(1)(i), 235.63 (c) and 235.64 (c) for further clarification.) Costs matchable as training expenditures at 75% FFP under this provision may include: (1) salaries, fringe benefits, travel, per diem, tuition, books and registration fees for title IV-E agency trainees in allowable short-term or long-term training (regardless of the duration of the training) for the time period the employee is actually participating in training; (2) salaries, fringe benefits, travel and per diem for staff development personnel assigned to training functions to the extent time is spent performing such functions; (3) salaries, fringe benefits, travel and per diem for experts outside the agency engaged to develop or conduct training programs; (4) travel, per diem, tuition, books and registration fees for foster parents and other persons identified under section 474(a)(3)(B) of the Act in short-term training; and (5) costs of space, postage, training supplies, and purchase or development of training material. Federal regulations at 45 CFR 1356.60 (b)(2) require that all training activities and costs funded under title IV-E must be included in the title IV-E agency's training plan for title IV-B. Title IV-E agencies will be reimbursed under title IV-E for such costs only if the activities and costs are described and included in the jointly developed and approved title IV-B plan. All training costs must be allocated to the benefiting title IV-E foster care, adoption assistance or guardianship assistance program and other State/Tribal/Federal programs consistent with the State's CAP or Tribe's CAM and in such a manner as to ensure that the cost is charged to the program in accordance with the relative benefits that the program receives from the training. Title IV-E agencies may determine the manner in which they allocate costs but must do so in accordance with the cost principles delineated at 2 CFR Parts 200 and 300. Beginning October 1, 2008, section 474(a)(3)(B) of the Act was expanded to authorize FFP for the short-term training of additional trainees. The additional trainees are: relative guardians (if the title IV-E agency has opted per section 471(a)(28) to offer a guardianship assistance program), members of licensed or approved child welfare agencies providing services to children receiving assistance under title IV-E, members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in the proceedings of such courts in ways that increase their ability to provide support and assistance to title IV-E eligible children. FFP is available for the additional categories of trainees at a Federal matching rate of 75 percent.

Note: This answer previously referenced 45 CFR Part 75. However, 2 CFR Parts 200 and 300 supersede 45 CFR Part 75 effective October 1, 2025.

Source/Date

07/23/07 (Revised 12/02/13, P.L. 110-351), (revised 11/2/2016, 81 FR 3022, Jan. 20, 2016), (revised 10/1/25, 89 FR 80055, Oct. 2, 2024)

Legal and Related References

Social Security Act - sections 474 (a)(3)(A) and (B); 2 CFR Parts 200 and 300; 45 CFR 1356.60 (b) and (c), 235.64(c); ACYF-CB-PA-90-01, ACYF-CB-PI-10-11;

Question 3. May the title IV-E agency fund adoptive parents' attendance at adoption conferences with title IV-E training funds?

Answer

Yes. Title IV-E agencies may utilize title IV-E funds for the purposes of paying for the costs of adoptive parents' attendance at conferences which have training components or which include discussions of significant issues covering adoption and the needs of children. Title IV-E of the Act supports a continuing relationship between adoptive parent(s) and the agency to provide services, as needed, to the adoptive parent(s) in the care of the child. These provisions are interpreted to include training for this purpose.

Costs, including travel and per diem, claimed under title IV-E would be reimbursable at the 75% matching rate for adoptive parents attending such training conferences (45 CFR 1356.60 (b)(1)(ii)).

Source/Date

ACYF-CB-PA-82-03 (10/14/82); revised 9/30/26

Legal and Related References

Social Security Act - section 474 (a)(3)(B); 1356.60 (c)(5)

Question 4. May allowable costs include salary, travel and per diem for title IV-E agency program staff or agency staff development unit staff conducting training of employees or foster parents?

Answer

For purposes of title IV-E, 45 CFR 235.64 (a), which we have used as the implementing regulation (as cross-referenced in 45 CFR 1356.60 (b)), allows the costs identified above to be claimed for FFP purposes.

Source/Date

ACYF-CB-PIQ-82-17 (10/14/82; revised 9/30/26

Legal and Related References

Social Security Act - sections 471and 474 (a); 45 CFR Parts 1356 and 235

Question 6. Prior to the on-site portion of a child and family services review (CFSR), the State members of the team must participate in a State team training. Can the costs related to such participation be claimed by the State at the 75 percent rate of Federal financial participation (FFP)?

Answer

Yes, the State may, using an approved cost allocation methodology, identify and claim that portion of the cost of its employees' participation in the CFSR State team training that is allowable under title IV-E at the enhanced rate of 75 percent Federal financial participation pursuant to 45 CFR 235.64(c)(3). Specifically, travel, per-diem, and educational supplies may be claimed at the 75 percent rate. The costs of training the State's external partners or participants who are not employees of the State agency similarly must be allocated across benefiting programs and the title IV-E portion may be claimed at the 50 percent FFP rate as administrative costs.

Pursuant to section 474(a)(3)(A) of the Social Security Act (the Act), an enhanced rate of FFP is available to train employees of the State agency to perform title IV-E functions. In accordance with section 471(a)(7) of the Act, the State agency is required to monitor and conduct periodic evaluations of its title IV-E program. A State agency employee who is participating in a CFSR is, therefore, performing a title IV-E function pursuant to section 471(a)(7) of the Act, making the enhanced FFP available to train the employee to perform that function.

Any other training associated specifically with conducting a child and family services review or included in an approved CFSR program improvement plan likewise may be claimed under title IV-E in accordance with the guidance provided above.

Source/Date

16-Aug-02

Legal and Related References

Social Security Act -- Sections 471(a)(7) and 474(a)(3)(A); 45 CFR 235.64

Question 8. What are the title IV-E training topics that a title IV-E agency may claim at the enhanced Federal financial participation (FFP) rate of 75% under section 474(a)(3)(A) and (B) of the Social Security Act and 45 CFR 1356.60(b)?

Answer

A title IV-E agency may claim FFP at the rate of seventy-five percent (75%) for training related to allowable title IV-E administrative functions, including training for title IV-E agency staff, foster parents, prospective foster parents, relative guardians,

adoptive parents, attorneys, guardians ad litem, and other individuals identified in 474 (a)(3)(A) and (B) of the Act and 45 CFR 1356.60(b).

In general, the training topics must be closely related to one of the examples cited in 45 CFR 1356.60(c)(1) and (2) as allowable administrative activities under the title IV-E program. The regulatory examples of allowable activities include:

- Eligibility determinations and re-determinations
- Fair hearings and appeals
- Rate setting
- Referral to services
- Preparation for and participation in judicial determinations
- Placement of the child
- Development of the case plan
- Case reviews
- Case management and supervision
- Recruitment and licensing of foster homes and institutions

Additional examples of allowable administrative activities specifically applicable to the title IV-E adoption assistance program include, but are not limited to:

- Grievance procedures
- Negotiation and review of adoption assistance agreements
- Post-placement management of subsidy payments
- Home studies
- A proportionate share of the development and use of adoption exchanges

There are many training topics that are closely related to these title IV-E allowable activities that the State may train its workers on and claim at the 75 percent rate. The following are some examples:

- Social work practice, such as family centered practice and social work methods including interviewing and assessment.
- Title IV-E policies and procedures.
- Child abuse and neglect issues, such as the impact of child abuse and neglect on a child, and general overviews of the issues involved in child abuse and neglect investigations, if the training is not related to how to conduct an investigation of child abuse and neglect.
- Permanency planning including using kinship care as a resource for children involved with the child welfare system.
- General substance abuse, domestic violence, and mental health issues related to children and families in the child welfare system, if the training is not related to providing treatment or services.
- Effects of separation, grief and loss, child development, and visitation.
- Communication skills required to work with children and families.

- Activities designed to preserve, strengthen, and reunify the family, if the training is not related to providing treatment or services.
- Assessments to determine whether a situation requires a child's removal from the home, if the training is not related directly to conducting a child abuse and neglect investigation. Training on how to conduct specialized assessments such as psychiatric, medical or educational assessments are not permitted.
- Ethics training associated with a title IV-E State plan requirement, such as the confidentiality requirements in section 471(a)(8) of the Act.
- Contract negotiation, monitoring or voucher processing related to the IV-E program.
- Adoption and Foster Care Analysis and Reporting System (AFCARS), Comprehensive Child Welfare Information system (CCWIS) or other child welfare automated system functionality that is closely related to allowable administrative activities in accordance with 45 CFR 1356.60(d) that the State has chosen to claim as title IV-E training rather than as CCWIS developmental or operational costs (see AT-ACF-OISM-001).
- Independent living and the issues confronting adolescents preparing for independent living consistent with section 477(b)(3)(D) of the Act and the Child Welfare Policy Manual (CWPM), Section 3.1H, Q/A #1.
- Foster care candidate determinations and pre-placement activities directed toward reasonable efforts in 471(a)(15), if the training is not related to providing a service.
- Training on referrals to services, not how to perform the service.
- Training on Fostering the Future Account (26 U.S.C. 530A) and ABLE Account (26 U.S.C. 529A) eligibility requirements, establishment procedures, agency responsibilities, coordination with other entities regarding account administration, and how Fostering the Future and ABLE Accounts may support case planning and successful transitions to adulthood.
- Training on general financial literacy or investment education to support case planning and case management activities that is not itself an administrative function.

Note: Fostering the Future Accounts include any account established under 26 U.S.C. 530A.

Source/Date

4/10/2007 (revised 08/12/2009; 4/2/2020, 8/18/2026)

Legal and Related References

Sections 471(a)(8), 471(a)(15), 474 (a)(3)(A) and (B) and 477(b)(3)(D); 45 CFR 1356.60(b), (c) and (d); 235.64(a)(1) and (2); CWPM, Section 3.1H, Q/A #1; AT-ACF-OISM-001; 26 U.S.C. 529A and 530A

Question 9. May the State claim title IV-E funds at the 75 percent match rate for any administrative activities that are directly related to carrying out the State agency's training initiatives?

Answer

Yes. Consistent with 45 CFR 235.64(a)(1) and (2) (which applies to title IV-E training costs by cross reference at 45 CFR 1356.60(b)(3)) and Departmental Appeals Board Decision #1666, the administration of training activities (when performed by the State agency training unit), such as contract negotiation, monitoring, or voucher processing is reimbursable as a training activity at the 75 percent match rate. Also, certain State agency overhead costs that are allocable to the State agency training unit in accordance with an approved cost allocation plan may be claimed as title IV-E training costs at 75 percent Federal financial participation (FFP). Further, while a State normally may not claim 75 percent FFP for day-to-day staff supervision, if the supervisor is performing a training function as part of a formalized training program, such as an on-the-job training component of initial in-service training, the State may consider the portion of time during which such activity is performed by the supervisor as training eligible for 75 percent match (to the extent it is allocable to title IV-E).

Source/Date

4/10/2007

Legal and Related References

45 CFR 1356.60(c)(2)(ix); 45 CFR 235.64(a)(1) and 235.65(a); Departmental Appeals Board Decision #1666

Question 10. May the title IV-E agency claim title IV-E administrative expenses at the 50 percent match on training topics not allowable at the 75 percent match rate?

Answer

It depends. The title IV-E agency may claim title IV-E administrative costs for training staff on any topic areas that are necessary for the proper and efficient administration of the State's or Tribe’s title IV-E program. These would include topics that address general skills or knowledge required for overall job performance. Some examples of general training topics that the agency may claim as a title IV-E administrative cost at the 50 percent match rate include, but are not limited to:

- Title IV-E agency personnel policies and procedures
- Job performance enhancement skills (e.g., writing, basic computer skills, time management)

- First aid, CPR, or facility security training
- General supervisory skills or other generic skills needed to perform specific jobs
- Ethics unrelated to the title IV-E plan
- Team building and stress management training
- Safe driving
- Worker retention and worker safety

Source/Date

4/10/2007; revised 9/30/26

Legal and Related References

Social Security Act § section 474(a)(3)(E); 45 CFR 1356.60(c)

Question 11. What training topics are not allowable as either a training cost or an administrative cost under the title IV-E program?

Answer

In general, the State may not claim title IV-E funds at the 75 percent rate unless the training addresses topics closely related to one of the examples of title IV-E administrative costs listed in Federal regulation at 45 CFR 1356.60(c)(1) and (2). In addition, funds are not allowable at either the 75 or 50 percent match rate for training on topics that do not address a general administrative need that is determined necessary for the proper and efficient administration of the title IV-E program. Examples of training topics that are not allowable under the title IV-E program include, but are not limited to:

- How to address or treat child or family problems or behaviors because it supports the delivery of social services rather than the administration of the title IV-E State plan.
- Conducting child abuse and neglect investigations because such specialized skills are required for staff activities that occur prior to a child's entering foster care or adoption, and even prior to a child's becoming a candidate for foster care.
- Child welfare/social service topics that are not related directly to the title IV-E programs or the administration of the title IV-E State plan.

Source/Date

4/10/2007

Legal and Related References

Social Security Act § sections 474(a)(3)(A) and (E); 45 CFR 1356.60(c)(1), (2) and (3); 45 CFR 235.62(b); Departmental Appeals Board Decision #1530 and others.

Question 12. Would you explain the cost-sharing or matching requirements for the title IV-E training program?

Answer

The cost-sharing or matching requirements for the title IV-E training program are addressed in regulation at 45 CFR 235.66(a), and referenced by 45 CFR 1356.60(b). The following principles apply:

- Only public funds consisting of cash outlays may be used as the State's share in claiming title IV-E training costs. In-kind contributions are not permitted.
- The funds used as match for title IV-E training must be appropriated directly to the State or local public agency administering the program, or transferred from another public agency or Tribe to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP.
- Private funds regardless of their source of origin may not be used as the State's share in claiming title IV-E training costs[1].
- Donated funds may be used as the State's share in claiming only if they are donated from a public source (see CWPM, Section 8.1F, Q/A #3).
- Funds used as a match cannot be used to match another Federal program unless the other Federal program explicitly allows such funds to be used as a match for title IV-E (for example, Tribes with a section 472(a) title IV-E agreement may use Indian Child Welfare Act, Indian Self-determination and Education Act and Community Development Block grant funds as a match for title IV-E, including training eligible under title IV-E at the 75 percent match rate).
- Federal funds are not permitted as a match.

[1]1356.60(b) does not cross reference to 45 CFR 235.66(b) which authorizes privately donated funds as a match under the former title IV-A Aid to Families with Dependent Children (AFDC), training program.

Source/Date

4/10/2007

Legal and Related References

45 CFR 1356.60(b) and 235.66(a); CWPM, Section 8.1F, Q/A #3; 25 CFR Parts 20 and 25

Question 13. May a title IV-E agency claim title IV-E training funds at the 75 percent match rate for initial in-service training if there are gaps of days or weeks or longer when the newly hired staff is not receiving training either in the classroom or on the job?

Answer

Yes. There may be situations in which an agency's approved training plan includes initial in-service training that is delivered intermittently over a period of time. In such situations, the agency may claim title IV-E at the 75 percent match rate for the periods of time the employee is actually participating in the training. Consistent with the regulations at 45 CFR 1356.60(b)(3) and 235.61(a), an employee must be in some form of structured training related to title IV-E administrative activities s/he will perform in order for the title IV-E agency to claim FFP for properly allocated trainee costs at the 75 percent match rate. Employee absences due to approved leave do not disrupt the initial in-service training period. However, if an employee is on duty but not participating in initial in-service training, FFP at the 75 percent rate is not available to reimburse the agency for the costs of the employee's salary, fringe benefits, travel or per diem during the non-training period.

Source/Date

4/10/2007; revised 9/30/26

Legal and Related References

45 CFR 1356.60(b)(3) and 235.61(a)

Question 14. May the title IV-E agency claim title IV-E training funds for the portion of the initial in-service training program that includes actual work experience?

Answer

It depends. Under some circumstances a title IV-E agency or local agency employee may be considered to be in training while carrying a partial caseload and the costs of that employee's salary, fringe benefits, travel or per diem may be reimbursable at the 75 percent level. To meet these circumstances, the employee must carry a caseload that is significantly smaller than that for the journeyman position in the agency. In addition, the work experience component must be fully detailed and justified as an integral component of the initial in-service training program in the title IV-E agency's training plan for title IV-B, as required by 45 CFR 1356.60(b)(2). It is reasonable to expect that an initial in-service training program that includes work experience would include more than the standard day-to-day supervision typically provided to experienced employees. Furthermore, the title IV-E agency should ensure that the trainee's performance is closely assessed and monitored, for example, that feedback is regularly provided to the worker.

Source/Date

4/10/2007; revised 9/30/26

Legal and Related References

45 CFR 1356.60(b)(2), 235.61(a) and 235.64(b)(1)

Question 15. May the title IV-E agency claim title IV-E training funds at the 75 percent match rate to train current title IV-E agency staff who are either promoted or transfer to another position within the agency, such as from caseworker to supervisor, under an initial in-service training program?

Answer

Yes, the title IV-E agency may claim title IV-E training funds at the 75 percent match rate to train through an initial in-service training program current agency employees who accept employment in a different position in the title IV-E agency, such as from a caseworker position to a supervisory position or from one program area to another such as from foster care to adoption. The training must meet the definition of initial in-service training, however, and therefore be intensive, task-oriented and last for at least one week as specified in the regulations at 45 CFR 235.61(a) and 235.64(b)(1).

While the definition of in-service training specifically indicates that such training is for "new employees," it is reasonable, within the context of this definition, to treat someone in a new position in the title IV-E agency as a "new" employee for training purposes. The employee's training needs are similar to those of a new employee. If the training is associated with the administration of an approved title IV-E plan requirement and intended to give the staff the specific skills required to perform title IV-E foster care and adoption functions, it may be matched at the 75 percent FFP rate. Training focused on the development of supervisory skills and tasks related to supervision (generic skills training) may be matched at the rate of 50 percent FFP. The training activities and costs must be included in the agency's training plan for title IV-B.

Source/Date

4/10/2007; revised 9/30/26

Legal and Related References

45 CFR 235.61(a) and 235.64(b)(1)

Question 16. The regulations at 45 CFR 235.61(a) define initial in-service training as a period of intensive, task-oriented training to prepare new employees to assume job responsibilities. What is meant by "intensive?" Are there any circumstances whereby an employee can be considered to be participating in initial in-service training while maintaining a full caseload?

Answer

Intensive training is training that is highly concentrated and intended to significantly strengthen and increase the employee's knowledge. Given these parameters, an employee could not participate in intensive training while maintaining a full caseload. There is not enough time in a regular work week to accommodate both maintaining a full caseload and participating in intensive training, whether classroom or on-the-job training is provided. The majority of the employee's time during intensive training is dedicated to training activities. An intensive training program may encompass an on-the-job component in which an employee maintains a partial caseload provided in a structured learning environment with a higher degree of supervision than a regular employee would experience. As specified in the regulations at 45 CFR 235.64, Federal financial participation is available at 75% for employees in initial in-service training for at least one week for salaries, fringe benefits, travel and per diem to the extent that the training is related to the examples of allowable administrative costs necessary for the administration of the foster care program at 45 CFR 1356.60(c)(2). Each State's title IV-B training plan must accord with the definition of in-service training at 45 CFR 235.61(a). In addition, course descriptions, activities and costs must be described in the State's approved training plan for title IV-B. Training that benefits the overall administration of a State's foster care or adoption assistance program, and not only children eligible under title IV-E, must be allocated to all benefiting Federal and State programs in accordance with 2 CFR Parts 200 and 300 cost principles and an approved cost allocation plan.

Note: This answer previously referenced 45 CFR Part 75. However, 2 CFR Parts 200 and 300 supersede 45 CFR Part 75 effective October 1, 2025.

Source/Date

09/05/07 (revised 11/2/2016, 81 FR 3022, Jan. 20, 2016), (revised 10/1/25, 89 FR 80055, Oct. 2, 2024)

Legal and Related References

45 CFR 235.64, 235.61(a) and 1356.60(c)(2); 2 CFR Parts 200 and 300

Question 19. Section 474(a)(3)(B) of the Social Security Act (the Act) permits title IV-E agencies to claim short-term training costs for members of the staff of child welfare agencies that are licensed or approved by the State or Tribe and providing services to children receiving title IV-E assistance. Is there a Federal definition of a child welfare agency that is “licensed” or “approved” by the State or Tribe?

Answer

No. The title IV-E agency has the discretion to determine what kinds of agencies are child welfare agencies and the criteria for licensing or approving such agencies for the purpose of this provision. See Q/A#8 for examples of allowable training topics.

Source/Date

8/12/2009; revised 9/30/26

Legal and Related References

Social Security Act § section 474(a)(3)(B)

Question 20. Section 474(a)(3)(B) of the Social Security Act allows the title IV-E agency to claim as title IV-E expenditures the short-term training costs to train attorneys who represent children and their parents in such ways that increase the ability of the attorney to provide support and assistance to these children. Must the attorneys be employed by the title IVE agency in order for the title IV-E agency to claim the short-term training costs for these attorneys?

Answer

No. There is no requirement in the law that the attorneys identified in section 474(a)(3)(B) be employed by the title IV-E agency. The title IV-E agency may claim the allowable costs to train an attorney who represents title IV-E children or their parents and meets the criteria established in section 474(a)(3)(B) of the Social Security Act. See Q/A#8 for examples of allowable training topics.

Source/Date

8/12/2009

Legal and Related References

Social Security Act § section 474(a)(3)(B)

Question 21. What are allowable title IV-E training topics related to the role of protective factors in healthy child development, such as resiliency; relational competence; child social and emotional development; trauma; and related areas?

Answer

There are many protective factors that help to minimize risk to children and promote healthy child development. Training and providing information to title IV-E child

welfare staff and foster/adoptive parents and others on such factors are allowable title IV-E training topics. Such training topics include, but are not limited to:

- Evidence-based practice: Training on the importance of using evidence-based techniques for case planning and modifying agency culture to support and sustain evidence-based practice.
- Screening and assessment: How to use of screening and assessment tools to develop the child's case plan.
- Protective factors: Introduction to the concept of risk and protective factors and prevention; effective strategies for prevention; overview of strategies to target and encourage development of protective factors.
- Resilience: Strategies for minimizing the traumatic experience of placement(s) for children, including facilitating attachment and promoting stable relationships.
- Relational competence: An overview of the role of relational competence in family relationships.
- Child social and emotional development and well-being: Principles of child growth and social, emotional, physical, and intellectual development.
- Trauma: An overview of trauma, including definitions, key terms related to trauma and the long-term impact of trauma experiences; the ways that trauma may impact children's functioning and well-being at various stages of development; the impact of secondary trauma on caregivers and providers; general descriptions of effective treatments and strategies for addressing traumatic reactions and restoring developmentally appropriate functioning.

However, training on *treating* conditions is not allowable as a title IV-E training topic because such training supports the delivery of social services. Also, please note that all title IV-E training activities and costs must be included in the title IV-E agency's training plan for title IV-B and properly cost allocated to benefiting programs using the appropriate eligibility rate or similar method. Please see Child Welfare Policy Manual section 8.1H Q/A#8 for more information on allowable training topics.

Source/Date

5/22/2012

Legal and Related References

Social Security Act § section 474(a)(3)(B)

Question 22. May a title IV-E agency claim title IV-E federal financial participation (FFP) for training costs on behalf of individuals who are preparing for employment with a private agency performing title IV-E administrative activities through a contractual arrangement with the title IV-E agency?

Answer

Yes. A title IV-E agency may claim title IV-E administrative costs for these individuals at the 50% FFP rate in accordance with section 474(a)(3)(E) of the Act because it is in line with the proper and efficient administration of the title IV-E program. The use of title IV-E for educational stipends or other allowable training costs for such prospective contract staff to perform title IV-E administration should enhance the quality of the title IV-E workforce as well as the associated case planning and management work in title IV-E programs. States may claim such costs to the extent allocable and in accordance with an approved cost allocation plan; tribes may claim such costs to the extent allocable and in accordance with an approved cost allocation methodology. Such costs may not be claimed at the 75% FFP rate. A title IV-E agency must include the basis for so allocating in its title IV-B training plan. The title IV-E agency may claim reimbursement for stipends to train persons preparing for employment with a private agency as described above, under the following conditions and limitations: (1) Persons preparing for employment with a private agency under contract with the title IV-E agency to perform title IV-E administrative activities are pursuing educational programs approved by the title IV-E agency; (2) Persons preparing for employment with a private agency under contract with the title IV-E agency to perform title IV-E administrative activities are committed to work for a title IV-E contracted private agency for a period of time at least equal to the period for which financial assistance is granted if employment is offered within 2 months after training is completed; (3) The title IV-E contracted private agency offers the individual preparing for employment a job upon completion of training unless precluded by contractual provisions or other circumstances beyond the agency's control; and if such agency is no longer operating under a title IV-E contract or cannot offer the individual employment, the title IV-E agency will either identify another title IV-E contracted agency to offer employment or release the individual from his or her commitment; (4) The title IV-E agency keeps a record of the employment of persons trained. If the persons are not employed by a title IV-E contracted private agency, the record specifies the reason for non-employment; (5) The title IV-E agency evaluates the training programs; and (6) Any recoupment of funds by the title IV-E agency from trainees failing to fulfill their commitment under this section shall be treated as program income and shall be deducted from total administrative costs for the purpose of determining net costs for FFP.

Source/Date

2-Dec-16

Legal and Related References

Social Security Act § 474(a)(3)(E); 45 C.F.R. 235.63(b)

8.2. TITLE IV-E, Adoption Assistance Program

Question 1. May a title IV-E agency suspend or reduce a title IV-E adoption assistance subsidy solely because the adoptive parents fail to renew or recertify the adoption assistance agreement?

Answer

It is incumbent upon adoptive parents to keep the title IV-E agency informed of material changes that might impact the parent's support, but a title IV-E agency cannot reduce or suspend adoption assistance solely because the adoptive parents fail to reply to its request to renew or recertify the agreement, unless the reduction or suspension is specified and agreed upon in the title IV-E adoption assistance agreement. Specifically, a title IV-E agency may include a clause in the title IV-E adoption assistance agreement to the effect that if the adoptive parents fail to provide a renewal or recertification of the agreement within prescribed timeframes, the adoptive parents agree to suspend or reduce the adoption assistance payment to $0 until the renewal or recertification is provided to the agency. The form of renewal or recertification and timeframes must be clearly specified in the title IV-E adoption assistance agreement. Once an eligible child is receiving title IV-E adoption assistance pursuant to an agreement, adoption assistance continues until either the adoptive parents concur to a change or one of the statutory conditions are met for termination of the assistance (section 473(a)(4) of the Social Security Act and Child Welfare Policy Manual Section (CWPM) 8.2B.9 Q/A #2). Therefore, suspensions or reductions in a title IV-E adoption assistance payment are not permitted without the concurrence of the adoptive parents under section 473(a)(3) of the Act unless the agency suspends the payment in accordance with CWPM 8.2D. If the agency suspends or reduces the payment to $0 for failure to provide the agreed upon renewal or recertification as outlined in the agreement, fair hearing requirements do not apply because the adoptive parents agreed to this reduction or suspension by signing the adoption assistance agreement (see CWPM 8.4G, Q/A #2).

In order to be able to reduce to $0 or suspend adoption assistance payments in accordance with the guidance above, the title IV-E agency must first amend its title IV-E plan and have the Children's Bureau approve the change. Note also that each new adoption assistance agreement must include the circumstances under which the title IV-E agency may reduce to $0 or suspend adoption assistance payments. Similarly, the title IV-E agency may try to re-negotiate existing adoption assistance agreements with the adoptive parent to include the circumstances under which the title IV-E agency may reduce to $0 or suspend payments; however, the terms of an existing adoption assistance agreement may only be changed with the concurrence of the adoptive parent. If an adoptive parent declines to include such a term in the existing agreement, the title IV-E agency may not reduce to $0 or suspend adoption assistance payments under that agreement for failing to renew or recertify their adoption agreement.

If the title IV-E agency reduces to $0 or suspends adoption assistance as described above, the child/youth remains title IV-E eligible, and the title IV-E adoption assistance agreement remains in effect while the payment is reduced to $0 or suspended.

Although an agency may reduce to $0 or suspend a child's adoption assistance payment under the circumstances described above, the child's eligibility for, and receipt of, Medicaid may not be suspended while the adoption assistance agreement is in effect. See section 473(b) of the Social Security Act. The title IV-E agency also may claim any title IV-E adoption assistance administrative costs on behalf of a child whose title IV-E adoption assistance is reduced to $0 or suspended in accordance with its approved cost allocation plan.

Source/Date

12/31/2007; Updated 08/28/2026

Legal and Related References

Social Security Act - section 473(a)(3) and (4); Child Welfare Policy Manual section 8.2B.9 Q/A #2

Question 2. Does ACF use or rely upon statistical sampling and/or an extrapolated methodology for the purpose of calculating adoption assistance disallowances?

Answer

No. The regulations at 45 C.F.R. § 1356.71(c) and Program Instruction PI-02-06 (Jul. 12, 2002) only apply to the title IV-E foster care program. Program Announcement 84-02, which was issued on March 7, 1984, addressed this issue, but was withdrawn on September 24, 2001, and therefore has not applied to the title IV-E adoption assistance program since that date. ACF does not use statistical sampling or an extrapolated methodology as a basis for calculating the amount of a disallowance in the title IV-E adoption assistance program. As such, any adoption assistance disallowances taken by ACF are limited to the amount of actual identified unallowable cost claims without application of any findings to other claims that have not been reviewed.

Source/Date

2/21/2019

Legal and Related References

45 C.F.R. section 1356.71(c)

Question 3. Adoption Savings funds must not supplant any federal or non-federal funds used to provide a service under titles IV-B or IV-E per section 473(a)(8)(D)(ii) of the Social Security Act (Act). If these funds are used as the non-federal share of an optional title IV-E program, is it considered supplantation?

Answer

We previously instructed that a title IV-E agency may not claim Adoption Savings expenditures for either federal reimbursement or as the non-federal share to secure federal financial participation as that would be considered supplantation. However, we are issuing this policy to allow a title IV-E agency to use Adoption Savings expenditures beginning in federal fiscal year (FFY) 2020 for the non-federal share of an optional title IV-E program (i.e., Guardianship Assistance, Prevention Services or Kinship Navigator) within the parameters described below. This does not constitute supplantation since these optional programs are not required as a condition of title IV-E plan approval. However, Adoption Savings expenditures may not take the place of the non-federal share currently being used for the optional title IV-E program. To document that a title IV-E agency is not supplanting the non-federal share for the optional title IV-E program with Adoption Savings expenditures, it must establish a base year amount of non-federal expenditures to maintain. The base year is always the FFY prior to the FFY in which the title IV-E agency begins to use Adoption Savings expenditures as a source of its non-federal share for the optional title IV-E program. The title IV-E agency must then maintain at least that base year amount as the non-federal share for that program as illustrated in the examples below.

A title IV-E agency that begins to use Adoption Savings expenditures as the non-federal share of an optional title IV-E program beginning in FFY 2020 will always use FFY 2019 as its base year. This means that the non-federal share of the optional program in 2020 and future FFYs must be equal to or greater than the FFY 2019 expenditures before any Adoption Savings may be expended for this purpose. Alternatively, if a title IV-E agency begins to use Adoption Savings expenditures as the non-federal share of an optional title IV-E program beginning in a later FFY it will use the immediately prior FFY as its base year.

Examples: Use of Adoption Savings expenditures beginning in FFY 2020 for the Non-Federal Share of an Optional Title IV-E Program:

Optional title IV-E program first implemented in FFY 2020. The base year amount of the title IV-E agency's non-federal share is zero since the IV-E agency did not participate in the program in FFY 2019 (the prior FFY). As such, the title IV-E agency may use Adoption Savings expenditures as part or as the entire non-federal share for the optional program in FFY 2020 and future FFYs.

Pre-existing optional title IV-E program implemented before FFY 2020. The base year amount (i.e., FFY 2019 non-federal share) is the amount that the title IV-E agency

must maintain in FY 2020 and in future FFYs. As such, the title IV-E agency may use Adoption Savings funds as part of the required non-federal share in FFY 2020 or future FFYs only to the extent that the total FFY non-federal share for the optional program exceeds the identified FFY 2019 base year amount.

Source/Date

2/17/2020

Legal and Related References

Legal and Related: Social Security Act - section 473(a)(8)(D)

Question 4. May a title IV-E agency use Adoption Savings to help cover the cost of ending its use of a child's Social Security survivor benefits to offset foster care costs?

Answer

Yes, depending on the circumstance. A title IV-E agency may use Adoption Savings for allowable title IV-B or title IV-E services or activities, including allowable foster care-related costs. However, Adoption Savings must supplement, not replace, other federal or non-federal funds. The agency must first maintain its required base-year level of non-federal spending with funds other than Adoption Savings. After that baseline is met, additional allowable spending may be counted as Adoption Savings. In circumstances in which a state passes a law prohibiting the use of social security survivor benefits to cover foster care costs, resulting in the baseline going down when the law was passed, then Adoption Savings could be used, and it would not be supplantation. If a state does not have a law prohibiting use of survivor benefits by the title IV-E agency, then the survivor benefits are part of the baseline and Adoption Savings could not be used to supplant those funds. Adoption Savings also may not be used as the state match for required title IV-E foster care maintenance payments or adoption assistance.

Source/Date

Legal and Related References

Section 473(a)(8)(D) of the Social Security Act

8.2A.1. TITLE IV-E, Adoption Assistance Program, Agreements, Interstate placements

Question 1. Which State is responsible for entering into an adoption assistance agreement in interstate adoptions?

Answer

If the State agency has responsibility for placement and care of a child, that State is responsible for entering into the adoption assistance agreement and paying the title IV-E adoption subsidy, even if the child is placed in an adoptive home in another State. If the State agency does not have responsibility for placement and care, it is the adoptive parents' State of residence where the adoption assistance application should be made. In that event, the public child welfare agency in the adoptive parents' State of residence is responsible for determining whether the child meets the definition of special needs, entering into the adoption assistance agreement and paying the subsidy, consistent with the way public benefits are paid in other programs.

Source/Date

ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References

Social Security Act - section 473

Question 2. What happens if a family moves to a different State while the adoption assistance agreement is still in effect?

Answer

Section 475 (3)(B) of the Social Security Act requires that any adoption assistance agreement, effective on or after October 1, 1983, stipulate that the agreement ...shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

States which enter into adoption assistance agreements must take measures to assure that the terms of the agreements are met. Either directly, or through agreements with other States, services and medical care (children eligible for title IV-E adoption assistance payments are deemed eligible for title XIX (Medicaid) regardless of their residence within the nation) agreed upon between the State and parents must be provided (45 CFR 1356.40(e)).

The responsibility of the State to honor its commitments for title XIX and other services as specified in the adoption agreement, is based on the State's agreement to administer title IV-E. The authority for the State to enter into agreements and contracts with other States to honor commitments made in adoption assistance agreements is based on the State's statute or administrative procedures.

Source/Date

ACYF-CB-PI-83-08 (8/10/83)

Legal and Related References

Social Security Act - section 475(3); 45 CFR 1356.40

Question 3. When the State agency enters into an adoption assistance agreement with a family from another State, which State's rate structure applies as the limit for the adoption assistance payment?

Answer

In situations where a child is placed by the State agency in one State with an adoptive family in another State, it is the placing State that would look at its own established foster care rate structure, as well as State law and policy governing its foster care and adoption assistance payments, to determine the amount of assistance available on behalf of the child. If the placing and paying State's law or policy allows flexibility to pay amounts based upon the foster care board rate in the State in which the child is placed for adoption, this practice would be allowable under title IV-E since the statutory requirement in section 473 (a)(3) of the Act would be met.

Source/Date

ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References

Social Security Act - section 473 (a)(3)

8.2A.2. TITLE IV-E, Adoption Assistance Program, Agreements, Means test

Question 1. May a title IV-E agency employ a means test when negotiating adoption assistance agreements?

Answer

The use of a means test is prohibited in the process of selecting a suitable adoptive family, or in negotiating an adoption assistance agreement, including the amount of the adoption assistance payment. Once a child has been determined eligible under section 473 of the Act, adoptive parents cannot be rejected for adoption assistance or have payments reduced without their agreement because of their income or other resources. In addition, the title IV-E agency cannot arbitrarily reject a request for an increase in the amount of subsidy (up to the amount the child would have received in

foster care) in cases where the adoptive parents make life choices such as resigning one's job to stay at home with the adopted child or to return to school. Adoptive parents can request a fair hearing if the title IV-E agency rejects such requests. The circumstances of the adopting parents must be considered together with the needs of the child when negotiating the adoption assistance agreement. Consideration of the circumstances of the adopting parents has been interpreted by the Department to pertain to the adopting family's capacity to incorporate the child into their household in relation to their lifestyle, standard of living and future plans, as well as their overall capacity to meet the immediate and future needs (including educational) of the child. This means considering the overall ability of the family to incorporate an individual child into their household. Families with the same incomes or in similar circumstances will not necessarily agree on identical types or amounts of assistance. The uniqueness of each child/family situation may result in different amounts of payment.

Source/Date

ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References

45 CFR 1356.40 (c)

8.2B. TITLE IV-E, Adoption Assistance Program, Eligibility

Question 4. Is the title IV-E agency required to provide title IV-E adoption assistance to all eligible children on whose behalf it is requested?

Answer

Yes, if the child meets the criteria in section 473 of the Social Security Act (the Act). Section 473(a)(1)(A) of the Act specifies that each title IV-E aagency "having a plan approved under this part shall [emphasis added] enter into adoption assistance agreements (as defined in section 475(3) of the Act) with the adoptive parents of children with special needs." Further, sections 473(a)(1)(B)(i) and (ii) of the Act require title IV-E agencies to make payments of nonrecurring adoption expenses incurred by or on behalf of parents in connection with the adoption of a child with special needs and/or adoption assistance payments on behalf of a child who meets the requirements of section 473(a)(2) of the Act.

Source/Date

04/24/07; (03/03/2020)

Legal and Related References

Social Security Act - sections 473(a), 475(3), and 479B

Question 6. The Adoption Assistance eligibility criteria for an "applicable child" includes one pathway to title IV-E adoption assistance eligibility which requires that the child must be in the "care" of a public or licensed private child placement agency by way of a voluntary placement, voluntary relinquishment or a court-ordered removal with a judicial determination that remaining at home would be contrary to the child's welfare. Does "care" mean that a public or private agency must have placement and care responsibility for the child?

Answer

No. Although the term "care" as it is used in 473(a)(2)(A)(ii)(I)(aa) of the Social Security Act (the Act) may imply that a public or private agency has placement and care responsibility for the child, it is not explicit. Therefore, in situations where any sort of care is being provided for an applicable child by a public or licensed private child placement agency or Indian tribal organization at the time the adoption proceedings are initiated, the requirements in section 473(a)(2)(A)(ii)(I)(aa) of the Act will be met.

Source/Date

5/04/11; (03/03/2020)

Legal and Related References

Social Security Act - section 473(a)(2)(A)(ii)(I)(aa)

Question 7. The Adoption Assistance eligibility criteria for an "applicable child" includes one pathway to title IV-E adoption assistance eligibility which requires that the child must be in the care of a public or licensed private child placement agency by way of a voluntary placement, voluntary relinquishment or a court-ordered removal with a judicial determination that remaining at home would be contrary to the child's welfare. When referring to a "licensed" private child placement agency, does this mean that the agency must be licensed by the State or Tribe entering into the adoption assistance agreement? Or is it required that the title IV-E agency provide a payment to an eligible child even if the agency was not licensed in the State or Tribe that is entering into the agreement?

Answer

Section 473(a)(2)(A)(ii)(I)(aa) prescribes only that the child be in the care of "...a licensed private child placement agency or Indian tribal organization." So long as the child placement agency is licensed for title IV-E eligibility purposes it does not matter who licenses the agency.

Source/Date

5/04/11; (03/03/2020)

Legal and Related References

Social Security Act - section 473(a)(2)(A)(ii)(I)(aa)

Question 9. Does a child who is a member of a sibling group have to meet the criteria in section 473(e)(3) of the Social Security Act (the Act) prior to finalization or prior to entering into the adoption assistance agreement to be considered an applicable child?

Answer

A child who is a member of a sibling group must meet the criteria in section 473(e)(3) of the Act prior to finalization of the adoption to be considered an applicable child. Under 473(e)(3) of the Act, a sibling is considered to be an applicable child if he meets the following elements:

(A) is a sibling of a child who is an applicable child;

(B) is to be placed in the same adoption placement as an applicable child who is his/her sibling; and

(C) meets the adoption assistance eligibility requirements for an applicable child.

A child must meet these three elements prior to the finalization of the adoption. This is consistent with policy stated in the Child Welfare Policy Manual Section 8.2B12 Q/A #2 in which we stated that a child's eligibility for Supplemental Security Income benefits must be established prior to finalization of the adoption. It is also consistent with policy in ACYF-CB-PI-10-11 in which we stated that an applicable child is a child who has been in foster care under the responsibility of the title IV-E agency for any 60 consecutive months prior to the finalization of the adoption.

Source/Date

5/4/2011

Legal and Related References

Social Security Act § section 473(e)(3); Child Welfare Policy Manual Section 8.2B.12 Q/A#2; ACYF-CB-PI-10-11

Question 10. Must a title IV-E agency that takes the option to extend the title IV-E programs to older youth ages 19, 20, or 21 per section 475(8)(B) of the Social Security Act provide title IV-E adoption assistance payments to the

older youth who remain eligible when the adoption assistance agreements expires?

Answer

Yes. A title IV-E agency must provide extended adoption assistance payments to an older youth when his adoption assistance agreement expires, if the youth remains eligible for the adoption assistance program. This includes youth under a title IV-E adoption assistance agreement in place prior to the agency taking the option to extend the title IVE programs.

Source/Date

5/4/2011

Legal and Related References

Social Security Act § sections 475(8)(B) and 473

8.2B.1. TITLE IV-E, Adoption Assistance Program, Eligibility, Biological parents

Question 1. Can a biological parent whose parental rights have been terminated and who later adopts his or her biological child receive title IV-E adoption assistance?

Answer

No. The purpose of the title IV-E adoption assistance program is to provide assistance to adoptive families who adopt special needs children in need of alternative permanent homes. A child cannot be considered a child with special needs unless, among other things, "the State has determined that the child cannot or should not be returned to the home of his parents" (section 473(c) of the Act). While the termination of parental rights (TPR) would verify that this determination had previously been made, the placement of the child back into the biological home would nullify such a determination. While the IV-E agency may continue to recognize that the legal ties have been severed, the biological ties remain.
In this situation, the child would be returned to the home of the biological parent. Thus, a determining factor for title IV-E eligibility in section 473(c) of the Act would not be present. The adoption by the biological parent in these circumstances, would be undertaken as a means of restoring the legal relationship between the parent and child, rather than for purposes of providing the child with new parents or a substitute for the original home.

Source/Date

ACYF-CB-PIQ-89-04 (8/8/89)

Legal and Related References

Social Security Act - sections 472 (a)(2)(A) and (C), 473 (a)(2)(A)(ii) and 473 (c)

8.2B.2. TITLE IV-E, Adoption Assistance Program, Eligibility, Children in foster care

Question 1. Would adoptive parents continue to be eligible to receive title IV-E adoption assistance payments on behalf of a child who has been placed in a psychiatric facility under the care and responsibility of the title IV-E agency through a voluntary placement agreement?

Answer

Yes. Title IV-E, section 473(a)(4)(A) of the Social Security Act indicates that no payment may be made to parents with respect to any child if the title IV-E agency determines that the parents are no longer legally responsible for the support of the child who has not attained 18 years of age or if the title IV-E agency determines that the child is no longer receiving any support from such parents. Other than the age of the child, these two conditions are the only basis in the Act for terminating adoption assistance payments on behalf of a child unless requested by or agreed to by the adoptive parents. On the other hand, there is nothing to prevent the title IV-E agency or the court from requesting or ordering the parents to contribute toward the cost of the child's care in the psychiatric facility, in the same manner as any other parents would be asked in similar situations.

Source/Date

ACYF-CB-PIQ-85-12 (11/25/85); 10/25/17; (03/03/2020)

Legal and Related References

Social Security Act - section 473(a)(4)(A) and 479B

Question 2. May title IV-E eligible children in adoptive homes receive title IV-E foster care maintenance payments prior to finalization of adoption?

Answer

Prior to the finalization of adoption, title IV-E eligible children in adoptive homes may receive foster care maintenance payments if the home is licensed for foster care.

Source/Date

ACYF-CB-PIQ-82-01 (1/19/82)

Legal and Related References

Social Security Act - section 472

8.2B.3. TITLE IV-E, Adoption Assistance Program, Eligibility, Child of a minor parent

Question 3. When does an applicable child of a minor parent have to live in a foster family home or child care institution with the minor parent to meet the requirements in section 473(a)(2)(A)(ii)(I)(cc) of the Social Security Act (the Act)?

Answer

The statute at 473(a)(2)(A)(ii)(I)(cc) requires that the applicable child of the minor parent lived with his or her minor parent in a foster family home or child care institution and does not specify a timeframe. Therefore, the applicable child of a minor parent may reside with his or her minor parent at any point prior to the finalization of the child's adoption.

Source/Date

5/4/2011

Legal and Related References

Social Security Act § section 473(a)(2)(A)(ii)(I)(cc)

8.2B.4. TITLE IV-E, Adoption Assistance Program, Eligibility, Deceased adoptive parents/dissolved adoptions

Question 1. Please explain the requirements regarding a child's eligibility for title IV-E adoption assistance when the adoptive parents die or the adoption is dissolved.

Answer

In the situation where a child is adopted and receives title IV-E adoption assistance, but the adoption later dissolves or the adoptive parents die, a child may continue to be eligible for title IV-E adoption assistance in a subsequent adoption. The only determination that must be made by the title IV-E agency prior to the finalization of the subsequent adoption is whether the child is a child with special needs, consistent with the requirements in section 473(c) of the Act. Eligibility factors in sections 473(a)(2)(A) of the Act must not be redetermined when such a child is subsequently

adopted because the child is to be treated as though his or her circumstances are the same as those prior to his or her previous adoption. Since title IV-E adoption assistance eligibility need not be re-established in such subsequent adoptions, the manner of a child's removal from the adoptive home, including whether the child is voluntarily relinquished to an individual or private agency, is irrelevant.

Source/Date

ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References

Social Security Act - section 473(a)(2)(A) and (C) and 473(c)

Question 2. Please explain the responsibilities of States that have entered into interstate adoptions when the adoptive parents die or the adoption is dissolved.

Answer

If a title IV-E adoption dissolves or the adoptive parents die and the child is placed with a State agency that assumes responsibility for placement and care, it is the placing State's responsibility to determine whether the child meets the definition of special needs, and pay the subsidy in a subsequent adoption. If, however, a public child welfare agency is not involved in the subsequent adoptive placement of a child, it is the public child welfare agency in the subsequent adoptive parents' State of residence that is responsible for determining whether the child meets the definition of special needs, entering into the adoption assistance agreement, and paying the subsidy. The State of the child's initial adoption or the State that pays the title IV-E adoption assistance in the child's initial adoption is irrelevant in a subsequent adoption.

Source/Date

ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References

Social Security Act - section 473

Question 3. A child is adopted by two parents, but only one parent signs the adoption assistance agreement. May the child continue to receive title IV-E adoption assistance payments if the parent who signed the adoption assistance agreement later dies?

Answer

Yes, once the surviving adoptive parent signs an agreement. There is nothing in title IV-E or 45 C.F.R. Part 1356 that would prohibit payments from continuing on behalf of the eligible child under an agreement signed by the surviving adoptive parent after the death of the parent who signed the original agreement.

Source/Date

3/18/2013

Legal and Related References

Social Security Act - Section 473; 45 CFR 1356.40

8.2B.7. TITLE IV-E, Adoption Assistance Program, Eligibility, Judicial determinations

Question 1. We believe that the lack of a "reasonable efforts" determination in accordance with section 472 (a)(1) of the Social Security Act (the Act) cannot result in ineligibility for title IV-E adoption assistance. Is this correct?

Answer

Yes. The judicial determination of "reasonable efforts" to prevent placement and reunify the child with his family is an eligibility requirement for the title IV-E foster care maintenance payments program (section 472 (a)(1) of the Act), but such a determination is not an eligibility requirement for adoption assistance in section 473 of the Act.

Source/Date

ACYF-CB-PIQ-85-06 (6/5/85)

Legal and Related References

Social Security Act - sections 472 and 473

Question 2. Do the "contrary to the welfare" requirements at 45 CFR 1356.21(c) and (d) apply to the adoption assistance program?

Answer

Yes. To fulfill the eligibility criteria in section 473 (a)(2)(A) of the Social Security Act when a child's removal from the home is the result of court action, there must be a judicial determination to the effect that to remain in the home would be contrary to the child's welfare. Since a child's removal from the home must occur as a result of

such a judicial determination, the determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. If the determination is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E adoption assistance pursuant to an involuntary removal. The contrary to the welfare finding must be explicit and made on a case-by-case basis. Items such as nunc pro tunc orders, affidavits, and bench notes are not acceptable substitutes for a court order. Only an official transcript is sufficient evidence of the judicial determination. A judicial determination regarding reasonable efforts to prevent removal or reunify the family, although required for title IV-E foster care, is not a requirement for title IV-E adoption assistance eligibility.

Source/Date

ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References

Social Security Act - section 473 (a)(2)(A); 45 CFR 1356.21(c) and (d)

8.2B.8. TITLE IV-E, Adoption Assistance Program, Eligibility, Medicaid

Question 1. Is Title XIX coverage required under title IV-E Adoption Assistance?

Answer

Yes. Section 473 (b) of the Social Security Act clearly establishes that a child receiving foster care maintenance payments or for whom an adoption assistance agreement is in effect is treated as a child who is a recipient of Aid to Families with Dependent Children (AFDC).
In addition, section 2171 of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) subsequently amended section 1902 (a)(10)(A) to specifically require eligibility for title XIX (Medicaid) services for "all individuals receiving aid or assistance under any plan of the State approved under...part A or part E of title IV". Consequently, to the extent that the State has a title XIX program, children covered by title IV-E are statutorily eligible.

Source/Date

ACYF-CB-PIQ-82-16 (6/21/82)

Legal and Related References

Social Security Act - sections 471, 473 and 1902; Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35)

8.2B.9. TITLE IV-E, Adoption Assistance Program, Eligibility, Redeterminations

Question 1. What are the requirements for redeterminations of title IV-E adoption assistance eligibility?

Answer

The title IV-E adoption assistance program does not require redeterminations of a child's eligibility. Although the title XIX Medicaid program and the program that, in part, may qualify a child initially for adoption assistance, such as Supplemental Security Income, require redeterminations, they are unnecessary for the purpose of maintaining a child's eligibility for title IV-E adoption assistance. Once a child has been determined eligible and is receiving adoption assistance, a title IV-E agency may terminate the assistance only under the circumstances specified at section 473(a)(4) of the Social Security Act.

Source/Date

ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References

Social Security Act - section 473

Question 2. Does title IV-E require the agency to perform annual renewals or continued eligibility determinations for adoption assistance?

Answer

No. Title IV-E does not require the title IV-E agency to perform annual renewals, recertifications or eligibility re-determinations for title IV-E adoption assistance. Parents who receive adoption assistance payments, however, have a responsibility to keep the agency informed of circumstances that would make them ineligible for title IV-E adoption assistance payments, or eligible for assistance payments in a different amount. See Section 473(a)(4)(B) of the Social Security Act. Once a child is determined eligible to receive title IV-E adoption assistance, he or she remains eligible until: (1) the age of 18 or such higher age up to age 21 as the title IV-E agency may elect under section 475(8)(B)(iii) (if the child meets applicable employment/education conditions), or age 21 (if the agency determines that the child has a mental or physical disability that warrants the continuation of assistance (2) the agency determines that the parent is no longer legally responsible for the support of the child under 18, or; (3) the agency determines the child is no longer receiving any support from the parents.

Source/Date

ACYF-CB-PIQ-98-02 (9/03/98); 2/14/18; (03/03/2020)

Legal and Related References

Social Security Act - section 473(a)(4)(A), 475(8)(B)(iii), and 479B

8.2B.11. TITLE IV-E, Adoption Assistance Program, Eligibility, Special needs

Question 2. In establishing title IV-E eligibility for adoption assistance, is termination of parental rights the only mechanism for demonstrating that a child cannot or should not be returned home?

Answer

One of the criteria for establishing that a child has special needs is a determination by the title IV-E agency that the child cannot or should not be returned to the home of his or her parents. Previous guidance stated that this means that the title IV-E agency must have reached that decision based on evidence by an order from a court of competent jurisdiction terminating parental rights, the existence of a petition for a termination of parental rights (TPR), or a signed relinquishment by the parents. It has been brought to our attention that there are situations in which adoptions are legal without a TPR. Specifically, in some Tribes adoption is legal without a TPR or a relinquishment from the biological parent(s), and there is at least one State that allows relatives who have cared for a related child for a period of time to adopt without first obtaining a TPR.
After consideration, we believe that our earlier policy is an unduly narrow interpretation of the statute. Consequently, if a child can be adopted in accordance with State or Tribal law without a TPR or relinquishment, the requirement of section 473 (c) of the Act will be satisfied, so long as the State or Tribe has documented the valid reason why the child cannot or should not be returned to the home of his or her parents.

Source/Date

ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References

Social Security Act - section 473 (c)

Question 3. In determining whether an applicable child who is a special needs child is eligible for title IV-E adoption assistance through the Supplemental Security Income (SSI) pathway, may a title IV-E agency make the determination that the child meets the medical or disability

requirements for SSI benefits? (See section 473(a)(2)(A)(ii)(I)(bb) of the Social Security Act).

Answer

Yes. For the purposes of determining whether an applicable child who is a special needs child is eligible for title IV-E adoption assistance through the SSI pathway, the title IV-E agency may make the determination that the child meets the medical or disability requirements for SSI benefits. The title IV-E agency is not making an SSI eligibility determination on behalf of the child, as that responsibility lies with the Social Security Administration and that includes a financial eligibility component. Rather, the title IV-E agency is responsible for title IV-E adoption assistance eligibility determinations, and therefore the agency is permitted to make the determination that the child meets the medical or disability requirements for SSI benefits for title IV-E eligibility purposes.

Source/Date

2/24/2011

Legal and Related References

Social Security Act - Sections 473(a)(1)(B)(ii)), 473(a)(2)(A)(ii)(I)(bb) and 473(c)(2)(B)(ii)

Question 4. An applicable child must meet sections 473(c)(2)(A), (B) and (C) of the Social Security Act (the Act) in order to be considered a child with special needs for the adoption assistance program. Must a title IV-E agency's definition of a child with special needs include the criteria in section 473(c)(2)(B)(ii) of the Act that the applicable child meets all the medical or disability requirements of title XVI?

Answer

Yes. A title IV-E agency must include both a child for whom the agency has determined there is a specific factor or condition (section 473(c)(2)(B)(i) of the Act) and a child who meets all medical or disability requirements of title XVI (section 473(c)(2)(B)(ii) of the Act) in the definition of a child with special needs for an applicable child. Therefore, the title IV-E agency must consider an applicable child who meets all the medical or disability requirements of title XVI and the requirements in sections 473(c)(2)(A) and (C) of the Act a child with special needs for the purpose of title IV-E adoption assistance eligibility.

Source/Date

05/04/11; (03/03/2020)

Legal and Related References

Social Security Act - sections 473(c)(2)(A), (B) and (C)

8.2C. TITLE IV-E, Adoption Assistance Program, Interstate Compact

Question 1. What is the definition or description of the term "interstate compact" as used in the Adoption Assistance and Child Welfare Amendments of 1980 (Public Law 96-272)?

Answer

An interstate compact is an instrument to assure provisions for the protection of the interests of the child receiving agreed-upon financial assistance or other supportive services under a currently effective adoption assistance agreement when the adoptive parents and the child adopted under the agreement move to another State (Social Security Act, section 475 (3)). The Act requires that adoption assistance agreements remain in effect regardless of the State in which the adoptive parents are residents at any given time.

Source/Date

ACYF-CB-PIQ-81-03 (10/20/81)

Legal and Related References

Social Security Act - section 475

8.2D. TITLE IV-E, Adoption Assistance Program, Payments

Question 1. May a title IV-E agency make title IV-E adoption assistance payments directly to a youth age 18 or older?

Answer

No. A title IV-E agency must make the payments to the youth's adoptive parent(s). Section 473(a)(1)(B)(ii) of the Act specifies that the title IV-E agency may make adoption assistance payments to parents who adopt a child with special needs, either directly or through another public or nonprofit private agency.

Source/Date

5/6/2013

Legal and Related References

Social Security Act § section 473(a)(1)(B)(ii)

Question 2. Must a title IV-E agency discontinue title IV-E adoption assistance payments provided per 475(8)(B) of the Act for a youth who is age 18 or older if the title IV-E agency determines that the youth is no longer meeting the education or employment criteria or is no longer incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency?

Answer

Yes. A title IV-E agency must ensure that a youth receiving a title IV-E adoption assistance payment under section 475(8)(B) of the Act meets the education and employment criteria or is incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency. Once a title IV-E agency determines that a youth no longer meets the criteria, the agency must discontinue title IV-E adoption assistance payments for the youth. However, if the youth meets the criteria at a later time, the title IV-E agency may resume payments to the youth.

Source/Date

5/6/2013

Legal and Related References

Social Security Act § section 475(8)(B); ACYF-CB-PI-10-11

Question 3. Under what circumstances may a title IV-E agency suspend adoption assistance payments?

Answer

Pursuant to long-standing policy, title IV-E agencies were prohibited from suspending adoption assistance payments because a suspension was the equivalent of terminating adoption assistance payments. See ACYF-CB-PIQ-98-02, as incorporated into § 8.2 of the Child Welfare Policy Manual (CWPM). Title IV-E agencies advised us that our adoption assistance suspension policy did not allow them the latitude to act when the agency was unsure or doubted that the parent was continuing to provide support to the child/youth. Consequently, we issued a Request for Comment in the Federal Register, 80 FR 17058 (March 31, 2015) asking agencies and other stakeholders to comment on our adoption assistance suspension policy. Informed by the comments we received, we revised our adoption assistance suspension policy to allow title IV-E agencies to suspend adoption assistance payments in accordance with the guidance provided below.

A title IV-E agency may suspend adoption assistance payments if the agency cannot establish that the adoptive parent is providing any support to the child/youth (including individuals up to age 21 as per an approved title IV-E plan) or that the adoptive parent remains legally responsible for the child/youth because the agency has not been able to establish contact with the parent to make such a determination. See section 473(a)(4)(A)(ii) and 473(a)(4)(A)(ii) of the Social Security Act (the Act); see also 80 FR 17058 (March 31, 2015). "Any support" includes, but is not limited to, various forms of financial support, as determined by the title IV-E agency. Payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs are acceptable forms of financial support. See CWPM, § 8.2D.5 Q/A #2. A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military. See section 473(a)(4)(A)(ii) of the Act; see also CWPM § 8.2D.5 Q/A #2.

A title IV-E agency may suspend adoption assistance payments if the agency determines that the child for whom adoption assistance eligibility was contracted has re-entered foster care. The title IV-E agency is not required to suspend adoption assistance payments when a child enters foster care and the decision to suspend adoption assistance must be made on a case-by-case basis. The Children's Bureau encourages agencies to consider the circumstances of the foster care entry when making suspension decisions, such as whether the entry is a short-term crisis, respite, diagnostic, or stabilization placement.

A title IV-E agency only may suspend adoption assistance payments in accordance with the fair hearing requirements at 45 C.F.R. § 205.10. Before suspending a payment, the title IV-E agency must ensure that notice to the adoptive parents is both timely and adequate, as described at 45 C.F.R. § 205.10(a)(4). As such, the title IV-E agency must mail notice of intent to suspend the adoption assistance payments at least ten days before the agency plans to suspend the payments. It also must describe that the agency intends to suspend payments, the reasons for the intended suspension and the title IV-E basis as outlined above for the intended suspension. Finally, the agency must describe the adoptive parent's right to request a fair hearing and the circumstances under which assistance is continued if a hearing is requested. If the agency suspends or reduces the payment to $0 for failure to provide the agreed upon renewal or recertification as outlined in the agreement, fair hearing requirements do not apply because the adoptive parents agreed to this reduction or suspension by signing the adoption assistance agreement (see CWPM 8.4G Q/A #2). See CWPM 8.2 Q/A #1.

If the title IV-E agency suspends adoption assistance as described above, the child/youth remains title IV-E eligible, and the title IV-E adoption assistance agreement remains in effect while the payment is suspended.

Although an agency may suspend a child's adoption assistance payment under the circumstances described above, the child's eligibility for, and receipt of, Medicaid may not be suspended while the adoption assistance agreement is in effect. See section 473(b) of the Social Security Act. The title IV-E agency also may claim any title IV-E adoption assistance administrative costs on behalf of a child whose title IV-E adoption assistance is suspended in accordance with its approved cost allocation plan.

Source/Date

2/14/2018; Updated 08/28/2026

Legal and Related References

Social Security Act, section 473(a)(4)(A) and (B); 45 CFR § 205.10, CWPM 8.2D.5 Q/A#2, CWPM 8.4G Q/A #2

8.2D.1. TITLE IV-E, Adoption Assistance Program, Payments, Allowable costs

Question 1. Are there restrictions for how title IV-E adoption assistance funds may be spent?

Answer

Once the adoption assistance agreement is signed and the child is adopted, the adoptive parents are free to make decisions about expenditures on behalf of the child without further agency approval or oversight. Hence, once an adoption assistance agreement is in effect, the parents can spend the subsidy in any way they see fit to incorporate the child into their lives. Since there is no itemized list of approved expenditures for adoption assistance, the title IV-E agency cannot require an accounting for the expenditures. The amount of the assistance may be adjusted periodically if the family's or child's circumstances change, but only with the concurrence of the adoptive family.

Source/Date

ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References

Social Security Act - sections 473

8.2D.2. TITLE IV-E, Adoption Assistance Program, Payments, Duration

Question 1. May a title IV-E agency limit the duration of payments pursuant to an adoption assistance agreement?

Answer

Title IV-E agencies may limit the duration of payments under an adoption assistance agreement for individual eligible children to a period which may end prior to the child's eighteenth birthday, if the decision is made on a case-by-case basis, taking into consideration the provisions of section 473 (a)(2) of the Social Security Act. Title IV-E agencies may not have a blanket policy which limits the duration of all adoption assistance payments to a date earlier than the eighteenth birthday of eligible children, although a time limit may be set in individual cases with the concurrence of the adopting parents, depending on the needs of the child and the circumstances of the parents.

Source/Date

ACYF-CB-PIQ-81-02 (12/8/81)

Legal and Related References

Social Security Act - section 473

8.2D.3. TITLE IV-E, Adoption Assistance Program, Payments, Non-recurring expenses

Question 1. Please summarize the requirements for the nonrecurring expenses of adoption.

Answer

The title IV-E agency must enter into an adoption assistance agreement prior to the finalization of the adoption and reimburse (up to $2000, or at title IV-E agency option a lower limit) the nonrecurring adoption expenses incurred by any parent who adopts a child with special needs. The only eligibility criterion to be applied for reimbursement of the nonrecurring expenses of adoption is that the title IV-E agency determine that the child meets the definition of special needs, in accordance with section 473 (c) of the Act. A child does not have to be eligible for Aid to Families with Dependent Children, title IV-E foster care, or Supplemental Security Income in order for the adoptive parents to receive reimbursement for their nonrecurring adoption expenses. Nor does the child have to be under the responsibility for placement and care of the title IV-E agency in order for the adoptive parents to be reimbursed for the nonrecurring expenses of adoption.
The term "nonrecurring adoption expenses" is defined as the reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not

incurred in violation of State/Tribal or Federal law, and which have not been reimbursed from other sources or funds. Federal financial participation is available at the matching rate of 50 percent for title IV-E agency expenditures up to $2000 for each adoptive placement.

Source/Date

ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References

Social Security Act - section 473(a)(6); 473(a)(1)(B)(i); 45 CFR 1356.41

Question 3. May a title IV-E agency further limit the reimbursable areas within the allowable expense categories for nonrecurring expenses of adoption? For instance, could reimbursement be limited to attorney fees only? Or, could a title IV-E agency elect not to reimburse adoption study fees and transportation costs? Or, may a title IV-E agency set maximum amounts on specific items within the category of nonrecurring expenses for which they will reimburse adoptive parents?

Answer

No. A title IV-E agency may not limit reimbursement for nonrecurring adoption expenses by category. Adoptive parents who apply for reimbursement of the nonrecurring expenses of adoption must be reimbursed for any of the non-recurring adoption expenses described at 45 CFR 1356.41 (i) when they adopt a child with special needs as set forth in section 473 (c) of the Social Security Act. The only discretion is the flexibility to set a reasonable lower maximum than the $2,000 for which Federal reimbursement is available at a 50% matching rate.

Source/Date

ACYF-CB-PIQ-89-02 (5/23/89), revised 10/2/2026

Legal and Related References

Social Security Act - section 473

Question 4. Prospective adoptive parents sometimes have an attorney review the subsidy agreement to ensure that the parents' best interests are addressed. This private attorney review is in addition to the work of the title IV-E agency attorneys who prepare the subsidy paperwork. Are attorney fees and other expenses related to the review of the title IV-E adoption assistance agreement directly related to the legal adoption of a child with special needs and, therefore, allowable under title IV-E?

Answer

Yes. If the adoptive parents who are adopting a child with special needs incur an attorney fee for review of the adoption subsidy agreement, the title IV-E agency may reimburse the adoptive parents for that expenditure, up to the $2,000 limit, as a nonrecurring expense of adoption. In addition, the title IV-E agency also may claim the costs of the agency attorney's review of the adoption assistance agreement as an administrative cost, consistent with the policy in the Child Welfare Policy Manual (CWPM), Section 8.1A, Q/A #1.

Source/Date

7/6/05; (03/03/2020)

Legal and Related References

Social Security Act -- Section 473(a)(6) and 479B; 45 CFR 1356.41(i); CWPM, Section 8.1A, Q/A #1

Question 5. Does the nonrecurring adoption expenses limit of $2,000 (or lower at title IV-E agency option) apply per adoption episode or is it a lifetime limit?

Answer

The nonrecurring adoption expenses limit is applied per adoption episode.

Source/Date

7/6/2005

Legal and Related References

Social Security Act -- Section 473(a)(1)(B)(i), 45 CFR 1356.41

Question 6. Can the title IV-E agency claim Federal financial participation (FFP) for the nonrecurring expenses of adoption if the adoption is never finalized?

Answer

Yes. The title IV-E agency may claim FFP for the nonrecurring expenses of adoption in accordance with the requirements set forth in 45 CFR 1356.41 if:
- there is a title IV-E agreement for the nonrecurring expenses of adoption between the adoptive parent(s) and the title IV-E agency; and
- the title IV-E agency determined that the child is a child with special needs in accordance with section 473(c) of the Social Security Act (the Act).

Consistent with section 473(a)(5) of the Act, payments may be made on behalf of a child in an adoptive placement prior to the finalization of adoption when all eligibility requirements in section 473 of the Act are met and there is a signed adoption assistance agreement between the title IV-E agency and the adoptive parent(s). The regulation at 45 CFR 1356.41(b) provides that the agreement for the nonrecurring expenses of adoption may be a separate document or a part of the agreement for either Federal or State/Tribal adoption assistance. In allowing adoption assistance payments to be made prior to the finalization of the adoption, the Department has never differentiated between payments for ongoing adoption assistance under such agreements and payments for the nonrecurring expenses for adoption. Further, nothing in statute or regulation prohibits reimbursement for the expenses incurred by adoptive families in circumstances where the adoption is not finalized.

Source/Date

September 29, 2005; (03/03/2020)

Legal and Related References

Social Security Act - Sections 473(a)(1)(B)(i), 473(a)(5), and 479B; 45 CFR 1356.41(b).

8.2D.4. TITLE IV-E, Adoption Assistance Program, Payments, Rates

Question 1. Please explain how the title IV-E agency should set rates for title IV-E adoption assistance payments.

Answer

The amount of the title IV-E adoption assistance payment cannot exceed the amount the child would have received if s/he had been in a foster family home, but otherwise must be determined through agreement between the adoptive parents and the title IV-E agency. Further, the adoptive parents' income is not relevant to the child's eligibility for the program. Title IV-E adoption assistance is not based upon a standard schedule of itemized needs and countable income. Instead, the amount of the adoption assistance payment is determined through the discussion and negotiation process between the adoptive parents and a representative of the title IV-E agency based upon the needs of the child and the circumstances of the family. The payment that is agreed upon should combine with the parents' resources to cover the ordinary and special needs of the child projected over an extended period of time and should cover anticipated needs, e.g., child care. Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment.

If a title IV-E agency's foster care payment schedule includes higher level-of-care rates that are paid across-the-board for certain children, the title IV-E agency may pay up to that amount in adoption assistance if that specific child would have received the higher level-of-care rate in foster care. In addition, if a title IV-E agency's foster care payment standard includes across-the-board higher foster care rates for working foster parents to pay for child care, or includes provisions for periodic across-the-board increases for such items as seasonal clothing, the adoption assistance agreement may include the higher rate. However, special allowances that may be made on behalf of an individual child in certain situations in foster care, such as child care or clothing allowances, are not permitted as an allowable additional reimbursement in the adoption assistance program. Special allowances for individual children that are over and above the title IV-E agency's foster care payment standard cannot be included in the amount negotiated in the adoption assistance agreement since the adoption assistance payment cannot exceed the foster care maintenance payment rate for the child.

Although Federal law and regulations do not prohibit a title IV-E agency from having a law or policy that limits the maximum adoption assistance payments to a level lower than the maintenance payment a child would have received in a foster family home, from a practice standpoint establishing a lower ceiling within which the title IV-E agency and family may negotiate an adoption assistance payment may reduce the pool of adoptive parents available to provide permanent homes for children with special needs.

Source/Date

ACYF-CB-PA-01-01 (1/23/01); 7/7/2006; (03/03/2020); revised 9/30/26

Legal and Related References

Social Security Act - section 473 (a)(3) and 479B

Question 2. A title IV-E agency wants to include a list of specific circumstances in the adoption assistance agreement that would lead to an automatic reduction in the adoption subsidy amount if the title IV-E agency determines the circumstances occur. These circumstances could include an improvement in the condition of the child or the financial circumstances of the parent, the child's eligibility for other forms of assistance, or the child's re-entry into foster care. Is this practice allowable?

Answer

Once a child is adopted and determined to be eligible for title IV-E adoption assistance, the adoption assistance payments may not be automatically adjusted without the agreement of the adoptive parents for any reason other than an across-

the-board reduction or increase in foster care maintenance rates. However, a title IV-E agency may temporarily suspend adoption assistance agreement payments if the agency cannot establish that the adoptive parent is providing any support to the child/youth (including individuals up to age 21 as per an approved title IV-E plan) or that the adoptive parent remains legally responsible for the child/youth because the agency has not been able to establish contact with the parent to make such a determination. See section 473(a)(4)(A)(ii) and(iii) of the Social Security Act (the Act see also the Child Welfare Policy Manual (CWPM) 8.2D Q/A #3. A title IV-E agency may also reduce or suspend adoption assistance if the adoptive parents fail to renew or recertify the adoption assistance agreement if renewal or recertification is required and agreed upon in the title IV-E adoption assistance agreement. See CWPM 8.2 Q/A #1. Specifically, a title IV-E agency may include a clause in the title IV-E adoption assistance agreement to the effect that if the adoptive parents fail to provide a renewal or recertification of the agreement within prescribed timeframes, the adoptive parents agree to reduce the adoption assistance payment to $0 until the renewal or recertification is provided to the agency. The form of renewal or recertification and timeframes must be clearly specified in the title IV-E adoption assistance agreement. If the agency suspends or reduces the payment to $0 for failure to provide the agreed upon renewal or recertification as outlined in the agreement, fair hearing requirements do not apply because the adoptive parents agreed to this reduction or suspension by signing the adoption assistance agreement (see CWPM 8.4G, Q/A #2). See CWPM 8.2 Q/A #1.

The statute requires that the adoption assistance payment "take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents depending upon changes in such circumstances (section 473(a)(3) of the Social Security Act)." A title IV-E agency would not be considering the unique circumstances of the child and parents by automatically adjusting the subsidy. The title IV-E agency may describe in the agreement specific circumstances such as those articulated in the question, that may warrant a future re-negotiation and adjustment of the payment. Agreements that are not negotiated to the specific needs of the adoptive child and the circumstances of the family, however, are not permissible.

Source/Date

ACYF-CB-PIQ-98-02 (9/03/98); Updated 08/28/2026

Legal and Related References

Social Security Act - section 473 (a)(3), CWPM 8.4G, Q/A#2

Question 3. Can the State median income adjusted to family size be used as a guide to establish consistency in determining amounts of payment?

Answer

No. The use of such guidelines is not appropriate to the process. During the negotiation of an adoption assistance agreement, it is important to keep in mind that the circumstances of the adopting parents and the needs of the child must be considered together. The overall ability of a singular family to incorporate an individual child into the household is the objective. Families with the same incomes or in similar circumstances will not necessarily agree on identical types or amounts of assistance. The uniqueness of each child/family situation may result in different amounts of payment. Consistency is not the goal.

Source/Date

ACYF-CB-PIQ-90-02 (10/2/90)

Legal and Related References

Social Security Act - sections 473

Question 4. Is it permissible to adjust the amount of the adoption assistance payment after the adoption assistance agreement is signed?

Answer

Adoption assistance payments made on behalf of a child cannot exceed the amount the child would have received if s/he had been in a foster family home. Accordingly, a title IV-E agency may negotiate an adoption assistance agreement that automatically allows for adjustments to the adoption assistance payment when there is an increase in the foster care board rate. Alternatively, a title IV-E agency may renegotiate an adoption assistance agreement if the adoptive parents request an increase in payment due to a change in their circumstance and a higher foster care rate would have been paid on behalf of the child if the child had still been in foster care. As an example, a child is adopted and the adoption assistance agreement is negotiated for $250 a month, the same amount the child had been receiving in foster care. If, two years later, the title IV-E agency's monthly foster care board rate is increased to $400, the family can request that the adoption assistance agreement be renegotiated and receive up to $400 for the child, since this is the amount the child would have received each month if s/he had continued to be in foster care.

Source/Date

ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References

Social Security Act - section 473 (a)(3)

8.2D.5. TITLE IV-E, Adoption Assistance Program, Payments, Termination

Question 1. Under what circumstances may the title IV-E agency terminate an adoption assistance agreement?

Answer

Title IV-E adoption assistance is available on behalf of a child if s/he meets all of the eligibility criteria and the title IV-E agency enters into an adoption assistance agreement with the prospective adoptive parent(s) prior to the finalization of the adoption. The agreement must be signed by all parties to the agreement (namely, the adoptive parents and the title IV-E agency representative) in order to meet the requirements for an adoption assistance agreement.

Once an adoption assistance agreement is signed and in effect, it can be terminated under the following circumstances only. Namely, (1) the child has attained the age of 18 or such greater age that the State or Tribe may elect under section 475(8)(B)(iii) of the Act; (2) the child has attained age of 21 if the title IV-E agency has determined that the child has a mental or physical disability which would warrant continuation of assistance); (3) the title IV-E agency determines that the adoptive parents are no longer legally responsible for support of the child who has not attained 18 years of age; or (4) the title IV-E agency determines that the adoptive parents are no longer providing any support to the child.

Source/Date

ACYF-CB-PA-01-01 (1/23/01)

Legal and Related References

Social Security Act - sections 473(a)(4) and 475(8)(B)(iii); 45 CFR 1356.40(b)

Question 2. Section 473(a)(4)(A) of the Social Security Act states that no adoption assistance payment can be made to parents if the title IV-E agency determines that the parents are no longer legally responsible for the support of a child who has not attained 18 years of age, or if the title IV-E agency determines that a child is no longer receiving any support from the parents. When is a parent considered to be "no longer legally responsible for support" or not providing "any support" for the child?

Answer

A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military.

"Any support" includes various forms of financial support. The title IV-E agency may determine that payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs, are acceptable forms of financial support. Consequently, the title IV-E agency may continue the adoption assistance subsidy, if it determines that the parent is, in fact, providing some form of financial support to the child.

Source/Date

ACYF-CB-PIQ-98-02 (9/03/98)

Legal and Related References

Social Security Act - section 473(a)(4)(A)

Question 4. Is it permissible for a title IV-E agency to include a statement in the title IV-E adoption assistance agreement to the effect that "The Department's obligation to provide for Federally funded adoption assistance payments and/or services is subject to the appropriation of funds"?

Answer

No. Although we understand that the title IV-E agency may experience difficulties in its ability to pay subsidies due to the agency’s budget, such difficulties do not relieve or alter the title IV-E agency's obligation under title IV-E to act in accordance with executed adoption assistance agreements. Accordingly, any statement that undermines the title IV-E agency's obligation to honor the terms of the title IV-E adoption assistance agreement is not consistent with Federal requirements in section 473(a)(1)(B)(ii) and (a)(3) of the Social Security Act. However, a title IV-E agency may include a statement in the agreement to the effect that if there is a lapse in the agency’s appropriations, the title IV-E agency may delay making title IV-E adoption assistance payments until the funds are available.

Once an agreement is signed, the title IV-E agency must obtain the concurrence of the adoptive parent if it wishes to make any changes (including a clause for delayed payments under an appropriations lapse) with one exception. That exception is when there is an across-the-board reduction or increase in the foster care maintenance payment rate. In that circumstance, the title IV-E agency may adjust the adoption assistance payment without the adoptive parent's concurrence.

Source/Date

08/05/08; (03/03/2020); Updated 08/28/2026

Legal and Related References

Social Security Act - sections 473(a)(1)(B)(ii), (a)(3), and 479B; CWPM 8.2D4, Q/A #2)

8.2E. TITLE IV-E, Adoption Assistance Program, Promoting Adoption Assistance

Question 1. What is the title IV-E agency's responsibility for notifying prospective adoptive parents about the availability of adoption assistance?

Answer

The title IV-E agency is required to actively seek ways to promote the adoption assistance program. This means that it is incumbent upon the title IV-E agency to notify prospective adoptive parents about the availability of adoption assistance for the adoption of a child with special needs. There is no prescribed way in which promotion of the program must be accomplished. One example would be to alert potential adoptive parents during a recruitment campaign for adoptive homes (websites, newspapers, flyers, etc.). Another example would be to alert every prospective adoptive parent who inquires to the title IV-E agency about adoption.

The primary goal of the title IV-E adoption assistance program is to provide financial support to families who adopt difficult-to-place children from the public child welfare system. These are children who otherwise would grow up in foster care systems if a suitable adoptive parent could not be found. Thus, the title IV-E agency is responsible for assuring that prospective adoptive families with whom they place eligible children who are under their responsibility are apprised of the availability of title IV-E adoption assistance.

However, in circumstances where the title IV-E agency does not have responsibility for placement and care, or is otherwise unaware of the adoption of a potentially special needs child, it is incumbent upon the adoptive family to request adoption assistance on behalf of the child. It is not the responsibility of the title IV-E agency to seek out and inform individuals who are unknown to the agency about the possibility of title IV-E adoption assistance for special needs children who also are unknown to the agency. This policy is consistent with the intent and purpose of the statute, and that is to promote the adoption of special needs children who are in the public foster care system.

Source/Date

ACYF-CB-PA-01-01 (1/23/01); (03/03/2020)

Legal and Related References

45 CFR 1356.40(f)

8.3A. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility

Question 1. A judicial determination is made that a child'should be removed from his home, and the child is placed in foster care with title IV-E foster care payments being paid on his behalf. Casework services are provided toward a goal of reunification. At a later date, the court rules that the child'should return home; however, the court retains jurisdiction and continues the county department's responsibility to supervise the home and to provide services necessary to further strengthen the family unit. Subsequent circumstances cause the court to determine that the child must return to foster care. In considering initial eligibility on the title IV-E foster care reapplication, which judicial determination removing the child from his home should be used - the first or the second?

Answer

When a child is removed from his home and placed in foster care, there must be a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child and that reasonable efforts have been made to prevent or eliminate the need for removal. Such a determination is necessary at any time (or every time) that a child is removed from his home, because each situation involves different circumstances and reasons for placement. Unless the child was visiting his home on a trial basis, a return to foster care would require a new determination of eligibility based on the circumstances at that time. In the situation described, the judicial determination and eligibility factors current at the time of the most recent removal would be used to determine eligibility for title IV-E foster care.

Source/Date

ACYF-CB-PIQ-86-03 (5/9/86)

Legal and Related References

Social Security Act - section 472

Question 2. The statute refers to a child being eligible for AFDC "in or for such month" in sections 472(a)(3)(A)(i) and (ii) of the Social Security Act (the Act). Please clarify the month in which the child must have met the AFDC eligibility criteria?

Answer

The child must have been eligible for AFDC in either the month of the voluntary placement agreement or the removal petition. This is true whether the child was living with a specified relative at the time of the removal petition or voluntary

placement agreement (section 472(a)(3)(A)(i) of the Act), or whether the child was living with an interim relative caretaker within the six months prior to the removal petition or voluntary placement agreement (section 472(a)(3)(A)(ii)(II) of the Act). In the latter situation, although the child is not in the home of the specified relative from whom the child was removed, the title IV-E agency must determine whether the child would have met the AFDC criteria had the child remained in the specified relative's home.

Source/Date

7/7/2006; 10/23/2019

Legal and Related References

Social Security Act - section 472(a)(3)(A)(i) and (ii) and 479B; 45 CFR 1356.21(l)

Question 3. In determining a child's Aid to Families with Dependent Children (AFDC) eligibility, should the title IV-E agency examine the household circumstances when the child was removed from home, or should the title IV-E agency examine the whole month in which the removal petition was initiated or the voluntary placement agreement was signed?

Answer

The title IV-E agency must determine a child's AFDC eligibility in or for the month in which the court proceedings were initiated or the voluntary placement agreement was signed. State title IV-E agencies must use the state's title IV-A plan (as it was in effect on July 16, 1996) to determine if a child would have been eligible for AFDC. Tribal title IV-E agencies must use the title IV-A state plan (as it was in effect on July 16, 1996) in the state in which the child resides when the child was removed from the home to determine if a child would have been eligible for AFDC.

Source/Date

December 2, 2016; October 23, 2019

Legal and Related References

Social Security Act - section 472(a)(3) and 479B

Question 4. May a youth age 18 or older who is married or enlisted in the military be eligible for title IV-E foster care?

Answer

Yes. There is nothing in title IV-E that prohibits a title IV-E agency from providing title IV-E foster care to an otherwise eligible youth if the youth is married or enlisted in the military (including if the youth is in the military reserves or ROTC).

Source/Date

5/6/2013

Legal and Related References

Social Security Act - section 475(8)(B); ACYF-CB-PI-10-11

8.3A.1. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Adjudicated delinquents

Question 1. Are adjudicated delinquents eligible for title IV-E foster care maintenance payments?

Answer

The question of eligibility for Federal reimbursement in the case of adjudicated delinquents rests on two factors: (1) eligibility of the child, and (2) the type of facility in which the child is placed. Any child for whom title IV-E foster care maintenance payments are claimed must meet the eligibility criteria described in section 472 (a) of the Social Security Act (the Act). These general requirements are: (a) The child must be a "dependent child" as defined in section 406 (a) or 407 of the Act (as in effect on July 16, 1996) and the applicable regulation, 45 CFR 233.90 (c)(1), but for his or her removal from the home of a specified relative; (b) That the child was eligible for Aid to Families with Dependent Children (AFDC) in the month described in section 472 (a)(3)(A)(i) of the Act and consistent with the contingencies explained in section 472 (a)(3)(A)(ii) of the Act; (c) The child must be removed from the home of a relative pursuant to a voluntary placement agreement or as the result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child and that reasonable efforts were made prior to placement to prevent the need for removal of the child from his home; and (d) The child's placement and care must be the responsibility of the title IV-E agency or another public agency with whom the title IV-E agency has a currently effective agreement.

If the child meets the title IV-E eligibility requirements, FFP may be claimed for foster care costs in licensed or approved facilities as described in sections 472 (b) and (c) of the Act. Such facilities, however, may not include "detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent."

Source/Date

ACYF-CB-PIQ-82-10 (8/11/82); ACYF-CB-PIQ-88-03 (4/11/88); 10/23/2019

Legal and Related References

Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996) 472 and 479B; 45 CFR 1355.20 and 233.90 (c)(1)

Question 4. A youth may be declared a ward of the court and be ordered placed in much the same manner as delinquents, yet, he is not a delinquent in that no crime has been committed. Does the term "juvenile delinquent" refer to status offenders and, if not, are status offender wards eligible for Federal funds?

Answer

It is the Department's position that "juvenile delinquent" refers only to those children who have been adjudicated as having committed a delinquent act(s) and does not include status offenders. This interpretation is clearly supported by the legislative history.

Source/Date

ACYF-CB-PIQ-82-10 (8/11/82)

Legal and Related References

Social Security Act - section 470

8.3A.2. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Age

Question 1. For what title IV-E eligible children age 18 and older does title IV-E allow Federal financial participation (FFP) for foster care maintenance payments (FCMP?

Answer

A title IV-E agency may provide title IV-E FCMP to a child age 18 or older under two optional pathways: the option under section 406 of the Act in the state’s former 1996 title IV-A Aid to Families with Dependent Children (AFDC) plan to permit eligibility for certain youth up to age 19, and the option to adopt a definition of “child” that includes certain youth over age 18 under section 475(8)(B) of the Act.

Consistent with the title IV-E agency’s former AFDC plan, children who are over 18 and under the age of 19 and who are full time students expected to complete their

secondary schooling or equivalent training before reaching age 19 may be eligible for title IV-E FCMP.

Under section 475(8)(B) of the Act, a title IV-E agency may optionally define “child” as age 18 or older (up to age 21) consistent with section 475(8) of the Act and provide title IV-E FCMP for eligible youth if the youth meets certain criteria. Under both options, if a youth ages out of foster care at age 18 and the title IV-E agency no longer has placement and care responsibility, the title IV-E agency must make a new determination of the youth’s title IV-E eligibility if the youth later reenters foster care (see Child Welfare Policy Manual section 8.3A.10, Q&A #2). A child at age 18 could retain their title IV-E eligibility if the child provides written authorization for the title IV-E agency's *continued* placement and care responsibility prior to aging out of foster care or if a court order continues the agency’s placement and care responsibility. In this scenario, the child must still meet the requirements of section 406 of the Act for the former AFDC plan option, or the criteria elected by the title IV-E agency under the definition of child in section 475(8)(B) of the Act to be eligible for title IV-E FCMPs.

A title IV-E agency may limit title IV-E foster care under section 475(8)(B) of the Act to a child that was in foster care prior to turning age 18. However, there is no federal requirement for a child to have been in foster care prior to turning age 18 to receive title IV-E foster care at age 18 or older under section 475(8)(B) of the Act.

Source/Date

ACYF-CB-PIQ-85-05 (4/12/85); 12/31/2007; revised 9/30/26

Legal and Related References

Social Security Act - sections 406 (a) (as in effect on July 16, 1996); 472(a)(3); Child Welfare Policy Manual section 8.3A.10 Q&A2

8.3A.3. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Biological parents

Question 1. Since adoption assistance is not available for children adopted by biological parents, would Federal financial participation (FFP) under title IV-E foster care be available in those homes if the parents do not adopt and the agency retains guardianship and responsibility for placement and care?

Answer

No. Title IV-E foster care maintenance payments are available for AFDC-eligible children who have been removed from their own homes and placed in a foster family home or child care institution. By definition, foster care is provided by someone other than a biological parent.

While a termination of parental rights severs the legal ties between the parent and the child, it does not change the biological relationship with the child. A child living with his parents would not be considered to be living in a foster home and, thus, would not be eligible for title IV-E foster care maintenance payments.

Source/Date

ACYF-CB-PIQ-89-04 (8/8/89)

Legal and Related References

Social Security Act - sections 472 (a)(2)(A) and (C), 472 (b)

Question 2. When a child is removed from the custodial parent and placed by the title IV-E agency for a temporary period of time with the non-custodial parent under the placement and care responsibility of the title IV-E agency, and then the title IV-E agency subsequently moves the child to a licensed foster family home, must the title IV-E agency obtain another removal order in order to claim title IV-E?

Answer

No. The child is not eligible for title IV-E while placed with the non-custodial parent (see Child Welfare Policy Manual Section 8.3A.3 Q/A #1). However, the child's placement with the title IV-E agency non-custodial parent has no bearing on whether the title IV-E agency may claim title IV-E reimbursement for the child when s/he is later placed in a licensed foster family home, so long as the title IV-E agency maintains placement and care responsibility and the child otherwise meets the criteria in sections 472(a)(2)(A) and (B) and 472(a)(3) of the Act. Presuming the title IV-E agency has already obtained a contrary to the welfare finding in relation to the custodial parent, it remains valid for title IV-E purposes unless the title IV-E agency's placement and care responsibility ends and the child is removed again pursuant to a court order or voluntary placement agreement.

Source/Date

12/6/2007; 10/23/2019

Legal and Related References

Social Security Act - sections 472(a)(2)(A) and (B), and 479B; 45 CFR 1355.20

8.3A.4. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Child in facility outside scope of foster care

Question 2. How should the title IV-E agency establish title IV-E eligibility for a child who is temporarily placed in a facility that is considered outside the scope of "foster care," such as a detention facility or psychiatric hospital, prior to his/her placement in foster care? When may the title IV-E agency begin to claim for such child if s/he is placed in foster care?

Answer

The title IV-E agency must comply with the title IV-E eligibility criteria as set forth in the statute at section 472 (a) of the Social Security Act (the Act) and the implementing regulations at 45 CFR 1356.21(b), (c), and (d). The title IV-E agency must establish the child's eligibility at removal (which includes meeting the Aid to Families with Dependent Children eligibility requirements as in effect on July 16, 1996 and judicial determinations to the effect that it is contrary to the child's welfare to remain in the home and that reasonable efforts were made to prevent such removal) even for children who are not initially placed in a foster care setting. Title IV-E is an entitlement program and, as such, no flexibility exists with respect to satisfying the requisite eligibility criteria. If such eligibility criteria are not satisfied within the time frames prescribed in the regulation, the child is ineligible for title IV-E funds.

When the child is transferred to a facility that meets the requirements of section 472 (c) of the Act, Federal financial participation is available from the first day of placement in the month in which all title IV-E eligibility requirements are met.

Source/Date

Questions and Answers on the Final Rule (65 FR 4020) (1/25/00); ACYF-CB-PIQ 88-03 (4/11/88); 10/23/2019

Legal and Related References

Social Security Act - section 472 and 479B; 45 CFR 1356.21

8.3A.5. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Child of a minor parent

Question 1. Please explain the requirements with respect to title IV-E eligibility and the case review system at section 475(5) of the Social Security Act (the Act) for a child and his/her minor parent in foster care. Specifically: Must the title IV-E agency have placement and care responsibility of both? Is the child considered to be in foster care even if the title IV-E agency does not have placement and care responsibility? May the child continue to receive IV-E if the minor parent runs away? May the title IV-E agency claim

administrative costs for the child? Is the child eligible for medical assistance under title XIX and social services under title XX?

Answer

Section 475(4)(B) of the Act requires that foster care maintenance payments for a minor parent in foster care cover a child of such parent if the child is placed with the minor parent. Neither the statute nor regulations require the title IV-E agency to have placement and care responsibility for the child in order for such costs to be included in the minor parent's foster care maintenance payment. Good social work practice suggests that the minor parent's case plan include the needs of the child and that the child's needs and interests be addressed during the six-month periodic reviews and permanency hearings held on behalf of the minor parent. However, the title IV-E agency is not required to satisfy these requirements independently on behalf of the child because s/he is not under the title IV-E agency's responsibility for placement and care and, therefore, pursuant to Federal law and regulations, is not in foster care.

Title IV-E eligibility of the son or daughter is not a condition of the increased maintenance payment on behalf of the minor parent. Rather, it is the title IV-E eligibility of the minor parent that allows the increased payment to include an amount to meet the son or daughter's needs in that home. In cases where the title IV-E agency has placement and care responsibility for both the minor parent and the child, title IV-E eligibility would have to be determined individually for each. The resources (such as survivor benefits that are available to the child of the minor parent are not relevant to the title IV-E eligibility of the minor parent.

If a minor parent leaves the foster home and does not take the child, the child's eligibility for foster care then would be based upon his or her individual circumstances. In addition, the title IV-E agency would have to obtain responsibility for placement and care of the child through either a voluntary placement agreement or a court order with the required judicial determinations. Once the child of a minor parent is in foster care, the requirements of the case review system at section 475(5) of the Act apply.

When a child is placed with his/her minor parent without placement and care responsibility by the title IV-E agency, no administrative costs may be claimed on her/his behalf because s/he is not eligible for nor a recipient of title IV-E foster care maintenance payments. The title IV-E agency is merely increasing the amount of the title IV-E foster care maintenance payment made on behalf of the eligible minor parent to accommodate the board and care of the child. In situations where the eligibility of the minor parent and his/her infant are determined separately and both are placed in foster care, the title IV-E agency may claim administrative costs for the child because s/he is eligible for and receiving title IV-E maintenance payments in her/his own right.

Section 472(h) of the Act makes clear that a child whose costs are covered by the title IV-E payment made with respect to the minor parent is a child with respect to whom foster care maintenance payments are made under title IV-E and is thus eligible for medical assistance and social services under titles XIX and XX.

Source/Date

ACYF-CB-PIQ-91-02 (4/2/91); 06/09/04; 10/23/19; revised 9/30/26

Legal and Related References

Social Security Act - sections 472, 475, and 479B; Titles XIX and XX; 45 CFR 1356.21

Question 3. Are both a teen mother and her child eligible for Federal financial participation under title IV-E if both are under the placement and care responsibility of the title IV-E agency and have been placed in the same foster family home? If so, would the minor child continue to be eligible for title IV-E if the court orders that the child be reunited with the teen mother?

Answer

If a teen mother and her child are both in the same foster family home and each has been determined to be eligible for title IV-E, the title IV-E agency can claim FFP under title IV-E foster care for both the teen mother and her child. This includes foster care maintenance payments and administrative costs. In this situation, both the child and mother have been determined eligible for title IV-E foster care, and placed in a licensed foster family home. The fact that the teen mother and her child are in the same foster home does not mean that they have been "reunified" in the statutory sense, as the foster parent and not the teen parent, is responsible for the day-to-day care and supervision of the child.

If reunification of the child with the teen mother has occurred and the child is no longer under the responsibility of the title IV-E agency for placement and care, the child is no longer eligible for a title IV-E payment. (We use the term "reunification" here to refer to situations in which a child is returned to the parent's control and is no longer under the care or supervision of the title IV-E agency.) In such situations, the title IV-E agency must include amounts necessary to cover the costs incurred on behalf of the child in the teen mother's title IV-E payment. (See Section 475(4)(B)(ii) of the Act, 45 CFR 1356.21(j), and CWPM 8.3.A.5) However, once the child is no longer under the responsibility of the title IV-E agency for placement and care, the title IV-E agency cannot continue to claim administrative costs on his or her behalf since s/he is not eligible for, nor a recipient of, title IV-E foster care maintenance payments.

Source/Date

06/09/04; 10/23/19

Legal and Related References

Social Security Act - sections 472, 475, and 479B; 45 CFR 1356.21.

8.3A.6. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Contrary to the welfare

Question 1. Do you consider an emergency order (sometimes referred to as a "pick-up order" or "ex-parte order") as the first court ruling for the purpose of meeting the contrary to the welfare requirements?

Answer

We have made no distinction about the type of order in which the contrary to the welfare determination is required. Such a determination must be made in the very first court order pertaining to the child's removal from home. If the emergency order is the first order pertaining to a child's removal from home, then the contrary to the welfare determination must be made in that order to establish title IV-E eligibility.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00)

Legal and Related References

45 CFR 1356.21 (c)

Question 3. A child is ineligible for an entire foster care episode for failure to satisfy the contrary to the welfare requirements. Please explain the rationale for this position.

Answer

The contrary to the welfare determination is a critical statutory protection and a criterion for establishing title IV-E eligibility. Once a child is removed from home, the title IV-E agency cannot go back and "fix" an inappropriate removal. If a child's removal from home is not based on a judicial determination that it was contrary to the child's welfare to remain in the home, the child is ineligible for title IV-E funding for the entire foster care episode subsequent to that removal because there is no opportunity to satisfy this eligibility criterion at a later date. The same does not hold true for all other eligibility criteria. For example, judicial determinations regarding reasonable efforts to finalize a permanency plan, placement in a licensed foster family home or child care institution, and title IV-E agency responsibility for placement and care are all title IV-E eligibility criteria that can be reestablished if

lost or established at a later time if missing at the beginning of a foster care episode. This is not the case with the contrary to the welfare determination.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00); 10/23/19

Legal and Related References

Social Security Act - section 479B; 45 CFR 1356.21 (c)

Question 4. Court orders in juvenile justice proceedings often use language which differs from dependency court orders. What type of findings satisfy the title IV-E requirement in section 472(a)(2)(A)(ii) regarding "contrary to the welfare?"

Answer

To establish title IV-E eligibility, the first court order (see 45 CFR § 1356.21(c)), must contain a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child. Because juvenile justice proceedings often use different terminology than dependency proceedings, the specific language used by the court need not necessarily include the words “contrary to the welfare” but must convey the court has determined that remaining in the home is contrary to the welfare of the child. For example, a court order indicating that the child is a threat to himself satisfies the requirement of a determination that remaining in the home would be contrary to the child's welfare. However, if the court order indicates only that the child is a threat to the community or that the child is detained because there is reason to believe the child would run away, such language would not satisfy the requirement for a determination that continuation in the home would be contrary to the child's welfare.

It is important to remember that the judicial determinations required for title IV-E eligibility were intended to ensure that children were not removed from their homes unnecessarily. In juvenile justice procedures, where children are removed for correctional purposes, the courts must determine that continuation in the home would be contrary to the child's welfare if title IV-E eligibility is to be established.

Source/Date

ACYF-CB-PIQ-91-03 (4/3/91); revised 9/29/26

Legal and Related References

Social Security Act - section 472 (a)(2)(A)(ii)

Question 6. Our State presently petitions the court for protective supervision of a child (not legal custody) with the right to place the child. The petition is based on the child's being within the jurisdiction of the court on the basis that the child is abused, neglected, or is beyond the control of the parents. If the State is given protective supervision with the right to place, it is based on that petition. If placement becomes necessary, placement is made without the State needing to return to court for an amended order. In some situations, the child is already in placement under an immediate physical custody order of the court. Is the granting of a State's petition for protective supervision with the right to place and the subsequent placement of the child'sufficient to make an otherwise eligible child qualify for foster care payments under title IV-E?

Answer

No. The Social Security Act, at section 472 (a)(2)(A), requires that the removal of a child from the home be the result of a voluntary placement agreement or a judicial determination to the effect that continuation therein would be contrary to the welfare of the child.

If the court grants protective supervision responsibility to the title IV-E agency and leaves to that agency the option to remove the child from the home at a later time, the requirement in section 472 (a)(2)(A)(ii) for a judicial determination has not been met. Although there are no Federal requirements as to the exact language of court orders, the Act requires a judicial determination to the effect that continuation in the child's home would be contrary to his welfare. The granting of a petition for protective supervision with the right to place the child is not sufficient to meet this requirement.

At the time of removal, if a judicial determination is made that amends the earlier order granting protective supervision that sanctions the removal and satisfies the requirements in section 472 (a)(2)(A)(ii), the otherwise eligible child would then become eligible for title IV-E.

Source/Date

ACYF-CB-PIQ-84-05 (7/5/84); ACYF-CB-PIQ-85-07 (6/25/85); 10/23/19

Legal and Related References

Social Security Act - section 472(a)(2)(A) and 479B

Question 7. After a dependency petition is filed, the court finds reasonable grounds to believe a child is dependent and would be endangered in his or her home and enters a temporary shelter order causing the child to be taken in to custody. The child is then placed in foster care by the title IV-E agency.

Does this temporary shelter order constitute a "judicial determination" as required for a title IV-E agency to receive Federal financial participation (FFP) in the costs of the child's foster care maintenance under the title IV-E program? May FFP begin from the date of the shelter order, if the order is not rescinded or otherwise revised so that it no longer supports the removal of the child from the home?

Answer

A temporary shelter care order that meets the requirements of a "judicial determination" would permit the authorization of FFP as of the date of the shelter care order, provided all other eligibility requirements are met. As to the requirements of a "judicial determination," the essential element is that the court order (temporary or dispositional) for removal of the child from the home is based on a determination that continuation therein would be contrary to the welfare of the child.

It is correct that FFP would have to be discontinued if at a subsequent hearing the court order was rescinded or revised so that it no longer supported the removal of the child from the home. It is also correct that the date the judicial proceedings are initiated is not the date the judicial determination is made, if the initiated action is only a petition or summons, unless the judicial determination is made on the same date.

A title IV-E agency may claim Federal matching for costs of children placed involuntarily in foster care only after judicial determinations are made (1) that continuation in the home would be contrary to the welfare of the child and (2) that reasonable efforts had been made to prevent the removal of the child from the home. Once the court order is issued (either a temporary or dispositional order), FFP may be claimed only from the first day the child is in the foster home; provided all other title IV-E eligibility criteria are satisfied.

Source/Date

ACYF-CB-PIQ-82-03 (1/29/82); 10/23/19

Legal and Related References

Social Security Act - section 472 and 479B

Question 8. Once a court order is issued with a judicial determination that remaining in the home is contrary to the child's welfare, does the State/Tribe have to actually remove the child at that time and place the child in foster care?

Answer

Yes. Section 472(a)(2) of the Social Security Act predicates a child's receipt of title IV-E funds on the child's removal from home as the result of either a voluntary placement agreement or a judicial determination that to remain at home is contrary to the child's welfare.

The judicial determination that results in the child's removal must coincide with (i.e., occur at the same time as) the agency's action to physically or constructively remove the child, unless the court order specifies an alternative timeframe for removal, as allowed for in the Departmental Appeals Board (DAB) decision # 2017.

If a court makes a judicial determination that it is contrary to the child's welfare to remain at home (without specifying an alternative timeframe) and the child does, in fact, remain at home and no removal occurs, the requirement for removal is not met and the child is ineligible for title IV-E. If the child's safety is not at risk and a title IV-E agency chooses to offer support services to the family in-home to prevent having to remove the child, it should do so. States/Tribes cannot issue "blanket" removal orders, however, in an attempt to guarantee title IV-E eligibility in the event that the child has to be removed from home at some point in the future.

Source/Date

1/29/2007; 10/23/19

Legal and Related References

Social Security Act - section 472(a)(2) and 479B

8.3A.7. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Documentation of judicial determinations

Question 1. Please explain the rationale for requiring judicial determinations[JL43.1] to be explicit, made on a case-by-case basis, and documented in the court order. Must a judicial determination use the exact terminology of "contrary to the welfare," "reasonable efforts to prevent removal" or "reasonable efforts to finalize a permanency plan," and what documentation is acceptable to satisfy these requirements?

Answer

The basis for this policy can be found in the legislative history of the title IV-E foster care program. The Senate report accompanying Public Law 96-272 characterized the required judicial determinations as "... important safeguard[s] against inappropriate agency action..." and made clear that such requirements were not to become "... a mere pro forma exercise in paper shuffling to obtain Federal funding..." (S. Rept. No. 336, 96th Cong., 2d Sess. 16 (1980)). We concluded, based on our review of States' documentation of judicial determinations over the past years, that, in many

instances, these important safeguards had become precisely what Congress was concerned that they not become.

Title IV-E agencies have flexibility in satisfying these determination requirements. For example, the court order may reference the facts of a court report, related psychiatric or psycho-social report, or sustained petition to demonstrate that a required judicial determination was made on a case-by-case basis. A checklist may also be acceptable if the title IV-E agency can demonstrate that the court made the required determinations on a case-by-case basis.

Judicial determinations do not need to contain the exact language in the statute at section 472(a)(2)(A)(ii) of the Social Security Act (the Act) or regulations at 45 CFR 1356.21(b) and (c) to satisfy the title IV-E eligibility requirements. As specified in the preamble to the final rule published on January 25, 2000 (65 FR 4056), the judicial determinations must clearly convey that the court has determined that the requisite findings have been made.

If the judicial determination is not made in a court order, a transcript of the proceedings that demonstrate that the court made the required judicial determination is the only other acceptable documentation.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00); 12/6/2007; 10/23/19; revised 9/30/26

Legal and Related References

Social Security Act - section 472(a)(2)(A)(ii); 479B; 45 CFR 1356.21 (d); S. Rept. No. 336, 96th Congress, 2nd Session 16 (1980), 65 FR 4056

Question 2. Some States do not transcribe court hearings; rather, court clerks take "bench notes" during the course of a hearing. Are these "bench notes" acceptable for purposes of meeting the documentation requirements of 45 CFR 1356.21(d)?

Answer

No. Bench notes do not constitute acceptable documentation of judicial determinations. In accordance with the regulations, the only acceptable alternative documentation of judicial determinations, absent language in a court order, is a transcript of the court proceedings. We recommend that the State agency collaborate closely with the judicial system to assure that the necessary judicial determinations are made and appropriately recorded for children who must be removed from their homes.

Source/Date

Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Legal and Related References

45 CFR 1356.21 (d)

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

Question 1. How is the 12 month limit calculated for a child placed with his/her parent in a licensed residential family-based substance abuse treatment facility?

Answer

Section 472(j) of the Social Security Act provides that a title IV-E agency may claim title IV-E foster care maintenance payments on behalf of an otherwise eligible child who is placed with his/her parent in a licensed, residential family-based treatment facility for substance abuse (facility) under specified circumstances. The title IV-E agency may claim title IV-E for such a child for no more than 12 months. The "clock" for the 12 months begins to run on the first day that the child is placed with the parent in such a facility, which begins the 12-month period in that placement. As such, if a child is placed with his/her parent in such a facility, the "clock" would start anew: 1) each time that the parent and child move to a different facility, or 2) the child is placed elsewhere away from the parent, and then is placed again with the parent either in the same facility or a different one.
Note that for title IV-E eligibility and plan purposes, the "clock" ends on the last day of the 12th month, regardless of the day in the month that the child was placed with the parent in such a facility 12 months prior. For example, if a child is placed in a facility with his/her parent on January 10th, the 12 month period would end on January 31st of the next year.

Source/Date

11/23/2020

Legal and Related References

Section 472(j) of the Social Security Act

8.3A.8a. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Facilities requirements, child-care institution

Question 1. When and under what conditions can a public agency or unit of government claim reimbursement under title IV-E for multiple facilities operated as licensed public child care institutions for 25 or fewer children?

Answer

Only public child-care institutions which are clearly and definitely separate entities serving 25 or fewer children are covered under the provisions in section 472 of the Social Security Act. Child care institutions operated by a public agency or unit of government must be separate entities that are managed or administered as individual programs complete in themselves.

In addition to a license or approval for 25 or fewer children, other criteria that are indicative of an independent, discrete facility are: (a) separate budget; (b) separate on-site management, including control over personnel, i. e. hiring and firing; (c) separate control over intake and discharge; (d) separate control over development of the child care program; and (e) separate identification of program/treatment purposes and goals.

Although cottages on the same plot of land are not considered to be separate entities, physical proximity to other facilities is not in itself a factor that would disqualify an institution that has otherwise demonstrated its autonomy. For example, a county may operate several small institutions throughout the county within a short distance from each other. If they are not on a common lot and do not share the same address or history of being one institution, it is possible that the costs of care in each facility may be allowable for FFP, if all other conditions, as outlined above, are met by the institution.

Source/Date

ACYF-CB-PIQ-88-04 (7/19/88)

Legal and Related References

Social Security Act - section 472 (c)

Question 2. An inquiry from a State described a situation in which a local governmental unit is operating a residential child care facility that consists of several cottages on a common plot of land. One of the cottages, licensed by the State, has a licensed capacity of 25 or fewer children. Another cottage is also licensed, but for more than 25. The question is: are the costs of care in the cottage of 25 or less eligible for Federal financial participation (FFP), since it has an individual license and is not considered, for purposes of licensing, as a part of the other cottage housing more than 25 children?

Answer

No. Despite the fact the individual cottage is licensed for 25 or fewer children, it is considered to be part of a single larger institution. The cottages, as described, are located on a common plot of land and are operated and managed by a single administration. Decentralization of living units from one large building to several smaller cottages does not qualify the institution under the definition of "child-care institution" in section 472 (c) of the Social Security Act. Therefore, the costs of foster care maintenance for children living in a public institution of this type, with a total population of over 25, may not be claimed for FFP under title IV-E.

Congressional intent is clear in the Senate Committee Report (No. 96-336 p. 16): "the committee expects that the administration will closely monitor claims for reimbursement under this authority to assure that payments are not made with respect to care in large institutions which have made superficial changes, such as the establishment of a 'group home' wing within a larger institution. The committee intends that only institutions which are clearly and definitely separate entities serving 25 or fewer children will be covered by the provision."

In addition, the House Conference Report (No. 96-136 p.54) stated that foster care payments for children placed in large public institutions would be disallowed, "even though a wing on the institution, a dormitory, or a cottage on the grounds of the institution may have 25 or fewer residents."

Source/Date

ACYF-CB-PIQ-88-04 (7/19/88)

Legal and Related References

Social Security Act - section 472 (c); House of Representatives Conference Report No. 96-136 and Senate Committee Report No. 96-336

Question 3. What is the operative definition of the term "primarily" when used to describe a facility for the detention of children?

Answer

Section 472 (c)(2) of the Social Security Act (the Act) defines "child-care institution". The word "primarily" is used to modify the use of the facility for detention purposes. The following questions are asked when determining the "primarily" issue: (a) Who operates the facility? (b) For what purposes does it exist? (c) Is it licensed or approved? If so, for what use and by whom? (d) From whom does it receive its major financial resources? (e) What type of children are residents? (f) Would it be viable without the need to house children adjudicated delinquent? (g) Is the facility physically restrictive?

In addition to these questions, the Department would look to the specific facts of a given situation. However, it is important to keep in mind that separation of serious juvenile offenders from foster care children (including status offenders) is a most significant practice issue.

Source/Date

ACYF-CB-PIQ-82-10 (8/11/82); ACYF-CB-PIQ-88-03 (4/11/88); 10/25/16

Legal and Related References

Social Security Act - sections 472; 45 CFR 1355.20

Question 4. Is Federal financial participation available for children placed in for-profit child-care institutions?

Answer

Formerly, title IV-E foster care maintenance payments for placements in child-care institutions were restricted to public or private nonprofit institutions. Effective August 22, 1996 with the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act, title IV-E reimbursement became available for State foster care maintenance expenditures incurred through placements made in eligible private "for-profit" child-care institutions.

Source/Date

ACYF-CB-PA-97-01 (7/25/97)

Legal and Related References

Social Security Act - section 472 (c)(2).

Question 5. If an otherwise eligible title IV-E child is placed in a child care institution that has locked living units for the child's benefit or safety, does this render the facility "physically restrictive," such that the child is ineligible for title IV-E?

Answer

Not necessarily. A facility that has locked living units may meet the Federal definition of a child care institution enabling the State to claim title IV-E on behalf of a child. The statute at section 472 (c)(2) of the Social Security Act requires the State to place the child in a child care institution that meets certain statutory and regulatory requirements. The law stipulates that a child care institution shall not include detention facilities "or any other facility operated primarily for the detention of

children who are determined to be delinquent". The definition of child care institution in Federal regulations at 45 CFR 1355.20 states that:

[A] Detention facility in the context of the definition of child care institution in section 472 (c)(2) of the [Social Security] Act means a physically restricting facility for the care of children who require secure custody pending court adjudication, court disposition, execution of a court order or after commitment.

It is clear that States may not claim title IV-E for a child if the facility is "physically restrictive" in that it is used primarily to detain children who require secure custody. If a facility is not used primarily for this purpose, but the facility has some restrictions for the benefit or safety of the child, then the State may make title IV-E claims on behalf of an otherwise eligible child placed there.

While the State may claim title IV-E for a child placed in a child care institution that is secured for his or her benefit or safety, we want to note one caveat. The Departmental Appeals Board (California Department of Social Services Decision No. 960) noted in its decision that "a mixture of detention and treatment is common in juvenile law." Adding a treatment component to a facility that is used primarily to secure delinquent children does not render the child care institution consistent with the strictures of title IV-E.

Source/Date

6/23/2003

Legal and Related References

Social Security Act - Section 472 (c)(2); 45 CFR 1355.20; Departmental Appeals Board California Department of Social Services Decision No. 960.

Question 7. A 16-year-old youth is placed in a childcare institution (CCI) after October 1, 2019 (or the state's approved delayed effective date), but before the CCI has met the requirements to be a qualified residential treatment program (QRTP). The child remains in the CCI for several months, at which point the CCI meets the QRTP requirements. How may the title IV-E agency claim title IV-E foster care maintenance payments for such a child? When does the QRTP "clock ? begin to run to obtain the 30 day qualified individual assessment; the 60 day judicial review; and the 12 consecutive or 18 non-consecutive months (or six months if under age 13) agency head approval (collectively, the QRTP protections)?

Answer

The agency may claim title IV-E foster care maintenance payments on behalf of such a child for the first 14 days of the child's placement in a CCI that has not met QRTP

requirements, or is not an allowable CCI placement specified in the Social Security Act (the Act). See §472(k)(1) and (k)(2) of the Act.

On the day that the CCI meets QRTP requirements, the agency must begin the statutory QRTP "clock," (the clock) to obtain the 30 day individualized assessment; the 60 day judicial review; and the agency head approval for placements in excess of six consecutive or non-consecutive months (for a child under 13) or 12 consecutive/18 non-consecutive months for children 13 and over on the day of the month in which the CCI has met the QRTP requirements. See §472(k)(1); §475A(c) of the Act.

Note that a CCI that meets QRTP program, licensing, and accreditation requirements for part of the month is deemed to have met those requirements for the entire calendar month. This means that if a childcare institution meets QRTP requirements for a portion of a month, the title IV-E agency may claim foster care maintenance payments for the entire month when an otherwise eligible child has resided in that childcare institution for the entire month. For a child placed in the CCI on or after the date that the CCI meets all QRTP requirements, the agency may claim title IV-E FCMP beginning on the date that the child is placed in the QRTP, and the QRTP statutory "clock" begins to run on that date. See the Child Welfare Policy Manual, at §8.3A.15, Question and Answer #1.

For example, here is how this would work for a 16-year-old youth placed in a CCI if a state's QRTP delayed effective date is July 1, 2021:

October 15, 2021: Youth is placed in a CCI that is not a QRTP.

October 15-October 28, 2021: Agency may claim foster care maintenance payments for 14 days.

October 29, 2021: This is the 15th day that the youth has been in the CCI; the agency may not claim title IV-E FCMP on behalf of the youth.

March 8, 2022: CCI meets all QRTP program requirements, including accreditation and licensing. This is the youth's placement date into the QRTP, and the "clock" begins for the QRTP protections. Note, however, that the agency may begin to claim FCMP for the child back to March 1, 2022 because the child has resided in the CCI continuously and because the CCI is considered a QRTP for the entire calendar month.

April 6, 2022: Agency must have secured a 30-day individual assessment about the most appropriate placement for the child. If the assessment is not completed within 30 days of the start of the placement (March 8, 2022), the title IV-E agency cannot claim title IV-E FCMPs for the entirety of the QRTP placement.

May 6, 2022: Agency must have secured a 60-day judicial review that approves the continued placement of the child in order to continue claiming title IV-E FCMP.

February 28, 2023: This ends the 12th month of placement in the QRTP. Agency must secure head of agency signature in order to continue claiming beyond this date.

Source/Date

11/1/2021

Legal and Related References

See §472(k) of the Social Security Act.

Question 8. May a title IV-E agency claim IV-E foster care maintenance payments for an otherwise IV-E eligible child placed in a child care institution (CCI) if it has not yet received the results of a child abuse and neglect (CAN) registry request that was submitted to another state or tribe where the employee used to live?

Answer

Yes. The CAN registry check procedures in section 471(a)(20)(D) and (B) of the Social Security Act (Act) require that a title IV-E agency "check any child abuse and neglect registry maintained by the State [or tribe] . . . and request any other State [or tribe] in which [the adult working in a child-care institution] has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State . . . before the [adult] may be finally approved . . ." The receipt of the results of CAN checks from other states for an adult working in a CCI, however, is not required prior to an agency claiming title IV-E foster care maintenance payments on behalf of an eligible child placed in that CCI provided that the adult awaiting their CAN registry check work under the direct supervision of personnel who have completed CAN registry and criminal record checks in accordance with section 471(a)(20)(D) of the Act until their completed CAN check is received (see guidance for foster family homes in the Child Welfare Policy Manual §8.4F, Q/A #8).

A title IV-E agency that believes that another state or tribe with an approved title IV-E plan that maintains a registry is not responding appropriately to an information request should contact their Administration for Children and Families' regional office.

Source/Date

07/29/2026

Legal and Related References

Social Security Act - section 471(a)(20)(D)

8.3A.8b. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Facilities requirements, foster family home

Question 3. May a title IV-E agency provide title IV-E foster care maintenance payments on behalf of an eligible child when the parent from whom the child is removed is residing in the licensed or approved foster family home where the child is placed?

Answer

No. Foster care is defined as “24-hour substitute care for children placed away from their parents or guardians and for whom the title IV-E agency has placement and care responsibility.” (45 CFR 1355.20). If a parent is residing in the same licensed/approved foster family home, then the child is not placed “away from their parents or guardians.” However, this does not apply to the minor parent and his/her child who are both placed in the same foster family home because the statute specifically identifies such placements as allowable and supersedes the regulation (42 U.S.C. 675(4)(B)).

Source/Date

9/9/2025

Legal and Related References

42 U.S.C. 675(4)(B); 45 CFR 1355.20

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

Question 1. 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)

Question 2. Must a foster home be licensed by the State or Tribal licensing agency or by a State-certified or Tribe-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 Tribe or its certified child placement agency. Foster care facilities may be licensed by the agency responsible for licensing, by other agencies under contract with the title IV-B/IV-E agency, or by Indian Tribal licensing authorities.

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), pursuant to authority granted under The Indian Child Welfare Act of 1978 at 25 U.S.C. 1931

Source/Date

ACYF-CB-PIQ-87-01 (3/25/87), revised 9/30/26

Legal and Related References

Social Security Act - section 472; 45 CFR 1355.20; 25 U.S.C. of the Indian Child Welfare Act

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Question 6. The regulations permit title IV-E agencies to claim title IV-E reimbursement 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), revised 9/30/26

Legal and Related References

45 CFR 1355.20

Question 7. Can a title IV-E agency claim title IV-E FFP for eligible children placed in foster family homes or child-care institutions that are not fully licensed or approved, but rather have a provisional license or probationary license/status?

Answer

It depends. The purpose of requiring full licensure or approval of all foster family homes and child-care institutions is to ensure the health, safety, and protection of all children placed in foster care. If a foster family home or child-care institution is granted a provisional license, probationary license, or placed on probationary status due to its failure to fully satisfy all of the licensing or approval standards, then the children in such placement are not eligible for title IV-E foster care maintenance payments and the title IV-E agency may not claim FFP during the time that placement fails to fully comply with the standards. A title IV-E agency may begin claiming FFP for children in such placement when it fully complies with the licensing or approval standards. This means the title IV-E agency must prorate any claims when the otherwise eligible child has resided in the home or institution for a portion of the month.

However, if the foster family home or child care institution meets all of the licensure or approval standards but is on probation only in the sense that it is a newly licensed home or child-care institution requiring more frequent supervision by the agency, then the period of probation would not preclude the agency from providing title IV-E foster care payments on behalf of an otherwise eligible child.

Source/Date

Questions and Answers on the Final Rule (65 FR 4020) (1/25/00), revised 9/30/26

Legal and Related References

Social Security Act - section 471 (a)(10); 45 CFR 1355.20

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

Answer

No. Per the definition of "foster family home" at section 1355.20 of the regulations, a licensing or approval authority may be: a state authority in the state in which the foster family home is located; a tribal authority with respect to a foster family home on or near an Indian Reservation pursuant to the Indian Child Welfare Act; or the licensing authority of a Tribe operating a title IV-E program with respect to a foster family home in the tribal title IV-E agency's service area. The 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), revised 9/30/26

Legal and Related References

Social Security Act - 45 CFR 1355.20; 25 U.S.C. of the Indian Child Welfare Act

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Question 11. 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 title IV-E agency 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 title IV-E agency may claim FFP for the entire month when an otherwise eligible child has resided in that home for the entire month. The agency 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), revised 9/30/26

Legal and Related References

Social Security Act - section 471 (a)(10)

Question 13. Does the law require that licensed child-placing agencies use the same foster home licensing standards as the title IV-E agency?

Answer

Yes. Section 471(a)(10) of the Act requires that the State or Tribal 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 title IV-E agency 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 title IV-E agency does not diminish the requirement for the agency to apply the licensing standards equally to all foster family homes. Failure to comply with this requirement will be considered a plan compliance issue.

The law does not preclude the title IV-E agency or child-placing agency from establishing additional criteria above and beyond basic 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 title IV-E agency or child-placing agency adheres to the State's or Tribe’s basic licensing standards, the title IV-E agency meets the requirements of section 471(a)(10) of the Act.

Source/Date

8/16/2002, revised 9/30/26

Legal and Related References

Social Security Act section 471(a)(10); 45 CFR 1355.20

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

Answer

Under specific circumstances, a title IV-E agency may claim title IV-E reimbursement on behalf of an otherwise eligible child when a State's or Tribe's licensure requirements are met through a "variance". For title IV-E purposes, a "variance" is a mechanism that allows the title IV-E agency to meet a standard for licensure in a way other than is specified in the rule that governs licensure in that State or Tribe. A "variance" is acceptable on a case-by-case basis only if the title IV-E agency has the authority to permit "variances", the purpose of the 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 title IV-E agency's "variance" from the original rule still meets the State's or Tribe's licensing requirement that the home is able to provide safe drinking water.

Source/Date

9/29/05, revised 9/30/26

Legal and Related References

45 CFR 1355.20(a)

Question 15. May a title IV-E agency 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 or Tribe's foster care license/approval requirements but does meet the adoptive home license/approval requirements?

Answer

No. The title IV-E agency 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 or Tribe'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 title IV-E agency 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

6-Apr-06, revised 9/30/26

Legal and Related References

Social Security Act - sections 472(b) and 473(a)

Question 16. 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 title IV-E agency 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 or Tribe 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 foster family home has a provisional license, probationary license, or has been placed on probation. A title IV-E agency cannot claim FFP for foster care maintenance payments beyond the date of revocation of a foster care provider's license or approval. A title IV-E agency may, however, claim a full month of administrative costs in accordance with the agency's cost allocation plan (for Tribes, cost allocation methodology).

Source/Date

8/7/2006, revised 9/30/26

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

Question 17. 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

4/26/2007

Legal and Related References

Social Security Act § section 471(a)(10), Child Welfare Policy Manual § section 8.3A.8c, question 11

Question 18. When a child is placed in a foster care setting outside the jurisdiction of the title IV-E agency that has placement and care responsibility, must the foster family home be licensed by the licensing agency of the State or Tribe 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 or Tribe 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 licensing authority of the State or Tribe program in which the home is situated.

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 foster family home (or child care institution) not licensed or approved by the State or Tribe 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

11/14/2007; revised 9/30/26

Legal and Related References

Social Security Act § section 472(c)

Question 19. 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

12/31/2007

Legal and Related References

Social Security Act § sections 471(a)(10) and 472(c)

8.3A.8d. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Facilities requirements, supervised independent living

Question 1. Under what circumstance may a title IV-E agency consider a youth age 18 or older who is residing in the same home as his/her parent or guardian to be in an allowable title IV-E supervised independent living setting if paired with title IV-E agency supervision? May a title IV-E agency consider a youth age 18 or older who is residing in a substance abuse, mental health or other adult residential treatment facility to be in a supervised independent living setting for title IV-E purposes?

Answer

A title IV-E agency has discretion to develop a range of supervised independent living settings for youth age 18 or older, as long as those settings can be reasonably interpreted as consistent with the law at section 472(c)(2) of the Act and are paired with title IV-E agency supervision.

A title IV-E agency may determine that a youth residing in the home of a parent or guardian is an allowable supervised independent living setting. In this arrangement,

the parent or guardian is not the foster care provider for the youth, nor has the agency returned the youth home to live under the care of his/her parent or legal guardian.

For example, the title IV-E agency may consider a youth who normally resides in a dorm during college and lives in a room in the home of his/her parent during college breaks, or a youth who takes classes and rents a basement room from his/her guardian, to be in allowable supervised independent living setting when the arrangement is paired with the title IV-E agency supervision.

A title IV-E agency may determine a substance abuse, mental health or other adult residential treatment facility to be a supervised independent living setting only if the youth is living in the facility voluntarily and the arrangement is paired with title IV-E agency supervision.

Ultimately, it is the responsibility of the title IV-E agency to evaluate the individual circumstances of the youth and the nature of the living arrangement to determine whether it is an appropriate and allowable independent living setting consistent with section 472(c)(2) of the Act.

Source/Date

5/6/2013, revised 9/30/26

Legal and Related References

Social Security Act § section 472(c)(2); ACYF-CB-PI-10-11

8.3A.9. TITLE IV-E, Foster Care Maintenance Payments Program, Reasonable efforts

Question 1. What is the statutory basis for treating a judicial determination that the title IV-E agency made reasonable efforts to prevent the child's removal from his/her home, to reunify the child and family, and to make and finalize an alternate permanent placement when the child and family cannot be reunited as title IV-E eligibility criteria?

Answer

Section 472(a)(2)(A)(ii) of the Social Security Act (the Act) contains two eligibility criteria. The first pertains to the child's removal from home. Such removal must be based on a judicial determination that it was contrary to the child's welfare to remain at home. The second eligibility criterion requires a judicial determination that the title IV-E agency made reasonable efforts of the type described in section 471(a)(15) of the Act. Section 471(a)(15) of the Act requires the title IV-E agency to make reasonable efforts to prevent the child's removal from his/her home, to reunify the

child and family, and to make and finalize an alternate permanent placement when the child and family cannot be reunited. The requirements for judicial determinations regarding reasonable efforts are title IV-E eligibility criteria. If the eligibility criteria are not satisfied, the child is not eligible for title IV-E funding.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00); 7/17/2006; (3/2/20)

Legal and Related References

Social Security Act - sections 471(a)(15), 472(a)(2)(A)(ii), and 479B; 45 CFR 1356.21(b) and (d)

Question 3. May a checklist be used to document the reasonable efforts requirements?

Answer

The regulations, at section 1356.21(d), requires judicial determinations to be explicit, and made on a case-by-case basis. This requirement is made to assure that the individual circumstances of each child before the court are properly considered in making judicial determinations. If the title IV-E agency can demonstrate that such determinations are made on a case-by-case basis and documented through a checklist that will be considered acceptable in a title IV-E foster care eligibility review.

Source/Date

Questions and Answers on the Final Rule (65 FR 4020) (1/25/00); (3/2/20)

Legal and Related References

45 CFR 1356.21(d)

8.3A.9a. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Reasonable Efforts to Finalize a Permanency Plan

Question 1. We understand that the timing for obtaining the initial judicial determination related to making reasonable efforts to finalize/achieve a permanency plan is based on the date the child is considered to have entered foster care. Are subsequent judicial determinations to be obtained based on the date the child is considered to have entered foster care or within 12 months of the date the judicial determination actually was obtained?

Answer

The statute requires that the judicial determination of reasonable efforts to finalize/achieve a permanency plan be obtained no later than 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child is in foster care. Accordingly, title IV-E agencies must use the date of the last judicial determination for a child to determine the date the next one is due. In no circumstance may the interval between these judicial determinations exceed 12 months. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within the time frame prescribed above, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made and remains ineligible until such a determination is made.

Although the permanency hearing may serve as the mechanism for obtaining the judicial determination of reasonable efforts to finalize/achieve a permanency plan, there is no requirement that the judicial determination be made at a permanency hearing. The court may make such a judicial determination, based upon evidence presented to it by the title IV-E agency, without a formal hearing.

Source/Date

06/09/04; (3/2/20)

Legal and Related References

Social Security Act - section 471(a)(15)(B) and 479B; 45 CFR 1355.20 and 1356.21(b)(2).

Question 2. Regarding the reasonable efforts to finalize judicial determination: Is the title IV-E agency required to look at the permanency plan in effect at the time the judicial determination is due to see if the court order addresses that specific plan in its reasonable efforts judicial determination?

Answer

No. The title IV-E agency is not required to reconcile the permanency plan in effect at the time the judicial determination is due with the reasonable efforts determination itself. In order to sustain a child's ongoing title IV-E foster care eligibility, the court must make a judicial determination of reasonable efforts to finalize a permanency plan within 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child remains in foster care. We have indicated that we will not instruct courts on the criteria they are to use to make the judicial determination. At the same time, however, we recognize the significance of the provision as it relates to moving a child toward permanency. The courts, therefore, may rule on the plan that is in effect at the time of the finding, a

plan that has been in effect for a brief period of time, or the activities related to achieving permanency that took place over the prior 12 months, even if the plan had been abandoned during that 12-month period. In any event, the judicial determination should reflect the court's judgment as to whether the agency activities that were performed during the previous 12 months were meaningful in bringing about permanency for the child.

Source/Date

7/6/05; (3/2/20)

Legal and Related References

Social Security Act - Section 471(a)(15) and 479B; 45 CFR 1356.21(b)(2), 1356.71(d)(1)(i)

Question 3. Is the title IV-E agency required to obtain a judicial determination regarding reasonable efforts to finalize a permanency plan in accordance with 45 CFR 1356.21(b)(2) for a child placed in foster care as a result of a voluntary placement agreement?

Answer

No. A judicial determination regarding reasonable efforts to finalize a permanency plan is required only for children removed from their homes via court action (section 472(a)(2)(A)(ii) of the Social Security Act (the Act)). Although a judicial determination regarding reasonable efforts to finalize a permanency plan is not required, the title IV-E agency must comply with the title IV-E plan requirements to provide reasonable efforts for all children as described in section 471(a)(15) of the Act, including those children who are voluntarily placed.

Source/Date

April 6, 2006; (3/2/20)

Legal and Related References

Social Security Act - sections 472(a)(2)(A)(ii), 471(a)(15), and 479B; 45 CFR 1356.21(b) and 1356.22

Question 4. What are the criteria for determining whether a child is ineligible for a title IV-E foster care maintenance payment with respect to the requirement that a judicial determination regarding reasonable efforts to finalize a permanency plan be made within 12 months of the date the child is considered to have entered foster care and every 12 months thereafter? For

example, is a child ineligible from the date the determination is due until such time as the date the determination is made?

Answer

Consistent with the regulation at 45 CFR 1356.21(b)(2)(ii), if a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the prescribed schedule, the child becomes ineligible for title IV-E at the end of 12th month following the date the child is considered to have entered foster care or the end of the 12th month from the most recently obtained judicial determination regarding reasonable efforts to finalize a permanency plan. If the reasonable efforts to finalize a permanency plan determination subsequently is made later for the otherwise eligible child, the title IV-E agency can claim Federal financial participation (FFP) under title IV-E foster care from the beginning of the month in which the judicial determination was made. See section 8.3A.15 of the Child Welfare Policy Manual, Q/A#1.

We offer the following example to clarify the policy:

If the judicial determination regarding reasonable efforts to finalize a permanency plan is due September 10, 2004, but not held until October 18, 2004, the title IV-E agency may claim FFP on behalf of an otherwise eligible child without interruption. Consistent with the regulation cited above, the child is eligible until the end of the 12th month in which the determination is due. Therefore, in this example, the child is eligible through September 2004, which is the month in which the determination was due. Further, in accordance with long-standing Departmental policy, once all eligibility criteria are met for a child, a title IV-E agency may claim Federal financial participation for a child from the first day of placement in the month in which all title IV-E eligibility criteria are met. Therefore, the child would continue to be eligible for title IV-E benefits from October 1, 2004, since the determination was made in October 2004.

It should be noted that for a child who entered foster care prior to March 27, 2000 (the effective date of the Final Rule which established the reasonable efforts to finalize a permanency plan requirement at 45 CFR 1356.21(b)(2)), the concept of "the date the child is considered to have entered foster care" is nonexistent. For those children, the initial reasonable efforts to finalize a permanency plan judicial determination was due no later than March 27, 2001.

Source/Date

8/7/2006; (3/2/20)

Legal and Related References

Social Security Act - section 471(a)(15)(B)(ii) and 479B; 45 CFR 1356.21(b)(2)(ii); 65 FR 4052; Child Welfare Policy Manual Section 8.3A.15 Q/A#1

8.3A.9b. TITLE IV-E, Foster Care Maintenance Payments Program, Reasonable efforts, to prevent a removal

Question 1. Does the initial "reasonable efforts to prevent removal" determination affect the child's initial eligibility for title IV-E foster care payments, or does this determination constitute FFP criteria for claiming foster care maintenance payments?

Answer

Pursuant to the regulations at section 1356.21(b) (1) (ii), judicial determinations regarding reasonable efforts to prevent removal must be made in accordance with the criteria and time frames specified therein, or the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

Source/Date

Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Legal and Related References

Social Security Act - section 472 (a)(2)(A)(ii); 45 CFR 1356.21 (b)

Question 2. When must the "reasonable efforts to prevent removal" criteria be met; in the initial court order that removes the child or 60 days from the date the child is removed?

Answer

Pursuant to 45 CFR 1356.21(b)(1)(i), the title IV-E agency must obtain a judicial determination that it either made or was not required to make reasonable efforts to prevent a child's removal from the home no later than 60 days from the date the child was removed from the home. However, the title IV-E agency may obtain such a determination earlier than 60 days from the date of removal.

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 471(a)(15) and 479B; 45 CFR 1356.21(b)

Question 3. Title IV-E eligibility for an entire foster care episode is prohibited if the reasonable efforts to prevent removal requirements are not

satisfied. Please explain the rationale for this policy.

Answer

The requirement for the title IV-E agency to make reasonable efforts to prevent removals is a fundamental protection under the Social Security Act and one of several criteria used in establishing title IV-E eligibility. From both a practice and an eligibility perspective, it is impossible for the title IV-E agency to provide efforts to prevent the removal of a child from home after the fact.

From a practice perspective, the removal of a child from the home, even temporarily, makes a profound impact on a family that cannot be undone. If the child is returned after services have been delivered, or even immediately, the title IV-E agency has reunified the family, not prevented a removal.

The statute requires that title IV-E eligibility be established at the time of a removal. If the title IV-E agency does not make reasonable efforts to prevent a removal or fails to obtain a judicial determination with respect to such efforts, the child can never become eligible for title IV-E funding for that entire foster care episode because there is no opportunity to establish eligibility at a later date.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00); (3/2/20)

Legal and Related References

Social Security Act - section 472(a)(2) and 479B; 45 CFR 1356.21(b)(1)

Question 4. For title IV-E eligibility purposes, will the Administration for Children and Families accept a judicial determination that efforts to prevent removal or reunify the family were not necessary for a reason other than those described in 45 CFR 1356.21(b)(3)?

Answer

Yes. We addressed this issue in the 1998 preamble to the Proposed Rule on *Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews* (63 FR 50057, 50073). It states that "[w]hile we recognize that concern for the child's safety may preclude efforts to prevent removal, the court must make a reasonable efforts determination. Even when children are removed in emergency situations, the court must consider whether appropriate services were or should have been provided. When the court determines that it was reasonable for the agency to make no effort to provide services to prevent removal [or to return the child home] in light of exigent circumstances discovered through assessment of the family, such as the safety or protection of the child, there must be a judicial determination to that

effect." Thus, if there is a judicial determination to the effect that efforts to prevent removal or reunify the family have not been made due to the immediate danger to the child, or that the lack of efforts is appropriate due to the particular circumstances of the case, the reasonable efforts requirements in 45 CFR 1356.21(b)(1) and (2) will be satisfied.

Source/Date

12/31/2007

Legal and Related References

45 CFR §1356.21(b); Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews (63 FR 50057, 50073; 65 FR 4020, 4053)

8.3A.9c. TITLE IV-E, Foster Care Maintenance Payments Program, Reasonable Efforts, Qualifying Language in Court Orders

Question 1. Some States have begun to use qualifying language in court orders, which restricts the purpose of the reasonable efforts findings to title IV-E funding purposes only. For example, in one State, the court annotates its orders with the phrase "for Federal funding purposes only" in order to address parental concerns that the order is entered without prejudice. Another State proposes adding language to the court order that "the title IV-E judicial determination shall not be given any effect in subsequent court proceedings." Is the use of qualifiers to the judicial determination of reasonable efforts allowable under title IV-E?

Answer

No. It is not permissible for a title IV-E agency to use such restrictive language in making the required judicial findings. When a judicial determination is qualified by language stating or implying that it has been made for the purpose of Federal funding only or that it has no precedential effect, then a bona fide judicial determination has not been made. An official notation that a finding is for a limited purpose only suggests that it must be "re-made" in order for it to become valid.

This policy is consistent with legislative history and was addressed in the preamble to the 2000 regulations, which quote S. Rep. No. 336, 96th Cong., 2d Sess. 16 (1980) and make the point that the required judicial determinations should not become "...a mere pro forma exercise in paper shuffling to obtain Federal funding..." (pg. 4056, 65 Fed. Reg.).

Court orders containing judicial determinations qualified by restrictive language such as that described above will not satisfy title IV-E eligibility requirements for Federal financial participation (FFP).

Source/Date

7/6/05; (3/2/20)

Legal and Related References

Social Security Act - Sections 471(a)(15)(B), 472(a)(2)(A)(ii), and 479B

8.3A.10. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Redeterminations

Question 2. How does a title IV-E agency determine when it must re-establish a Child's eligibility for foster care? What is required after a break in a foster care placement in those cases where there is no new court ordered removal from the home and no break in title IV-E agency responsibility for placement and care? Examples of situations are as follows: (a) A child in foster care goes to the State training school and then back to foster care; (b) A child in foster care goes to live with a relative (not parent) under title IV-E agency supervision, and then back to foster care; (c) A child in foster care goes home under title IV-E agency supervision without a change in court order and then returns to foster care.

Answer

The criteria to be used in determining whether re-establishing a child's eligibility for foster care maintenance payments under title IV-E would be required hinges on whether the child is continuously in foster care status and remains under the responsibility of the title IV-E agency for placement and care. In making this determination, the agency would ask: (1) Is the child in foster care? (2) Is the original court order or voluntary placement agreement still in effect in relation to removal of the child from his home? (3) Is the child'still under the responsibility of the title IV-E agency for placement and care? If all of these conditions are in effect, even though there has been a temporary interruption of the foster care placement, the child's title IV-E eligibility does not need to be re-established.
If the child is discharged from foster care and returned to his own home (the home from which he was removed), he could not be considered to be in foster care status, even if the agency maintains a supervisory role with the child and family. If the child leaves foster care to live with a relative, the agency would need to determine whether the child remained in foster care status or whether the home of the relative was now considered to be the child's own home. Short trial visits to a child's home would not be considered interruptions in foster care status. In the event the child returns home (for what is expected to be a permanent period), but is later returned to foster care, a new determination of eligibility based on circumstances at the time of that placement would be required. If the child leaves the foster home and is placed in the State training school for a temporary period, and the court order of removal is

still in effect, he may retain his foster care status during the training school placement. Of course, Federal financial participation is allowed only during the time the child is in a licensed or approved foster care facility.

Source/Date

ACYF-CB-PIQ-85-06 (6/5/85); April 6, 2010

Legal and Related References

Social Security Act - section 472

8.3A.11. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Removal from the home/living with

Question 1. We are confused by the term "constructive removal"? Please explain the term and its implications for the title IV-E program.

Answer

To be eligible for title IV-E funding, a child must, among other things, be removed from the home of a relative as the result of a voluntary placement agreement or a judicial determination that continuation in the home would be contrary to the child's welfare. The statute allows a six-month period of time during which the child can live with an interim caretaker, relative or non-relative, and still be eligible for title IV-E. Under prior policy, we interpreted the term "removal" to mean a physical removal. As a result, if the interim caretaker was a relative, and the title IV-E agency intended to remove custody from the parent but let the child remain with that interim caretaker relative, the child could not be eligible for title IV-E funding because the child was not physically removed from the home of a relative. This policy created a disincentive for relative placements. To remove this inequity between relative and non-relative caregivers, we now permit the removal of the child from the home, in this circumstance, to be a "constructive" (i.e., nonphysical, paper, or legal) removal.

We offer a summary of examples to clarify when a child would be eligible for title IV-E foster care pursuant to a constructive removal. These examples presume that the child is eligible for Aid to Families with Dependent Children (AFDC) in the home of the parent or other specified relative:

The child lived with either a related or non-related interim caretaker for less than six months prior to the title IV-E agency's petition to the court for removal of the child. The State/Tribe licenses the home as a foster family home and the child continues to reside in that home in foster care. The child is eligible for title IV-E foster care since s/he lived with the parent within six months of the title IV-E agency's petition to the court, and was constructively removed from the parent (i.e., there was a paper removal of custody).

The child lived with either a related or non-related interim caretaker for more than six months prior to the title IV-E agency's petition to the court. The State/Tribe licenses the home as a foster family home and the child remains in that home in foster care. The child is ineligible for title IV-E foster care since s/he had not lived with the parent within six months of the title IV-E agency's petition to the court, and was not removed from the home of a relative. (Although constructively removed, the child is ineligible for title IV-E because it had been more than six months since the child lived with the parent.)

The child lives with a related interim caretaker for seven months before the caretaker contacts the title IV-E agency to remove the child from his/her home. The agency petitions the court and the court removes the custody from the parents and physically removes the child from the home of the interim related caretaker. The child would not be eligible for title IV-E foster care since s/he had not lived with the parent or other specified relative from whom there was a constructive removal within six months of the initiation of court proceedings. (Although the child was physically removed from the home of the related interim caretaker, that removal cannot be used to determine title IV-E eligibility since the removal was not the result of a voluntary placement agreement or judicial determination, as required in section 472(a)(2)(A) of the Act. Moreover, the child is ineligible for title IV-E because it had been more than six months since the child lived with the parent from whom s/he was removed.)

The child lived with a non-related interim caretaker for seven months before the caretaker asks the title IV-E agency to remove the child from his/her home and place in foster care. The child is ineligible for title IV-E foster care because s/he had not lived with a parent or specified relative within six months of the petition.

The child is in a three-generation household in which the mother leaves the home. The grandmother contacts the title IV-E agency four months later and the agency petitions the court within six months of the date the child lived with the mother in the home. The State/Tribe licenses the grandmother's home as a foster family home and the child continues to reside in the home in foster care. The child is eligible for title IV-E foster care since s/he lived with the parent within six months of the State's or Tribe's petition to the court, and was constructively removed from the parent's custody.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00); (3/2/20)

Legal and Related References

Social Security Act - section 472(a)(2)(A) and 479B; 45 CFR 1356.21(k) and (l)

Question 2. Can a child be considered "constructively" removed from a legal guardian who is not a specified relative?

Answer

No. The statute at section 472 (a)(3)(A) of the Social Security Act requires, among other things, that a child be living with and removed from the home of a specified relative at the time of the voluntary placement agreement or initiation of court proceedings. The provisions for "constructive" removal do not alter the requirement that the removal be from the home of a parent or specified relative.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00)

Legal and Related References

Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996) and 472(a)(3)(A); 45 CFR 1356.21 (k)

Question 3. May a child born to a woman while she is a prison inmate or patient in a state hospital be considered eligible for foster care payments if all other title IV-E foster care requirements are met? It has been our interpretation that since the child could not return home with the mother and live with her because of her prisoner or patient status, the child would not be eligible to receive AFDC. Hence, such a child could not meet title IV-E foster care eligibility requirements.

Answer

An otherwise eligible child born to a woman who is a prison inmate or a patient in a hospital, and deprived of the support of an absent father, would be eligible for the title IV-E foster care program if removed from the "home of a relative" and placed in foster care in accordance with section 472 of the Social Security Act (the Act). This is true when the child is placed in foster care awaiting the mother's release or when parental rights are terminated directly after birth. The inability of the child to return to the mother during her prisoner or patient status (or for any other reason) has no bearing on the child's eligibility for title IV-E foster care.

Eligibility for the title IV-E foster care maintenance payments program as defined in section 472(a) of the Act states that a title IV-E agency shall make foster care maintenance payment on behalf of each child who has been removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) if, among other things, the child was AFDC eligible in the home of the specified relative from whom the child was legally removed.

The child born to a mother who was a hospital patient or a prison inmate would be considered to be living with the mother at the time of birth, and if placed in foster care would be removed from the home of the relative (the mother) in accordance with section 472 (a). The definition of "home" at 45 CFR 233.90(c)(1)(v)(B) is applicable to the hospital or prison setting.

Source/Date

ACYF-CB-PIQ-86-03 (5/9/86); 7/17/2006; (3/2/20)

Legal and Related References

Social Security Act - sections 406(a) and 407 (as in effect on July 16, 1996), 472(a), and 479B; 45 CFR 233.90(c)(1)(v)(B) and 1356.21(k)

Question 4. For the purpose of determining a child's eligibility for Aid to Families with Dependent Children (AFDC) at the time of the child's removal from his or her home, the child must have been living with and removed from the home of a specified relative. Who is considered a "specified relative" for this purpose?

Answer

A specified relative is defined as any relation by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child. This includes great-great-great grandparents and first cousins once removed (children of first cousins). Accordingly, for the purpose of determining title IV-E eligibility, any otherwise eligible child who is removed from the home of a relative who is within the fifth degree of kinship to the child will be eligible for assistance under title IV-E.

Source/Date

ACYF-CB-IM-92-04 (2/24/92)

Legal and Related References

45 CFR 233.90 (c)(1)(v)

Question 5. Once a court order is issued with a judicial determination that remaining in the home is contrary to the child's welfare, does the title IV-E agency have to actually remove the child at that time and place the child in foster care?

Answer

Yes. Section 472(a)(2) of the Social Security Act predicates a child's receipt of title IV-E funds on the child's removal from home as the result of either a voluntary placement agreement or a judicial determination that to remain at home is contrary to the child's welfare.

The judicial determination that results in the child's removal must coincide with (i.e., occur at the same time as) the agency's action to physically or constructively remove the child, unless the court order specifies an alternative timeframe for removal, as allowed for in the Departmental Appeals Board (DAB) decision # 2017.

If a court makes a judicial determination that it is contrary to the child's welfare to remain at home (without specifying an alternative timeframe) and the child does, in fact, remain at home and no removal occurs, the requirement for removal is not met and the child is ineligible for title IV-E. If the child's safety is not at risk and a title IV-E agency chooses to offer support services to the family in-home to prevent having to remove the child, it should do so. Title IV-E agencies cannot issue "blanket" removal orders, however, in an attempt to guarantee title IV-E eligibility in the event that the child has to be removed from home at some point in the future.

Source/Date

1/29/2007; (3/2/20)

Legal and Related References

Social Security Act - section 472(a)(2) and 479B; Departmental Appeals Board Decision No. 2017

Question 6. A child is placed in a residential treatment facility by his parents without title IV-E agency involvement and the child remains there for more than six months while his parents maintain responsibility for the child. If the child is later judicially or voluntarily removed from the home and placed in the title IV-E agency's placement and care, could the child meet the Aid to Families with Dependent Children (AFDC) "living with" a specified relative requirement in section 472(a)(3)(A) of the Social Security Act (the Act)?

Answer

Yes. The title IV-E foster care maintenance payment program includes a requirement that the child would have received AFDC in the home of the 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). In addition, 45 CFR 233.90(c)(v)(4)(B) provides that under the AFDC program, the "living with" standard has been met "so long as the relative exercises responsibility for the care and control of the child."

In this situation, the parents exercise responsibility for the care and control of the child as they have made a private placement for their child and can decide when their child can leave. Therefore, so long as the parents maintained care and control of the child while he or she was in the residential facility, the child could meet the AFDC "living with" requirement if the child is later judicially or voluntarily removed from the home and placed in the title IV-E agency's placement and care responsibility.

Source/Date

2/24/2011

Legal and Related References

Social Security Act § section 472(a)(3)(A), 45 CFR 233.90(c)(v)(4)(B), 45 CFR 1356.21(l)

Question 7. May a youth over age 18 under the option per section 475(8)(B) of the Social Security Act be his or her own specified relative for the purposes of satisfying the "living with" and "removed from" specified relative requirements described at section 472(a) of the Social Security Act?

Answer

Yes.

Source/Date

2/24/2011

Legal and Related References

Social Security Act § sections 472(a)(3)(A)(ii)(II) and 475(8)(B)

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

Question 1. Does responsibility for placement and care of the child as used in section 472(a)(2)(B) of the Social Security Act (the Act) equate with custody? What does "responsibility for placement and care" mean and may the title IV-E agency delegate certain activities?

Answer

The title IV-E agency, or another public agency with whom the title IV-E agency has made an agreement that is in effect, must 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. If the court assigns the responsibility for placement and care 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 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.

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. 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.

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 the child's safe return home or another alternative permanent placement. Case planning 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 making 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 child’s home or identify and work toward another 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.

The title IV-E agency must actively supervise the various activities performed by a contractor or other agency. This supervision includes oversight of case planning and case review functions and ensuring compliance with 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.

Responsibility for placement and care does not necessarily equate with custody. Although responsibility for placement and care is often 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, provided that the title IV-E agency administering the approved title IV-E plan, or another public agency with which the title IV-E agency has a current effective agreement, is 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), revised 9/30/26

Legal and Related References

Social Security Act - sections 471, 472, and 479B

Question 2. 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

Question 3. 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)

8.3A.13. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Voluntary placement agreements

Question 1. If a title IV-E agency fails to obtain the necessary judicial determination within the first 180 days of a voluntary placement, can the case be reopened when a judicial hearing is convened or does the child lose all further benefits of the title IV-E program during that period of placement?

Answer

The case may not be reopened. The judicial determination must be made within the first 180 days of placement. Section 472(e) of the Social Security Act states that no

Federal payment may be made for a child removed from his or her home pursuant to a voluntary placement agreement and who remains in voluntary placement in excess of 180 days, unless there has been a judicial determination within the first 180 days of such placement to the effect that the placement is in the best interests of the child.

According to the legislative history, this provision was included in Public Law 96-272 in order to allow for short term emergency placements but provide the child with the protection of a court review if the placement became prolonged.

Source/Date

ACYF-CB-PIQ-85-09 (10/10/85); (3/2/20)

Legal and Related References

Social Security Act - sections 472(d) and (e), and 479B

Question 2. In the event that a court hearing date has been set within the first 180 days of a voluntary placement, but no determination made, may a pre-approved continuance hearing date deem the child eligible up to the continuance date?

Answer

No. Although the applicable title IV-E requirement at section 472 (e) is stated in terms of a judicial determination, it does not specifically require a court hearing. If the determination is not made within 180 days of placement, whether or not a hearing is held, Federal financial participation may not continue.

Source/Date

ACYF-CB-PIQ-85-09 (10/10/85)

Legal and Related References

Social Security Act - sections 472 (d) and (e)

Question 3. A State places a child into foster care pursuant to a voluntary placement agreement but does not have the voluntary placement provision in its title IV-E Plan and, thus, does not claim Federal financial participation (FFP) for the child. Can this placement later be considered a judicial removal and FFP be claimed from that time forward if there is a petition to the court within six months of the time the child had last been living with the parent(s) and subsequent judicial determinations are made regarding "contrary to the welfare" and "reasonable efforts"?

Answer

No. The statute allows FFP for otherwise eligible children who are removed from their homes either pursuant to a voluntary placement agreement or as the result of judicial determinations regarding "contrary to the welfare" and "reasonable efforts." It is a title IV-E agency option whether to claim FFP for voluntary placements. For a title IV-E agency to be eligible for Federal reimbursement for voluntary placements, it must meet the requirements of section 472 of the Social Security Act and must have such provision in its title IV-E plan. If the title IV-E agency accepts voluntary placements, but do not meet the requirements for claiming FFP, such placements are ineligible for FFP during the entire stay in foster care. The fact that a petition is filed within six months of the removal and the required subsequent judicial determinations are obtained does not change the nature of the removal from voluntary to judicial.

If, however, a title IV-E agency revises its title IV-E plan and becomes eligible to claim FFP for voluntary placements, it may also begin to claim FFP for any eligible child who had previously been removed pursuant to a voluntary placement agreement if there had been a judicial determination regarding "best interests" within 180 days of the child's placement.

Source/Date

ACYF-CB-PIQ-89-03 (7/24/89); (3/2/20)

Legal and Related References

Social Security Act - sections 472 and 479B

Question 4. If a title IV-E agency, which is claiming Federal financial participation (FFP) for voluntarily placed children, misses the requirement for a judicial determination within 180 days of placement that such placement is in the best interests of the child, but petitions the court within the six-month timeframe set forth in section 472(a)(3)(A)(ii)(II) of the Social Security Act, can the title IV-E agency consider this a judicial removal, once determinations are made concerning "contrary to the welfare" and "reasonable efforts"?

Answer

No. The title IV-E agency has been claiming FFP under the Federal voluntary placement program for 180 days. In this case, the title IV-E agency has failed to meet the requirement for continuing FFP that there must be a judicial determination within 180 days to the effect that the placement is in the best interests of the child. The fact that the title IV-E agency petitioned the court within six months of the time the child last resided with a relative and later obtained the judicial determinations

required for judicial removals would not change the nature of that removal from voluntary to judicial.

Source/Date

ACYF-CB-PIQ-89-03 (7/24/89); (3/2/20)

Legal and Related References

Social Security Act - sections 472(a)(3)(A)(ii)(II) and 479B; 45 CFR 1356.22

Question 5. May a title IV-E agency develop a voluntary placement agreement that would allow a parent to retain custody of his or her child and allow the title IV-E agency to claim Federal financial participation under the title IV-E foster care maintenance payments program on behalf of an otherwise eligible child?

Answer

Yes. As long as the title IV-E agency retains placement and care responsibility for the child, the fact that the voluntary placement agreement allows the parent to retain custody of the child does not impair the child's eligibility for title IV-E foster care maintenance payments. Placement and care responsibility means that the title IV-E agency is legally accountable for the day-to-day care and protection of the child in foster care. Responsibility for placement and care 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.

The title IV-E agency's placement and care responsibilities under section 472(a)(2)(B) of the Social Security Act must be unencumbered in order to claim Federal financial participation for title IV-E foster care costs. To the extent that a title IV-E agency's definition of custody contradicts or in any manner limits the agency's placement and care discretion, such children would not be eligible for title IV-E foster care maintenance payments.

Source/Date

06/09/04; (3/2/20)

Legal and Related References

Social Security Act - sections 472(a)(2)(B) and (f), and 479B; CWPM section 8.3A.12

Question 6. When a child is initially placed into foster care through a voluntary placement agreement, and the title IV-E agency subsequently issues a court order regarding the child's removal and/or the title IV-E

agency's placement and care responsibility, what criteria must be met for the child to be eligible for title IV-E foster care maintenance payments?

Answer

The child must meet the criteria for voluntary placement agreements in section 472(a)(2)(A)(i) of the Social Security Act and 45 CFR 1356.22(a) to be eligible for title IV-E foster care maintenance payments. This is because the subsequent court order does not change the child's removal, which was authorized by the voluntary placement agreement. As such, the agency is not required to secure a judicial finding of reasonable efforts to prevent removal or to finalize the permanency plan.

Source/Date

04/26/07; (3/2/20)

Legal and Related References

Social Security Act - section 472(a)(2)(A) and 479B; 45 CFR 1356.22(a)

Question 7. Section 472(e) of the Social Security Act (the Act) requires a title IV-E agency to obtain a judicial determination during the first 180 days of the voluntary placement to the effect that the placement is in the child's best interest to continue title IV-E payments beyond that time. When does this 180-day clock begin?

Answer

The 180-day clock begins the day a child is physically placed in foster care as defined in 45 CFR 1355.20 pursuant to a voluntary placement agreement with the exception of constructive removals. In constructive removals, the 180-day clock begins on the date the voluntary placement agreement is signed since there is no physical removal of the child from his/her home (45 CFR 1356.21(k)(3)).

Source/Date

12/6/2007; (3/2/20)

Legal and Related References

The Social Security Act - Section 472(e) and 479B; 45 CFR 1355.20, 1356.21(k)(3), and 1356.22(b)

8.3A.14. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Voluntary relinquishments

Question 1. May voluntary relinquishments from biological parents be treated as voluntary placement agreements for the purpose of establishing title IV-E eligibility? What if the relinquishment is approved by a court?

Answer

A child who is voluntarily relinquished to the title IV-E agency does not meet the requirements of section 472 of the Social Security Act for the receipt of foster care maintenance payments.

Voluntary relinquishment means the voluntary relinquishing by parents of their parental rights to the department of social services, without court involvement. A voluntary relinquishment does not meet the definition of a voluntary placement under section 472 nor is it a placement resulting from a judicial determination as provided by section 472. Thus, Federal financial participation (FFP) would not be available for voluntarily relinquished children.

In order for a child to qualify for foster care maintenance payments, section 472(a)(2) provides that removal from the home must occur by either of two ways: (1) pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian or (2) be the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and that reasonable efforts have been made (A) prior to the placement of a child in foster care to prevent or eliminate the need for removal of the child from his home, (B) to make it possible for the child to return home, and (C) to finalize an alternate permanency plan if the child cannot be returned home.

The term "voluntary placement" as provided at section 472(f)(1) means: an out-of-home placement of a minor by or with participation of a title IV-E agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement. The term "voluntary placement agreement" as provided by section 472(f)(2) means: a written agreement, binding on the parties to the agreement between the title IV-E agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

It is clear from section 472, specifically sections 472(a)(2)(A) and (f) that voluntary placement recognizes an agreement between parents (or legal guardians) and the title IV-E agency. The agreement, as provided by section 472(f) must specify the "legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement." Parents cannot be a party to such an agreement while abandoning their basic legal status as parents. Further, if at any time after the signing of the agreement, the parents or legal guardians no longer have the legal status as such, then the agreement is no longer effective, and the placement is no longer the voluntary placement stipulated in the agreement.

The language of section 472(g) suggests that a voluntary placement is a temporary state of affairs with parents or guardians having the capacity and right to revoke such agreement unless a court determines that return to the home would be contrary to the best interest of the child. Even in this latter situation, such a determination prevents a return of the child to its parental home but does not deprive the parents of their parental rights.

Finally, with regard to non-voluntary placement under section 472, it is clear that Federal foster care payments can be made only if the removal from the home of the parents was the result of a judicial determination (including the "reasonable efforts" determination) as required by section 472(a)(2)(A)(ii). Thus, even though a voluntary relinquishment is later accepted or approved in court, such an approval does not change the nature of the action from a voluntary relinquishment to a removal which results from a judicial determination as provided by section 472(a)(2)(A)(ii).

Source/Date

ACYF-CB-PIQ-85-03 (3/19/85); (3/2/20)

Legal and Related References

Social Security Act - section 472 (a)(2)(A), (f) and (g), and 479B

Question 2. How may a child who is voluntarily relinquished by his/her parents to the title IV-E agency become eligible for title IV-E foster care maintenance payments?

Answer

If the child had last been living with the parent(s) within six months of the date court proceedings were initiated leading to a judicial determination that remaining in the home would be contrary to the welfare of such child, the removal from the home will be considered a "judicial removal." In addition, the "reasonable efforts" determination must be made in relation to removal of the child from the home. Such judicial determinations will prevail as the critical factor related to removal and any prior voluntary relinquishment action will not be relevant for purposes of title IV-E eligibility (sections 472(a)(2)(A)(ii) and 472(a)(3)(A)of the Social Security Act).

However, if the court merely sanctions the relinquishment without making the findings specified in section 472(a)(2)(A)(ii), the child cannot be considered to be "judicially removed" in accordance with that section, and foster care maintenance payments may not be claimed under title IV-E.

Source/Date

ACYF-CB-PIQ-89-01 (2/9/89); (3/2/20)

Legal and Related References

Social Security Act - section 472(a)(2) and (3) and 479B

8.3A.15. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, When payments may begin

Question 1. At what point may the title IV-E agency begin to claim Federal financial participation (FFP) for title IV-E foster care maintenance payments?

Answer

Title IV-E agencies may claim FFP from the first day of placement in the month in which all title IV-E eligibility criteria are met.

Source/Date

ACYF-CB-PIQ-91-05 (8/15/91); (3/2/20)

Legal and Related References

Social Security Act - section 472 and 479B

8.3B. TITLE IV-E, Foster Care Maintenance Payments Program, Payments

Question 1. Under title IV-E, how is the term "foster care maintenance payments" defined?

Answer

Under title IV-E, the term "foster care maintenance payments" is defined in section 475(4) of the Social Security Act. The costs of providing the items may include costs such as local transportation necessary for either a foster parent or child-care institution to provide the items. However, allowable costs do not include reimbursement in the nature of salary for the exercise by the foster family of ordinary parental duties. The reasonable costs of administration and operation necessary to provide the items only for children served under title IV-E foster care are allowable elements in payments only to child-care institutions. Since these costs are limited types of activities and apply only to title IV-E children, the costs of foster care in child-care institutions will have to be allocated along two lines: (1) the allocation of costs, for purposes of Federal financial participation (FFP), based on allowable cost items and activities; and (2) the allocation of costs based on the proportion of children in the child-care institution receiving foster care under title IV-E for those allowable elements compared to children whose care is paid under other programs. The establishment of a cost allocation system for child-care institutions, as

well as for the title IV-E agency itself, is a title IV-E agency-responsibility and is a necessary precursor to the title IV-E agency's ability to claim FFP for allowable child-care institution foster care costs.

Source/Date

ACYF-CB-PA-82-01 (4/30/82) revised 08/31/09, revised 9/30/26

Legal and Related References

Social Security Act - sections 472, 474 and 475 (4)

Question 3. Please clarify how funds may be disbursed for allowable child care.

Answer

Title IV-E agencies may include the cost of allowable child care in the basic foster care maintenance payment or may make a separate maintenance payment directly to the licensed provider. For example, if, in a particular foster family, both parents work, the title IV-E agency may include the cost of child care in the maintenance payment made to that family or may pay the licensed provider directly. Regardless of the payment method chosen, the title IV-E agency must be able to provide documentation to verify allowable expenditures.

Source/Date

Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98); (11/07/19)

Legal and Related References

45 CFR 1355.20

Question 4. Federal policy allows a title IV-E agency to include child care for working foster parents in the title IV-E foster care maintenance payment. Are there any Federal requirements that prohibit a title IV-E agency from providing child care for working foster parents in some but not all "political subdivisions" or jurisdictions?

Answer

No. Nothing in statute or regulation prohibits a title IV-E agency from providing child care for working parents in some but not all jurisdictions. Daily supervision is one of the components of a foster care maintenance payment, and licensed child care is an allowable element of daily supervision in certain circumstances (see the definition of foster care maintenance payments in 45 CFR 1355.20). A title IV-E agency has the

discretion to choose the way in which it will provide daily supervision, including whether or not to provide child care in the title IV-E foster care maintenance payment for some or all working foster parents.

Source/Date

March 1, 2005; November 7, 2019

Legal and Related References

Social Security Act - section 475(4)(A) and 479B; 45 CFR 1355.20

Question 5. May title IV-E foster care maintenance payments flow through a for-profit entity to the foster care provider?

Answer

Yes. The Fair Access Foster Care Act of 2005 (Public Law 109-113), which took effect on November 22, 2005, amended section 472(b) of the Social Security Act to eliminate the prohibition against making foster care maintenance payments through a for-profit entity.

Source/Date

1/29/2007

Legal and Related References

Social Security Act, section 472; Public Law 109-113

Question 7. May the title IV-E agency claim a title IV-E foster care maintenance payment for an allowable provider that covers the entire month if a child is temporarily absent for a portion of the month? For example, the child has run away, goes on a weekend home visit, or is hospitalized for medical treatment during some part of the month.

Answer

Yes. The title IV-E agency may provide a full month's title IV-E foster care maintenance payment to the licensed provider if the brief absence does not exceed 14 days and the child's placement continues with the same provider. Otherwise, the title IV-E agency must prorate its claims if the child is absent from the placement for more than a reasonable brief period.

Source/Date

1/29/2007; 11/07/2019

Legal and Related References

Social Security Act - section 472, 479B

Question 8. Must a title IV-E agency discontinue title IV-E foster care maintenance payments provided per section 475(8)(B) of the Act for a youth who is age 18 or older if the title IV-E agency determines that the youth is no longer meeting the education or employment criteria, or is no longer incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency?

Answer

Yes. A title IV-E agency must ensure that a youth receiving a title IV-E foster care maintenance payment under section 475(8)(B) of the Act meets the education and employment criteria or is incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency. Once a title IV-E agency determines that a youth no longer meets the criteria, the agency must discontinue the title IV-E foster care maintenance payment for the youth. However, if the youth meets the criteria at a later time, the title IV-E agency may resume payments to the youth.

Source/Date

5/6/2013

Legal and Related References

Social Security Act § section 475(8)(B); CWPM Section 8.3A.4 Q/A #1

Question 9. May a title IV-E agency make title IV-E foster care maintenance payments directly to a youth age 18 or older who is in a supervised independent living setting under agency supervision?

Answer

Yes. If the youth is in a supervised independent living setting and there is no actual provider or other child placing intermediary, the title IV-E agency may pay the foster care maintenance payment directly to the youth.

Source/Date

5/6/2013

Legal and Related References

ACYF-CB-PI-10-11

8.3B.1. TITLE IV-E, Foster Care Maintenance Payments Program, Payments, Allowable costs

Question 1. What are the elements of costs for foster care maintenance payments under section 475 (4) of the Social Security Act (the Act)?

Answer

There are three groups of costs: (1) Items of Cost: Clearly, all items of cost specifically enumerated in the Act are allowable. In addition, questions may arise about the interpretation of items, listed in the Act, particularly, "daily supervision."

(a) "Daily supervision" in family foster care - "Daily supervision" in family foster care may include such an item as child care. A foster family parent who is working while a foster child is not in school will have to arrange for some form of alternate care, such as day care, for the daily supervision of the child. However, as was stated in the legislative history of P.L. 96-272, "payments for the costs of providing care to foster children are not intended to include reimbursement in the nature of a salary for the exercise by the foster family parent of ordinary parental duties." (p. 50, House of Representatives, Report No. 96-900, April 23, 1980.)

(b) "Daily supervision" in institutional foster care - "Daily supervision" in institutions is a limited function. It includes routine day-to-day direction and supervision. It does not include social services.

(c) Social services under family foster care or institutional foster care - As with all items of care and for costs of administration and operation, the critical factor is the activity being performed and not the title or position of the performer. "Social services" are not allowable cost items as title IV-E maintenance payments under any circumstances, regardless of what type of person provides them. Examples of unallowable "social services" are: counseling and therapy to help with a child's adjustment at the institution; counseling and therapy to help a child resolve the problem(s) for which he or she was placed; counseling and therapy with the child and his or her biological family to resolve the difficulties that led to the need for placement; counseling and therapy to plan for the return of the child to the community; and psychological or educational testing, evaluation, and assessment. These costs may be claimed under other programs, e.g., title IV-B or title XX (Social Services Block Grant Program) of the Act or a State-funded program.

(d) Other items in family or institutional foster care - Questions have been raised regarding some other specific items. "Recreation" is not enumerated in the Act and cannot be regarded as an element of these costs except where it clearly substitutes for otherwise necessary daily supervision, e.g., day care, as discussed in (a) above. In such a case, only the minimal costs for the eligible child and caretaker may be included. (2) Costs of providing: In both family and institutional foster care, the costs of providing the items listed in section 475 (4) may be included in payments. This is a

limited added cost. However, recreation generally is not a "cost of providing". When it is a form of daily supervision, as stated in paragraph (1)(d) above, it is allowable. In an institution, the cost of providing the items might include the costs of activities performed by cottage parents or other persons filling such a role in their daily supervision of eligible children. The key is the activity being performed rather than the occupation or profession of the individual. And, to reiterate, only the proportion of costs related to providing allowable items to title IV-E children is eligible for payment. Inquiry has also been made regarding two other functions and performers. The costs of providing daily supervision of eligible children in an institution by a social worker is allowable; however, the costs of a social worker providing counseling and guidance related to a child's development, as contrasted with routine supervision, would not be an allowable cost. Further, only the proportion of costs attributable to title IV-E children would be allowable. Another question relates to the costs of (1) dispensing over the counter medicines, (2) supervising the administration of prescribed medicines, (3) administering first aid and (4) diagnosing illnesses. The activities performed under numbers (1) and (2) and routine activities under (3) would be allowable. The activity described under (4) is more specialized and is not a cost of providing daily supervision. It is unlike an activity which a family foster parent would be expected to be able to perform in the course of providing "daily supervision." Again, only the proportion of costs of providing allowable items to title IV-E children are eligible for Federal financial participation (FFP). (3) Reasonable costs of administration and operation in an eligible institution: Section 475 (4) also permits payment on behalf of eligible children in institutions to include "the reasonable costs of administration and operation of such institution as are necessarily required to provide the items [described in the same paragraph]." Factors related to the allowability of costs therefore include: (a) The institution must meet the definition of a "child-care institution" in section 472 (c)(2) of the Act. Costs borne by child placing agencies are not eligible for FFP. (b) The costs of administration and operation must be "necessarily required to provide the items described in [paragraph 475 (4)]." Thus, the proportional cost of a bookkeeper, food workers, and supervisor of cottage parents for the institution would be allowable. The costs of providing counseling or diagnosis of illness by a social worker or nurse or costs of the staff of a parent agency not employed by the institution would not be allowable. (c) The costs must be "reasonable", that is, no more than the customary costs for performing similar functions in similar institutions, e.g., in size, and type of children, such as handicapped children. (d) The costs must be allocated for title IV-E children on whose behalf payments are made. (e) The costs must be allowable under 45 CFR Parts 200 and 300. Given these factors, the issue of cost allocation is important. Various cost allocation methods, e.g., random moment studies or actual counts, may be used by institutions in developing their cost allocation plans. The State agency must approve the plan as a part of its approval of rates.

Note: This answer previously referenced 45 CFR Part 75. However, 2 CFR Parts 200 and 300 supersede 45 CFR Part 75 effective October 1, 2025.

Source/Date

ACYF-CB-PA-82-01 (4/30/82) (revised 11/2/2016, 81 FR 3022, Jan. 20, 2016), (revised 10/1/25, 89 FR 80055, Oct. 2, 2024)

Legal and Related References

Social Security Act - sections 472, 474 and 475 (4); 2 CFR Parts 200 and 300

Question 2. In child care institutions, are costs that are normally associated with family activities such as going to a baseball game, picnics, etc., allowable for Federal financial participation (FFP) in the title IV-E Foster Care Maintenance Payment Program? What about staff time for supervision, transportation, tickets, etc.?

Answer

Reimbursement of recreation costs per se is not permitted under title IV-E (see the definition of "foster care maintenance payments" under section 475(4) of the Social Security Act). Since section 475(4) includes "a child's personal incidentals," however, the reasonable and occasional cost of such items as tickets or other admission fees for sporting, entertainment or cultural events or dues for clubs are reimbursable under title IV-E Foster Care as a part of the maintenance payment.

The costs of staff necessary to provide supervision to insure the well being and safety of children on or off campus are allowable even if the event has recreational components. The costs of staff merely accompanying the children but not necessary for their supervision are not allowable.

Transportation as a separate item of expense is not allowable except for reasonable travel to the child's home for visitation and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

Source/Date

ACYF-CB-PIQ-87-02 revised 08/31/09

Legal and Related References

Social Security Act - sections 472, 474 and 475 (4)

Question 3. Are all costs for day care/baby-sitting services provided to title IV-E eligible children reimbursable as a title IV-E foster care maintenance cost? If not, for which of the following purpose(s) may daycare/babysitting services be claimed for reimbursement: (1) illness of the foster parent; (2) respite care; (3) foster parent attendance at: administrative case

review/judicial reviews, case conferences/team meetings, school conferences/ET (Pupil Evaluation Team), or foster parent training; (4) foster parent visits with a child who is temporarily out of the home, e.g. child hospitalized or at camp; (5) enhancement of a foster child's social skills/peer relationships/socialization; or, (6) special needs of foster child best met in a day care setting.

Answer

The legislative history of Public Law 96-272 (p. 5, House of Representatives, Report No. 96-900, April 23, 1980) states that "payments for the costs of providing care to foster children are not intended to include reimbursement in the nature of a salary for the exercise by the foster family parent of ordinary parental duties." Since foster care maintenance payments are not salaries, foster parents must often work outside the home. Therefore, child care that provides daily supervision during a foster parent's working hours when the child is not in school is an allowable expenditure under title IV-E. Child care costs which facilitate the foster parent's attendance at activities which are beyond the scope of "ordinary parental duties" are allowable expenditures as well.

Child care provided to a foster child to facilitate a foster parent's participation in activities that are within the realm of "ordinary parental duties" or child care activities which are deemed a social service are not reimbursable under title IV-E. The items enumerated in the question were assessed based on these criteria.

(1) Illness of a foster parent: ensuring supervision for one's children during one's illness is an ordinary parental duty. Therefore, child care provided to a child in foster care due to the illness of the foster parent is not an allowable expenditure under title IV-E foster care maintenance.

(2) Respite care: respite care is defined in federal regulation as an allowable title IV-B child welfare service and is not an allowable expenditure under title IV-E foster care maintenance. States may use title XX to fund respite care services.

(3) Foster parent attendance at:

a. administrative case/judicial reviews: this activity is not an ordinary parental duty. Therefore, child care is an allowable expenditure under title IV-E foster care maintenance when the foster parent(s) is required to attend administrative case/judicial reviews without the foster child;

b. case conferences/team meetings: when the foster parent is mandated by the court or the agency to attend case conferences or team meetings without the foster child, child care is an allowable expenditure under title IV-E foster care maintenance because this activity is beyond the scope of ordinary parental duties;

c. school conferences/ET (Pupil Evaluation Team): this activity is an ordinary parental duty and the cost of child care to provide for the foster parent's attendance at such is not an allowable expenditure under title IV-E foster care maintenance; or,

d. foster parent training: foster parent training required by the title IV-E agency is an activity beyond the scope of ordinary parental duties. Therefore, the cost of child care to provide for the foster parent's attendance at mandatory foster parent training is an allowable expenditure under title IV-E foster care maintenance.

(4) Foster parent visits with a child who is temporarily out of the home, e.g. child hospitalized or at camp: this is an ordinary parental duty. Child care provided to facilitate such is not an allowable expenditure under title IV-E foster care maintenance.

(5) Enhancement of a foster child's social skills/ peer relationships/socialization: child care that serves to enhance a child's social skills is typically a social service and/or recreational activity and, as such, is not reimbursable under title IV-E foster care maintenance. However, when recreational activities clearly substitute for otherwise necessary daily supervision, e.g., child care during the foster parent's working hours, they are allowable expenditures under title IV-E foster care maintenance.

(6) Special needs of a foster child best met in a day care setting: therapeutic child care is a social service and is not an allowable expenditure under title IV-E foster care maintenance.

Child care services for children in foster care must be rendered by a provider that is licensed, certified, or has some other formal status under State, Tribal, or local regulations in order for the title IV-E agency to claim reimbursement under title IV-E. This interpretation is consistent with the statute at section 472(c) which requires title IV-E agencies to make placements in licensed or approved foster family homes and/or child care institutions. Since foster parents must be licensed or approved, child care providers that provide a foster child daily supervision in the foster parent's stead must also be licensed or approved in order for the title IV-E agency to claim reimbursement under title IV-E foster care maintenance. Informal, episodic child care need not have such status and is presumably included in the basic title IV-E foster care maintenance payment.

Source/Date

ACYF-CB-PIQ-97-01 (3/4/97); (11/7/19)

Legal and Related References

Social Security Act - sections 472, 474, 475, and 479B; 45 CFR 1356.60

Question 4. For which of the following purpose(s) may transportation services be claimed for reimbursement as a foster care maintenance payment: (1) the foster parent's involvement in/attendance at administrative case/judicial reviews, case conferences/team meetings, school conferences, and foster parent training; (2) the travel of a child in foster care to/from the following activities: (a) allowable day care, (b) school attendance and extracurricular activities, (c) pre-placement visits, (d) foster family trips, (e) sports and cultural events, (f) administrative case/judicial reviews, (g) visitation at other locations, e.g., in the child welfare office, or, (h) visitation with siblings, other relatives, or other caretakers?

Answer

Local travel associated with providing the items listed in the first sentence of section 475 (4)(A) of the Social Security Act (the Act): food; clothing; shelter; daily supervision; school supplies; and a child's personal incidentals is an allowable expenditure for title IV-E foster care reimbursement.

The cost of local transportation associated with the items listed at section 475(4)(A) of the Act is presumably included in the basic title IV-E foster care maintenance payment. Transportation as a separate item of expense is not allowable except for reasonable travel to the child's home for visitation and for the child to remain in the school in which the child is enrolled at the time of placement. The items enumerated in the question were assessed based on these criteria.

(1) a. The foster parent's involvement in/attendance at administrative case/judicial reviews, case conferences/team meetings, and foster parent training: these items do not coincide with the definition at section 475 (4)(A) of the Act. Therefore, transportation associated with them is not an allowable title IV-E foster care maintenance expenditure. However, section 474 (a)(3) of the Act states that each title IV-E agency shall be entitled to a payment "... for the proper and efficient administration of the [title IV-E] plan...." Transportation to provide for a foster parent's attendance at administrative case/judicial reviews and mandatory case conferences/team meetings is an allowable title IV-E administrative expenditure because these activities provide for the proper and efficient administration of the title IV-E plan. Additionally, section 474(3)(B) of the Act states that each title IV-E agency shall be entitled to Federal financial participation for "... expenditures (including travel and per diem expenses) as are for the short-term training of current or prospective foster or adoptive parents..." Transportation and per diem to provide for foster parent's attendance at mandatory foster parent training is an allowable title IV-E training expenditure.

b. The cost of a foster parent traveling to attend school conferences in the school in which the child was enrolled at the time of placement would be an allowable foster

care maintenance expenditure because section 475(4) of the Act includes the cost of reasonable travel for the child to remain in that school.

(2) The travel of a child in foster care to/from the following activities:

a. allowable day care: transportation as a separate item of expense is not allowable except for reasonable travel to the child's home for visitation. However, the costs of transporting a child in foster care to and from child care that substitutes for daily supervision are allowable and presumed to be included in the basic foster care maintenance payment;

b. school attendance and extracurricular activities: Section 475(4) of the Act includes the cost of reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement in foster care as allowable as a title IV-E foster care maintenance expenditure. Additionally, other transportation associated with the child's attendance at his/her school of origin is an allowable administrative cost under title IV-E because such transportation is related to case management and therefore necessary for the proper and efficient administration of the title IV-E plan (see Child Welfare Policy Manual section 8.1B and 45 CFR 1356.60(c)(2)). The cost of transportation to and from extracurricular activities that substitute for daily supervision is also allowable and presumed to be included in the basic title IV-E foster care maintenance payment;

c. pre-placement visits: this activity does not fall under the definition at section 475(4)(A) of the Act. Therefore, transportation to and from pre-placement visits is not an allowable foster care maintenance expenditure. However, regulations at 45 CFR 1356.60(c)(2) list "placement of the child" as an example of an allowable administrative cost;

d. foster family trips: transportation for foster family trips is not an allowable expenditure under title IV-E because these trips do not coincide with the items described at section 475(4)(A) of the Act. Transportation as a separate item of expense is not allowable except for reasonable travel to the child's home for visitation;

e. sports and cultural events: the reimbursement of recreation costs per se is not permitted under title IV-E. Since section 475(4) of the Act includes "a child's personal incidentals" the reasonable and occasional cost of such items as tickets or other admission fees for sporting, entertainment or cultural events are reimbursable under title IV-E foster care as a part of the maintenance payment. Transportation to and from these events is presumed to be included in the basic foster care maintenance payment;

f. administrative case/judicial reviews: transportation costs associated with the child's attendance at administrative case/judicial reviews are not allowable expenditures under title IV-E foster care maintenance because these activities do not

coincide with the items described at section 475(4)(A) of the Act. However, transportation costs associated with the child's attendance at administrative case/judicial reviews are allowable administrative costs under title IV-E because they provide for the proper and efficient administration of the title IV-E plan;

g. visitation at other locations, e.g., in the child welfare office: the statute provides for "reasonable travel to a child's home for visitation," however, in many circumstances, it is not possible or appropriate for visitation to occur at the child's home. Therefore, reasonable transportation costs for visits at locations other than the child's home, e.g., at the child welfare office or other location deemed appropriate by the agency, are allowable as separate expenditures under title IV-E foster care maintenance. Transportation costs for visitation are only reimbursable for the child and not for the costs of a biological parent or other relative visiting with the child. States may use title XX or title IV-B agencies may use title IV-B funds for that purpose; or

h. visitation with siblings, other relatives, or other caretakers: since section 475(4)(A) of the Act does not specify with whom visits must occur, reasonable travel for visits with siblings, relatives, or other caretakers is an allowable separate title IV-E foster care maintenance expenditure. Again, transportation costs for visitation are only reimbursable for the child and not for the costs of a relative visiting with the child. States may use title XX or title IV-B agencies may use title IV-B funds for that purpose.

Source/Date

12/31/07 revised 08/31/09; 11/07/19

Legal and Related References

Social Security Act - sections 472, 474, 475, and 479B; 45 CFR 1356.60

Question 5. What is an acceptable profit margin for a for-profit child-care institution that services title IV-E eligible children?

Answer

When contracting for goods or services with a profit-making enterprise, there is a presumption that a certain amount of profit is included in the price offered. While there are no Federal guidelines limiting the amount or percentage of profit that may be included in such a contracted price, title IV-E agencies are required to obtain the most beneficial pricing by adhering to the "Procurements by states" mandated by 2 CFR 200.317 and the cost principles at 2 CFR Part 200.403, that "...(t)o be allowable under Federal awards, costs must ... (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles." In defining "reasonable costs", 2 CFR Part 200.404 provides the following guidance:

"... A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost ...In determining reasonableness of a given cost, consideration shall be given to: Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award; The restraints or requirements imposed by such factors as - sound business practices, arm's-length bargaining, Federal, State and other laws and regulations, and, terms and conditions of the Federal award; Market prices for comparable goods or services for the geographic area; Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government; Whether the non-Federal entity significantly deviates from the established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost." Accordingly, when title IV-E agencies are awarding contracts to for-profit child-care institutions under title IV-E, it is whether the price itself is reasonable under 2 CFR Part 200 that will be used to determine the allowability of that cost, not the amount of profit which a contractor may be making under that contract.

Note: This answer previously referenced 45 CFR Part 75. However, 2 CFR Parts 200 and 300 supersede 45 CFR Part 75 effective October 1, 2025.

Source/Date

ACYF-CB-PA-97-01 (7/25/97) (revised 11/2/2016, 81 FR 3022, Jan. 20, 2016); (revised 11/7/2019, P.L. 104-193), (revised 10/5/25, 89 FR 80055, Oct. 2, 2024)

Legal and Related References

Social Security Act - sections 472, 473, and 479B; 2 CFR 200.317, 200.403 and 200.404

Question 6. Routine medical-related expenses are covered under our title IV-E agencies uniform foster care rate. However, when unexpected, expensive medical costs are incurred which are not covered by title XIX, can other Federal funds be utilized? May prescription drugs which are not covered by Medicaid or any other program be allowed as a personal incidental cost within the definition in section 475 (4) of the Social Security Act (the Act)? If so, would there be any special conditions which would have to be met (e.g. cost limits, documentation)? If not, is there any provision within title IV-E which would permit reimbursement of the costs of prescription drugs for children in foster care for which no other funding source is available?

Answer

Federal medical payments on behalf of title IV-E eligible children in foster care are provided under the State's title XIX, Medicaid program, in accordance with title XIX, Medicaid Program, and with section 472 (h) of the Act. The definition of "foster care maintenance payments" in section 475 (4) of the Act does not include medical expenses as an allowable cost in title IV-E.

A title IV-E agency may not include in the title IV-E foster care maintenance payment a specific allowance for medical care - nor may a title IV-E agency be reimbursed under title IV-E for direct expenditures of the types described in the questions. The "personal incidentals" item in the foster care maintenance payment under title IV-E, as provided by section 475 (4), may be used to meet incidental needs - and foster parents are not generally required to provide an accounting of specific expenditures, as long as the basic needs of the child are met and the maintenance payment is used for those needs.

Source/Date

ACYF-CB-PIQ-84-01 (2/10/84); (11/7/19)

Legal and Related References

Social Security Act - sections 472 (h), 475 (4), and 479B; Title XIX

Question 7. How should the costs of foster parent insurance be claimed, as maintenance payments or as administrative expenditures subject to reimbursement? What types of insurance costs are allowable? Is liability insurance sometimes considered a service? What should be included in the definition of "liability insurance"?

Answer

Section 475 (4) of the Social Security Act, by including "liability insurance with respect to a child" in the definition of foster care maintenance payments, gives title IV-E agencies the option of considering insurance for foster parents as a direct foster care maintenance cost or as an administrative cost of the foster care maintenance program under title IV-E.

Some title IV-E agencies include payment for insurance coverage in the monthly foster care payment to foster parents; others provide the protection through a group insurance policy or through the self-insuring procedures. Using self-insurance, the title IV-E agency may be able to provide broad coverage at low cost.

Foster parent insurance should include coverage of damages by a foster child to the home or property of the foster parents and of harm done by a foster child to another party.

Source/Date

ACYF-CB-PIQ-82-04 (1/29/82); (11/7/19)

Legal and Related References

Social Security Act - section 475 (4) and 479B

Question 8. An individual is both a foster care provider and a child care provider for the same child. Is it permissible under title IV-E for the title IV-E agency to provide a title IV-E foster care maintenance payment and a Federal child care payment (title IV-A or child care development fund) to the same provider?

Answer

There is nothing in title IV-E that prohibits a title IV-E agency from providing a title IV-E foster care maintenance payment and a title IV-A or child care development fund payment to the same provider for the same child. Under these circumstances, however, the title IV-E agency may not include any payment for child care in its title IV-E foster care maintenance payment for the child.

Source/Date

06/09/04; 11/07/19

Legal and Related References

Social Security Act, sections 472, 474, 475(4), and 479B

Question 9. The definition of "foster care maintenance payments" at 475(4)(A) of the Social Security Act includes payments to cover the cost of (and the cost of providing) a child's "personal incidentals." For title IV-E purposes, what does the term "personal incidentals" include?

Answer

The Social Security Act requires that the title IV-E foster care maintenance payment is to cover the cost of (and the cost of providing), among other things, the personal incidentals of the child in foster care. These items are typically purchased for the child on an occasional, as-needed basis and may include a variety of items. Specifically, we consider the following categories of expenditures examples of "personal incidentals": items related to personal hygiene; cosmetics; over-the-counter medications and special dietary foods; infant and toddler supplies, including high chairs and diapers; fees related to activities, such as Boy/Girl Scouts; special lessons, including horseback riding; graduation fees; funeral expenses; and miscellaneous

items such as stamps, envelopes, writing paper, film and the cost of film development for a personal camera.

Further, as stated in section 8.3B.1 of the Child Welfare Policy Manual (CWPM), the "reasonable and occasional" costs of such items as tickets or other admission fees for sporting, entertainment or cultural events or dues for clubs are reimbursable under the foster care maintenance payment as personal incidentals.

The title IV-E agency may provide for these costs in the basic foster care maintenance payment or a separate payment to the foster parent.

Source/Date

7/6/05; 11/7/19

Legal and Related References

Social Security Act -- Section 475(4)(A) and 479B; CWPM Section 8.3B.1

Question 10. In some jurisdictions, foster parents provide "respite" for a short period of time for a child in foster care who is placed with another foster parent. May the title IV-E agency claim title IV-E foster care maintenance payments for the child who goes temporarily to stay with another foster parent for respite purposes?

Answer

Yes. A title IV-E agency may claim allowable title IV-E foster care maintenance payments on behalf of a child who is title IV-E eligible and is placed with a licensed foster care provider only temporarily, as a respite placement. The foster parent is not being paid to provide respite care, rather the allowable costs of an eligible child are continuing to be paid. Title IV-E foster care maintenance payments may be claimed because the child is eligible and with a licensed provider. However, foster care maintenance payments may not be made to both providers for the same period in this situation.

Source/Date

September 29, 2005; November 7, 2019

Legal and Related References

Social Security Act - Section 475 (4) and 479B

8.3B.2. TITLE IV-E, Foster Care Maintenance Payments Program, Payments, Rates

Question 1. What are the restrictions for rate setting with respect to for-profit child-care institutions?

Answer

States used non-Federal dollars when contracting with for-profit child-care institutions prior to the amendments to section 472 (c) of Social Security Act (the Act) which provide Federal financial participation (FFP) for children placed in for-profit child-care institutions. The availability of FFP should have little or no impact on title IV-E agency's rate setting practices for for-profit child-care institutions if a single set of standards has been utilized for facilities regardless of title IV-E eligibility. The approved rates should, however, clearly identify and separate payments for foster care maintenance, as defined at section 475 (4)(A) of the Act, from those for tuition, treatment, social services, and other expenditures not reimbursable under title IV-E foster care maintenance.

Source/Date

ACYF-CB-PA-97-01 (7/25/97); (11/07/19)

Legal and Related References

Social Security Act - sections 472, 475, and 479B; the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) (PL 104-193)

Question 2. In our State, we pay four different rates for foster care maintenance. A basic rate to all foster parents covers food, clothing, shelter, and personal incidentals. In addition, there are three levels of supplements which are paid to foster parents who care for children with varying degrees of physical or emotional handicaps. The higher rates in these cases relate to the increased supervision required for children with special needs and are considered a part of the foster care maintenance payment. Are these supplemental payments to foster parents allowable for reimbursement under title IV-E foster care as a maintenance cost?

Answer

Yes. These costs are allowable for Federal financial participation under the title IV-E foster care program. Certain categories of children, including those with physical or emotional disabilities, may require more day-to-day supervision and attention than those without such conditions. Although Congress did not intend that salaries be paid under title IV-E to foster parents for ordinary parental duties, "daily supervision" is one of the items included in the definition of "foster care maintenance payments" in section 475(4) of the Social Security Act. A supplement to the basic maintenance payment for a particular child is justified when the child has greater than usual needs for the items included in the definition, as determined by the title IV-E agency.

Source/Date

ACYF-CB-PIQ-86-04 (8/20/86); (11/7/19)

Legal and Related References

Social Security Act - section 475 (4) and 479B

8.3C. TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements

Question 1. For what population of children must the section 422 protections be provided?

Answer

Section 422 of the Social Security Act requires that all of the protections set forth therein be provided to all children in foster care. "Foster care" is defined at 45 CFR 1355.20 as:

"24 hour substitute care for all children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes but is not limited to foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child-care institutions, and pre-adoptive homes regardless of whether the foster care facility is licensed and whether payments are made by the State or local agency for the care of the child or whether there is Federal matching of any payments that are made."

Situations exist in which a child who, while s/he may have been removed from her/his home and placed in 24 hour substitute care, is not considered to be in "foster care" because of the nature of the facility in which s/he is placed. In accordance with the statute, we have not considered detention facilities, forestry camps, training schools, facilities that are primarily for the detention of children who are adjudicated delinquent, and facilities like medical or psychiatric hospitals as foster care placements. Therefore, children placed in facilities of the type described here are not, by definition, in foster care and the State is not required to provide the protections to them while they are placed in such facilities.

Source/Date

Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Legal and Related References

Social Security Act - section 471 (22); 45 CFR 1355.20

Question 3. Section 471(a)(26) of the Social Security Act (the Act) requires the title IV-E agency to conduct and complete an interstate home study requested by another title IV-E agency and return a report on the results of the study within 60 days (or 75 days under certain circumstances). Must the title IV-E agency include the results of the criminal background checks and child abuse registry checks on the prospective foster or adoptive family required by section 471(a)(20) of the Act in the 60-day report?

Answer

No. Section 471(a)(26) of the Act requires that if a title IV-E agency receives a request to conduct a "study of a home environment" to assess the safety and suitability of placing a child in the home, the agency must within 60 days conduct, complete, and provide a report of the study to the requesting agency. does not encompass the Federal provisions for criminal background checks and child abuse registry checks in section 471(a)(20) of the Act. Rather, these checks are required before the State or Tribe can license or approve a prospective foster or adoptive family. Ideally, however, the title IV-E agency receiving the request for a home study would include the results of the criminal background check and child abuse registry check in the report to the requesting agency so that the agency can more readily determine the suitability of the home for the child.

Source/Date

1/29/2007, revised 9/30/26

Legal and Related References

Social Security Act § sections 471(a)(26) and 471(a)(20)

Question 4. How will ACF determine compliance with the home study requirements in section 471(a)(26) of the Social Security Act (the Act)?

Answer

Section 471(a)(26) of the Act is a title IV-E plan requirement; therefore, ACF has the authority to apply the partial review process described in 45 CFR 1355.32(d), if warranted, to determine the title IV-E agency's compliance.

Source/Date

1/29/2007, revised 9/30/26

Legal and Related References

Social Security Act § section 471(a)(26)

Question 5. Section 471(a)(26)(A)(i) of the Social Security Act (the Act) requires title IV-E agencies to complete home studies requested by another title IV-E agency within 60 days, or 75 days in limited circumstances. Are the time limits of section 471(a)(26)(A)(i) of the Act based on business or calendar days and when does the timeframe begin?

Answer

The 60 and 75-day time limits that apply to the requirements of section 471(a)(26)(A)(i) of the Act are based on calendar days. Time limits referred to in the statute refer to calendar days unless otherwise specified. The time limit begins when the title IV-E agency that is to conduct the home study receives the home study request. It is up to each title IV-E agency to determine the entity to receive these requests.

Source/Date

4/24/2007, revised 9/30/26

Legal and Related References

Social Security Act § section 471(a)(26)(A)

Question 7. Section 471(a)(26)(A)(i) of the Social Security Act (the Act) requires that within 60 days of receiving a request for a home study t from another title IV-E agency, the responding title IV-E agency conduct and complete the study and return a report to the requesting agency. If the home study request is incomplete when it is received and additional information is required, when does the statutory 60-day timeframe begin?

Answer

A title IV-E agency may establish its own rules for what constitutes a completed home study request pursuant to section 471(a)(26)(A)(i) of the Act. Therefore, the 60-day timeframe begins when a complete request, as defined by the title IV-E agency that is performing the home study, is received from the requesting title IV-E agency.

Source/Date

4/24/2007, revised 9/30/26

Legal and Related References

Social Security Act § section 471(a)(26)(A)

Question 8. Under section 471(a)(26)(A) of the Social Security Act (the Act), the law requires a title IV-E agency receiving a home study request from

another title IV-E agency to "directly or by contract" complete the home study. Does the statute permit either the responding or requesting title IV-E agency to contract with a private agency to complete the home study?

Answer

Yes. When a title IV-E agency receives a home study request from another title IV-E agency, the agency is required to conduct and complete the study "directly or by contract." However, the requesting title IV-E agency may choose to contract directly with a private agency to conduct a home study, rather than requesting the other title IV-E agency complete the study.

Source/Date

4/24/2007, revised 9/30/26

Legal and Related References

Social Security Act § section 471(a)(26)(A)

8.3C.1. TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case plans

Question 1. 45 CFR 1356.21 (g)(1) requires case plans to be developed jointly with the parent(s). What if the title IV-E agency is unable to locate the parent or s/he is unwilling or unable to participate in developing the plan?

Answer

The regulatory requirement to include parents in the joint development of case plans serves the goal of the Adoption and Safe Families Act (Pub. Law 105-89) to begin the permanency planning process and service delivery as soon as possible following a child's removal from home. If the parent is not able or willing to participate in the development of the case plan, it should be so noted in the plan.

Source/Date

Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98), revised 9/30/26

Legal and Related References

45 CFR 1356.21 (g)

Question 3. Must the court approve case plans?

Answer

No. There is no statutory basis for requiring judicial approval of the title IV-E agency's case plan document. The court's role is to: exercise oversight of the permanency plan; review the title IV-E agency's reasonable efforts to prevent removal from the home, reunify the child with the family and finalize permanent placements; and to conduct permanency hearings. The title IV-E agency is responsible for developing and implementing the case plan. We see no additional benefit in requiring court approval of the case plan.

Moreover, it is not permissible for courts to extend their responsibilities to include choosing a child's placement with a specific foster care provider. To be eligible for title IV-E foster care maintenance payments the child's placement and care responsibility must either lie with the title IV-E agency, or another public agency with whom the title IV-E agency has an agreement according to section 472 (a)(2) of the Social Security Act. Once a court has chosen a placement with a specific provider, it has assumed the agency's placement responsibility. Consequently, the title IV-E agency cannot claim Federal financial participation (FFP) for that placement.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00), revised 9/30/26

Legal and Related References

45 CFR 1356.21 (g)

Question 5. Section 475(1)(C) of the Social Security Act states that the case plan must include "the most recent information available" regarding the health and education records of the child. How can a title IV-E agency meet the requirements in order to continue eligibility for Federal financial participation (FFP) if the records are not available?

Answer

Title IV-E agencies are required under this provision to include the child's most recent available health and educational records in the child's case plan. If the information is unavailable as a result of Federal, State, or Tribe confidentiality restrictions or for any other reason, the title IV-E agency should explain this in the case plan and describe the steps being taken to obtain such records. Including recent health and education records in a case plan is a title IV-E plan requirement, rather than a title IV-E eligibility criterion upon which FFP is conditioned. Therefore, we may determine whether the title IV-E agency is in substantial compliance with this requirement through a Child and Family Services Review or a partial review (45 CFR 1355.32 and 1355.34).

Source/Date

1/29/2007, revised 9/30/26

Legal and Related References

The Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239); 475(5)(C) of the Social Security Act

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Question 6. Regulations at 45 CFR 1356.21(g) require that a title IV-E agency develop a case plan within 60 days of removal. How is the due date for development of a case plan determined for a child initially placed in a facility outside the scope of foster care (e.g., a detention facility or psychiatric hospital) prior to entering foster care?

Answer

The case plan requirements in 45 CFR 1356.21(g) apply to children in foster care. Accordingly, when a child is initially placed in a facility that is outside the scope of foster care, the title IV-E agency has 60 days from the date the child is placed in foster care to develop a case plan.

Source/Date

12/31/2007, revised 9/30/26

Legal and Related References

Social Security Act § sections 471(a)(16); 45 CFR 1356.21(g); Preamble to the Final Rule (65 FR 4031)

Question 7. Does 475A(b) of the Social Security Act (the Act) create specific federal "rights" for youth in foster care with regard to education, health, visitation, court participation and other areas?

Answer

No. Section 475A(b) expands the title IV-B/IV-E case plan requirements so that the title IV-B/IV-E agency must provide information to the youth about certain rights of the child in foster care. Specifically, in the case plan of each youth age 14 and older, the title IV-B/IV-E agency must include a document that describes the rights the agency has established for the youth, such as rights to education, health, visitation and the child's right to stay safe and avoid exploitation.

Source/Date

6/5/2015

Legal and Related References

Social Security Act – section 475A(b)

Question 8. Do the title IV-E/IV-B case plan provisions at section 475(1)(E) of the Social Security Act (the Act) require a state or tribe to use adoption exchanges as part of its child'specific recruiting for adoption or other permanent homes?

Answer

No. Section 475(1)(E) of the Act requires a title IV-E/IV-B agency to document the child'specific recruitment efforts it makes on behalf of a child whose permanency plan is adoption or placement in another permanent home. The Act provides adoption exchanges as an example of the type of child'specific recruitment activities that the agency must document. This does not mean that using adoption exchanges is required; only that doing so is consistent with the type of child'specific recruitment efforts that could be useful for a title IV-E/IV-B agency that is considering permanency options for a child who needs one.

Source/Date

7/15/2020

Legal and Related References

Section 475(1)(E) of the Social Security Act

8.3C.2. TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system

Question 1. Should the time a child'spends in shelter care be factored into calculating the timing for holding periodic reviews, permanency hearings, and for complying with the termination of parental rights (TPR) provision?

Answer

Under long-standing Departmental policy, shelter care is considered a form of foster care (see the definition of "foster care" at 45 CFR 1355.20). Shelter care is one of many possible settings in which children in foster care are placed. Therefore, time spent in shelter care counts in determining when to hold periodic reviews, permanency hearings, and for complying with the TPR provision.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00)

Legal and Related References

Social Security Act - section 475 (5)(F); 45 CFR 1355.20 and 1356.21 (f)

Question 2. How is the timing for holding six-month periodic reviews and permanency hearings impacted by an interruption in a foster care episode, for example, a temporary placement in a detention facility or psychiatric hospital?

Answer

Tittle IV-E agencies have two options for addressing the scenario presented in this question:

First, despite the interruption in foster care, the title IV-E agency may choose to treat the foster care placement as continuous if the original court order pertaining to the child's removal from the home is still in effect. If the title IV-E agency chooses to do so, the "clock" for holding six-month periodic reviews and permanency hearings would stop while the child is placed in a facility that is outside the scope of "foster care" because the title IV-E agency is not required to hold such reviews and hearings for children who are not in "foster care." The timing for holding six-month periodic reviews and permanency hearings would resume in accordance with the original schedule when the child returns to a foster care setting.

Alternatively, the title IV-E agency may treat the placement in a facility that is outside the scope of foster care as a discharge from foster care. Obviously, if the child is discharged from foster care, the title IV-E agency is not required to hold six-month periodic reviews or permanency hearings for such child. The timing for holding such reviews and hearings begins anew when/if the child returns to foster care.

Regardless of the option the title IV-E agency chooses, no Federal financial participation is available while the child is placed in a facility that is considered outside the scope of "foster care."

Source/Date

Questions and Answers on the Final Rule (65 FR 4020 (1/25/00), revised 10/1/26

Legal and Related References

Social Security Act - section 475 (5); 45 CFR 1355.20

Question 3. Must the title IV-E agency hold six-month periodic reviews and permanency hearings for children who have run away?

Answer

If the title IV-E agency retains responsibility for the placement and care of the child during the runaway episode, it must continue to hold six-month periodic reviews and permanency hearings on the original schedule, even if the child has not been located.

Source/Date

Questions and Answers on the Final Rule (65 FR 4020 (1/25/00), revised 9/30/26

Legal and Related References

Social Security Act - sections 472 (a) and 475 (5)

Question 4. Must the title IV-E agency hold six-month periodic reviews and permanency hearings for children in foster care who are placed in unlicensed foster family homes?

Answer

Yes. The protections set forth at section 422(a)(10) of the Social Security Act apply to all children in foster care, regardless of a foster care provider's licensure.

Source/Date

Questions and Answers on the Final Rule (65 FR 4020 (1/25/00), revised 9/30/26

Legal and Related References

Social Security Act - section 422; 45 CFR 1355.20

Question 6. When a child in foster care is placed in another State and the sending State transfers the child's placement and care responsibility to the receiving State's title IV-B/IV-E agency, does the "clock" re-start for determining when the case review requirements or reasonable efforts to finalize a permanency plan are due?

Answer

No. The "clock" for the case review requirements and reasonable efforts to finalize a permanency plan judicial determination begins on the date the child is considered to have entered foster care (section 475(5)(F) of the Social Security Act, 45 CFR 1355.20 and 1356.21(b)(2)). The date the child is considered to have entered foster care is the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect, or the date that is 60 days after the child's removal from the home. The child's transfer from one State to another does not alter either date. Moreover, we believe that not extending the timeframes for carrying out

the protections in such circumstances is consistent with a child's sense of time and the statute's emphasis on timely permanency for children.

Source/Date

9/5/2007

Legal and Related References

Social Security Act - section 475(5)(F); 45 CFR 1355.20 and 1356.21(b)(2)

Question 7. Section 475(5)(I) of the Social Security Act (the Act) expands the case review system to require the title IV-B/IV-E agency to provide birth certificates, Social Security cards and other documents to certain youth who age out of foster care. To whom must the title IV-B/IV-E agency provide these documents?

Answer

Title IV-B/IV-E agencies must provide the documents to a child who is leaving foster care because he or she has attained 18 years of age or such greater age as the title IV-E agency has elected under section 475(8) of the Act unless the child has been in foster care for less than 6 months. If a youth leaves foster care after age 21, the title IV-B/IV-E agency also is required to provide the documents to such youth. Although not required, we encourage agencies to provide these essential documents to any youth who leave foster care over the age of 18.

Source/Date

6/5/2015

Legal and Related References

Social Security Act – sections 475(5)(I), 475(8). Effective 9/29/15, unless ACF approves a delayed effective date.

8.3C.2a. TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, date a child is considered to have entered foster care

Question 1. For the date the child is considered to have entered foster care, may the title IV-E agency use a date that is earlier than that prescribed in regulation?

Answer

The time frames for considering when a child has entered foster care, i.e., the earlier of a judicial finding of abuse or neglect or 60 days from the date the child is removed from the home, are statutory. However, nothing precludes a title IV-E agency from using a point in time that is earlier than that required by statute or regulation, such as the date the child is physically removed from the home. Clearly, if a title IV-E agency uses the date a child is physically removed from the home, the requirements for holding periodic reviews, permanency hearings, and complying with the termination of parental rights provision within the time frames prescribed would be satisfied.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00), revised 9/30/26

Legal and Related References

Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

Question 2. How does the date of entry into foster care apply to children who enter foster care pursuant to a voluntary placement agreement?

Answer

The statute makes no distinction with respect to the manner in which children enter foster care when setting the parameters for determining when a child is considered to have entered foster care. Therefore, children placed in foster care via a voluntary placement agreement will be considered to have entered foster care no later than 60 days after the child is removed from the home.

The purpose of the 60-day limit at section 475 (5)(F) of the Social Security Act is to ensure that periodic reviews, permanency hearings, and application of the termination of parental rights (TPR) provision are not delayed as a result of contested involuntary removals. The danger of such a delay often does not exist when children are removed from their homes pursuant to a voluntary placement agreement. When children are removed from home via a voluntary placement agreement, we encourage title IV-E agencies to use the date the child is placed in foster care (rather than 60 days later) as the date for calculating when to hold periodic reviews, permanency hearings, and for complying with the TPR provision.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00), revised 9/30/26

Legal and Related References

Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

Question 3. How should the State determine the date a child is considered to have entered foster care for a child who is voluntarily relinquished?

Answer

The date a child is considered to have entered foster care according to the statute is the earlier of a judicial finding of abuse or neglect or 60 days from the date the child was removed from the home. Typically, there is no finding of abuse or neglect in a voluntary relinquishment, so the date of entry into foster care would be no later than 60 days from the date the child was removed from the home.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00)

Legal and Related References

Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

Question 4. What is the connection between the date the child is considered to have entered foster care and when the State may claim Federal financial participation (FFP) for foster care maintenance payments?

Answer

Establishing initial eligibility for title IV-E funding and initial claiming for FFP have no relationship to the date the child is considered to have entered foster care defined at section 475 (5)(F) of the Social Security Act. The purpose of that provision is to set the "clock" for determining when to satisfy the requirements for holding periodic reviews, permanency hearings, and the termination of parental rights (TPR) provision. A child's initial eligibility for title IV-E funding is not related to this time frame.

The date a child is considered to have entered foster care is, however, related to maintaining a child's eligibility for title IV-E funding. Under section 1356.21 (b)(2), we require the State to use the date the child is considered to have entered foster care in determining when to obtain a judicial determination that it made reasonable efforts to finalize a permanency plan. We intentionally linked the timing for obtaining this judicial determination to the date the child is considered to have entered foster care so that such determinations could occur at the permanency hearing, the logical time for making such determinations.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00)

Legal and Related References

Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

Question 5. Title IV-E agencies often temporarily place children in facilities that are outside the scope of what is considered "foster care," such as a detention facility or psychiatric hospital, with the intent of moving the child to a foster care placement at a later date. What is the "date the child is considered to have entered foster care" (the date used to satisfy the case review requirements at section 475 (5) of the Social Security Act (the Act)) for such children?

Answer

If a child is initially placed in a facility that is not a foster family home or child-care institution, i.e., the child is not in "foster care," and remains in such facility for more than 60 days, the date such child is considered to have entered foster care is the day that child is placed in a foster family home or child-care institution. If however, the child's entry into foster care from such a setting occurs within 60 days of his or her removal from the home, title IV-E agencies should determine the "clock" for satisfying the requirements of the case review system in accordance with section 475 (5)(F) of the Act, i.e., the earlier of a judicial finding of abuse or neglect or 60 days from the date of removal.

Source/Date

Questions and Answers on the Final Rule (65 FR 4020) (1/25/00), revised 9/30/26

Legal and Related References

Social Security Act - section 475 (5); 45 CFR 1355.20

8.3C.2b. TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, notice and right to be heard

Question 1. Is it possible to waive noticing a parent whose child's case plan goal is a permanent foster care placement?

Answer

There is no waiver provision in the law with respect to opportunity for parental involvement in an administrative review undertaken as required by the case review system.

A periodic case review may be undertaken either by a court or by an "administrative review". (Section 475 (5)(B) of the Social Security Act (the Act)). Section 475 (6) of

the Act defines an "administrative review" as a "review open to the participation of the parents of the child..."

These provisions indicate that when a title IV-E agency satisfies the periodic review requirement by "administrative review", it must provide parents the opportunity to participate in the proceedings. Of course the parents may choose not to participate. But it is incumbent upon the title IV-E agency to give them that opportunity.

Source/Date

ACYF-CB-PIQ-81-01 (10/20/81), revised 9/30/26

Legal and Related References

Social Security Act - sections 471 (a)(16) and 475 (5) and (6)

Question 2. Do the notice requirements in section 475(G) of the Social Security Act apply to all court hearings? Do they apply to shelter care, emergency removal, adjudication and disposition hearings? Do they apply to procedural hearings, such as pretrial hearings or hearings on motions for discovery?

Answer

The revised statutory language confers a "right" to be heard instead of an "opportunity," as well as changes such right to be heard to a "proceeding" instead of "review or hearing" as in the previous language. Thus, we are interpreting this change to mean that in having a "right" to any "proceeding" to be held with respect to the child, the foster parents, pre-adoptive parents or relatives providing care for a child must, at a minimum, be provided with notice of their right to be heard in all permanency hearings, as well as six-month reviews, if held by the court.

Source/Date

1/29/2007

Legal and Related References

Social Security Act § section 475(5)(G), 45 CFR 1356.21(o)

8.3C.2c. TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, permanency hearings

Question 1. Must the title IV-E agency cease efforts at reunification at the permanency hearing if the child is unable to return home to the parent at

that time?

Answer

No. The title IV-E agency is not obliged to set an alternate permanency plan at the permanency hearing if the child and family are not able to reunify at that time. Families often present very complicated issues that must be resolved prior to reunification. For example, parents with substance abuse issues may require more than 12 months to resolve those issues. However, a parent must be complying with the established case plan, making significant measurable progress toward achieving the goals established in the case plan, and diligently working toward reunification in order to maintain it as the permanency plan at the permanency hearing. Moreover, the title IV-E agency and court must expect reunification to occur within a time frame that is consistent with the child's developmental needs. If this is not the situation, the title IV-E agency is obliged to establish and act on an alternate permanency plan for the child at the permanency hearing. Too often, reunification is retained as the permanency goal when a parent is negligent in complying with the requirements of the case plan until the months or weeks immediately prior to the permanency hearing. A parent's resumption of contact or overtures toward participating in the case plan in the months or weeks immediately preceding the permanency hearing are insufficient grounds for retaining reunification as the permanency plan. In such situations, the parent should demonstrate a genuine, sustainable investment in completing the requirements of the case plan in order to retain reunification as the permanency goal. The shortened time frames and increased accountability for parents makes it incumbent on the title IV-E agency to begin providing services to families as soon as it receives responsibility for the child's placement and care. Ideally, the title IV-E agency will begin delivering services to resolve those parental issues which lead to the removal as soon as the child is removed from home.

Source/Date

Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98), revised 9/30/26

Legal and Related References

Social Security Act - section 475 (5)(C); 45 CFR 1355.20

Question 2. What is the rationale for prohibiting any body that conducts permanency hearings from being part of or under the supervision or direction of the title IV-E agency? Does this requirement extend to other public agencies with which the title IV-E agency has a title IV-E agreement?

Answer

Critical decisions that have a significant effect on the lives of children and their families are made at permanency hearings. The purpose of requiring courts to oversee permanency hearings is to ensure that these hearings are conducted by an impartial body, which includes any body appointed or approved by the court to provide this oversight in its stead. An administrative body that is part of the title IV-E agency or under its direction or supervision would not meet the test of impartiality.

The requirement does extend to other public agencies with which the title IV-E agency has an agreement. Title IV-E requirements extend to any other public agency with which the title IV-E agency enters an agreement for the performance of title IV-E administrative functions, including responsibility for placement and care of the child.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00), revised 9/30/26

Legal and Related References

Social Security Act - section 475 (5)(C); 45 CFR 1355.20

Question 3. May a title IV-E agency include placement in a permanent foster family home and emancipation in the list of permanency goals at section 475 (5)(C) of the Social Security Act (the Act) that are exempt from the compelling reason requirement in that section?

Answer

No. Section 475 (5)(C) of the Act specifies that the only permanency options the title IV-E agency may set without a compelling reason to do so include reunification, adoption, legal guardianship, or placement with a fit and willing relative.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00), revised 9/30/26

Legal and Related References

Social Security Act - section 475 (5)(C); 45 CFR 1355.20

Question 4. In what way can a title IV-E agency meet the requirement for the court holding a permanency hearing to conduct age-appropriate consultation with the child in section 475(5)(C)(iii) of the Social Security Act (the Act)?

Answer

Any action that permits the court to obtain the views of the child in the context of the permanency hearing could meet the requirement. Section 475(5)(C)(iii) of the Act tasks the title IV-E agency with applying procedural safeguards to ensure that the consultation occurs. However, the statute does not prescribe a particular manner in which the consultation with the child must be achieved which provides the title IV-E agency with some discretion in determining how it will comply with the requirement.

We do not interpret the term "consult" to require a court representative to pose a literal question to a child or require the physical presence of the child at a permanency hearing. However, the child's views on the child's permanency or transition plan must be obtained by the court for consideration during the hearing. For example, a report to the court in preparation for a permanency hearing that clearly identifies the child's views regarding the proposed permanency or transition plan for the child could meet the requirement. Also, an attorney, caseworker, or guardian ad litem who verbally reports the child's views to the court could also meet the requirement. Information that is provided to the court regarding the child's best interests alone are not sufficient to meet this requirement. Ultimately, if the court is not satisfied that it has obtained the views of the child through these or any other mechanism, it could request that the child be in the courtroom, or make other arrangements to obtain the child's views on his/her permanency or transition plan.

Source/Date

6/22/2007, revised 9/30/26

Legal and Related References

Social Security Act - 475(5)(C)(iii)

8.3C.2d. TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, six month periodic reviews

Question 1. Is it possible to abbreviate and/or alter case review procedures for a child whose case plan goal is long-term foster care?

Answer

Each child for whom foster care maintenance payments are claimed under title IV-E must have a case review in accordance with the provisions outlined in section 475 (5) of the Social Security Act. These statutory requirements must be adhered to under all circumstances. Thus, a case plan and periodic reviews must be developed and implemented even if the goal for the child is long-term foster care.

However, the form and content of the review may be varied to accommodate the circumstances described. If the placement goal is long-term foster care, review

would focus on areas other than alleviating problems in the child's original home. There are many interests of the child for which the agency continues to be responsible. There are, for example, matters concerning the continued appropriateness of the plan and the placement, plans for assuring that the child continues to receive proper care in the placement, and the appropriateness of services provided to the child under the plan; and, by implication, the agency has a continuing responsibility to assure and facilitate the child's adjustment. Moreover, information from full case review is needed to report to the court at the 12-month permanency hearing.

Source/Date

ACYF-CB-PIQ-81-01 (10/20/81)

Legal and Related References

Social Security Act - sections 471(a)(16) and 475(1) and (5)

Question 2. Is it correct to say that an administrative review as a written report from the title IV-E agency to the court does not meet the court review requirement unless the court reviews the report and makes a determination as described in section 475 of the Social Security Act (the Act)?

Answer

This interpretation is correct. Section 475 (5)(B) of the Act lists the determinations which must be made with regard to a foster child's status during the periodic six month review. If these do not occur in the court review, it is the title IV-E agency's responsibility to carry out an administrative review which meets these requirements. For States or Tribes which make use of courts for periodic review of children in foster care, it would be advisable to develop cooperative arrangements, if possible, to accomplish the purposes of the review.

Source/Date

ACYF-CB-PIQ-82-01 (1/19/82), revised 9/30/26

Legal and Related References

Social Security Act - sections 471(a)(16) and 475 (5)

Question 3. We believe failure to hold a six month case review is a program issue and not an eligibility issue. Is this correct?

Answer

Yes. Failure to hold a periodic review as required in section 471 (a)(16) of the Social Security Act is not an eligibility issue. Section 471 (a)(16) is a title IV-E plan requirement for a case review system with respect to each child receiving title IV-E foster care maintenance payments. It is not an eligibility requirement for the individual child in care. Failure to conduct timely periodic reviews of the status of each child receiving assistance under title IV-E could result in the agency's being out of compliance with its title IV-E plan; however, such failure would not affect the individual child's eligibility under the program.

Source/Date

ACYF-CB-PIQ-85-06 (6/5/85), revised 9/30/26

Legal and Related References

Social Security Act - sections 471 (a)(16) and 472

Question 4. Can periodic reviews occur less frequently than every six months?

Answer

No. Section 475 (5)(B) of the Social Security Act provides that, "the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review.." Without exception, the clear statutory language requires a review at least once every six months.

Source/Date

ACYF-CB-PIQ-81-01 (10/20/81)

Legal and Related References

Social Security Act - sections 471(a)(16) and 475 (5)(B)

8.3C.2e. TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, termination of parental rights

Question 1. How should a title IV-E agency calculate the 15 out of 22 months when a child has multiple entries to and exits from foster care?

Answer

For the purpose of implementing the termination of parental rights (TPR) provision for children with multiple foster care placement episodes within the 22 month period,

the title IV-E agency must use a cumulative method of calculating 15 months in foster care. For example, a child enters foster care on January 15, 2001 and is discharged from foster care three months later on April 15, 2001. He remains home for six months and then enters foster care again on October 15, 2001. The title IV-E agency must apply the TPR requirement at section 475(5)(E) of the Social Security Act with respect to this child based on the date he entered foster care for the first foster care episode, or January 15, 2001. If this child remains in foster care for another 12 months, the title IV-E agency will be obliged to comply with section 475(5)(E) on October 15, 2002, because this child will have been in foster care for a cumulative total of 15 out of the previous 22 months. However, the time line for conducting case reviews, permanency hearings, and providing time-limited reunification services for the subsequent foster care episode must be based on the date the child entered foster care for that episode, October 15, 2001.

If the child in the above scenario does not return to foster care until January 15, 2003, the title IV-E agency must begin calculating a new 15 out of 22 month period for applying section 475(5)(E) and the other case review requirements as of January 15, 2003, because this most recent date of entry into foster care is more than 22 months after the date the child entered foster care during the prior episode.

Source/Date

Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98), revised 9/30/26

Legal and Related References

Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

Question 2. When a child has been in foster care for 15 out of 22 months but the title IV-E agency does not file a petition to terminate parental rights (TPR) because an exception applies, must the title IV-E agency begin counting another 15 out of 22 months at that time?

Answer

Title IV-E agencies need only apply section 475(5)(E) of the Social Security Act (the Act) to a child once. If, when a child reaches 15 months in foster care, the title IV-E agency does not file a petition for TPR because one of the exceptions applies, or the agency does file such a petition but the court does not sustain that petition, the title IV-E agency does not need to begin calculating another 15 out of 22 months in foster care for that child. The requirements at sections 471(a)(15)(C) and (E) and 475(1)(E) of the Act regarding reasonable efforts to make and finalize alternate permanency placements and the requirements at section 475(5)(C) of the Act regarding permanency hearings provide children sufficient protections with respect to

achieving permanency, thereby removing the need to require multiple applications of section 475(5)(E) of the Act. However, this does not preclude the title IV-E agency from filing, or the court from ordering, a petition for TPR upon later review if the permanency plan has not been achieved.

Source/Date

Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98), revised 9/30/26

Legal and Related References

Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

Question 3. Must the title IV-E agency obtain a judicial determination regarding a compelling reason not to file a petition to terminate parental rights (TPR)?

Answer

No. We have not interpreted the statutory language which requires that the documentation of the compelling reason be "... available for court review..." as a requirement that the court make a determination with respect to the compelling reason. To interpret this language as requiring a court determination with respect to the compelling reason not to file a TPR would place an unnecessary additional burden on the title IV-E agency and the courts. We do anticipate, however, that the court will have the opportunity to review the compelling reason not to file for TPR as part of its ongoing oversight.

Source/Date

Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98), revised 9/30/26

Legal and Related References

Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

Question 4. Is it possible to exempt certain categories of children from the requirement to file or join termination of parental rights (TPR) petitions for children who have been in foster care for 15 out of the most recent 22 months?

Answer

No. There is no statutory authority to provide an exemption for particular populations from the requirement to file a TPR for children who have been in foster care for 15 out of the most recent 22 months. The TPR requirement is designed to encourage title IV-E agencies to make timely decisions about permanency for children in foster care. Exempting groups of children from the requirements would be contrary to this goal.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00), revised 9/30/26

Legal and Related References

Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

Question 7. Is the fact that a child had been in foster care for 15 out of the most recent 22 months legal grounds for a title IV-E agency to file a termination of parental rights (TPR) petition?

Answer

Title IV-E agencies are neither required nor prohibited by Federal statute from making a child's length of stay in foster care legal grounds to file or grant a petition for TPR.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00), revised 9/30/26

Legal and Related References

Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

8.3C.3. TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Foster care goals

Question 1. Must the foster care goals required at section 471(a)(14) of the Social Security Act be enacted into a statute or may these goals be set forth in administrative code?

Answer

Section 471(a)(14) of the Social Security Act requires that specific goals be established by State law as to the maximum number of children receiving assistance under the title IV-E agency’s plan who will remain in foster care in excess of 24 months, and that the plan include a description of the steps which will be taken by

the agency to achieve such goals. There is no specific requirement that such goals be incorporated into a statutory enactment. Title IV-E agencies may use statute, or administrative regulations, properly promulgated according to the procedural requirements of that State or Tribe to set forth the goals. Tribal title IV-E agencies may use another mechanism that carries the force and effect of law to satisfy title IV-E requirements. In either case, the law must be specific as to absolute numbers or a percentage of all foster children receiving assistance under the plan.

Source/Date

ACYF-PIQ-82-01 (1/19/82), revised 9/30/26

Legal and Related References

Social Security Act - section 471 (a)(14)

8.3C.4. TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Reasonable efforts

Question 1. What is the definition of "reasonable efforts?"

Answer

We have not, nor do we intend to define "reasonable efforts." To do so would be a direct contradiction of the intent of the law. The statute requires that reasonable efforts determinations be made on a case-by-case basis. We think any definition would either limit the courts' ability to make determinations on a case-by-case basis or be so broad as to be ineffective. In the absence of a definition, courts may entertain actions such as the following in determining whether reasonable efforts were made:

(1) Would the child's health or safety have been compromised had the agency attempted to maintain him or her at home?

(2) Was the service plan customized to the individual needs of the family or was it a standard package of services?

(3) Did the agency provide services to ameliorate factors present in the child or parent, i.e., physical, emotional, or psychological, that would inhibit a parent's ability to maintain the child'safely at home?

(4) Do limitations exist with respect to service availability, including transportation issues? If so, what efforts did the agency undertake to overcome these obstacles?

(5) Are the State agency's activities associated with making and finalizing an alternate permanent placement consistent with the permanency goal? For example, if the permanency goal is adoption, has the agency filed for termination of parental

rights, listed the child on State and national adoption exchanges, or implemented child'specific recruitment activities?

Source/Date

Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)

Legal and Related References

Social Security Act - section 471 (a)(15)

Question 2. The statute states that a court of competent jurisdiction may find that reasonable efforts are not required. Please clarify what is meant by the term "court of competent jurisdiction".

Answer

The court that has responsibility for hearing child welfare dependency cases must make the determination that reasonable efforts to prevent a child's removal from home or to reunify a child and family are not required. Depending on the circumstances, this determination may be based on the findings of another court or the findings of the court that is determining whether reasonable efforts are required.

The court that hears child welfare dependency cases may find that the child has been subjected to aggravated circumstances, if it has the authority to do so, and that reasonable efforts are not required because the statutory language at section 471(a)(15)(D)(i) of the Social Security Act (the Act) regarding aggravated circumstances does not require a criminal conviction.

When a parent has been found to have committed one of the felonies enumerated at section 471(a)(15)(D)(ii) of the Act, the court's determination that reasonable efforts are not required must be based on the findings of a criminal court. The statutory language at section 471(a)(15)(D)(ii) requires a criminal conviction of one of the felonies identified therein. In circumstances in which the criminal proceedings have not been completed or are under appeal, the court that hears child welfare dependency cases must determine whether reasonable efforts are required based on the developmental needs of the child and the length of time associated with completion of the criminal proceedings or the appeals process.

When the determination that reasonable efforts are not required is based on a previous involuntary termination of parental rights, that determination is clearly based on the findings of another court decision.

Source/Date

Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)

Legal and Related References

Social Security Act - section 471 (a)(15)(D); 45 CFR 1356.21 (b)(3)

Question 3. Are title IV-E agencies required to engage in concurrent planning or is it an option?

Answer

Title IV-E agencies have the option of making reasonable efforts to make and finalize an alternate permanent placement concurrently with reasonable efforts to reunify a child with his/her family. Concurrent planning can be an effective tool for expediting permanency, and the statute offers it as such. However, since it may not be an appropriate approach for every child or family, title IV-E agencies are not required to use concurrent planning and the decision to do so must be made on a case-by-case basis.

Source/Date

Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98); revised 09/29/26

Legal and Related References

Social Security Act - section 471 (a)(15)(F); 45 CFR 1356.21 (b)(4)

Question 4. The regulations, at 45 CFR 1356.21 (b)(3), list the circumstances under which the court may determine that reasonable efforts are not required to prevent removal or to reunify the child and family. Are there other circumstances under which the court may determine that reasonable efforts are not required?

Answer

The statute specifically enumerates those circumstances in which reasonable efforts are not required. Unless one of the circumstances at section 471 (a)(15)(D) of the Social Security Act (the Act) exists, the statute requires the title IV-E agency to make reasonable efforts. In each individual case, the court and the title IV-E agency must determine the level of effort that is reasonable, based on safety considerations and the circumstance of the family. Section 478 of the Act clarifies that the court continues to have discretion when making judgments about the health and safety of the child.

Source/Date

Questions and Answers to the Final Rule (65 FR 4020) (1/25/00); revised 9/30/2026.

Legal and Related References

Social Security Act - section 471 (a)(15)(D) and 478; 45 CFR 1356.21 (b)(3)

Question 6. What are the requirements with respect to the timing for obtaining judicial determinations that reasonable efforts are not required to reunify a family?

Answer

There are none. We do not think it is appropriate to prescribe a time frame for obtaining such a determination.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00)

Legal and Related References

45 CFR 1356.21 (b)(3)

8.3C.5. TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Trial home visit

Question 1. What is the regulatory definition of a trial home visit?

Answer

There is no regulatory definition of the term "trial home visit," as it is within the title IV-E agency's discretion to define. It is not appropriate for ACF to develop a regulatory definition, nor could ACF develop a definition that would be inclusive of the variety of title IV-E agency policies on trial home visits or that a definition would be helpful. In practice, a trial home visit is intended to be a short-term option in preparation for returning the child home permanently.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00); revised 9/30/26

Legal and Related References

45 CFR 1356.21 (e)

Question 2. Often, courts do not specify time periods for trial home visits for children in foster care. If a court does not specify a time period, should we

assume it cannot be longer than six months without having to re-establish eligibility for title IV-E foster care payments?

Answer

Pursuant to 45 CFR 1356.21 (e), six months is the outside limit for a trial home visit without having to re-establish title IV-E eligibility if the child re-enters foster care, unless there is a court order extending the trial home placement beyond six months. If there is a court order extending the trial home visit beyond six months, and the trial home visit does not exceed the time frame in the court order, the child retains title IV-E eligibility upon returning to foster care following the trial home visit.

Source/Date

Question and Answers on the Final Rule (65 FR 4020) (1/25/00)

Legal and Related References

45 CFR 1356.21 (e)

Question 3. Would a continuance of a hearing scheduled to address the trial home visit satisfy the requirement that for title IV-E funding to continue, a court must order a longer visit?

Answer

No. The regulations establish a six-month outer limit for a trial home visit, except when a court orders a longer visit. A court continuance of a hearing regarding the trial home visit does not satisfy this requirement.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00)

Legal and Related References

45 CFR 1356.21 (e)

Question 4. Must the title IV-E agency hold six-month periodic reviews and permanency hearings for children on trial home visits?

Answer

Historically, this has been an area in which title IV-E agencies have had some flexibility. If the title IV-E agency considered a child who is on a trial home visit to be "in foster care," then it was required to continue holding six-month periodic reviews and permanency hearings during that visit. If not, then the title IV-E agency was not

required to hold such reviews or hearings. If the trial home visit ends within the six months allotted in the regulations at 45 CFR 1356.21 (e), then the foster care placement is considered continuous and the title IV-E agency should hold six-month periodic reviews and permanency hearings in accordance with the original schedule.

Source/Date

Questions and Answers on the Final Rule (65 FR 4020) (1/25/00); revised 9/30/26

Legal and Related References

Social Security Act - section 475 (5); 45 CFR 1356.21 (e)

8.4. TITLE IV-E, General Title IV-E Requirements

Question 1. What is the definition of "unemployed parent" for purposes of completing the AFDC portion of a title IV-E eligibility determination?

Answer

Services The Administration for Children and Families (ACF) and the Centers for Medicaid and Medicare (CMS) amended the definition of “unemployed parent” at 45 CFR 233.101(a)(1) in 1998 in response to the replacement of the former AFDC program with the Temporary Assistance for Needy Families (TANF) program. Each State was required to establish a “reasonable standard” for measuring unemployment in order to determine whether an individual qualified for benefits under TANF or Medicaid and whether a child met the AFDC portion of title IV-E eligibility. The amended regulation specifically permits title IV-E agencies to consider hours of work, dollar amounts earned, and family size in establishing the reasonable standard of unemployment.
At a minimum, title IV-E agencies are required to include as an “unemployed parent” an individual who is employed less than 100 hours per month, or exceeds that standard for a particular month if the work is intermittent and the excess work is temporary. Such work may be considered temporary if the unemployed parent worked fewer than 100 hours in the preceding two months and is expected to work fewer than 100 hours in the following month (see 45 CFR 233.101(a)(1)). Title IV-E agencies are constrained by this definition in order to preserve Medicaid and title IV-E eligibility for any individuals who would have been eligible under the AFDC rules previously in effect (see 63 FR 42270 - 42272, August 7, 1998). Under the AFDC rules, States were not required to establish a broader definition of “unemployed parent” but could choose to.

Source/Date

6/23/2003; revised 9/30/26

Legal and Related References

Public Law 104-193; 45 CFR 233.101(a)(1); 63 FR 42270-42275, August 7, 1998.

Question 2. Please explain the assurance requirement at section 471(a)(30) of the Social Security Act (the Act).

Answer

Section 471(a)(30) of the Act requires the title IV-E agency to provide assurances in the title IV-E plan that each child eligible for a title IV-E payment who has attained the minimum age for mandatory school attendance under State or Tribal law is a full-time elementary or secondary school student, has completed secondary school, or is incapable of attending school on a full-time basis, in accordance with sections 471(a)(30)(A) through (D). Section 471(a)(30) of the Act is a title IV-E plan requirement and, as such, does not place conditions on a child's eligibility for or receipt of assistance under the foster care, adoption assistance or guardianship assistance programs. ACF may conduct a partial review pursuant to 45 CFR 1355.32(d), if necessary to determine compliance with the title IV-E plan.

Source/Date

5/29/2009

Legal and Related References

Social Security Act - section 471(a)(30)

Question 3. Is the requirement at section 471(a)(30) of the Social Security Act (the Act) an annual requirement, a one time requirement when the adoption or guardianship is finalized, or an ongoing requirement?

Answer

The requirement at section 471(a)(30) of the Act is not prescriptive; therefore, the title IV-E agency may determine how it will assure that the requirement is being met and the frequency of any procedures for doing so.

Source/Date

5/29/2009

Legal and Related References

Social Security Act - section 471(a)(30)

Question 4. 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

8.4A. TITLE IV-E, General Title IV-E Requirements, AFDC Eligibility

Question 5. Aid to Families with Dependent Children (AFDC) eligibility requires the counting of a step-parent's income. Is this requirement applicable to title IV-E?

Answer

If the title IV-E agency deems step-parent income available to the child pursuant to its July 16, 1996 AFDC State plan, step-parent income must be counted in determining title IV-E eligibility (45 CFR 233.20 (a)(3)(xiv)).

Source/Date

ACYF-CB-PIQ-85-07 (6/25/85) (revised 6/6/13, 2/18/20); revised 9/30/2026

Legal and Related References

45 CFR 233.20

Question 6. Under the Aid to Families with Dependent Children (AFDC) regulations, certain work expense deductions and disregards are allowable in determining eligibility. In determining the amount of a child's earnings, is

the AFDC budgeting procedure to be followed or are title IV-E agencies allowed to establish a separate set of budgeting procedures for title IV-E?

Answer

The AFDC regulations and procedures (45 CFR 233.20) are applicable in the title IV-E foster care maintenance payments program.

Source/Date

ACYF-CB-PIQ-85-07 (6/25/85) (revised 6/6/13)

Legal and Related References

45 CFR 233.20

Question 7. A State asks whether the payment standard or the Aid to Families with Dependent Children (AFDC) need standard to determine AFDC eligibility shall be used to determine eligibility for the title IV-E program.

Answer

The AFDC need standard should be used for determining eligibility for the title IV-E program. Section 472(a) of the Social Security Act defines as eligible "a child who would meet the requirements of section 406(a)... " as in effect on July 16, 1996. Section 406(a), in turn, refers to a "needy child," without reference to a payment standard. Reference to the need standard thus flows directly from the words of the statute. The title IV-E program has never interpreted the reference to receipt of aid, in section 472(a)(3), as excluding from foster care eligibility a needy child who did not or might not have actually received AFDC because of the payment standard.

Section 472 of the Social Security Act refers to the need standard at the outset, and does not subsequently distinguish between the need and payment standards; moreover, there is no such distinction recognized in the IV-E regulations. Consistent with that framework, the reference to receipt of aid in section 472(a)(3) has been consistently understood to mean eligibility in accordance with the need standard.

Furthermore, when section 472(a)(3) states: "received aid...in or for the month in which court proceedings leading to the removal...from the home were initiated," it is not using those words as an eligibility requirement but rather, referring to the point in time when the child meets the appropriate eligibility standards. Thus, sections 472(a)(3)(A) and (B) are understood to refer to the times when the child met the 406(a) standards.

Source/Date

ACYF-CB-PIQ-96-01 (10/8/96); (revised 2/18/20)

Legal and Related References

Social Security Act - sections 402, 406, 407 (as in effect on July 16, 1996) and 472(a)(3); 45 CFR 1356.60 and 233.20(a)

Question 10. For the purpose of determining a child's AFDC eligibility at the time of the child's removal from his or her home, the child must have been living with and removed from the home of a specified relative. Who is considered a "specified relative" for this purpose?

Answer

A specified relative is defined as any relation by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child. This includes great-great-great grandparents and first cousins once removed (children of first cousins). Accordingly, for the purpose of determining title IV-E eligibility, any otherwise eligible child under age 18 who is removed from the home of a relative who is within the fifth degree of kinship to the child will be eligible for assistance under title IV-E. Also see Q7 in section 8.3A11 for the specified relative requirements for youth over age 18.

Source/Date

ACYF-CB-IM-92-04 (2/24/92) (revised 6/6/13)

Legal and Related References

Social Security Act - section 406 (a) (as in effect on July 16, 1996); 45 CFR 233.90(c)(1)(v)

Question 11. How does the title IV-E agency determine need and deprivation to establish a child's eligibility for title IV-E adoption assistance?

Answer

If a child's eligibility for title IV-E adoption assistance is based upon his or her eligibility for Aid to Families with Dependent Children (AFDC) as a dependent child, the title IV-E agency must determine that the child would have been AFDC-eligible in the home from which s/he was removed. To meet the AFDC criteria, the child must be both a needy child and a child who is deprived of parental support or whose principal wage earner parent is unemployed. Need exists in the child's home if the resources available to the family are below $10,000 and meets the income test (see section 8.4A Q/A #18 of the Child Welfare Policy Manual). Deprivation exists in the home in situations where there is death of a parent, an absent parent, or a parent with a mental or physical incapacity to the extent that the parent cannot support or care for

the child. At the point of the removal of a child from his or her home, a termination of parental rights (TPR) alone is not proof that deprivation exists. The factors noted here must be established based on the circumstances in that home. If the child meets these AFDC criteria at removal, no further AFDC eligibility determination is needed for adoption assistance.

Source/Date

ACYF-CB-PA-01-01 (1/23/01); 7/17/2006 (revised 6/6/13)

Legal and Related References

Social Security Act - section 473 (a)(2); section 8.4B Q/A #18 of the Child Welfare Policy Manual).

Question 13. Should a title IV-E agency include Temporary Assistance for Needy Families (TANF) payments as unearned income when determining whether a child meets the Aid to Families with Dependent Children (AFDC) requirements in effect on July 16, 1996 for title IV-E eligibility purposes?

Answer

No. As the title IV-A program, TANF should not be counted as income in determining title IV-E eligibility.

Source/Date

06/09/04 (revised 6/6/13)

Legal and Related References

Section 472 of the Social Security Act.

Question 15. How is the $10,000 resource limit to be applied in determining eligibility for title IV-E?

Answer

Effective December 14, 1999, the $10,000 resource limit applies to the resources of the child and family for the purposes of determining AFDC/title IV-E eligibility. A State may not opt to set the combined value of resources at less than $10,000. (Note: The current citation for the foster care program is section 472(a)(3)(B) and for the kinship guardianship assistance program is section 473(3)(A)(i)(II)of the Social Security Act).

Source/Date

7/6/05; 7/17/2006 (revised 6/6/13; 2/18/20); Questions and Answers on the Chafee Foster Care Independence Program 7/29/01; revised 7/17/06, 2/18/20; revised 9/30/26

Legal and Related References

Social Security Act - Sections 472(a)(3) and 473(a)(2)(A)(i)(I)(aa)(BB)

Question 17. May a title IV-E agency determine a child's title IV-E eligibility based on the Temporary Assistance for Needy Families (TANF) Program instead of the Aid to Families with Dependent Children (AFDC) Program? If not, can title IV-E agencies include an annual cost of living adjustment?

Answer

No. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) retained the connection between the title IV-E program and the AFDC program and established an AFDC "look-back date" of July 16, 1996. As such, TANF eligibility may not be substituted for an AFDC eligibility determination. Title IV-E agencies must use the title IV-A State plan that was in effect on July 16, 1996, to determine a child's AFDC eligibility. Tribal title IV-E agencies must use the title IV-A State plan that was in effect on July 16, 1996, in the State in which the child resides at the time of removal from the home to determine a child's AFDC eligibility. The AFDC program did not include a cost of living adjustment.

Source/Date

September 29, 2005 (revised 6/6/13); 7/6/2005; revised 9/30/26

Legal and Related References

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L.104-193)

Question 18. Question: One of the title IV-E eligibility requirements under section 472(a) of the Social Security Act (Act) is that a child must have been eligible for the former Aid to Families with Dependent Children (AFDC) program. As such, the title IV-E agency must determine that the child is a dependent child based on the State title IV-A plan in effect as of July 16, 1996. What process must agencies use to determine whether a child is a "needy child" under the former AFDC program, as described in former section 406(a) of the Act?

Answer

The AFDC program required that a child meet eligibility requirements related to both financial need (i.e., a "needy child") and deprivation of parental support. In response to the specific question, this answer addresses only the requirements for establishing that a child meets the requirements related to financial need under AFDC.

For AFDC eligibility determinations, the title IV-E agency must apply the former AFDC program's two-step income test to establish whether a child would have been considered a "needy child" under the State's title IV-A plan in effect on July 16, 1996. In addition to the income test, the agency must apply a test of resources. Both the two-step income and resources tests must be applied, in accordance with 45 CFR 233.20. 1

Prior to the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each State set its own AFDC need standard to use in determining eligibility for the program. The term "AFDC need standard" refers to the amount of money a State determined that a particular size family needed to subsist. For title IV-E purposes, the State's need standard as of July 16, 1996, (disregarding any Section 1115(a) waivers that may have been in effect on that date) is the amount that provides the basis for both steps in the income test portion of the AFDC eligibility determination process.

The two-step income test to determine financial need under AFDC to be conducted in accord with Federal requirements and the State plan as in effect on July 16, 1996, is as follows (see 45 CFR 233.20(a)(3)(xiii) and 45 CFR 233.20(a)(3)(ii)(F)):

Step One of the Income Test-Gross Income Limitation: The title IV-E agency determines if the family's gross income is less than 185 percent of the State's AFDC need standard, after applying appropriate disregards. 2 If the family's gross income is more than 185 percent of the State's AFDC need standard, the child would have been ineligible for the program and, thus, is not eligible for title IV-E. If the family's gross income does not exceed 185 percent of the State's AFDC need standard, the title IV-E agency proceeds to the second step to continue the process of determining if a child is a needy child and would have been eligible for AFDC.

Step Two of the Income Test-Determination of Need: For this second step, the title IV-E agency compares the family's income, after applying further appropriate disregards, to 100 percent of the State's AFDC need standard, the same need standard used in step one. If the family's income is in excess of 100 percent of the State's need standard, the child would not have been eligible for AFDC and, thus, is not eligible for title IV-E. If the family's income does not exceed 100 percent of the need standard, the child would have met the AFDC income test for eligibility.

In addition to applying the two-step income test to determine if a child would have been considered a "needy child" under AFDC, the title IV-E agency must determine whether the child's family has resources under $10,000 in value, after appropriate

disregards.3 Both the income and resources tests must be applied to the child and family in the removal home to determine eligibility for AFDC.

Once the child has been determined to be eligible for AFDC, the child remains eligible for AFDC as long as the court order that sanctioned the child's removal from the home remains in effect.

1 The two-step process has been in place since 1981. See the 1994 Green Book, 14th Edition, July 15, 1994, Section 10 for more details on the two-step process.

2 The gross income limitation -the first step of the process- was increased from 150 percent to 185 percent of the need standard by the Deficit Reduction Act of 1984 (Public Law 98-369) and implemented through regulation at 45 CFR 233.20(a)(3)(xiii).

3 Public Law 106-169 increased the resource limit to $10,000. See the Child Welfare Policy Manual at 8.4A #15 for more information.

Source/Date

April 6, 2010 (revised 6/6/13)

Legal and Related References

Social Security Act § section 472(a), Sections 406(a) and 407 (as in effect on July 16, 1996); 45 CFR 233.20(a)(3)(xiii); 45 CFR 233.20(a)(3)(ii)(F); 45 CFR 233.20(a)(2); 45 CFR 233.20(a)(2)(v)

Question 19. How does a title IV-E agency determine title IV-E eligibility for an abandoned child whose parents are unknown?

Answer

It is unlikely that a title IV-E agency would be able to determine title IV-E eligibility for an abandoned child whose parents are unknown. This situation differs from one in which a parent leaves a child with a friend or relative and is unreachable, but the identity of the parent is known. In either scenario, all of the title IV-E eligibility requirements must be met for a child on whose behalf title IV-E foster care or adoption assistance is claimed. This includes the requirement that the child meet the Aid to Families with Dependent Children (AFDC) eligibility requirements as outlined at section 472(a)(3) and 473(a)(2)(A)(i)(I)(aa)(BB) of the Social Security Act. As such, the title IV-E agency must be able to establish and verify financial need and deprivation of parental support based on the home from which the child was removed. Determining a child's financial need requires a title IV-E agency to examine the parents' income and resources. In the case in which the identity of the parents is unknown, including when a child has been abandoned, the title IV-E agency will not

have any financial information on which to make an AFDC eligibility determination. A title IV-E agency must document that a child meets all AFDC eligibility requirements; a title IV-E agency cannot presume that a child would meet the eligibility requirements simply because the child has been abandoned.

Source/Date

April 6, 2006 (revised 6/6/13)

Legal and Related References

Social Security Act - sections 472(a)(3), 473(a)(2) and 479B(b)

Question 20. If a child is removed from a specified relative who is the child's legal guardian, must the title IV-E agency determine whether the child meets the Aid to Families with Dependent Children (AFDC) criteria of deprivation based on the legal guardian or the parent?

Answer

A determination of deprivation is always made in relation to the child's parent for AFDC eligibility purposes. Under no circumstances does the title IV-E agency look to the legal guardian to determine deprivation. Consistent with the provision in 45 CFR 233.90(c)(1)(i), "[t]he determination whether a child has been deprived of parental support or care is made in relation to the child's natural parent or, as appropriate, the adoptive parent or stepparent described in paragraph (a) of this section." Even when parental rights have been terminated and the child is removed from a relative legal guardian, the title IV-E agency must look to the situation of the parents to determine deprivation. When determining deprivation with respect to a child who is living with a relative legal guardian, a positive determination regarding deprivation can be made based upon the fact that the child is deprived of parental support due to continued absence. Although deprivation must be based on the child's parent, this does not alter the requirement to determine whether the child would have met the AFDC criteria of financial need while living in the home of the *specified relative* from whom the child was removed (section 472(a)(3) of the Social Security Act and 45 CFR 1356.21(l)).

Source/Date

04/24/07 (revised 6/6/13)

Legal and Related References

Social Security Act - sections 472(a)(3) and 479B(c)(1)(C)(ii)(II); 45 CFR 233.90(c)(1)(i) and 1356.21(l)

Question 22. Must a State or Tribal title IV-E agency use one definition of "unemployed parent" for Medicaid, Temporary Assistance for Needy Families (TANF) and title IV-E purposes?

Answer

No. For title IV-E eligibility purposes, there is no requirement that the title IV-E agency use the same definition of "unemployed parent" as Medicaid and TANF. The title IV-E agency must use the definition that was in the State's Aid to Families with Dependent Children (AFDC) State plan on July 16, 1996, unless the State used the authority under 45 CFR 233.101(a)(1) to apply a less restrictive definition to the title IV-E program.

Source/Date

4/26/2007; revised 4/27/2007

Legal and Related References

45 CFR 233.101(a)(1)

Question 23. How should the title IV-E agency determine financial need for Aid to Families with Dependent Children (AFDC) program eligibility purposes when the child is removed from a specified relative other than a parent? Must the title IV-E agency consider the relative's income and resources?

Answer

If a child is removed from the non-parental specified relative through a contrary to the welfare judicial determination, or a valid voluntary placement agreement, the title IV-E agency determines financial need based on the financial situation of the child only. However, if the State's July 16, 1996 AFDC State plan required the title IV-E agency to consider non-parental relative income or resources, then the title IV-E agency must consider the relative's income and resources.

Source/Date

12/31/07 (revised 6/6/13)

Legal and Related References

45 CFR 233.20

Question 24. May title IV-E agencies re-determine a child's Aid to Families with Dependent Children (AFDC) eligibility after the child was determined to be AFDC eligible at removal?

Answer

No. A title IV-E agency is not required to re-determine a child's AFDC eligibility. Given the statutory changes over the years, we have eliminated the former requirement to re-determine a child's AFDC eligibility at regular intervals as we now believe it is unnecessary to conduct re-determinations for a program (AFDC) that has not been operational for nearly 14 years. Further, it is not possible to implement the option to extend title IV-E assistance to youth in foster care over the age of 18 and require such youth to be subject to AFDC re-determinations. To do so clearly would be inconsistent with the law's amendments to provide an option for extended title IV-E assistance to older youth. Rather, a child must have met the AFDC eligibility requirements per section 472(a)(3) of the Social Security Act at the time of removal from the home or when a voluntary placement agreement is entered to be eligible for title IV-E foster care. For the purpose of title IV-E eligibility reviews, we will not review whether title IV-E agencies have conducted annual AFDC re-determinations for each child in the sample.

Source/Date

6-Apr-10

Legal and Related References

Social Security Act-Section 472(a)(3); Sections 406(a) and 407 (as in effect on July 16, 1996); 45 CFR 233.20.

Question 25. If a youth age 18 or older entering foster care is married, how is AFDC eligibility determined?

Answer

AFDC eligibility for a married youth who is entering foster care at age 18 or older is determined without regard to the parents/legal guardians or others in the assistance unit in the home from which the youth was removed as a younger child, and without regard to the youth's spouse.

Source/Date

5/6/2013

Legal and Related References

Social Security Act - sections 472(a)(3) and 473(a)(2); ACYF-CB-PI-10-11

Question 28. Should a title IV-E agency count the money that is in a child’s Fostering the Future Account (26 U.S.C. 530A) or an Achieving a Better Life

Experience (ABLE) Account (26 U.S.C. 529A) towards the $10,000 resource limit when determining whether a child meets the Aid to Families with Dependent Children (AFDC) resource requirements in effect on July 16, 1996 for title IV-E eligibility purposes?

Answer

For children under 18, Fostering the Future Accounts and ABLE Accounts should not be counted as resources in determining title IV-E eligibility. For youths age 18 and older, Fostering the Future Accounts and ABLE Accounts are available resources that should be considered when determining eligibility.

Note: Fostering the Future Accounts include any account established under 26 U.S.C. 530A.

Source/Date

08/18/2026

Legal and Related References

Social Security Act - Sections 472(a)(3)(B); 26 U.S.C. 529A and 530A

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

Question 1. 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)

Question 2. 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

Question 3. 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)

Question 4. 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)

Question 5. 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)

Question 6. 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)

Question 7. 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)

Question 8. 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)

Question 9. 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)

Question 10. 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

Question 11. 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)

Question 12. 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 ad 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

5/4/2011

Legal and Related References

Social Security Act § section 471(a)(27); 62 FR 61344

8.4C. TITLE IV-E, General Title IV-E Requirements, Child support

Question 5. As part of the Aid to Families with Dependent Children (AFDC) requirements for eligibility, must the parents must sign a child 'support assignment form? Section 471(a)(17) of the Social Security Act (the Act) requires title IV-E agencies to "where appropriate take all steps” to secure an assignment of the rights to child support for a child receiving title IV-E foster care maintenance payments (FCMPs). How should a title IV-E agency

determine when it is "appropriate" to secure an assignment of the rights to child support?

Answer

Section 471(a)(17) of the Act requires a title IV-E agency, where appropriate, to take steps to secure an assignment of support rights on behalf of each child receiving title IV-E foster care maintenance payments.

A child is not ineligible under title IV-E because the parent fails to comply with certain AFDC requirements regarding child support assignment. According to the regulations, "a child may not be denied AFDC either initially or subsequently because a parent or other caretaker relative fails to cooperate with the child support agency..." (45 CFR 233.90 (b)(4)(i)).

We are issuing revised policy for title IV-E agencies to define more narrowly "where appropriate" so that the default position in these determinations can be for the title IV-E agency not to secure an assignment of the rights to child support for children receiving title IV-E FCMPs.

Securing an assignment of the rights to child support is generally deemed not to be cost effective as analyses have shown that very low levels of collections are obtained, particularly in comparison to the costs for administering child support for children in title IV-E foster care (see references). In addition, children receiving title IV-E FCMPs have been removed from households where they would have qualified for Aid to Families for Dependent Children (AFDC) under a state's July 16,1996 standard of need. This means that the parent(s) of these children are likely to be living in poverty. It is almost never the case that securing an assignment of the rights to child support is in the best interests of a child during the time the child is in title IV-E foster care. Parent(s) are typically required to engage in a variety of efforts and services to be successfully reunified with their child. This may include regular family time, therapy, parenting courses, and/or treatment for a substance use disorder. It's likely that reducing the income of the child's parent(s) could impede their ability to engage in reunification efforts, potentially extending the time the child spends in foster care. Given this, previous policy directing title IV-E agencies to determine 'where appropriate' on a case-by-case basis is withdrawn. Consequently, while each title IV-E agency may determine what constitutes "where appropriate", agencies should consider across-the-board policies. These policies may reflect that an assignment of the rights to child support for children in title IV-E foster care is not required except in very rare instances where there will be positive or no adverse effects on the child, or the assignment will not impede successful achievement of the child's permanency plan. For example, title IV-E agencies might consider policies reflecting that securing an assignment of the rights to child support isn't appropriate unless the parent(s) income is above a specified income level.

Where a child support referral has been made, we encourage title IV-E agencies to use the 6-month periodic reviews to re-assess whether the assignment of rights to support should continue, given this new federal policy. As always, we encourage title

IV-E agencies to consult with their title IV-D counterparts when considering these issues.

References: Orange County Department of Child Support Services. (Second Edition, July 2020). Child Support and Foster Care Special Study. https://www.css.ocgov.com/sites/css/files/import/data/files/116568.pdf.

Skophammer, Trish. (2017). Child Support Collections to Offset Out of Home Placement Costs: A Study of Cost Effectiveness. Dissertation for the Graduate School of Hamline University. https://digitalcommons.hamline.edu/hsb_all/16.

Washington Department of Social and Health Services, Economic Services Administration, Division of Child Support. (2019). Washington's Cost Effectiveness for Foster Care Child Support Cases. https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/Cost%20Effectiveness%20-FC%20collections%20FINAL.pdf

Source/Date

6/8/2022; ACYF-CB-PIQ-85-07 (6/25/85) (revised 6/6/13); revised 9/30/26

Legal and Related References

Social Security Act - section 471(a)(17); 45 CFR 233.90

8.4D. TITLE IV-E, General Title IV-E Requirements, Concurrent Receipt of Federal Benefits

Question 1. What is the Department's policy, under title IV-E, on concurrent receipt of benefits under title IV-E and Supplemental Security Income (SSI)?

Answer

There is no prohibition in title IV-E against claiming Federal financial participation (FFP) for foster care maintenance payments, guardianship assistance payments, or adoption assistance payments made on behalf of a child who is receiving SSI benefits.

Foster Care: Although eligibility for title IV-E foster care is tied to eligibility for Aid to Families with Dependent Children (AFDC) as was in effect on July 16, 1996 and AFDC precluded concurrent eligibility for payments from AFDC and title XVI (section 402 (a)(24) of the Social Security Act), this preclusion rule is not transferable to title IV-E for the purposes of foster care maintenance payment eligibility determinations. The AFDC regulations at 45 CFR 233.20(a)(1)(ii) and 45 CFR 233.20 (a) (3)(x) exclude the needs, income and resources of individuals receiving benefits under title XVI in determining the need and amount of payment of an AFDC assistance unit. Thus, these exclusions apply to SSI-eligible children who are under the care and responsibility of the title IV-E agency and otherwise eligible for title IV-E. A child, if

eligible, may receive benefits from both the foster care and adoption assistance programs simultaneously.

Adoption Assistance: In the Adoption Assistance program, the applicant may choose to apply for either or both SSI and adoption assistance. Concurrent receipt of benefits from the adoption assistance program and SSI is not prohibited under title IV-E (section 473).

The adoptive parents of the child eligible to receive title IV-E adoption assistance payments and SSI benefits may make application for both programs and the child, if eligible, may receive benefits from both programs. In considering the most appropriate choice of programs and deciding whether to make application for one or both, the adoptive parents should be aware of the differences between SSI and the Adoption Assistance Program.

In the Adoption Assistance Program, the amount of the adoption assistance payment is determined after taking into consideration the circumstances of the adopting parents and the needs of the child being adopted. While the child's SSI benefit would be a consideration in the negotiation of the amount of the adoption assistance payment as part of the determination of the needs of the child being adopted, this income would not generate an automatic reduction in any standardized payment amount.

The amount agreed upon by the adoptive parents and the administering agency is limited, however, to the amount of the foster care maintenance payment which would have been paid if the child had been in a foster family home (section 473(a)(3)).

Because there are many complexities and financial implications for the States and Tribes as well as the adoptive families, it is important for all parties to discuss all aspects of a combination of SSI and adoption assistance at the time the adoption assistance agreement is negotiated. Such discussions could include, in addition to the adoptive parents, representatives from title IV-E and title XVI programs.

With full knowledge of the SSI and Adoption Assistance programs, the adoptive parents can then make an informed decision about application for or receipt of benefits from either or both programs for which they or the child are eligible. They should be advised, however, that if they decline title IV-E adoption assistance and choose to receive only SSI for the child, and if they do not execute an adoption assistance agreement before the adoption is finalized and do not receive adoption assistance payments pursuant to such an agreement, they may not later receive title IV-E adoption assistance payments, as the child would no longer meet all of the eligibility requirements as a child with special needs (section 473 (c)).

Source/Date

ACYF-CB-PA-94-02 (2/4/94) (revised 6/6/13; 4/13/2020); 11/14/07 (revised 6/6/13); revised 9/30/26

Legal and Related References

Social Security Act - sections 402(a)(24), 406(a) and 407 (as in effect on July 16, 1996), 472(a), and 473(a) and (c), and titles IV-E and XVI; 45 CFR 233.20(a)(1)(ii) and 233.20(a)(3)(x)

Question 2. How should the decision to apply for SSI or title IV-E benefits be made?

Answer

The difference between title XVI (SSI) and title IV-E should be considered carefully by the decision maker when choosing whether to apply for either or both title IV-E or SSI benefits on behalf of the child. Information regarding the benefits available under each program should be made available by the title IV-E agency so that an informed choice can be made in the child's best interest. To achieve this goal, title IV-E agencies should exchange information regarding eligibility requirements and benefits with local Social Security district offices and establish formal procedures to refer clients and their representatives to the local Social Security district office for consultation and/or application when appropriate.

Source/Date

ACYF-CB-PA-94-02 (2/4/94) (revised 6/6/13)

Legal and Related References

Social Security Act - titles IV-E and XVI

Question 3. May we claim title IV-E administrative costs for eligible children who receive Supplemental Security Income (SSI)?

Answer

Yes. An August 17, 1993 memorandum from the Acting Commissioner of the Administration on Children, Youth, and Families to the Administration for Children and Families Regional Administrators allowed a State to include children who are eligible for title IV-E but who are receiving SSI in lieu of title IV-E foster care maintenance payments when determining its administrative cost ratio. This practice was conceptualized by considering these children candidates for foster care. While the policy itself is sound, a child who is in foster care is not a candidate because s/he has already been removed from home. If a child is fully eligible for title IV-E a title IV-E agency's choice to fund that child's board and care through SSI rather than title IV-

E does not negate that child's eligibility for title IV-E. The agency may, therefore, claim Federal financial participation under title IV-E for title IV-E administrative functions performed on behalf of that child.

Source/Date

ACYF-CB-PA-01-02 (7/3/01) (revised 6/6/13)

Legal and Related References

Social Security Act - sections 471 and 474

8.4E. TITLE IV-E, General Title IV-E Requirements, Confidentiality

Question 1. Under title IV-E, what information can be released? In particular, what information is child welfare information when a child is placed as a result of a juvenile offense?

Answer

The issue of confidentiality is not focused around the specific nature of the information, but rather the source of the information. No information that is gained from the title IV-E agency may be released, except for the purposes identified in 45 CFR 205.50 (a)(1)(i).

For example, if the court gains information regarding a juvenile from the title IV-E agency, this information must remain confidential. Should the court gain information about a juvenile in a proceeding that does not involve the title IV-E agency, the confidentiality provisions of Section 471(a)(8) of the Social Security Act do not apply.

Thus, in a court proceeding, if a psychologist is requested to testify on behalf of the title IV-E agency, the information is safeguarded under the provisions of Section 471(a)(8). If the psychologist's relationship to the child does not involve the title IV-E agency, then Section 471(a)(8) does not apply.

Additionally, if the police, school officials, or some other party refers a child to title IV-E agency, the child welfare agency must treat information about the referral as confidential. If the child welfare agency informs the court about this referral, court redisclosure of this information would result in the title IV-E agency's violation of the title IV-E plan requirements. If the police, the school official, or some other party goes directly to the court, or if the court becomes aware of the information through a source other than the child welfare agency, the confidentiality provisions in Section 471(a)(8) of the Social Security Act and 45 CFR 205.50 would not apply.

Source/Date

ACYF-CB-PIQ-95-02 (6/7/95); (revised 6/6/13); revised 9/30/26

Legal and Related References

Social Security Act - section 471 (a)(8); 45 CFR 205.50

Question 5. What are the title IV-E confidentiality requirements?

Answer

Title IV-E of the Social Security Act requires that title IV-E agencies provide safeguards to restrict the use and/or disclosure of information regarding children receiving title IV-E assistance. In addition, in accordance with 45 CFR 1355.30 (p)(3), records maintained under title IV-E of the Act are subject to the confidentiality provisions in 45 CFR 205.50. Among other things, 45 CFR 205.50 restricts the release or use of information concerning individuals receiving financial assistance under the programs governed by this provision to certain persons or agencies that require the information for specified purposes. The authorized recipients of this information are in turn subject to the same confidentiality standards as the agencies administering those programs.

To the extent that the records of the State title IV-E agency contain information regarding child abuse and neglect reports and records, such information is subject to the confidentiality requirements at section 106 of the Child Abuse Prevention and Treatment Act (CAPTA).

Source/Date

ACYF-NCCAN-PIQ-97-03 (9/26/97); ACYF-CB-PIQ-98-01 (6/29/98 updated 9/27/11) (revised 6/6/13)

Legal and Related References

Social Security Act - section 471 (a)(8); 45 CFR 205.50; 45 CFR 1355.30; Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 (b)(2)(B)(viii), (ix), and (x)

Question 6. Will States compromise compliance with title IV-E of the Social Security Act if they comply with the confidentiality requirements in sections 106 (b)(2)(B)(viii), (ix), and (x) of CAPTA?

Answer

Title IV-E requires that States provide safeguards restricting the use and/or disclosure of information regarding children served by title IV-E foster care. Records maintained under title IV-E are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to

certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs. There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under title IV-E and 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106 (b)(2)(B)(ix), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. Where the CAPTA provision is permissive (such as in sections 106 (b)(2)(B)(viii)(I)-(VI)), it allows States to disclose such information without violating CAPTA, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

Source/Date

ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11

Legal and Related References

Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106; 45 CFR 205.50

Question 7. Some States have enacted laws that allow open courts for juvenile protection proceedings, including child in need of protection or services hearings, termination of parental rights hearings, long-term foster care hearings and in courts where dependency petitions are heard. Questions have arisen about whether courts that are open to the public and allow a verbal exchange of confidential information meet the confidentiality requirements under title IV-E. Do the confidentiality provisions in title IV-E restrict the information that can be discussed in open court?

Answer

No. Section 471(c) of the Social Security Act allows title IV-E agencies to set their own policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to titles IV-B or IV-E. Such policies must, at a minimum, ensure the safety and well-being of the child, his or her parents and family.

Source/Date

06/19/08 (revised 6/6/13)

Legal and Related References

Social Security Act - section 471 (a)(8) and (c)

Question 8. Is it permissible under title IV-B or IV-E of the Social Security Act (the Act) for the title IV-E agency to disclose to the public information contained in a title IV-B/IV-E agency's records regarding a deceased foster child?

Answer

Yes. Section 471(a)(8) of the Act and section 45 CFR 205.50 require the title IV-B or IV-E agency to provide safeguards which restrict the disclosure of information concerning individuals assisted under the title IV-B or IV-E plan. Upon the child's death, he/she is no longer a recipient of these programs. However, information concerning other family members is still protected if they are recipients and care must be exercised to not release information on such other family members.

Source/Date

09/05/07 (revised 6/6/13)

Legal and Related References

Social Security Act § section 471, 45 CFR 205.50

8.4F. TITLE IV-E, General Title IV-E Requirements, Criminal Record and Registry Checks

Question 1. Do title IV-E agencies have to request information from a child abuse and neglect registry maintained by a State, a U.S. Territory or Tribe operating a title IV-E program in which a prospective foster or adoptive parent has resided within the last five years in accordance with section 471(a)(20)(C)(i) of the Social Security Act (the Act)?

Answer

Yes. For the purposes of title IV-E, a "State" is defined in 45 CFR 1355.20 as the 50 States, the District of Columbia, Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa. As such, title IV-E agencies must request child abuse and neglect information pursuant to section 471(a)(20)(C)(i) of the Act of any of these territories that maintains a child abuse and neglect registry. However, only Territories that have an approved plan under title IV-E of the Act are obligated to comply with an incoming request pursuant to section 471(a)(20)(C)(ii) of the Act. Title IV-E agencies must request information from a child abuse and neglect registry maintained by a Tribe operating a title IV-E program if the prospective foster or adoptive parent resided in the tribal agency’s service area within the last five years (479B and 471(a)(20)(C)(ii) of the Act). Title IV-E agencies may also request such information from Indian tribes that are not approved title IV-E agencies, however, such tribes are not obligated to comply with an incoming request.

Source/Date

12/6/2007; 4/13/07; revised 9/30/26

Legal and Related References

Social Security Act - section 471(a)(20)(C); 45 CFR 1355.20

Question 5. Does a "drug-related offense" include an alcohol-related felony conviction?

Answer

The criminal records check provision at section 471 (a)(20)(A) of the Social Security Act would apply in such situations. Alcohol is considered a drug and a felony conviction for an alcohol-related offense is a serious crime. Therefore, an alcohol-related felony conviction within the last five years would prohibit the title IV-E agency from placing children with the individual for the purpose of foster care or adoption under title IV-E.

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00) revised 9/30/26

Legal and Related References

Social Security Act - section 471 (a)(20); 45 CFR 1356.30

Question 7. Must a title IV-E agency complete the fingerprint-based check of national crime information databases required by section 471(a)(20)(A) of the Social Security Act before placing a child in the home of a prospective foster or adoptive parent?

Answer

No. The title IV-E agency is not required by Federal law to complete the fingerprint-based checks before placing a child in the home of a prospective foster or adoptive parent. Rather, section 471(a)(20)(A) of the Act makes a fingerprint-based check of the national crime information databases an integral part of a title IV-E agency's criminal records check procedures that the agency must complete before licensing or approving a prospective foster or adoptive parent.
Although the title IV-E agency may place a child in the home prior to completing the required criminal records check, doing so prior to completing thorough safety checks has serious practice implications. Further, title IV-E agencies must still meet other Federal requirements to claim title IV-E foster care maintenance or adoption assistance. Therefore, title IV-E foster care maintenance payments may be paid on

behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any prohibited felonies in section 471(a)(20)(A)(i) and (ii) of the Act, and the foster family home is licensed. Similarly, title IV-E adoption assistance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any of the prohibited felonies, and all other adoption assistance criteria are met.

Source/Date

1/29/2007; revised 9/30/26

Legal and Related References

Social Security Act § 471(a)(20)(A)

Question 8. Must the title IV-E agency conduct the child abuse and neglect registry checks required by section 471(a)(20)(C) of the Social Security Act before placing a child in the home of a prospective foster or adoptive parent?

Answer

No. The title IV-E agency is not required to conduct a check of its child abuse and neglect registry before placing a child in the home of a prospective foster or adoptive parent. Rather, a title IV-E agency must check, or request a check of a State or Tribal title IV-E agency-maintained child abuse and neglect registry in each State or Tribal title IV-E agency's service area where the prospective foster and adoptive parents and any other adult(s) living in the home have resided in the preceding five years before the title IV-E agency can license or approve a prospective foster or adoptive parent.

Although the title IV-E agency may place a child in the home prior to completing the required registry checks, doing so prior to completing thorough safety checks has serious practice implications. Further, title IV-E agencies must still meet other Federal requirements to claim title IV-E foster care maintenance or adoption assistance. Therefore, title IV-E foster care maintenance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any prohibited felonies in section 471(a)(20)(A)(i) and (ii) of the Act, and the foster family home is licensed. Similarly, title IV-E adoption assistance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any of the prohibited felonies, and all other adoption assistance criteria are met.

Source/Date

1/29/2007; revised 9/30/26

Legal and Related References

Social Security Act § section 471(a)(20)(C)

Question 9. Does section 471(a)(20) of the Social Security Act (the Act) require the title IV-E agency to conduct a child abuse and neglect registry check on an adult who moves into a licensed/approved foster or adoptive home?

Answer

No. The new child abuse and neglect registry check requirements in section 471(a)(20) of the Act apply to "prospective" adoptive or foster parents, as well as all adults living in the prospective family's home. Thus, once a foster or adoptive home has been approved or licensed by the State or Tribal title IV-E agency, section 471(a)(20) of the Act does not require the title IV-E agency to complete additional child abuse and neglect checks on other adult(s) living in the home.

Source/Date

1/29/2007; revised 9/30/26

Legal and Related References

Social Security Act § section 471(a)(20)

Question 10. Please explain the criminal background check requirements of section 471(a)(20)) of the Act and to whom they apply.

Answer

Section 471(a)(20)(A) of the Act places requirements on the title IV-E agency as a condition of the title IV-E plan and places additional requirements for claiming title IV-E foster care maintenance and adoption assistance payments on behalf of a title IV-E eligible child. As a condition of the title IV-E plan, the title IV-E agency must have procedures for criminal background checks, including fingerprint-based criminal record checks of the national crime information databases for prospective foster and adoptive parents. This requirement does not include checks for any member of the household over the age of 18. (Note: Section 106(b)(2)(B)(xxii) of the Child Abuse Prevention and Treatment Act (CAPTA) requires that States have provisions and procedures that require criminal background checks for prospective foster and adoptive parents and other adults residing in the household that meet the title IV-E criminal background check requirements in section 471(a)(20) of the Act). The title IV-E agency and its agents, must conduct the checks and otherwise apply the procedures for prospective parents whom it will license or approve to care for a

participant in the title IV-B/IV-E program (section 471(a)(20)(A) of the Act). Agents of the title IV-E agency include a State or Tribal licensing authority and any other agency that is under contract with the title IV-E agency to issue licenses or approvals.
Further, in order for a title IV-E agency to claim title IV-E foster care maintenance or adoption assistance payments for an otherwise title IV-E eligible child, the criminal records check must reveal that the prospective foster or adoptive parent has not been convicted of the prohibited felonies, and in the case of a foster family home, the home must be licensed or approved (section 471(a)(20)(A)(i) and (ii) of the Act). This applies regardless of the entity that licenses or approves the prospective parent (e.g., a private adoption agency, an Indian tribe either with or without an agreement under section 472(a)(2)(B)(ii) of the Act, or a private child placing agency not under contract with the title IV-E agency).
In addition, the title IV-E agency must check any child abuse and neglect registry maintained by a State or Tribe in which the adults living in the home of a prospective foster or adoptive parent have resided during the preceding five years, for any prospective parent who: 1) will be licensed or approved by the title IV-E agency, another public agency operating the title IV-E program pursuant to an agreement with the title IV-E agency (section 472(a)(2)(B)(ii) of the Act), or any other agency that is under contract with the title IV-E agency to issue licenses or approvals; and, 2) will provide care for a child who is a participant in the title IV-B/IV-E programs (section 471(a)(20)(C)(i) of the Act).

Source/Date

13-Apr-07; Preamble to the Final Rule (65 FR 4020) (1/25/00); revised 9/30/26

Legal and Related References

Social Security Act - section 471(a)(20)(A) and 471(a)(20)(C); 45 CFR 1356.30

Question 12. May a title IV-E agency develop alternative procedures for background checks that do not include a fingerprint-based check of the national crime information databases (NCID) or a check of all State or Tribal title IV-E agency-maintained child abuse and neglect registries in which a prospective foster or adoptive parent and other adults living in the house have resided in the past five years?

Answer

A title IV-E agency's general procedures for criminal background checks of prospective foster and adoptive parents prior to licensing or approval as specified in section 471(a)(20) of the Social Security Act, must include conducting fingerprint-based checks of the NCID. The title IV-E agency must also check its own State or Tribe-maintained child abuse and neglect registry, if it has one, and other State or

Tribal title IV-E agency-maintained registries in which adult members of the prospective foster or adoptive parent's home have resided in the last five years. See the Child Welfare Policy Manual (CWPM) Section 8.4F Q/A #16 for case-by-case situations in which title IV-E agencies may use an alternative method to obtain fingerprint-based checks of the NCID.

Source/Date

7/2/2007; revised 9/30/26

Legal and Related References

Social Security Act - section 471(a)(20); CWPM Section 8.4F #16

Question 13. If a foster parent decides to become an adoptive parent, would the background check provisions of section 471(a)(20) of the Social Security Act (the Act) apply if the foster parent had already undergone the checks to be licensed as a foster parent?

Answer

It depends. Some prospective parents are "dually licensed" to be a foster parent and/or an adoptive parent and therefore do not need a separate license or approval once initially licensed or approved. In this circumstance, the parent providing foster care does not become a "prospective" adoptive parent and the title IV-E agency would not be required by Federal law to conduct the background checks in section 471(a)(20) of the Act again.
However, if a State or Tribe has separate licenses or approvals for foster and adoptive parents, then the title IV-E agency must comply with section 471(a)(20) of the Act prior to licensing or approving the foster parent as an adoptive parent. Consistent with the Child Welfare Policy Manual 8.4F Q/A #14, if the title IV-E agency has established an appropriate timeframe that a background check remains valid and such timeframe has not expired for the foster parent seeking approval as an adoptive parent, the title IV-E agency can consider the requirement of section 471(a)(20) of the Act met without conducting a new background check.

Source/Date

7-Apr-08 revised 9/30/26

Legal and Related References

Social Security Act - section 471(a)(20)

Question 14. May a title IV-E agency establish an appropriate timeframe for when a fingerprint-based check of the national crime information databases

or a child abuse and neglect registry check must be completed or can remain valid to meet the purposes in section 471(a)(20) of the Social Security Act (the Act)?

Answer

Yes. The statute requires only that the background checks for prospective foster and adoptive parents be conducted prior to licensure or approval (section 471(a)(20) of the Act). Since the statute does not prescribe a specific timeframe for when such checks must be completed or remain valid, the title IV-E agency has the discretion to establish timeframes as it sees fit, so long as the background checks are completed prior to licensure or approval.

Source/Date

13-Apr-07; revised 9/30/26

Legal and Related References

Social Security Act - section 471(a)(20)

Question 15. May a title IV-E agency determine that it will not license or approve a foster or adoptive parent who has a criminal record other than one specified in section 471(a)(20)(A)(i) or (ii) of the Social Security Act (the Act)?

Answer

Yes. The title IV-E agency has the discretion to establish more restrictive criteria for foster or adoptive home licensure or approval than described in section 471(a)(20)(A)(i) or (ii) of the Act.

Source/Date

13-Apr-07; revised 9/30/26

Legal and Related References

Social Security Act - section 471(a)(20)(A)

Question 16. How should a title IV-E agency implement the child abuse and neglect registry checks requirement under section 471(a)(20)(C) of the Social Security Act (the Act), including requesting information from another title IV-E agency, responding when another title IV-E agency does not provide the requested information, and responding to incoming request from another title IV-E agency?

Answer

Section 471(a)(20)(C)(i) of the Act requires the title IV-E agency to request and check a child abuse and neglect registry maintained by another title IV-E agency in which prospective foster and adoptive parents and other adults living in the home have resided within the last five years.

A title IV-E agency may not approve or license a prospective foster or adoptive home pursuant to section 471(a)(20)(C)(i) of the Act without the results of a child abuse and neglect registry check maintained by another title IV-E agency where the prospective parents or other adults in the home have lived in the past five years, unless the results are not provided because the other title IV-E agency does not maintain a registry. The requirement is met for the requesting title IV-E agency once the registry information is received from the other title IV-E agency or when the request is denied because the other title IV-E agency does not maintain a registry. If the request is denied because the other title IV-E agency does not maintain a registry, the title IV-E agency may determine whether to license or approve the prospective foster or adoptive parent in the absence of the information.

The law does not require a title IV-E agency that does not maintain a child abuse and neglect registry to develop one, nor does it require a title IV-E agency that currently has a registry to maintain it in perpetuity. If a title IV-E agency has verified that another title IV-E agency does not maintain a child abuse and neglect registry, the requirement in section 471(a)(20)(C)(i) of the Act to request a check for child abuse and neglect registry information from that title IV-E agency is inapplicable.

A title IV-E agency that maintains a child abuse and neglect registry must comply with another title IV-E agency 's request to check information on a prospective foster or adoptive parent and other adult household members consistent with section 471(a)(20)(C)(i) and (ii) of the Act. The request must be made by the title IV-E agency or other licensing authority requiring the check directly to the other title IV-E agency where the adult had lived, and the title IV-E agency that maintains the child abuse and neglect registry must respond directly to the requesting title IV-E agency or other licensing authority rather than to the prospective parent or other adult living in the household. The title IV-E agency may establish procedures for releasing registry information, including requiring an affidavit, notarized release, or other form of consent from the adult to release such information, and may charge fees for access to the information. As long as the title IV-E agency that maintains the registry enables another title IV-E agency to request and check information in the registry, the title IV-E agency is meeting the requirement in section 471(a)(20)(C)(ii) of the Act. Any fees paid by the requesting title IV-E agency to obtain access to information in a child abuse and neglect registry maintained by another title IV-E agency pursuant to section 471(a)(20)(C)(i) of the Act may be reimbursed as direct title IV-E administrative costs.

A title IV-E agency that believes that another title IV-E agency that maintains a registry is not responding appropriately to an information request should contact its ACF Regional Office. ACF may conduct a partial review pursuant to 45 CFR

1355.32(d) to determine the title IV-E agency 's compliance with the title IV-E plan. For incoming requests under section 471(a)(20)(C)(ii) of the Act, the title IV-E agency has the discretion to determine what information to release to a requesting title IV-E agency on the prospective foster or adoptive parent or any adult living in the home of such prospective parent, unless or until regulations are issued on this provision. We encourage title IV-E agencies to be as forthcoming as possible to permit requesting title IV-E agencies to make appropriate decisions about approval or licensure of prospective foster or adoptive parents.

Source/Date

13-Apr-07; revised 9/30/26

Legal and Related References

Social Security Act - section 471(a)(20)(C); Public Law 109-248 § section 152(c); 45 CFR 1355.32(d)

Question 23. If the child will not receive title IV-E foster care maintenance or adoption assistance payments, must a prospective foster parent or adoptive parent who will be licensed or approved by an Indian tribe meet the requirements of 471(a)(20) of the Social Security Act (the Act)?

Answer

No. The requirement at section 471(a)(20) of the Act is applicable to the State's title IV-E plan, with some additional conditions for claiming title IV-E payments and therefore does not extend to Indian tribal licenses or approvals if the child will not receive title IV-E foster care maintenance or adoption assistance payments.

Source/Date

13-Apr-07

Legal and Related References

Social Security Act - sections 471(a)(20)

Question 24. Section 471(a)(20)(A)(i) and (ii) of the Social Security Act (the Act) prohibit a State from claiming title IV-E foster care maintenance payments or adoption assistance payments when prospective foster or adoptive parents have been convicted of certain crimes. Are there any exemptions or exceptions permitted from this requirement, such as the State or Indian tribe under a title IV-E agreement with the State considers the prospective parent rehabilitated or the placement is in the best interests of the child?

Answer

No, there are no exceptions to the requirements at section 471(a)(20)(A)(i) and (ii) of the Act, once the provision is effective in the State. The State, or an Indian tribe under a title IV-E agreement (pursuant to section 472(a)(2)(B)(ii) of the Act) has the discretion to place the child in a home where prospective parents have been convicted of such crimes. However, the State or Tribe may not claim title IV-E foster care maintenance or adoption assistance payments in such cases.

Source/Date

13-Apr-07

Legal and Related References

Social Security Act - sections 471(a)(20)(A) and 472(a)(2)(B)(ii)

Question 30. Some prospective foster or adoptive parents have unreadable or missing fingerprints due to their age, disability, or occupation. How can a State comply with section 471(a)(20)(A) of the Social Security Act (the Act) in such cases?

Answer

Section 471(a)(20)(A) of the Act requires States to have procedures for conducting fingerprint-based checks of the national crime information databases (NCID) for certain prospective foster and adoptive parents (see CWPM 8.4F Q/A #9). Those procedures must provide for the State to obtain fingerprints of all such prospective parents and submit them to the NCID. We are aware that in some limited, case-specific circumstances, a State may not be able to: 1) obtain an individual's fingerprints as a result of the individual's disability; or, 2) obtain legible fingerprints due to low quality fingerprints, as a result of age, occupation or otherwise, thereby making it impossible for the NCID to provide results. Establishing such procedures under the below circumstances satisfies section 471(a)(20)(A) of the Act: Inability to obtain fingerprints due to a physical disability. The State must comply with section 471(a)(20)(A) of the Act by developing and utilizing a procedure to conduct a name-based check of the NCID or it may develop and utilize another appropriately comprehensive criminal background check process. We expect the State to reserve and clearly state in writing that this alternative procedure is for limited and case-specific situations, such as when a fingerprint specialist has documented that the prospective parent's disabling condition prevents fingerprinting, or the individual does not have fingers. Inability to obtain results due to low quality fingerprints. The State must comply with section 471(a)(20)(A) of the Act by obtaining and submitting the individual's fingerprints to the NCID. If the individual's fingerprint impressions are rejected by the NCID, the State may instead implement an alternate procedure to

conduct a name-based check of the NCID or to use another appropriately comprehensive criminal background check process. We expect the State to reserve and clearly state in writing that this alternate procedure is used only in the limited and case-specific situation described above. It is not acceptable for the State to utilize an alternative background check process when fingerprints impressions are of low quality due to the State's lack of technological capacity or use of improper techniques. The Criminal Justice Information Services (CJIS) Division of the Department of Justice and the State's CJIS Systems Officer can assist the State in determining appropriate techniques and technologies to use to take legible fingerprints, including procedures for individuals with abnormalities of the fingers or hands.

Source/Date

7/2/2007

Legal and Related References

Social Security Act § section 471(a)(20)(A)

Question 32. Upon the dissolution of an adoption or death of the adoptive parents of a child receiving title IV-E adoption assistance, must the child's new prospective adoptive parents meet the background check requirements of section 471(a)(20) of the Social Security Act (the Act) before they can receive IV-E adoption assistance if that subsequent adoption will be achieved through a private or independent entity?

Answer

Yes. In order for the title IV-E agency to claim title IV-E adoption assistance payments in an independent or private adoption for an otherwise eligible child, the background checks specified in section 471(a)(20)(A) of the Act must be conducted. Furthermore, the checks must reveal that the prospective adoptive parent has not been convicted of one of the prohibited felonies consistent with section 471(a)(20)(A)(i) and (ii) of the Act.

Source/Date

12/6/2007; revised 9/30/26

Legal and Related References

Social Security Act - section 471(a)(20)(A); Child Welfare Policy Manual Section 8.4F Q/A #9 and 10

Question 33. Are the criminal background check requirements at section 471(a)(20)(A) of the Social Security Act (the Act) applicable to all international, private or independent adoptions?

Answer

No, the criminal background checks pursuant to section 471(a)(20)(A) of the Act are only applicable in circumstances in which the child who is the subject of an international, private or independent adoption will receive title IV-E adoption assistance. This is because section 471(a)(20)(A) of the Act generally applies to prospective parents whom the State or its agents will license or approve to care for a participant in the State's title IV-B/IV-E program (see the Child Welfare Policy Manual Section 8.4F Q/A #9). In order for a State to claim title IV-E adoption assistance payments for an otherwise eligible child, the State must conduct a criminal background check that reveals that the prospective adoptive parent has not been convicted of one of the prohibited felonies consistent with section 471(a)(20)(A)(i) and (ii) of the Act. Therefore, if a child'subject to an international, private or independent adoption is otherwise eligible for title IV-E adoption assistance, the State can claim reimbursement under title IV-E only after the background checks specified in section 471(a)(20)(A) of the Act have been conducted and the results meet the conditions in section 471(a)(20)(A)(i) and (ii) of the Act.

Source/Date

4/25/2008

Legal and Related References

Social Security Act - section 471(a)(20)(A); Child Welfare Policy Manual section 8.4F Q/A #9

Question 34. Under what circumstances may the title IV-E agency claim title IV-E foster care maintenance payments (FCMP) on behalf of a child who is placed in a child care institution or family foster home based on the criminal record check procedures under 471(a)(20)(A) or (D) of the Social Security Act (the Act)? Can a title IV-E agency allow adults to work in a childcare institution before the results of their checks have been received?

Answer

Consistent with section 471(a)(20)(A) and (D) of the Act, a title IV-E agency may claim title IV-E FCMPs **only for the days** that the results of the criminal record checks have been received as described in the Act.
For a child placed in a child care institution, a title IV-E agency may claim title IV-E FCMPs on behalf of an otherwise eligible child **only for the days** the results of the criminal record checks have been received for all of the adults working in the child

care institution. The procedures under 471(a)(20)(D) of the Act do not govern when an employee may be hired to work in a child care institution or whether an employee may work in a child care institution at a certain point in time (e.g., before the results of the criminal record checks are received), instead they govern when a title IV-E agency may claim FCMPs.
For a child placed in a foster family home, title FCMPs may be paid on behalf of an otherwise eligible child placed **only for the days** that the foster parents' criminal records check have been completed and the records reveal that the parents did not commit any prohibited felonies described in section 471(a)(20)(A) (i) and (ii) of the Act, and the foster family home is licensed (see CWPM 8.4F, Q/A #8).

Source/Date

8/22/2019; 12/8/2022; revised 9/30/26

Legal and Related References

Social Security Act - section 471(a)(20)(A) and (D); CWPM §8.4F, Q/A #8

Question 36. Must a title IV-E agency's alternative procedures for criminal record checks be fingerprint-based under section 471(a)(20)(D) of the Social Security Act (the Act)?

Answer

No. The Act does not require that the title IV-E agency's alternative procedures for criminal record checks be fingerprint-based. See ACYF-CB-PI-18-07 for further information on alternative procedures.

Source/Date

8/22/2019

Legal and Related References

Social Security Act - section 471(a)(20)(D)

8.4G. TITLE IV-E, General Title IV-E Requirements, Fair Hearings

Question 1. Do the regulations at 45 CFR 205.10 require fair hearings for appeals related to services as well as financial claims?

Answer

Yes. The regulations at 1355.30 (p)(2) provide that the procedures for hearings found in 45 CFR 205.10 shall apply to all programs funded under titles IV-B and IV-E of the Social Security Act. Fair hearings in relation to services as well as financial claims

are therefore covered under this regulation. The process for fair hearings under section 205.10 is essentially the same for services hearings as for financial hearings. However, because the substantive portion of the regulations provides no examples of service issues, the title IV-E agency has the option of modifying the context of the hearing to accommodate services program complaints. The hearing process under either situation requires that recipients be advised of their right to a hearing, that they may be represented by an authorized representative, and that there be a timely notice of the date and place of the hearing.

The following paragraphs, excerpted from the now obsolete section 1392.11, may be used as guidance for the hearings related to services issues. The title IV-E agency "must have a provision for a fair hearing, under which applicants and recipients may appeal denial of or exclusion from a service program, failure to take account of recipient choice of service or a determination that the individuals must participate in the service program. The results of appeals must be formally recorded and all applicants and recipients must be advised of their right to appeal and the procedures for such appeal. There must be a system through which recipients may present grievances about the operation of the service program."

Examples of service issues in title IV-E that might result in a grievance or request for a hearing include: Agency failure to offer or provide appropriate pre-placement preventive services or reunification services; Agency may not have placed child in the most family-like setting in close proximity to his parents; Parents were not informed of their rights to participate in periodic administrative reviews; Agency failed to provide services agreed to in case plan; A request for a specific service is denied or not acted upon; and Agency failure to carry out terms of adoption assistance agreements.

Source/Date

ACYF-CB-PIQ-83-04 (10/26/83) (revised 6/6/13)

Legal and Related References

45 CFR 1355.30 (k), and (p), 205.10 and 1392.11

Question 2. Please explain the circumstances in which adoptive parents have the right to a fair hearing.

Answer

Federal regulations at 45 CFR 1356.40(b)(1) require that the adoption assistance agreement be signed and in effect at the time of, or prior to, the final decree of adoption. However, if the adoptive parents feel they wrongly have been denied benefits on behalf of an adoptive child, they have the right to a fair hearing. Some allegations that constitute grounds for a fair hearing include: relevant facts

regarding the child were known by the title IV-E agency or child-placing agency and not presented to the adoptive parents prior to the finalization of the adoption; denial of assistance based upon a means test of the adoptive family; adoptive family disagrees with the determination by the title-IV-E agency that a child is ineligible for adoption assistance; failure by the agency to advise potential adoptive parents about the availability of adoption assistance for children in the foster care system; decrease in the amount of adoption assistance without the concurrence of the adoptive parents; and denial of a request for a change in payment level due to a change in the adoptive parents circumstances. In situations where the final fair hearing decision is favorable to the adoptive parents, the agency can reverse the earlier decision to deny benefits under title IV-E. If the child meets all the eligibility criteria, Federal Financial Participation (FFP) is available, beginning with the earliest date of the child's eligibility (e.g., the date of the child's placement in the adoptive home or finalization of the adoption) in accordance with Federal and State/Tribal statutes, regulations and policies.

The right to a fair hearing is a procedural protection that provides due process for individuals who claim that they have been wrongly denied benefits. This procedural protection, however, cannot confer title IV-E benefits without legal support or basis. Accordingly, FFP is available only in those situations in which a fair hearing determines that the child was wrongly denied benefits and the child meets all Federal eligibility requirements. For example, if a fair hearing officer determines that a child would have been eligible for Supplemental Security Income (SSI) prior to the finalization of the adoption, FFP is available only if there had been eligibility documentation for the child from the Social Security Administration, or its designee at that time. Accordingly, if a fair hearing officer decides that a child'should have received adoption assistance, but, in fact, the child does not meet all the Federal eligibility criteria, the title IV-E agency cannot claim FFP under title IV-E for the child.

Source/Date

ACYF-CB-PA-01-01 (1/23/01) (revised 6/6/13)

Legal and Related References

Social Security Act -sections 471(a)(12) and 473

Question 3. Do foster parents, relative caregivers, or prospective adoptive parents have a right to a fair hearing under section 471(a)(12) of the Social Security Act (the Act) to challenge a title IV-E agency’s placement decision? In particular, do the provisions for relative preference at section 471(a)(19) of the Act and an opportunity to be heard for foster parents and relative caretakers at section 475(5)(G) of the Act create fair hearing rights?

Answer

No. The title IV-E agency determines where and with whom the child will be placed by virtue of its placement and care responsibility. Nothing in Federal law or regulations requires the title IV-E agency to provide an individual with an opportunity for a fair hearing with regard to agency placement decisions, including pre-adoptive foster care placement decisions.
The fair hearing provision at section 471(a)(12) of the Act provides an opportunity for a fair hearing to any individual whose claim for benefits available pursuant to title IV-E is denied or not acted upon with reasonable promptness. The benefit under the title IV-E foster care maintenance payments program is provided to eligible children. The fair hearings provisions are directed to individuals who believe that they have been denied a benefit to which they are entitled, such as the denial of adoption assistance (see 45 CFR 205.10(a)(5) and Child Welfare Policy Manual Section 8.4). The provisions at sections 471(a)(19) and 475(5)(G) of the Act have no relation to or bearing on the fair hearing requirements.

Source/Date

06/09/04 (revised 6/6/13); revised 9/30/26

Legal and Related References

Section 471(a)(12) of the Social Security Act, 45 CFR 205.10 and 1355.30(p)(2).

Question 5. Is the title IV-E agency required to conduct the fair hearings mandated at section 471(a)(12) of the Social Security Act (the Act), or may it delegate the process to another agency?

Answer

Although section 471(a)(12) of the Act requires that the title IV-E agency provide for an opportunity for a fair hearing "before the State agency," the regulation at 45 CFR 1355.30(p)(2) cross references 45 CFR 205.10. The latter citation at 45 CFR 205.10(a)(9) authorizes the hearings to "be conducted by an impartial official(s) or a designee of the agency." Thus, an agency other than the title IV-E agency may be designated to conduct hearings and make recommendations to the title IV-E agency. The provision at 45 CFR 205.100(b)(1), however, prohibits officials of the title IV-E agency from delegating their authority for exercising administrative discretion in the "administration or supervision of the plan." Thus, although the title IV-E agency may delegate the fair hearing function pursuant to the title IV-E requirement, the title IV-E agency must make the final decision.

Source/Date

7/6/05 (revised 6/6/13)

Legal and Related References

Social Security Act -- Sections 471(a)(12), 45 CFR Parts 1355.30(p)(2), 205.10(a)(9) and 205.100(b)(1)

8.4I. TITLE IV-E, General Title IV-E Requirements, Social Security Numbers

Question 1. What is the policy regarding a Social Security Number for persons eligible under title IV-E?

Answer

Section 472 of the Social Security Act does not require that an otherwise eligible child apply for or furnish to the title IV-E agency a Social Security Number in order to be eligible for the title IV-E foster care maintenance and adoption assistance programs.

Source/Date

ACYF-CB-PA-86-01 (2/25/86) (revised 6/6/13)

Legal and Related References

Social Security Act - section 472

Question 2. How should title IV-E agencies reconcile the inconsistent requirements for furnishing social security numbers (SSN) under Medicaid and title IV-E?

Answer

Changes brought about by the Deficit Reduction Act of 1984 (DEFRA) (Public Law 98-369) resulted in an OHDS Policy Announcement which stated that otherwise eligible children are not required to apply for or furnish a Social Security Number (SSN) in order to be eligible for the title IV-E Foster Care Maintenance Payments Program or the Adoption Assistance Program.

However, title XIX program regulations at 42 CFR 435.910 were amended to require, effective April 1, 1985, that each individual (including children)

requesting Medicaid services furnish his/her SSN as a condition of eligibility for Medicaid. (It should be noted that if an individual needs emergency medical care, medical assistance cannot be denied if the individual has not previously applied for a SSN.)

Children who are eligible for title XIX Medicaid on the basis of their eligibility under title IV-E must furnish a SSN as a condition of eligibility for Medicaid, even though a SSN is not required under title IV-E.

Source/Date

ACYF-CB-PA-87-01 (1/5/87) (revised 6/6/13)

Legal and Related References

Social Security Act - sections 472 (h), 473 (b), 1102 and 1137; Public Law 98-369; 42 CFR 435.910

8.5. Guardianship Assistance Program

Question 1. Are children that are receiving title IV-E guardianship assistance payments eligible for Medicaid?

Answer

Children who receive title IV-E kinship guardianship assistance payments are categorically eligible for title XIX pursuant to section 473(b)(3)(C) in the State where such child resides.

Source/Date

8/12/2009

Legal and Related References

Social Security Act § section 473(b)(3)(C)

Question 2. Do the fair hearing requirements in section 471(a)(12) and 45 CFR 205.10 apply to the title IV-E Guardianship Assistance Program (GAP)?

Answer

Yes. The title IV-E agency must provide an opportunity for a fair hearing to any individual whose claim for kinship guardianship assistance available under title IV-E is denied or is not acted upon with reasonable promptness per regulations in 45 CFR 205.10.

Source/Date

8/12/2009

Legal and Related References

Social Security Act § section 471(a)(12); 45 CFR 205.10; 45 CFR 1355.30(p)(2)

Question 4. Which title IV-E plan requirements apply to the guardianship assistance program?

Answer

The title IV-E plan requirements that are not specifically limited to the title IV-E foster care maintenance payment or adoption assistance programs also apply to the guardianship assistance program under title IV-E. These requirements are in sections 471(a)(2) through 471(a)(9); 471(a)(12), 471(a)(13), 471(a)(20)(C), 471(a)(25), 471(a)(26), and 471(a)(30) through (a)(32) of the Social Security Act, and address topics such as agency organization and program administration, program audits and monitoring, confidentiality of information, fair hearings, interstate placements, school attendance and sibling placement. Further, Departmental regulations at 45 CFR 1355.30 apply to the title IV-E guardianship assistance program to the same extent that they apply to the title IV-E foster care maintenance payments and adoption assistance programs.

Source/Date

8/12/2009

Legal and Related References

Social Security Act § sections 471(a)(2) § (9), 471(a)(12) § (13), 471(a)(20)(C), 471(a)(25) § (26), 471(a)(30) § (32); 45 CFR 1355.30

Question 6. Is a title IV-E agency obligated to reimburse the non-recurring expenses (NREs) (e.g., legal fees) if the legal guardianship is never finalized?

Answer

Yes. A title IV-E agency is obligated to reimburse NREs incurred pursuing legal guardianship, even if the guardianship is never finalized, pursuant to section 473(d)(1)(B)(iv) of the Social Security Act (the Act). A kinship guardianship assistance agreement must be in place with a prospective relative guardian prior to the establishment of the legal guardianship and must specify, among other things, that the title IV-E agency will pay the total cost of NREs associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed $2,000 (section 473(d)(1)(B)(iv) of the Act). A title IV-E agency may claim Federal financial participation at the 50 percent rate for NREs incurred pursing legal guardianship per section 474(a)(5) of the Act.

Source/Date

10/14/2011

Legal and Related References

Social Security Act § sections 473(d)(1)(B)(iv) and 474(a)(5)

Question 8. Are title IV-E agencies required to have a successor legal guardian option?

Answer

Yes. Title IV-E agencies with approved title IV-E guardianship assistance plans must include the successor legal guardian provision as part of their guardianship assistance program, and must amend their title IV-E plans per instructions in ACYF-CB-PI-14-06. A successor guardian must enter into a guardianship assistance agreement that meets the requirements in section 473(d)(1) of the Act. The title IV-E agency is also required to pay non-recurring expenses associated with obtaining legal guardianship of the child on behalf of the successor guardian. The guardianship assistance agreement must specify that the agency will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child to the extent the total cost does not exceed $2,000, per section 473(d)(1)(B).

Source/Date

ACYF-CB-PI-14-06 (11/21/14); 2/18/2015; 8/26/2015; revised 9/30/26

Legal and Related References

Social Security Act – sections 473(d)(1), 473(d)(3)(C)

8.5B. Guardianship Assistance Program, Eligibility

Question 2. If the relative guardian receiving title IV-E Guardianship Assistance Program (GAP) payments on behalf of a child dies or is no longer able to care for the child, does the child retain eligibility for title IV-E foster care maintenance payments if he returns to foster care?

Answer

No. There is no provision in section 472 of the Social Security Act (the Act) for the child to retain title IV-E eligibility for foster care maintenance payments if he re-enters foster care from a legal guardianship. A child in this situation would need to meet the eligibility criteria in section 472(a) through (c) of the Act to receive title IV-E foster care maintenance payments in the subsequent foster care placement.

Source/Date

5/29/2009

Legal and Related References

Social Security Act § sections 472(a) through (c)

Question 6. Please provide additional guidance on what counts as a "consecutive month" for purposes of determining eligibility for title IV-E kinship guardianship assistance payments.

Answer

One of the eligibility criteria for title IV-E kinship guardianship assistance payments is that the child must be eligible for title IV-E foster care maintenance payments for at least a consecutive six-month period while the child resided in the prospective relative guardian's licensed or approved foster family home.

A month may be counted in the six consecutive month period if the child met all of the title IV-E foster care maintenance payment eligibility criteria for at least one day of that particular month while in the prospective relative guardian's home, and is therefore eligible for a title IV-E foster care maintenance payment for at least a portion of that month.

Additionally, a title IV-E agency may count a period of up to 60 days toward the consecutive six-month requirement when the prospective guardian meets all requirements for licensure or approval but issuing the actual license or approval is delayed. This is because the definition of “foster family home” in 45 CFR 1355.20(a) allows title IV-E agencies to “claim title IV-E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.” The 60-day period begins when the state or tribal agency receives all of the documentation required to issue a license or approval, based on full compliance with the agency's licensing standards. During this 60-day period, each month (or partial month) counts toward the six-month requirement as long as all other title IV-E eligibility requirements are met.

Source/Date

2/24/2011 (Updated 6/8/2026)

Legal and Related References

Social Security Act § section 472, 473(d)(3)(A)(i)(II), 45 CFR 1355.20(a), ACYF-CB-PI-10-11, CWPM 8.3A8c, Q/A #6

Question 7. Must a title IV-E agency that takes the option to extend the IV-E programs to older youth ages 19, 20, or 21 per section 475(8)(B) of the Social Security Act and has opted to provide title IV-E guardianship assistance provide title IV-E guardianship assistance payments to the older youth who remains eligible when the agreement expires?

Answer

Yes. A title IV-E agency must provide extended guardianship assistance payments to an older youth when his title IV-E guardianship assistance agreement expires, if the youth remains eligible for the guardianship assistance payments. This includes youth under a title IV-E guardianship assistance agreement in place prior to the agency taking the option to extend the title IVE programs.

Source/Date

5/4/2011

Legal and Related References

Social Security Act § sections 475(8)(B) and 473(d)

8.5B.1. Guardianship Assistance Program, Eligibility, Siblings

Question 1. If a title IV-E agency operates the Guardianship Assistance Program (GAP), is it mandatory or optional for the agency to provide a GAP payment for a sibling of the child who is eligible for a GAP payment?

Answer

It is optional. Section 473(d)(3)(B) of the Social Security Act (the Act) permits a title IV-E agency to provide kinship guardianship assistance payments on behalf of a sibling to a child eligible per section 473(d)(3)(A) of the Act if the sibling is placed in the same kinship guardianship arrangement in accordance with section 471(a)(31) of the Act.

Source/Date

5/29/2009

Legal and Related References

Social Security Act § sections 471(a)(31) and 473(d)(3)

Question 2. May a title IV-E agency provide guardianship assistance payments for the siblings of an eligible child?

Answer

The title IV-E agency may make kinship guardianship assistance payments pursuant to a kinship guardianship agreement on behalf of each sibling of an eligible child who is placed with the same relative under a kinship guardianship arrangement if the title IV-E agency and the relative guardian agree that the placement is appropriate (section 473(d)(3)(B) of the Social Security Act (the Act)). Title IV-E nonrecurring expenses are also available for siblings so placed. The Act does not require that the title IV-E agency place siblings with the relative guardian of the child'simultaneously with the title IV-E eligible child for the siblings to qualify for payment under section 473(d)(3)(B) of the Act. The sibling does not have to meet the eligibility criteria in section 473(d)(3)(A) of the Act to receive kinship guardianship assistance payments or for the legal guardian to be reimbursed for the nonrecurring expenses related to the costs of the legal guardianship.

Source/Date

8/12/2009

Legal and Related References

Social Security Act § section 473(d)(3)

8.5B.2. Guardianship Assistance Program, Eligibility, Guardian requirements

Question 1. Describe the criminal records check requirements for relative guardians.

Answer

Before a relative guardian may receive title IV-E kinship guardianship assistance payments on behalf of a child, the title IV-E agency must conduct fingerprint-based criminal records checks of the national crime information databases (NCID) of the relative guardian(s) and child abuse and neglect registry checks of relative guardian(s) and other adults living in the guardian's home consistent with section 471(a)(20)(C) of the Social Security Act (the Act).
Consistent with existing policy, if the title IV-E agency has established an appropriate timeframe that the NCID and child abuse and neglect registry background checks remain valid and such timeframe has not expired for the foster parent who previously received the background checks and is now seeking to become a relative guardian, the agency can consider the requirement of section 471(a)(20) of the Act met without conducting new background checks (Child Welfare Policy Manual 8.4F Q/A #13).

Source/Date

8/12/2009

Legal and Related References

Social Security Act § section 471(a)(20); Child Welfare Policy Manual section 8.4F Q/A #13

Question 2. Are fingerprint-based criminal background check requirements in 471(a)(20)(C) of the Act required for successor legal guardians named in the guardianship assistance agreement per section 473(d)(3)(C) of the Act? If so, at what point must this be completed?

Answer

Yes. The criminal background check requirements in section 471(a)(20)(C) of the Act apply to the successor legal guardian. Before the successor legal guardian may receive a title IV-E payment, the title IV-E agency must: 1) conduct fingerprint-based criminal records checks of the national crime information databases (NCID) of the guardian(s) and 2) child abuse and neglect registry checks of guardian(s) and other adults living in the guardian's home consistent with section 471(a)(20)(C) of the Social Security Act (the Act). See CWPM 8.5B.2 Q/A #1 for more information.

Source/Date

2/18/2015

Legal and Related References

Social Security Act ? sections 471(a)(20)(C), 473(d)(3)(C)

Question 3. Must the successor legal guardian named in the guardianship assistance agreement be a "relative" as with the original guardian?

Answer

No. The statute at 473(d)(3)(C) of the Act provides that the child's eligibility "...shall not be affected by reason of replacement of the relative guardian with a successor legal guardian named" in the agreement.

Source/Date

2/18/2015

Legal and Related References

Social Security Act – section 473(d)(3)(C)

8.5C. Guardianship Assistance Program, Payments

Question 1. May a title IV-E agency operating a Guardianship Assistance Program (GAP) set a different payment ceiling for payments under the GAP than it sets for the Adoption Assistance Program?

Answer

Yes. However, neither the GAP payment nor the adoption assistance payment can exceed the amount of the foster care maintenance payment which the child would have received had the child remained in a foster family home.

Source/Date

5/29/2009

Legal and Related References

Social Security Act § section 473(d)(2)

Question 2. For the Guardianship Assistance Program (GAP), does a title IV-E agency have the flexibility to establish a cap on specific components (e.g., attorney fees) of the nonrecurring expenses that it must pay in connection with obtaining legal guardianship of the child?

Answer

No. Section 473(d)(1)(B)(iv) of the Social Security Act provides that a GAP agreement must specify, among other things, that the title IV-E agency will pay the ?total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed $2,000.? Such language does not permit a title IV-E agency the discretion to establish such a cap on specific items that qualify as nonrecurring expenses.

Source/Date

2/24/2011

Legal and Related References

Social Security Act § section 473(d)(1)(B)(iv)

Question 3. If a relative guardian moves to another country on a temporary or permanent basis with the child for whom he/she is the guardian, would the relative guardian still be eligible to receive title IV-E Guardianship Assistance Program payments directly on behalf of the child?

Answer

Yes. However, the title IV-E agency has the flexibility to include a provision in the GAP agreement to either continue or terminate payments if the guardian and the child move to another country. ACYF-CB-PI-10-11 states that a title IV-E agency has broad discretion to establish how it will evaluate, reevaluate, or terminate GAP agreements. The PI states, "[f]or example, a title IV-E agency may establish agreements that: . . . allow the agency to suspend or discontinue guardianship assistance payments when a certain event occurs." Accordingly, a title IV-E agency may also continue to provide in the GAP agreement that moving to another country is an event that could cause the suspension or discontinuation of GAP payments.

Source/Date

2/24/2011; revised 9/30/26

Legal and Related References

Social Security Act § section 473(d)(1); ACYF-CB-PI-10-11

Question 4. May a title IV-E agency make a title IV-E guardianship assistance payment directly to a youth age 18 or older?

Answer

No. A title IV-E agency must make the payments to the relative guardian(s) per section 473(d)(1)(A) of the Act which specifies that the guardianship assistance agreement is between the agency and the relative guardian(s).

Source/Date

5/6/2013

Legal and Related References

Social Security Act § section 473(d)

Question 5. Must a title IV-E agency discontinue title IV-E guardianship assistance payments provided per section 475(8)(B) of the Act for a youth age 18 or older if the title IV-E agency determines that the youth is no longer meeting the education or employment criteria or is no longer incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency?

Answer

Yes. A title IV-E agency must ensure that a youth receiving a title IV-E guardianship assistance payment under section 475(8)(B) of the Act meets the education and employment criteria or is no longer incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency. Once a title IV-E agency determines that a youth no longer meets the criteria, the agency must discontinue title IV-E guardianship assistance payments for the youth. However, if the youth meets the criteria at a later time, the title IV-E agency may resume payments to the youth.

Source/Date

5/6/2013

Legal and Related References

Social Security Act § section 475(8)(B); ACYF-CB-PI-10-11

8.6. Title IV-E Prevention Services Program

Question 1. Section 479B(c)(1)(E)(i) of the Act provides that in the case of a tribe, organization, or consortium that elects to provide services and programs specified in section 471(e)(1) of the Act under a title IV-E prevention plan, services and programs may be adapted to the culture and context of the tribal communities served. Is this also applicable to a tribe providing title IV-E prevention services and programs under a title IV-E agreement with a state or tribal title IV-E agency (made in accordance with section 472(a)(2)(B)(ii) of the Act)?

Answer

Yes. The Act does not provide an express limitation to the vehicle through which those entities may provide prevention services and programs, therefore, section 479B(c)(1)(E)(i) of the Act applies to any tribe, organization or consortium providing title IV-E prevention services under a title IV-E prevention plan either directly or under a title IV-E agreement under section 472(a)(2)(B)(ii) of the Act. Such tribes may provide title IV-E prevention services and programs adapted to the culture and context of the tribal communities served through the agreement. The title IV-E agency under the title IV-E 472(a)(2)(B)(ii) agreement with the tribe must include the program and describe the adaptations as part of the title IVE agency's five-year title IV-E prevention program plan.

Source/Date

7/30/2024

Legal and Related References

Social Security Act – sections 472(a)(2)(B) and 479B(c)(1)(E)(i)

Question 2. Is a tribe that has an agreement with a title IV-E agency under section 472(a)(2)(B)(ii) of the Act required to use programs that have been rated by the title IV-E Prevention Services Clearinghouse as meeting the practice criteria of promising, supported, or well-supported for title IV-E prevention services or may such tribe determine the practice criteria for services that are adapted to the culture and context of the tribal communities served.

Answer

The Children's Bureau has determined it is not practicable for either tribes directly operating the title IV-E Prevention program or for tribes operating under an agreement under section 472(a)(2)(B)(ii) of the Act to meet the same practice criteria as state title IV-E agencies. Therefore, tribes operating under such an agreement may determine the practice criteria for services that are adapted to the culture and context of the tribal communities served under the agreement. The title IV-E agency that has an agreement with the tribe must include the program and describe the tribal practice criteria in the title IVE agency's five-year title IV-E prevention services and programs plan.

Source/Date

7/30/2024

Legal and Related References

Social Security Act – sections 472(a)(2)(B) and 479B(c)(1)(E)(i)

Question 3. 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?

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).

8.6A. Program Requirements

Question 1. May program expenditures under Medicaid for well-supported programs count toward the 50% requirement in section 474(a)(6)(B)(ii)?

Answer

No, only amounts expended under the title IV-E prevention services program in section 474(a)(6)(A)(i) for the provision of title IV-E prevention services or programs that are provided in accordance with well-supported practices count towards the 50% requirement in section 474(a)(6)(A)(ii).

Source/Date

8/28/2019

Legal and Related References

Social Security Act - sections 474(a)(6)(A)(i) and 474(a)(6)(B)(ii)

Question 2. Are title IV-E agencies and community partners required to inform a family receiving title IV-E prevention services that information about the child, services provided, and outcomes will be collected and shared with ACF?

Answer

No. Nothing in section 471(e) of the Act specifically requires title IV-E agencies to inform families about the details of the data collection and submission requirements of sections 471(e)(4)(E) and 471(e)(5)(B)(x) of the Act. Title IV-E agencies operating a title IV-E Prevention Program are required to collect and report child'specific data title IV-E prevention services (sections 471(e)(4)(E) and 471(e)(5)(B)(x) of the Act). As clarified in Revised Technical Bulletin #1 (published June 30, 2021), the information shared with ACF for the purposes of the title IV-E prevention data collection must use a unique child identifier number that is encrypted in accordance with ACF standards. This ensures the confidentiality of the children and families receiving title IV-E prevention services while allowing ACF to collect and analyze the data as required under 471(e)(6) of the Act.

Source/Date

2/28/2023

Legal and Related References

Social Security Act – sections 471(e), 471(e)(4)(E) and 471(e)(5)(B)(x), and 471(e)(6), and TB #1 revised 6/30/21)

Question 3. Are title IV-E agencies and community partners required to retain information about a child and family receiving title IV-E prevention services for use in future child protective services assessments and investigations, or for future prevention or foster care case planning?

Answer

In section 471(e) of the Social Security Act (Act) there are no requirements for title IV-E agencies to retain information about a child or family for these purposes. However, the title IV-E agency must ensure that it is meeting the title IV-E prevention program requirements related to collecting and maintaining information about children and families, such as the requirements for records maintenance (2 CFR

200.334), data collection (e.g., section 471(e)(4)(E) of the Act), and confidentiality (e.g., section 471(a)(8) of the Act).

Note: This answer previously referenced 45 CFR Part 75. However, 2 CFR Parts 200 and 300 supersede 45 CFR Part 75 effective October 1, 2025.

Source/Date

7/30/2024 (revised 10/1/25, 89 FR 80055, Oct. 2, 2024)

Legal and Related References

Sections 471(a)(8), 471(e), and 471(e)(4)(E); 2 CFR 200.334; 45 CFR 1355.30(i)

Question 4. What information is a title IV-E agency required to obtain from providers of title IV-E prevention services about a child and family receiving those services?

Answer

The title IV-E agency must meet many requirements as part of operating the five-year title IV-E prevention plan. For example, under section 471(e)(5)(B)(ii) of the Act, the title IV-E agency must ensure that it can fulfill its responsibility to examine the prevention plan as necessary based on periodic risk assessments and provide oversight. Another example of a title IV-E agency responsibility is eligibility determinations. Determinations with respect to foster care candidacy for the purposes of eligibility for the title IV-E prevention program must be made by employees of the title IV-E agency, or the employees of another public agency that has entered into an agreement with the title IV-E agency pursuant to section 472(a)(2)(B)(ii) of the Act.

In many states, the title IV-E prevention program is not operated directly by the title IV-E agency. Instead, the title IV-E prevention program is operated by community-based providers under an agreement or contract with the title IV-E agency. While the community-based provider works directly with the family, the title IV-E agency is ultimately responsible for proper operation of the program and must have access to case records, reports or other informational materials as needed to monitor compliance with all title IV-E prevention requirements.

Therefore, the title IV-E agency must obtain information from community-based provides that is necessary to support and monitor the implementation of the title IV-E prevention program requirements and to meet its responsibilities under the program. The title IV-E agency may also need to collect information to meet the state or tribe's own policies and procedures, rules for data collection, audit and quality assurance processes, and requirements to report and investigate suspected child abuse and neglect. The title IV-E agency may also need to gather information to meet other

obligations under title IV-E and other federal laws. For example, under section 471(a)(9) of the Act, the title IV-E agency must "report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under" title IV-B or title IV-E, "which indicate that the child's health or welfare is threatened thereby."

Title IV-E agencies must be cautious that collecting information about children and families served under the title IV-E prevention program through community-based agencies does not lead to oversurveillance of families by the child protective services agencies and/or the title IV-E agency. Further, the title IV-E agency must carefully balance the agency's oversight responsibilities and ensuring family engagement in the program when determining what information must be shared with the title IV-E agency. Families may choose to not participate in title IV-E prevention services if there is a concern that the title IV-E agency will use the information shared with the community-based provider to surveil the family beyond the purposes of the title IV-E prevention program.

Source/Date

7/30/2024

Legal and Related References

Social Security Act sections 471(a)(2)(B)(ii), 471(a)(8), 471(a)(9) and 471(e)(5)(B)(ii); 45 CFR 205.50; 45 CFR 1355.21(a); 45 CFR 1355.30(p)

8.6B. Eligibility

Question 1. Are title IV-E agencies required to have an open child welfare case for a child who is receiving title IV-E prevention services? For example, if an otherwise eligible child is provided title IV-E prevention services by a community provider, does the title IV-E agency need to have an open child welfare case for that child?

Answer

No, there is no requirement in the statute that the title IV-E agency have an open child welfare case for a child who is receiving title IV-E prevention services. The title IV-E agency, however, must still meet the requirements of the agency's title IV-E prevention 5-year plan regarding these children.

For example, section 471(e)(5)(B)(ii) of the Act requires that the agency describe how it will monitor and oversee the safety of children receiving title IV-E prevention services in the 5-year plan. This must include periodic risk assessments throughout the 12-month period, and if the risk of the child entering foster care remains high

despite the provision of the services, the agency must reexamine the child's prevention plan during the 12-month period. While the statute does not specify who must conduct the periodic risk assessments, the agency must ensure that it can fulfill its responsibility to examine the prevention plan as necessary based on these risk assessments and provide oversight.

Another example of a title IV-E agency responsibility is eligibility determinations. Determinations with respect to foster care candidacy for the purposes of eligibility for the title IV-E prevention program must be made by employees of the title IV-E agency, or the employees of another public agency that has entered into an agreement with the title IV-E agency pursuant to section 472(a)(2)(B)(ii) of the Act. However, the title IV-E agency may enter into a contract or agreement with community providers to assist in gathering all of the necessary information for the title IV-E agency to make the determination of candidacy.

Source/Date

2/28/2023

Legal and Related References

Social Security Act - sections 471(e)(5)(B)(ii) and 472(a)(2)(B)(ii)

Question 2. In the process of determining eligibility for and providing title IV-E prevention services, does title IV-E require that the title IV-E agency and/or community provider use language indicating that the child is "at imminent risk of entering foster care ? in communicating with parents?

Answer

No, section 471(e) of the Act does not address what, if anything, the title IV-E agency must communicate to parents about a child's eligibility for title IV-E prevention services and status as a candidate for foster care. The law specifies only that a child's eligibility for title IV-E prevention services as a candidate for foster care who is at imminent risk of entering foster care absent the provision of title IV-E prevention services must be documented in the child's title IV-E prevention plan (section 471(e)(3)(A) of the Act). However, good practice dictates that title IV-E agencies approach families with integrity. The IV-E agency should consider potential practice implications related to family engagement and agency transparency with involved families when providing prevention services.

Source/Date

2/28/2023

Legal and Related References

Social Security Act – sections 471(e) and 471(e)(3)(A)

Question 3. What guidance has been provided regarding when a title IV-E agency can consider a child to be at "imminent risk ? of entering foster care under the definition of "candidate for foster care ? for the title IV-E prevention program?

Answer

As stated in ACYF-CB-PI-18-09, we are not further defining the phrase "candidate for foster care" as it appears in section 475(13) of the Act or further defining the term "imminent risk" of entering foster care for the title IV-E prevention program. Therefore, states and tribes have the flexibility to define and operationalize the concept of "imminent risk" in a way that fits within the scope and goals of the agency's 5-year title IV-E prevention plan, consistent with the statute.

Source/Date

2/28/2023

Legal and Related References

Social Security Act – sections 471(e) and 475(13), and ACYF-CB-PI-18-09

8.6B.4. Title IV-E Prevention Services Program, Eligibility, Age

Question . Can a title IV-E agency extend title IV-E prevention services to expectant parents to address the safety, permanence, or well-being of their unborn child and prevent the child from later entering foster care?

Answer

Yes, a title IV-E agency may allow an expectant parent to receive title IV-E prevention services if the title IV-E agency determines that their unborn child is a candidate for foster care (as defined in section 475(13) of the Act) for the purposes of the title IV-E prevention program. In this scenario, certain title IV-E prevention services may be provided to the parents of the child to prevent the child from entering foster care at or after birth. These services include title IV-E prevention services rated by the Title IV-E Prevention Services Clearinghouse that are intended to enroll expectant parents, include expectant parents in the target population, or are otherwise appropriate and necessary to address the needs of the parents to reduce the risk of removal when the child is born. The title IV-E agency must ensure that all other requirements of the title IV-E prevention program in section 471(e) of the Act are met to receive reimbursement under the program. For example, the title IV-E agency must document that the child is a candidate for foster care in a prevention plan in

accordance with the statute. This must include that the child is at imminent risk of removal at or after birth if title IV-E prevention services that are necessary to prevent the child’s entry into foster care are not provided.

Source/Date

09/28/2026

Legal and Related References

Social Security Act - Sections 471(e), 475(13)

8.6C. Administrative Functions/Costs

Question 1. May a title IV-E agency contract out title IV-E administrative activities under the title IV-E prevention services program to a private or public agency?

Answer

Yes. Generally, a title IV-E agency may contract out title IV-E administrative activities necessary for the administration of the title IV-E prevention program, but the title IV-E agency must supervise the activities performed by the contracted agency. Examples of title IV-E administrative activities that may be contracted out include developing and maintaining the child's prevention plan, activities associated with meeting the requirements in section 471(e)(5)(B)(ii) of the Social Security Act (the Act) to monitor and oversee the safety of children receiving prevention services, and other activities that comport with or are closely related to the examples provided in 45 CFR 1356.60(c)(2).

However, only the title IV-E agency or a public agency (including a tribe) under a title IV-E agreement per section 472(a)(2) of the Act is permitted to make the determination that a child is a candidate for foster care (see also CWPM, Section 8.1D, Q/A #6). The title IV-E agency may contract with a private or public agency to gather all of the necessary information for the title IV-E agency or public agency/tribe under the agreement to make a determination of candidacy.

Source/Date

11/16/2020

Legal and Related References

Social Security Act- sections 471(a)(2), 471(e), and 474(a)(6)(B)(i); 45 CFR 1356.60

8.6C.1. Allowable administrative and training costs

Question 1. ACYF-CB-PI-18-09 provides guidance on claiming child'specific title IV-E prevention administrative costs if services are provided for a specified period. Would this include prevention services claimed under a non-title IV-E program, such as Medicaid?

Answer

Yes, if a child has a title IV-E prevention plan in accordance with section 471(e)(4)(A) of the Act and the prevention services listed in that plan are being provided, the state may claim child'specific title IV-E administrative costs under the title IV-E prevention program.

Source/Date

9/18/2019

Legal and Related References

Social Security Act - section 471(e)(4)(A)

Question 2. May a title IV-E agency claim title IV-E administration for the costs of conducting a well-designed and rigorous evaluation of title IV-E prevention service under section 471(e)(5)(C)(i) of the Act?

Answer

Yes. Conducting an evaluation under section 471(e)(5)(C)(i) of the Act is a requirement of the title IV-E prevention plan. Therefore, the costs of conducting that evaluation are allowable title IV-E administrative costs because it is necessary for the proper and efficient administration of the title IV-E prevention plan (section 474(a)(6)(B)(i) of the Act). Any such costs must be properly cost allocated to benefitting programs through an approved cost allocation plan.

Source/Date

10/23/2019

Legal and Related References

Social Security Act - sections 471(e)(5)(C)(i) and 474(a)(6)(B)(i)

Question 3. Are title IV-E administrative costs available under section 474(a)(6)(B)(i) of the Act for the cost of conducting an independent systematic review in order to complete the checklist for transitional payments?

Answer

Yes, if the state claims such costs pursuant to an approved five-year title IV-E prevention plan. Conducting an independent systematic review of the evidence of a prevention service or program for the purpose of completing the Checklist for Program or Service Designation for HHS Consideration and claiming transitional payments under the title IV-E prevention program is "necessary for the proper and efficient administration" of the title IV-E prevention plan (section 474(a)(6)(B)(i) of the Act). Consistent with 45 CFR 1356.20(c)(8) and ACYF-CB-PI-18-09, a state may claim allowable title IV-E administrative costs beginning the first day of the fiscal quarter in which the state submits an approvable five-year prevention plan (but not prior to October 1, 2019). Any such costs must be allocated through an approved cost allocation plan. However, since the completion of an independent systematic review is a prerequisite solely for purposes of obtaining approval to claim title IV-E prevention Federal Financial Participation (FFP) for transitional payments, the title IV-E prevention program is the only benefitting program for the purposes of cost allocation. This means there is no need to allocate these costs to any other programs that may fund such a prevention service or program.

Source/Date

11/5/2019

Legal and Related References

Social Security Act - section 474(a)(6)(B)(i), 45 CFR 1356.20(c)(8)

Question 4. What are the allowable administrative costs under the title IV-E prevention program?

Answer

Costs for the proper and efficient administration of the title IV-E prevention program are reimbursable at 50 percent federal financial participation (section 474(a)(6)(B)(i) of the Act). Some examples include activities to develop necessary processes and procedures to establish and implement the provision of prevention services for eligible individuals, policy development, program management, continuous quality improvement, data collection and reporting, and conducting an evaluation under section 471(e)(5)(C)(i) of the Act. Processes to establish the provision of prevention services could include outreach efforts to encourage program participants by providing information and identifying any questions or concerns on available services.
The state may also claim for child'specific allowable activities that comport with or are closely related to one of the listed activities at 45 CFR 1356.60(c)(2), such as:
- the development and maintenance of the child's prevention plan as defined in section 471(e)(4)(A) of the Act;
- verification and documentation of program eligibility;

- referral to services;
- outreach to provide information, coordinate services and connect families with resources;
- case planning activities including needs assessments;
- child-care to facilitate a parent or kin caretaker participation in provision of prevention services;
- case management activities, including activities to increase access, utilization, and participation in title IV-E prevention services or programs such as:
o coordinate services, provide transportation escorts and transportation to services and related appointments (e.g., bus passes, rideshares, gas gift cards, and agency or community partner-provided transportation); family engagement activities, such as phone calls to encourage and remind the family of service appointments, and
o peer navigation programs provided as part of case management to support participation in a title IV-E prevention program or service.

A title IV-E agency may claim child'specific administrative costs even when a title IV-E prevention service is paid for from another source (e.g., Medicaid), if the child has a title IV-E prevention plan in accordance with section 471(e)(4)(A) of the Act and the prevention services listed in that plan are being provided.

Child specific administrative costs may be claimed for allowable activities from the beginning of the month in which the child is identified in a prevention plan until the end of the 12th month, if services were provided for the entire 12-month period, or if the services are provided for less than the entire 12-month period, the end of the month the child's title IV-E prevention services ended. Any such costs must be allocated through an approved cost allocation plan or methodology.

Source/Date

7/30/2024

Legal and Related References

Social Security Act- sections 471(e)(4)(A) and (5)(C)(i), 474(a)(6)(B)(i) and (ii); 45 CFR 1356.60(c)(2); and ACYF-CB-PI-24-07
