

Child Welfare Policy Manual

Section 8.4: TITLE IV-E, General Title IV-E Requirements

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

The Administration for Children and Families (ACF) and the Centers for Medicaid and Medicare Services (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 States to consider hours of work, dollar amounts earned, and family size in establishing the reasonable standard of unemployment.

At a minimum, States 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)). States 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). States are not required to establish a broader definition of "unemployed parent" but may do so.

Source/Date

6/23/2003

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 1. Section 108(d) of the Personal Responsibility 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, 2/18/20)

Legal and Related References

Social Security Act - sections 472(a)(4) and 473(a)(2)(B); the Personal Responsibility Work Opportunity Reconciliation Act (PL 104-193); Balanced Budget Act of 1997 (PL 105-33)

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 State 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)

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 8. May the income of a foster care child be pro-rated among the siblings who are placed in the same living arrangement with that child? May resources considered similarly in the same situation? In other words, may the children be considered an assistance group or must each child be a separate assistance unit?

Answer

Each child in foster care, whether placed alone or in the same foster care facility as his or her siblings, is considered a separate unit for purposes of determining eligibility for title IV-E foster care. Only income that is actually received by a child in foster care is counted as available to meet the child's needs and the income and resources of the foster child would not be considered as available to siblings placed or living in the same foster home.

Source/Date

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

Legal and Related References

Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996); 45 CFR 233.90

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-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 12. Pursuant to the provisions of the Foster Care Independence Act of 1999, Section 472(a) of the Social Security Act was amended to permit an increase in the value of resources allowable for title IV-E eligibility to \$10,000. What is the effective date of this amendment?

Answer

The effective date of the amendment to section 472(a) of the Social Security Act (the Act) made by the Foster Care Independence Act of 1999 is December 14, 1999. (Note: The current citation for the foster care program is section 472(a)(3)(B) and for the adoption assistance program is section 473(a)(2)(A)(i)(I)(aa)(BB) of the Act).

Source/Date

Questions and Answers on the Chafee Foster Care Independence Program 7/29/01; revised 7/17/06, 2/18/20

Legal and Related References

Social Security Act - sections 472(a)(3)(B) and 473(a)(2)(A)(i)(I)(aa)(BB)

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 14. What is the definition of unemployed parent for purposes of completing the AFDC portion of a title IV-E eligibility determination?

Answer

The Administration for Children and Families (ACF) and the Centers for Medicaid and Medicare Services (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 States to consider hours of work, dollar amounts earned, and family size in establishing the reasonable standard of unemployment.

Source/Date

6/23/2003

Legal and Related References

Public Law 104-193; 45 CFR 233.101(a)(1); 63 FR 42270-42275, August 7, 1998.

Question 15. How is the \$10,000 resource limit to be applied in determining eligibility for title IV-E?

Answer

The Foster Care Independence Act of 1999 amended section 472(a) of the Social Security Act to authorize an increase in the value of resources allowable for title IV-E eligibility to \$10,000. 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 adoption assistance program is section 473(a)(2)(A)(i)(I)(aa)(BB) of the Social Security Act).

Source/Date

7/6/05; 7/17/2006 (revised 6/6/13; 2/18/20)

Legal and Related References

Question 16. May States adjust the 1996 standard of need to reflect cost of living adjustments?

Answer

No. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) did not include any allowance for cost of living or adjustments for inflation in setting the July 16, 1996 look-back date. States may not adjust the 1996 standard of need to reflect cost of living adjustments, since the statutory look-back date is set at a specific point in time.

Source/Date

7/6/2005

Legal and Related References

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L.104-193)

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?

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. States 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.

Source/Date

September 29, 2005 (revised 6/6/13)

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

Answer

The state 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

2-Dec-16

Legal and Related References

472(a)(3) of the Social Security Act

Question 22. Must a State 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 State use the same definition of "unemployed parent" as Medicaid and TANF. The State must use the definition that was in its Aid to Families with Dependent Children (AFDC) State

plan on July 16, 1996, unless the State has 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

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 26. If a tribal title IV-E agency's service area spans more than one state, how should the agency determine whether the child is AFDC eligible?

Answer

The tribal title IV-E agency must use the AFDC plan (as it was in effect on July 16, 1996) of the state where the child resides (479B(c)(1)(C)(ii)(II) of the Act). However, the tribal title IV-E agency may determine the state in which a child resides in accordance with tribal law or policy.

Source/Date

12/10/2015

Legal and Related References

479B(c)(1)(C)(ii)(II)

Question 27. 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

8.4B. 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 and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996" published in the Federal Register on November 17, 1997 (62 FR 61344) by the Department of Justice should be used as guidance for verifying citizenship.

Source/Date

5/4/2011

Legal and Related References

Social Security Act § section 471(a)(27); 62 FR 61344

Question 13. 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 (updated 12/10/2025)

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).

8.4C. TITLE IV-E, General Title IV-E Requirements, Child support

Question 1. As part of the Aid to Families with Dependent Children (AFDC) requirements for eligibility, the parents must sign a child's support assignment form. Does this provision apply to title IV-E?

Answer

When Public Law 96-272 established title IV-E in 1980, it made no provision for the assignment of support rights as a condition of eligibility. Early developmental policy stated that under title IV-E the assignment of support rights was optional; however, section 471(a)(17) of the Social Security Act (as amended by Public Law 98-378, (effective October 1, 1984)) requires title IV-E agencies to take steps to secure an assignment of support rights on behalf of each child receiving title IV-E foster care maintenance payments. However, a child is not ineligible under title IV-E because the parent fails to comply with certain AFDC requirements in regard to child's 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's support agency..." (45 CFR 233.90 (b)(4)(i)).

Source/Date

ACYF-CB-PIQ-85-07 (6/25/85) (revised 6/6/13)

Legal and Related References

45 CFR 233.90

Question 5. 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's 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's support?

Answer

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's support for children receiving title IV-E FCMPs.

Securing an assignment of the rights to child's 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's 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%20FC%20collections%20FINAL.pdf>

Source/Date

6/8/2022

Legal and Related References

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 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. A child, if eligible, may receive benefits from both 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)

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);

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

Question 4. Are Supplemental Security Income (SSI) benefits under Title XVI made to a child in foster care, including those funds conserved for the child in dedicated accounts, counted as a resource when determining eligibility for title IV-E?

Answer

No. The child must have been eligible for Aid to Families with Dependent Children (AFDC) as it was in effect on July 16, 1996 (section 472(a) of the Social Security Act) to receive title IV-E foster care maintenance payments. 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.

Source/Date

11/14/07 (revised 6/6/13)

Legal and Related References

Social Security Act - titles IV-E and XVI; 45 CFR 233.20(a)(1)(ii) and 233.20(a)(3)(x)

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 focussed around the specific nature of the information, but rather the source of the information. No information that is gained from the child welfare agency may be released, except for the purposes identified in 45 CFR 205.50 (a)(1)(i). If the court gains information regarding a juvenile from the child welfare agency, this information must remain confidential. Should the court gain information about a juvenile in a proceeding that does not involve the child welfare agency, the confidentiality provisions of Section 471(a)(8) of the Social Security Act do not apply. Other parties would abide by their own confidentiality restrictions.

Thus, in a court proceeding, if a psychologist is requested to testify on behalf of the child welfare 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 child welfare agency, then Section 471(a)(8) does not apply.

Source/Date

ACYF-CB-PIQ-95-02 (6/7/95)

Legal and Related References

Social Security Act - section 471 (a)(8); 45 CFR 205.50

Question 2. Who can release information? In particular, can parties other than the title IV-E agency (such as the court) release information?

Answer

The release of information which was obtained from the child welfare agency by any party (including the court), except in the same circumstances as identified in 45 CFR 205.50(a)(1)(i), would result in violation of the title IV-E Plan requirements.

Source/Date

ACYF-CB-PIQ-95-02 (6/7/95) (revised 6/6/13)

Legal and Related References

Social Security Act - section 471 (a)(8); 45 CFR 205.50

Question 3. Is any information contained in the child welfare record protected from redisclosure by a court in accordance with title IV-E confidentiality requirements?

Answer

No. The prohibition covers information that is gained from the child welfare agency. The provisions of confidentiality of information cannot be extended to information that the court has gained from sources other than the child welfare agency.

For example, if the police, school officials, or some other party refers a child to the child welfare agency, the child welfare agency must treat information about the referral as confidential. If the child welfare agency informed the court about this referral, court redisclosure of this information would result in the agency's violation of the plan requirements under title IV-E. If the police, the school official, or some other party went to the court directly, then the confidentiality provisions would not apply. If the court became aware of the police, the school, or other party involvement 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)

Legal and Related References

Social Security Act - section 471 (a)(8); 45 CFR 205.50

Question 4. Under what authority may the Department review closed or sealed foster care records, particularly for those children who have been adopted?

Answer

Section 471(a)(8) of the Social Security Act requires a title IV-E plan to provide safeguards restricting use and disclosure of information concerning individuals assisted by the title IV-E programs. It also indicates that a title IV-E plan must provide: Safeguards which restrict the use of information concerning individuals assisted under the Plan to purposes directly connected with... (C) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan

or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in (D), with respect to any activity referred to in such clause), of any information which identifies by name or address any such applicant or recipients except that nothing contained herein shall preclude a State or Tribe from providing standards which restrict disclosures to purposes more limited than those specified herein, or which in the case of adoptions, prevent disclosure entirely.

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

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

The authority for Federal audits of the title IV-E programs is expressly provided for under section 471 (a)(6). That section requires that a Plan, in order to qualify for FFP for title IV-E, provide that the appropriate agency will make such reports, in such form and containing such information as the Secretary may from time to time find necessary to assure the correctness and verification of such reports.

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

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

Source/Date

ACYF-PA-85-02 (12/19/85) (revised 6/6/13)

Legal and Related References

Social Security Act - sections 471 (a)(6) and (8) and 479Bb; H.R. Rep. Conf. No. 96-900, 96th Congress 2nd Session 44 (1980)

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

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 States have to request information from a "State" maintained child abuse and neglect registry of a U.S. Territory 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, States have to 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 those Territories that have an approved State plan under title IV-E are obligated to comply with an incoming request pursuant to section 471(a)(20)(C)(ii) of the Act.

Source/Date

12/6/2007

Legal and Related References

Social Security Act - section 471(a)(20)(C); 45 CFR 1355.20

Question 4. Do the requirements for a criminal records check include checks for any member of the household over the age of 18?

Answer

No. Such a requirement would go beyond the statute.

Source/Date

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

Legal and Related References

Social Security Act - section 471 (a)(20); 45 CFR 1356.30

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, unless the State opts out of the provision, an alcohol-related felony conviction within the last five years would prohibit the State 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)

Legal and Related References

Social Security Act - section 471 (a)(20); 45 CFR 1356.30

Question 6. May an Indian tribe elect not to conduct or require criminal records checks on foster or adoptive parents if it obtains an approved resolution from the governing body of the Indian tribe?

Answer

No. Tribes may only receive title IV-E funds pursuant to a title IV-E agreement with a State. A Tribe that enters into such an agreement must comport with section 471 (a)

(20) of the Social Security Act (the Act) and section 1356.30 in accordance with the State plan in order to receive title IV-E funding on behalf of children placed in the homes it licenses. Agreements between the State child welfare agency and other public agencies or Tribes permit those entities to have placement and care responsibility for a particular group of the foster care population under the approved State plan. Such agreements do not permit other public agencies or tribes to develop a distinct title IV-E program separate from that operated under the approved State plan.

Source/Date

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

Legal and Related References

Social Security Act - section 471(a)(20); 45 CFR 1356.30

Question 7. Must a State 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 State 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 State's criminal records check procedures that the State must complete before licensing or approving a prospective foster or adoptive parent.

Although the State 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, States 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

Legal and Related References

Social Security Act § 471(a)(20)(A)

Question 8. Must the State 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 State is not required to conduct a check of the State's child abuse and neglect registry before placing a child in the home of a prospective foster or adoptive parent. Rather, a State must check, or request a check of a State-maintained child abuse and neglect registry in each State the prospective foster and adoptive parents and any other adult(s) living in the home have resided in the preceding five years before the State can license or approve a prospective foster or adoptive parent.

Although the State 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, States 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

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 State 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, section 471(a)(20) of the Act does not require the State to complete additional child abuse and neglect checks on other adult(s) living in the home.

Source/Date

1/29/2007

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)(A) of the Act and to whom they apply.

Answer

Section 471(a)(20)(A) of the Act places requirements on the State as a condition of the title IV-E State 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 State plan, the State 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. The State 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 State's title IV-B/IV-E program (section 471(a)(20)(A) of the Act). Agents of the title IV-E agency include a State 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 State 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 State agency).

Source/Date

13-Apr-07

Legal and Related References

Question 11. To whom do the child abuse and neglect registry checks for prospective foster and adoptive parents at section 471(a)(20)(C) of the Social Security Act (the Act) apply?

Answer

The State must check any child abuse and neglect registry maintained by a State in which the adults living in the home of a prospective foster or adoptive parent have resided in 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 State's title IV-B/IV-E programs (section 471(a)(20)(C)(i) of the Act).

Source/Date

13-Apr-07

Legal and Related References

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

Question 12. May a State 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-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 State'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 State must also check its own State-maintained child abuse and neglect registry, if it has one, and other State-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 #29 for case-by-case situations in which States may use an alternative method to obtain fingerprint-based checks of the NCID.

Source/Date

7/2/2007

Legal and Related References

Social Security Act - section 471(a)(20); CWPM Section 8.4F #29

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 State 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 has separate licenses or approvals for foster and adoptive parents, then the State 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 State 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 State can consider the requirement of section 471(a)(20) of the Act met without conducting a new background check.

Source/Date

7-Apr-08

Legal and Related References

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

Question 14. May a State 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 State 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

Legal and Related References

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

Question 15. May a State 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 State 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

Legal and Related References

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

Question 16. Section 471(a)(20)(C)(i) of the Social Security Act (the Act) requires a State to request a check of information in another State's child abuse and neglect registry in which a prospective foster parent, adoptive parent, or other adult in the home has resided in the preceding five years. With regard to this provision, is the requesting State able to comply with the law if the other State that maintains such a registry denies the request because the provision is not yet effective in the other State?

Answer

Yes. Section 471(a)(20)(C)(i) of the Act requires the State to request and check a State-maintained child abuse and neglect registry of another State in which prospective foster and adoptive parents and other adults living in the home have

resided within the last five years. The requirement is met for the requesting State when the State receives the information from the other State's registry or is denied the request because the statutory provision is not yet in effect in the other State (or does not maintain a registry). If the State's request to check child abuse and neglect information is denied because the other State has an ACF-approved delayed effective date, or the State does not maintain a registry, the State may determine whether to license or approve the prospective foster or adoptive parent in the absence of the information. A State that maintains a child abuse and neglect registry must comply with another State's request to check information on a prospective adoptive or foster parent and other adult household members (section 471(a)(20)(C)(ii) of the Act) as of the State's specified effective date consistent with section 471(a)(20)(C)(i) and (ii) of the Act. The effective date will vary among the States and may extend into 2008 if a State has an ACF-approved delayed effective date (section 152(c) of Public Law 109-248).

Source/Date

13-Apr-07

Legal and Related References

Social Security Act - section 471(a)(20)(C); Public Law 109-248 § section 152(c)

Question 17. Must a State make a registry check request pursuant to section 471(a)(20)(C)(i) of the Social Security Act (the Act) of a State which is not yet required to comply with such a request due to having an ACF-approved delayed effective date for section 471(a)(20)(C)(ii) of the Act?

Answer

Yes. Section 471(a)(20)(C)(i) of the Act requires a State to request a check of information in another State's child abuse and neglect registry in which a prospective foster parent, adoptive parent, or adult in the home has resided in the preceding five years. A State seeking to approve or license prospective foster or adoptive parents must request the information on all adults in the prospective foster/adoptive home, even if the other State that maintains a child abuse and neglect registry has an ACF-approved delayed effective date.

Source/Date

13-Apr-07

Legal and Related References

Social Security Act - section 471(a)(20)(C)(i)

Question 18. Section 471(a)(20)(C)(i) of the Social Security Act (the Act) states that "the State shall check any child abuse and neglect registry maintained by the State..." How does this apply if a State does not maintain a child abuse and neglect registry?

Answer

If a State itself does not maintain a child abuse and neglect registry, the State is not required by section 471(a)(20)(C)(i) of the Act to provide information to a requesting State or check further for child abuse and neglect information within the State on the prospective adoptive parent, foster parent or other adults living in the home.

Source/Date

13-Apr-07

Legal and Related References

Social Security Act - section 471(a)(20)(C)(i)

Question 19. How should a State proceed when another State that maintains a child abuse and neglect registry does not respond to an out-of-State request to check a child abuse and neglect registry pursuant to section 471(a)(20)(C)(i) of the Social Security Act (the Act)?

Answer

The State 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 State-maintained child abuse and neglect registry check of another State 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 State has an ACF-approved delayed effective date. A State that believes that another State that maintains a registry is not responding appropriately to an information request for a reason other than an ACF-approved delayed effective date should contact their ACF regional office. ACF may conduct a partial review pursuant to 45 CFR 1355.32(d) to determine the State's compliance with the title IV-E State plan.

Source/Date

13-Apr-07

Legal and Related References

Social Security Act - section 471(a)(20)(C)(i) and (ii); 45 CFR 1355.32(d)

Question 20. How should a State that maintains a child abuse and neglect registry and has an ACF-approved delayed effective date respond to incoming requests for child abuse and neglect registry information on prospective adoptive and foster parents pursuant to section 471(a)(20)(C) of the Social Security Act? Is that State out of compliance with the law if it does not provide the information?

Answer

The statute does not prescribe how a State with an ACF-approved delayed effective date should respond when denying a request for child abuse and neglect registry information from another State. The State is not out of compliance with the statute if it is unable to provide the information in its registry to another State on the adults living in the home of a prospective foster and adoptive parent before the ACF-approved effective date on which it is required to comply.

Source/Date

13-Apr-07

Legal and Related References

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

Question 21. If a State has verified that another State does not maintain a child abuse and neglect registry, is the State still required by section 471(a)(20)(C)(i) of the Social Security Act (the Act) in every case to make a request to that other State?

Answer

No. The requirement in section 471(a)(20)(C)(i) of the Act to request a check for child abuse and neglect registry information in another State in which the prospective parent or other adult has resided in the preceding five years is inapplicable if that other State does not maintain a child abuse and neglect registry.

Source/Date

13-Apr-07

Legal and Related References

Social Security Act - section 471(a)(20)(C)(i)

Question 22. Some States have procedures that predicate releasing information from their State-maintained child abuse and neglect registry on

the requesting State meeting certain conditions. For example, some States require the requesting State to obtain a notarized release or consent from the prospective foster or adoptive parent and others charge a fee for the information. Is this permissible?

Answer

Yes. The statute does not prohibit a State from establishing procedures or charging fees for another State to access information from its State-maintained child abuse and neglect registry. As long as the State that maintains the registry enables another State to request and check information in that registry, the State is meeting the requirement in section 471(a)(20)(C)(ii) of the Social Security Act. Any fees paid by the requesting State to another State to gain access to information in a State-maintained child abuse and neglect registry pursuant to section 471(a)(20)(C)(i) of the Act may be reimbursed as direct title IV-E administrative costs.

Source/Date

13-Apr-07

Legal and Related References

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

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 25. Is an Indian tribe that has a title IV-E agreement under section 472(a)(2)(B)(ii) of the Social Security Act (the Act) permitted an exemption or exception to the background check provisions of section 471(a)(20) of the Act?

Answer

No. An Indian tribe with a section 472(a)(2)(B)(ii) agreement must meet the requirements of section 471(a)(20) of the Act for any prospective foster or adoptive parent who will provide care for a child who will receive title IV-E foster care maintenance payments or title IV-E adoption assistance payments.

Source/Date

13-Apr-07

Legal and Related References

Social Security Act § sections 471(a)(20)(A) and 472(a)(2)(B)(ii)

Question 26. Do States have to request information from a child abuse and neglect registry of an Indian tribe 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)? Do Indian tribes have to comply with such a request from a State according to section 471(a)(20)(C)(ii) of the Act?

Answer

No to both questions. The references to a "State"-maintained child abuse and neglect registry in section 471(a)(20)(C)(i) and (ii) of the Act do not include an Indian tribe, as an Indian tribe is not considered a "State" for title IV-E pursuant to 45 CFR 1355.20.

Source/Date

13-Apr-07

Legal and Related References

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

Question 28. For the purposes of section 471(a)(20)(C) of the Social Security Act (the Act), what constitutes a "child abuse and neglect registry maintained by the State"? If a State does not have such a registry, is it required to develop one?

Answer

The State has the discretion to determine whether it has a "child abuse and neglect registry maintained by the State." The law does not require a State that does not maintain a child abuse and neglect registry to develop one, neither does it require a State that currently has a registry to maintain it in perpetuity. States that do not maintain a child abuse and neglect registry are not required by section 471(a)(20)(C)(ii) of the Act to provide child abuse and neglect information to a requesting State on adult members of a prospective foster or adoptive parent's home.

Source/Date

4/27/2007

Legal and Related References

Social Security Act § section 471(a)(20)(C)

Question 29. What information must a State release from its child abuse and neglect registry to comply with an incoming request from another State for information on an adult member of a prospective foster or adoptive parent's

home as required by section 471(a)(20)(C)(ii) of the Social Security Act? For example, may the State release information only on substantiated reports of abuse and neglect?

Answer

The State has the discretion to determine what information to release to a requesting State on the prospective foster or adoptive parent or any adult living in the home of such prospective parent, unless or until we issue regulations on this provision. We encourage States to be as forthcoming as possible to permit States to make appropriate decisions about approval or licensure of prospective foster or adoptive parents.

Source/Date

4/27/2007

Legal and Related References

Social Security Act § section 471(a)(20)(C)(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 31. Does the State title IV-E agency, or licensing authority, itself have to request information from a State-maintained child abuse and neglect registry pursuant to section 471(a)(20)(C)(ii) of the Social Security Act (the Act)? Similarly, does the State title IV-E agency, or licensing authority, itself have to receive the registry information?

Answer

Yes to both questions. The statute provides "that *the State shall check* any child abuse and neglect registry...*and request* any other State in which" the prospective parent or other adults in the home have resided the past five years (see section 471(a)(20)(C) of the Act). Further, the State that maintains such a registry must comply with an incoming request received from another State title IV-E agency or licensing authority (section 471(a)(20)(C)(ii) of the Act). For purposes of this State plan requirement, the request must be made *by the State* title IV-E agency or other licensing authority requiring the check *directly to the other State* where the adult had lived, and the State that maintains the child abuse and neglect registry must respond *to the State* title IV-E agency or other licensing authority rather than to the prospective parent or other adult living in the household. It is permissible, however, for the State that maintains the registry to have a procedure which requires the State title IV-E agency or other licensing authority submitting the request to obtain an affidavit or other form of consent from the adult to release such information.

Source/Date

12/6/2007

Legal and Related References

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

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 State 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

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's 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 agency claim title IV-E foster care maintenance payments on behalf of a child who is placed in a child care institution? May a title IV-E agency's criminal record check procedures under 471(a)(20)(D) allow adults to work in a childcare institution before the results of their checks have been received?

Answer

The criminal record check procedures under 471(a)(20)(D) of the Act establish the circumstances under which an agency may claim title IV-E foster care maintenance payments on behalf of an eligible child. A title IV-E agency only may claim title IV-E foster care maintenance payments on behalf of a child placed in a child care institution if, during the period the title IV-E agency claims title IV-E foster care maintenance payments, 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).

Source/Date

8/22/2019

Legal and Related References

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

Question 35. May a title IV-E agency claim title IV-E foster care maintenance payments for children placed in child care institutions if the agency does not have approved criminal record check procedures in place by its effective date or delayed effective date as required section 471(a)(20) of the Social Security Act (the Act) and is under a program improvement plan?

Answer

No. Congress specified an effective date for the criminal record check requirements in section 471(a)(20)(D) of the Act and possible delayed effective dates by which a title IV-E agency that required legislation must have implemented this provision. As such, a title IV-E agency may not claim title IV-E foster care maintenance payments for children placed in child care institutions while under a program improvement plan because it does not have its criminal record procedures developed and approved by its effective date or delayed effective date.

Source/Date

8/22/2019

Legal and Related References

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

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)

Question 37. The Act at 471(a)(20)(B) and (D) requires that the title IV-E agency request child abuse and neglect registry information from any State or tribe with an approved title IV-E plan where the adult who works in the child care institution has resided over the preceding five years. From which

date are these five years calculated for adults already working in the institution?

Answer

For each adult working in the child care institution, the agency may calculate the preceding five-year period for this requirement using its effective date for section 471(a)(20)(B) and (D), or through another method as approved in its title IV-E plan.

Source/Date

8/22/2019

Legal and Related References

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

Question 38. When may a title IV-E agency begin to claim title IV-E foster care maintenance payments (FCMP) on behalf of an otherwise eligible child if the criminal record checks required by section 471(a)(20) (A) or (D) were completed after a child is placed in a foster family home or child care institution?

Answer

Consistent with section 471(a)(20)(A) and (D) of the Social Security Act (the Act), a title IV-E agency only may claim title IV-E FCMPs on behalf of a child placed in a foster family home or child care institution for the days that the results of the criminal record checks have been received as described in the Act. Specifically, a title IV-E agency may only claim title IV-E FCMP on behalf of an otherwise eligible child placed in a child care institution for the days that the agency has received criminal records checks for all adults working in the child care institution (CWPM 8.4F, Q/A #34). Further, as specified in CWPM 8.4F, Q/A #8, title IV-E foster care maintenance payments may be paid on behalf of an otherwise eligible child placed in a foster family home only for the days that the foster parents' criminal records check have 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.

Source/Date

12/8/2022

Legal and Related References

Social Security Act - section 471(a)(20)(A) and (D), CWPM §8.4F, Question and Answers #8 and #34

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

Question 3. Do foster parents or relative caregivers have a right to a fair hearing under section 471(a)(12) of the Social Security Act (the Act) with regard to adverse placement decisions? 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 provisions at sections 471(a)(19) and 475(5)(G) of the Act have no relation to or bearing on the fair hearing requirements. The title IV-E agency determines where and with whom the child will be placed by virtue of its placement and care responsibility.

The fair hearing provision at section 471(a)(12) of the Act provides for granting an opportunity for a fair hearing to any individual whose claim for benefits available pursuant to this part 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.

Source/Date

06/09/04 (revised 6/6/13)

Legal and Related References

Section 471(a)(12) of the Social Security Act, 45 CFR 205.10 and 1355.30(p)(2).

Question 4. Does section 471(a)(12) of the Act give prospective adoptive parents a right to the 45 CFR 205.10 fair hearings provisions with regard to pre-adoptive foster care placement issues?

Answer

No. Section 471(a)(12) of the Act does not grant prospective adoptive parents the right to a fair hearing under 45 CFR 205.10, for the purposes of challenging the title IV-E agency's exercise of its placement and care responsibilities pursuant to section 472(a)(2)(B) of the Act. The title IV-E fair hearings provision is 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 situation raised in the question does not involve the denial of a benefit or assistance, but rather entails a placement decision.

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.

Source/Date

06/09/04 (revised 6/6/13)

Legal and Related References

Section 471(a)(12) of the Social Security Act, 45 CFR 205.10.

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)

8.4H. TITLE IV-E, General Title IV-E Requirements, Safety Requirements

Question 1. Is the requirement for criminal records checks extended to the staff of child-care institutions, unlicensed relative homes?

Answer

See CWPM sections [8.3A.8C](#) and [8.4F](#).

Source/Date

Preamble to the Final Rule (65 FR 4020) (1/25/00) (revised 6/6/13;4/15/20)

Legal and Related References

Social Security Act - section 471 (a)(20); 45 CFR 1356.30; Child Welfare Policy Manual sections 8.3A.8C and 8.4F

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
